
From: James Sharpe [mailto:grosharp@msn.com]
Sent: Friday, September 12, 2008 4:31 PM
To: zzMSHA-Standards - Comments to Fed Reg Group
Subject: Submission for the MSHA Rulemaking Docket: RIN 1219-AB41

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AB41-COMM-5

MEMORANDUM

TO: zzMSHA-comments@dol.gov

FROM: James Sharpe, CIH

SUBJECT: RIN 1219-AB41 Proposed Rule on Substance Abuse (2 pages)

DATE: September 12, 2008

I respectfully request that MSHA extend the comment period another 30-60 days and hold public hearings on this proposed rule.

Since this rulemaking encompasses the entire industry, there is broad interest from throughout the mining community. However, 30 days is insufficient time for some organizations to prepare the thoughtful comments you seek as you finalize the regulation.

As an example, operators need time to assess your preliminary economic analysis, review their own costs, and then estimate on an industry-wide basis if their figures and yours are in accord or discordant. These tasks simply cannot be done properly within a 30-day time frame.

As a former trade association executive, I can also affirm that the comment period is woefully short of the length needed by some associations. Typically, an association executive provides a summary of the rule for member safety and health professionals, who then meet one or more times to develop a comment set, which then must be approved by the organization's Executive Committee or full Board. Given this bureaucratic infrastructure, 30 days falls way short of what is needed.

In addition, the Department of Transportation is current updating its regulations under 49 CFR 40. One provision, in fact, has been postponed in response to petitions, and will not go into effect until Nov. 1. Since you are basing testing requirements of your rule on DOT procedures, you are in essence trying to set a rule based on a moving target. As such, you will not be affording operators their due process right to comment on 49 CFR Part 40.67(b).

I recognize politics plays a part in your decision for speedy rulemaking. But you still should be able to make a January 19, 2009 release deadline even with an extended comment period. A potential stumbling block is the Office of Management and Budget (OMB), which must review your final draft. But as the days close on this Administration, OMB's plate will be emptying. As such, they should be able to turn your final proposal around quickly. After all, OMB has already seen your proposed rule.

Politics aside, I trust you want to produce the most practical, cost-effective regulation possible. As officials at the Office of Standards, Regulations and Variances have said many times, they never go through rulemaking without receiving comments they had not considered that affect their final product favorably. With so much experience by operators with administering drug-testing programs, that will especially be the case here.

However, if you half the time allotted for the feedback process, count on getting some half-formed comments for respondents with no time to provide better. Or, worse, no comments at all from individuals who also have something truly worthwhile to say.

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