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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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**1219-AB53-COMM-17**



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

- 3. Remove Sec. 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 Part 49 Subpart B: Optional Forms for Certifying Mine Rescue Teams.

Subpart B--Mine Rescue Teams for Underground Coal Mines

Sec. 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 Act of 2006 (MINER Act). 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.

Mine Rescue Team Requirement		Type of	
		Mine-site	Composite
Contract	State-sponsored*		
Team members must participate at least annually in two local mine rescue contests.	YES.....	YES.....	YES
Team members must participate in annually.....	Quarterly at Large	Annually at Large	Semi-Annually at Large

mine rescue training at the Mines.  
Mines. Mines  
underground coal mine covered by Semi-annually at  
Semi-annually at Semi-annually at  
the mine rescue team. Small Mines.  
Small Mines. Small Mines  
Teams must be available at the YES.....  
YES..... YES..... YES  
mine within 1 hour ground travel  
time from the mine rescue  
station.  
Team members must be YES.....  
YES..... YES..... YES  
knowledgeable about the  
operations and ventilation of  
the covered mines.  
Teams must have team members .....  
YES.....  
which include at least two  
active employees from each of  
the covered mines.

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Team must be comprised of persons .....  
..... YES.....  
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.

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.

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\*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) conducting mine safety training or (4) 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.

Sec. 49.12 Availability of mine rescue teams.

(a) Except where alternative compliance is permitted for small and  
remote mines (Sec. 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 **at least** 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 the effective date of this rule.

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

(e) Upon the effective date of this part, 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 part, 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 part. 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.

#### Sec. 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. For the purposes of this part 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.

Sec. 49.15 Mine rescue station.

(a) **Except where alternative compliance is permitted,** 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.

Sec. 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 title) 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 ensure 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.

Sec. 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 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.

**Rationale:** The revision to (5) recognizes that the use of contact lenses and face pieces with attachments for glasses have become commonplace and accepted in industry and among the medical/general industry community. The revision will eliminate the disqualification of miners provided the eyeglasses can be worn securely within an approved face piece. Additionally, this same reference "without glasses" should be removed from the 5000-3 form.

Sec. 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. The initial training requirement is waived for those miners on a mine rescue team on the effective date of this rule.

(b) Upon completion of the initial training, all team members shall

receive at least ~~64~~ **48** hours of training annually, which shall consist of refresher training given at 8 hours every 2 months. Refresher training shall include:

**Rationale:** We recommend 48 hours of annual refresher training which aligns with the 8 hours every 2 months requirement. We are concerned that a negative impact of the delivery of experienced mine rescue services may result by raising the requirement higher. Conflicting mine-site duties may preclude those currently on rescue teams from spending additional time away from their other responsibilities. This might result in an influx of inexperienced mine rescue team personnel on what are merely "compliance" rescue teams – a proposition that would run counter to the purpose of the statutory changes.

- (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 one of the following methods:

- (1) Completion of an MSHA or State approved instructor's training course and the program of instruction in the subject matter to be taught; or
- (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 redesignated 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. **Records can be maintained in either paper or electronic format.**

Sec. 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.

Sec. 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 at large mines and semi-annually at small mines **and personnel that oversee multiple mines and are engaged in activities involving engineering, safety and training are considered to work at the mines they represent.**

(2) Composite teams. A Mine rescue teams that covers multiple mines and whose members— **(1) A single operator composite team that provides coverage for two or more of a single operators mines (37 employees or more); all of a single operator's mines, (36 employees or less) and all of the single operator's contract mines. The team may be comprised of one or more employees from each of the covered single operators mines or a single mine (37 or more) who have knowledge of the operations and ventilation of the single operators mines (37 employees or more) and train semi-annually at a mine covered by the team and would rotate to each covered mine until all covered mines were completed. A single operator composite team is a single company (single operator) employer team. This team provides coverage for multiple mines owned by a single operator. The team provides coverage for the single operator's contract mines or a State-Sponsored team.**

**(2) A multiple operator composite team provides coverage for multiple mines and has team members which include at least two active employees from each covered operator that have knowledge of the operations and ventilation of the covered operators mines and train semi-annually at each covered mine. A composite team can be a multiple employer (multiple operator) team, a team that provides coverage for multiple mines owned by the same operator, or a State-Sponsored team.**

**Rationale:** Our proposed changes to the various team definitions are designed to clarify and better represent the many configurations that exist throughout the industry. Without these revisions those tasked with managing mine rescue services, as well those charged with ensuring that adequate coverage is available, will be confronted with repeated definitional questions concerning how team structures are evaluated. Basic to our suggestions is the recognition that we must, to the greatest extent possible,

ensure that existing teams which have served the industry so well are not disrupted. If left unchanged the proposed rule will disqualify several mine rescue members who are not assigned to a particular mine, but are operations personnel responsible for several mines. For example, operations engineering personnel that know the ventilation of not just one mine, but all the mines in their operations, operations safety and training personnel that are over multiple mines would not be permitted to serve on a mine rescue team if the proposed rule is not revised. These personnel are vital to the functioning of many rescue teams and bring a great deal of knowledge of the overall workings of all the mines. To maintain continuity and stability of existing teams, it is imperative that the rule be amended to permit controlling entities and their related companies to create teams from employees working in and around their underground mines

The second change would allow a single operator with multiple mine sites within 1-hour ground travel to use one individual from each covered mine to form two composite teams that would cover these multiple sites and also participate in training at a covered mine at least semi-annually. Without these changes to the proposed rule: in order to form two composite teams for multiple mines sites each covered mine would be required to provide two individuals per team, which would equate to four individuals from each mine covered.

(i) Include at least two members from each covered mine,  
(ii) Are knowledgeable about the operations and ventilation of the covered underground coal mines, and  
(iii) Participate in mine rescue training at ~~each a~~ covered mine at least semi-annually at large and small mines.

(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—~~**A contract team is a mine rescue team that is provided by an arrangement with another coal company, mine, or third party. Members of a contract team must have at least 3 years underground coal mine experience within the 10 year period preceding their employment on the contract mine rescue team or having alternative experience and knowledge that the Secretary deems appropriate. Contract team members must have knowledge of the operations and ventilation of the covered mine and train semi-annually at a mine covered by the team and would rotate the mine covered until all covered mines were completed.**

(i) Are knowledgeable about the operations and ventilation of the covered underground coal mine, and  
(ii) Participate in mine rescue training at a covered large mine at least quarterly and at a covered small mine at least semi-annually.

(4) ~~State-sponsored team. Members who are State employees and participate in mine rescue training and who conduct at least 4 regular inspections per year at the covered mine shall be exempt from mine rescue training at these covered mine sites. at a covered large mine at least annually and at a covered small mine at least semi-annually.~~

**Rationale:** Our reasoning in support of our recommended change to subparagraph (iii) is multifaceted. First, the mining industry supports mine rescue training at a mine, including underground training. In fact, Section

49.18 currently provides, and the proposed regulations retain, the obligation pursuant to Section 49.18(b)(1) that:

“Refresher training shall include:

Sessions underground at least once each 6 months.”

Also, Section 49.20(b)(iii) needs to be consistent with the other subsections of Section 49.20. In particular, subsection 49.20(b)(3)(ii) regarding a Contract team requires training only “... at a covered large mine and at a covered small mine at least semi-annually.” This proposed subsection 49.20(b)(3)(ii) does not require training at “each covered mine” as proposed in subsection 49.20(b)(iii). Likewise, proposed subsection 49.20(b)(4), relating to a State-sponsored team, only requires “... mine rescue training at a covered large mine at least annually and at a covered small mine at least semi-annually,” but does not required training “at each covered mine.”

The mining industry is not suggesting that mine rescue teams should not train at a covered mine or train underground; however, we do not believe training at “each covered mine” is practical or necessary. Industry mine rescue teams are trained to assume that when they arrive on site the conditions of the mine are assumed to not exist as they did before the accident and the mine rescue team makes their recovery plan of how to enter the mine based on the mine maps and general experience – not on a mandated mine visit. Therefore, training at each covered mine would have little or no benefit.

In lieu of training at each covered mine, one or more members of the mine rescue team that covers the mine should be familiar with:

- (1) Location of the mine;
- (2) The mine's map, including ventilation and escape way layout;
- (3) Seal locations;
- (4) SCSR storage plans; and
- (5) Fire fighting capabilities.

This can be accomplished by the mine manager or safety representative at the covered mine by meeting with one or more member(s) of the mine rescue team providing the coverage. However, training at each of the covered mines would not be necessary and would be of little use to the mine rescue team in the event of an emergency.

As was repeatedly testified to during the four public hearings, and as the agency recognizes, mine rescue team members are volunteers. If training is required as proposed we are concerned that many trained and qualified team members may choose to terminate their involvement due to the amount of time required participating in training exercises “at each covered mine.” For example, assuming 2 composite teams were the mine rescue teams of record

for a mine: the 1st composite team covers 5 mines and the 2nd composite team covers 4 mines. If each team has to train semi-annually at each covered mine, this would require 10 training sessions for the 1<sup>st</sup> team (versus 2 underground training sessions currently required) and 8 training sessions for the 2<sup>nd</sup> team at the covered mines

We believe this level of training, would be of little benefit, and is likely to eliminate the opportunity for participation in other beneficial training programs the teams currently perform (not required by any law), such as MERD exercises, fire brigade training, and advanced fire fighting rescue.

Our suggested change to subparagraph (4) will prevent the loss of over a dozen current, highly-experienced state inspector mine rescue teams. Mine inspectors that regularly inspect mine sites four times per year are intimately knowledgeable of all facets of covered mine site operations thus eliminating the need for them to conform to the requirements imposed on other teams.

Sec. 49.30 Requirements for small coal mines.

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

Sec. 49.40 Requirements for large coal mines.

At mines with more than 36 employees, **mine rescue team members shall be knowledgeable about the operations and ventilation of the mine and one of the two certified mine rescue teams shall be an individual mine-site team(s) or a composite team, which can include a state-sponsored composite team.**

**Rationale:** The proposed rule discriminates against contract mine rescue teams and limits the options of a mine with over 36 employees, a number derived with no analysis or justification. As written the proposed rule could be interpreted to prohibit a mine sponsoring two on-site teams from designating both to provide the required coverage. We believe our recommended changes can be implemented without diminishing the intent of the statute namely, to enhance the industry's existing mine rescue capacity.

Sec. 49.50 Certification of coal mine rescue teams.

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 part as listed in the following Table 49.50.

Table 49.50.--Criteria To Certify the Qualifications of Mine Rescue Teams

Qualification	Criteria (30 CFR)
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(a) Team Members

- 
- (1) Except where alternative compliance is permitted, team has at least five members and one alternate.. 49.12(a)  
49.12(b)
  - (2) Members are physically fit..... 49.17
  - (3) Members have experience working in an underground coal mine.. 49.12(c)
  - (4) Members are familiar with the operations of the mine.. 49.20(a)1)
  - (5) Members are knowledgeable about the operations and ventilation of the mine.. 49.20(b) (2) (ii)  
49.20(b) (3) (i)  
49.30
  - (6) Members are properly trained..... 49.18
  - (7) Members participate in mine rescue training at the mine.. 49.20(b) (1)  
49.20(b) (2) (iii)  
49.20(b) (3) (ii)  
49.20(b) (4)  
49.30
  - (8) Members participate in at least two mine rescue contests annually.. 49.20(a) (2)
- 

(b) Team Availability

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- (1) Team is available at all times when miners are underground.. 49.12(a)
  - (2) Team is available within 1-hour ground travel time from the mine rescue station to the mine.. 49.12(f)
- 

(c) Team Equipment

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Appropriate mine rescue equipment is provided, inspected, tested, and maintained.. 49.16

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Sec. 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) 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 realistic simulation rescue exercise; and

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

(b) Upon request from the District Manager, the operator shall provide information concerning the schedule of upcoming mine rescue contests.

(c) Other training that provides equivalent skills development can substitute for participation in a local mine rescue contest. Examples include a Mine Emergency Response Development (MERD) drill or an equivalent realistic simulation exercise, such as fire and explosion drills, where the team participates in simulated mine rescue team exercises and wears breathing apparatus.

Appendix to Part 49 Subpart B: Optional Forms for Certifying Mine Rescue Teams.

PART 75--[AMENDED]

6. The authority for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

7. Amend Sec. 75.1501 by revising paragraph (a) to read as follows:

~~Sec. 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 inundations.~~

~~— (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 mine emergency response. Training shall include knowledge in the following:~~

~~— (i) Organizing a command center;~~

~~— (ii) Directing firefighting personnel;~~

~~— (iii) Deploying firefighting equipment;~~

~~— (iv) Directing 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.~~

●\*\*\*\*\*

**Rationale:** While we appreciate and are supportive of the intent of the proposed revision to this section, we believe the expectation that one person will be knowledgeable and trained in such a vast array of issues is unrealistic and goes against the grain of accepted emergency response practice.

In the case of a mine emergency, there are persons on the team who have specific responsibilities to implement portions of the plan, but for MSHA to expect that each shift will have someone who can do it all is wholly unrealistic. Particularly in small mines, it is difficult enough for the operator to cover all shifts with a "responsible person" as envisioned in the language of 75.1501. It is important for the agency to keep in mind that the primary responsibility of any such person on a shift is to assure that the miners are safely evacuated from the mine. This will require that person's undivided attention, and to expand those requirements could lead that person to be distracted from the primary goal. This is unacceptable. Mine rescue work is a very exacting skill that is only acquired from years of hands on experience and training. To expect that annual training could be given to such a large sub set of the management at the mine is impossible.

There is a huge difference in being trained in mine rescue skills and being knowledgeable in them. What the responsible person needs to know is how to activate the Emergency Response Plan and his specific role in the bigger picture, but certainly not all of the tasks to be performed. That is like asking an EMT to be knowledgeable in directing surgical procedures for the patient, maintenance of the ambulance and equipment used therein while communicating to the press and hospital while performing CPR on the patient.

The "Responsible Persons" should be trained in the Emergency Response Plan, the location of equipment within the mine intended to address emergencies and be aware of how to activate the plan. Once this has been accomplished, this person should be free to direct the evacuation and, when that has been accomplished, to help with the mine response to the emergency.

## Mine Rescue Teams Proposed Rule Questions & Request for Information

1. MSHA specifically solicits comments on the approach taken in this proposal that is, retaining all existing standards as a separate subpart A applicable to underground metal and nonmetal mines and creating a new separate subpart B containing existing standards and proposed new MINER Act provisions for underground coal mines.

**RESPONSE:** The proposed format separating Part 40 into two distinct parts, one containing the requirements for coal operators and the other for non-coal operators is logical and will make it easier for operators to identify the requirements relevant to their particular type of mining.

2. MSHA also is requesting comments on whether this proposed rule will result in different approaches to providing mine rescue services and, if so, what those approaches would be.

**RESPONSE:** It is very difficult to know what different approaches to mine rescue will be required, since we are unsure of what the final rule will say about state teams.

We are concerned that the proposed rule will diminish rather than enhance the delivery of experienced mine rescue services when required. This unfortunate outgrowth of the MINER Act is one that the agency must recognize and correct.

Today many operators provide mine rescue coverage not only for their own operations but also for smaller coal and metal-nonmetal operations within their area. The stringent training requirements in the proposal will, in many instances, eliminate this form of mine rescue delivery and will result in less rather than more coverage. This is particularly problematic for small operations in remote areas that do not have a workforce sufficient to support two mine rescue teams. These operations, whose employment base exceeds the 36 employee threshold, are going to find it particularly difficult to meet the requirements of the proposed rule. It is imperative that the agency recognize these situations and develop an alternative coverage means for these operations.

3. MSHA requests comments on this provision (state-sponsored teams) particularly on allowing experience to substitute for 50 percent of the training requirement.

**RESPONSE:** We believe the agencies recognition of the importance of state-sponsored mine rescue teams and their active role at the mining operations is entirely justified and supported by considerable evidence. The decision to allow experience to substitute for 50 percent of the training requirement,

while a step in the right direction, does not address the problems created by the MINER Act.

As the agency is aware, some states have limited resources and rigid state inspection requirements, others rely on mining company personnel to perform mine rescue duties, when necessary, as state-sponsored teams. Even the 50 percent allowance will force some to make the difficult choice of eliminating their state-sponsored mine rescue activity due to their statutory inspection obligations under state law. Such an approach runs counter to the intent of Congress, as reflected in the Senate report (109-365) that accompanied the MINER Act, where the Committee on Health, Education, Labor and Pensions states:

It is not the intent of the committee to displace the current practice in some states of providing state-sponsored mine rescue teams.

Team members who are state employees, who participate in mine rescue training and who conduct at least four regular mine inspections per year at the covered mine should be exempt from mine rescue training at these covered mine sites. This would prevent the loss of 11 current state inspector mine rescue teams in Kentucky alone. Mine inspectors that regularly inspect mine sites four times per year would be intimately knowledgeable of all facets of covered mine site operations.

4. The agency solicits comments on whether some existing (mine rescue) stations may need to be moved to meet this (1-hour travel time) requirement.

**RESPONSE:** We anticipate that several existing mine rescue stations will have to be relocated to meet the 1-hour travel time requirement. In particular we know of at least one station, located at a mine that will have to be relocated to be within 1-hour ground travel time of the other mines served by this station. This is an illogical outgrowth of the MINER Act and one MSHA must remedy in the final rule.

The current proposed rule has the potential to increase the initial response time of a rescue team to mine sites in many instances. For example, as on-site mine rescue stations and teams are eliminated, they will be replaced with composite or contract teams responding from a single centralized off-site rescue station.

5. MSHA also solicits comment on whether mine operators will encounter any difficulties in meeting the requirements of the proposal (1-hour travel time).

**RESPONSE:** Many mine operators expect to encounter some difficulty in meeting the 1-hour travel time requirement of the proposed rule. More specifically, several have indicated that additional stations will have to be

equipped to meet this requirement while the existing stations, which fall within the current 2-hour requirement, have served the mines for which they are responsible in a timely manner.

Some mines are remote and not located within an hour of any other mines or stations. In these cases, a mine with 40 employees may be required to field two teams by themselves. The cost to do this will be extraordinary and if a disaster were to occur at such a mine, at least half of the team members would be caught underground, making it impossible to field two teams to address the disaster. In the state of West Virginia, before the rescue effort can begin, you must have three teams on the property that are prepared to enter the mine. One to do the work, one to be the back-up underground and one to be the back-up on the surface. Therefore, you would still be required to wait for more support than the host mine can provide. No company could be ready to send rescue teams into a mine in one hour following a disaster and this requirement is not consistent with good mine rescue practice to assure the safety of the teams.

6. MSHA specifically requests information from members of the mining community affected by this provision on the number of additional mine rescue teams and stations that would be needed to comply with this requirement.

**RESPONSE:** At this time it is difficult to determine how many new teams or stations will be created to comply. In large part this determination is dependent upon the requirements of the final rule. Preliminary information provided by our members, which is premised on the requirements of the proposed rule, indicates that the number of teams that will be required will far exceed the number estimated by the agency. We are aware of two companies whose estimated requirements approach one-fourth the total numbers assumed by the agency.

As the agency considers changes to the final rule it would be beneficial to consider the impact this will have on existing, successful mine rescue team programs. For example, many small operators in Southwest Virginia are more than 1 hour ground travel time from any mine rescue station. They are presently covered under the Virginia state program. Under the present Virginia state program, certain larger company mine rescue teams have contracted to be state designated teams and those small mines are presently covered by those teams. The new regulations would eliminate this program and these small operators will be adversely impacted by this change. The industry would be well-served by agency consideration of an exception provided to allow state programs that are currently in place to continue and to allow those present mine rescue teams to continue to serve those remote mine locations as designated state mine rescue teams.

7. MSHA is particularly interested in: (1) how compliance would be achieved; (2) location of new rescue stations; (3) make-up and composition of new teams; and (4) any others information that might be useful.

**RESPONSE:** The need for additional compliance mine rescue stations and compliance mine rescue teams may result in lesser quality and less efficient preparedness.

8. MSHA is also interested in feasibility information, including economic feasibility. The agency requests that comments include specific information such as cost or technical capability in support of their positions.

**RESPONSE:**

The following are typical costs to establish and maintain one team.

Mine Rescue Team Estimated Cost

Apparatus	72,000
Communication Reel	9,000
PPE	3,000
Clothing	4,400
Spare Parts	4,445
3500 Watt Generator	600
Dryer	9,015
Oxygen Pump (1-Master Line)	13,390
Lights & Charger (6)	2,205
Instruments - Multi Gas & Chargers (3)	4,815
Vehicle (1)	25,000
Trailer (1)	5,000
Contest & Training Wages	5,240
Contests	11,000
Maintenance Supplies	2,000
Wages	17,675

9. The agency is interested in comment pertaining to whether the amount (mandatory training hours) should be increased or decreased in the final rule. Comments should specifically address: the rationale for the amount of training; the type of training; the number of hours that should be required for specific activities; and the impact of such a requirement on the mining industry's ability to form additional mine rescue teams or retain current mine rescue team members.

**RESPONSE:** Training eight hours every two months is adequate. That means 48 hours plus the two contests, and that will be plenty. All of the different types of teams should practice the same. To require more training for small mines, composite teams, contract teams, state teams and state sponsored teams is penalizing them and likely eliminating them from being capable to provide rescue services economically.

10. MSHA invites comment regarding the types of state relationships with teams and team members that would qualify the team members as "employees" and the team as "state-sponsored."

**RESPONSE:** There are two types of relationships that exist. The first being state employees who comprise the members of the team and the second being mining company employees designated to serve on state teams.

For example, Illinois has state teams made up of inspectors and state sponsored teams made up of employees from the covered mines. If a company does not have its own teams, they must provide members for the state sponsored teams. The state owns the equipment and the stations, but the companies pay the wages of the miners on the team. There has been some discussion of the miners becoming state employees if they are called out on an emergency, covering them for Worker's Compensation from the state, but these talks have stalled in light of the new regulations. Kentucky has state teams made up of inspectors and they maintain stations throughout the state. They provide primary coverage teams for all of the mines in the state.

11. MSHA invites comment regarding the types of teams that are available to mines having 36 or fewer employees who could qualify to be a mine rescue team member and whether these mines should be able to use other types of teams, such as teams consisting of one miner per covered mine.

**RESPONSE:** Many large operator provide coverage for their contract mines, many of which fall into the <36 employee category. If they are required to practice at each of these mines, several times per year, it is likely they will be forced to terminate their coverage and these small operations will be at the mercy of contracted teams or state teams if they continue to exist. The result will be poorer coverage for many of these mines if they can find any at all.

12. MSHA invites comments on the different treatment of mines less than and larger than 36 employees. Comments should explain any suggested alternatives, including supporting documentation and data. MSHA also requests comment on whether this training needs to be conducted underground at the covered mine.

**RESPONSE:** The training of teams underground is of little value. They will not be familiar with the mine workings no matter what is required. For the

most part, teams are called upon to assist mines where they have never performed work. This requirement will make state teams and contract teams economically infeasible. What the teams really need to know is how to get to the covered mine, and then their training takes over and they do what they need to do as a team.

We do not feel that underground training is necessary as long as the team familiarizes themselves with the operation of the mine, ventilation, any unusual roof conditions and the equipment and systems in use at the covered mine. This provision should require a visit by the Team Trainer and Captain only, to review all the required information with mine management.

13. MSHA specifically requests comments on the following criteria for a local mine rescue contest:

- The contest must be conducted in the U.S. and use MSHA recognized rules
- The contest must include a minimum of three competing teams
- Team members must have the necessary equipment to participate in a simulated mine rescue exercise; participate while being timed and observed by trained judges and wear oxygen breathing apparatus
- Contest judges must have completed annual training

**RESPONSE:** 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 Preliminary Regulatory Economic Analysis accompanying the proposed rule projects that 28 new stations and 56 new mine rescue teams will be formed. This will result in several new local mine rescue contests and many requests for judges for those contests. The current contests are having difficulty in finding a sufficient number of qualified judges who are willing to help with judging contests. 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 the judges to federal or state personnel. If judges are required to attend judges training then there will be an increase in the request for judges training.

14. The agency solicits comments on whether there should be a minimum amount of annual training prescribed for contest judges.

**RESPONSE:** 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 much more beneficial as judges training.

15. MSHA requests comments on other alternatives to participation in local mine rescue contests.

**RESPONSE:** 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. For example, contests credit should be given those teams that participate in fire fighting training at the MSHA Academy or at the Lake Lynn Facility. Other considerations could be training such as that at the Ansul Fire Training School or participation in Mine Emergency Response Drill (MERD) exercises.

Two MERD exercises should be allowed to fulfill this requirement. These exercises are realistic and just as beneficial as the standard mine rescue contests. However, it should not be mandatory for each mine rescue team member to wear a breathing apparatus during the MERD exercise. He/she may serve in another role during the MERD exercise. This 'cross training' would expand the team member's understanding of the various duties performed during actual mine emergencies and would serve as valuable training for the individual.

16. MSHA requests comments on whether an oxygen resuscitator should be provided at the mine rescue station for use by the mine rescue team.

**RESPONSE:** While an oxygen resuscitator may be a valuable addition to the equipment provided to mine rescue teams we caution the agency to recognize that some states do not currently permit their use by emergency medical service personnel. As such, we believe the use of this device should be encouraged for use on a voluntary rather than regulatory basis.