

# United Mine Workers of America

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September 11, 2008

Richard E. Stickler  
Acting Assistant Secretary of Labor  
for Mine Safety and Health  
U.S. Department of Labor  
1100 Wilson Blvd., 21<sup>st</sup> Floor  
Arlington, VA 22209-3939

Dear Mr. Stickler:

The United Mine Workers of America writes concerning the above-referenced proposed rule. It was published in the Federal Register on September 8, 2008 (*73 Federal Register 52136-52163: Alcohol- and Drug-Free Mines: Policy, Prohibitions, Testing, Training, and Assistance; Proposed Rule*). We urge the Proposed Rule be withdrawn; in the alternative we seek an expansion of the comment period.

This proposal would require employers to establish alcohol-free and drug-free programs that include education, testing, and referrals for those who would violate any such policy. However, MSHA has not determined there is a significant problem with improper drug and alcohol use in the coal mining industry and acknowledges in the preamble (at 52139) that four out of five miners report their employers already use pre-employment screening tests, while seventy-five percent of miners report their employers subject them to random testing; MSHA further indicates these practices are more than twice the all-industry average. The Agency also knows that at least two of the key coal mining states (Kentucky, and Virginia) already have their own drug and alcohol testing protocols established. MSHA's expressed rationale for advancing a rule on drug-testing seems to be driven more by DOL's overall-policy objectives, rather than any real need in the coal mining industry.

Moreover, proceeding with this Proposed Rule will divert valuable Agency resources from other, much more essential, rulemakings that would address health and safety issues for which the need is both demonstrated and urgent. Thus, while the Union certainly does not condone drug or alcohol use that impairs a miner at work, we contend the Agency's effort to implement a Final

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Rule on alcohol and drug use would constitute a grave waste of precious MSHA-employee time, and taxpayer money. Our membership - and all coal miners – simply cannot afford this distraction when, for example, black lung continues to ravage the health of coal miners, including young miners just now entering the industry. For years we have been seeking rules that would protect miners from the health hazards associated with respirable dust and crystalline silica, as well as requesting MSHA to update the outdated air quality chemical substance and respiratory protection standards. Rules on these issues would do far more to protect workers, and effort spent on them would constitute a better use of your limited Agency dollars and manpower resources. For these reason, we therefore urge you to immediately withdraw this Proposed Rule.

We also object to the short time allotted for commenting on this Proposed Rule, and seek an extension of the comment period, if it is not simply withdrawn and rescinded. For example, the proposed emergency evacuation rule that was published after the multi-fatal disasters of 2006 provided a comment period of 112 days. Other proposed MSHA rules and policies generally provide *at least* twice the time allowed here and those proposed rules are often extended by request. There is no compelling reason why this proposal must be rushed through on this substantially shorter calendar. We simply will not be able to prepare and submit all of our substantive comments in the short time allotted. Moreover, just a week before this Proposed Rule was published, DOL also proposed a significant revamping of how all health-related rules would be effectuated in the future, for which the comment period is simultaneously running - and also on an expedited calendar. If MSHA is truly interested in learning what its stakeholders think about these issues it would allow more time for the preparation and submission of comments.

We urge you to rescind this proposal. If you refuse to do that, then we at least seek an extension of time in the amount of an additional 60 days for commenting. I thank you for your attention to this important issue and await your response.

Sincerely,



Dennis O'Dell  
Administrator of Occupational Health and Safety  
United Mine Workers of America

cc: Elaine L. Chao, U.S. Secretary of Labor  
Edward M. Kennedy, U.S. Senator  
George Miller, U.S. Representative  
Robert C. Byrd, U.S. Senator  
John D. Rockefeller, U.S. Senator  
Patty Murray, U. S. Senator  
UMWA International President Cecil E. Roberts  
UMWA International Secretary-Treasurer Daniel J. Kane  
AFL-CIO Safety and Health Director Peg Seminario