

PUBLIC SUBMISSION

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Examinations of Working Places in Metal and Nonmetal Mines. 30 CFR Parts 56 and 57

Comment On: MSHA-2014-0030-0179

Examinations of Working Places in Metal and Nonmetal Mines - Proposed rule, limited reopening of the rulemaking record; notice of public hearings; close of comment period.

Document: MSHA-2014-0030-0223

Comment from Garry Clark, International Brotherhood of Boilermakers, et. al.

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General Comment

I am a miner, and my employer ordered me and my co-workers to submit workplace exams reports with notice that anyone not completing the ordered action could be terminated from employment with the threat abridging our 4th Amendment Rights to be "... secure in our persons, houses, papers, and effects from unreasonable... seizure without Warrant... probable cause...." The abridgment resides in the government knowing that me and my co-workers needing employment to maintain the specified protected property. This conduct by government incorporated MSHA SLAM and workplace exams with MSHA and my employer names and logos appearing on the SLAM workplace exam booklet released to me and my co-workers. This action is in violation of Executive Order 12630.

Worse, me and my co-workers lost our rights to report violations anonymously, and the Final Rule fails to provide protections for miners that the government and employer intend to "target." Yes, when my employer issued order, mine management declared that MSHA placed a "target" on their back with management proudly declaring that "target" is on me and my co-workers. I filed discrimination complaint, and MSHA interviewed me at the location where a

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wife of the senior member of management labors. Two "investigators" from MSHA residing in Duluth, MN arrived in Greencastle, Indiana and just happen to select the facility where the Plant Manager's wife works as an interview location.

While reading the Final Rule, MSHA told me through my employer that I must report "... conditions which may affect safety and health." The Final Rule stipulates that the operator must take "appropriate action" and "promptly initiate" that action. This vague language makes it even more difficult for miners to reason intent of the Final Rule given that miners are not lawyers. For each instance that one may reason a condition 'may affect safety and health', one may reason such condition may not affect safety and health. Prompt may be five seconds, five hours, five days, five years, five decades or five centuries dependent on context and one's relative perspective. Finally, appropriate act may be complete withdraw from the mine or posting notice of hazard with miners unable to direct management with fear of retaliation. This performance violates Executive Order 12988.

Furthermore, the facility employing me operates 24/7 with portions of the mine not used during late afternoon, evening, and nights with the Final Rule directing me and my co-workers to inspect those areas too even though there is no miner working in those areas which means that no miner could have one's safety and health risked excepting for the one having to conduct the safety and health workplace exam. This is an unnecessary risk!

If the goal is truly protecting miners, it would seem that the regulation would make it a criminal offense for any operator to compulsory require any miner to perform a workplace exam subject to significant imprisonment. It would seem that MSHA would define the ambiguous language such as promptly meaning 2.2 seconds. It would seem that MSHA would alter the "may" language to reading which results in safety and health condition.

In the past, MSHA has conducted war against the mining industry, and the mining industry has conducted war against MSHA. We miners are in a lose lose situation when we are forced to enter that war while having to conduct the labors of both MSHA and the operator. We would be grateful if those within government and the operators exclude us from their war.

In the mean time, we miners wait patiently to be fired so that we can file 18 USC 241, 18 USC 242, 42 USC 1985, and 42 USC 1983 actions naming all involved in this abridgment of our Constitutional Rights.