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September 27, 2019

Sheila A. McConnell, Director  
Office of Standards, Regulations, and Variances  
Mine Safety & Health Administration (MSHA)  
201 12<sup>th</sup> Street South, Suite 4E401  
Arlington, Virginia 22202-5450

RE: Docket No. MSHA-2018-0015

Dear Ms. McConnell:

The Nevada Mining Association (NvMA) has been in existence for more than 100 years and represents its members in federal, state, and local policy matters, public relations, workforce development, and community support. NvMA has a diverse membership of over 524 companies and individuals, many of whom are mine operators located throughout the state. The health and safety of mining employees is the highest priority of NvMA member operators. As such, they are committed to continually building improving health and safety controls and processes.

On behalf of our members, NvMA submits comments regarding the Mine Safety and Health Administration's (MSHA) proposed Program Policy Letter (PPL) published in the Federal Register on July 29, 2019, discussing Escapeway and Refuge requirements under 30 C.F.R. § 57.11050.

30 C.F.R. § 57.11050, Escapeways and refuges, states:

- a) Every mine shall have two or more separate, properly maintained escapeways to the surface from the lowest levels which are so positioned that damage to one shall not lessen the effectiveness of the others. A method of refuge shall be provided while a second opening to the surface is being developed. A secondary escapeway is recommended but not required during the exploration or development of an ore body.
- b) In addition to separate escapeways, a method of refuge shall be provided for every employee who cannot reach the surface from his working place through at least two separate escapeways within a time limit of one hour when using the normal exit method. These refuges must be positioned so that the employee can reach one of them within 30 minutes from the time he leaves his workplace.

The stated purpose of the PPL is to provide guidance regarding the existing standard that requires refuges to protect underground M/NM miners in mines while a second escapeway is being developed or during the exploration or development of an ore

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body, and the location of such refuges. The PPL further states that 30 C.F.R. § 57.11050 requires two or more separate, properly maintained escapeways in underground M/NM mines to enable miners to escape in an emergency and, when they cannot escape, the standard requires refuges to enable miners to shelter safely in place until they can be rescued. MSHA has taken the position that the only two exceptions to the requirement that underground M/NM miners be provided at least two separate escapeways from their working places to the surface are:

1. Miners must be provided a method of refuge while a second escapeway is being developed.
2. During the exploration or development of an ore body, a second escapeway is "recommended, but not required."

The Nevada Mining Association, on behalf of its members, provides the following comments:

- NvMA and its members place the utmost importance on providing a safe working environment for the miners in Nevada. Considerable amounts of time and financial resources are spent to protect the safety and health of our miners. The success of our efforts is reflected in our exceptional safety record, which we continually improve every year.
- To be clear, the standard at 57.11050 requires underground MNM mines have two escapeways from the lowest levels of the mine and that a miner be able to reach the secondary egress or refuge within 30 minutes from the time he or she leaves his or her working place. NvMA and its member companies do not agree with MSHA's interpretation of the standard that it requires two escapeways from every working place in the mine. This interpretation is a material change to the current rule, and as such, should go through notice and comment rulemaking as provided in the Federal Administrative Procedure Act. Following a formal rulemaking allows operators from across the country the opportunity to participate in the process and the agency to research and assess the potential impact of any proposed change.
- NvMA and its members believe the rule as currently written is reasonable and effective in protecting the safety and health of miners in the event of an evacuation event underground. No change in the rule is necessary.
- MSHA has not provided any evidence that the current rule does not adequately protect miners. NvMA requests MSHA provide detailed and verifiable justification for changing a rule that adequately protects miners.
- Again, the current rule requires a miner to be able to reach the secondary egress or refuge within 30 minutes from the time he or she leaves his or her working place. The walking pace for the average adult is approximately 3 miles per hour, or roughly 264 feet per minute on level ground. Even if a person's progress were slowed by uneven or inclined

conditions to the relative pace of 1 mile per hour, that person would be traveling at a rate of roughly 88 feet per minute. Under those conditions, that person would still be able to travel approximately 2,640 feet in 30 minutes, almost twice the distance MSHA contemplates in the PPL. As such, the proposed 1500-foot limit is a significant reduction over the distance the current standard allows.

- NvMA agrees that a mine-specific approach should be utilized when considering escapeway access and refuge locations. The various mines in our state, and the numerous mines throughout our country, are each unique and require different systems to adequately protect the safety of their employees in the event of an emergency. NvMA recommends that MSHA does not require all mines to follow an arbitrary distance that may be unsuitable or inappropriate for some mines. NvMA suggests that mines be allowed to propose mine-specific distances that adequately reflect the actual needs present at each mine site.
- Finally, the PPL summarily dismisses the costs involved in considering escapeway access and refuge placement. The cost of developing additional egresses beyond those that have already been planned and mined to meet the existing regulation would be significant. Development costs are very often in excess of \$1,000 per foot and can be as high as \$4,000 per foot in some mines depending on ground conditions. The efforts and costs involved in the purchase, installation, and maintenance of portable refuge chambers is considerable.

For example, one 12-person, 96-hour refuge station costs more than \$120,000. Hiring a contractor to cut a drift along with installation of infrastructure to support the refuge would cost an additional \$197,000. In many cases, mines will have multiple active areas, compounding the above costs. Setting a minimum distance to a secondary egress or refuge will require operators to incur significant costs and may force some operations into financial hardship or closure. In addition to the one-time costs of installation, there is also the effort required to inspect and maintain these refuges on an ongoing basis.

In closing, NvMA recommends that any changes proposed to 30 C.F.R. § 57.11050 should be evaluated and considered through the proper notice-and-comment rulemaking process rather than as a program policy letter.

Thank you for the opportunity to provide comments regarding the proposed program policy letter.

Sincerely,



Dana R. Bennett, PhD  
President

# PUBLIC SUBMISSION

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**Docket:** MSHA-2018-0015

Escapeways and Refuges in Underground Metal and Nonmetal Mines. (Program Policy Letter (PPL))

**Comment On:** MSHA-2018-0015-0003

Meetings: Escapeways and Refuges in Underground Metal and Nonmetal Mines

**Document:** MSHA-2018-0015-0006

Comment from Dana Bennett,

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## General Comment

Please see attached files from NVMA.

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## Attachments

HR 2579 Comments 2019