

Statement of Brett S. Smith

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Mine Safety and Health Administration (MSHA)

Proposed Rule for Examinations of Working Places in Metal and Nonmetal Mines

30 CFR Parts 56 and 57; Docket ID: MSHA-2014-0030

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AISI and Steel Industry Background

Good morning and thank you for holding this public hearing on the MSHA proposed rule for examinations of working places in metal and nonmetal mines. I am Brett Smith Senior Director of Government Relations for the American Iron and Steel Institute, or AISI. AISI serves as the voice of the North American steel industry in the public policy arena and advances the case for steel in the marketplace as the preferred material of choice. AISI is comprised of 19 member companies, including integrated and electric furnace steelmakers, and approximately 124 associate members who are suppliers to or customers of the steel industry.

The U.S. steel industry operates more than 100 steelmaking and production facilities, producing 98 million tons in steel shipments valued at \$75 billion in 2014. Steel production facilities directly employ about 142,000 people in the United States, and they directly or indirectly support almost one million U.S. jobs.

An integral part of the AISI membership are the three companies who mine iron ore in the United States – ArcelorMittal, Cliffs Natural Resources, and U.S. Steel. AISI's member companies maintain the eight large active iron ore mining and processing

facilities in the United States located in Northeast Minnesota and Michigan's Upper Peninsula. In aggregate, these facilities directly employ nearly 5,000 workers when at full production and play an outsized role in supporting the regional economies of those areas. Iron ore is a critical raw material needed for the production of steel. These facilities provide the bulk of the iron ore consumed by the U.S. integrated steel industry. The United States is a net exporter of iron ore.

Ongoing Steel Import Crisis

The domestic steel industry is presently combating a steel import crisis. Due to the surge in dumped and subsidized steel from China and many other countries, finished steel imports took a record 29 percent of the U.S. market in 2015. Domestic steel shipments declined by over 12 percent, and capacity utilization averaged just 70 percent for the year. American steel producers were forced to lay off nearly 14,000 workers since January 2015. Though import market share year-to-date is 24 percent and capacity utilization has risen slightly to 72.8 percent through last week, the fundamental challenges to the industry remain.

Foreign government subsidies and other market-distorting policies have fueled the massive global overcapacity in steel which is estimated by the OECD to be about 700 million metric tons today. More than half of that – 425 million metric tons – is located in China. China represents half of all global steel production, and the Chinese steel industry is overwhelmingly government-owned, controlled and subsidized.

The U.S. iron ore industry has been particularly hard-hit by the steel import crisis and companies were forced to idle facilities and lay-off nearly 2,000 workers in 2015 alone. While industry conditions have stabilized and nearly 1,000 miners have been called back to work in recent months, market conditions remain very challenging for both the iron ore sector and the downstream steel industry.

Steel Industry Workplace Safety and Health Commitment

AISI member companies have made substantial efforts to decrease the number and frequency of workplace incidents and continue to work through AISI to share information and best practices to meet their shared goal of improving occupational safety and health. Our experience has demonstrated that cooperative efforts among company management, employees, and government can help maximize safety and health.

The North American steel industry is committed to the highest safety and health standards. Since 2005, U.S. steel producers have achieved a reduction of 50 percent in both the total OSHA recordable injury and illness and lost workday case rates. All of our member companies – whether they are regulated by OSHA or MSHA – are committed to making continuous improvements so that our employees return home safely each day.

Comments on Proposed Examination Rule

After reviewing the MSHA proposed examination rule for metal/nonmetal mines, AISI members have a number of concerns and questions that need further explanation. I will address a few of those issues in my statement this morning and we will provide more detail in our formal written comments to the proposal that we will submit to the docket in September.

Of particular note is the concern from our member companies that full compliance with the proposed rule will require substantially more commitment than the additional five minutes forecast in the proposal. Iron ore mines are vast operations with footprints encompassing tens of square miles. Mine operations in the United States range from

twelve to over fifty square miles wide, consisting of multiple buildings and varied operations. These mine sites include multiple employees and jobs operating simultaneously. For instance, an average-sized building at one of our member company mines has over 150 thousand square feet and five floors. Compliance with all of the various diverse functions across a broad mine operation will certainly be challenging and require more than the limited time MSHA foresees. The agency should reevaluate that estimate.

The industry also is concerned about the impact of the proposed rule on the hourly employees. Our member companies believe that all employees, from management down to the shop floor, must share in a commitment to safety at every moment of the work period. Identifying only one or a few employees to have the responsibility for safety, as this proposal appears to do, will counteract the shared commitment to safety that all of our employees consistently must have.

Furthermore, the provisions in the proposal to include adverse conditions and corrective actions on the examination records raise the concern that MSHA will cite operators for violations it finds in records even if operators are in the process of abating or already abated those conditions. What does MSHA foresee as the remedy if the corrective action the operator has chosen is not what the inspector would like done? In addition, will the final rule include a safe-harbor provision so that MSHA does not issue citations based on what is found in records?

There are also several additional terms used in the proposed rule that we believe require more detailed explanation. In particular, is a “travelway” at a mine operation considered a “working place” in the regulation? Additionally, under the rule, does MSHA intend “competent persons” be considered “agents of the operator?” Providing clarity to these and other terms in the final are critical to insure compliance ability and the rule’s eventual success.

Conclusion

AISI and its member companies urge MSHA to reevaluate existing workplace examination practices currently in place within the iron ore mining sector. In particular, the agency should ensure that the expected compliance costs to the employer are adequately balanced with the foreseen benefits of the proposal. Furthermore, we request that MSHA further define and provide clarity to several of the key terminologies used in the proposed rule.

AISI and its members truly stand at a crossroads for our industry in the U.S. moving forward. We face from a surge of foreign imports – often from areas of the world where steel production is heavily subsidized and undertaken with little or no commitment to workplace safety and health. Nowhere in our industry have these challenges been more accurately felt than in the iron ore production sector.

As you move forward on a number of the key questions we have raised today with the proposed examination regulation, we ask that you recognize the challenges we currently face. The specific details of this proposal have great potential to affect our sector's international competitiveness.

Again thank you for the ability to appear before you today and I am ready to answer any questions that you may have.