CALCIMA

California Construction and
Industrial Materials Association

September 30, 2016

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

Re: Examination of Working Places in Metal and Nonmetal Mines
(Docket No. MSHA-2014-0030)

Dear MSHA:

The California Construction and Industrial Materials Association (CalCIMA) provides these comments on the Mine Safety and Health Administration's (MSHA) proposed changes to workplace exam requirements. CalCIMA is a trade association for aggregate and industrial mineral producers in California. California produces over two dozen non-fuel mineral commodities, and is the sixth largest non-fuel producing state in the nation. The commodities include everything from aggregates and limestone to diatomite and rare earth elements.

Safety is critically important to our members. They place high priority on a safety culture, employee involvement in safety, and when appropriate, making the operational and engineering changes necessary to maintain a safe workplace. Indeed, they have been active in promoting mine safety education through training materials focused on customer trucks and contractors, education programs, awards, news articles, relations with MSHA, and mine tours. Agency personnel often utilize the product of these cooperative initiatives in their own safety efforts.

In addition, we agree that effective work place exams are an essential tool in ensuring work places are safe, and hazards are identified and addressed. The current requirement is effective. However, we are concerned the proposed changes are vague, impractical, overlap current activities, and will result in more focus on paperwork rather than mine safety improvement. We have these specific comments:

"**Before Miners Begin Work in That Place**." In place of an exam at least once each shift, the proposal would require an exam "before miners begin work" in an area. The proposal further requests comment on whether the exam should be a specific length of time, such as 2 hours, before miners start work in an area. Both would be a significant expansion of current law, with little to no anticipated safety improvements. Before miners begin work in an area will mean, in most instances, an exam before or at the start of a shift. It means workers will either be coming in early to conduct exams, taking away from the beginning of their shift, or completing prior shifts early to conduct exams. This is particularly so if 2 hours are dedicated to the exam. This significantly adds to operational costs, and disruption of work flow. Given that the underlying rule is ambiguous about terms such as "adversely affect," "work", and "workplace," there is concern that the proposal could lead to focus on minutiae and away from the most serious potential hazards.

In particular, this seems a difficult requirement to meet for operations with multiple and overlapping shifts. It is not clear if exams can overlap shifts or if each shift needs an exam. Another concern is what would take precedent for operations where there is break-down or break-in work required on mechanical devices that fail during a prior shift and need immediate troubleshooting or repair. For a small mine where each employee has multiple demands, trying to ensure each and every work place and potential hazard is examined, workers notified, forms filled out, and actions written down, could lead to a misplaced focus. And, it causes difficulties, if narrowly interpreted, for situations where no work is planned in an area at the beginning of a shift, but in which there is a production concern or mechanical issue that arises during the course of the day or shift.

In general, it is difficult to determine what concern is being addressed. Mines are already required to inspect work places, record, and take action. The proposed rule seems to only add an operational difficulty, without any appreciable safety benefit, by changing use of work forces and requiring certain amounts of time for exams.

It appears that the proposed rule is attempting to enforce workplace examination practices from underground coal regulations onto the Metal/Non-Metal mines without due consideration of the inherent differences between surface and underground mining operations. Due to the physical and operational differences between underground and surface mining, conducting a workplace examination before work begins in a surface mine is more burdensome and far less practical than in an underground mine. In fact, the MSHA surface coal standard for conducting workplace examinations (77.1713(a) recognizes this difference and states that "At least once during each working shift, or more often if necessary for safety, each active working area and each active surface installation shall be examined."

"Promptly Notify Miners in Any Affected Areas." In addition to the current requirement to promptly initiate corrective actions, the proposal would add that miners also be promptly notified. The proposal says this change is necessary to increase awareness and participation in safety; yet, there is already a workplace exam requirement and high awareness and participation in safety. As further justification, the proposal provides examples where work place exams were not conducted and fatalities resulted. In those instances, the operator was not following current law—they did not do a workplace exam. So, it is unclear why adding more requirements on compliant operators will compel non-compliant operators to do something they are not.

Although MSHA notes in the Federal Register on August 25, 2016 that the notification of miners of adverse conditions "could take any form that is effective" and, thus, includes verbal notification; it is our collective experience that if you did not document it, enforcement agents believe or interpret that it did not get done. We are not asking to require mine operators to document the method of notification and who was notified be added to the rule, as this will create an additional record keeping burden on the operator; however, we question how effective this provision in the rule will be in practice.

The law already requires the operator to remove miners from an area if there is an imminent hazard, so it is unclear why there is an additional notification requirement. It is also unclear what "any affected areas of any adverse conditions" means. This seems open-ended, and leads to concern that there will be focus on minutiae. Also, the proposal seems to mean that mine operators will need to go through a formal process to issue notification to miners, and then proceed to take corrective action. To be effective, the proposal needs to be narrowed to serious hazards, not every little thing that a miner would already be trained to avoid.

Recordkeeping. Outside the two changes above, the remainder of the rule is all about new recordkeeping and administrative requirements. These include signing and dating the exams; when to sign and date them; complete descriptions of areas examined; explaining corrective actions; name of person who made the corrective action; the date; and making the records available to miners. These activities seem to be implicit in the current requirement. Indeed, the proposed changes probably duplicate much of what mining operations already have internally; now, operators will have to fill out another set of forms to document what they already know.

The proposal says that it will take 5 minutes to do the additional record-keeping. However, this only takes into account the initial record. There would be additional time to document required follow-up, how hazards were communicated, and explaining corrective actions. Members estimate that this could add 10 to 15 minutes per exam at the very minimum. And, when crews are assigned to multiple locations throughout their shift, there will be an exponentially larger increase in the time and paperwork burden.

The proposed rule does not take into account that duplicative records could exist for the same hazard if they were noted by multiple competent persons entering an area. As an example: a hazard is discovered and say, barricaded or otherwise safeguarded by one crew, could be discovered by a subsequent crew and duly noted in their workplace exam forms. The first crew then may correct the hazard and note the corrective action taken. The second crew may not re-enter the area and thusly not record any corrective action, only the presence of the barricaded hazard. Under the proposed rule, the operator could be cited for the second crew's examination record not including any corrective action noted. In the least, it would seem the proposed rule should be changed so an operator will not have to duplicate what they are already doing.

The proposed rule is not clear on the recording of corrective actions. The operator is required to record the immediate corrective action taken. However, it is unclear as to whether or not the operator must provide a written record of the corrective actions taken until the adverse condition is completely eliminated. If the latter is the case, this will create a greater and unnecessary tracking record keeping burden on the operator.

Negative Impact on Technology. As part of the record keeping, we are also concerned about the signature requirement. This provision may inhibit, or possibly prohibit, the ability to use electronic recordkeeping systems for workplace exams. This is particularly important if the records are to be maintained for 12 months or longer. Capable electronic systems have been or will be developed in the near future, and we should be able to embrace those new technologies, which would actually enhance our ability to maintain good documentation, and not create a rule that would prevent utilizing them. We recommend removing the signature requirement.

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Competent Person – The proposal asks for response in regard to whether further definition is needed for the term "competent person." There is already definition, long precedent, and understanding of what a competent person is. Inspectors already have latitude to judge whether the competent person is doing work place exams adequately. There is no need to further change the definition and add confusion.

Competent Person Signature - MSHA noted in the Federal Register on August 25, 2016 that "...some commenters were concerned that the signature requirement would discourage miners from conducting workplace examinations and would have a negative impact on the quality of the examination..." We agree that the alternative approach of requiring the name of the competent person, rather than the signature, be included in the record is an acceptable alternative approach.

Cumulative Concerns. An overall concern with the proposal is that it adds vagueness in what will be considered adverse conditions, when and how much to examine, and how to notify workers. The changes will provide undisciplined inspectors increased latitude to write citations for minutiae. At the same time, the proposal adds a prescriptive list of recordkeeping requirements that, again, can be used by overly zealous inspectors to find the most minor of discrepancies. In effect, operators will, first, be providing inspectors a list of places and items that inspectors should look at for citation-writing opportunities. And, secondly, inspectors will be able to point to anything not on the list as evidence of a recordkeeping violation....gotcha!

The cumulative concern is not only the fines that may result, but that mine operators will have to turn all their attention to worrying about outliers and details of reports rather than focus on the day-to-day hazards at mine sites. We are concerned that the proposed rule elevates enforcement opportunities over the safety goal of letting personnel focus on fixing problems, rather than taking the time to write them down.

As stated at the beginning of this comment, the existing standard is adequate and effective when it is properly followed. The proposed additional requirements do little to nothing to enhance the safety of miners. For operators who fail to comply with the existing standard, all due regulatory enforcement is warranted and expected.

Thank you again for the opportunity to comment.

Sincerely,

Charles L. Rea
Director, Communications & Policy