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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.

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Comment from Michael Wright, United Steelworkers

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General Comment

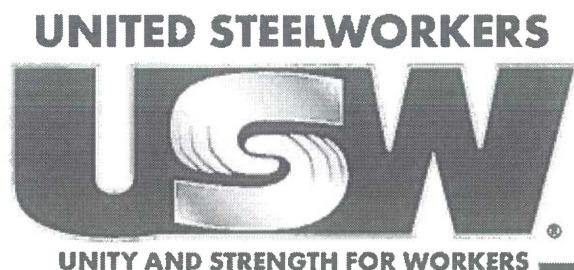
Attached are the comments of the United Steelworkers on proposed revisions to the MSHA Examination Rule for Metal and Nonmetal Mines.

Attachments

MSHAExamRuleUSWComments11-13-17

AB87-COMM-176

11/13/2017



**Comments of the
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and
Service Workers International Union (USW)
on Examinations of Working Places in Metal and Nonmetal Mines
Proposed Revisions
Docket No. MSHA-2014-0030**

November 13, 2017

On September 12, 2017, the U.S. Mine Safety and Health Administration proposed two revisions to the January 2017 rule on Examinations of Working Places in Metal and Nonmetal Mines. The USW represents the majority of unionized metal and nonmetal miners in the United States. These revisions will diminish the protection afforded our members and all other metal and nonmetal miners by the January 2017 rule, and are therefore illegal under Section 101(a)(9) of the Federal Mine Safety and Health Act of 1977.

Rules for workplace examinations in mines have been on the books since 1969, first as Bureau of Mines advisory standards; then, in 1979, as MSHA mandatory standards. The changes wrought by the MSHA regulation of January 2017 were few, simple, and easy to comply with – but they will save miners' lives. Examinations have to be conducted before a shift, instead of during the shift. Examinations have to document the hazards found, and the corrective actions taken. Miners have to be notified of hazardous conditions. And the records have to be made available to MSHA and to miners' representatives.

MSHA now proposes to step backward in two of these areas. The first concerns when examinations have to be conducted. MSHA proposes to allow examinations to be conducted as miners begin work in a potentially hazardous area, instead of before they begin work. This is clearly less protective.

MSHA justifies this change as more protective than the "existing" rule only by claiming, without justification, that the January rule does not exist. Yet it was duly

promulgated, based on sufficient evidence in the rulemaking record. It is true that MSHA has three times delayed the rule's effective date, but that does not negate the existence of the rule.

The second proposed change concerns what conditions have to be documented. Under the existing (January 2017) rule all adverse conditions have to be documented. Under the proposed revision, the competent person conducting the examination need not document conditions that are corrected "promptly."

As MSHA itself states in the preamble to the September proposal, the January final rule was based on the fact that "recording all adverse conditions, even though they are corrected immediately, would be useful in identifying trends and areas that could benefit from an increased safety emphasis." (FR Vol 82, No 175, p. 42759) They attempt to justify the change by claiming, without any evidence, that mine operators will be more willing to correct hazardous conditions if they do not have to record them. But mine operators have plenty of reasons to correct adverse conditions, beginning with a respect for human life, and if that is not enough, the threat of MSHA enforcement.

Additionally, the need to record even those adverse conditions that are corrected promptly could induce mine operators to investigate the underlying causes of those conditions, and take steps to prevent their recurrence. It is difficult to see how a mine safety and health program based on finding and fixing hazardous conditions could benefit from less information.

We urge MSHA to reject these changes to the existing January 2017 rule, along with all future delays in its enforcement.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael J. Wright", with a long horizontal stroke extending to the right.

Michael J Wright
Director of Health, Safety and Environment