



TESTIMONY OF

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THE NATIONAL MINING ASSOCIATION

BEFORE THE
MINE SAFETY AND HEALTH ADMINISTRATION

ON THE

EMERGENCY TEMPORARY STANDARD

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The National Mining Association (NMA) appreciates this opportunity to comment on the Emergency Temporary Standard (ETS) on Emergency Mine Evacuation. We recognize this most important regulatory initiative was prompted by the high level of concern – shared by the coal mining community – arising from the tragic events earlier this year in West Virginia’s coal fields.

In reviewing the ETS, NMA focused on MSHA’s objective to protect “miners from the grave dangers that they face when they must evacuate a mine after an emergency occurs” and our overriding commitment to improve mining safety. Our comments and recommendations are intended to strengthen the requirements for meeting these complementary objectives. As such, we also offer our thoughts on actions that would safeguard against unintended consequences, unrealistic performance outcomes or unrealized expectations that may result from the ETS as published.

I. Part 48 – Training:

In general, NMA supports of the revised training requirements for miners contained within Part 48. We believe, however, the application of these training requirements to visitors would be better accommodated by providing more flexibility in the manner in which mine operators must comply with such requirements. For example, instead of requiring the actual donning of self-contained self-rescuers (SCSRs), we believe the necessary instruction can be accommodated by alternative means. While we have historically provided limited training on a designated unit to visitors, we are concerned that training on multiple units, for those unfamiliar with the mining environment, will be confusing and counterproductive. We would urge that the final standard be revised to reflect these concerns.

Similarly, we question the agency’s decision to require that all independent contractor employees be provided with this level of training. As the agency is well aware, independent contractor activities can vary widely. We believe those providing regular or continual services should receive SCSR training comparable to that provided miners, while those whose services are on an infrequent basis can be accommodated through an alternative means similar to that employed for visitors

II. Part 50 – Notification:

The accident reporting revisions under Part 50 are intended to facilitate rapid response by MSHA to serious mining accidents. According to the Agency, the purpose of the new 15 minute notification requirement is “so that the coordination of appropriate mine rescue or other emergency response can begin as soon as possible.” 71 FR at 12553. NMA strongly supports this objective. We agree with the agency’s assessment that promptly notifying MSHA of mining accidents that pose a threat of death or serious physical injury “is vital to enable the Agency to effectively respond in emergency or potentially life threatening situations.” NMA suggests that the objectives of the ETS would be better served if the Accident Notification requirements distinguished between accidents that pose a threat to life,

serious physical injury, or require an emergency response for trapped or injured miners, which would require notification within 15 minutes, and all other reportable accidents which would remain subject to the prior requirement to "immediately contact" the MSHA District Office. We would also add that prompt notification to MSHA is only one side of the coin for assuring a timely and effective response to emergencies. In connection with the changes made to the notification requirements, NMA recommends that MSHA reform the agency protocols for receiving notification and transmitting the information to appropriate officials in a position to act decisively and diligently in response to the operator's notification of an accident.

A. The 15 Minute Notification Requirement:

MSHA regulations prior to the ETS required an operator to "immediately contact" the MSHA District Office in the event of any accident which met one of twelve "accident" conditions set forth in 30 CFR §50.2(h). Under the revisions made to the notification requirement, immediately contact now means—without exception and regardless of circumstances—within 15 minutes from determination that an accident has occurred. In short, the 15 minute requirement applies to all accidents regardless of their seriousness or need for any emergency response.

The ETS explains that the purpose of the 15-minute notification requirement is to enable the coordination of appropriate mine rescue or other emergency response as soon as possible in order to miners from grave dangers of physical injury or death. We strongly support that objective and we believe this purpose would be better served if the 15-minute notification requirement applied to accidents that pose a threat to life, a danger of serious physical injury, or requires a rescue or other emergency response for trapped or injured miners. For other accidents that do not pose such dangers or necessitate an emergency response, the operator would still be required to "immediately contact" the MSHA District Office which, as the agency notes in the ETS, has been applied on a case by case basis appropriate for the conditions and circumstances of the accident. We believe that by focusing the 15-minute notification requirement upon accidents that are likely to require emergency response, the agency would avoid system "fatigue" in terms of emergency response personnel and resources.

The agency's statistics disclose the real possibility of being overwhelmed by the 15 minute notification requirement for accidents where a real emergency does not exist. In 2005, MSHA was notified of approximately 2,400 immediately reportable accidents. Approximately 90 percent of these 2,400 incidents did not involve an injury to a miner. The profile of these accident notifications illustrates this point -- MSHA was notified of approximately 2,400 immediately reportable accidents. Approximately 90 percent of these 2,400 incidents did not involve an injury to a miner. They involved accidents in two categories:

- Unplanned roof falls at or above the anchorage point, and
- Damage to hoisting equipment which interferes with its use for more than thirty (30) minutes.

Experience has shown that in these cases, it is not necessary to activate mine rescue personnel and or local emergency response resources. Contacting MSHA within the required 15 minute time frame for these non-emergency events would be counterproductive and does not serve the purpose set forth in the ETS which is to facilitate the rapid coordination of mine rescue or other emergency response. However, that may occur under the 15-minute rule.

As noted earlier, this proceeding evolved from the tragic events that transpired earlier this year at the Sago and Alma mines. The State of West Virginia responded rapidly enacting new mine safety legislation followed by the issuance of emergency rules. It is important to note that that circumstances requiring the reporting of accidents within 15 minutes is the topic of discussion within the state at this very moment. While it is premature to ascertain how the discussions will proceed we believe MSHA should, at a minimum, be cognizant and take note of these discussions, as they may result in a limiting of the conditions that would trigger the 15 minute reporting requirement.

B. MSHA Notification Procedures:

This ETS solely focuses on the 15-minute notification requirement following an immediately reportable accident. The ETS does not address how MSHA will receive and respond to these notification calls. NMA is concerned that this omission will result in a system that unnecessarily delays an effective emergency response.

The MSHA notification protocol has built-in time delays. It requires mine operators to place multiple calls at a time when the focus should be on responding to the emergency event. In an emergency, each additional call a mine operator has to make consumes precious time.

The current protocol requires a mine operator to call their MSHA district office when an immediately reportable accident occurs. If that call is placed outside of business hours, the caller is forwarded to an answering service. The answering service provides the mine operator with other numbers to call to personally reach MSHA district officials. If the caller cannot reach an MSHA district official, the caller is expected to contact MSHA headquarters. The toll-free answering service maintained by MSHA headquarters relies on individuals with no knowledge of the mining industry and, therefore, incapable of making informed decisions on how to respond to the event that has been reported.

MSHA should streamline this process so that the 15-minute notification is not based in each MSHA district. MSHA should establish a 1-800 number nationwide that would allow operators anywhere in the country to make one call, not only to satisfy the law, but also to provide faster and more appropriate deployment of resources. That call center should make the additional notifications as necessary to the

districts, to tech support or to whomever they deem necessary to call. MSHA personnel should be required to provide this call center with all relevant numbers and persons in charge. Thus, the operators make one call and then go about addressing the emergency.

If the establishment of a 1-800 number is not acceptable, we would recommend that each MSHA district provide mine operators with a list of emergency contact numbers. In addition, MSHA should assign staff to be "on call" to receive emergency calls. A mine operator should only be required to place one call to a designated person when an emergency occurs. That individual should have the ability to determine the severity of a situation and the authority to direct an appropriate response. A notification system of this type would eliminate the built-in delays created by the current accident reporting protocol.

III. Part 75 – Mandatory Safety Standards:

The proposed revisions to Part 75, like the revisions to Part 50, are intended to address what the agency deems as "grave danger" when a mine accident occurs. While the industry endorses the direction, technology and procedures advocated in the standards, specific requirements regarding applications and practices, may, unfortunately, introduce unintentional hazards. These specific requirements should be revised to address the concerns identified below. Many of the issues identified in this section have equal application to the new requirements required under Part 48.

A. Proposed Revisions to Section 75.380(7)(i):

NMA supports the installation of lifelines in the primary escapeway as a way to improve and facilitate emergency evacuations. However, the installation of lifelines in the travelways makes lifelines a potential hazard. This is especially true when the mine uses trolley wire to power the haulage equipment. We suggest that travelways not be required to have lifelines. If an emergency requires evacuation, the miners will be riding in a mantrip in the travelway. Under those circumstances, a lifeline will not be used. If they encounter smoke, they are trained to don the SCSR and immediately enter the intake escapeway. This escapeway has the lifeline, and they can then exit the mine. It should be noted that the State of West Virginia recognized this circumstance in its regulations and requires the lifeline only in the primary escapeway.

B. Proposed Revisions to Section 75.1502(a)(1):

NMA and its member companies want to reinforce the process under Section 75.1502(a)(1)(iv), which addresses the "[p]rocedures for the rapid assembly and transportation of necessary miners, fire suppression equipment, and rescue apparatus to the scene of the mine emergency." To prevent full blown mine emergencies, the mining industry directs their employees to fight fires as the first line of defense. The industry commends MSHA for acknowledging this fact.

The industry, however, requests that MSHA train its local inspectors and field supervisors to support and understand plans for firefighting. In our view, there have been too many occurrences where firefighting has been hindered by 103(k) orders or other orders of withdrawal from firefighting activities. We believe that MSHA can help in this training by directing the local inspectors to become familiar with the mine's fire fighting practices.

C. Proposed Revisions to Section 75.1502(c)(1):

The industry recognizes that the standard interval for fire drill training and, subsequently, mine emergency training has always been "not more than 90 days". With the addition of more extensive training requirements in the ETS, NMA recommends that this timeframe be modified to "once each quarter". This change will enable the operator to train more efficiently without any negative effect on the actual training standard.

Large mines will be training over 400 people on SCSR transfers, escapeway systems, firefighting and evacuation drills. This can all be accomplished quarterly. By providing timing flexibility, crews can be pulled systematically for training. To alleviate any concern that a person would be trained at the end of one quarter and at the beginning of the next, MSHA could require that the training be accomplished during a "window" of time. For example, the rule could require that training be accomplished in a month in each quarter (i.e. January, April, July and September). This schedule could be listed in the plan.

D. Proposed Revisions to Section 75.1502(c)(2):

NMA opposes requiring all miners to travel the entire escapeway every 90 days as part of the training requirement. First, NMA does not believe that physically traveling the escapeway is training as the term is defined. Nor does NMA believe that physically traveling to an entry will train a person on escape. A more logical method for training miners on escapeways would include expectation training, i.e. instructing miners on: (1) the location of escapeway entrances from their work stations; (2) the location of the lifeline systems and stored SCSRs; (3) the physical issues in the escapeways (i.e. areas that are low or are more difficult to travel through); and (4) the locations where important escape decisions must be made.

Second, requiring all miners to physically travel escapeways fails to recognize the physical condition of the mining workforce. The coal industry has an aging workforce whose average age is in the early 50s. The ETS acknowledges "that miners may have to travel through long and difficult underground travelways." This statement confirms that walking escapeways is laborious and could cause illnesses or injuries. Thus, NMA recommends that MSHA revise its proposed evacuation drill requirements to allow miners to travel by personnel carriers or to walk short distances to the ventilation split where expectation training could be administered. This modification would achieve enhanced training and education, while still allowing for training on the condition of escapeways and locations of lifelines and stored SCSRs, where applicable.

Overall, NMA recommends that Section 75.1502(c)(2) be changed to require the operator to provide quarterly training to all employees on escape routes, emergency escape scenarios, SCSR storage locations, and areas in the escape system where decisions for escape may need to be made.

E. Proposed Revisions to Section 75.1502(c)(2)(ii):

The industry wants to reinforce the position that donning and transfer training on SCSRs can be accomplished more effectively on the surface. We support the agency's recognition of this as reflected in the "Emergency Temporary Compliance Guide" that MSHA posted on its website.

The industry does not object to the hands-on training requirement in transferring and donning SCSRs. The industry, however, recommends that this requirement be modified so that operations that have multiple types of SCSRs are permitted to train for varied transfers each quarter. For example, an operation may provide a belt worn unit (SR 100) and store other SR 100s as the "additional rescuer". This operation may also store in caches Ocenco units. In theory, the worker could transfer SR 100 to SR 100, SR 100 to Ocenco, or SR100 to Ocenco and back. Thus, the industry recommends that one type of transfer be required each quarter.

F. Proposed Revisions to Sections 75.1714-2 and 75.1714-4:

NMA and its member companies support the agency's efforts to enhance the resources available to our employees and others for the safe evacuation from the nation's underground coal mines in the event of an emergency. We are committed to preventing a repetition of the tragic loss of life suffered at Sago and Alma. In an emergency situation, however, it is critical that the additional storage of SCSRs contemplated by the ETS be used for prompt evacuation of the mine. Barricading remains a last resort.

1. Signage:

While a good faith desire to improve the existing standards is apparent throughout the ETS, in many instances the regulatory language is restrictive to the point we are concerned it could be counterproductive. For example, the term "SCSR" is an industry wide term of art that is used throughout the ETS, yet Section 75.1714-2(f) requires the word "SELF-RESCUER" or "SELF-RESCUERS" be used on storage location signs. Requiring mines with existing "SCSR" storage location signs to install signs stating "Self Rescuer" could be counterproductive given the years of training and acceptance of the terms "SCSR."

2. SCSRs in Primary and Alternate Escapeways:

Section 75.1714-4 (c) requires additional SCSR storage in the primary and alternate escapeways to augment other SCSR requirements when these requirements do not provide enough oxygen for all persons to safely evacuate.

Where the operator determines additional SCSRs are required, the operator must submit a plan setting forth the location, quantity and type of these additional SCSRs and may be required by the district manager to demonstrate the plan's adequacy.

Based on the plain language of this provision and the preamble, a number of operators have proposed, as an alternative, the use of airlocks located between adjacent escapeways for storage of SCSRs, along with other important emergency supplies. The use of an airlock has the additional benefit of providing employees with an area isolated from the main air courses for the transfer of SCSR units. Another alternative proposal is to build a SCSR storage unit into the stopping to permit stored units to be accessed from either escapeway. Both of these proposals are simple, functional and proven mine-worthy.

In its recent guidance documents, the agency has rejected these proposals, taking the prescriptive position that equal numbers of stored SCSRs are required in both escapeways. The stated basis for rejection is speculative and encroaches on the operator's clearly defined obligations under Section 75.1714-4(c) and should be withdrawn. Section 75.1714-4(c) does not require that identical quantities of additional units be stored both in the primary and alternate escapeway. Instead, this section requires "additional units in the primary and alternate escapeways." Furthermore, the operator's alternatives described above would place the SCSRs in locations that satisfy both primary and alternate escapeway storage. We believe that this needs to be re-visited by the agency.

The preamble to the ETS contains a series of questions for which we will provide responses by the end of the comment period.

In closing let me again thank you for providing this opportunity. I would be pleased to respond to any questions you may have.