NATIONAL LIME ASSOCIATION

September 29, 2016

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

(Submitted electronically at http://www.regulations.gov)

RE: Examinations of Working Places in Metal and Nonmetal Mines: Proposed Rule (RIN 1219-AB97)

The National Lime Association (NLA) appreciates the opportunity to provide comments on MSHA's notice referenced above. The notice proposes changes to MSHA's rules governing workplace examinations in metal and non-metal mines, found in 30 CFR Sections 56.18002 and 57.19002.

NLA is the trade association for manufacturers of high calcium quicklime, dolomitic quicklime, and hydrated lime, collectively referred to as "lime." Lime is a chemical without substitute, providing cost-effective solutions to many of society's environmental problems. Lime is produced by calcining limestone, and thus most lime manufacturers also quarry lime, with mining operations under the jurisdiction of MSHA.

NLA believes there are a number of serious ambiguities and unanswered questions with regard to the proposed rule, and that the rule should not be finalized until these questions are answered and the regulated community has an opportunity to comment on them. While NLA commends MSHA for providing clarification of some points in its Federal Register notice published on August 25, 2016, this clarification did not go far enough, and several important points were unanswered, most notably the intended connection of the rule with enforcement policies and actions. NLA's concerns are set out in detail below.

1. MSHA Should Define Interaction of the Rule with Enforcement Policy and Actions

Multiple commenters at public hearings have pointed out that the proposed rule preamble is silent on how the workplace examination records under the revised rule would be used by MSHA inspectors in an enforcement context. This is a question that must be answered before a final rule can be crafted. At present, the regulated community is obligated to speculate on this vital topic.

The proposed rule calls for the record of a workplace examination to identify "conditions that may adversely affect safety or health." It also calls for the record to be later modified to indicate what corrective actions were performed, and when.

MSHA should clearly state the following policy in conjunction with this rule:

> No citation will be issued for a condition that was identified pursuant to a workplace examination if:
>
> (1) The appropriate miners were notified of the condition and appropriate steps were taken to protect miners from the risk pending corrective action; and
>
> (2) Appropriate corrective action was performed in a timely manner.

This policy would be consistent with MSHA's policy as expressed in its Enforcement Manual that citations should not be issued for defects in equipment if the equipment has been tagged and removed from service as a result of a preoperational inspection.

As the rule currently stands, there is no clear guidance to inspectors on whether they are permitted to write citations for violations identified on workplace examination records after they have been corrected. As noted above, the preamble is silent on this topic. NLA is concerned that this outstanding issue will hinder regulated entities' internal controls and tracking systems that promote safety and reduce incidents.

MSHA should state its position on this issue and allow for public comment before a final rule is published.

2. More Clarity Is Needed on Miner Notification

NLA commends MSHA for providing additional clarification in its August 25 notice with respect to what constitutes adequate notice to miners of a condition found during a workplace examination. NLA agrees that flexibility is needed in terms of the methods, timing, and location of notification, and that what is most important is that the miners who are likely to be exposed to the condition receive effective notice. NLA believes, however, that more clarity is needed with respect to how MSHA inspectors will evaluate the effectiveness of notice. For example, the rule does not appear to require that the workplace examination record include a description of steps to notify miners; MSHA should clarify that such a record is not required. MSHA should also clarify that notification is not required after a condition is corrected (i.e., if it is corrected immediately).

3. More Clarity Is Needed on Immediately Corrected Conditions

Many conditions that can pose a hazard can – and should – be immediately corrected by the person performing the workplace examination, especially if the examination is of a miner's own work area. MSHA should clarify what record-keeping requirements apply in such cases. NLA believes that it is unnecessary to require the inclusion of these conditions on the workplace examination record, and that no notification to other miners or record of corrective action should be required.

Many of these conditions are likely to be easy-to-correct situations such as minor housekeeping problems, uncovered containers, and the like. Miners typically address such problems by correcting them before the shift begins. If all such items must be included on the workplace examination records, they are likely to overwhelm the more significant conditions that require correction by someone other than the person performing the examination.

MSHA should clarify that records are not required for conditions that can be and are immediately corrected.

4. More Clarity Is Needed on Timing and Location of Examinations

NLA believes that the details of when and where examinations need to be performed remain confusing, despite MSHA's efforts to provide clarification in the August 25 notice. As noted at the July 26 public hearing, NLA believes that many operators will choose to train miners to perform examinations of their own work areas, and that most of these examinations will be performed at the beginning of the shift, or upon moving to a new work area. The difficulty arises, however, with respect to inspections that will be performed by persons other than the individual miners, and when the areas are not individual work stations. NLA believes that MSHA should provide as much flexibility as possible for operators to identify the best way to perform and record these inspections.

NLA is also concerned about including travelways in the workplace examination standard. MSHA's regulations provide distinct definitions for travelways and working places, and NLA believes that it stretches the definitions to suggest that a "a passage, walk or way regularly used and designated for persons to go from one place to another" can sensibly be defined as a place "where work is being performed." Requiring inspection of all travelways that could be used by miners each shift creates many practical difficulties. For example, maintenance personnel may travel to many portions of a mine site each day to perform work. Can they examine the travelway as they travel, or must another person have already examined each potential travelway? Also, adding travelways will vastly increase the recordkeeping burden. MSHA should consider an alternate approach to inspection and maintenance of travelways that is more consistent with normal operations at a mine site.

5. The Proposed Rule Would Impose Substantial Administrative Burdens

MSHA's proposed rule as written will impose substantial burdens on all mining operators, including those that already have a robust system for identifying and correcting hazardous conditions at the mine. This is because the rule requires the corrective action to be included as part of the workplace examination record. This is a major departure from the current rule, under which the workplace examination record is intended to serve as documentation that the

examination was performed. Most, if not all, mine operators currently use a different system to track corrective actions, and consolidation and linkage of these systems would be costly and time-consuming.

Some mines, especially smaller mines, use more direct methods of managing corrective actions, such as a greaseboard or whiteboard on which job orders are posted and then erased after the work is completed. Obviously, the proposed rule would impose a much greater recordkeeping burden on such operations.

NLA believes that the proposed rule would impose much more than an additional 5 minutes per workplace examination on the average mine operator, in particular when the time required to reopen the records to add corrective action information about is quantified.

MSHA should allow and encourage flexibility in order to reduce this paperwork burden.

6. MSHA Should Allow Alternative Methods of Managing and Documenting Corrective Actions

The proposed rule would require all workplace examination records to include a listing of identified hazardous conditions, and for those records to be modified when corrective actions have been performed. As noted above, this will be burdensome, even for operations that already maintain records of corrective actions in another form.

Accordingly, MSHA should provide that the requirements of the new rule will be met by any system that provides a record of conditions that require correction and that confirms they have been corrected. For example, some mines achieve this through a system of work orders, and the work order is "closed out" when the work is performed and the correction achieved. As long as records of this work are maintained, MSHA should not require that they be maintained in the same files as those showing that workplace examinations have been performed.

7. MSHA Should Retain the Current Definition of Competent Person

NLA agrees with MSHA that the definition of competent person should not be modified. As noted above, many mine operators believe that it is best to train all miners to inspect their own work areas and to be directly involved in the identification and correction of hazardous conditions.

8. The Competent Person's Signature Should Not Be Required

MSHA notes in the August 25 notice that several commenters have expressed the view that requiring the person who performs the workplace examination to sign the record may discourage some miners from performing these examinations. MSHA responded that personal liability would not depend on the presence of a signature. If this is the case, there is no reason to require a signature as long as the person who performed the examination is identified.

9. The Proposed Rule Is Ambiguous and Should Be Reproposed

At the public hearing on the proposed rule held in Arlington, Virginia, on July 26, 2016, NLA (through the undersigned) testified that the rule as proposed left too many questions unanswered

and too many points unclarified. As noted above, MSHA's August 25 notice clarified some issues, but remained silent on a number of important questions identified above. Given these uncertainties, MSHA should repropose the rule in a form that responds to those concerns in order to provide the regulated community a full and fair opportunity to provide relevant comments.

NLA appreciates the opportunity to comment on these important issues.

Very truly yours,

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