

# PUBLIC SUBMISSION

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**Docket:** MSHA-2014-0030

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-DRAFT-0253

Comment from Henry Chajet, Mining Coalition

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## Submitter Information

**Name:** Henry Chajet

**Organization:** Mining Coalition

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## General Comment

Attached please find the Mining Coalition's Post-Hearing Comments on the Examination of Working Places in Metal and Non-Metal Mines Rule.

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## Attachments

Mining Coalition Post-Hearing Comments on Examination of Working Places

AB87-COMM-183

# HUSCH BLACKWELL

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November 13, 2017

Ms. Sheila McConnell  
MSHA, Office of Standards Regulations and  
Variances  
201 12th Street South  
Suite 4E401  
Arlington, VA 22202-5452

Re: RIN 1219-AB87  
Docket No. MSHA-2014-0030  
Examination of Working Places in Metal and Nonmetal Mines

Dear Ms. McConnell:

The Mining Coalition is an informal group of metal and nonmetal production, service and equipment companies, subject to MSHA jurisdiction, which support continuing safety improvements and sound regulations. On behalf of the Coalition, the undersigned counsel participated in this rulemaking since its inception.

We hereby incorporate by reference our prior comments (dated July 12, 2016 and September 30, 2016) and public hearing testimony, including the information and data requests set forth in our July 12, 2016 prior post-hearing comments. We again request that MSHA provide the requested information and data related to this rulemaking for full consideration and comment on the record.

The Coalition opposed the original rulemaking and resulting January 23, 2017 Rule (82 Fed. Reg. 7695) because changes to forty years of successful regulation and mining procedure were not justified, will cause confusion, and will end the successful implementation, flexibility and safety benefits of the long-standing workplace examination rule at 30 C.F.R. § 56/57.18002.

We remain deeply concerned that this rulemaking, even with the recent proposed MSHA revisions to the 2017 rule, will decrease safety, impose significant costs, introduce compliance and operations confusion, and vastly expand unneeded paperwork. We urge MSHA to permanently reinstate the original and successful workplace exam regulation, which has been used successfully since 1979 for millions of inspections.

We endorse MSHA's delay of its January 23, 2017 rule amendments and the reopening of the rulemaking record to consider proposed 2017 rule changes. But, we urge MSHA to go further. The Mine Act and the White House's January 20, 2017 Memorandum for the Heads of Executive Departments and Agencies require MSHA to re-examine the entire rulemaking to date, to withdraw the January 23, 2017 rule, and to reinstate the original 56/57.18002 rule.

MSHA rushed this rulemaking, which was not published in the Federal Register until January 23, 2017, **after** the White House's January 20, 2017, Memorandum that ordered a regulatory freeze. The President had ordered MSHA and other agencies to:

“send no regulation to the office of Federal Register . . . until a department or agency head appointed or designated by the president . . . reviews and approves . . .”

Moreover, for “regulations that have been sent to the OFR but not published in the Federal Register,” the Memorandum required agencies to “immediately withdraw” such regulations “for review and approval.”

The President's Order prohibited the MSHA January 23, 2017 rule, renders it unauthorized, void, and unenforceable, and requires the reinstatement of the prior successful rule.

It does not appear from the rulemaking record that any interested party suggested this rulemaking, and it is clear that the overwhelming number of commenters and witnesses opposed the proposed rule, often stating, “if it's not broke, don't fix it,” while describing the vast problems, confusion, and costs that the MSHA changes will cause.

Indeed, there is widespread industry recognition of the fact that workplace examinations are a key component of any workplace safety program but that the new rule, even with the proposed changes, could render those examinations less valuable. Restricting examination flexibility, expanding record keeping, and increasing risks of individual fines creates the wrong incentives and will render workplace exams less, rather than more, robust and effective.

The new Rule diverts resources from finding and fixing hazards to focusing on extensive new paperwork. It threatens to divert miners' attention by requiring overbroad notification of hazards, even minor ones. In addition, the Rule risks creating “alarm fatigue,” whereby too many warnings become background noise and no one really hears them.

It also risks creating unnecessary suspicion, enforcement, and friction between inspectors and miners who feel that they are the targets in an unfair cat-and-mouse game over whether every record and inspection was properly documented. Finally, the rule contains multiple ambiguous terms, including “as miners begin work.” The rule's vagueness is an invitation for inspectors to exercise wildly varying discretion with differing interpretations.

In support of the new MSHA rule, there is only speculation that it can improve safety (MSHA

“believes” so). Agency speculation cannot justify rule changes and the imposition of new duties, with vague language that expands individual employee penalty risks, while reducing operator flexibility and employee safety participation. The 2017 MSHA rule amendments violate President Trump’s freeze order, the Administrative Procedures Act and the Mine Act, are counterproductive to safety, and should be withdrawn, concurrent with the reinstatement of the successful prior rule.

We note that MSHA’s postponement of the rule was based, in part, on its expressed desire to consult with stakeholders. We respectfully suggest that upon withdrawal of the new rule and reinstatement of the original rule, MSHA can and should engage in meaningful dialogue with all stakeholders to determine if changes are needed and would be beneficial.

Sincerely,

A handwritten signature in blue ink, appearing to read "Henry Chajet", is written over a light gray rectangular background.

Henry Chajet  
Erik Dullea  
Brian Hendrix  
Robert Horn  
Avi Meyerstein  
Donna Pryor  
Mark Savit

*On behalf of the Mining Coalition*