

NSSGA Presentation of Concerns on MSHA's Workplace Exams Proposal at the Office of Management and Budget

Brian McNamara, Bluegrass Materials
Joseph Casper, NSSGA

January 3, 2017

NSSGA

NATIONAL STONE, SAND
& GRAVEL ASSOCIATION

NSSGA Concerns with MSHA's Workplace Exams Proposal

- I. **NSSGA's Demonstrated Commitment to Safety**
- II. NSSGA's Concerns Over the Lack of Basis for Burdensome New Workplace Exams Rule
- III. Some Key NSSGA Concerns with the Proposal

NSSGA's Demonstrated Commitment to Safety

- I. NSSGA works with MSHA in the Agency's oldest, and most active, Alliance for education and training. This has spawned:
 - NSSGA's public support of "Rules to Live By" initiative, which dramatically raised penalty amounts for violations
 - Noise & Dust workshops
 - Establishment of Core Principles of Safety



NSSGA-MSHA Alliance

Core Principles of a Safety Program

The fundamental elements of a safety program that will help create an ideal culture in order to prevent accidents and injuries are:

- ✓ **Front Line Management Leadership and Commitment**
 - *Senior Management & CEO/Owner Commitment*
 - *Safety Director Role*
- ✓ **Training and Development**
- ✓ **Formal Auditing of All Employee Work Practices**
- ✓ **Employee Involvement & Participation**
 - *Job Safety Analysis*
 - *Safety Committees*
- ✓ **Incident Investigation**
- ✓ **Safety Communications**
 - *Alerts*
 - *Newsletters*
- ✓ **Regulatory Compliance Programs**
- ✓ **Operational Safety Best Practices**
- ✓ **Recognition Program**
- ✓ **Accountability System**
- ✓ **Substance Abuse Prevention Program**

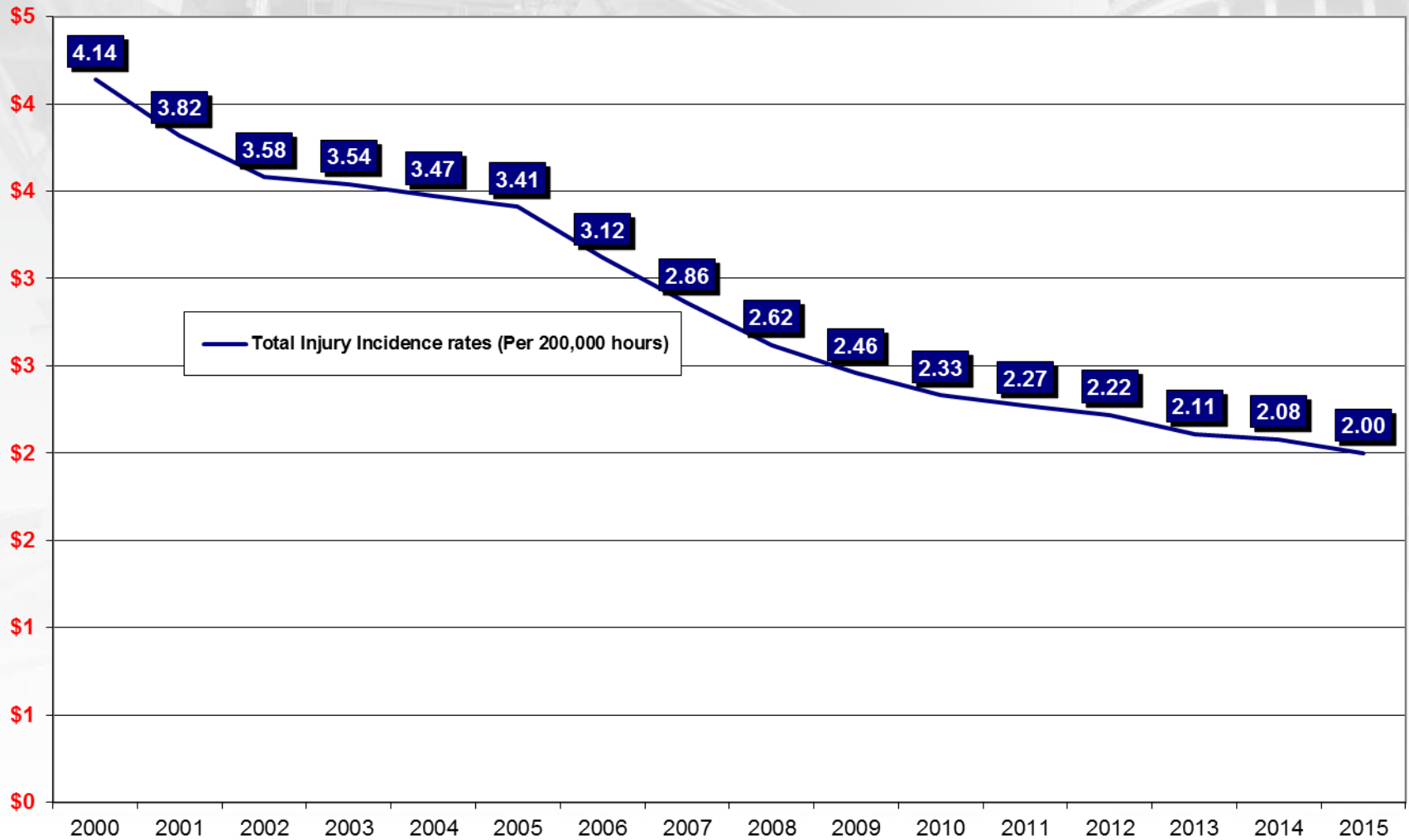
The following pages will describe each of these elements and provide examples of how they can be used to achieve better safety performance at your company.

NSSGA's Demonstrated Commitment to Safety

I. This has spawned (cont'd):

- Publication of "Rip & Shares" in *NSSGA Magazine*
- Posting of Safety Alerts based on MSHA injury data on NSSGA website
- Issuance of CEO Safety Newsletter to all industry CEOs via email
- Regular dissemination and discussion of MSHA Hazard Alerts on Near Hits

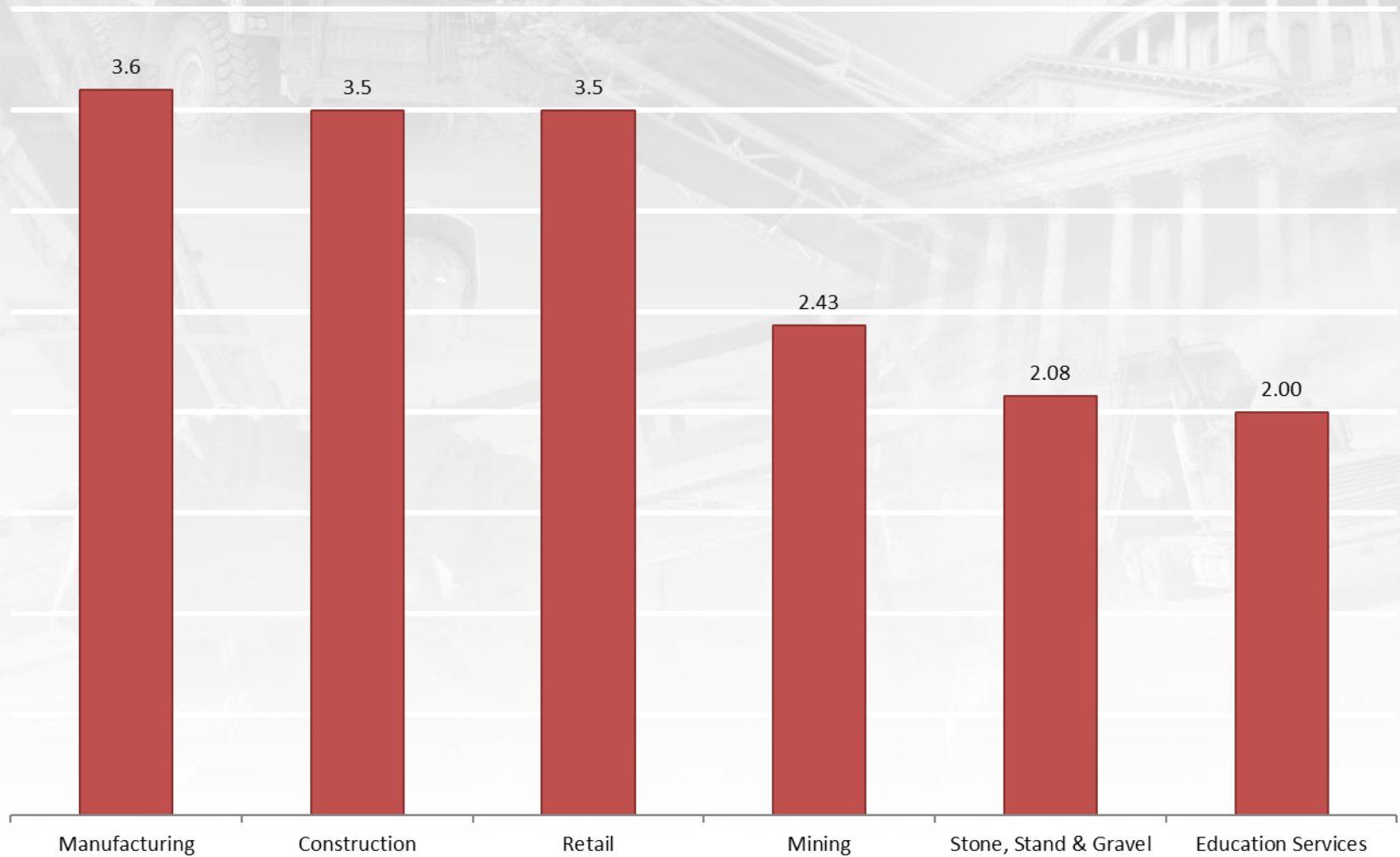
Aggregates Operations Are Increasingly Safe



Comparison of Industries' Injury Rates

BLS Data

(per 200,000 hours worked)



NSSGA

NATIONAL STONE, SAND
& GRAVEL ASSOCIATION

Labor Department Acknowledges Safety Advances

“The data show that last year was the safest year in mining history, both in terms of number of deaths and fatal injury rates.” - Joseph Main

Assistant Secretary of Labor, April 7, 2016



NSSGA Concerns with MSHA's Workplace Exams Proposal

- I. Introduction of NSSGA's Demonstrated Commitment to Safety
- II. NSSGA's Concerns Over the Lack of Basis for Burdensome New Workplace Exams Rule**
- III. Some Key NSSGA Concerns with the Proposal

NSSGA Concerns with MSHA's Workplace Exams Proposal

- II. The proposal violates the principles of Executive Orders 13563 and 12866
 - President Barack Obama's E.O. 13563 states that the regulatory system must “identify and use the best, most innovative and least burdensome tools” as the first principle of regulation.

NSSGA Concerns with MSHA's Workplace Exams Proposal

- II. The proposal violates the principles of Executive Orders 13563 and 12866
- President Bill Clinton's E.O. 12866 calls for regulations "that are effective, consistent, sensible and understandable."

NSSGA Concerns with MSHA's Workplace Exams Proposal

II. NSSGA's Concerns Over the Lack of Basis for Burdensome New Workplace Exams Rule

- MSHA admitted that it “is unable to quantify the benefits of this rule.”
- Further, MSHA provided no evidence that the current rule is not being complied with. Given that MSHA surely has data on this, we wonder why it was not shared with the regulated community.

NSSGA Concerns with MSHA's Workplace Exams Proposal

- I. Introduction of NSSGA's Demonstrated Commitment to Safety
- II. NSSGA's Concerns Over the Lack of Basis for a Burdensome New Workplace Exams Rule
- III. Some Key NSSGA Concerns with the Proposal**

Concerns with Possible Changes to the Workplace Exams Standard

Number one:

The mandate to document hazards would do nothing for safety.

But, this would add to an operation's paperwork burden, thus making it more challenging to effectively manage for safety.

Concerns with Possible Changes to the Workplace Exams Standard

Number two:

Increased liability for operators would likely result from the mandate for additional documentation.

Instead of one citation for a violation, an inspector could conceivably issue additional citation(s) if the operator was found – months previous to the inspection - to have inadequately documented the presence or abatement of a hazard found earlier.

Concerns with Possible Changes to the Workplace Exams Standard

Number three:

Because the MSHA estimate of just five minutes needed for new documentation is substantially understated, costs would grow substantially beyond the mere \$10 million estimated by MSHA. This would deplete resources necessary for needed future investments in capital equipment and training for safety.

Concerns with Possible Changes to the Workplace Exams Standard

Number three (cont'd):

Documentation of all hazards and abatements will typically take more than five minutes.

Also, MSHA's computation of these costs is simply not credible. Just in small mines, where there are between two and four examiners, NSSGA, while using MSHA data, re-calculated and arrived at an annual cost of \$24.8 million (almost 2 ½ times MSHA's estimate of \$10.1 million for all industry).

Concerns with Possible Changes to the Workplace Exams Standard

<u># of sm mines</u>	<u>days/yr</u>	<u>\$31/hr for 5 mins</u>	<u># of persons</u>	<u>days/yr</u>	<u>\$ Cost</u>
5,300	300	2.60	2	300	8.26 million
5,300	300	2.60	4	300	16.54 million
					<u>24.80 million</u>

Concerns with Possible Changes to the Workplace Exams Standard

Number four:

While more than 80 percent of all injuries are related to the issue of behavior of workers or managers (source: National Safety Council), this rule would simply be one more MSHA attempt at merely addressing facility's conditions.

Concerns with Changes to the Workplace Exams Standard

Number five:

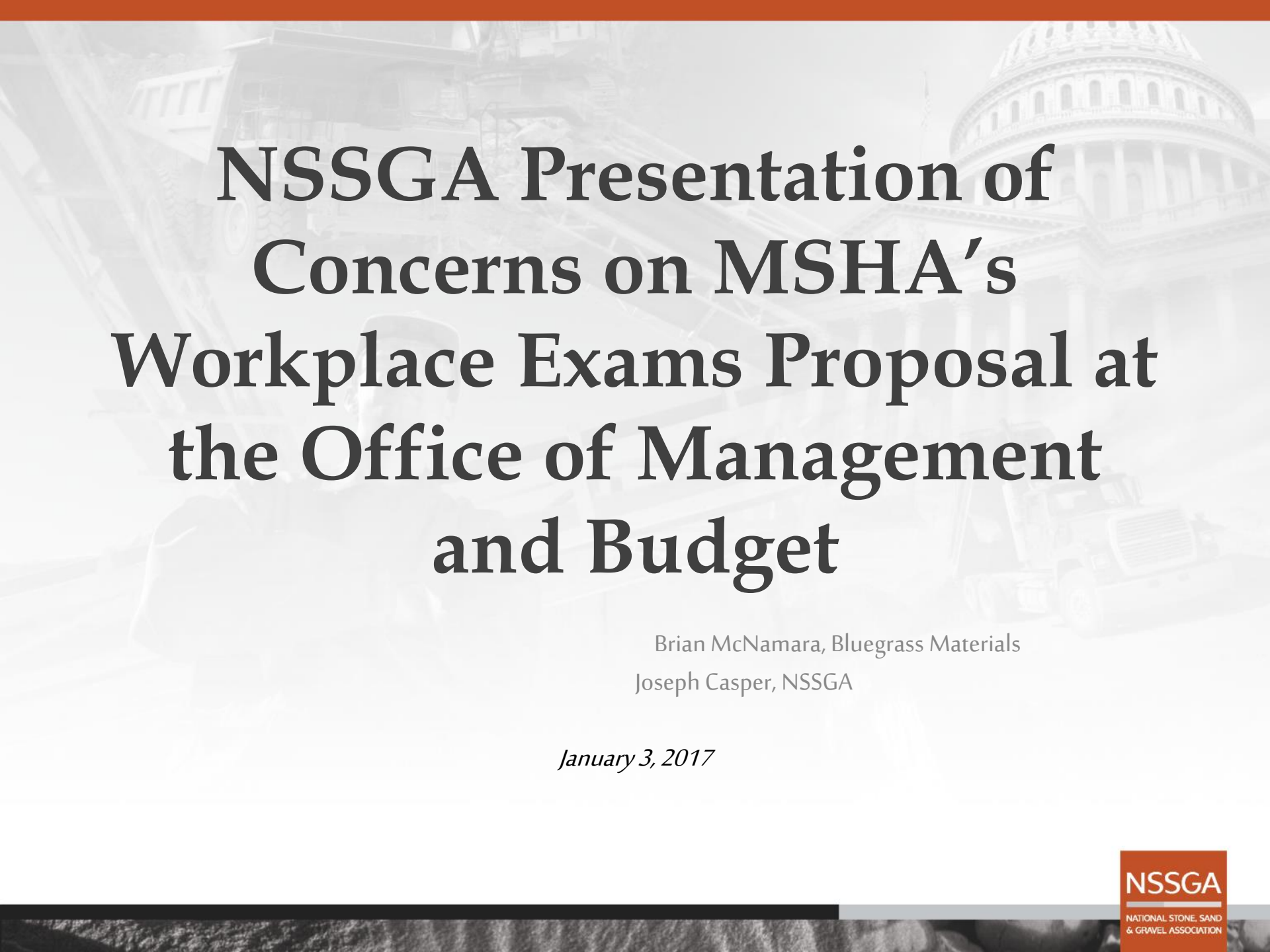
Un-intended consequence: while major improvements in safety have been forged by operators having empowered all employeesan effect of this proposal would be reversal of that positive trend. This would likely force operators to place more safety responsibility on fewer employees.

Concerns with Changes to the Workplace Exams Standard

NSSGA is concerned that the workplace exams rule proposal is ill-advised, and will make it harder - and not easier - to effectively manage for workplace safety.

Accordingly, NSSGA urges OMB to prevent the proposal from being finalized.

NSSGA would be happy to again work with MSHA on an improved approach.



NSSGA Presentation of Concerns on MSHA's Workplace Exams Proposal at the Office of Management and Budget

Brian McNamara, Bluegrass Materials
Joseph Casper, NSSGA

January 3, 2017