



Received 6/29/06
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June 29, 2006

Robert Stone, Acting Director
Office of Standards, Regulations & Variances
Mine Safety and Health Administration
U.S. Department of Labor
1100 Wilson Boulevard, Room 2350
Arlington, VA 22209-3939
Submitted by email to: zzMSHA-Comments@dol.gov

Re: Comments on Proposed Rulemaking
RIN 1219-AB46

Dear Mr. Stone:

The Pennsylvania Coal Association (“PCA”) offers the following comments to the Mine Safety and Health Administration concerning the proposed rule that is its Emergency Temporary Standard (“ETS”). The ETS was published at 71 Fed. Reg. 12252-12271 (March 9, 2006).

PCA is an association that represents the majority of underground and surface coal mine operators in Pennsylvania. It represents large longwall mines and one section continuous miner mines. Our underground members come within the scope of the ETS with respect to emergency evacuation and training and storage of SCSRs. All our members come within the scope of the new accident reporting requirements. All our members are interested in the agency developing and adopting a workable and effective standard.

As an initial comment, we note that the proposed rule must be reconciled with the provisions of the Miner Improvement and New Emergency Response Act of 2006 (“Miner Act”) because some of the provisions of the ETS are inconsistent with the new statutory provisions. This needs to be

AB46-COMM-36

done before the final rule is promulgated because many provisions of the Miner Act are self-executing and will go into effect in 60 days. We also urge that the ETS be revoked since it is now superseded by the Miner Act and in conflict with it.

Part 50 – Notification

PCA believes that the revisions of Part 50.10 are unworkable and unrealistic. They place the emphasis entirely on contacting MSHA “so that the coordination of appropriate mine rescue or other emergency response can begin as soon as possible.” 71 FR at 12553. Historically, that responsibility has been placed upon the operator, rather than MSHA. Further, as recently as the public hearings on the Sago Mine explosion, agency officials made it clear that the first responsibility for rescue of miners rests with the operator. But the rule places primary focus on notification of MSHA rather than in taking steps to address whatever situation has occurred.

While we recognize that the Miner Act has imposed a 15 minute time period for reporting certain events that are classified under 30 C.F.R. § 50.2 as accidents, 15 minutes simply is not a long enough period. During that first 15 minutes after learning of a reportable accident that requires rescue or firefighting, an operator will be attempting to contact emergency medical services, mine rescue personnel, state agencies that have adopted a similar 15 minute requirement and mine management critical to any rescue or firefighting. MSHA clearly contemplates multiple calls to the agency and it takes time to complete such calls even if no one answers at the receiving end. In order to expedite the process, MSHA needs to establish one number to call that will be staffed 24 hours a day 7 days a week.

Contrary to the assertions in the preamble, 71 Fed. Reg. 12260, that the Rule will not reduce protection to miners, it will reduce it because it will delay emergency response by the operator.

The 15 minute period permits the operator to gain only minimal information before calling MSHA. According to the preamble, the agency expects “sufficient notice” so the agency can know what happened. 71 Fed. Reg. 12260. The 15 minute period will preclude provision of much substantive information.

The language of the rule is also unclear in a number of respects. The first sentence declares that “If an accident occurs, an operator shall immediately contact the MSHA District office having jurisdiction over its mine.” While the preamble indicates that the 15 minute period begins “when the operator determines that an accident has occurred,” 71 Fed. Reg. 12260, the language of the rule does not include this and it should be modified to read “when an operator realizes that an accident has occurred, it shall immediately contact the MSHA District office having jurisdiction over the mine.”

The Miner Act does not utilize language similar to the proposed Section 50.10 but ties the notification requirement to the point in time when an operator “realizes” that a death or an injury or entrapment that has the reasonable potential to cause death has occurred. While the new statutory language has some ambiguity, it is more specific than the ETS and should be followed.

The language of Section 50.10 is also unclear because it states “the operator shall contact MSHA as described at once without delay and within 15 minutes.” The “without delay” interjects ambiguity into the rule. It should simply state “contact MSHA within 15 minutes.” The use of the terms “at once without delay” along with the conjunction “and” could permit the agency to argue that an operator violated the “at once without delay” provision even if it reported within 15 minutes. PCA’s suggested revision is also consistent with the language of the Miner Act which simply requires contact within 15 minutes. The additional modifiers of “without delay,” “at once” and “immediately” simply create ambiguity where clarity of expression is preferable.

The ETS includes within the 15 minute notification period all events that fell within the definition in Section 50.2 of “accident.” The objectives of the ETS would be better served if the accident notification requirements distinguished between accidents that require an emergency response either for trapped or injured miners, an explosion or firefighting. All other reportable accidents would remain subject to the prior requirement to “immediately contact” the MSHA District Office.

This would be consistent with the Miner Act which imposes the 15 minute period for circumstances where there is a death or injury or entrapment which has the reasonable potential to cause death.

The agency’s statistics reveal the need for segregation of the other types of accidents from those requiring immediate emergency response or mobilization mine rescue personnel. In 2005, MSHA was notified of approximately 2,400 immediately reportable accidents. Approximately 90 percent of these 2,400 incidents did not involve an injury to a miner. Of the 90%, two categories were involved:

- Unplanned roof falls at or above the anchorage point, and
- Damage to hoisting equipment which interferes with its use for more than thirty (30) minutes.

Experience has shown that in these cases, it is not necessary to activate mine rescue personnel and/or local emergency response resources. Contacting MSHA within the required 15 minute time frame for these non-emergency events would be counterproductive and does not serve the purpose set forth in the ETS which is to facilitate the rapid coordination of mine rescue or other emergency response. However, the unnecessary activation of mine rescue personnel and/or local emergency response resources may occur under the proposed ETS 15 minute rule.

B. MSHA Notification Procedures

This ETS solely focuses on the 15 minute notification requirement following an immediately reportable accident. The ETS does not address how MSHA will receive and respond to these notification calls. This omission will result in a system that unnecessarily delays an effective emergency response.

The MSHA notification protocol has built-in delays. It requires mine operators to place multiple calls at a time when the focus should be on responding to the emergency event. In an emergency, each additional call a mine operator has to make consumes precious time.

The current protocol requires a mine operator to call the MSHA district office when an immediately reportable accident occurs. If that call is placed outside of business hours, the caller is forwarded to an answering service. The answering service provides the mine operator with other numbers to call to personally reach MSHA district officials. If the caller cannot reach an MSHA district official, the caller is expected to contact MSHA headquarters. The toll free answering service maintained by MSHA headquarters relies on individuals with no knowledge of the mining industry and, therefore, incapable of making informed decisions on how to respond to the event that has been reported.

MSHA should streamline this process so that the 15 minute notification is not based on notifying the District office in each MSHA district. MSHA should establish a 1-800 number nationwide that would allow operators anywhere in the country to make one call, not only to satisfy the law, but also to provide faster and more appropriate deployment of resources. That call center should make the additional notifications as necessary to the districts, to tech support or to whomever they deem necessary to call. MSHA personnel should be required to provide this call center with all

relevant numbers and persons in charge. Thus, the operators make one call and then go about addressing the emergency.

If the establishment of a 1-800 nationwide number is not acceptable, we recommend that each MSHA district provide mine operators with one emergency contact number. In addition, MSHA should assign staff to be “on call” to receive emergency calls. A mine operator should only be required to place one call when an emergency occurs. That individual should have the ability to determine the severity of a situation and the authority to direct an appropriate response. A notification system of this type would eliminate the built-in delays created by the current accident reporting protocol.

MSHA must also reevaluate its standard practice of issuing 103(k) orders verbally over the telephone when an accident is reported. Because of the abbreviated period for reporting, it is likely that minimal substantive information will be conveyed to MSHA in the initial report. The rote issuance of 103(k) orders withdrawing miners may delay the initiation of rescue or firefighting in situations where time may be of the essence. Also, despite MSHA’s practice of issuing 103(k) orders over the telephone, the language of Section 103(k) requires an MSHA inspector to be present in order to issue such an order and PCA suggests such requirement is appropriate and should be followed by the agency.

Part 75 – Mandatory Safety Standards

While PCA does not oppose generally the direction, technology and procedures advocated in the standards, specific requirements regarding applications and practices should be revised to address the concerns identified below. Many of the issues identified in this section have equal application to the new requirements required under Part 48.

A. Proposed Revisions to Section 75.380(7)(i)/Lifelines

PCA does not object to the installation of lifelines in the primary escapeway as a way to improve and facilitate emergency evacuations or in the secondary escapeway. It believes, however, that an exception should be made for travelways that contain track or other structure that could be used in lieu of a lifeline as a guide out of the mine or the belt entry. There are several reasons for this. One, the track or belt structure provides a guide out of the mine. Further, in travelways where equipment is operated, it has been the experience of our members that lifelines are often difficult to maintain. They may also pose a hazard to miners on equipment. This is especially true when the mine uses trolley wire to power the haulage equipment. If an emergency requires evacuation, the miners will be riding in a mantrip in the travelway. Under those circumstances, a lifeline will not be used. It should be noted that the State of West Virginia recognized this circumstance in its regulations and does not require the lifeline in a belt or track heading.

Further, enforcement of the ETS has indicated there are problems with interpretation of the standard. MSHA has interpreted the standard as requiring the lifeline to be in the center of the entry. That is not feasible in mines in lower coal seams or in high coal seams.

MSHA personnel have also indicated initially that hanging the lifeline below the high voltage cable is prohibited. This precludes location of the lifeline in a portion of the entry where the likelihood of inadvertent damage is reduced. Such location poses little hazard in the event of an emergency evacuation. One District has indicated it will not prohibit hanging the lifeline from the high voltage cable but this should be established in the new rules.

The standard will need to take into account the fact that the Miner Act requires lifelines to be flame-resistant. Further, the standard needs to permit the use of alternatives to lifelines such as floor

mats, fish plate reflectors and laser devices as discussed in the WV Mine Safety Technology Task Force Report. Further, the standard should not be prescriptive as to the type of directional devices.

B. Proposed Revisions to Section 75.1502(a)(1)

PCA supports the language under Section 75.1502(a)(1)(iii) and (iv), that addresses procedures for evacuating miners “not required for mine emergency response” and the “[p]rocedures for the rapid assembly and transportation of necessary miners, fire suppression equipment, and rescue apparatus to the scene of the mine emergency.” To prevent full blown mine emergencies, the mining industry directs their employees to fight fires as the first line of defense. One of the principles of firefighting is to address the fire as quickly as possible. To prevent the fire growing and endangering miners during later firefighting efforts, it is necessary for MSHA to permit such efforts to proceed expeditiously and without evacuating necessary personnel. It is appropriate that MSHA acknowledge this fact.

Another aspect of this is that the agency must avoid issuing 103(k) orders that hinder initial efforts. MSHA must ensure that its personnel are familiar with the mine’s firefighting practices.

C. Proposed Revisions to Section 75.1502(c)(1)/Training Interval

The ETS utilizes the standard interval for fire drill training and mine emergency training as “not more than 90 days.” With the addition of more extensive training requirements in the ETS, PCA recommends that this timeframe be modified to “once each quarter.” This change will enable the operator to train more efficiently and will not have any negative effect on the actual training standard. It will permit easier recordkeeping. It reduces the potential that an operator will inadvertently miss training a particular miner.

Large mines will be training over 400 people on SCSR transfers, escapeway systems, firefighting and evacuation drills. This can all be most readily accomplished quarterly. By providing timing flexibility, crews can be pulled systematically for training.

D. Proposed Revisions to Section 75.1502(c)(2)/Training

Section 75.1502(c)(2) requires that all miners “travel” the entire escapeway every 90 days. This has been interpreted by some in the industry as requiring travel on foot. Section 75.1502(c)(2) uses the term “travel.” Such term by its common definition would permit travel by mine vehicle. The standard should make it clear that travel may include travel in such fashion. The Compliance Guide, Volume II, specifically recognizes this, but it should be placed in the standard. In many mines physical conditions such as height of the coal seam or steepness of the grades make travel by foot onerous and it should be clarified that “travel” may include travel by mine vehicles.

The difficulty, however, is that some escapeways are not susceptible to travel in a mine vehicle. It is for this reason that requiring all miners “to travel” the entire escapeway every 90 days as part of the training requirement is not appropriate.

Requiring all miners to physically travel escapeways would fail to recognize the physical condition of the mining workforce. The coal industry has an aging workforce whose average age is in the early 50s. The ETS acknowledges “that miners may have to travel through long and difficult underground travelways.” This statement confirms that walking escapeways is laborious and could cause illnesses or injuries. Such miners would be able to exit the mine in an emergency but such travel is not the most effective training.

PCA recommends that MSHA revise its proposed evacuation drill requirements to make it clear that miners are allowed to travel by personnel carriers or to require only that they walk short distances to the ventilation split where expectation training could be administered. This modification

would achieve enhanced training and education, while still allowing for training on the condition of escapeways and locations of lifelines and stored SCSRs, where applicable.

Further, physically traveling the escapeway is not effective training. It wastes valuable training time for a rote exercise. The Sago accident has made it clear that miners need to evaluate their routes of escape. The miners at Sago who escaped clearly knew the location of the escapeways, as did the miners who barricaded themselves. The issue there, as in many situations, is for the miners to evaluate the safest and most feasible route out. The more logical method for training miners on escapeways would include expectation training, i.e., instructing miners on, 1) the location of escapeway entrances from their work stations, 2) the location of the lifeline systems and stored SCSRs, 3) the physical issues in the escapeways (i.e., areas that are low or are more difficult to travel through), and 4) the locations where important escape decisions must be made and the thought process that must go into the determination of what route to use.

The need to travel the escapeways is also vitiated by the fact that lifelines will be installed. Given the imposition of this requirement, it renders unnecessary travel all the way out of the mine.

PCA urges that Section 75.1502(c)(2) be changed to require the operator to provide quarterly training to all employees on escape routes, emergency escape scenarios, SCSR storage locations, and areas in the escape system where decisions for escape may need to be made.

E. Proposed Revisions to Section 75.1502(c)(2)(ii)/SCSR Training

Section 75.1502(c)(2)(ii) requires that training on donning and use of SCSRs be performed during evacuation drills. This is not feasible or practical. Donning and transfer training on SCSRs can be accomplished more effectively on the surface. MSHA recognized this in its “Emergency Temporary Compliance Guide,” but the language in 30 C.F.R. § 75.102(2)(c)(ii) needs to be changed because it states the evacuation drill shall include such training. To avoid ambiguity, the SCSR

training in Subsections 75.1502(c)(2)(ii) and (iii) should be made into a separate requirement to be performed on a quarterly basis.

Section 75.1502(c)(2)(iii) is unclear whether an operator that has multiple types of SCSRs is permitted to train for varied transfers each quarter. For example, an operator may provide a belt worn unit (SR 100) and store other SR 100s as the “additional rescuer.” This operation may also store in caches Ocenco units. In theory, the worker could transfer SR 100 to SR 100, SR 100 to Ocenco, or SR100 to Ocenco and back. The standard should be clarified to only require one type of transfer each quarter.

F. Proposed Revisions to Section 75.1714-2 and 75.1714-4

1. Signage

While a good faith desire to improve the existing standards is apparent throughout the ETS, in many instances the regulatory language is restrictive to the point we are concerned it could be counterproductive. For example, the term “SCSR” is an industry wide term of art that is used throughout the ETS, yet Section 75.1714-2(f) requires the words “SELF-RESCUER” or “SELF-RESCUERS” be used on storage location signs. Requiring mines with existing “SCSR” storage location signs to install signs stating “Self Rescuer” could be counterproductive given the years of training and acceptance of the term “SCSR.” This language is in the current existing standard, 30 C.F.R. § 75.1714-2(f), and should be changed.

2. SCSRs in Primary and Alternate Escapeways

Section 75.1714-4(c) requires additional SCSR storage in the primary and alternate escapeways to augment other SCSR requirements when these requirements do not provide enough oxygen for all persons to safely evacuate.

Where the operator determines additional SCSRs are required, the operator must submit a plan setting forth the location, quantity and type of these additional SCSRs and may be required by the district manager to demonstrate the plan's adequacy.

There have been a number of proposals as to how the distance of storage caches is to be determined. MSHA proposed a method using heart rate calculations and many operators argued that the NIOSH chart, which has been utilized previously by MSHA and is currently being utilized by the State of West Virginia, should be employed. The Miner Act addresses the issue by requiring caches "at a distance of no further than an average miner could walk in 30 minutes." We assume that the NIOSH chart may be used to provide guidance in this regard.

Based on the plain language of this provision and the preamble, a number of operators have proposed, as an alternative, the use of airlocks located between adjacent escapeways for storage of SCSRs, along with other important emergency supplies. The use of an airlock has the additional benefit of providing employees with an area isolated from the main air courses for the transfer of SCSR units. Another alternative proposal is to build a SCSR storage unit into the stopping to permit stored units to be accessed from either escapeway. Both of these proposals are simple, functional and proven mine-worthy.

In its guidance documents, the agency has rejected these proposals, taking the prescriptive position that equal numbers of stored SCSRs are required in both escapeways. The stated basis for rejection is speculative and encroaches on the operator's clearly defined obligations under Section 75.1714-4(c) and should be withdrawn. Section 75.1714-4(c) does not require that identical quantities of additional units be stored both in the primary and alternate escapeway. Instead, this section requires "additional units in the primary and alternate escapeways." Furthermore, the

operator's alternatives described above would place the SCSRs in locations that satisfy both primary and alternate escapeway storage. We believe that this needs to be revisited by the agency.

Part 48 – Training

In general, PCA supports revised training requirements for miners to be contained within Part 48. We believe, however, the training requirements in 30 C.F.R. § 75.1502(c)(2) are misdirected and must be revised in order to most effectively train miners. The provisions of Section 48.11 apply to contractors and visitors. Independent contractor activities can vary widely. Those providing regular or continual services should receive SCSR training comparable to that provided miners who are employees of the operator, while those whose services are on an infrequent basis can be accommodated through an alternative means similar to that employed for visitors.

PCA recommends clearly providing operators the flexibility to accept Form 5000-23 documentation of applicable up-to-date SCSR training in lieu of hands-on training for non-mine employees, such as visitors, vendors, contractors and other non-mine personnel.

Sections 48.5(b)(5) and 48.6(b)(5) deal with requirements for emergency evacuation and barricading instruction for new and experienced miners. While PCA recognizes that the miners at Sago resorted to use of a barricade, we urge the agency not to emphasize that option. First, in mines that liberate a significant amount of methane, the potential for secondary explosions makes this option problematic at best. It was a concern of the agency even at Sago, where little methane was liberated. At the Willow Creek Mine in Utah in July 2000, there were three secondary explosions after the initial event. Barricading can, as it did at Sago, provide miners with false hope of rescue. Even if reliable tracking devices are developed, permitting the location of barricaded miners, barricading should be a last resort.

PCA believes that the industry must focus its emergency response efforts on prevention, firefighting preparedness and evacuation training, in that order. Given the fact that coal is a fuel source and the historical evidence of secondary explosions following underground coal mine fire related events, our miners must be taught that barricading is the avenue of last resort.

We believe, however, the application of these training requirements to visitors would be better accommodated by providing more flexibility in the manner in which mine operators must comply with such requirements. For example, instead of requiring the actual donning of SCSRs, we believe the necessary instruction can be accommodated by alternative means. While our members have historically provided limited training on a designated unit to visitors, we are concerned that training on multiple units, for those unfamiliar with the mining environment, will be confusing and counterproductive. We urge that the final standard be revised to reflect these concerns.

Questions

The Federal Register sought comment on several questions. PCA responds to those questions as follows:

1. Reports on SCSR use. PCA believes it would not be appropriate to require the reporting of the use of SCSRs during an emergency or accident, but it would be appropriate to report units that were alleged not to function properly. Such reporting should be in a form similar to the 7000-1 form and should be required within a 10 day period.

PCA also believes a 90 day period of retention for units believed to have malfunctioned is excessive and that period should be 30 days at most. Further, any standard that addresses this issue should provide specifically for participation by the operator and the sharing of test results with the operator. Otherwise there is no purpose served for the agency to be notified of used or damaged units.

2. Tethers. PCA believes that tethers should be stored in SCSR storage caches. Storage in a separate location would be impractical.

3. Signs. PCA does not object to a requirement that the signs at SCSR storage areas be made of reflective materials. PCA does not believe that a requirement for a strobe light at the SCSR storage locations is necessary. It may create additional problems in the presence of methane after an explosion.

4. Filter Self Rescuers. PCA does not believe that the use of filter self rescuers should be eliminated in situations where a storage plan is appropriate.

5. Reporting of SCSR details. PCA believes that the gathering and maintenance of data on SCSRs will be extremely burdensome in light of the massive number of SCSRs that will now have to be purchased and maintained by operators. Currently SCSRs may have multiple serial numbers on various parts of the apparatus. We do not believe such reporting is necessary for product recalls.

Thank you for your consideration of PCA's comments. If you have any questions or comments, please do not hesitate to contact us.

Very truly yours,

George Ellis, President

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