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**From:** Travis Deti <tdeti@wyomingminning.org>  
**Sent:** Wednesday, April 26, 2017 10:36 AM  
**To:** zzMSHA-Standards - Comments to Fed Reg Group  
**Subject:** WMA Comments  
**Attachments:** 170425 WMA Comments\_Delay in Implementation of MSHA Rule.pdf

To whom it may concern, attached please find comments of the Wyoming Mining Association on MSHA's Proposed Revisions Work Place Exam Proposed Rules. These have also been submitted at [www.regualtions.gov](http://www.regualtions.gov).

Thanks you for your kind attention.

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## WYOMING MINING ASSOCIATION

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April 25, 2017

Mine Safety and Health Administration  
Office of Standards, Regulations and Variances  
201 12th Street South  
Arlington, VA 22202

Submitted electronically via [www.regulations.gov](http://www.regulations.gov)

Re: Comments on the Proposed Revisions Work Place Exam Proposed Rules  
RIN 1219-AB87 or Docket No. MSHA-2014-0030

Dear Sir or Madam:

The Wyoming Mining Association (WMA) is a statewide trade organization that represents and advocates for 26 mining company members producing bentonite, coal, trona and uranium. WMA also represents 120 associate member companies, one railroad, one electricity co-op, and 200 individual members.

On January 23, 2017, the Mine Safety and Health Administration (MSHA) published a final rule in the Federal Register amending the Agency's standards for the examination of working places in metal and nonmetal mines. The effective date of this final rule is May 23, 2017. In the March 27, 2017 Federal Register (FR), MSHA published a proposed rule to delay the effective date of the final rule on Examinations of Working Places in Metal and Nonmetal Mines. The summary included in the FR notice states that the delay in effective date is proposed to assure that mine operators and miners affected by the examinations final rule have the training and compliance assistance they need prior to the rule's effective date. This proposed rule would delay the effective date of the final rule to July 24, 2017.

The Supplemental Information portion of the FR notice goes on to state that "On January 20, 2017, the Chief of Staff of the White House released a memorandum titled "Regulatory Freeze Pending Review" to "ensure that the President's appointees or designees have the opportunity to review any new or pending regulations . . ." 82 FR 8346, January 24, 2017. Among other things, the memorandum directed the heads of executive departments and agencies to consider temporarily postponing the effective dates of all regulations that had been published in the Federal Register but had not yet taken effect."

The March 27, 2017 FR notice states that MSHA is soliciting comments on the limited issue of whether to extend the effective date to July 24, 2017, and whether this extension offers an appropriate length of time for MSHA to provide stakeholders training and compliance assistance.

[www.wyomingmining.org](http://www.wyomingmining.org)

WMA appreciates the opportunity to submit comments on the proposed delay in the effective date in this rule. The Wyoming Mining Association submitted comments on the proposed rule on Work Place Exams for Metal Non-metal mines published on June 8, 2016 and those comments raised several concerns with the proposed rule. The final rule published on January 23, 2017 does not address all those concerns. Thus, a delay in effective date is reasonable to allow MSHA time to develop training and implement compliance assistance programs to address those remaining implement-ability concerns, and WMA supports a delay in the effective date of the regulation.

However, MSHA's proposal to extend the effective date until July 24, 2017 does not adequately address the other equally important reason for delay as described in the March 27, 2017 FR notice – compliance with the intent of the White House's memorandum titled "Regulatory Freeze Pending Review." This intent was to "ensure that the President's appointees or designees have the opportunity to review any new or pending regulations." With no appointees of the new administration in place in the Department of Labor or the Mining Safety and Health Administration in place at this time – nor expected to be in place before July 24, 2017, it is unclear how a delay until July 24, 2017 is adequate. Even if appointees were in place before that time, it is equally unclear that they would have time to review this new and pending regulation.

Thus, a delay of the effective date is supported, but a delay beyond July 24, 2017 is required to provide opportunity for new appointees to become familiar with and conduct adequate review to comply with the intent of the Regulatory Freeze Pending Review memorandum. We support a full year delay in effective date – until May 23, 2018 – for the MNM Work Place Exam rules published on January 23, 2017.

It is noteworthy that in the MSHA Quarterly Stakeholders Training Conference Call conducted on April 24, 2017, MSHA reviewed recent accidents at both coal mines and MNM mines. Investigation of the cause of those incidents did not implicate deficiencies in a work place exam program, rather MSHA identified the common 'comedy of errors' to involve miner working alone. One of the elements of the MNM Work Place Exam rules published on January 23, 2017 requires miners to conduct work place examinations prior to miners working in the area (versus the current requirement that work place examinations be conducted during the shift) and thus increases the frequency with which miners are working alone. MSHA's response that conducting a required examination does not constitute work should be further evaluated in the review of the rule and incorporated into compliance assistance training materials to be developed.

Thank you for your kind attention to these comments.

Best regards,



Travis Deti  
Executive Director