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MHSA

Office of Standards, Regulations, and Variances
201 12th Street South, Suite 4E401
Arlington, Virginia 22202-5452

RE: RIN 1219-AB87 or Docket No. MSHA-2014-0030

To Whom It May Concern,

Representing Nevada's mining industry, the Nevada Mining Association respectfully submits the following comments regarding 56/57.18002 Examination of Working Places. The Nevada Mining Association (NvMA) has been in existence for more than 100 years and represents its members in federal, state, and local policy matters, public relations, workforce development, and community support. NvMA has a diverse membership of over 420 individuals and companies, many of whom are mine operators located throughout the state. The health and safety of mining employees is the highest priority of NvMA member operators. As such they are devoted and committed to continually building improving health and safety controls and processes.

MSHA has requested comments from the industry on its proposed changes to existing regulation 56/57.18002 Examination of Working Places. With respect to those proposed changes, please accept the following comments on behalf of NvMA.

These comments are not intended to reflect the opinions or comments of any other company, group, or organization.

General Comments

NvMA members are in agreement that the workplace examination is an important tool in identifying and correcting hazards that may pose safety or health risk to our employees, and in reducing accidents and injuries in the workplace. We also agree that the workplace examinations need to be performed in a meaningful manner so as to maximize their effect on workplace safety.

Our members believe that the existing regulation for workplace examinations has already been proven effective for the purpose of identifying and correcting unsafe conditions that may affect the safety and health of our miners. The proposed rule, while quite similar to the existing rule, stipulates modifications to the existing requirements that we see as

ambiguous and potentially detrimental to the effectiveness and practicality of the process. We see the potential for the changes in the proposed rule to reduce the effectiveness of the current process as operators may be forced to depart from already successful examination practices solely to satisfy the requirements of the new regulation without any appreciable benefit to the miners. MSHA itself has admitted that the proposed changes to this rule may not provide any significant benefit to the safety and health of the miner.

Competent Person

MSHA representatives stated clearly at the public hearing in Salt Lake City on July 19th that MSHA is not changing the definition of a competent person. However, MSHA has released numerous PPLs within which it is communicate that MSHA believes that best practice is for a foreman or other supervisor to conduct the examinations. Our members maintain that the operators are familiar with their personnel and better able to determine who may be qualified as a competent person based on each individual's skill and performance.

Our members reaffirm our position that any miner, if properly trained and prepared, will be qualified to perform the workplace examinations as a competent person. Our members are confident that the training our employees receive as part of their new hire training, site specific hazard training, task training, and annual refresher training makes those employees competent to recognize hazards and unsafe conditions that are expected or known to occur in their workplaces. Placing arbitrary requirements around minimum levels of experience for competent people would fail to recognize the efficacy of the training and preparation provided to our miners and the differential pace at which individuals develop their competence based on aptitude and opportunity.

The potential requirement that a competent person be a foreman or other supervisor may reduce the quality of inspections. The authority that comes with a supervisory position does not necessarily equate to a higher level of competence over that of another employee.

Requiring that a competent person be a foreman or other supervisor may create the perception within the workforce that workplace inspections are only the responsibility of supervisory personnel and may remove a sense of responsibility or accountability on the part of the miner. The role of the supervisor in this process should be to enforce the quality performance of the workplace inspection by the competent person.

Requiring that a competent person be a foreman or other supervisor severely reduces the number of competent persons available to perform inspections. This condition would, for multi-heading mines, slow production unnecessarily as it would take time for that supervisor to perform examinations on each of the headings for which he or she is responsible. A time study was conducted at one mine in Nevada to see how long it would take a supervisor to inspect and release the ten headings for which he was responsible. The supervisor performed this task on two separate days, performing just the workplace examinations with no interruptions. Between driving between headings and performing the inspections the last heading was not released for work until 11:25 in the morning (averaged over the two days). This represents a minimum four-and-a-half hour delay from the normal time that the heading would normally be inspected and released for

work by the miners who normally perform their own workplace examinations. If this process were required by the proposed rule, then the company would incur significant lost opportunity costs and reduced production. Operators could reduce these effects by hiring additional supervisory staff to perform the inspections, but the costs associated with this increase in manpower would be significant. MSHA would need to produce empirical evidence that such additional expense would be justified by an appreciable increase in protection for the miners.

Also, assigning the workplace examinations to foremen or supervisors to perform could result in a reduction in the quality and effectiveness of those examinations. There will understandably be pressure for the supervisor to complete the examinations in a timely manner, which could drive internal pressures that may reduce the supervisor's attention to detail. The repetitive nature of performing examination after examination may also lead to a reduction in the quality of the examinations as supervisors may become bored or somewhat disengaged from a repetitive, monotonous task. Finally, the fact that the supervisor will not be exposed to any unsafe conditions to the extent that would a miner who was working in the heading may lead the supervisor to underestimate the degree of risk for any unsafe condition and thus may lead to unsafe conditions going uncorrected. The person with the most impetus to identify and correct unsafe conditions in the working place is the miner who will be exposed to those unsafe conditions should they go uncorrected.

Timing of Examinations

MSHA has requested comments on whether the Agency should require that examinations be conducted within a specified time period, e.g. 2 hours before miners start work in an area. Such a stipulation may limit the effectiveness of the workplace examinations. The mining environment is often an environment of continual change. Conditions can often do change over the course of a shift, and those changes can occur rapidly depending of the nature of the activity in the area. Blasting operations, weather changes or alterations to traffic patterns are just some of the factors that can work to significantly change working conditions during the course of a shift. Requiring that inspections take place during a specific time period has the potential to encourage miners to perform workplace inspections during periods far enough in advance of the commencement of work that conditions may have significantly changed before the work actually begins.

It appears that it would be more effective to require that workplace inspections be completed before work begins in a working area and at any time that significant changes in conditions are recognized. Such a requirement would better accommodate the dynamic nature of the mining environment and thus better protect miners from unsafe conditions that may change over time.

Examination Records

The proposed rule requires that the competent person performing the examination shall create a record of that examination, and that record that shall be required to include:

- (1) The name of the person performing the examination,
- (2) The date of the examination,
- (3) The locations of all areas examined,
- (4) A description of each condition found that could adversely affect the safety or health of miners,
- (5) A description of the corrective action and the date the corrective action was taken.

A) Clarification on the Term “Adversely”

MSHA needs to define what it considers conditions that would “adversely” affect the safety or health of miners. The word “adversely” is defined as “in a way that prevents success or development; harmfully or unfavorably”. Under this definition, what are the limits of what is considered a condition that may adversely affect the safety or health of miners? The presence of dust in their air, no matter how little, could be perceived as having the potential to adversely affect the miner’s safety or health. Darkness, an ever present condition in an underground mine, could also be considered as adverse to the safety of a miner if it makes it more difficult for the miner to recognize other hazards in the workplace. Without clear guidelines on what constitutes a condition that “adversely affects the safety or health of miners”, this requirement is too broad and leaves far too much room for interpretation by inspectors.

B) Documentation of Expected Conditions

There are certain conditions that have the potential to pose risk to miners that can be expected in regular, everyday operation. For example, when entering a drift in which a round has recently been blasted a miner can expect to encounter unsupported ground at the face, loose rock on the back and ribs of the drift, blast rock presenting tripping hazards on the sill of the drift, and dusty conditions generated by blasting. These conditions will very likely exist in each and every recently blasted drift. The miner will inherently be expecting to encounter these conditions. He or she will then ensure they stay back from the unsupported ground, scale down the loose rock, use a loader or some other tool to remove the tripping hazards, and wash down the heading with water to eliminate the dust hazard. We believe that requiring the miner to record these regularly expected conditions and the associated corrective actions would add no value and unnecessarily add to the duties of the miner. Can MSHA demonstrate any value to requiring that these regularly expected conditions must be recorded on each workplace inspection document?

C) Maintenance of Inspection Documents Between Miners and Across Shifts

There will be instances where a competent person notes an unsafe condition on his or her inspection record, but is unable to correct the unsafe condition themselves. In those cases the competent person should take action to prevent exposure of others to the unsafe condition (barricading and signage) and to communicate the need for corrective action to someone who is capable of correcting the condition. In those cases, how are operators to ensure that the action associated with correcting the unsafe condition is noted on the original workplace examination record? The competent person who originally performed the workplace examination may be in another part of the mine or indeed may be off shift by the time the corrective action is carried out. Requiring the original workplace examination record to include a description of the corrective action taken and the date on which it was taken could likely be difficult in these instances, and would set the operator up to receive citations for incomplete documentation, even when the unsafe conditions have been corrected in a timely manner.

D) Feasibility of Managing Examination Documents

Requiring that examination records note descriptions of unsafe conditions and the associated corrective actions will, as a matter of practicality, require separate records for each and every examination so that there is enough room on each record to note this information. For medium sized and larger operations this requirement would necessitate the generation, management, and storage of hundreds of thousands of individual examination records each year. This level of effort may prove not to be feasible for many operators,

or will require the operators to add additional personnel and incur the associated costs without any proven benefit to the requirement. MSHA states that it “believes” that this additional information “would help assure that adverse conditions are identified and corrected”, but it has no empirical evidence to back that belief. If our members are to be required to incur the additional effort and cost that it will take to produce and maintain these documents, then MSHA needs to be able to demonstrate that the additional effort and cost are justified.

Notification of Miners

The proposed change would also require that “operators promptly notify miners of any adverse conditions found that may adversely affect safety or health”. This requirement is ambiguous. What qualifies as promptly? Is it within an hour, within the shift? And which miners must be notified of the adverse condition? Would that be every miner entering the specific workplace, every miner in that portion of the mine, or every miner in the active mine at the time the condition is identified? If the condition is identified and immediately corrected, do other miners still need to be notified? What is the purpose of notifying miners who will not be exposed to the hazard? How would that notification be made? Would a radio call be required? And how would you ensure that all required miners had been effectively notified? Again this proposed change leaves too much room open for interpretation and may lead unnecessary citations.

Would it suffice to barricade off any hazard that cannot be immediately corrected and affix proper signage to the barricade to alert any miner entering the specific area of the hazard to the exact nature of that hazard? Barricading and signage have been used successfully for many years to alert miners of and protect them from unsafe conditions.

The proposed rule would require that “if the competent person finds conditions that may present an imminent danger, these conditions must be brought to the immediate attention of the operator. The operator must immediately withdraw all persons from the affected area until the danger is abated.”

If a competent person identifies an imminent danger, but they are able to correct it without leaving the work area, are they still expected to notify the operator immediately before abating the danger? It would seem more productive, in such a case, for the competent person to take immediate action to abate the danger.

Lack of Justification for Proposed Change

MSHA is unable to quantify the benefits from this proposed rulemaking, including the proposed provisions that an examination of the working place be conducted before miners begin work in an area; that the operator notify miners in the working place of any conditions found that may adversely affect their safety or health; and that the examination record include a description of the adverse conditions found that may adversely affect their safety or health; and that the examination record include a description of the adverse conditions found and the corrective action taken. (81 Fed. Reg 36823, June 8, 2016)

Timeline of Proposed Rule Change

We request that the schedule for the proposed rule change be re-examined and the deadlines set for comment be significantly extended. In past rule change proceedings, MSHA has provided not just a few months but in some cases years for companies to review the proposed rule changes and to provide

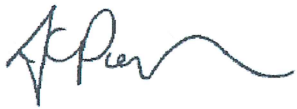
meaningful feedback. MSHA is requiring that companies perform this review and provide feedback within an unnecessarily accelerated timeframe. With the potential implications of changes to such an important regulation, we believe it is necessary for the industry to have a greater period of time in which to fully consider the immediate and possible downstream effects of the proposed changes.

Conclusion

Our members believe that the existing regulations for the examination of working places have already been proven to be effective. The proposed changes to the regulation appear to offer no appreciable additional protection to our miners, but instead appear to increase the potential for operators to be issued citations for failure to meet requirements that are problematic and possibly impractical. We request that the Agency withdraw the proposed changes and re-evaluate the benefits and potential detrimental effects of those changes.

We appreciate this opportunity to provide some initial feedback on these proposed rule changes. If you have any questions or concerns on which you would like further discussion, please contact us directly.

Sincerely,



Simon Pollard
Regulatory Subcommittee Chairman
NvMA Safety & Health Committee



Joseph Riney
Director of Workforce Engagement
Nevada Mining Association