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FAX COVER PAGE

To:

MSHA - Office of Standards, Regulations & VarianceS

Fax No.:

202-693-9441

From:

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Date/Time:

Nov. 16, 2007 9:00AM

9 page(s) including cover sheet

Message:

RIN 1219-AB53

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1219-AB53-COMM-25

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1219-AB53-COMM-25

November 16, 2007

Office of Standards, Regulations and Variances
 Mine Safety and Health Administration
 1100 Wilson Boulevard, Room 2350
 Arlington, VA 22209-3939

Re: Comments regarding 30CFR Parts 49 and 75 Mine Rescue Teams and Equipment:
 Proposed Rules (RIN 1219-AB53 and RIN1219-AB56)

Dear Sirs:

Cumberland Resources Corporation appreciates the opportunity to comment on the proposed rules, as these rules would have a dramatic effect on the future of mining. These proposed regulations could cause many operations to go out of business, especially small mines of 36 or fewer employees, due to a lack of available mine rescue services. Many of these same issues arose with the promulgation of Part 49 in 1981. Many mining operations were placed in jeopardy by the requirement that an operation designate two mine rescue teams to cover each mine. The mine rescue system became "commercialized" as a result of this requirement and the adequacy of the system suffered and declined. This direction changed when several states and mining associations became involved by providing mine rescue services to operations for compliance with Part 49. Now the MINER Act and these proposed regulations again place those services in jeopardy. The state-designated mine rescue teams program in Virginia and the mine rescue teams available to the industry by the Kentucky Office of Mine Safety and Licensing will no longer be able to provide mine rescue services due to the requirements of on site training at each covered mine and the participation in two local mine rescue contests annually. Many companies will have to form new mine rescue teams but many mines do not have the financial or physical resources to form these teams and subsequently may go out of business.

The MINER Act and these proposed regulations force changes to a mine rescue program that is not broken and does not need such major changes.

Mine safety is a constant effort and the achievement of such is not aided by the constant changing and modification of laws and regulations without review and comment by miners and companies who must apply and comply with those regulations daily. These proposed regulations were published on September 6, 2007 with public hearing conducted in late

November 12, 2007

October and early November. Written comments are due on November 16, 2007 with the final regulations proposed to become effective on December 15, 2007. This is to compressed of a time frame for regulations that are so far-reaching and critical to the future operations of many mines. The public hearing transcripts and a single written comment were posted on the MSHA website for review only a few days prior to the original date for written comments to be submitted. Industry should at least 30 days to review the transcripts prior to filing written comments. This time frame is too short to allow for the careful review and consideration of such critical requirements that could have a devastating effect for many coal mines. I therefore request that the written comment deadline be extended for an additional 60-day period. Due to substantial requirements and changes as a result of these regulations, a compliance time frame of nine to twelve months will be needed. Therefore an extension of the written comment period would not be unreasonable or cause any hazards to working miners. The current mine rescue programs and coverage should be allowed to remain in effect until these regulations are finalized.

Your consideration of the comments is appreciated.

Sincerely,

Mr. Harry D. Childress
Government Affairs Agent
Cumberland Resources Corporation

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Responses to the questions and requests for information contained in the preamble of the proposed rule:

1. The creation of a subject B in Part 49 containing existing standards and MINER Act provisions would be beneficial in eliminating confusion for both the operator and MSHA.
2. The MINER Act and the proposal regulations will most likely lead to the establishment of "commercial" contract mine rescue teams for compliance. This occurred when Part 49 was promulgated in 1981. The sole employment of these individuals could be as members of contract mine rescue teams. These team members could have been out of the coal mines for the last seven years and would never have to work again in or at an underground coal mine for their entire career as members of a contract mine rescue team. The fees charged by the "commercial" contract mine rescue teams could be an extreme financial burden on the operators of small mines for who they serve as both designated mine rescue teams and for those large mine operators who use the contract team as their second team. These costs have not been estimated and have not been considered in the financial analysis of the regulation.
3. The job duties of members of State-sponsored teams should substitute for 100% of the training required by the MINER Act and these proposed regulations. MSHA should not regulate the training of State-sponsored mine rescue teams.
4. Some existing mine rescue stations will have to be relocated to comply with the one-hour ground travel time requirement. This will be a burden for industry by having to move a station from secure company property to purchased or rented property requiring security services. These new locations could also be burdensome for team members by requiring longer travel time for training sessions and may result in the loss of trained experienced team members. Established stations should be grandfathered into compliance if the travel time to any covered mine is less than two hours.
5. Difficulties will encountered in meeting the one-hour travel time in many instances due to remote mine location, terrain, road systems and conditions, and weather conditions. With the terrain, the road systems, and mine locations in the central Appalachian coalfields, currently established mine rescue stations should be grandfathered into compliance if all covered mines are within a two-hour ground travel time. The location of the mine rescue station has never been a problem in the response time in any of the events with which I have been associated. Few mine rescue situations that occur will be handled only by the two assigned teams. Other teams will have to respond and in most cases their travel time will be much greater than one hour.
6. Our company will have to form two composite teams for our Virginian operations and two composite teams for our Kentucky operations. The teams will be made

up of two employees from each of our mines with more than 36 employees. Most of these employees have no mine rescue training or background. Our other mines that have 36 or fewer employees will be covered as contract mine rescue teams. We will also cover any contract mines as contract mine rescue teams. One or two mine rescue stations will be established depending on location and the final regulations.

7. Each mine rescue station will cost \$300,00 to \$500,000 to establish and \$25,000 to \$40,000 yearly to maintain the station and equipment. Projected training costs per year per team are estimated to be \$57,600. We have several employees experienced in mine rescue in our safety, engineering, and management areas but the regulations do not address that a central employee familiar with all the mines and operations at each mine could serve on a mine rescue team as a representative of an individual mine. If this is not allowed many valuable experienced personnel will be prohibited from serving on a mine rescue team.
8. Mandatory training should remain at the proposed 64 hours in the final rule. The content and quality of the training are much more important than the number of hours.
9. In Kentucky, each district of the Office of Mine Safety and Licensing provide two mine rescue teams for the mines in that district. These team members are employees of the Office of Mine Safety and Licensing. In Virginia, DMME has established the state-designated mine rescue program to provide mine rescue services to those mines that contract with DMME for the service. The state-designated teams are coal company teams who have signed an agreement with DMME to provide mine rescue services under Part 49 for mines of any size that request the service. Under the MINER Act and the proposed regulations both of these programs are in jeopardy thereby placing small operations in danger of having no mine rescue coverage and having to go out of business. Unless the mine is associated with a company that provides mine rescue coverage, no coverage will be available to many small mines with the loss of the Virginia and Kentucky programs.
10. Training at large and small mines should be consistent in required frequency for the particular type of mine rescue team. Mine site teams should only be required to train annually at the mine whether it is a large or small mine. The same frequency of annual training at a large or a small mine should be required of a state-sponsored team. Annual training at any size mine would be sufficient but training at any size mine should not be more often than semiannually. Annual training should be required of a composite team whose members are from multiple mines of the same operator. In this situation, the same personnel at all the mines would perform the management, safety, and engineering functions and that information would be available at all times to the teams. Training underground at every covered mine should not be required. This decision should be left up to the team trainer, team captain, and team members. Rotation of team

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personnel to a mine would provide the necessary information for each team member. In actual mine rescue situations, most teams responding have never been to the mine nor trained at the mine and in general have had no problem performing their required duties based on the briefing and information they are provided.

11. The local contest judges should complete annual mine rescue judges training prior to judging local contests but schedules for contests and judges training may not permit this to occur. Personnel who are knowledgeable of mine rescue principles and practices and experienced in mine rescue should be able to serve as judges for local contests. Training and contests should concentrate on the practical aspects of mine rescue and not totally focus on compliance with contest rules. The proposed rule projects that 28 new stations and 56 new mine rescue teams will be formed. This will result in several new local contests and many requests for judges for those contests. The current contests are having difficulty in finding a sufficient number of qualified personnel who are willing to be contest judges. Many current contests limit the number of competing teams as a result of the lack of qualified contest staff. Nothing in the final rule should limit contest judges to federal or state personnel. If judges are required to attend judges training then there will be an increase in requests for judges training. Judges training should be conducted in each MSHA district at a minimum.
12. There should be no minimum required amount of time for judges training. The amount of training should be based on the rule changes, inconsistent interpretations and any other issues that need to be addressed. A more practical approach directed toward the actual type work a mine rescue team would perform during an actual disaster or emergency would be more beneficial as judges training.
13. Teams should be allowed to submit alternative types of training that could be approved by the District Manager as an alternative to participation in a local mine rescue team contest. New and different types of training could be developed and should not be excluded as a result of not being developed or available at the time the final rule goes into effect.

Additional Comments on Proposed Regulations

1. How and who determines whether the mine has 36 or less employees or more than 36 employees? What information is used to make the determination? Do surface employees, clerks, or other personnel who work only on the surface count toward the determination of more than or less than 36? An operation may normally have less than 36 employees at the mine but on occasion may employ contractors for the performance of a particular function for a period of time. Do these contractors count toward the determination of 36? Do employees who are off injured or sick affect the determination of the number of employees? To date, no information or guidelines has been given as to how the number of employees at the mine is determined. This needs to be addressed in the regulations since it was not addressed in the MINER Act.
2. What happens if two employees do not volunteer to serve on a mine rescue team at a mine that has more than 36 employees? The operator should not be required to mandate that employees participate on a mine rescue team. Members of mine rescue teams have historically been volunteers and the MINER Act or these regulations should not force a change to that tradition.
3. How is the operator to address a situation where one or both of the mine rescue team members from a particular mine are unable to serve due to injury, illness, leaving employment, etc.? The operator should be given the opportunity to train replacement personnel without the team(s) being determined as not being qualified. This could affect several mines that the team(s) may be serving.
4. A company that has several mines may form two composite teams to cover the applicable mines. Training sessions should not be required at each covered mine more than twice each year. The teams should rotate the members training at the mine during each training session so that each member will train once each year at the mines where the team member is not employed. Teams should not be required to train underground at every covered mine each year. Trainers and team captains should determine how and where training is conducted based on a assessment of mine conditions and team training needs.
5. If an operator has as mix of large and small mines, can the composite teams serve as contract teams for the small mines? If members of the composite teams only have one year of mining experience, will the teams be in compliance with the requirement of 3 years experience in last 10 years for contract team members?
6. The judges training conducted at the Academy each year should be web cast to each MSHA District and to other relevant locations so that additional personnel can receive the training.

7. Judges for local contests should not be limited to MSHA and State personnel. Many of these personnel have no mine rescue team experience except for the judges training. Mine rescue team members and other industry personnel should be allowed to serve as contest judges.
8. There should be an allowance for the formation of composite teams from small mines with each mine contributing one employee to the team(s).
9. Central personnel (engineers, safety personnel, etc.) should be allowed to represent a mine on a mine rescue team since they would be familiar with the operation and ventilation of the mines. Exclusion of these personnel because they are not specifically employed at a single mine would result in the elimination of qualified and experienced mine rescue personnel.
10. If a team has more than the number of personnel allowed to compete in a contest, will all team members be credited with participating in the contest?
11. A composite team that provides coverage for both large and small mines and has two members from each large mine and one member from each small mine should be permitted.
12. The MINER Act or the current 49.8 (d)(1)(2) do not require that a mine rescue instructor have experience as a mine rescue team member. Companies forming new mine rescue teams could have a problem complying with this requirement. MSHA needs to establish and conduct training sessions for new mine rescue instructors to facilitate the formation of new mine rescue teams.
13. What is the projected date for compliance with the final regulations? Time will be needed to procure equipment, select team members, perform physical examinations, conduct training and participate in two mine rescue contests. A newly formed team would need nine to twelve months before they could meet the requirements of proposed 49.50 as detailed in Table 49.50—Criteria to Certify the Qualification of Mine Rescue Teams. Some current mine rescue teams may not meet the proposed requirements of 49.50.
14. The chart proposed under 49.50 for the certification of mine rescue team qualification should be completed by a representative of the mine rescue team and submitted by the mine operator. The mine operator may not be aware that all the mine rescue team qualification requirements have been completed since many of the requirements will be performed away from the particular mine site and several of the requirements are common for every mine covered by the mine rescue teams. There is no indication as to when the form is due and what period of time it covers.
15. Under the proposed 75.1501, there are several items the responsible person does not need to perform. The responsible should be trained in and responsible for;

deploying fire fighting equipment, initiating an emergency mine evacuation, contacting emergency personnel and mine rescue teams, communicating appropriate information relating to the emergency and to some extent directing fire fighting personnel. Such items as organizing a command center, directing mine rescue personnel, establishing a fresh air base deploying mine rescue personnel, providing for mine gas sampling and analysis, and establishing security should be handled by others once the emergency is recognized and the appropriate personnel notified. The responsible person would be better utilized by allowing him to concentrate on the emergency by evacuating personnel and/or directing fire fighting personnel and ensuring they have the equipment and supplies needed.

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