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Examinations of Working Places in Metal and Nonmetal Mines, Extension of comment period; close of record.

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General Comment

Attached please find the comments of the American Iron and Steel Institute (AISI) on MSHA's proposed examination rule for metal and nonmetal mines.

Attachments

MSHA Exam Rule Proposal - AISI Proposed Rule Comments - FINAL

AB87-COMM-64

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U.S. Department of Labor
Mine Safety and Health Administration (MSHA)
Office of Standards, Regulations, and Variances
201 12th Street South, Suite 4E401
Arlington, VA 22202-5452

Re: Comments on “Examinations of Working Places in Metal and Nonmetal Mines; Proposed Rule; 30 CFR Parts 56 and 57; 81 Fed. Reg. 36818 (June 8, 2016)”

Ladies and Gentlemen:

The American Iron and Steel Institute (AISI) is pleased to submit comments on the proposed MSHA rule for “Examinations of Working Places in Metal and Nonmetal Mines.”¹ AISI serves as the voice of the North American steel industry in the public policy arena and advances the case for steel in the marketplace as the preferred material of choice. AISI is comprised of 19 member companies, including integrated and electric furnace steelmakers, and approximately 124 associate members who are suppliers to or customers of the steel industry.

The U.S. steel industry operates more than 100 steelmaking and production facilities, producing 98 million tons in steel shipments valued at \$75 billion in 2014. Steel production facilities directly employ about 142,000 people in the United States, and they directly or indirectly support almost one million U.S. jobs.

An integral part of the AISI membership are the three companies who mine iron ore in the United States – ArcelorMittal, Cliffs Natural Resources, and U.S. Steel. AISI’s member companies maintain the eight large active iron ore mining and processing facilities in the United States located in Northeast Minnesota and Michigan’s Upper Peninsula. In aggregate, these facilities directly employ nearly 5,000 workers when at full production and play an outsized role in supporting the regional economies of those areas. Iron ore is a critical raw material needed for the production of steel. These

¹ 81 Fed. Reg. 36818 (June 8, 2016)

facilities provide the bulk of the iron ore consumed by the U.S. integrated steel industry. The United States is a net exporter of iron ore.

While AISI and its member companies share the intent of MSHA with this proposed rule to maximize safety at metal and non-metal mines, the agency should reevaluate the proposal to ensure that its negative impact on the domestic industry is mitigated. Accordingly, we offer the following comments summarized and detailed below.

SUMMARY

- The domestic steel industry is currently in the midst of an unprecedented crisis regarding steel imports.
- The industry shares MSHA's commitment to ensuring safe workplaces at its mining operations.
- AISI member companies have a number of concerns and questions about the proposed rule. In particular,
 - Full compliance with the proposed rule will require substantially more commitment than the additional five minutes forecast in the proposal.
 - The proposed rule will have a negative effect on hourly employees.
 - Several terms used in the proposed rule require more detailed explanation.
- MSHA should reassess existing workplace examination practices currently in place within the iron ore mining sector before moving forward with this proposed rule.

The Domestic Steel Industry is Presently Combating an Ongoing Steel Import Crisis.

Due to the surge in dumped and subsidized steel from China and many other countries, finished steel imports took a record 29 percent of the U.S. market in 2015. Domestic steel shipments declined by over 12 percent, and capacity utilization averaged just 70 percent for the year. American steel producers have been forced to lay off nearly 16,000 workers since January 2015. Though import market share year-to-date is 25 percent and year-to-date capacity utilization has risen slightly to 72.1 percent through September 24, the fundamental challenges to the industry remain.

Foreign government subsidies and other market-distorting policies have fueled the massive global overcapacity in steel that is fueling the steel import crisis. Global excess capacity is estimated by the OECD to be about 700 million metric tons today. More than half of that - 425 million metric tons - is located in China. China represents half of all global steel production, and the Chinese steel industry is overwhelmingly government-owned, controlled and subsidized.

The U.S. iron ore industry has been particularly hard-hit by the steel import crisis and companies were forced to idle facilities and lay-off nearly 2,000 workers in 2015 alone. While industry conditions have stabilized and nearly 1,000 miners have been called back to work in recent months, market conditions remain very challenging for both the iron ore sector and the steel industry.

The Domestic Steel Industry Shares MSHA's Commitment to Workplace Safety and Health.

AISI member companies have made substantial efforts to decrease the number and frequency of workplace incidents and continue to work through AISI to share information and best practices to meet their shared goal of improving occupational safety and health. Our experience has demonstrated that cooperative efforts among company management, employees, and government can help maximize safety and health.

The North American steel industry is committed to the highest safety and health standards. Since 2005, U.S. steel producers have achieved a reduction of 50 percent in both the total OSHA recordable injury and illness and lost workday case rates. All of our member companies - whether they are regulated by OSHA or MSHA - are committed to making continuous improvements so that our employees return home safely each day.

After Reviewing the Proposed Rule, AISI Members Have a Number of Concerns and Questions.

The proposed rule from MSHA on examinations of working places in metal and nonmetal mines would have a substantial impact on the operations of iron ore mining operations. 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. It underestimates the time and resources required for compliance at iron ore mines. And the comparable benefits may outweigh these costs, especially given that the proposal may undercut the commitment of the industry to make safety and shared goal for all employees. Beyond that, several key aspects of the proposed rule are unclear and may hinder its efficacy.

Of particular note is the concern from our member companies that full compliance with the proposed rule will require substantially more commitment than the additional five minutes forecast in the proposal.² Iron ore mines are vast operations with footprints encompassing tens of square miles. The size of iron more mine operations in the United States range from twelve to over fifty square miles, consisting

² 81 Fed. Reg. at 36823.

of multiple buildings and varied operations. These mine sites include multiple employees and jobs operating simultaneously. For instance, an average-sized building at one of our member company mine operations has over 150 thousand square feet and five floors. Compliance with all of the various diverse requirements across a broad mine operation will certainly be challenging and require more than the limited time MSHA foresees. The agency should reevaluate this estimate.

The industry also is concerned about the impact of the proposed rule on the hourly employees. Our member companies believe that all employees, from management down to the shop floor, must share in a commitment to safety at every moment of the work period. Identifying only one or a few employees (such as a supervisor or foreman) to have the responsibility for safety, as this proposal appears to do in mandating that a “competent person” have responsibility for each examination record, will counteract the shared commitment to safety that all of our employees consistently must have.³ At iron mining and other large operations, all personnel authorized to work on a mine site must be seen as competent to perform examination of working places. We do not believe that additional training is necessary for a person to act as a competent person, as miners already receive 24-hour new miner training and 8-hour annual refresher training that is focused on recognition of mining conditions and hazards. Specific training that is deemed necessary to qualify someone as competent to perform examination of working places should and can be accommodated within the already-required MSHA training.⁴

Furthermore, the provisions in the proposal to include adverse conditions and corrective actions on the examination records raise the concern that MSHA will cite operators for violations it finds in records even if operators are in the process of abating, or have already abated those conditions.⁵ It is unclear what MSHA foresees as a remedy if the corrective action the operator has chosen is not what the inspector proposes. In addition, will the final rule include a safe-harbor provision so that MSHA does not issue citations based on what is found in facility records?

Another concern raised in the proposal relates to the interaction between mines and contractors on site. Companies typically address workplace examination requirements at annual contractor meetings and the workplace exam requirement may be included on a contractor’s work authorization form or similar form. We agree that contractors should be responsible for inspecting their active work areas, but disagree that the production mine operator should be held dually liable if a contractor fails to properly inspect or document hazards in work areas that it controls. Mining operations

³ *Id.* at 36819.

⁴ 30 CFR 48.25, 27, & 28.

⁵ *Id.* at 36821.

utilize dozens of contractors. The sheer volume of contractors makes it infeasible for mine staff to review each contractor's work area examination reports each shift and verify whether all hazards were recorded and all corrections documented. The recent Federal Mine Safety and Health Review Commission (FMSHRC) ruling in *Sunbelt Rentals* (July 2016) makes unwarranted, redundant citations a legitimate concern if the documentation requirements are expanded.⁶

Finally, there are also several additional terms used in the proposed rule that we believe require more detailed explanation. In particular, it is unclear whether a "travelway" at a mine operation is considered a "working place" in the regulation.⁷ Additionally, under the rule, it is unclear if MSHA intends "competent persons" to be considered "agents of the operator".⁸ Providing clarity to these and other terms in the final rule are critical to insure compliance ability and the rule's eventual success. In the final version of this proposed rule, MSHA should provide clarifying definitional language to existing definitions currently used in agency policy guidance so that regulated employers can best comply with minimal confusion.

MSHA Should Reassess Existing Workplace Examination Practices Currently in Place Before Moving Forward with this Proposed Rule.

AISI and its member companies urge MSHA to reevaluate existing workplace examination practices currently in place within the iron ore mining sector before imposing additional new requirements like the ones proposed in this rule. In addition, the agency should ensure that the benefits of the proposal equal or exceed the expected compliance costs to employers. Furthermore, we request that MSHA further define and provide clarity to several of the key terminologies used in the proposed rule, as detailed above.

AISI and its members truly stand at a crossroads for our industry in the U.S. moving forward. We face a surge of foreign imports - often from areas of the world where mining and steel production are heavily subsidized and undertaken with little or no commitment to workplace safety and health. Nowhere in our industry have these challenges been more acutely felt than in the iron ore production sector.

As MSHA moves forward on a number of the key questions raised in these comments on the proposed examination regulation, AISI and its member companies ask that you recognize the challenges we currently face. The specific details of this proposal have great potential to affect our sector's international competitiveness.

⁶ *Secretary of Labor v. Sunbelt Rentals, Inc.; LVR, Inc.; and Roanoke Cement Co., LLC*; Federal Mine Safety and Health Review Commission; July 12, 2016

⁷ *Id.* at 36821.

⁸ *Id.* at 36819.

We appreciate the opportunity to offer our comments and look forward to working with the agency to address the remaining issues. If MSHA staff has any questions or comments, please contact me at bsmith@steel.org or (202) 452-7214.

Sincerely,

Brett S. Smith

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