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**30 CFR Parts 49 and 75
Mine Rescue Teams; Final Rule**

DEPARTMENT OF LABOR**Mine Safety and Health Administration****30 CFR Parts 49 and 75**

RIN 1219-AB53

Mine Rescue Teams**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.**ACTION:** Final rule.

SUMMARY: The final rule revises MSHA's existing standards for mine rescue teams for underground coal mines. This final rule implements Section 4 of the Mine Improvement and New Emergency Response (MINER) Act of 2006 to improve overall mine rescue capability; to improve mine emergency response time and mine rescue team effectiveness; and to increase the quantity and quality of mine rescue team training.

DATES: *Effective date:* February 8, 2008.

Compliance dates: Each mine operator shall comply with the following sections by the dates listed below.

1. § 49.12(h) by May 8, 2008.
2. § 49.12(f) and § 75.1501(a)(2) by August 8, 2008.
3. § 49.40 by November 10, 2008.
4. §§ 49.18(b), 49.20(a), 49.20(b), 49.30, and 49.50 by February 9, 2009.

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I. Introduction

This final rule implements Section 4 of the Mine Improvement and New Emergency Response (MINER) Act of 2006. MSHA's objective, consistent with the MINER Act, is to develop a final rule that fosters an environment that results in more preparation for mine rescue and mine emergency response. The final rule, like the proposal, retains all existing standards as subpart A applicable to underground metal and nonmetal mines. The MINER Act is not applicable to metal and nonmetal mines. The final rule creates a new, separate, subpart B containing existing standards and MINER Act provisions for underground coal mines. MSHA developed this final rule based on the provisions of the MINER Act, Agency data and experience, testimony at the public hearings, and the comments on the proposed rule.

MSHA is providing delayed compliance dates for some sections to give mine operators the time needed to comply with the stated requirements.

1. By May 8, 2008, each mine operator must send the District Manager a statement describing the mine's method of providing mine rescue coverage in accordance with § 49.12(h).

2. By August 8, 2008—

- Each mine must have a mine rescue station located no more than 1 hour ground travel time from the mine in accordance with § 49.12(f). If equipment is not readily available, the operator must have purchase orders for the required equipment.

- The mine operator must have a responsible person knowledgeable about mine emergency response, who has completed the course of instruction in

mine emergency response prescribed by MSHA in accordance with § 75.1501(a)(2).

3. By November 10, 2008, each operator of a large mine must have either an individual mine-site team or a composite team as one of the mine's certified mine rescue teams in accordance with § 49.40.

4. By February 9, 2009—

- Mine rescue team members must have completed 96 hours of annual training, including participation in two local mine rescue contests and training at each covered mine in accordance with § 49.18(b).

- Each mine operator shall make available two certified mine rescue teams whose members are familiar with the operations of the mine and have participated in two local mine rescue contests in accordance with § 49.20(a).

- Each team providing coverage to a mine must be knowledgeable about the operations and ventilation of the mine in accordance with §§ 49.20(b) and 49.30.

- Each mine operator must certify to the District Manager that each team designated to provide mine rescue coverage to the mine meets the requirements for certification in accordance with § 49.50.

II. Statutory and Rulemaking Background

In accordance with section 115(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act), MSHA issued standards in 30 CFR part 49 for mine rescue teams in underground coal and metal and nonmetal mines (45 FR 47002, July 11, 1980). Part 49 contains requirements addressing the three essential elements of effective mine rescue teams: (1) Ready availability; (2) proper equipment; and (3) basic levels of skills and training.

After several underground coal mine disasters in 2006, Congress passed and the President signed the Mine Improvement and New Emergency Response (MINER) Act of 2006, which became effective on June 15, 2006. The goal of the MINER Act is "to improve the safety of mines and mining." Section 4 of the MINER Act requires that the Secretary issue regulations for mine rescue teams by December 2007. Because the mine rescue team provisions contained in section 4 of the MINER Act apply only to underground coal mines, the final rule affects those mines and the mine rescue teams that cover them.

MSHA published the proposed rule for Mine Rescue Teams in the **Federal Register** on September 6, 2007 (72 FR 51320). The Agency held four public

hearings on October 23, 2007, in Salt Lake City, Utah; on October 25, 2007, in Lexington, Kentucky; on October 30, 2007, in Charleston, West Virginia; and on November 1, 2007, in Birmingham, Alabama. In response to a request from the public, MSHA extended the comment period from November 9, 2007, to November 16, 2007. This action allowed commenters sufficient time to review the posted transcripts and submit comments.

III. Section-by-Section Analysis

MSHA developed this final rule based on the provisions of the MINER Act, Agency experience, testimony at the public hearings, and the comments on the proposed rule.

A. Technical Amendments to Existing Standards

This final rule makes no substantive change to requirements for mine rescue teams at underground metal and nonmetal mines; however, it makes the following non-substantive organizational changes to 30 CFR part 49.

- The final rule adds a heading designating the existing standards as *Subpart A—Mine Rescue Teams for Underground Metal and Nonmetal Mines*; but makes no changes to §§ 49.1 through 49.9.

- The final rule deletes § 49.10 *Effective date*, which is obsolete.

B. Subpart B

Subpart B contains all the standards applicable to mine rescue teams for underground coal mines. The final rule revises existing standards to implement the provisions and achieve the goals of the MINER Act, and to address the unique conditions present in anthracite coal mines. The final rule also revises existing § 75.1501(a) in 30 CFR part 75 to implement a MINER Act requirement.

Subpart B contains the following five new standards:

§ 49.20 Requirements for all coal mines.

§ 49.30 Requirements for small coal mines.

§ 49.40 Requirements for large coal mines.

§ 49.50 Certification of coal mine rescue teams.

§ 49.60 Requirements for a local mine rescue contest.

1. New Subpart B and the Reorganization of Part 49

The final rule, like the proposal, retains all existing standards as subpart A applicable to underground metal and nonmetal mines and creates a new, separate, subpart B containing existing

standards and the MINER Act provisions for underground coal mines. In the proposal, MSHA requested comments on the re-organization of 30 CFR part 49. Commenters supported the re-organization and thought that it was beneficial in eliminating confusion. A commenter expressed concern regarding use of separate standards for different industries and urged MSHA to be cautious of this approach. MSHA's approach in the final rule is consistent with the Agency's longstanding practice of having separate standards for different industries.

MSHA also requested comments on whether the proposal would result in different approaches to providing mine rescue services and, if so, what those approaches would be. Commenters expressed a variety of concerns, most related to team composition and training at each covered mine.

2. Section 49.11 Purpose and Scope

The final rule, like the proposal, adds the phrase, "as amended by the Mine Improvement and New Emergency Response Act of 2006," to update § 49.11 *Purpose and scope*. This change is a technical amendment. The final rule also designates the existing provision as paragraph (a) and adds a new paragraph (b). Paragraph (b) contains Table 49.11, which provides mine operators a summary of new MINER Act requirements. As noted following the table, state employees, whose primary job duties include (1) inspecting underground mines for compliance with state safety laws, (2) training mine rescue teams, or (3) other similar duties that would enhance their mine rescue knowledge, can substitute their regular job experience for 50 percent of the annual training requirements, including mine rescue contests and mine-site training.

MSHA requested comments on allowing State employees on mine rescue teams to substitute their job experience for 50 percent of the annual training requirements. Most commenters agreed that job duties can substitute for some of the required training. One commenter suggested that job experience should substitute for all training requirements. Some commenters stated that all mine rescue team members should be allowed to substitute job experience for training requirements. Several commenters stated that individual job duties should not be allowed to substitute for any mine rescue team training for any mine rescue team members.

State employees on mine rescue teams involved in full-time inspection and mine rescue training activities have

developed an expertise that will enhance mine rescue team emergency response capabilities. They are dedicated professionals who are familiar with mines they cover and knowledgeable about mine rescue and other areas of mine safety and health training. On a daily basis, they are exposed to a variety of mining environments, complex conditions, different problems, and new issues. This affords them a broad perspective into the safety and health objectives pertaining to mine rescue and mine rescue training.

MSHA recognizes the knowledge and experience state employees on mine rescue teams gain in the performance of their jobs. MSHA agrees with the commenters supporting the note to Table 49.11. Under the final rule, full-time state employees on mine rescue teams must complete at least 48 hours of refresher training annually, including participation in at least one local mine rescue contest and training at each covered mine at least once every year.

3. Section 49.12 Availability of Mine Rescue Teams

(a) § 49.12(b) Alternative Composition Requirements for Mine Rescue Teams for Anthracite Coal Mines

The final rule, like the proposal, includes requirements for mine rescue teams serving underground anthracite coal mines with no electrical equipment at the working section. The final rule is derived from petitions for modification, which MSHA has historically granted under section 101(c) of the Mine Act, because mining methods and conditions in underground anthracite coal mines are unique. For these mines, MSHA requires mine rescue teams to be comprised of three members each and one alternate team member to serve both teams.

In support of these petitions, anthracite mine operators cited the following:

- Most anthracite mines are not highly mechanized. Production and maintenance work is done largely by hand, using simple hand tools and equipment. Anthracite mines may have no underground electric power or may have power only at the bottom of the hoist slope.

- Typically, extraction occurs in a single face or production area. Many anthracite mines are developed only short distances underground, rarely more than several thousand feet.

- Anthracite seams dip steeply and are often near vertical. Openings are narrow and constricted. Access between levels is by means of hardwood ladders

through small, steeply pitched openings.

- The hoist bucket, used to transport personnel, typically can accommodate no more than four persons.

- Rock dusting is not required because of the extremely low combustibility of anthracite coal, caused by its low volatile content.

- The average underground anthracite mine employs four miners.

- In the past 20 years, no more than one mine rescue team has been needed in the anthracite region for rescue and recovery activities. Further, no more than three rescue team members have entered a working place at the same time during such activities.

In accordance with section 101(c) of the Mine Act, MSHA investigated each petition of § 49.2(b) from these small, underground anthracite coal mines and made the following finding:

Considering this confirmation and the narrow width and constricted openings, the limited capacity of hoist conveyances, the pitched seam, the short travel distance from the slope bottom to the working face, and the low combustibility of anthracite coal, petitioner's alternative method of two mine rescue teams with three members each is as safe as maintaining two teams of five members. As such, it achieves the result of the standard to ensure the availability of mine rescue capability for purposes of emergency rescue and recovery.

On the basis of the petitions and the findings of its investigations, MSHA granted 22 petitions for modification of § 49.2(b) that allow anthracite coal mines to operate under the approved alternate method. Currently, 10 underground anthracite coal mines operate under this approved alternative method.

Most anthracite mines are small (average 5 employees) and could not have their own mine site teams, are located in the same geographical area, and belong to an association called "Anthracite Underground Rescue" (AUGR). AUGR and the Pennsylvania Bureau of Mine Safety (Bureau) have an agreement for mine rescue training. AUGR provides qualified miners to be trained in mine rescue and the State provides a mine rescue station, equipment, and a trainer. These teams cover all the anthracite mines.

Commenters supported this provision. One commenter stated that the proposed alternative does not benefit two small anthracite mines that have electrical face equipment and they can not realistically start their own company teams. This commenter urged MSHA to consider these teams as composite, but not require team members from each covered mine. The final rule does not

expand the proposed provision to underground anthracite coal mines with electrical equipment at the face or working section. This final provision is consistent with MSHA's action on existing petitions for modification.

(b) § 49.12(c) Alternative Experience Requirement for Members of Contract Mine Rescue Teams

The final rule, like the proposal and consistent with the MINER Act, requires that members of contract mine rescue teams have "a minimum of 3 years underground coal mine experience that shall have occurred within the 10-year period preceding their employment on the contract mine rescue team." The final rule retains the existing provision that requires mine rescue team members to have been employed in an underground mine for at least 1 year within the past 5 years. MSHA received no comments on this provision.

One commenter objected to allowing a surface employee who regularly works underground to claim such time to meet the experience requirement. The final rule retains this existing provision; the proposal did not address it.

Another commenter asked that MSHA clarify what it means to work underground "regularly." For the purpose of this provision, MSHA considers "regularly works" to mean that the member has recurring job duties at each mine, exposing the member to the mine's underground operations, conditions, and environment. For example, this may include surveyors, engineers, safety personnel, electricians, and maintenance and service personnel.

Several commenters requested that MSHA waive this requirement for current mine rescue team members who are employed on the surface. Like the proposal, the final rule waives the underground experience requirement for those miners on a mine rescue team on February 8, 2008.

4. § 49.12(f) Available Within 1 Hour Ground Travel Time From the Mine Rescue Station

The final rule, like the proposal, includes the MINER Act requirement that no mine served by a mine rescue team shall be located more than 1 hour ground travel time from the mine rescue station with which the rescue team is associated. This provision will assure that a team will arrive at the mine more quickly in case of a mine emergency.

MSHA received numerous comments on this proposal. Commenters questioned whether this provision would improve safety in an actual emergency. Commenters noted that there have been no instances where a

team's arrival delayed a rescue operation and stated that the provision is not justified. Several commenters indicated that the proposal is infeasible for some western coal mines, which are geographically isolated. Likewise, some commenters indicated that rugged terrain in Central Appalachia hinders ground travel, making compliance difficult. A few commenters stated that the proposal will cause the relocation of stations further from some mine sites, disrupt current team coverage, and may result in mine closures. Many commenters indicated that a sufficient number of volunteers may not be available to form additional teams needed for new mine rescue stations. Commenters stated that the establishment of new and relocation of existing rescue stations is an unnecessary, burdensome expense, with no benefit to mine safety.

Commenters suggested that MSHA grandfather existing mine rescue stations and current coverage arrangements. Commenters also suggested that MSHA allow the District Manager to grant waivers of the 1 hour ground travel time for existing teams and stations, but only up to 2 hours. Commenters also asked MSHA to consider alternatives, including the use of air transportation and emergency escorts.

One commenter did not believe the 1-hour provision would cause undue hardship. One commenter stated that more rescue stations would likely be created, resulting in teams getting to the mines sooner. Consistent with the MINER Act, the final rule includes the 1-hour requirement.

5. Section 49.13 Alternative Mine Rescue Capability for Small and Remote Mines

The final rule, like the proposal, retains the existing provision for alternative capability for small and remote mines. It requires that the operator's application include the total underground employment of any mines within 1 hour of the operator's mine, to be consistent with the 1-hour requirement of the MINER Act. It also requires that the operator include the location of the mine rescue station serving the mine. Commenters suggested alternatives that the District Manager should consider for small and remote mines. Other commenters stated that this provision should not be used to allow remote operations with large numbers of miners to circumvent the MINER Act requirement for two teams. For clarification, MSHA notes that this provision, which was in the existing standard, requires a mine to be both

small and remote before it can file an application.

6. Section 49.14 [Reserved]

The final rule, like the proposal, does not include this provision in subpart B because it is not applicable to underground coal mines. MSHA received no comments on this proposal.

7. Section 49.15(a) Mine Rescue Station

The final rule, like the proposal, removes the exception related to alternative compliance. The final rule makes no change from the proposal. This final rule is consistent with the goals of the MINER Act. MSHA received no comments on this proposal.

8. Section 49.16(a) Alternative Equipment Requirement for Anthracite Mines

The final rule, like the proposal, adds a provision to address underground anthracite coal mines that have no electrical equipment at the face or working section. Through the petition for modification (PFM) process, MSHA allows mine rescue teams for underground anthracite coal mines, which have no electrical equipment at the face or working section, to have three members for each team and one alternate to serve both teams. These operators have submitted petitions for modification to allow the mine rescue station to maintain eight self-contained oxygen breathing apparatus and eight cap lamps and a charging station, rather than twelve of each as required by the existing standard.

On the basis of these petitions and the findings of its investigation, MSHA granted 17 petitions for modification of § 49.6(a)(1) and (5) that allow each mine rescue station for anthracite coal mines to have eight self-contained oxygen breathing apparatus, eight cap lamps, and a charging rack, as the approved alternative method. Currently, 10 underground anthracite coal mines operate under this approved alternative method.

The final rule requires that mine rescue stations covering anthracite coal mines that have no electrical equipment at the face or working section have at least the amount of equipment appropriate for the number of mine rescue team members, consistent with the action taken in existing petitions for modification. For three-person teams and one alternate, this would mean seven self-contained oxygen breathing apparatus and seven cap lamps. Under the final rule, equipment required per team, such as gas detectors, may not be reduced. No commenters objected to

this provision, so long as it is consistent with the provisions in the petitions for modification.

9. Section 49.17 Physical requirements for Mine Rescue Team

Like the proposed rule, the final rule maintains the existing physical requirements for mine rescue teams. Commenters suggested that MSHA modify the rule to allow the use of corrective glasses in determining distant visual acuity. Although MSHA considered this suggestion, it is beyond the scope of the rulemaking.

10. Section 49.18 Training for Mine Rescue Teams

The final rule, like the proposed rule, retains the existing requirements. In the final rule, MSHA has removed obsolete language in § 49.18(a) related to waiver of initial training. All existing teams meet the initial training requirement, making it unnecessary to waive.

Like the proposal, the final rule adds paragraph (b)(6), which requires all mine rescue team members, at least once during each 12-month period, to participate in training that includes wearing mine rescue apparatus while in smoke, simulated smoke, or an equivalent environment. Commenters agreed that training in smoke afforded teams skills that would be useful in an actual mine emergency and that several mine rescue teams already perform this training. Although some mine operators or training facilities use actual smoke, operators can use a nontoxic theatrical smoke, which is harmless. For the purposes of this provision, an equivalent environment could include training with glasses or face shields that reduce vision and simulate smoke. This requirement assures that mine rescue team members train in realistic conditions.

The final rule increases the 40-hour annual refresher training requirement to 96 hours from 64 hours in the proposed rule. This training must be provided at least 8 hours every 2 months. This increase is in response to comments and is consistent with the goals and objectives of the MINER Act and the recommendations of the Mine Safety Technology and Training Commission (Commission). Some commenters supported the existing requirement of 40 hours of annual training. These commenters generally were concerned that small mines do not have the resources to allow training during work hours and that an increase in this training could affect the mine rescue teams' ability to attract volunteers. Other commenters suggested 48 hours of annual training was appropriate. They

suggested 8 hours of training every 2 months, for a total of 48 hours. They indicated that the increased training time may conflict with mine-site duties, which might preclude experienced miners from participating on rescue teams.

Other commenters were not opposed to the proposed 64 hour training requirement. Several noted that their teams' annual training currently exceeds 64 hours. These commenters noted that the content and quality of this training is more important than the total number of training hours. They requested more flexibility in scheduling training, stating that some mine rescue training occurs irregularly, depending on weather conditions and contest schedules.

Other commenters recommended that the annual training requirement be increased to a minimum of 96 hours, given at 8 hours each month. In support of this recommendation, they cited the Commission's report on *Improving Mine Safety Technology and Training: Establishing U.S. Global Leadership* (2006). The Commission, composed of members from a cross-section of the mining community, industry, labor, academia, government, including mine rescue practitioners, recommended a minimum of 96 hours of annual training, at 8 hours each month. One commenter also stated that participating in mine rescue contests should not be considered as part of this 96 hours of annual training.

Based upon the comments, the Commission's report, and Agency data and experience, in the final rule MSHA has increased the amount of annual training to 96 hours. In making this decision, MSHA determined that additional annual refresher training is necessary to fully address all of the training requirements in the MINER Act. MSHA also agrees with commenters' suggestions and the Commission's report that additional training is necessary to adequately prepare for mine rescue team service. In addition, based on the Commission's recommendations and MSHA's experience, MSHA anticipates that this additional training will provide an incremental increase in safety for underground coal miners. Therefore, the final rule increases training from the proposed 64 to 96 hours.

In addition to existing requirements, the MINER Act requires that team members be familiar with operations of covered mines, have knowledge of the operation and ventilation of covered mines, and train at covered mines. Also, teams under paragraph (b)(6) need to train in smoke, simulated smoke, or an equivalent environment once annually.

In order to further improve their skills, teams may also participate in Mine Emergency Response Development (MERD) exercises or other practical simulation exercises, such as a fire or explosion drills. This type of training further enhances teams' skills in interacting with a command center. Recommended training could also include: first responder training, communications, mine gases, gas detectors, new technology, heat stress, and hazard training unique to the covered mines. In addition, skills training may include building temporary stoppings and seals, using a foam generator underground, and using an air lock to rescue survivors. This additional training will enhance teams' skills and abilities.

The MINER Act also requires mine rescue team members to participate in two local mine rescue contests each year. The final rule will allow up to 16 hours of credit for participation in the two required mine rescue contests. Some commenters objected to including mine rescue contests as a part of the annual training requirement, while others favored such a requirement. Commenters stated that mine rescue contests are designed to increase rescue team skill levels and to facilitate interaction between various rescue teams. MSHA agrees. MSHA believes that mine rescue contests serve a vital role in achieving the purpose of the MINER Act to improve the safety of mines and mining. Historically, they have served to assure that mine rescue teams are well-trained and capable of responding to mine emergencies. Under existing Agency policy, MSHA allows up to 8 hours credit for mine rescue contests toward the annual training requirement. In recognition of the critical need for the team to travel efficiently from the mine rescue station to the covered mine, under the final rule, travel time can be counted toward fulfilling the 96 hour requirement.

While the final rule increases the total amount of annual refresher training, it retains the requirement that the training occur at least 8 hours every 2 months. Taking into consideration comments that mine rescue training occurs irregularly, depending on weather conditions and contest schedules, MSHA decided not to reduce the flexibility of scheduling training. Based on MSHA data and experience, 8 hours of training every 2 months is necessary to avoid skills degradation. As the Commission's report states,

The nation's mine rescue capability rests more heavily on training than on any other aspect of the mine emergency response system. Especially since emergency incidents

are relatively rare, the predominant way teams keep their skills sharp, and develop cohesion, enthusiasm, and trust, is through training.

The final rule, like the proposed rule and the existing standard, requires that the training courses be conducted by instructors who have been employed in an underground mine and have had a minimum of 1 year experience as a mine rescue team member or mine rescue instructor within the past 5 years. A commenter suggested that MSHA allow experienced underground miners to become instructors even though they do not have 1 year experience as a mine rescue team member. MSHA has not included this suggestion in the final rule to assure that mine rescue team members are instructed by persons with practical mine rescue experience. Mine rescue team instructors who have received MSHA approval prior to the effective date of the final rule would not have to meet this requirement.

C. Subpart B—Mine Rescue Teams for Underground Coal Mines; Additional MINER Act Provisions

1. Section 75.1501(a) Person Knowledgeable in Mine Emergency Response

The final rule, like the proposal, requires that the responsible person be trained annually in a course of instruction in mine emergency response. This provision implements the MINER Act requirement that the operator have a person employed on each shift who is knowledgeable in mine emergency response. The final rule requires that the responsible person be trained in a course prescribed by MSHA's office of Educational Policy and Development.

The majority of commenters expressed concern that the proposal placed too much responsibility on one person. Some of these commenters thought that the proposal required the responsible person to conduct the activities listed in the proposal, rather than to be trained in those activities. Other commenters expressed concern that the proposal contained excessive training requirements and that the training areas listed were not sufficiently described. One commenter indicated that MSHA must establish and require a standard minimum curriculum along with recommended times for each topic.

In response to comments, MSHA has clarified the final rule to require that the responsible person be trained in a course which includes topics listed in the rule. The rule does not establish any new duties for the responsible person.

Further, in response to comments, the course for the responsible person will be based on a curriculum prescribed by MSHA and placed on the Agency's Web site. MSHA is developing this course in mine emergency response to assure consistent and comprehensive training. Commenters further requested that the final rule include a recommended duration of time for this training. In light of the fact that MSHA is developing the curriculum for this course, MSHA does not believe that it is either necessary or appropriate to specify a duration for this training.

Consistent with other MSHA training requirements, the final rule, like the proposal, requires that the operator certify by signature and date after each responsible person has completed the training and that the certification be kept at the mine for 1 year. MSHA received no comments on this aspect of the proposal.

2. Section 49.20 Requirements for All Coal Mines

The final rule addresses MINER Act provisions that are the same for all underground coal mine rescue teams, regardless of the size of the operation. It requires the operator to make available two certified mine rescue teams whose members are familiar with the operations of each coal mine covered by the mine rescue team, participate annually in two local mine rescue contests, and train at the covered mines.

a. Section 49.20(a)(1) Familiarity With Operations of Covered Mines

This final rule, like the proposal, requires two certified mine rescue teams whose members are familiar with the operations of the mine and participate at least annually in two local mine rescue contests. One commenter stated that while MSHA's understanding of "familiarity" is acceptable for the knowledge a miner would possess in order to safely perform job duties, it does not adequately describe the level of knowledge a mine rescue team member should possess in order to carry out rescue and recovery duties. Commenters indicated that familiarity with the covered mine was necessary but did not agree with the frequency of training at the covered mine.

The final rule adopts the MINER Act requirement of "familiarity" with the operation of the coal mine. Under the final rule, MSHA considers "familiarity" with the operations of the covered mine as first-hand experience of the underground mining conditions and operations at a particular mine. Team members who do not work at the

covered mine become familiar with its operations by participating in mine rescue training at the mine. Training at the mine may include: Identifying the designated escapeways, intakes, returns, the ventilation system, locations and types of fire fighting equipment, the communication system, mine-wide monitoring system, and the type of transportation equipment used at the mine. Also, team members need to be familiar with the location of stored SCRSRs, lifelines, breathable air, hardened rooms, and other emergency response equipment or supplies.

MSHA recognizes that the amount of time required to familiarize teams with a particular mine will vary, depending on mining conditions. For example, teams may need more time to become familiar with complex mines and newer team members may require more time to achieve this familiarity. For this reason, MSHA is not requiring a minimum amount of time for mine rescue team training underground at each covered mine. MSHA expects the operator to effectively evaluate each team member to determine the amount of training necessary for that person to become familiar with operations at the covered mine. MSHA expects that a portion of each required training session at the mine be conducted in the mine.

b. § 49.20(a)(2) Participation in Two Local Mine Rescue Contests

Like the proposal, the final rule includes the MINER Act requirement that mine rescue team members participate in two local mine rescue contests annually.

Commenters expressed concern with the criteria for, and quality of, mine rescue contests. They were concerned about the availability of acceptable contests. MSHA addresses commenters' concerns with criteria for mine rescue contests in the discussion of § 49.60, which addresses requirements for a local mine rescue contest.

Mine rescue contests are designed to sharpen skills and test the knowledge of team members who would be called on to respond to a mine emergency. Historically, mine rescue contests have provided individuals with practical, hands-on experience and are one of the most effective forms of training. Some team members who are regular participants in contests have been called on in recent years to perform actual mine rescue and recovery work. They have done so successfully and training exercises, such as mine rescue contests, were essential to maintaining a well-prepared team.

A commenter stated that participation in two back-to-back contests is

counterproductive because the teams need time to analyze and discuss in depth their performance during the contest. Contest judges evaluate teams and provide a written evaluation and score after each contest. Contest judges will evaluate each team and judge if the team demonstrates acceptable skills to be certified. A copy of the judge's evaluation will be submitted to the District Manager. MSHA expects that teams learn from constructive feedback and their experiences during contests. In response to this comment, MSHA has changed the proposed criteria for a local mine rescue contest in the final rule to clarify that a contest consists of one or more problems on one or more days with a determined winner.

c. § 49.20(b) Requirements for Types of Mine Rescue Teams

The final rule, like the proposal, provides for four types of mine rescue teams, consistent with the MINER Act. In response to comments, MSHA has included clarifying changes in the final rule.

Commenters generally expressed concern that the description of teams in the MINER Act did not adequately encompass the variety of arrangements for mine rescue service or the composition of mine rescue teams that are currently available to the mining community. Commenters indicated that this provision would disrupt existing mine rescue service, which would be contrary to the goals of the MINER Act. They cautioned that the proposal could result in: Disbanding experienced mine rescue teams; replacing experienced team members with inexperienced ones; inability to attract volunteers to join mine rescue teams; mines losing current coverage arrangements, and possibly mine closures.

Commenters objected to the differences in training requirements for large and small mines. In particular, commenters expressed concern that the training differences between types of teams were illogical, requiring mine-site and state-sponsored teams to train more often at each covered small mine than at each covered large mine. Other commenters stated that mine size and complexity should determine the frequency of training at the covered mine, not the type of team.

Commenters objected to the proposed requirement that composite teams from small mines need to include two miners from each covered mine. They were concerned about the ability of small mines to generate two volunteers due to their employment. They indicated that small mines are less likely to be able to spare a miner to perform mine rescue

training or service. A commenter, however, indicated that small mines should be required to have two team members on composite teams.

Several commenters suggested allowing a company team, composed of miners who work for an operator of multiple mines, to be considered a mine-site team so they would not need to have two team members from each covered mine. Commenters also expressed concern that requiring two members from each covered mine may result in teams with too many members, creating logistical training problems and excessive costs.

With regard to state-sponsored teams, several commenters suggested that teams composed of non-state employees who use mine rescue equipment and stations provided by the state be considered a state-sponsored or composite team instead of a contract team. Some commenters stated that State-sponsored composite team members should be considered state employees to get credit for the time in training at the mine in which they work.

In response to commenters' concerns that the proposal did not effectively encourage the creation of new mine site teams, the final rule requires mine-site teams to train annually at each covered small mine. MSHA expects this change to encourage more mine-site teams. The final rule also requires state-sponsored teams to train annually instead of semi-annually at each covered small mine. Additionally, at small mines only, the final rule allows composite teams to have one member from each covered small mine. Also in response to comments, for the purpose of mine rescue team membership, a member employed by an operator of multiple mines is considered to be an employee of each mine at which the member regularly works. In this section, MSHA considers "regularly works" to mean that the member has recurring job duties at each mine, exposing the member to the mine's underground operations, ventilation, conditions, and environment. For example, these employees may include surveyors, engineers, safety personnel, electricians, and maintenance and service personnel.

One commenter questioned the use of "a" covered mine in the proposal, believing that MSHA meant "each" covered mine. In response to this comment, the final rule includes the term "each" covered mine.

d. Knowledge of Operations and Ventilation at the Covered Mine

The final rule, like the proposal, requires members of mine rescue teams to have knowledge of the operations and

ventilation at each covered mine. Generally, this would require each team to review the mine's ventilation maps, roof or ground control methods, emergency response plan, transportation, and communication system.

e. Mine Rescue Team Training at Each Covered Mine

The final rule, like the proposal, requires that members of mine rescue teams must participate in training at each covered mine, consistent with the MINER Act, MSHA interprets the intent of the MINER Act to require that at least

a portion of the training at each covered mine must be conducted underground.

Commenters objected to the requirement that teams train at each covered mine. They stated that this training is impractical, overly burdensome, unnecessary, and may negatively affect the ability to attract new team members. In particular, commenters indicated that travel and training time is excessive for contract teams. Several commenters suggested that, to alleviate this burden, team members be allowed to rotate training at each covered mine so that each team

member trains at each covered mine at least annually. Some commenters suggested that only two members of each team be required to train at each covered mine and they would brief the team. A commenter suggested that, if the team does not complete training at each covered mine, the team should not be used as a first responder.

Under the final rule, the number of training sessions required at the covered mine depends on the mine size and type of mine rescue team. The following chart illustrates the required number of training sessions at each covered mine.

TABLE 1.—FREQUENCY OF TRAINING FOR MINE RESCUE TEAM MEMBERS AT EACH COVERED UNDERGROUND COAL MINE EACH YEAR

| Type of team | Mine size | |
|-----------------------|-------------------------|---------------------|
| | Large (more than 36) | Small (36 or fewer) |
| Mine Site | 1 (annually) | 1 (annually). |
| Composite | 2 (semi-annually) | 2 (semi-annually). |
| Contract | 4 (quarterly) | 2 (semi-annually). |
| State-sponsored | 1 (annually) | 1 (annually). |

In response to comments, the final rule includes § 49.20(d) to clarify that a portion of the training at each covered mine must be conducted underground.

f. Integration of Mine Rescue Team Training Requirements

The two new categories of training for mine rescue team members, participation in mine rescue contests and participation in training at the covered mines, complement the existing training. The final rule retains existing requirements for training sessions underground every 6 months; and the wearing of breathing apparatus for a minimum of 2 hours every 2 months. MSHA expects operators to integrate the new requirements, including mine rescue training at the covered mines, with the existing requirements.

g. Section 49.20(c) Employee of Multiple Mines

The final rule adds this paragraph in response to comments. Commenters requested that the Agency clarify, for mine rescue team purposes only, the employment status of an employee who works at multiple mines for a single operator. For the purpose of mine rescue team membership, this new provision allows a team member employed by an operator of multiple mines to be considered an employee of each mine at which the member regularly works. In this section, MSHA considers "regularly works" to mean that the member has recurring job duties at each mine, exposing the member to the mine's

underground operations, conditions, and environment. For example, this may include surveyors, engineers, safety personnel, electricians, and maintenance and service personnel.

3. Section 49.30 Requirements for Small Coal Mines

The final rule, like the proposal, requires that members of mine rescue teams covering a small mine know the operations and ventilation of the mine. In response to comments, MSHA clarifies that small coal mines applies to mines with 36 or fewer underground employees. Commenters asked MSHA to clarify how the Agency would determine employment for purposes of the rule. MSHA recognizes that a small mine's employment may fluctuate from time to time. MSHA expects operators to use data reported to MSHA for the quarterly employment and coal production report required in § 50.30 to determine the number of underground employees working at a mine.

4. Section 49.40 Requirements for Large Coal Mines

The final rule, like the proposal, requires that the mine operator of a large mine designate either an individual mine-site team or a composite team as one of the two mine rescue teams, consistent with the MINER Act. The second mine rescue team can be a mine-site, composite, contract, or State-sponsored team. MSHA clarifies that large coal mines applies to mines that

have more than 36 underground employees. MSHA recognizes that a large mine's employment may fluctuate from time to time. MSHA expects operators to use the data reported to MSHA for the quarterly employment and coal production report required in § 50.30 to determine the number of underground employees working at a mine.

5. Section 49.50 Certification of Mine Rescue Teams

The final rule establishes criteria to certify the qualifications of mine rescue teams, consistent with the MINER Act.

a. § 49.50(a) Certification Criteria

The final rule, like the proposal, requires that a mine operator certify that each of the mine's two designated mine rescue teams meet the requirements of this subpart. The certification criteria include a certification statement, equipment and training requirements, and the frequency of certification. As in the proposed rule, to be certified, the mine rescue team must be available when miners are underground and within 1 hour ground travel time from the mine rescue station to the mine; team members must be physically fit, experienced working in an underground mine, and properly trained; and the mine rescue station must be adequately equipped. The criteria for these qualifications are contained in the final rule.

A commenter asked MSHA to clarify whether a mine rescue team member may complete an annual certification statement. Like the proposal, the final rule does not address who completes the annual certification statement. To comply with this requirement, the mine operator must certify and submit the annual certification statement to the District Manager.

One commenter objected to operator certification of mine rescue teams because it does not provide for an objective review of a team's abilities. This commenter also expressed concern about MSHA's "lifetime certification" of mine rescue instructors and suggested that MSHA require instructors to demonstrate routinely their skill and understanding of mine rescue. The final rule provides that a local mine rescue contest is training that provides an objective evaluation of demonstrated mine rescue team skills. MSHA considers the evaluations of team performance at the two required local mine rescue contests to be an objective test and evaluation of a mine rescue team's abilities.

In response to comments, MSHA has added a requirement in the certification table that judges must certify the results of the two local contests. This will serve to provide further evidence of an objective evaluation of a team's abilities. The final rule requires that contest judges complete annual training for mine rescue contest judges. As required by the final rule, a local mine rescue contest must use the National Mine Rescue Contest rules, or other rules recognized by MSHA. Contest judges receive comprehensive training on contest rules. At each contest, each mine rescue team has a problem. In general, judges use the following criteria to evaluate team performance: (1) Communication with team members; (2) Time taken to solve problem; (3) Accuracy of markings, e.g. on maps; (4) Team effectiveness in solving problem; (5) Team effectiveness in handling first responder activities, e.g. first-aid; and (6) Team's use of technology, e.g. testing for methane and other gasses. Teams receive discounts for mistakes, and an overall score. Periodically, MSHA will monitor mine rescue team instructor activities. When a judge finds that a team does not meet minimum skills, MSHA will audit the training and notify the District Manager. Based on this audit, MSHA may revoke the instructor's approval.

For further ease of understanding, MSHA divided the proposed Table on Certification into two tables in the final rule. Table 49.50-A lists the initial criteria to certify the qualifications of

mine rescue teams. Table 49.50-B lists the annual criteria to maintain mine rescue team certification. New teams will have to meet these requirements.

In response to comments, this final rule includes an optional certification form that operators may use to assist them in complying with this section. This optional form is attached as an appendix to this rule. The form is posted on MSHA's Web site. MSHA will accept certification statements in all formats, both electronic and paper.

(b) § 49.50(b) District Manager Notification

The final rule includes a new requirement that an operator must notify the District Manager within 60 days of any change in team membership. Commenters stated that the membership of each team is subject to change and questioned the impact of changes on team certification. MSHA clarifies that a team does not automatically lose its certification when a team replaces a member. Under the final rule, the operator has 60 days in which to notify the District Manager of any change so that MSHA can assure continued compliance.

6. Section 49.60 Requirements for a Local Mine Rescue Contest

The final rule, like the proposal, includes criteria for a local mine rescue contest. It also requires that, when requested, the mine operator must provide information to the District Manager concerning each designated team's schedule of participation in upcoming local mine rescue contests.

Paragraph (a) of this section in the final rule requires that a local mine rescue contest is: conducted in the United States; uses MSHA recognized rules; has a minimum of 3 teams; and has one or more problems conducted on one or more days with a determined winner.

With respect to the requirement that contests use MSHA-recognized rules, commenters stated that all contests should use MSHA National Contest rules; others indicated that contests should concentrate on the practical aspects of mine rescue and not focus on compliance with rules. Some said the contest rules may be too restrictive. Like the proposal, the final rule does not require contest organizers to use the National Mine Rescue Contest Rules; it allows other rules recognized by MSHA.

Commenters wanted MSHA to clarify the term "participate," as used in the proposal. As is existing practice, MSHA recognizes a team as participating when the team is present and competes. Also, in response to comments, MSHA will

consider State-sponsored teams, whose members are full-time state employees, as participating in a local mine rescue contest when performing duties as contest judges or officials.

One commenter supported the proposed requirement stating that this would allow companies to put on their own mine rescue contests and have intra-company training. Another commenter questioned whether permitting competitions with as few as three participating teams is adequate. As stated in the proposal, MSHA intends that requiring a minimum of three teams for a local mine rescue contest will encourage more contests among teams in close geographic proximity. Therefore, the final rule requires a minimum of three competing teams in a local mine rescue contest.

Commenters indicated that participation in a mine rescue contest is an opportunity to demonstrate the results of training. Teams spend a lot of time preparing for contests. As stated in the proposal, teams must prepare to compete as if the contest were an actual mine emergency. MSHA agrees that preparation for a contest is a vital component of team training, along with the interaction with other teams and the evaluation provided by judges. Competing while being timed, observed, and judged creates a stressful environment that provides an effective forum for evaluating and testing the team's level of knowledge and skill under simulated mine emergency conditions. The ability to make effective decisions quickly, while under stress and wearing breathing apparatus, is a vital skill for each mine rescue team member to develop.

Most commenters agreed that, in order for judges to administer the mine rescue contest fairly and provide appropriate and meaningful evaluations, judges should have a strong background in mine rescue. In addition, most commenters agreed that there should be prescribed areas of annual training for contest judges, but did not want a minimum required amount of time. Some stated that judges' training on the rules should address changes in the rules only. MSHA disagrees because training should always be comprehensive. This strengthens existing skills and knowledge and accommodates new judges. Some commenters indicated that persons with knowledge of mine rescue principles and practices and experienced in mine rescue should be allowed to serve as judges for local contests. Some said that only MSHA or State personnel should judge contests. A few commenters stated that judges should have actual mine

rescue experience, preferably experience in an actual emergency. MSHA believes that the annual rules training is sufficient to adequately train judges.

Paragraph (b) of this section in the final rule clarifies that a local mine rescue contest provides an objective evaluation of demonstrated mine rescue team skills. A number of commenters indicated that there are other simulated mine rescue team exercises that also enhance mine rescue skills and provide an evaluation of the team's performance. A few commenters expressed concern that MSHA proposed other simulated mine rescue team exercises as a substitute for a local mine rescue contest. A local mine rescue contest provides an objective evaluation of demonstrated mine rescue team skills. In response to these comments, the final rule clarifies that a MERD exercise or practical simulation exercise, such as a fire or explosion response exercise, can be a local mine rescue contest for purposes of this provision. MSHA recognizes that the benefit of preparing for a contest is as valuable as competing.

Some commenters said that scheduling issues may preclude some mines from participating in two local mine rescue contests and that additional opportunities to participate in other types of simulated mine rescue exercises allows teams to satisfy this requirement.

Two commenters stated that MSHA cannot allow substitution of other training for participation in local mine rescue contests because the MINER Act mandates that teams must participate at

least annually in two local mine rescue contests. As stated previously, MSHA considers that participation in simulated mine rescue team exercises, where the members wear breathing apparatus, demonstrate mine rescue team skills, and receive an evaluation of team performance fosters an environment conducive to increased preparation for mine rescue and mine emergency response.

As stated in the preamble to the proposed rule, MSHA considers actual underground participation in a rescue or recovery operation as a substitute for participation in a local mine rescue contest.

The final rule requires mine operators to notify the appropriate District Manager, on request, when and where their designated teams plan to participate in mine rescue contests. This notice allows MSHA time to prepare for attending the contest and to provide assistance as necessary. This notice also allows MSHA to verify that the contest meets the requirements of this final rule.

IV. Regulatory Economic Analysis

A. Executive Order 12866

Executive Order (E.O.) 12866 as amended by E.O. 13258 (Amending Executive Order 12866 on Regulatory Planning and Review) requires that regulatory agencies assess both the costs and benefits of regulations. To comply with E.O. 12866, MSHA has prepared a Regulatory Economic Analysis (REA) for the final rule. The REA contains supporting data and explanation for the summary materials presented in this preamble, including the covered mining

industry, costs and benefits, feasibility, small business impacts, and paperwork. The REA is located on MSHA's Web site at <http://www.msha.gov/REGSINFO.HTM>. A copy of the REA can be obtained from MSHA's Office of Standards, Regulations, and Variances at the address in the **ADDRESSES** section of this preamble.

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of significant regulatory actions. Under the Executive Order, a "significant regulatory action" is one meeting any of a number of specified conditions, including the following: Having an annual effect on the economy of \$100 million or more, creating a serious inconsistency or interfering with an action of another, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. Based on the REA, MSHA has determined that the final rule does not have an annual effect of \$100 million or more on the economy and that, therefore, it is not an economically "significant regulatory action" pursuant to section 3(f) of E.O. 12866. MSHA, however, has concluded that the final rule is otherwise significant under Executive Order 12866 because it raises novel legal or policy issues.

B. Population at Risk

The rule applies to 653 underground coal mines covering 42,597 miners and 8,250 (non-office) contractors. Table 2 shows summary data for underground coal mines.

TABLE 2.—SUMMARY DATA FOR UNDERGROUND COAL MINES

| Mine size ^a | Number of mines | Total number of miners ^b | Number of employees underground ^b | Annual revenue (billions) | Annual cost (millions) | Cost per mine |
|------------------------|-----------------|-------------------------------------|--|---------------------------|------------------------|---------------|
| 1–19 | 220 | 2,255 | 1,952 | \$0.3 | \$1.1 | \$5,200 |
| 20–500 | 420 | 32,852 | 29,742 | 10.3 | 3.4 | 8,200 |
| >500 | 13 | 7,490 | 6,503 | 3.1 | 0.2 | 13,400 |
| All Mines | 653 | 42,597 | 38,197 | 13.7 | 4.8 | 7,400 |

^a Size based on total mine employment.

^b Does not include 1,188 office workers or 8,250 (non-office) contractor employees, 4,096 of which work underground.

C. Costs

Table 3 shows a summary of the total yearly cost of this rule for mine operators. MSHA estimates that the rule will result in total yearly costs for the underground coal mining industry of

approximately \$4.8 million. Disaggregated by mine size, yearly costs will be \$1.1 million (or approximately \$5,200 per mine) for mine operators with fewer than 20 employees; \$3.4 million (or about \$8,200 per mine) for

mine operators with 20–500 employees; and \$0.2 million (or about \$13,400 per mine) for mine operators with more than 500 employees. All cost estimates are presented in 2006 dollars.

TABLE 3.—SUMMARY OF TOTAL YEARLY COST OF THE RULE FOR UNDERGROUND COAL MINE OPERATORS

| Section | Mine size | | | Total yearly cost |
|--|------------------|------------------|----------------|-------------------|
| | 1–19 | 20–500 | 501+ | |
| One Hour from Mine Rescue Station to Mine ^a | \$559,407 | \$292,982 | \$7,000 | \$859,390 |
| Mine Rescue Team Training ^b | 379,967 | 2,225,222 | 119,768 | 2,724,956 |
| Mine Rescue Contests ^c | 91,915 | 552,810 | 30,037 | 674,762 |
| Certification of Mine Rescue Teams ^d | 8,161 | 15,580 | 482 | 24,223 |
| Responsible Person Training & Certification ^e | 95,047 | 362,906 | 16,849 | 474,803 |
| Total | 1,134,497 | 3,449,500 | 174,137 | 4,758,134 |

For purposes of the mine rescue team final rule, MSHA has broken down total compliance costs for mines with 1–36 employees and mines with 37 or more employees. Of the \$4.8 million total yearly cost of the final rule, underground coal mines with 1–36

employees will incur costs of approximately \$2.0 million per year and underground coal mines with 37 or more employees will incur costs of approximately \$2.8 million per year.

In addition, the final rule will impose costs on State-sponsored mine rescue

teams. As shown in Table 4, the total yearly cost of the final rule for State-sponsored mine rescue teams will be about \$66,000. Of this, \$57,000 will be for training and \$8,000 will be for participation in one local mine rescue contests.

TABLE 4.—SUMMARY OF TOTAL YEARLY COST OF THE FINAL RULE FOR STATE MINE RESCUE TEAMS

| Section | Mine size | | | Total yearly cost |
|--|---------------|---------------|------------|-------------------|
| | 1–19 | 20–500 | 501+ | |
| Mine Rescue Team Training ^a | \$24,905 | \$31,869 | \$708 | \$57,482 |
| Mine Rescue Contests ^b | 6,466 | 8,486 | 159 | 15,111 |
| Total | 31,371 | 40,355 | 867 | 72,593 |

These cost estimates reflect the new requirements in the final rule that no mine served by a mine rescue team be more than one hour ground travel time from the mine rescue station with which the rescue team is associated. The costs are also related to final rule requirements that each mine rescue team, except for qualified State teams, participate in at least two local mine rescue contests annually and that teams train at the mines serviced by the team. To fully address all of the training requirements in the MINER Act, mine rescue team members must have at least 96 hours of refresher training annually, which can include travel time from the mine rescue station to the covered mine and up to 16 hours of participation in mine rescue contests. MSHA estimates that the additional cost attributable to training, relative to the proposed rule, is approximately \$600,000. Also, the final rule requires that all underground coal mine operators certify that each of the mine’s designated rescue teams meet the requirements of § 49.50, that the operator have a person employed on each shift who is knowledgeable in mine emergency response, and that the responsible person be trained in a course prescribed by MSHA’s Office of Educational Policy and Development.

These cost estimates are based on a number of assumptions, informed by

public comments on the proposed rule, that MSHA made with respect to anticipated industry and State responses to the final rule: (1) 28 mine rescue stations will be added to the 92 stations currently serving underground coal mines and 5 mine rescue stations will be relocated; (2) an additional 68 mine rescue teams will be formed; and (3) none of the existing 145 mine rescue teams will disband. In addition, although MSHA is aware that the requirements in the final rule may cause States to increase the number of State-sponsored mine rescue teams and stations, the Agency assumed no change in the existing level of these services in response to the final rule. MSHA also made various changes to its cost estimates in response to public comments on the proposed rule. These changes are discussed in detail in the REA.

D. Benefits

The purpose of this rule is to enhance the availability and effectiveness of mine rescue teams in the event of an emergency situation at an underground coal mine. Mine operators often rely on mine rescue teams to save miners during an underground emergency such as an explosion, fire, roof fall, or water inundation. In such a situation, the timely arrival of a properly-trained mine

rescue team can sometimes mean the difference between life and death. In most instances, other types of rescue units, e.g., a rescue squad from the local fire department, are unlikely to have the specialized training and equipment to respond effectively to an emergency due to the hazardous nature of the underground coal mine environment.

A good mine rescue team will have knowledge and familiarity with the mine layout, including the designated escapeways, intakes, returns, locations and types of fire fighting equipment, the communication system, mine-wide monitoring system, the type of transportation equipment used at the mine, the location of stored SCSRs, lifelines, breathable air, hardened rooms, and other emergency response equipment or supplies; know the mine’s roof conditions and ventilation system; and have an established working relationship with mine management and among the team members. These factors provide for more efficient decision-making during an emergency and increased confidence in the personnel who implement these decisions.

MSHA has qualitatively determined that the final rule will make coal mine rescue teams better able to respond to emergencies when a quick response by rescue teams is vital to miners. The final

rule will improve overall mine rescue service in three areas:

- It will improve mine emergency response time by requiring that mine rescue team members be available at the mine within 1 hour ground travel time from the mine rescue station.

- It will increase the quality and effectiveness of training by requiring team members to be familiar with the covered mines' operations, participate in training at the covered mines, and participate in two local mine rescue contests. A portion of the training must be conducted underground. This training will enhance the team's knowledge of the underground environment and provide firsthand experience of the underground mining conditions.

- It will strengthen the requirements for knowledge and experience of mine rescue team members by requiring them to have knowledge of the operations and ventilation of the covered mines and by requiring contract team members to have at least 3 years underground coal mine experience within the 10-year period preceding their employment on the contract team.

The final rule will also increase awareness of the mine operator by requiring the operator to provide two certified mine rescue teams and to have a responsible person knowledgeable in mine emergency response on each shift. The final rule includes criteria for certifying mine rescue teams and clarifies training requirements for the knowledgeable person.

Team members employed at a mine must be knowledgeable in mine gases, ventilation, first aid, and other health and safety subjects as they apply generally and at the covered mine. Their level of mine rescue training, combined with their everyday presence during the normal work cycle, provides an added measure of safety for each worker at the mine.

The final rule increases the 40-hour annual refresher training requirement to 96 hours from 64 hours in the proposed rule. This additional annual refresher training is necessary to fully address all of the training requirements in the MINER Act and the recommendations of the Mine Safety Training and Technology Commission. It will allow teams to adequately prepare for mine rescue team service. The additional training enhances teams' skills in interacting with a command center. The additional training could include: first responder training, communications, mine gases, gas detectors, new technology, heat stress, and hazard training unique to the covered mines. Additional skills training may include

building temporary stoppings and seals, using a foam generator underground, and using an air lock to rescue survivors. Based on the Commission's recommendations and MSHA's experience, this additional training will enhance teams' skills and abilities. In addition, MSHA anticipates that the additional hours of training will provide an incremental increase in safety for underground coal miners.

The final rule also requires mine rescue team members to participate in two local mine rescue contests each year. Mine rescue contests serve a vital role in achieving the purpose of the MINER Act to improve the safety of mines and mining. Historically, they have served to assure that mine rescue teams are well-trained and capable of responding to mine emergencies. They provide a practical forum to objectively evaluate a team's skills and abilities. The final rule will allow up to 16 hours of credit for participation in the two required mine rescue contests.

V. Feasibility

MSHA has concluded that the requirements of the final rule are technologically and economically feasible.

A. Technological Feasibility

This final rule is not a technology-forcing standard and does not involve new scientific knowledge. The requirements of the rule involve training and purchase of equipment and a requirement that the mine rescue station be located closer, within 1 hour (rather than 2 hours) ground travel time to the covered mines. MSHA estimates that this requirement will necessitate additional mine rescue stations and mine rescue teams. MSHA has concluded that the final rule is technologically feasible.

B. Economic Feasibility

The total cost of the final rule is approximately \$4.8 million annually for all underground coal mine operators. These compliance costs are under one percent of the yearly revenues of \$13.7 billion for these underground coal mine operators. MSHA concludes that the final rule is economically feasible.

VI. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

Pursuant to the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA analyzed the impact of the final rule on small entities. Based on that analysis, MSHA notified the Chief Council for Advocacy,

Small Business Administration (SBA), and made the certification under the Regulatory Flexibility Act at 5 U.S.C. 605(b) that the final rule does not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is presented in full in Chapter V of the REA and in summary form below.

A. Definition of a Small Mine

Under the RFA, in analyzing the impact of a rule on small entities, MSHA must use the Small Business Administration's (SBA's) definition for a small entity, or after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not established an alternate definition and is required to use the SBA definition. The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees.

MSHA has also examined the impact of this rule on underground coal mines with fewer than 20 employees, which MSHA has traditionally referred to as "small mines." These small mines differ from larger mines not only in the number of employees, but also in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, the cost of complying with MSHA's final rule and the impact of the final rule on small mines will also be different.

In addition, MSHA has examined the cost of compliance for underground coal mines with 36 or fewer employees, consistent with the requirements of the MINER Act. The detailed factual basis below also shows the economic impact on underground coal mines with 36 or fewer employees.

B. Factual Basis for Certification

MSHA initially evaluates the economic impact of a rule on "small entities" by comparing the estimated costs of the rule for small entities to their estimated revenues. When estimated costs are less than one percent of estimated revenues for the size categories considered, MSHA believes it is generally appropriate to conclude that there is not a significant economic impact on a substantial number of small entities. If the estimated costs are equal to or exceed one percent of revenues, MSHA will investigate whether a further analysis is required. For this final rule, MSHA has determined that the estimated costs are less than one percent of the estimated revenues. Therefore, MSHA certifies that this final

rule does not have a significant economic impact on a substantial number of small entities.

Coal mining revenues are derived from data on the price of coal and total coal production. Total underground coal production in 2006 was 359 million tons. The price of underground coal in 2006 was \$38.28 per ton.¹ Thus, based on the total amount of coal production and the cost of coal per ton, the total estimated revenue in 2006 for underground coal production was \$13.7 billion. Using the same approach, the estimated 2006 underground coal revenue by employment size category is approximately \$0.3 billion for 220 mines with 1–19 employees, \$1.4 billion for 399 mines with 1–36 employees, and \$10.6 billion for 640 mines with 1–500 employees.

The final rule results in an average yearly cost per underground coal mine of \$5,157 for mines with 1–19 employees; \$4,908 for mines with 1–36 employees; and \$7,162 for mines with 1–500 employees. The average yearly cost per mine for all underground coal mines is \$7,287. When dividing the yearly compliance costs by the annual revenues in each mine size category, the cost of the rule for underground coal mines is 0.38% of revenues for mines with 1–19 employees, 0.14% of revenues for mines with 1–36 employees, and 0.04% of revenues for mines with 1–500 employees. The cost as a percentage of revenues for all underground coal mines will be approximately 0.03%.

When applying MSHA's and SBA's definition of small entities, the annual cost of the final rule for small mines is substantially less than one percent of their estimated annual revenues. MSHA has certified that the final rule does not have a significant economic impact on a substantial number of small entities that are covered by the final rule.

VII. Paperwork Reduction Act of 1995

A. Summary

The mine rescue team final rule retains the existing paperwork burden requirements and imposes several new paperwork burden requirements. Final § 49.16 requires certification of inspection and testing of breathing apparatus, as well as a record of any corrective action taken for breathing apparatus. Final § 49.18 requires preparation of training materials for new mine rescue team members and a record of each new mine rescue team member's training. The Office of Management and

Budget (OMB) has approved these requirements, which are in existing §§ 49.6 and 49.8, under OMB control number 1219–0078. Final § 49.50 contains a new annual paperwork requirement for mine operators to certify that each designated mine rescue team meets the requirements of this part. Final § 75.1501 also requires mine operators to certify that each responsible person has completed the required mine emergency response training.

Overall, the underground coal industry will incur approximately 1,387 paperwork burden hours annually with associated paperwork burden costs of approximately \$61,587.

MSHA estimates that the final rule will require additional mine rescue teams and equipment. Existing standards require information collection for mine rescue teams and equipment. MSHA will add the information collection burden for additional teams and equipment to that approved under existing Office of Management and Budget (OMB) control number 1219–0078.

For a detailed explanation of how the burden hours and related costs were calculated, see the Paperwork Section of the Regulatory Economic Analysis (REA) accompanying this final rule. The REA is posted on MSHA's Web site at <http://www.msha.gov/REGSINFO.HTM>. A copy of the REA can be obtained from MSHA's Office of Standards, Regulations, and Variances at the address provided in the ADDRESSES section of this preamble.

B. Procedural Details

The information collection package was submitted to OMB with the proposed rule for review under 44 U.S.C. 3504, paragraph (h) of the Paperwork Reduction Act of 1995, as amended. A copy of the information collection package can be obtained from the Department of Labor by electronic mail request to king.darrin@dol.gov or by phone request to 202–693–4129.

Since the proposed rule was published, MSHA has not received any substantive comments on the paperwork collection.

VIII. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995

MSHA has reviewed the final rule under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). The final rule will not increase private sector expenditures by more than \$100 million annually; nor will it significantly or uniquely affect small governments. The final rule may result in increased

expenditures by State, local, or tribal governments, however, because it places new requirements on underground coal mine operators in providing and training mine rescue teams. These changes will not directly affect States or their relationships with the national government; however, some States sponsor mine rescue teams.

B. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires agencies to assess the impact of agency actions on family well-being. MSHA has determined that this final rule will have no effect on family stability or safety, marital commitment, parental rights and authority, or income or poverty of families and children. Accordingly, MSHA certifies that this final rule will not impact family well-being.

C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This final rule will not implement a policy with takings implications. Accordingly, E.O. 12630 requires no further Agency action or analysis.

D. Executive Order 12988: Civil Justice Reform

This final rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. Accordingly, this final rule meets the applicable standards provided in Section 3 of E.O. 12988.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This final rule will have no adverse impact on children. Accordingly, E.O. 13045 requires no further Agency action or analysis.

F. Executive Order 13132: Federalism

Executive Order (E.O.) 13132 requires MSHA to develop an accountability process to ensure a meaningful and timely input by State and local officials in the development of regulatory policies that have "federalism implications." Policies that have federalism implications are defined as having "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

¹ U.S. Dept. of Energy, Energy Information Administration, "Annual Coal Report 2006," Table 28, October 2007.

responsibilities among the various levels of government.” The final rule places new requirements on underground coal mine operators in providing and training mine rescue teams. These changes will not directly affect States or their relationships with the Federal government. Although the final rule does not directly affect States, some States sponsor mine rescue teams.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This final rule does not have “tribal implications,” because it will not “have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.” Accordingly, E.O. 13175 requires no further Agency action or analysis.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to publish a statement of energy effect when a rule has a significant energy action that adversely affects energy supply, distribution, or use. MSHA has reviewed the final rule for its impact on the supply, distribution, and use of energy because it applies to the underground coal mining industry. Because this final rule results in yearly costs of approximately \$4.8 million to the underground coal mining industry, relative to annual revenues of \$13.1 billion in 2006, it is not a significant energy action because it will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

Accordingly, E.O. 13211 requires no further Agency action.

I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

MSHA has thoroughly reviewed the final rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. MSHA has determined and certified that the final rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects in 30 CFR Parts 49 and 75

Education and training, Mine safety and health, Reporting and recordkeeping requirements.

Dated: February 1, 2008.

Richard E. Stickler,

Acting Assistant Secretary for Mine Safety and Health.

■ For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977 as amended by the Mine Improvement and New Emergency Response Act of 2006, MSHA amends chapter I of title 30 of the Code of Federal Regulations as follows.

PART 49—MINE RESCUE TEAMS

■ 1. The authority citation for part 49 is revised to read as follows:

Authority: 30 U.S.C. 811, 825(e).

Subpart A—Mine Rescue Teams for Underground Metal and Nonmetal Mines

■ 2. Add a new subpart A with the heading as shown above consisting of existing §§ 49.1 through 49.9.

§ 49.10 [Removed]

■ 3. Remove § 49.10.

■ 4. Add new subpart B to read as follows:

Subpart B—Mine Rescue Teams for Underground Coal Mines

Sec.

- 49.11 Purpose and scope.
- 49.12 Availability of mine rescue teams.
- 49.13 Alternative mine rescue capability for small and remote mines.
- 49.14 Reserved.
- 49.15 Mine rescue station.
- 49.16 Equipment and maintenance requirements.
- 49.17 Physical requirements for mine rescue team.
- 49.18 Training for mine rescue teams.
- 49.19 Mine emergency notification plan.
- 49.20 Requirements for all coal mines.
- 49.30 Requirements for small coal mines.
- 49.40 Requirements for large coal mines.
- 49.50 Certification of coal mine rescue teams.
- 49.60 Requirements for a local mine rescue contest.

Appendix to Subpart B—Optional Form for Certifying Mine Rescue Teams

Subpart B—Mine Rescue Teams for Underground Coal Mines

§ 49.11 Purpose and scope.

(a) This subpart implements the provisions of section 115(e) of the Federal Mine Safety and Health Act of 1977, as amended by the Mine Improvement and New Emergency Response (MINER) Act of 2006. Every operator of an underground coal mine shall assure the availability of mine rescue capability for purposes of emergency rescue and recovery.

(b) The following Table 49.11 summarizes the new requirements for mine rescue teams contained in section 4 of the MINER Act.

TABLE 49.11.—SUMMARY OF NEW MINER ACT REQUIREMENTS FOR UNDERGROUND COAL MINE OPERATORS AND MINE RESCUE TEAMS

| Requirement | Type of mine rescue team | | | |
|--|--------------------------|---------------------|---|-------------------|
| | Mine-site | Composite | Contract | State-sponsored * |
| Team members must participate at least annually in two local mine rescue contests. | YES | YES | YES | YES. |
| Team members must participate in mine rescue training at each mine covered by the mine rescue team. A portion of the training must be conducted underground. | Annually | Semi-annually | Quarterly at Large Mines; Semi-annually at Small Mines. | Annually. |
| Team must be available at the mine within 1 hour ground travel time from the mine rescue station. | YES | YES | YES | YES. |
| Team members must be knowledgeable about the operations and ventilation of each covered mine. | YES | YES | YES | YES. |
| Team must include at least two active employees from each covered large mine and at least one active employee from each covered small mine. | | YES | | |

TABLE 49.11.—SUMMARY OF NEW MINER ACT REQUIREMENTS FOR UNDERGROUND COAL MINE OPERATORS AND MINE RESCUE TEAMS—Continued

| Requirement | Type of mine rescue team | | | |
|--|--------------------------|-----------|-----------|-------------------|
| | Mine-site | Composite | Contract | State-sponsored * |
| Team must be comprised of persons with a minimum of 3 years underground coal mine experience that shall have occurred within the 10-year period preceding their employment on the contract mine rescue team. | | | YES | |
| All mine operators must provide for two certified mine rescue teams. Large mine operators shall provide one team that is either an individual mine-site mine rescue team or a composite team. | | | | |

* Note: Team members of State-sponsored teams who are full-time State employees whose primary job duties include (1) inspecting underground mines for compliance with State safety laws or (2) training mine rescue teams or (3) other similar duties that would enhance their mine rescue knowledge may substitute their regular job experience for 50 percent of the training requirements (annual training which includes mine rescue contests and mine-site training) for non-State employee mine rescue team members.

§ 49.12 Availability of mine rescue teams.

(a) Except where alternative compliance is permitted for small and remote mines (§ 49.13), every operator of an underground mine shall:

- (1) Establish at least two mine rescue teams which are available at all times when miners are underground; or
- (2) Enter into an arrangement for mine rescue services which assures that at least two mine rescue teams are available at all times when miners are underground.

(b) Each mine rescue team shall consist of five members and one alternate who are fully qualified, trained, and equipped for providing emergency mine rescue service. Mine rescue teams for anthracite coal mines, which have no electrical equipment at the face or working section, shall consist of at least three members per team and one alternate that may be shared between both teams.

(c) To be considered for membership on a mine rescue team, each person must have been employed in an underground mine for a minimum of 1 year within the past 5 years, except that members of contract mine rescue teams shall have a minimum of 3 years underground coal mine experience that shall have occurred within the 10-year period preceding their employment on the contract mine rescue team. For the purpose of mine rescue work only, miners who are employed on the surface but work regularly underground shall meet the experience requirement. The underground experience requirement is waived for those miners on a mine rescue team on February 8, 2008.

(d) Each operator shall arrange, in advance, ground transportation for rescue teams and equipment to the mine or mines served.

(e) The required rescue capability shall be present at all existing underground mines, upon initial

excavation of a new underground mine entrance, or the re-opening of an existing underground mine.

(f) No mine served by a mine rescue team shall be located more than 1 hour ground travel time from the mine rescue station with which the rescue team is associated.

(g) As used in this subpart, mine rescue teams shall be considered available where teams are capable of presenting themselves at the mine site(s) within a reasonable time after notification of an occurrence which might require their services. Rescue team members will be considered available even though performing regular work duties or in an off-duty capacity. The requirement that mine rescue teams be available shall not apply when teams are participating in mine rescue contests or providing services to another mine.

(h) Each operator of an underground mine who provides rescue teams under this section shall send the District Manager a statement describing the mine's method of compliance with this subpart. The statement shall disclose whether the operator has independently provided mine rescue teams or entered into an agreement for the services of mine rescue teams. The name of the provider and the location of the services shall be included in the statement. A copy of the statement shall be posted at the mine for the miners' information. Where a miners' representative has been designated, the operator shall also provide the representative with a copy of the statement.

§ 49.13 Alternative mine rescue capability for small and remote mines.

(a) If an underground mine is small and remote, an operator may provide for an alternative mine rescue capability consistent with statutory requirements. For the purposes of this subpart only,

consideration for small and remote shall be given where the total underground employment of the operator's mine and any surrounding mine(s) within 1 hour ground travel time of the operator's mine is less than 36.

(b) An application for alternative mine rescue capability shall be submitted to the District Manager for the district in which the mine is located for review and approval.

(c) Each application for an alternative mine rescue capability shall contain:

- (1) The number of miners employed underground at the mine on each shift;
- (2) The location of the designated mine rescue station serving the mine;
- (3) The total underground employment of mines within 1 hour ground travel time of the operator's mine;

(4) The operator's mine fire, ground, and roof control history;

(5) The operator's established escape and evacuation plan;

(6) A statement by the operator evaluating the usefulness of additional refuge chambers to supplement those which may exist;

(7) A statement by the operator as to the number of miners willing to serve on a mine rescue team;

(8) The operator's alternative plan for assuring that a suitable mine rescue capability is provided at all times when miners are underground; and

(9) Other relevant information about the operator's mine which may be requested by the District Manager.

(d) A copy of the operator's application shall be posted at the mine. Where a miners' representative has been designated, the operator shall also provide the representative with a copy of the application.

(e) In determining whether to approve an application for alternative compliance, the District Manager shall consider:

(1) The individual circumstances of the small and remote mine;

(2) Comments submitted by, or on behalf of, any affected miner; and

(3) Whether the alternative mine rescue plan provides a suitable rescue capability at the operator's mine.

(f) Where alternative compliance is approved by MSHA, the operator shall adopt the alternative plan and post a copy of the approved plan (with appropriate MSHA mine emergency telephone numbers) at the mine for the miners' information. Where a miners' representative has been designated, the operator shall also provide the representative with a copy of the approved plan.

(g) The operator shall notify the District Manager of any changed condition or factor materially affecting information submitted in the application for alternative mine rescue capability.

(h)(1) An approved plan for alternative mine rescue capability shall be subject to revocation or modification for cause by MSHA, where it is determined that a condition or factor has changed which would materially alter the operator's mine rescue capability. If such action is contemplated, the operator will be notified, and given an opportunity to be heard before the appropriate District Manager.

(2) If an application for alternative compliance is denied or revoked, the District Manager shall provide the reason for such denial or revocation in writing to the operator. The operator may appeal this decision in writing to the Administrator for Coal Mine Safety and Health.

§ 49.14 [Reserved]

§ 49.15 Mine rescue station.

(a) Every operator of an underground mine shall designate, in advance, the location of the mine rescue station serving the mine.

(b) Mine rescue stations are to provide a centralized storage location for rescue equipment. This centralized storage location may be either at the mine site, affiliated mines, or a separate mine rescue structure.

(c) Mine rescue stations shall provide a proper storage environment to assure equipment readiness for immediate use.

(d) Authorized representatives of the Secretary shall have the right of entry to inspect any designated mine rescue station.

§ 49.16 Equipment and maintenance requirements.

(a) Each mine rescue station shall be provided with at least the following

equipment. Mine rescue stations serving underground anthracite coal mines, which have no electrical equipment at the face or working section, shall have at least the amount of equipment appropriate for the number of mine rescue team members.

(1) Twelve self-contained oxygen breathing apparatus, each with a minimum of 2 hours capacity (approved by MSHA and NIOSH under 42 CFR part 84, subpart H), and any necessary equipment for testing such breathing apparatus;

(2) A portable supply of liquid air, liquid oxygen, pressurized oxygen, oxygen generating or carbon dioxide absorbent chemicals, as applicable to the supplied breathing apparatus and sufficient to sustain each team for 6 hours while using the breathing apparatus during rescue operations;

(3) One extra oxygen bottle (fully charged) for every six self-contained compressed oxygen breathing apparatus;

(4) One oxygen pump or a cascading system, compatible with the supplied breathing apparatus;

(5) Twelve permissible cap lamps and a charging rack;

(6) Two gas detectors appropriate for each type of gas which may be encountered at the mines served;

(7) Two oxygen indicators or two flame safety lamps;

(8) One portable mine rescue communication system (approved under part 23 of this chapter) or a sound-powered communication system. The wires or cable to the communication system shall be of sufficient tensile strength to be used as a manual communication system. These communication systems shall be at least 1,000 feet in length; and

(9) Necessary spare parts and tools for repairing the breathing apparatus and communication system.

(b) Mine rescue apparatus and equipment shall be maintained in a manner that will assure readiness for immediate use. A person trained in the use and care of breathing apparatus shall inspect and test the apparatus at intervals not exceeding 30 days and shall certify by signature and date that the inspections and tests were done. When the inspection indicates that a corrective action is necessary, the corrective action shall be made and the person shall record the corrective action taken. The certification and the record of corrective action shall be maintained at the mine rescue station for a period of 1 year and made available on request to an authorized representative of the Secretary.

§ 49.17 Physical requirements for mine rescue team.

(a) Each member of a mine rescue team shall be examined annually by a physician who shall certify that each person is physically fit to perform mine rescue and recovery work for prolonged periods under strenuous conditions. The first such physical examination shall be completed within 60 days prior to scheduled initial training. A team member requiring corrective eyeglasses will not be disqualified provided the eyeglasses can be worn securely within an approved facepiece.

(b) In determining whether a miner is physically capable of performing mine rescue duties, the physician shall take the following conditions into consideration:

- (1) Seizure disorder;
- (2) Perforated eardrum;
- (3) Hearing loss without a hearing aid greater than 40 decibels at 400, 1000, and 2000 Hz;
- (4) Repeated blood pressure (controlled or uncontrolled by medication) reading which exceeds 160 systolic, or 100 diastolic, or which is less than 105 systolic, or 60 diastolic;
- (5) Distant visual acuity (without glasses) less than 20/50 Snellen scale in one eye, and 20/70 in the other;
- (6) Heart disease;
- (7) Hernia;
- (8) Absence of a limb or hand; or
- (9) Any other condition which the examining physician determines is relevant to the question of whether the miner is fit for rescue team service.

(c) The operator shall have MSHA Form 5000-3 (available at <http://www.msha.gov>) certifying medical fitness completed and signed by the examining physician for each member of a mine rescue team. These forms shall be kept on file at the mine rescue station for a period of 1 year.

§ 49.18 Training for mine rescue teams.

(a) Prior to serving on a mine rescue team each member shall complete, at a minimum, an initial 20-hour course of instruction as prescribed by MSHA's Office of Educational Policy and Development, in the use, care, and maintenance of the type of breathing apparatus which will be used by the mine rescue team.

(b) Upon completion of the initial training, all team members shall receive at least 96 hours of refresher training annually, which shall include participation in local mine rescue contests and training at the covered mine. Training shall be given at least 8 hours every 2 months and shall consist of:

- (1) Sessions underground at least once each 6 months;

(2) The wearing and use of the breathing apparatus by team members for a period of at least 2 hours while under oxygen every 2 months;

(3) Where applicable, the use, care, capabilities, and limitations of auxiliary mine rescue equipment, or a different breathing apparatus;

(4) Advanced mine rescue training and procedures, as prescribed by MSHA's Office of Educational Policy and Development;

(5) Mine map training and ventilation procedures; and

(6) The wearing of mine rescue apparatus while in smoke, simulated smoke, or an equivalent environment at least once during each 12-month period.

(c) A mine rescue team member will be ineligible to serve on a team if more than 8 hours of training is missed during 1 year, unless additional training is received to make up for the time missed.

(d) The training courses required by this section shall be conducted by instructors who have been employed in an underground mine and have had a minimum of 1 year experience as a mine rescue team member or a mine rescue instructor within the past 5 years, and who have received MSHA approval through:

(1) Completion of an MSHA or State approved instructor's training course and the program of instruction in the subject matter to be taught.

(2) Designation by the District Manager as approved instructors to teach specific courses, based on their qualifications and teaching experience outlined above. Previously approved instructors need not be re-designated to teach the approved courses as long as they have taught those courses within the 24 months prior to the effective date of this part.

(e) The District Manager may revoke an instructor's approval for good cause. A written statement revoking the approval together with reasons for revocation shall be provided the instructor. The affected instructor may appeal the decision of the District

Manager by writing to the Administrator for Coal Safety and Health. The Administrator shall issue a decision on the appeal.

(f) Upon request from the District Manager, the operator shall provide information concerning the schedule of upcoming training.

(g) A record of training of each team member shall be on file at the mine rescue station for a period of 1 year.

§ 49.19 Mine emergency notification plan.

(a) Each underground mine shall have a mine rescue notification plan outlining the procedures to follow in notifying the mine rescue teams when there is an emergency that requires their services.

(b) A copy of the mine rescue notification plan shall be posted at the mine for the miners' information. Where a miners' representative has been designated, the operator shall also provide the representative with a copy of the plan.

§ 49.20 Requirements for all coal mines.

(a) The operator of each underground coal mine shall make available two certified mine rescue teams whose members—

(1) Are familiar with the operations of the mine, and

(2) Participate at least annually in two local mine rescue contests.

(b) Team members shall meet the following:

(1) *Mine-site team.* Members who work at the mine and participate in mine rescue training at the mine at least annually.

(2) *Composite team.* A mine rescue team that covers multiple mines and whose members—

(i) Include at least two members from each covered large mine and at least one member from each covered small mine,

(ii) Are knowledgeable about the operations and ventilation of each covered underground coal mine, and

(iii) Participate in mine rescue training at each covered mine at least semi-annually.

(3) *Contract team.* A mine rescue team that is provided by an arrangement with another coal mine or with a third party and whose members—

(i) Are knowledgeable about the operations and ventilation of each covered underground coal mine, and

(ii) Participate in mine rescue training at each covered large mine at least quarterly and at each covered small mine at least semi-annually.

(4) *State-sponsored team.* Members who are State employees and participate in mine rescue training at each covered mine at least annually.

(c) For the purpose of mine rescue team membership, a member employed by an operator of multiple mines is considered to be an employee of each mine at which the member regularly works.

(d) For the purpose of mine rescue team training at each covered mine, a portion of the training must be conducted underground.

§ 49.30 Requirements for small coal mines.

At mines with 36 or fewer underground employees, mine rescue team members shall be knowledgeable about the operations and ventilation of each covered mine.

§ 49.40 Requirements for large coal mines.

At mines with more than 36 underground employees, one of the two certified mine rescue teams shall be an individual mine-site team or a composite team.

§ 49.50 Certification of coal mine rescue teams.

(a) For each mine rescue team designated to provide mine rescue coverage at an underground coal mine, the mine operator shall send the District Manager an annual statement certifying that each team meets the requirements of this subpart as listed in the following Table 49.50-A and Table 49.50-B.

(b) The operator shall notify the District Manager within 60 days of any change in team membership.

TABLE 49.50-A.—INITIAL CRITERIA TO CERTIFY THE QUALIFICATIONS OF MINE RESCUE TEAMS

| Qualification | Criteria (30 CFR) |
|---|--------------------|
| (1) Team is available at all times when miners are underground | 49.12(a); 49.12(g) |
| (2) Except where alternative compliance is permitted, team has five members and one alternate | 49.12(b) |
| (3) Members have experience working in an underground coal mine | 49.12(c) |
| (4) Team is available within 1-hour ground travel time from the mine rescue station to the mine | 49.12(f) |
| (5) Appropriate mine rescue equipment is provided, inspected, tested, and maintained | 49.16 |
| (6) Members are physically fit | 49.17 |
| (7) Members have completed initial training | 49.18(a) |

TABLE 49.50–B.—ANNUAL CRITERIA TO MAINTAIN MINE RESCUE TEAM CERTIFICATION

| Qualification | Criteria (30 CFR) |
|---|----------------------|
| (1) Members are properly trained annually | 49.18(b) |
| (2) Members are familiar with the operations of each covered mine | 49.20(a)(1) |
| (3) Members participate in at least two local mine rescue contests annually. Judges certify results | 49.20(a)(2) |
| (4) Members participate in mine rescue training at each covered mine | 49.20(b)(1); |
| | 49.20(b)(2)(iii); |
| | 49.20(b)(3)(ii); |
| | 49.20(b)(4) |
| (5) Members are knowledgeable about the operations and ventilation of each covered mine | 49.20(b)(2)(ii); |
| | 49.20(b)(3)(i); |
| | 49.30 |

§ 49.60 Requirements for a local mine rescue contest.

(a) A local mine rescue contest is one that—

- (1) Is conducted in the United States;
- (2) Uses MSHA-recognized rules;
- (3) Has a minimum of three mine rescue teams competing;
- (4) Has one or more problems conducted on one or more days with a determined winner;
- (5) Includes team members who—

(i) Have the necessary equipment to participate in a simulated mine rescue team exercise,

(ii) Participate in a simulated mine rescue team exercise while being timed and observed by trained judges who evaluate the performance of each team and provide written feedback, and

(iii) Wear oxygen breathing apparatus while participating in a simulated mine rescue team exercise; and

(6) Includes contest judges who have completed annual training for mine rescue contest judges.

(b) A local mine rescue contest is training that provides an objective evaluation of demonstrated mine rescue team skills and can be a Mine Emergency Response Development

(MERD) exercise or a practical simulation exercise, such as a fire or explosion drill, where the team participates in simulated mine rescue team exercises and wears breathing apparatus.

(c) Upon request from the District Manager, the operator shall provide information concerning each designated team’s schedule of participation in upcoming local mine rescue contests.

Appendix to Subpart B—Optional Form for Certifying Mine Rescue Teams

BILLING CODE 4510–43–P

| | | | | | | | | |
|---|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Familiar with operations of mine | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Knowledge of operations & ventilation of mine | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Participates in two local mine rescue contests (insert dates) | | | | | | | | |
| Trains at this mine (insert dates) | | | | | | | | |

MSHA Form No. _____

OMB Control No. _____

I certify the information above is true and accurate to the best of my knowledge.

Printed Name & Signature:

Position held at the mine:
Date:

Use of this form is optional.

An underground coal mine operator may file a copy of this form with the appropriate District Manager for each of the two designated mine rescue teams, that provide coverage for this mine, to certify that each team meets the requirements of 30 CFR Part 49 Subpart B.

PART 75—[AMENDED]

■ 5. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

■ 6. Amend § 75.1501 by revising paragraph (a) to read as follows:

§ 75.1501 Emergency evacuations.

(a) For each shift that miners work underground, there shall be in attendance a responsible person designated by the mine operator to take charge during mine emergencies involving a fire, explosion, or gas or water inundation.

(1) The responsible person shall have current knowledge of the assigned location and expected movements of miners underground, the operation of the mine ventilation system, the

location of the mine escapeways, the mine communications system, any mine monitoring system if used, locations of firefighting equipment, the mine's Emergency Response Plan, the Mine Rescue Notification Plan, and the Mine Emergency Evacuation and Firefighting Program of Instruction.

(2) The responsible person shall be trained annually in a course of instruction in mine emergency response, as prescribed by MSHA's Office of Educational Policy and Development. The course will include topics such as the following:

- (i) Organizing a command center;
- (ii) Coordinating firefighting personnel;
- (iii) Deploying firefighting equipment;
- (iv) Coordinating mine rescue personnel;

- (v) Establishing fresh air base;
- (vi) Deploying mine rescue teams;
- (vii) Providing for mine gas sampling and analysis;
- (viii) Establishing security;
- (ix) Initiating an emergency mine evacuation;
- (x) Contacting emergency personnel; and
- (xi) Communicating appropriate information related to the emergency.

(3) The operator shall certify by signature and date after each responsible person has completed the training and keep the certification at the mine for 1 year.

* * * * *

[FR Doc. 08-551 Filed 2-5-08; 2:40 pm]

BILLING CODE 4510-43-C