



June 29, 2006

Mine Safety and Health Administration
Office of Standards, Regulations, and Variances
1100 Wilson Blvd., Room 2350
Arlington, Virginia 22209-3939

(Also submitted electronically to
zzMSHA-Comments@dol.gov)

RE: Emergency Mine Evacuation; Emergency Temporary Standard (RIN 1219-AB46)

The National Lime Association (NLA) is pleased to present its comments on the Emergency Temporary Standard (ETS) on Emergency Mine Evacuation. NLA is the trade association for manufacturers of calcium oxide and calcium hydroxide, collectively referred to as "lime." NLA's members operate both surface and underground mines under the jurisdiction of MSHA.

NLA salutes MSHA for taking prompt action to respond to safety issues raised by recent tragic accidents in the mining industry. NLA's members are pledged to safety as a primary value of the lime industry, and NLA's Health and Safety Committee has worked with MSHA staff to improve the overall safety of the lime industry workforce. NLA stands ready to continue to work with MSHA as new rules and legislation are implemented.

Many of the provisions of the ETS apply only to coal mines, and NLA is not commenting on those portions of the rule. Our specific comments follow:

1. The Immediate Notification requirement should be modified to coincide with the requirements of the MINER Act.

The ETS revised the immediate notification provisions of 30 CFR 50.10 to require notification to MSHA of an "accident" within 15 minutes. "Accident" is broadly defined in 30 CFR 50.2 to include various events, including deaths and injuries, but also inundations, roof falls, or certain types of equipment damage or failure. Although all of these circumstances are significant and merit prompt reporting to MSHA, NLA believes that not all justify a rigid requirement that they be reported within 15 minutes.

In the recently enacted MINER Act, Congress chose to apply a 15-minute notification requirement to a more limited set of circumstances, as follows: "For purposes of the preceding sentence, the notification required shall be provided by the operator within 15 minutes of the

time at which the operator realizes that the death of an individual at the mine, or an injury or entrapment of an individual at the mine which has a reasonable potential to cause death, has occurred.” This reflects Congress’ concern, clearly established in hearings and floor debate, that the 15-minute notification was primarily needed to allow for prompt mobilization of rescue efforts. The MINER act amended 30 U.S.C. 813(j), which calls for notification to MSHA of accidents. Congress only applied the 15-minute requirement to a subset of those accidents.

NLA believes that MSHA should modify 30 C.F.R. 50.10 to reflect the provisions of the MINER act. Thus, NLA believes that 30 C.F.R. 50.10 should read as follows:

If an accident occurs, an operator shall immediately contact the MSHA District Office having jurisdiction over its mine. If an operator cannot contact the appropriate MSHA District Office, it shall immediately contact the MSHA Headquarters Office in Arlington, Virginia by telephone, at (800) 746-1553. For purposes of the preceding sentence, if the death of an individual at the mine, or an injury or entrapment of an individual at the mine which has a reasonable potential to cause death, has occurred, “immediately” shall mean within 15 minutes of the time at which the operator realizes the death, injury, or entrapment has occurred. If communications are lost because of an emergency or other unexpected event, the operator shall notify MSHA at once without delay and within 15 minutes of having access to a telephone or other means of communication.

Interpretation of the meaning of “immediately” for other accidents should be left as it currently is under enforcement practice and precedent.

While the most important reason for making the change set out above is to create consistency with the statute, NLA believes there are other reasons as well.

First, if all accidents must be reported within 15 minutes, MSHA is likely to be inundated with calls made by operators who want to be certain they have complied with the time limit, but have not had the opportunity to do even initial investigation of the event to ensure that it really is an accident that must be reported immediately. Inclusion of events that do not present immediate danger to workers will only increase this problem.

Second, 15 minutes is an extremely short period of time, and such a short time limit should be reserved only for the most severe incidents, and particularly those in which prompt action by MSHA (as in organizing rescue efforts) is likely to save lives.

Third, it should be noted that the minimum and maximum penalty applied to failure to notify in the MINER Act will apply only to the 15-minute requirement as imposed by the statute, and not to other portions of 813(j), and thus those penalties will not apply to failure to report “accidents” that do not fall within the new statutory language. Maintaining the current language of the ETS could thus lead to the confusing situation of having a 15-minute reporting requirement that would have different penalties depending on the kind of accident being reported.

For all the reasons stated, NLA respectfully suggests that MSHA revise 50.10 to reflect Congressional action by adopting the suggested language above.

2. Ambiguities in training provisions should be clarified.

From the language in the preamble, and from the structure of the rule provisions, it appears that the changes in Part 48 in the ETS are intended to apply only to underground coal mines, and not to other underground mines (for example, only underground coal mines are required to submit revised Part 48 plans). However, some of the rule language is ambiguous on this point.

Specifically, revised section 48.5(b)(2) does not refer specifically to coal mines, although the preamble indicates that this section is being changed to reflect changes to Part 75, which applies only to coal mines. Sections 48.6(b)(12) and 48.11(a)(4) reflect the same ambiguity. Note that revised section 48.8(b)(8) does specifically limit the changes to underground coal mines.

MSHA should revise the ETS to make it clear that the changes in Part 48 apply only to underground coal mines.

NLA appreciates the opportunity to comment on these important issues.

Very truly yours,

/s/

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