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Comment On: MSHA-2014-0030-0129

Examinations of Working Places in Metal and Nonmetal Mines

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Comment from Bradley Byrne, NA

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General Comment

See Attached

Attachments

MNM Exam Comment Final

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April 26, 2017

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Dear Ms. Silvey and Mr. Geale:

All miners deserve strong health and safety protections as outlined in the *Federal Mine Safety and Health Act*. Unfortunately, in promulgating "Examinations of Working Places in Metal and Nonmetal Mines,"¹ the Mine Safety and Health Administration (MSHA) finalized a rule that failed to meaningfully improve worker safety. The regulation changes the existing practice of on shift examination of working conditions to a preshift examination, among other requirements. On March 28, 2017, MSHA proposed a delay in the enforcement date of the rule and asked if the regulation could be improved with more compliance assistance materials or education. I write in support of a delay in the effective date of MSHA's regulation and to express concern that the regulation does not meet the purpose of improving safety and health in metal and nonmetal mines.

A delay and reexamination of this rule would be consistent with the goal of eliminating burdensome regulations as announced in President Trump's February 24, 2017, Executive Order (EO) 13777, "Enforcing the Regulatory Reform Agenda." The EO directed federal agencies to immediately identify and begin repealing, replacing, or modifying any regulations that eliminate jobs or inhibit job creation, are unnecessary or ineffective, or impose costs that exceed benefits. This regulation, which was finalized during the Obama administration but published on January

¹ 82 Fed. Reg. 7680 (Jan. 23, 2017).

Mr. Edward C. Hugler
March 17, 2017
Page 2

23, 2017, appears to be inconsistent with the President's EO. This rule should be delayed indefinitely in light of stakeholder concerns that the rule is duplicative and ineffective.

Stakeholders filed extensive comments for the record expressing concerns that appear to have been ignored by the agency. Many of these stakeholders, including the National Mining Association, the National Stone, Sand and Gravel Association, the Portland Cement Association, the American Iron and Steel Institute, the Georgia Mining Association, and the Georgia Construction Aggregate Association, subsequently commenced litigation against MSHA in the U.S. Court of Appeals for the Eleventh Circuit on March 16, 2017.

As chairman of the House subcommittee with jurisdiction of workplace safety, I am especially concerned by MSHA's statement in the final rule that even though it was "unable to quantify the benefits, the Agency has concluded that the final rule will have benefits."² However inexplicable this statement may be, it is not entirely surprising. During the comment process, stakeholders raised significant concerns that the regulation would fail to actually improve safety. One commenter noted, "It has the potential to impose additional burdens on employers that would be either duplicative or counterproductive of safety practices already in place in the sector."³ Another stakeholder concluded, "[W]e strongly encourage the agency to consider, as have many commenters, the potentially detrimental impact the rule will have on miner safety."⁴

Miners deserve thoughtful and carefully-considered safety initiatives, but this regulation fails to deliver appropriate reforms. I urge the Department of Labor to indefinitely delay this regulation, review its effectiveness, and ensure the agency can quantify the benefits of any regulatory actions taken in the future.

Sincerely,



Bradley Byrne
Chairman
Subcommittee on Workforce Protections

² *Id.* at 7689.

³ American Iron and Steel Inst., Comment on "Examinations of Working Places in Metal and Nonmetal Mines" (Sept. 30, 2017).

⁴ National Mining Ass'n, Comment on "Examinations of Working Places in Metal and Nonmetal Mines" (Sept. 30, 2017).