

HUSCH BLACKWELL

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January 24, 2017

Mr. Don McGahn
White House Counsel
Office of the President
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Mr. Edward Hugler
Acting Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Request for Withdrawal of Final Rule (MSHA Examination of Working Places in Metal/Non-Metal Mines)

Dear Mr. McGahn and Mr. Hugler:

We write on behalf of our client, the Mining Coalition, to respectfully request the withdrawal of a final rule published in the January 23, 2017 Federal Register by the Mine Safety and Health Administration (MSHA), entitled "Examinations of Working Places in Metal and Nonmetal Mines," 82 Fed. Reg. 7680 (Jan. 23, 2017). MSHA submitted the rule to the Office of Federal Register (OFR) on or about January 17, 2017, and MSHA informed stakeholders that the rule would be published on January 23, 2017. Although the White House's January 20, 2017 memorandum directed agencies to immediately withdraw regulations that had been sent to the OFR but not yet published in the Federal Register, OFR published the rule on January 23, 2017.

The Mining Coalition is a group of mine operators in the metal/non-metal industry who employ miners around the country. As the Mining Coalition and a host of other commenters explained to MSHA during the rushed rulemaking process, the rule is unsupported by the record and changes an existing, successful rule in a manner that is likely to lead to confusion and capricious enforcement.

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MSHA itself estimates that the “final rule will result in \$34.5 million in annual costs for the M/NM industry,” and the “total undiscounted cost of the final rule over ten years will be \$345.1 million.” *Id.* In contrast, “MSHA is not claiming a monetized benefit for this rule.” *Id.* MSHA “anticipates that there will be benefits” attributable to the final rule, but MSHA is “unable to quantify the benefits.” *Id.* Moreover, MSHA admits that it “is unable to separate the benefits of the new requirements under the final rule from those benefits attributable to conducting a workplace examination under the existing standards.” *Id.*

This new rule is all cost, with no apparent benefit to safety or health. It was hastily conceived and rushed through the rulemaking process in the waning days of the last Administration. We respectfully maintain that the rule should be withdrawn, consistent with the White House’s memorandum of January 20, 2017. We welcome the opportunity to discuss this issue with you in more depth at your earliest convenience.

Respectfully,



Henry Chajet
Robert J. Horn
R. Brian Hendrix

Husch Blackwell LLP

Counsel for the
Mining Coalition