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From: Watzman, Bruce [BWatzman@nma.org]
Sent: Thursday, November 15, 2007 11:50 AM
To: zzMSHA-Standards - Comments to Fed Reg Group
Subject: RIN 1219-AB53

Attachments: Mine Rescue NPR Cover Letter.pdf; Rule Text Edited.pdf; Mine Rescue Teams Proposed Rule Questions1.pdf

Attached are the comments of the National Mining Association in response to the Notice of Proposed Rulemaking revising 30 CFR Parts 49 and 75, Mine Rescue Teams and Equipment.

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November 16, 2007

Patricia W. Silvey
Director, Office of Standards, Regulations, and Variances
U.S. Department of Labor
Mine Safety and Health Administration
1100 Wilson Boulevard
Room 2350
Arlington, VA 22209-3939

Re: Comments of the National Mining Association on MSHA's Proposed Rules for Mine Rescue Teams (72 Fed. Reg. 51320; RIN 1219-AB53) and Mine Rescue Equipment (72 Fed Reg. 51338; RIN 1219-AB 56)

Dear Ms. Silvey:

Set forth below and in the attachments to this letter, please find the comments of the National Mining Association ("NMA") on MSHA's two Notices of Proposed Rulemaking ("NPR" or "NPRs") published in the Federal Register for Sept. 6, 2007. The NPR for Mine Rescue Teams, which would amend the provisions of 30 CFR Part 49 and the emergency evacuations requirements of 30 CFR § 75.1501, begins at 72 Fed. Reg. 51,230. The NPR for Mine Rescue Team Equipment is found beginning at 72 Fed. Reg. 51,338.

Introduction

The attachments consist of the text of the NPR for Mine Rescue Teams, with "interlining" of language that we suggest is changed or deleted and language in "**bold**" for language we believe should be added. Included with the regulatory text is rationale for our recommended deletions and additions. We have also enclosed a document which consists of a listing of the questions posed by MSHA in the preamble to this NPR, followed by our answers to the questions.

In addition to the attachments, NMA discusses below the overall approach we believe is critical to any successful final rulemaking on the Mine Rescue Team NPR.

As for the Mine Rescue Equipment NPR, our comments are also contained in this letter below.

The NPR For Mine Rescue Teams (72 Fed. Reg. 51,320; RIN 1219-AB 53)

Turning first to MSHA's NPR on Mine Rescue Teams, NMA notes with approval MSHA's summary description of the NPR as follows:

This proposed rule would implement the provisions of the Mine Improvement and New Emergency Response Act of 2006 (MINER Act) to improve overall mine rescue service; improve mine emergency response time; improve mine rescue team effectiveness; and increase the quantity and quality of mine rescue team training.

72 Fed. Reg. 51,320.

NMA supported passage of the Mine Improvement and New Emergency Response (MINER) Act of 2006 which, in § 4, "Mine Rescue Teams," added new provisions strengthening § 115(e) of the Federal Mine Safety and Health Act of 1977 (the "1977 Mine Act"). As both the agency and the regulated industry have learned since implementation of the MINER Act began following its enactment in June, 2006, while its goals are laudable and supported by a strong consensus within the mining community, the particular provisions of the MINER Act are, in many respects, complex and subject to a variety of interpretations consistent with the MINER Act's goals. A key challenge posed by MINER Act § 4 therefore, is to ensure that its required regulations accomplish the purposes of the provision, while, at the same time, preserving mine rescue systems that are currently working.

This shared goal was cited repeatedly during the four public hearings conducted by MSHA when discussing the NPR. For example, MSHA's statement at the Charleston, W.Va. hearing on Nov. 30 that, "MSHA does not intend to negatively affect mine rescue teams, mine rescue team services or considerations with respect to the long history and traditional of mine rescue teams" epitomizes this goal which we so passionately support. (Public Hearing, Charleston, W.Va., Nov. 30, 2007, pg. 20, lines 4-8) (See also Public Hearing, Lexington, Ky., Nov. 25, 2007, pg. 29, lines 5-7).

NMA's comments, therefore, are offered to support those current practices of our nation's mine rescue team system which can be harmonized with the above-expressed Congressional intent of MINER Act § 4. In this respect, NMA notes with approval that the Mine Rescue Teams NPR cites as the basis for its authority not only MINER Act § 4, but also Mine Act § 101, the fundamental rulemaking authority granted to MSHA to develop and promulgate improved mandatory safety standards for the protection of life and prevention of injuries in coal or other mines. We believe that the NPR represents a solid step in the right direction, MSHA's final Mine Rescue Teams rules would benefit by adoption of our comments. Our suggestions accomplish the objective delineated by MSHA to "put some common sense in crafting the regulations then you do it in the first place." (Public Hearing, Oct. 25, 2007, Lexington, Ky. pg. 63).

Simply put, our comments are offered in the spirit of honoring the MINER Act's purpose of strengthening mine rescue team requirements for underground coal mines, while at the same time preserving those systems that currently work well. Fundamental to any successful outcome along these lines is that MSHA must keep in mind that, when all is said and done, rescue team members are largely volunteers. This rulemaking must not discourage what is already a limited pool of volunteers from participating in the mine rescue teams system.

The report of the Senate Health, Education, Labor and Pensions Committee on the MINER Act discusses this problem in connection with the various categories of mine rescue teams. Thus, in its section by section analysis, the committee specifically stated that the regulations to be promulgated pursuant to MINER Act § 4 must "preserve systems that are currently working such as consortium teams, 'co-op' and leased teams and state teams." In addition, the committee report specifically states:

It is not the intent of the committee to displace the current practice in some states of providing state-sponsored mine rescue teams. It is the view of the committee that state-sponsored teams which meet the familiarity, training and proximity requirements in Section 4 will satisfy the requirement to make available mine rescue teams for underground coal mines with 36 employees or less and those with more than 36 employees.

U.S. Senate Report No. 109-365, pg. 9

In this regard, several of our changes are designed to provide clarity and further definition to describe the multitude of mine rescue team configurations that exist throughout the industry. Again, just as the agency, we want to "do it right in the first place rather than trying to have it subject to a lot of different interpretations." (Public Hearing, Oct. 25, 2007, Lexington, Ky. pg. 63).

The NPR for Mine Rescue Equipment (72 Fed. Reg. 51,338; RIN 1219-AB 56)

With regard to MSHA's NPR on Mine Rescue Equipment, we find it to be overlapping and confusing in its relationship to the NPR on Mine Rescue Teams. Thus, at 72 Fed. Reg. 51,347, MSHA proposes revisions to 30 C.F.R. § 49.16 that are **different** than 30 C.F.R. § 49.16 as proposed in the NPR Mine Rescue Teams.

For example, in the NPR for Mine Rescue Equipment the caption of § 49.16 is proposed to read "Equipment and Maintenance Requirements for Coal Mine Rescue Stations." However, as proposed in the NPR for Mine Rescue Teams, the caption for that section would read "Equipment and Maintenance Requirements." More

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substantively, as proposed in the Mine Rescue Equipment NPR, § 49.16(a)(3) and (6) would increase, respectively, requirements for oxygen bottles from one to two and for gas detectors from two to four, whereas the same provisions of § 49.16 proposed in the Mine Rescue Teams NPR would only require one oxygen bottle and two gas detectors.

NMA believes that the provisions of § 49.16 as proposed in the Mine Rescue Teams NPR are sufficient in regard to extra oxygen bottles and gas detectors. However, we find it extraordinarily confusing to determine what MSHA's actual intent is regarding revisions of § 49.16. NMA, therefore, strongly recommends that MSHA publish a notice in the Federal Register as quickly as possible clarifying this problem and providing us and other interested persons an additional period of time to comment on it.

Lastly, we respectfully suggest that an 18 month implementation period be included in the final rule to permit for the purchase and delivery of equipment, the systematic implementation of changes, and the selection and training of the new teams. As the agency is well aware, delays in the delivery of safety equipment have become commonplace across the industry as manufacturers strive to meet the unanticipated demands arising from the MINER Act. The industry still awaits the delivery of tens of thousands of self-contained self-rescuers and it is likely that similar delays will be encountered as we obtain the required equipment to effectively train and equip the many new mine rescue teams that will be created to meet the regulations.

To conclude, NMA appreciates the opportunity to comment on these NPR's. We stand ready to work with MSHA to craft regulations that "that would not negatively impact mine rescue team service or mine rescue team members or mine rescue teams" (Public Hearing, Birmingham, Ala., Nov. 1, 2007, pg. 31, lines 12-14).

Sincerely,



Bruce Watzman
Vice President, Safety, Health
and Human Resources