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September 30, 2016

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:

As counsel to the Mining Coalition ("Mining Coalition"), we appreciate this opportunity to submit the Coalition's comments on MSHA's Proposed Rule, Examinations of Working Places in Metal and Non-Metal Mines, 81 Fed. Reg. 36818 (June 8, 2016), as well as MSHA's subsequent clarification of selected proposed revisions, 81 Fed. Reg. 58422 (August 25, 2016). The following comments expand upon the testimony offered by the Mining Coalition at each of the four public hearings on the Proposed Rule held by MSHA in July and August. We have also attached a document for inclusion in the rulemaking record.

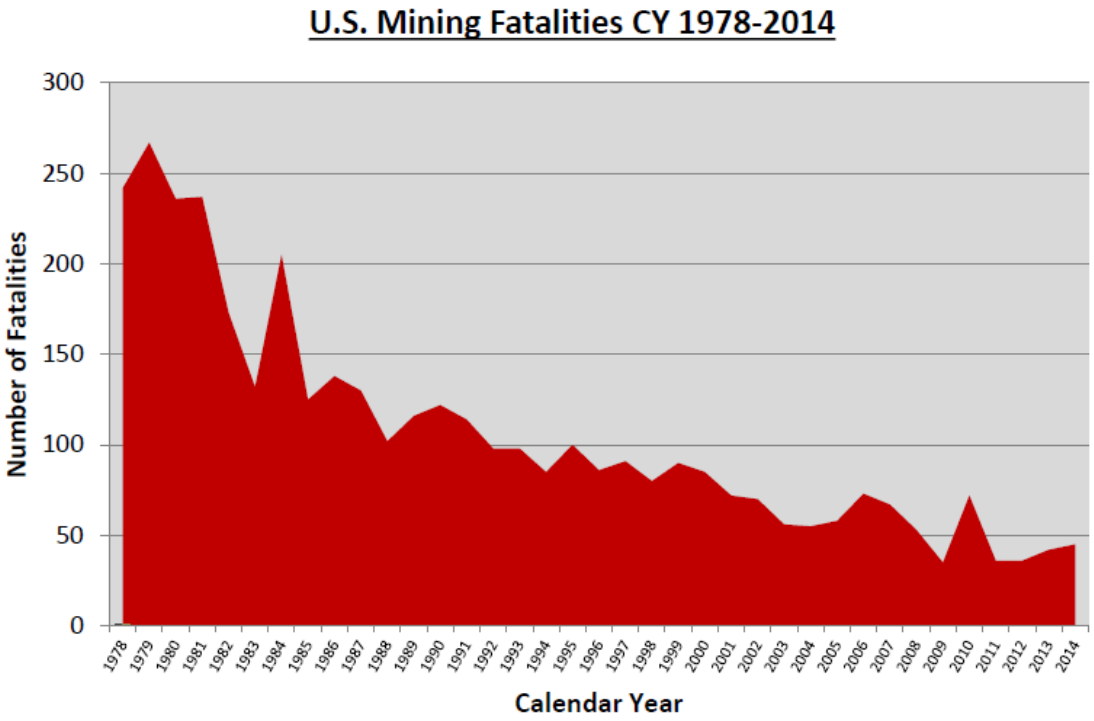
THE MINING COALITION COMMITMENT TO CONTINUOUS SAFETY IMPROVEMENTS

The Mining Coalition is a group of MSHA-regulated companies operate mines, quarries and processing and milling facilities. These companies employ thousands of people working in and with a wide range of different conditions, practices, processes and methods.

The Coalition and MSHA both share a common purpose, to protect and improve the safety and health of our Nation's miners. We welcome efforts to improve the effectiveness of MSHA's standards. However, the Coalition maintains that MSHA's existing Workplace Examination Rule provides the flexibility needed to address the extensive differences in the mines and facilities that must comply with the current rule. Miners work in very dynamic environments,

and conditions often change during and across shifts. MSHA promulgated the current rule to account for those differences and the ever-changing nature of the mining workplace.

Our mines are safer now than they have ever been. The trends in mine safety and health are positive and long-running, showing that what the industry is doing is working. MSHA's July 20, 2015 graph shows the steep decline in fatal accidents under the current rule:



Of course, we have not achieved our ultimate goal—zero injuries and illnesses—and we have many opportunities for further improvement. Workplace examinations are an important element of every effective safety and health program. It may be that MSHA can improve the effectiveness of workplace examinations by revising the current rule, but the question here is whether the Proposed Rule as written will actually improve or have a positive impact on the safety and health of miners.

MSHA has proposed changes to the current rule based almost solely on its naked belief that those changes will improve the effectiveness of the current rule. It has not offered any real evidence to support this claim in any way or to show that the changes to the current rule will be beneficial. MSHA has not shared, and we are not aware of, any data to support MSHA's belief. This is a Proposed Rule based on nothing more than assumptions, suppositions and beliefs that are wholly unsupported by the wealth of empirical data that's readily available to MSHA, data that MSHA could easily use to identify, explain and support revisions to improve effectiveness of the current Workplace Examination Rule.

MSHA'S RUSHED RULEMAKING PROCESS

From the outset, the Mining Coalition has expressed its concerns about MSHA's accelerated rulemaking schedule. MSHA is obviously rushing to change this long-standing, well-established and important rule, but it hasn't offered any explanation as to why it decided such haste is necessary or proper. MSHA does not appear to have spent the time necessary to propose a rule supported or explained by anything more than its beliefs, and it compounded that error by refusing to provide the public with the time necessary to thoroughly evaluate and comment on the Proposed Rule. Additionally, MSHA decided to combine two complex issues—Workplace Examinations and Diesel Particulate Matter—and invite comments on both at the same public hearings.

This compressed schedule and the combination of two complex subjects severely curbed the public's opportunity to carefully review and comment on the Proposed Rule. It denied regulated parties their statutory rights to thoroughly evaluate and provide input on the Proposed Rule. That is why the Mining Coalition asked MSHA to extend the comment period for the Proposed Rule and the Diesel Particulate Matter Information Request and to schedule separate hearings on the two topics.

MSHA did not see fit to schedule separate hearings. While the Mining Coalition did appreciate MSHA's decision to extend the comment period for the Proposed Rule by a few weeks, the extension was paired with what MSHA referred to as a "document [that] also clarifies and seeks additional comments on selected proposed revisions." 81 Fed. Reg. at 58422. In other words, rather than providing the public with additional time to evaluate and comment upon the Proposed Rule, MSHA attempted to address some of the confusion caused by its hastily drawn up rule by "clarifying" the Proposed Rule and asking for additional comments on this new document.

MSHA ADMITS THAT IT HAS NO EVIDENCE THAT THE PROPOSED RULE WILL IMPROVE SAFETY

MSHA expressly admits that the Proposed Rule is not based on any empirical data or supported by clear evidence. MSHA believes that the rule will have a positive impact, but it admits that it cannot quantify that impact:

> *MSHA is unable to quantify the benefits* from this proposed rulemaking, including the proposed provisions that an examination of the working place be conducted before miners begin work in an area; that the operator notify miners in the working place of any conditions found that may adversely affect their safety or health; and that the examination record include a description of the adverse conditions found that may adversely affect their safety or health; and that the examination record include a description of the adverse conditions found and the corrective action taken.

81 Fed. Reg. at 36823. In other words, MSHA cannot quantify the benefits, but it assumes that the rule will be beneficial, not detrimental. MSHA must do more than assume that a revised rule

will be beneficial. The Federal Mine Safety and Health Act ("Act") requires MSHA to show that its revision of the current rule will not negatively impact the safety and health of miners.

More specifically, Section 101(a)(9) of the Act provides that ''[n]o mandatory health or safety standard promulgated under this subtitle shall reduce the protection afforded miners by an existing mandatory health or safety standard.'' 30 U.S.C. § 811(a)(9). What this means is that, when MSHA revises a standard, it must show that the revisions will offer "no less protection" to miners. MSHA has failed to make such a showing.

MSHA claims that the "purpose of this proposed rule is to ensure that mine operators identify and correct hazardous conditions that may adversely affect miners' safety or health." That is the purpose of the *current rule*; it requires mine operators to identify and correct hazardous conditions. When MSHA revises a rule, particularly a rule that it has enforced for more than three decades, it must explain how and why it believes that the current rule is deficient and how the proposed rule is intended to address those deficiencies. Put differently, MSHA must evaluate and quantify the effectiveness of the current regulation and then explain how the proposed revision maintains or improves upon this level of protection.

That was not MSHA's approach here. MSHA believes that the current rule is ineffective, but it says almost nothing about how and why it reached that conclusion. Since we do not know why MSHA has determined that the current rule is deficient, it is extremely difficult to evaluate MSHA's claim that the Proposed Rule addresses the deficiencies of the current rule.

Beyond MSHA's broad statement of purpose, MSHA also claims that the "proposal would enhance the quality of working place examinations in MNM mines and help assure that violations of mandatory safety or health standards are identified and corrected, thereby improving protections for miners." MSHA offers no metrics for the evaluation of workplace examination "quality," and it has offered no data or information on the current quality of workplace examinations. As far as we know, MSHA did nothing to evaluate the current quality of workplace examinations, and it has offered no means or method for making such an evalution. MSHA's claim that the proposed rule would "enhance the quality" of examinations is based on nothing more than MSHA's belief.

To be sure, MSHA "believes" that the proposed rule will improve the quality of workplace examinations. The phrase "MSHA believes" appears at least eighteen (18) times in a nine page the Proposed Rule as support for MSHA's claims about its benefits. MSHA's "belief" is essentially all that supports this rule. Indeed, MSHA expressly admits that it is "unable to quantify the benefits" of the proposed rule.

For example, the proposed rule would require that "the examination record include additional information." Why? Because "MSHA believes" it "would help assure that adverse conditions are identified and corrected." The Proposed Rule will also require "additional communication" between operators and miners about "conditions that violate [Rules to Live By] standards and

other adverse conditions" and "recording additional information about these conditions." Why? Because MSHA "believes the proposal will help prevent fatalities and other accidents."[1]

MSHA offers anecdotal examples, not data, to support these beliefs. MSHA cites three "recent examples" of "adverse conditions that existed for more than one shift prior to the causing or contributing to a fatal accident," and it "believes that, had the person making the examination noted these conditions prior to miners working in the area, had the conditions been recorded, and had the operator warned miners about these conditions, the accidents may have been prevented." In other words, the most MSHA can say is that MSHA "believes" that the actions required by the Proposed Rule "*may* have" prevented these three accidents.

Yet, the examples cited by MSHA offer no support for MSHA's belief. For example, the PCS Phosphate fatality cited by MSHA in the Proposed Rule occurred when an excavator tipped over into a "water filled ditch" that was "invisible to persons working in the area." The condition existed for no more than three days. The "water filled ditch was not identified as a hazard after the heavy rainfall," was not "immediately obvious to miners working in the area" and had not been barricaded or posted with warning signs. The excavator operator who was fatally injured, had over 35 years of experience at the mine. MSHA cited the operator for an unwarrantable failure to post warning signs and a failure to perform "adequate workplace examinations" following a fatality and claimed that "management failed to ensure that competent persons were properly conducting workplace examinations."

MSHA's Accident Investigation Report on that fatality provides no information as to when (or even whether) a workplace examination was conducted on the shift when the accident occurred. It does not indicate whether anyone was working in the area prior to the shift when the accident occurred. It does not even say when workplace examinations were typically conducted at the mine. As such, it provides no support whatsoever for MSHA's position that a workplace

[1] The Proposed Rule requires "the examination record to include additional information" because MSHA "believes" that this additional information "would help assure that adverse conditions are identified and corrected." Aside from the fact that MSHA has offered nothing beyond its belief to support its proposal, MSHA's belief is directly at odds with the findings MSHA made when it promulgated the original rule. MSHA ignores the evidence and views expressed in its earlier rulemaking, including input from MSHA's expert advisory committee, which concluded:

> Because of the importance of this standard and the extensive debate it generated before the Advisory Committee, interested persons were requested . . . to submit specific comments including recommended wording for the standard . . . Numerous comments and objections were received, raising several important issues. These included . . . the recordkeeping requirements were burdensome and possibly self-incriminating . . . and the standard could be used to cite operators for violations covered by existing standards that would result in multiple citations for a single violation. Changes have been made in the final standard to reflect the concerns raised by public comments.

44 Fed. Reg. 48505 (August 17, 1979).

examination conducted prior to the commencement of work is preferable from a safety standpoint to an examination conducted during or throughout a shift.

Rather, the focus of the Accident Investigation Report is its conclusion that workplace examinations at the mine were not adequate and that mine management failed to "ensure competent persons were conducting workplace examinations." The adequacy of workplace examinations and the competence of persons assigned to perform workplace examinations are certainly important issues, but they are not particularly relevant to (or are, at least, distinct from) the question of whether a workplace examination performed prior to the commencement of work is more effective than an examination conducted during or throughout a shift. It is also the case that the Proposed Rule does not revise the current rule to address adequacy or competency.

It is worth noting that, while the Accident Investigation Report alleges that the workplace examinations at the mine were inadequate and that management failed to assign competent persons to perform those examinations, there is nothing in MSHA's Accident Investigation Report to support those allegations aside from the fact that a hazardous condition was not noted or identified prior to an accident. MSHA's Report does not identify the person assigned to perform workplace examinations at the mine, and it does not describe the training or experience of any individual assigned to perform workplace examinations.

The condition was, according to MSHA, "invisible to persons working in the area," including the excavator operator who had more 35 years of experience at that mine. However, MSHA does not say whether the excavator operator performed a workplace examination. If he was assigned to examine the workplace, MSHA cannot say whether or not (and why) such an experienced miner was or was not competent to perform such an examination. Finally, MSHA offers no explanation for its claim that a workplace examination conducted by a competent person would have identified a condition that was (as MSHA described it) "invisible to persons working in the area," including a miner with over 35 years of mining experience.

MSHA MUST (AND COULD) QUANTIFY THE IMPACT OF THE PROPOSED RULE ON SAFETY AND HEALTH

MSHA did not explain why it was "unable to quantify the benefits" the benefits of the Proposed Rule. We do not know whether MSHA attempted to quantify or evaluate the Proposed Rule's impact on the safety and health of miners. However, we do know that MSHA has ready access to the data and information that would have enabled such an exercise. Of course, that exercise would have required MSHA to identify specific metrics for the evaluation of current workplace examination "quality."

The Mining Coalition has repeatedly urged MSHA to use its data and information for this purpose and to disclose the data and information to the public. For example, since MSHA's professional inspectors examine mines constantly, information about what it takes in terms of time and documentation for MSHA to inspect mines would shed great light on what to expect from mine operators. Likewise, data on the enforcement experience with the current workplace exam rule would help MSHA and public measure its success and compare it with a new rule.

Some of the information that MSHA has not evaluated (or shared with the public) includes the following, despite the fact that MSHA has ready access to this information:

(1) The average number of inspectors and inspection hours necessary for MSHA to itself conduct a complete inspection of each 30 C.F.R. 56/57.18002 regulated mine over the last ten years;

(2) The average number of separate work areas MSHA inspects during a regular inspection of a mine (by mine type and size);

(3) The volume or quantity of records kept or created by MSHA during a regular inspection;

(4) The volume or quantity of information collected by MSHA inspectors to document violations of 30 C.F.R. 56/57.18002 violations;

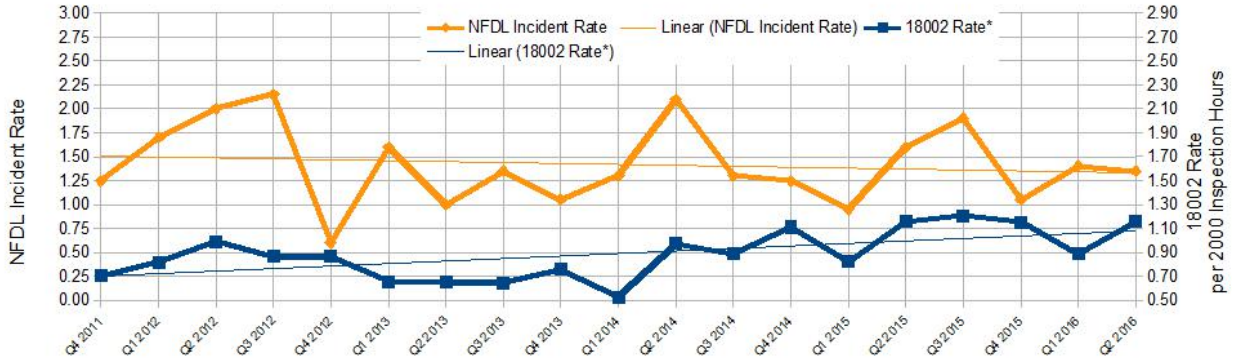
(5) MSHA's investigation files on each accident and/or accident report MSHA cited or referenced in the Proposed Rule;

(6) The number of miners, mines, mine operators and independent contractors subject to the current rule over each of the last ten years;

(7) The total number of citations and orders issued by MSHA for violations of 30 C.F.R. 56/57.18002, the severity of negligence alleged for such violations, the gravity alleged for the alleged violations and the method of abatement each year for the last ten years, as well as the total amount of the penalties proposed for those alleged violations;

(8) Materials and information regarding the training MSHA has provided to its inspectors regarding the enforcement of the current rule and the Program Policy Letters related to the current Rule.

Although MSHA has not quantified or evaluated the effectiveness of either the current rule or the Proposed Rule, our analysis suggests that the rate of compliance with the current rule and the Non-fatal Days Lost ("NFDL") rate may be correlated. However, if there is a correlation, it is an extremely weak correlation:



THE PROPOSED RULE DOES NOTHING TO ADDRESS THE CAUSE OF MOST ACCIDENTS AND INJURIES

MSHA believes that the Proposed Rule will "help prevent fatalities and other accidents," in part, by requiring mine operators to specifically notify miners of "conditions that violate RTLB standards" and to record those conditions and the actions taken to address or correct those conditions.[2] MSHA's belief is beggared by the fact that adverse or unsafe conditions are no longer the cause of the majority of accidents and injuries. Rather, unsafe acts—behavior—cause the vast majority of accidents and injuries in the mining industry today, and we know that Training, accountability and shared responsibility for behavior and culture are critical elements of any program aimed at the prevention of unsafe acts. The Proposed Rule encourages just the opposite.

More significantly, the Proposed Rule will undermine the industry's efforts to address unsafe acts. Effective workplace exams start at the beginning of a shift and end when the shift ends. All experienced miners should be competent to perform workplace examinations, and every miner should (and most do) take care to examine their own workplaces for hazards throughout a shift. In stark contrast, the Proposed Rule recasts workplace examinations as very discrete events that occur just once per shift, prior to the commencement of work in an area, to be extensively and painstakingly documented by one person, preferably an agent of the company, not a rank-and-file miner. The lesson this teaches to miners is that they need not personally

[2] We agree with MSHA that "at this point . . . most operators and miners should be familiar with the RTLB standards." As such, the communications about RTLB standards required by the Proposed Rule are not likely to increase miners' or mine operators' awareness of those standards. Moreover, the current rule has long required mine operators to identify and "promptly initiate action to correct" any "conditions which may adversely affect safety or health," and we assume that MSHA currently considers conditions that violate MSHA's RTLB standards (or other MSHA standards) to qualify as "adverse." Communication about the existence of an adverse action is typically one of the steps taken by an operator to "promptly initiate action to correct" an adverse condition, as required by the current rule.

But the RTLB standards and other accident causes that are behavior-based, not conditions-based, are not relevant to the proposed rule. MSHA must to take into account that human behavior plays a significant role in at least 80% of accidents, and these behaviors are not impacted by work place exams.

concern themselves with the identification of hazardous conditions in their workplace because MSHA requires someone else to perform that task.

Until MSHA focuses on human factors, and addresses the true causes of accidents, progress in prevention will be impeded, and the Proposed Rule will impede and likely set back the progress that has already been made by the industry.

COMPLIANCE WITH THE PROPOSED RULE WOULD BE COSTLY AND UNDULY BURDENSOME

The Proposed Rule imposes a significant paperwork burden on mine operators, particularly at large mines with dozens of work areas and mines with crews that move between work areas each shift. Specifically, the Proposed Rule requires operators to maintain a record of each workplace examination that includes the locations of all areas examined, description of each adverse condition found, a description of the actions taken to correct the adverse condition, the date on which corrective action was taken, the name of the person updating the record, the date on which the record was updated and the name of the competent person who conducted the examination.

MSHA concedes that it has "no data on the number of corrective actions that would be recorded under this proposed rule." Yet, MSHA "believes that the time to record the corrective actions would be minimal at best. MSHA estimates that it will take a competent person approximately 5 additional minutes to make the record after each examination. MSHA estimates that the annual cost of making this record for all MNM mines is approximately $10.1 million."

MSHA's estimates are wholly unrealistic. MSHA made these estimates by assuming that "one" person at each "mine" would conduct one workplace exam for the whole mine, and that the exam would only take that person 5 minutes to inspect the whole mine. By MSHA's logic, as mines grow in size, the inspection costs go down. In reality, the bigger the mine, the more people it will take to inspect all workplaces. At many operations, one person could not possibly examine each working place at the beginning of the shift. The shift would never begin as that person raced from one area to another.

MSHA's estimates were also based on MSHA's assumption that that mines with 1-19 employees operate one shift per day, 300 days per year and that mines with 20+ employees operate two shifts per day, 300 days per year.

Analyzing the data from from "Table 1—MNM Mines and Employment in 2014" and the "Total employment at mines, excluding office workers" from the Proposed Rule with more reasonable and realistic assumptions, we offer the following estimates of the burden and costs imposed by the new recordkeeping requirements:

Mine size	No. of mines	Total employment at mines, excluding office workers	Based on working 21 days a month*12 months	MSHA 300 days a per year	Based on $31.14/hr for 5min	Every person doing one inspection	MSHA Cost for exam for 300 days	Cost for exam for 252 days
1-19 Employees	10,599	52,328	252	300	$2.60	1	$40,815,840	$34,285,306
20-500 Employees	1,162	73,253	252	300	$2.60	1	$57,137,340	$47,995,366
501+ Employees	26	20,186	252	300	$2.60	1	$15,745,080	$13,225,867
Contractors		75,762	252	300	$2.60	1	$59,094,360	$49,639,262
Total	11,787	221,529	252	300	$2.60	1	$172,792,620	$145,145,801

MSHA estimates $10.1 million as the cost of performing workplace examinations that comply with the Proposed Rule. The chart above shows that the actual cost is more likely to be between $145 to $172 million, i.e., 170% greater than MSHA's estimate.

The costs associated with the recordkeeping requirements of the Proposed Rule are also quite significant. At a large mine operated by a Coalition member, 400-500 workplace examinations are performed every day. This operator stores the records of these workplace examinations by department in no particular order for one year. However, the operator anticipates that compliance with the new recordkeeping requirements in the Proposed Rule will require it to hire at least one new, full-time employee at each mine to collect, organize and maintain these records.

MSHA estimates that the Proposed Rule will apply to 11,787 mines. If it takes one person 40 hours a year to comply with recordkeeping requirements of the Proposed Rule, the total annual cost of compliance with those requirements would be $14,681,887 (11,787 * 40 hours * $31.14 an hour = $14,681,887). It is plainly evident that the record keeping and administrative burden will far exceed the estimates contained in the Proposed Rule.

ENFORCEMENT IMPACT & DISINCENTIVES TO PERFORM INSPECTIONS

Under the proposed rule, MSHA inspectors are likely to question the "adequacy" of an inspection, or the credibility of the miner performing the exam, when they see conditions not recorded at the beginning of a shift. Any competent person who performs an exam will be

placed in the difficult position of having to prove to an inspector that the condition did not exist earlier in the shift, promoting counterproductive disagreements.

Moreover, "adverse conditions," is a subjective term or phrase about which reasonable persons may define differently. MSHA's refusal to address this issue and further define the term will foster further disagreement between inspectors and mine operators.

Likewise, the sufficiency of the actions taken to correct an adverse condition is a topic about which reasonable people may disagree. By forcing the assessment of sufficiency into a specific time frame and requiring extensive records to be kept regarding abatement, MSHA will increase the potential for disagreements between inspectors and miners, a counterproductive result.

COMMUNICATION BURDENS

The Proposed Rule requires the operator "to promptly notify miners" of hazards found during the examination, precautions taken and abatement. MSHA did not explain the basis for its belief that the methods of communication that MSHA has accepted for decades under the current rule are insufficient or ineffective. Similarly, MSHA has not explained or provided any support for its belief that the communications required by the Proposed Rule will have a positive impact on safety.

In addition, MSHA originally did not describe the Proposed Rule's "promptly notify miners" requirement, and many commenters, including the Mining Coalition requested MSHA to provide clarification. Thus, the Mining Coalition was pleased and appreciated MSHA's attempt to provide some clarity regarding the type or form and substance of the communications required by the Proposed Rule. However, we submit that the attempt was unsuccessful.

Specifically, MSHA offered the following:

> MSHA clarifies that "to promptly notify miners" means any notification to the miners that alerts them to adverse conditions in their working place so that they can take necessary precautions to avoid an accident or injury before they begin work in that area. This notification could take any form that is effective to notify affected miners of the particular condition: Verbal notification, prominent warning signage, other written notification, etc. MSHA believes that, in most cases, verbal notification or descriptive warning signage would be needed to ensure that all affected miners received actual notification of the specific condition in question.
>
> MSHA also clarifies that a "prompt" notification would occur before miners are potentially exposed to the condition; e.g., before miners begin work in the affected areas, or as soon as possible after work begins if the condition is discovered while they are working in an area. For example, this notification could occur when miners are given work-shift assignments.

81 Fed. Reg. at 58423. MSHA states that "notification could take any form that is effective to avoid an accident or injury" and then almost immediately qualifies and essentially contradicts

that statement by noting that it "believes that, in most cases, verbal notifications or descriptive warning signage would be needed to ensure that all affected miners are given work-shift assignments." In other words, the rule does not explicitly bar the use of hazard tape or barricades as a means of communicating the existence of an adverse condition, but in "most cases" MSHA will interpret the Proposed Rule to bar those methods.

MSHA has not explained why it "believes" that verbal notifications or descriptive warning signage" would be necessary. Even if sincerely held, MSHA's belief in the efficacy of "verbal notifications or descriptive warning signage" is not enough by itself to justify such a requirement.

MSHA offers no definition of "descriptive warning signage" or describe in even the most general terms what that phrase means. Would yellow or red tape, commonly referred to in the industry as hazard tape or barricade tape, displaying "CAUTION" or "DANGER DO NOT ENTER" warnings qualify as "descriptive warning signage?" How descriptive must the warnings on any type of signage be in order to comply? Will MSHA accept a sign or physical barricade if it does not describe the specific hazard present in that area but does generally warn miners to stay out of an area?

Similarly, MSHA indicates that verbal communication is sufficient to comply, but MSHA says nothing regarding the requisite substance of those communications? Would it be enough to tell miners to stay out of a specific area of the mine or to stay a certain distance from a particular piece of equipment? Or, does MSHA expect a mine operator to provide more detail about the specific hazards? For example, if a workplace examination identified a loose guard on a conveyor in a surge tunnel, would verbally warning to miners to stay out of the tunnel until further notice comply with the Proposed Rule? Or, would MSHA expect the operator to tell miners exactly which guard was loose while also verbally warning miners to stay out of the tunnel? These are all questions that MSHA should address.

RESTRICTIONS ON COMPETENT PERSONNEL ARE COUNTERPRODUCTIVE

The Mining Coalition was pleased to see MSHA's statement that it will not change its current definition of "competent person." We presume that this definition would remain unchanged not only in the text of the regulations but also in real-world enforcement. The Mining Coalition maintains that every experienced miner who has received 24 hours of training under Part 46 or 40 hours of training under Part 48 should be competent to examine their workplace for adverse conditions.

COUNTERPRODUCTIVE CITATION & PENALTY BURDENS

When MSHA alleges a violation of a safety or health standard, it should not also duplicate that charge with an alleged violation of the workplace exam standard, nor should MSHA expand this troubling practice by increasing workplace examination requirements. The resulting diversion of safety resources is counterproductive to achieving safety improvements.

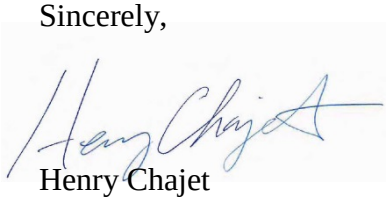
MSHA has the data to analyze this issue but has not done so. When MSHA cites operators for specific conditions (*e.g.*, guarding, loose ground, or housekeeping) in an acknowledged, ever-changing environment, it also often uses regulations such as the workplace examination rule as a type of "general duty" violation. It will often duplicate a violation of a specific standard with a citation for inadequate or failure to conduct work place exams, failure to provide safe access, failure to provide notice of non-obvious hazards, or failure to provide adequate training.

MSHA has an enormous quantity of data and information about its enforcement of its rules. Before it further expands the requirements of a regulation that is often misused in this "general duty" fashion, MSHA could have easily used its data and information to analyze the effectiveness of these rules and evaluate how proposed changes would impact safety. MSHA should have shared that data and information with the public. In the Proposed Rule, it did not.

CONCLUSION

For all of the above reasons the Mining Coalition opposes the proposed rule, and we urge MSHA to withdraw the Proposed Rule. Thank you for the opportunity to present our views.

Sincerely,



Henry Chajet
Counsel to the Mining Coalition

Talking Points for discussion of 56/57.18002

- Thorough and complete workplace exams are a requirement. Mine operators should be diligently reviewing the records of workplace examinations to ensure hazards are being noted and corrected.

- Competent persons "designated by the operator" shall do the exams

- Exams are required to check for safety AND health hazards

- In the Western District, all persons doing workplace examinations must receive task training. (This is a new requirement as per the DM. As allowed under Part 48 "such other courses as may be required by the DM based on circumstances at the mine" 48.7/27 (a)(4)

- All companies will be required to update their training plans to reflect that workplace examination training is required. The following paragraph is required under the Task training Section for training plans: Any individual designated to conduct or supervise Workplace Examinations shall receive appropriate training relative to this task. The training for Workplace Examinations shall include: proper procedures for conducting a workplace examination, hazard recognition, protocols for minimizing and or mitigating hazards, barricading hazardous areas as well as proper reporting of hazardous conditions. This training will be documented on an MSHA Form 5000-23. All operators will be notified in writing of the requirement.

- All places where work is being performed must be examined. As used in the standard it applies to those locations at a mine where persons work in the mining or milling process (including cleanup and maintenance activities). This includes areas infrequently accessed.

- The designated person must be fully qualified to perform the inspections. They don't necessarily have to be mine management; but, keep in mind that for the purpose of the exam the designated person is an agent of the company and their negligence is applied just as it would be if they were a manager. (But ONLY for the purpose of the exam requirements).

- If the competent person isn't properly identifying hazards it may mean that the task training wasn't adequate.

- Records of examination must show: the date of the exam (and shift for multi-shift operations. Each "shift" shall have a separate exam done), the examiner's name, and the working places examined. Records must be maintained for 12 months. MSHA no longer accepts the alternative to the 12 month retention. (The old policy allowed them to discard them after an E01 inspection)

- Evidence that exams were not done or that prompt corrective action was not taken **will** result in a citation being issued (not may, but will).

- Evidence that a previous shift examination was not conducted or that prompt corrective action* was not taken **constitutes a violation** of §§ 56/57.18002(a). (Taken directly from the new PPL). Since it's a violation the inspector has no choice but to issue a citation.