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To: zzMSHA-Standards - Comments to Fed Reg Group
Subject: Comments, RIN 1219-AB87; Docket No. MSHA 2014-0030
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To Whom it May Concern:

Attached please find Comments with respect to RIN 1219-AB87; Docket No. MSHA-2014-0030, filed on behalf of National Mining Association, National Stone, Sand & Gravel Association, Portland Cement Association, American Iron and Steel Institute, Georgia Mining Association and Georgia Mineral Aggregate Association.

Thank you,

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Via E-mail

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**Re: RIN 1219-AB87
Docket No. MSHA-2014-0030**

To Whom it May Concern:

On January 23, 2017, the Mine Safety and Health Administration ("MSHA") published a Final Rule entitled "Examinations of Working Places in Metal and Nonmetal Mines." 82 Fed. Reg. 7680 (hereinafter "Final Rule"). A coalition of six associations – National Mining Association, National Stone, Sand & Gravel Association, Portland Cement Association, American Iron and Steel Institute, Georgia Mining Association and Georgia Construction Aggregate Association (hereinafter "Petitioners") filed a Petition for Review of the Final Rule in the United States Court of Appeals for the Eleventh Circuit on March 17, 2017. That case is docketed at Case No. 17-11207. Briefing is complete and oral argument is currently scheduled for the week of December 11, 2017.

Petitioners now submit these comments in response to MSHA's most recent proposed extension of the effective date of the Final Rule from October 2, 2017 to March 2, 2018, as set forth in 82 Fed. Reg. 42765 (Sept. 12, 2017). While an extension of the Final Rule's effective date beyond October 2, 2017 is necessary and appropriate, Petitioners believe that the regulated community and the Agency itself would be best served by an indefinite suspension of the effective date until the Final Rule's substantive terms are finalized. That is unlikely to happen during the five month period of delay that is proposed.

There is currently uncertainty as to the substance of the Final Rule for two reasons: (1) Concurrent with its proposed extension of the effective date, MSHA also proposed substantive amendments to certain provisions of the Final Rule; and (2) The litigation in the Eleventh Circuit remains pending.

With respect to the former, on the same day as it published the proposed extension of the effective date, MSHA also proposed substantive amendments to two of the Final Rule's provisions. 82 Fed. Reg. 42757 (Sept. 12, 2017) (hereinafter "Proposed Amendments"). MSHA indicated that it is considering changes to the Final Rule to address:

- When workplace examinations must begin; and
- The adverse conditions and related corrective actions that must be included in the examination record.

82 Fed. Reg. at 42758. MSHA averred that the Proposed Amendments "would provide mine operators additional flexibility in managing their safety and health programs and reduce regulatory burdens without reducing the protections afforded miners." 82 Fed. Reg. at 42757. MSHA established a deadline of November 13, 2017 for comments on the Proposed Amendments. It also scheduled four public hearings: October 24, 2017 in Arlington, VA, October 26, 2017 in Salt Lake City, UT, October 31, 2017 in Birmingham, AL and November 2, 2017 in Pittsburgh, PA. 82 Fed. Reg. at 42758. It is anticipated that MSHA will subsequently promulgate an amended Final Rule following the feedback it receives in response to the Proposed Amendments.

In light of the foregoing, the substance of the Final Rule's provisions is currently uncertain and it is unknown when it will be finalized. Accordingly, while it is necessary to postpone the Final Rule's effective date beyond October 2, 2017, it is imprudent to establish any effective date until the amended Final Rule is promulgated and the substance of the rule is known.

This is particularly so given MSHA's stated reasons for proposing the delay of the effective date. MSHA stated that it intends to provide the industry with compliance assistance prior to the effective date, including holding informational meetings, distributing compliance assistance material to operators, conducting compliance assistance visits to mine sites, providing specific training to inspectors on the Final Rule and making the inspector training materials available to the mining community. 82 Fed. Reg. at 42765. It would, of course, be necessary for the exact terms of the Final Rule to be known for these compliance assistance measures to have any meaning. In light of the uncertainty of when the Final Rule's substantive terms will be known, the compliance assistance measures cannot yet be scheduled. Accordingly, an appropriate effective date cannot be established.

Moreover, any effective date must also consider that following the period of compliance assistance from MSHA, operators will be required to develop appropriate compliance programs to comply with the Final Rule. Operators will

then need to provide the necessary training to their workforces to ensure that those conducting examinations are doing so in accordance with the Rule's requirements. Again, for any of this to take place, the terms of the rule must be known.

For these reasons, the current effective date of October 2, 2017 should be delayed, and the effective date of the Final Rule should be indefinitely suspended. An effective date should only be established once the substantive terms of the Final Rule are finalized, and not before the amended Final Rule is promulgated and the litigation in the Eleventh Circuit is resolved.

Please let us know if we may be of further assistance. Thank you for your courtesy and attention to this matter.

Very truly yours,



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