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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

RIN 1219-AA97

Safety Standards for First Aid at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule revises existing standards at metal and nonmetal mines, requiring first aid capability to be available in the event a miner is injured. The final rule provides operators more flexibility and clarifies requirements for persons trained in first aid.

EFFECTIVE DATE: December 26, 1996.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director; Office of Standards, Regulations, and Variances, MSHA; 703-235-1910 (voice), 703-235-5551 (facsimile), psilvey (Internet e-mail).

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background

Sections 56/57.18010, requiring first aid training, were originally promulgated as advisory standards on July 31, 1969, and made mandatory on August 29, 1973. MSHA issued Program Policy Letter (PPL) No. P94-IV-2 on October 3, 1994, to underscore the first aid requirements. MSHA withdrew the PPL by notice in the Federal Register (60 FR 9986) on February 22, 1995, and began a new procedure for formulating certain policies with increased participation by the mining community. MSHA asked the mining community to comment on the issues and to help with development of a policy for the first aid standard.

By letter of August 25, 1995, the National Mining Association (NMA) petitioned the Secretary of Labor requesting that MSHA institute rulemaking, rather than develop policy on the first aid

issue, and suggested language for a new standard. The NMA recommended that MSHA develop a new rule to require that an individual capable of providing first aid be available on all shifts and that first aid training be made available to all interested miners. The recommendation from NMA addressed mutual concerns of MSHA and the mining industry.

In lieu of finalizing a first aid policy, MSHA used NMA's recommendation as the basis for a proposed first aid rule published in the Federal Register (60 FR 55150) on October 27, 1995. MSHA received comments from organized labor, industry associations, mining contractors, and medical personnel first aid trainers, all of which were considered in developing the final rule. MSHA also reviewed and considered written comments previously submitted to the Agency on its draft policy letter. One request for a public hearing was received, but it was subsequently withdrawn.

II. Discussion and Summary of the Final Rule.

A. General Discussion

Mining has historically experienced one of the highest rates of severe injuries among its employees of any major industry group in America. Despite significant long-term improvements in safety and health, in the three-year period from 1993 through 1995, mine operators and independent contractors reported 226 amputations among the approximately 225,000 miners in the metal and nonmetal industry. During the same period, over 500 burns; 1500 fractures; and 1200 cuts, lacerations, or punctures resulted in time lost from work. The frequency and severity of injuries in the mining industry and the remoteness of many operations and working places require a skilled first aid response, the first level of care for many injured miners.

First aid is basic emergency treatment rendered on-site as soon as possible
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after an injury occurs and is intended to help a victim until medical care arrives. In severe instances, first aid typically precedes two subsequent care levels: a secondary level often performed by paraprofessionals, such as emergency medical technicians (EMT's), and full medical care performed by professionals, such as physicians and nurses.

Existing MSHA standards at Secs. 56/57.18010 provide that: "Selected supervisors shall be trained in first aid. First aid training shall be made available to all interested employees." The primary purpose of these standards is to assure that a responsible person, trained to provide first aid, is available to render assistance in the event a miner is injured. An additional purpose is to encourage first aid education among miners so that they are able to help an injured co-worker or even provide self-treatment.

The existing standards identify supervisors as the persons required to receive first aid training. Supervisors are typically more mobile than other workers. Companies often provide transportation to supervisors so they can quickly access areas of the mine in the performance of their duties. Traditionally, supervisors are present where work is performed and injuries are most likely to occur.

Since the existing standards were first promulgated, however, there has been significant progress in emergency response care and conditions in the mining industry. At a number of mines, medical paraprofessionals or professionals are members of mine workforces and able to render skilled help at mine properties. This rulemaking takes into account these developments.

B. Discussion of Final Rule

Final Secs. 56/57.18010 require that an individual capable of providing first aid be available on all shifts. This individual must be currently trained and have the skills to perform patient assessment and artificial respiration; control bleeding; and treat shock, wounds, burns, and musculoskeletal injuries. Operators must make first aid training available to all interested miners.

The final rule adopts the proposal with two changes: it expressly requires that the individual be currently trained and it deletes the requirement for transportation and handling skills. MSHA received comments that addressed many aspects of the proposal as discussed below.

Individual With First Aid Skills

The final rule requires that operators have an individual capable of providing first aid. Some commenters suggested that operators should be allowed to use any medical personnel and paraprofessionals, such as nurses or EMT's, to satisfy the first aid standard whether or not that person is a supervisor. Another commenter said that the term "individual" should be interpreted to refer to any miner, even if the miner is not a professional medical service provider. One commenter asked whether a security guard could fulfill the requirements of the proposal.

A primary reason for this rulemaking is to broaden the scope of the rule to permit any person, regardless of title, to provide first aid. Under the final rule, operators will have the flexibility to use anyone who meets the requirements.

One commenter raised a concern that a miner could become an agent of the company when the miner is available to provide first aid. The final rule requires that operators have a capable individual available who can perform first aid. The operator has the responsibility to arrange for this first aid coverage. An individual's assignment for purposes of this coverage does not make that person an "agent" in the sense of being empowered to act as a representative of the operator.

Capability

One commenter was concerned that the proposed requirement for an individual "capable" of performing first aid would be open to subjective interpretation. This commenter asked how MSHA would interpret such a requirement. Commenters generally pointed to training as the means to establish capability and raised the issue of what type of training was contemplated. While the existing rule requires that supervisors "be trained," the proposal contained no expressed training requirement other than that first aid training be made available to interested miners.

The final rule expressly provides that the individual must be "currently trained" and have certain specified first aid skills. The individual who is so trained and skilled is "capable." To be "currently trained" means that the individual must have received in-depth first aid training which covers the specific skills in the final regulation and that such training be up-to-date. Persons, such as EMT's, nurses, and physicians, with current licenses or certifications to practice, are considered "currently trained" under the final rule.

One commenter suggested that first aid training be provided annually. Organizations with histories of successfully training individuals in first aid skills differ in the frequency, breadth, and depth of the retraining required to maintain competence. Some, such as the American Red Cross, use a different interval from annual retraining to maintain certification of competence. The American Red Cross's current standard course is initially an 8-hour program to receive certification. It requires retraining every three years to maintain a current certification. Training offered by similar organizations, such as local fire departments, also has varying retraining components.

Rather than exclude or constrain programs that have effectively prepared individuals for rendering first aid, the final rule does not incorporate an annual retraining requirement. MSHA will accept the retraining requirements prescribed by the organization providing the initial training.

One commenter said that first aid training taken to meet the existing requirements of 30 CFR part 48 should qualify individuals as "capable". The commenter stated that part 48 training allows ample time for adequate first aid training.

Part 48 training, however, may not automatically qualify an individual as capable since part 48 is a different type of training provision from the final rule. Part 48 requires basic first aid training for all miners. The final rule for Secs. 56/57.18010 requires that certain persons, trained and skilled in first aid, be available and that the more in-depth first aid training to acquire those skills be made available to interested miners.

Part 48 was promulgated in 1978. It implements Section 115 of the Federal Mine Safety and Health Act of 1977 (Mine Act) 30 U.S.C. 825 which was intended by Congress to prevent miners from being put to work before having received some safety and health training, including basic first aid.

Part 48 requires training in many health and safety subjects. The 24-hour training required of new surface miners must cover at least eleven other subjects besides first aid. The 8-hour annual refresher training must cover at least ten other subjects. Operators have sought flexibility to adjust the time spent on any one subject, particularly during annual refresher training, according to the accident experience and safety and health needs of the mine and the miners. An operator with a high number of back injuries, for example, may determine that miners need more training on proper lifting. To allocate

more time to lifting, first aid training might be curtailed. Under these circumstances, a brief review of first aid would not adequately train persons to maintain skills as required by Secs. 56/57.18010.

MSHA will accept part 48 training for compliance with the final rule if it is sufficiently in-depth to develop the capability to perform the necessary first aid skills. In all instances, training that complies with this rule would satisfy the new miner training requirements for first aid under part 48 and annual refresher training requirements for the year in which it was received.

Availability

Commenters asked that MSHA clarify the meaning of the terms "available" and "on all shifts." The concept of availability is critical to the purpose of the final rule and is intended to have its ordinary meaning--present and ready for use or at hand. The final rule requires that, if an injury occurs, a person skilled in first aid must be present at the site and must be able to be at the scene quickly. Individuals on-site are able to respond sooner because they are closer to the scene of an accident and know the mine. The likelihood of survival for a seriously injured miner would be greatly diminished if first aid treatment were not administered before off-site medical personnel could provide it. Operators also will have to plan to assure that this on-site coverage is provided during absences and vacations.

One commenter questioned whether the person capable of providing first aid would be required underground and, if so, must the person be trained to go underground. The final rule revises current Sec. 57.18010 and expressly applies to underground mines where first aid availability is a critical element of injury response planning. To be available, the first aid person must be prepared to provide first aid to injured miners promptly. An individual capable of first aid and located on the surface at an underground mine would not be available for miners underground in many cases because the time required to reach the injured person would be too long. For example, reaching some areas of an old underground mine may require traveling through a mile or more of old workings and could take an hour or more, depending on the availability of transportation. In those few cases where a first aid person on the surface is available to miners injured underground, such as some small adit mines, that person would have to be trained to go underground to the extent required by other MSHA standards.

Similarly, to ensure availability under conditions of difficult access and remote work areas, an underground mine operator may be required to have more than one first aid person underground. This concept of availability also applies to surface mines where miners may be working in remote areas.

One commenter suggested that the term "readily" be inserted in the standard before "available" to ensure a prompt response. "Available" is commonly defined to mean present and ready for use or at hand. Adding the term "readily" would not increase miner protection and, therefore, this suggestion is not adopted in the final rule.

Another commenter suggested that availability be established either by having the person present on-shift or reachable through radio contact. While such factors as communication, transportation,

and presence on-shift help determine availability, they do not make a person available to provide first aid. For example, radio communication without the ability to reach an accident scene quickly would not meet the requirements of the final rule.

The final rule provides that an individual skilled in first aid be available "on all shifts." Commenters questioned which shifts need to be covered. One commenter said that only "production" shifts should be covered. Another commenter stated that the standard should apply "to all shifts where two or more miners are engaged in production, extraction, or maintenance activities." Under the Mine Act, mining includes activities beyond those suggested by the comments. Production (excavation, extraction, and milling), development, stripping, construction, dismantling, maintenance, and abandonment comprise mining activities according to the Mine Act. All of these activities involve exposure to hazards that may require the application of first aid skills. The final rule retains the "on all shifts" wording to convey the breadth of these activities while keeping the language as simple as possible. The final rule does not apply, however, in the few instances when no mining activities occur, for example, when only security, sales, or office work is performed.

Independent Contractors

One commenter suggested that independent contractors should be solely responsible for compliance with the rule for their own employees. Another commenter said that the rule's requirements should not apply when independent contractors are performing explosives-related work, such as shot service, which can involve a single employee.

Under the final rule, independent contractors will be treated the same as under other MSHA safety and health standards. Independent contractors working on mine property are responsible for compliance with MSHA regulations. In some instances, the mine operator and independent contractor are isolated from one another and a single individual capable of first aid could not be available for both. In those situations, each would be responsible for their own coverage. In other instances, the mine operator and independent contractor work in such close proximity that one can choose to provide first aid coverage for the other. In those situations, it is the mine operator's and independent contractor's responsibility to agree on the coverage and to coordinate and communicate its implementation. Consistent with MSHA's enforcement of the existing standard, mine operators and independent contractors have the flexibility to use anyone at the mine with the necessary skills and availability, regardless of employer.

Mining activity can present hazards to an employee whether the employee is working alone or with another person. If an employee is alone and becomes injured, the ability to provide self-treatment could be critical to survival. The final rule, therefore, does not include an exception for miners or contractor employees working alone.

First Aid Skills

Several commenters addressed the proposed first aid skills needed to establish capability. One commenter suggested that the required skills for those other than EMT's be limited to "basic first aid such as for breathing, bleeding, and shock." This recommendation would exclude patient

assessment and treatment of wounds, burns, breaks, sprains, and strains. MSHA's experience is that the injuries that occur in mines require assessment and treatment skills; the final rule, therefore, retains the proposed skill requirements, except as discussed below.

This commenter also said that a good procedure for obtaining "outside medical assistance" should be emphasized. Separate existing standards, however, already require operators to have suitable emergency communications and arrangements for obtaining medical assistance (Secs. 56/57.18012, 18014).

One commenter suggested that cardiopulmonary resuscitation (CPR) be
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added to the list of required skills. The commenter suggested that firefighting, extrication, and evacuation also be included. The ability to perform CPR competently can require additional patient assessment skills, physical dexterity, and endurance. Traditionally, CPR training has been a supplement to first aid training and is not always offered with first aid.

The final rule does not require that first aid skills include CPR. Mine operators are encouraged, however, to add skills which are considered appropriate to their workforce and environment. Likewise, the final rule does not include the suggestion that persons be specially trained in firefighting, extrication, or evacuation. This suggestion exceeds the scope of first aid. In addition, existing standards require operators to train miners in these areas.

One commenter recommended that the individuals capable of providing first aid be able to treat injuries from hazardous liquids and gases. The final rule requires skills for treatment of injuries from any source or cause. Skills in patient assessment and artificial respiration and treatment of shock and burns would have direct application to injuries from hazardous liquids and gases.

The proposed rule would have required an individual to have the skills to handle and transport injured persons. One commenter stated that transportation is no longer taught in the American Red Cross's basic first aid course. The commenter pointed out that when transporting an injured person, particularly one with a neck or spinal injury, there is the potential to cause greater harm and possible paralysis. The commenter suggested that the handling and transportation of injured persons be deleted from the required skills under the final rule.

MSHA agrees that mishandling and improper transportation of a victim with a serious neck or spinal injury presents a high potential to exacerbate the injury. The American Red Cross does not currently include separate instruction on transportation and handling of the injured in its standard first aid course, although it furnishes guidance about these subjects in an informational section of its textbook. The American Red Cross teaches that one of the most dangerous threats to any seriously injured victim is unnecessary movement. Further, the National Safety Council's course emphasizes that injured persons should be moved only if they are in immediate danger from their environment.

Special training, experience, dexterity, and strength are often required to successfully handle or transport a victim with an injured spine. Emergency medical personnel have the skills to

successfully handle and transport victims in these cases. Improvements in transportation and communications, and the widespread availability of emergency service present an alternative that MSHA believes is more protective of miner safety. Under current regulations at Secs. 56/57.18014, operators must make advance arrangements for obtaining transportation for injured persons and emergency medical assistance beyond first aid. The final rule, therefore, does not include the skill requirements for transportation and handling of injured persons contained in the proposal.

Interested Miners

The second sentence of the existing standard is revised in the final rule to require that training be available to all interested "miners" rather than all interested "employees." This is not a substantive change and merely conforms the rule's terminology with other MSHA standards. To comply with the rule, operators must inform miners of the training in advance, so the miners can plan to attend.

One commenter questioned whether the operator must pay for first aid training. Consistent with the existing standard, the final rule requires the operator to make the training available to all interested miners. Therefore, to encourage the miners' attendance at the course, the operator must pay ordinary course expenses. The final rule, like the existing rule, does not address the issue of compensation for the miner's time.

III. Executive Order 12866 and the Regulatory Flexibility Act

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations. MSHA has determined that this rulemaking is not a significant regulatory action representing additional costs in excess of \$100 million to a segment of the economy and, therefore, has not prepared a separate analysis of costs and benefits. The Regulatory Flexibility Act requires regulatory agencies to consider a rule's impact on small entities. For the purpose of the Regulatory Flexibility Act, MSHA policy defines a small entity as an operation employing fewer than 20 employees. This final rule would not have a significant economic impact on a substantial number of small entities. The analysis contained in this preamble meets MSHA's responsibilities under Executive Order 12866 and the Regulatory Flexibility Act.

A few commenters were concerned that the rule would expand training and personnel requirements beyond part 48 and existing Secs. 56/57.18010. One commenter stated that MSHA should prepare a regulatory analysis before proceeding further with the rulemaking.

Operators are currently required to provide supervisors trained in first aid who, by virtue of their position, work with and are available to the workforce. There may be some operators, however, who have not provided this first aid coverage for the miners on all shifts under the existing rule. These operators may incur some additional costs to comply with the final rule. These costs, however, would be minimal and offset by the flexibility provided in the final rule.

The final rule incorporates the National Mining Association's petition for rulemaking and broadens the scope of persons who can provide the first aid capability required by the standard.

A mine operator can rely on existing, non-supervisory personnel who possess these special skills. Accordingly, MSHA has determined that this rule will not result in any significant costs to the mining industry.

IV. Paperwork Reduction Act

This final rule contains no information collection or paperwork requirements subject to the Paperwork Reduction Act of 1995. The compiling and maintaining of records or other documentation of a miner's first aid training is incurred by mine operators in the normal course of their business activities. The burden associated with such usual and customary business records are excluded from the information collection burden under 5 CFR 1320.3(b)(2) (60 FR 44985).

One commenter maintained that the rule would represent a significant burden by virtue of increased paperwork. It was suggested that MSHA accept a certification by the mine operator as sufficient evidence of the training. Currently, MSHA determines compliance with the existing requirements by reviewing documentation already kept by the mine operator, particularly course records. MSHA accepts available documentation, such as course completion certificates, diplomas, letters from a qualified instructor, or similar evidence. Under the final rule, MSHA would continue this practice.

V. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4,
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requires each Federal agency to assess the effects of Federal regulatory actions on state, local, and tribal governments and the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute, and to determine if the rule might significantly or uniquely affect small governments. MSHA has concluded that small governmental entities are not significantly or uniquely impacted by this regulation. The final rule will impact about 10,800 metal and nonmetal mining operations of which about 400 sand and gravel or crushed stone operations are run by state, local, or tribal governments for the construction and repair of highways and roads. These entities may incur some additional costs to comply with the final rule. These costs, however, would be minimal and offset by the flexibility provided in the final rule. Notwithstanding this conclusion, MSHA will mail a copy of the final rule to these 400 entities.

List of Subjects in 30 CFR Parts 56 and 57

Emergency medical services, Metal and nonmetal mines, Mine safety and health.

Dated: September 18, 1996.

J. Davitt McAteer,
Assistant Secretary for Mine Safety and Health.

Parts 56 and 57, subchapter N, chapter I, title 30 of the Code of Federal Regulations are amended as follows:

PART 56--[AMENDED]

1. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811.

2. Section 56.18010 is revised to read as follows:

Sec. 56.18010 First aid.

An individual capable of providing first aid shall be available on all shifts. The individual shall be currently trained and have the skills to perform patient assessment and artificial respiration; control bleeding; and treat shock, wounds, burns, and musculoskeletal injuries. First aid training shall be made available to all interested miners.

PART 57--[AMENDED]

3. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

4. Section 57.18010 is revised to read as follows:

Sec. 57.18010 First aid.

An individual capable of providing first aid shall be available on all shifts. The individual shall be currently trained and have the skills to perform patient assessment and artificial respiration; control bleeding; and treat shock, wounds, burns, and musculoskeletal injuries. First aid training shall be made available to all interested miners.

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