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JUL 12 2016
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Ms. Sheila McConnell
MSHA, Office of Standards Regulations and
Variances
201 12th Street South
Suite 4E401
Arlington, VA 22202-5452

Re: RIN 1219-AB87
Docket No. MSHA-2014-0030
Examination of Working Places in Metal and Nonmetal Mines

Dear Ms. McConnell:

We write on behalf of the Mining Coalition, a group of MSHA-regulated companies in a wide variety of industries, that operate mines, quarries, and processing facilities with thousands of employees and vastly different conditions, operations, methods, and practices. All members of the Coalition share with MSHA the goal of protecting the safety and health of the workforce, reported by MSHA as including 221,529 employees at 11,787 regulated facilities.

After reviewing MSHA's Proposed Rule on Examinations of Working Places in Metal and Nonmetal Mines (the "Proposed Rule"), we respectfully urge MSHA to postpone any further consideration of the Proposed Rule until MSHA is able to collect and prepare all necessary data justifying a new rule on this subject. As written, the Proposed Rule is premature. It admits explicitly that:

MSHA is unable to quantify the benefits from this proposed rulemaking . . . including the proposed provisions that an examination of the working place be conducted before miners begin work in an area; that the operator notify miners in the working place of any conditions found that may adversely affect their safety or health; and that the examination record include a description of the adverse conditions found and the corrective actions taken. MSHA anticipates, however, that there would be benefits from the proposed requirements, such as expedited correction of adverse conditions, which would be expected to result in fewer injuries and fatalities. MSHA requests information

AB87-COMM-9

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and data on the benefits from this proposed rulemaking. Please be specific to facilitate any benefits quantification that may be possible.

* * * *

MSHA has no data on the number of corrective actions that would be recorded under this proposed rule. However, the Agency believes that the time to record the corrective actions would be minimal at best.

81 Fed. Reg. 36818, 36823 (Jun. 8, 2016) (emphasis added).

Because MSHA issued the Proposed Rule merely based on its “anticipation” of benefits, but admittedly without any data, the Proposed Rule is premature at this time. The interests of miner safety, which MSHA and the industry share, are only served when MSHA issues new mandates based on documented needs and demonstrated benefits. Otherwise, a new rule threatens to divert resources, energy, and focus from important safety priorities.

In addition, whenever the Proposed Rule is considered, we respectfully request that MSHA undertake the kind of extensive, thoughtful, and deliberate notice-and-comment rulemaking process that is more typical of significant regulations such as this one. MSHA’s unusually compressed schedule for this rulemaking – without any reason provided by the Agency – means that MSHA surely will not have all of the information necessary to consider the Proposed Rule, especially for a rule that MSHA admits lacks any supporting data or benefits at the outset. Specifically, even were MSHA to continue with the current rulemaking, we request:

1. A 60-day extension of the comment period on the Proposed Rule, until November 6, 2016.
2. Postponement of the scheduled July-August public hearings, until after December 6, 2016 (30 days after the written comments are due), to permit evaluation and response to the written comments to be submitted to the record.
3. The establishment of a 30-day post hearing comment period, until at least January 6, 2017, to permit hearing testimony to be evaluated and addressed in the rulemaking record.
4. Separate and extended comment periods and public hearings for the MSHA request for information on diesel exhaust, instead of the current MSHA plan to use the announced workplace exam public hearings for both.

This is not an emergency rulemaking under Mine Act Section 101(b)(1)-(3). That emergency provision envisions that reasoned rulemaking will consume at least nine months after a Federal Register notice. In contrast, MSHA routine rulemaking practice always has permitted years for analysis, testimony, and comment submissions, and stands in stark contrast to the unjustified speed proposed for this rule, prohibiting meaningful rulemaking participation.

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MSHA states that the Proposed Rule would require that:

1. “A competent person designated by the operator shall examine each working place at least once each shift, before miners begin work in that place.”
2. “The operator shall promptly notify miners in any affected areas of any adverse conditions found.”
3. “[T]he [competent] person conducting the examination shall sign and date the record before the end of the shift.”
4. “The record shall include” the “locations . . . examined,” “a description of each condition found,” and “the corrective action taken.”
5. Records must be “available for inspection by authorized representatives of the Secretary and the representatives of miners; and shall provide these representatives a copy on request.”

81 Fed. Reg. at 36826.

Each of the proposed new requirements introduces vague terms and definitional issues that must be addressed to understand their impact and permit the development of meaningful comments. MSHA itself poses some of these issues and seeks comments, but has not yet participated in meetings and public hearings to discuss these issues or identified enforcement and injury data that support the Proposed Rule. Indeed, as quoted above, MSHA says it is “unable to quantify the benefits from this proposed rulemaking.” It merely “anticipates, however, that there would be benefits.”

Yet, MSHA has not allowed the time needed to conduct this important analysis, particularly for the regulated group of 221,529 employees at 11,787 facilities cited by MSHA, especially when, as the Assistant Secretary of Labor concedes, “[t]he . . . environment changes continuously, and that environment must be constantly monitored.”

At best, it is not clear that the Proposed Rule, calling for a single examination at the beginning of work, will advance or deter the safety goals of the industry, of miners, and of the agency. Only by permitting the time for deliberation, discussion, and analysis, and by identifying and releasing all MSHA injury and enforcement data related to the current rule and MSHA’s analysis, can stakeholders conduct a rulemaking analysis and submit thoughtful, beneficial comments and testimony to address this and other difficult but critical issues.

The current schedule, permitting only three months for expert and industry analysis, written comments, multi-purpose hearings, and testimony, is simply inadequate. After the Proposed Rule’s June 7, 2016 announcement, it involves public hearings in a span of three weeks, prior to the submission of written comments. Those testifying will not have the benefit of

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addressing written comments in the record. Meanwhile, with written comments due just a few weeks later, on September 6, 2016, written comments will not be able to address testimony and discussion occurring at the public hearings.

The Proposed Rule changes nearly 40 years of the successful implementation of the current rule, as demonstrated by the steep decrease in MSHA recorded injury and fatality statistics. The new Proposed Rule can cause massive disruptions of practices and applications without adequately determining their impact on safety, operations, burdens, and costs. We urge MSHA to provide the requested time for analysis and meaningful comments and testimony.

Sincerely,

A handwritten signature in cursive script, appearing to read "Henry Chajet".

Henry Chajet
Counsel to the Mining Coalition