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Mine Safety and Health Administration  
Office of Standards, Regulations and Variances  
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**Re: Examinations of Working Places in Metal and Nonmetal Mines, RIN 1219-AB87, Docket No. MSHA-2014-0030**

The Arizona Mining Association (AMA) is a non-profit organization comprised of members in mining, beneficiation, and processing activities throughout the state of Arizona. Mining has been one of Arizona's most important industries since before statehood. In 2014, mining had a \$4.3 billion economic impact on Arizona's economy and provided 12,000 direct jobs and another 31,800 indirect jobs supporting the industry. Numerous types of metals are mined in Arizona, including gold, silver, selenium, tellurium, limestone and molybdenum. Sixty-six percent of the nation's entire copper output came from Arizona in 2014. From cell phones to renewable energy to medical technologies, the importance of copper in everyday life cannot be overstated.

AMA members place the utmost value on the health and safety of our employees and have put into place best practices to ensure workplaces meet the highest safety standards. Unfortunately, the proposed rule for Examinations of Working Places in Metal and Nonmetal Mines diverts attention away from true safety threats by imposing unworkable paperwork and communications requirements upon operators. We submit the following comments on how the proposed changes would impact the ability of operators to manage safe and healthy working places.

**Timing of Examinations [§56.180002(a) and §57.180002(a)]**

The proposed rule requires that an examination take place before the start of each work shift. This requirement is unworkable in large mines, such as many of the copper mines in Arizona. Large mines have several overlapping shifts throughout the day. Stopping work each time a new set of miners are ready to begin their shift would slow operations and create confusion. It routinely takes an inspector three to four hours to complete an entire examination round in a large copper mine. For this reason, examinations must be ongoing throughout the day, not forced to occur entirely before each shift begins.

Even more problematic is the fact that conditions can change during a work shift. Responsible operators are aware of these changes and currently conduct examinations throughout work shifts to ensure that no hazardous conditions have arisen. Requiring examinations to occur before work shifts begin would put miners in harm's way as inspectors would not be readily available to assess conditions as they change during the course of a work shift. Therefore, AMA recommends removing the proposed requirement that examinations of working places occur before shifts and retaining the prior requirement that allows operators to determine the appropriate timing for examinations.

**Recordkeeping Requirements [§56.180002(b) and §57.180002(b)]**

The proposed recordkeeping requirements are vague and burdensome and are unlikely to actually improve safety for miners. The paperwork is likely to be distract workers from activities that actually keep worksites safe. The new requirements would mandate that the competent person conducting the examination include a description of any adverse conditions found. The proposed rule does not define what constitutes an “adverse condition.” It is unclear whether this means a violation of a standard or something else. Furthermore, there is no guidance on how much detail is necessary in the report that must be completed and whether the operator or the Agency will make this determination. More specifically, will MSHA provide a form for recordkeeping or do operators design their own forms?

MSHA estimates that it will take the competent person approximately five minutes to complete the paperwork at the conclusion of an examination. AMA believes this estimate is too low, especially for large copper mines where extensive areas must be examined and documented. And finally, modern mines are high-tech operations. As such, AMA recommends that electronic recordkeeping, including electronic signatures, be considered acceptable forms of documentation.

**Definition of “Competent Person” [§56.2 and §57.2]**

§ 56.2 and § 57.2 define “competent person” as “a person having abilities and experience that fully qualify him to perform the duty to which he is assigned.” Operators commonly consider well-trained hourly workers to be “competent persons” able to perform working place examinations. The proposed rule creates a set of conditions which may render this common practice no longer viable. Specifically, the requirement in § 56.180002(b) and § 57.180002(b) for the competent person conducting the examination to sign and date the record introduces potential liability under Section 110(c) of the Federal Mine Safety and Health Act of 1977. These hourly workers could be considered “agents” of the operator and, thus, subject to Section 110(c) penalties of fines and imprisonment for errors. This potential liability would have the effect of preventing hourly workers from conducting examinations.

There are simply not enough managers in large mines to do all of the inspections required, so it is essential that well-trained hourly workers continue to perform this function. Therefore, the AMA recommends adding language to the proposed rule that explicitly states that hourly workers conducting working place examinations would not be considered “agents” of the operator and, therefore, would not be subject to Section 110(c) liability.

**Notification to Miners of Adverse Conditions [§56.180002(a)(1) and §57.180002(a)(1)]**

The proposed rule adds a new requirement that operators notify miners of any adverse conditions found during an examination. It has long been standard industry practice to notify miners promptly of any conditions that could be hazardous to their safety. Operators have different ways of handling these types of communications based on the specific circumstances involved and the immediacy of the threat.

The proposed rule lacks clarity on several levels. First, how quickly must the miners be notified of the adverse condition? By what means must the miners be notified – written, verbal, signage, barricades? Could the operator submit a communications plan to MSHA for approval? The proposed rule also lacks guidance on how the operator must document the notification in order to avoid being cited for non-compliance. AMA recommends modifying the proposed rule to clarify that operators have flexibility to determine the best way (written or verbal) to notify miners and the appropriate timing and location of such notification.

**Availability of Records to Miners and their Representatives [§56.180002(b)(3) and §57.180002(b)(3)]**

The proposed rule adds a new requirement that operators make records of working place examinations available to miners and their representatives upon request. First, it is not the place of MSHA to meddle in labor-management relations. Further, this requirement exposes operators to potential trouble with disgruntled employees. Making examination records widely available during the age of social media means that anyone with bad intentions could post the records out of context in a deliberate attempt to embarrass the operator. Most importantly, requiring operators to share examination records does absolutely nothing to improve safety. Therefore, AMA recommends removing the proposed requirement for making records available to miners and the representatives and instead allowing operators to determine what information should be made available in order to best ensure safety of workers.

**Definition of “Working Place” [§56.2 and 57.2]**

The current definition of “working place” refers to “any place in or about a mine where work is being performed.” Although this definition is not being modified in the proposed rule, AMA recommends adding language to clarify that “working place” only includes areas where active extraction and exploration are occurring. Regularly used administrative areas, storage facilities, walkways and toilet facilities should be explicitly excluded from the definition of “working places” for the purpose of the proposed rule.

**Concluding Thoughts**

The Arizona Mining Association appreciates the opportunity to comment on the proposed revisions to the Agency’s standards for the examinations of working places. Providing a safe work environment remains a top concern for our member companies. A one-size-fits-all approach is not workable given the vast variations in the sizes and types of mines in the United States. Mine operators know best how to conduct examinations in ways that will minimize the risk of injury or harm to workers while fostering positive labor-management relations. As stated in the Agency’s own cost-benefit analysis, MSHA is unable to quantify the benefits of the proposed changes. Given that there is no measurable evidence that the increased paperwork, disclosure and other requirements will actually improve the health and safety of miners, AMA recommends that MSHA modify the proposed rule to allow operators greater flexibility to implement proven best practices for working place examinations.

Sincerely,



Kelly Shaw Norton  
President, Arizona Mining Association