



MEMO: Comments on the Mine Safety and Health Administration's Proposed Rule on Workplace Examinations in Metal/Nonmetal Mines

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The Iron Mining Association of Minnesota (IMA) is the leading trade organization representing 11 mines in Northeast Minnesota and 175 vendors who work within the mines every day. IMA's membership produces over 75% of the domestic iron ore, used in products we use every day. The IMA is grateful for the opportunity to submit comments on "Examinations of Working Places in Metal and Nonmetal Mines; Proposed Rule; 30 CFR Parts 56.18002; 81 Fed Reg. 36818 (June 8, 2016)"

IMA strongly supports workplace safety and collaboration between management, employees and contractors to ensure the safety and vitality of all people working on a job site. IMA supports the concept of evaluating risks associated with work tasks, minimizing the risks and using safe work practices to conduct the work. IMA does not support the proposed workplace examination rule for large scale round-the-clock, 365-days-per-year mining operations. Iron mining operations have multiple 'working places' occurring each shift throughout the mining location. The number of 'working places' each shift is extensive, which make compliance difficult at best. The IMA recommends the proposed changes to the Examination of Working Places rule be deleted.

IMA and its member companies are concerned that new documentation and communication will require significant time and resources, as requested in the proposed rule. Moreover, the vague and broad language used in the proposed rule will create regulatory compliance concerns. For example, the proposed communication requirements include vague and subjective language requiring operators 'promptly' notify miners of 'any' 'adverse conditions' found that may adversely affect safety or health. Use of broad terms such as 'promptly', and 'any', and 'adverse conditions' creates subjective interpretation and regulatory concerns for the mining industry and MSHA regulators. Furthermore, the proposed requirement to communicate 'any' adverse condition all but ensures a constant stream of communication of 'any' and every

‘adverse condition’, the result may be that these crucial communications may be ignored and worse, that important hazard communication will go unnoticed as well. MSHA has indicated definitional changes are not needed for terms such as ‘working place’ and cites expired policy letters in an attempt to create clarity; however, policy is not tied to the definitions included in the Act. The broad language and definitions associated with the Examination of Working Places Rule will make compliance difficult at best. The IMA recommends deletion of additional communication and documentation requirements from the proposed changes to the Examination of Working Places rule.

The IMA is also concerned with the suggestion that ‘travelways’ are working places. Other current regulations cover ‘travelways’. The consideration that ‘travelways’ require additional examination via the Examination of Working Places is redundant and creates compliance difficulties.

Additionally, MSHA’s current policy letter P15-IV-01 includes the suggestion that a supervisor be used as the ‘competent person’ to conduct examinations of working places. This designation is counter to modern and effective workplace safety standards to educate all employees about safe working places and create personal responsibility for individual safety for the benefit and collective safety of all. MSHA’s suggestion that only select people are ‘competent’ for completing an examination of a working place negates the practice that each and every miner be responsible for safety. In order to comply with the Examination of Working Places rule every individual authorized to conduct work on the mining site must be competent to examine their working place for hazards as an integral step in completing their work safely, therefore there should be no designation for a ‘competent person’.

Iron mining operations operate three or more shifts per 24-hour day, 365-days-per-year requiring various working places across many square miles and throughout multiple level processing buildings covering thousands of square feet. The IMA does not believe examinations should be conducted before work begins and does not believe additional training would be required for the ‘competent person.’ However, IMA agrees that contractors should be responsible for inspecting their active work areas. IMA does not support the premise that production mine operators be liable if a contractor fails to properly inspect or document hazards in a work area that is overseen by that contractor. The volume of contractors at mine operations make it difficult to review each of their work area examination reports and verify that all hazards were recorded and corrective actions completed. The recent Federal Mine Safety and Health Review Commission (FMSHRC) ruling in the Sunbelt Rentals (July 2016) makes unwarranted, redundant citations a concern if the documentation requirements are expanded.

MSHA’s proposed rule will require considerable investment with no prescribed benefit. IMA employers pay on average \$35-55 per hour, excluding benefits. MSHA’s proposed rules’ cost burden for the competent person of \$31.14 per hour including benefits is inaccurate and does not reflect current compensation for the iron mining industry. MSHA’s estimate of the number of examinations needed and the time and cost to complete, document and communicate the result is incorrect for iron mining operations. MSHA’s allotment of two 5-minute examinations for mines employing 20 to over 500 is incorrect. The IMA requests MSHA evaluate more carefully

the size and scope of iron mining operations to better understand the vast number of 'working places' that occur every shift and recalculate the costs associated with the proposed changes to the Examination of Working Places rule.

IMA believes that while this proposed rule may be well intended, it is not applicable to iron mining or large scale round-the-clock mining operations. The proposed rule changes should be withdrawn from the Act. The IMA is supportive of any effort to enhance workplace safety. This Examination of Working Places rule creates a difficult compliance situation for the iron mining industry and is without a proven safety advantage. If the goal is to increase workplace safety this rule change will not have the intended outcome.

Very Truly Yours,

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