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SMALL MINE ADVOCACY REVIEW PANEL ACT

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Mr. JEFFORDS, from the Committee on Health, Education, Labor, and Pensions, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 1114]

[Including cost estimates of the Congressional Budget Office]

The Committee on Health, Education, Labor, and Pensions, to which was referred the bill (S. 1114) to amend the Federal Mine Safety and Health Act of 1977 to amend the Federal Mine Safety and Health Act of 1977 to establish a more cooperative and effective method for rulemaking that takes into account the special needs and concerns of smaller miners, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. INTRODUCTION

Achieving mine safety begins with cooperation. Cooperation between the Mine Safety and Health Administration (MSHA), mine companies and miners is the heart of safe workplaces. It establishes open lines of communication on occupational safety, reinforces the need for proper personal protective equipment and illustrates the importance of effective training. Cooperation, however, cannot end there. To obtain safe workplaces, there must also be an understanding of what safety rules mean, how they are to be implemented and what results should be expected. To further ensure the well-being of our nation's miners, this additional layer of cooperation should exist between MSHA and mine companies on each and every rulemaking process.

MSHA is the government agency responsible for regulating the occupational safety laws for all of American's mines. In addition, the Mine Safety and Health Act of 1977 requires MSHA to develop, promulgate and revise, as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in mines.[1] Beyond a short, one-time comment period or even public hearings, the cooperation that is required must evidence a commitment to partnership at every stage from commencement of rulemaking to enforcement. The committee does not believe it is enough to claim that safety is paramount while simultaneously rules are promulgated that no one can comprehend or legally implement. Compliance must be based on an effective working relationship where the objectives set by the regulators are understood and attainable by the mine companies responsible for the safety of their employees.

If mine companies are truly responsible for complying with MSHA's regulations, there is no reason for excluding their participation from day one of the rulemaking process. The committee acknowledges that MSHA has had great success when its rulemakings have involved cooperation between operators and miners. MSHA's draft Part 46 training rule, for instance, was developed in collaboration with over 15 industry representatives, the Teamsters, the Boilermakers, and the Laborers Health and Safety Fund of North America.[2] Working together from the start, the coalition was able to agree on a draft that was completed by MSHA's internal deadline—a true rulemaking success. Such success stories should be applicable to all of MSHA's rulemaking processes. There is no explanation for why each rulemaking can not boast such cooperation by its stakeholders. For this reason, the Small Mine Advocacy Review Panel Act (S. 1114) was introduced. This incremental bill would apply the existing small business advocacy review panel process, as set forth in the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), to MSHA's rulemaking process.[3]

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[1] Mine Safety and Health Act, 30 U.S.C. § 811(a) (1977).

[2] Increasing MSHA and Small Mine Cooperation, Hearing on S. 1114 before the Senate Subcommittee on Employment, Safety and Training, 106th Congress, 1st Session (1999) [hereinafter Senate Hearing 106–166] (statement of Senator Michael B. Enzi, Chairman of the Senate Subcommittee on Employment, Safety and Training), at 2.

[3] Small Business Regulatory Enforcement Fairness act, 5 U.S.C. § 609(b) (1996).

By statutorily favoring cooperation and partnership, MSHA would formally solicit the comments and concerns of small mine companies at the beginning of the process, rather than attempt to remedy such concerns, during late stages of the proposed rule's comment period—ensuring that small mine companies' unique workplace concerns are effectively remedied. It is the committee's intention that S. 1114 help shorten the current period of time it takes for an MSHA rule to be completed. The committee recognizes and respects the delicate relationship between MSHA, mine companies and miners. Based on the history of this relationship, S. 1114 was not written to overhaul MSHA's rulemaking process, but incrementally improve it for the benefit of mine safety and health.

II. PURPOSE

In 1996, SBREFA was enacted to help guarantee that small business entities receive fair treatment from federal agencies during their respective rulemaking processes. SBREFA amended the Regulatory Flexibility Act to require the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) to convene a small business advocacy review panel for the purpose of receiving advice and comments from small entities during rulemaking.[4] Each covered agency must convene a panel of federal employees, representing the Office of Information and Regulatory Affairs within the Office of Management and Budget, the Chief Counsel of Advocacy of the Small Business Administration, small business representatives and the covered agency promulgating the regulation. The law requires the covered agencies to convene a panel prior to publishing an initial regulatory flexibility analysis for a proposed rule that would have a significant economic impact on a substantial number of small entities.

Since SBREFA's enactment, EPA and OSHA have convened panels for 17 rules—three at OSHA and 14 at EPA.[5] The agencies have gained valuable information and appreciation for panelists invited to comment on the draft regulations and preliminary economic analysis. According to Jere Glover, Chief Counsel of Advocacy for the U.S. Small Business Administration (SBA), the SBA continues to find that agencies are more likely to minimize the burden on small entities while meeting their regulatory objectives if they involve small businesses and the Office of Advocacy early in the rulemaking process. In addition, the SBREFA panel process leads to promulgation of rules that often achieve the agency's goals, avoid unnecessary regulation burden on small business, without showing favoritism towards small business.[6]

The purpose of the panel process is to minimize the adverse impacts and increase the benefits to small businesses affected by the agency's actions. Consequently, the true proof of each panel's effectiveness in reducing the regulatory burden on small entities is not

[4] U.S.C. § 244(b).
[5] Senate Hearing 106–166 (letter from Jere Glover, Chief Counsel of Advocacy, Small Business Administration, to Michael B. Enzi, Chairman, U.S. Senate Subcommittee on Employment, Safety and Training, May 21, 1999), at 69.
[6] Ibid.

known until the agency issues the proposed and final rules.[7] It is through this formal process that small businesses know with certainty that their unique concerns have been heard by the respective regulatory agency.

The committee believes that enactment of S. 1114 would formally open doors between MSHA and small mine companies. The simple act of talking about safety will lead to safer workplaces. SBREFA panels are a valuable tool for addressing concerns and will ensure that MSHA's final rules fulfill their intent—enhancing safety and health for our nation's miners. Evidence shows that early comment from small business entities has benefited EPA and OSHA rulemakings. It is time that this process be extended to MSHA.

III. Legislative History and Committee Action

On May 25, 1999, Senator Enzi introduced S. 1114, the Small Mine Advocacy Review Panel Act.

On May 26, 1999, the Senate Subcommittee on Employment, Safety and Training held a hearing on the Small Mine Advocacy Review Panel Act, S. 1114, entitled, "Increasing MSHA and Small Mine Cooperation" (S. Hrg. 106–166). The following individuals provided testimony:

The Honorable J. Davitt McAteer, Assistant Secretary of Labor for the Mine Safety and Health Administration, Washington, DC
Tom Thorson, Owner of Black Hills Bentonite, Mills, WY
Steve Minshall, CIH, CSP, Corporate Health and Safety Manger of Ash Grove Cement Industry, Overland Park, KS
Joe Main, Administrator of the Department of Occupational Safety and Health for the United Mine Workers of America, Washington, DC
Bruce Watzman, Vice-President of Safety and Health for the National Mining Association, Washington, DC
Kim Snyder, President, Eastern Industries, Inc., Center Valley, PA

On November 3, 1999, the Senate Committee on Health, Education, Labor and Pensions met in Executive Session to consider Senate bill 1114, the Small Mine Advocacy Review Panel Act. The committee voted on the following amendment:

Senator Wellstone offered an amendment that would: replace SBREFA panel requirements with miner and local community panel participation; limit participation to small mine companies with 19 employees or less; and prohibit representatives of trade associations from panel participation. The amendment failed on a voice vote.

The committee then voted (11–7) to report the bill, as amended, on a rollcall vote:

YEAS	NAYS
Gregg	Kennedy
Frist	Dodd
DeWine	Harkin
Enzi	Mikulski
Hutchinson	Wellstone

[7]Senate Hearing 106–166 (statement of Senator Kit Bond, Chairman, U.S. Senate Small Business Committee), at 4.

Collins	Murray
Brownback	Reed
Hagel	
Sessions	
Bingaman	
Jeffords	

IV. COMMITTEE VIEWS

Since 1996, SBREFA panels have been a required rulemaking procedure at EPA and OSHA. According to SBA, this requirement has provided small business entities the formal ability to improve the regulatory culture in both agencies.[8] MSHA, sister-agency to OSHA, has the sole responsibility for regulating the safety and health of our nation's mines. It's mission mirrors OSHA's in both intent and administrative procedure. It is the mine company that is primarily responsible for ensuring that the workplace is in regular compliance with the law. Moreover, MSHA's objective centers on safeguarding the interests of miners. It is these two reasons that small mine companies, the majority of our nation's mines, should be formally included in MSHA's rulemaking process.

Two of MSHA's rules in particular would have benefited from the requirements of S. 1114: the Noise rule and the Diesel Particulate Matter rule. While the committee believes that MSHA is wholly justified in attempting to improve the safety and health conditions for miners as they relate to noise and diesel exposure, the SBA states that both of these final rules have raised concerns by small mine operators which could have been addressed at the pre-proposal state. In the case of noise exposure, small business comments repeatedly requested that MSHA's proposed rule permit the use of personal protective equipment prior to seeking engineering and administrative solutions—along the same lines as current OSHA standards.[9] In terms of the proposed rule on diesel particulate matter, questions of sound science, statutory jurisdiction, and economical and technical feasibility were also shared with MSHA.[10] According to the SBA, if small business advocacy review panels had been convened for both of these two proposals, current opposition and concerns could most likely have been lessened or eliminated.[11]

Amending S. 1114

During the November 3, 1999, Executive Session, one amendment, by Senator Wellstone, was offered to S. 1114. The amendment would have changed the bill so that existing SBREFA panel requirements for small business participation would be replaced by miner and local community participation. Miners and local communities are not excluded from participating in the rulemaking proc-

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[8] Senate Hearing 106–166 (letter from Jere Glover, Chief Counsel of Advocacy, Small Business Administration, to Michael B. Enzi, Chairman, U.S. Senate Subcommittee on Employment, Safety and Training, May 21, 1999), at 69.

[9] Letter and comments of the American Portland Cement Alliance (APCA) to Ms. Silvey, Mine Safety and Health Administration Office of Standards, Regulations and Variances (February 23, 1998), at 1.

[10] Senate Hearing 106–166 (letter from Senator Michael B. Enzi, Chairman, Senate Subcommittee on Employment, Safety and Training to J. Davitt McAteer, Assistant Secretary of Labor for MSHA, June 24, 1999), at 1.

[11] Id at 70.

ess during the public comment period. Employee representation is at the heart of MSHA's responsibility. The premise of SBREFA and S. 1114 is simply to strike a balance where small business concerns could be given formal, fair consideration. In addition, the Wellstone amendment called for "equal participation" for miners and local communities. MSHA enforcement, however, overwhelmingly applies to mine companies and the amendment did nothing to address this disparity.

Secondly, the Wellstone amendment would have reduced SBA's current definition of small business entities—500 employees or less—to 19 employees or less. The committee notes that MSHA's definition of small business is 20 employees or less.[12] Senator Wellstone claimed that SBA's current definition of 500 would apply to over 99 percent of the nation's mining industry.[13] If reduced to 19 employees or less, Senator Wellstone stated that over 90 percent of small businesses would meet this new definition. The committee believes that this new estimate is based on mine sites, not small businesses as a whole, and that SBA's current definition of small business includes all of the company's employees, not just those at a particular mine site. S. 1114 was written to be consistent with SBREFA requirements and that the vast majority of small business concerns should be formally illustrated by the advocacy review panel process.

Finally, the Wellstone amendment would have required that the panels "shall not include representatives of trade associations." To be clear, the committee points out that lobbyists or trade association employees do not serve on SBREFA panels. What is concerning to the committee however, is that the term "representative" is not defined. The committee believes that the language could prohibit a legitimate small business from participating on the panel simply because it happens to be a member of a trade association. In addition, the committee notes that the amendment did not exclude representatives of labor organizations.

MSHA's concerns

On May 26, 1999, the Senate Subcommittee on Employment Safety and Training heard testimony from J. Davitt McAteer, Assistant Secretary of Labor for MSHA, on S. 1114. According to Mr. McAteer's response to Senator Jefford's questioning, MSHA endorsed Senator Enzi's proposal, but was afraid that the agency would have to disagree, not with the purpose and not the goal, but in the process and how MSHA gets there.[14] The following testimony addresses Mr. McAteer's answer:

> Senator HUTCHINSON. I noticed that in responding to Senator Jeffords as to your position on the Enzi proposal, you said you opposed formalizing the process, and, if I recall correctly and my notes are accurate, you said, and I paraphrase that it would be more difficult to get out where the small operators are.

[12] Senate Hearing 106–166 (statement of Senator Paul Wellstone), at 8.
[13] Ibid.
[14] Senate Hearing 106–166 (McAteer response to Chairman Jeffords' question), at 22.

Are there other reasons why you oppose Senator Enzi's proposal?

Mr. MCATEER. Senator, we support the notion, the idea, of involving small operators, and we have made great strides to do it. We think in fact that our process can be more successful than the proposed advisory——

Senator HUTCHINSON. And your process involves what?

Mr. MCATEER. We do two things. First, we do pre-proposal meetings and public meetings on a number of regulations. Second, we put out the regulation to each mine operator, and we invite them to come to our meetings, and more to the point——

Senator HUTCHINSON. Is there anything in the Enzi proposal that would preclude you from continuing to do that?

Mr. MCATEER. No, there is not.[15]

Organized labor's concerns

On November 2, 1999, the AFLO–CIO wrote Chairman Jeffords in opposition to S. 1114.[16] First, the letter stated that S. 1114's definition of small business—the same as that used by SBA—included all mining employers with 500 or fewer employees. Moreover, this definition covered more than 95 percent of all the nation's miners.[17] The committee agrees with this statement, which was also stated repeatedly by members of the committees and reflected in S. 1114 hearing testimony. The fact that over 95 percent of mine companies meet S. 1114's and SBA definition of small business is the reason this committee seeks to apply the SBREFA panel process at MSHA. If the panel's concerns represent the vast majority of mine companies, the more reason for enacting S. 1114 so that they are formally made part of MSHA's rulemaking process.

Second, the letter stated that the industry groups have used the review procedures not as a means to address concerns of small business, but rather as a platform in their campaigns to delay or block needed safety and health rules, such as OSHA's ergonomics standard.[18] The committee has no evidence showing that the promulgation of any rule has been delayed or blocked due to a SBREFA panel. In fact, the panel must report on its comments and findings no later than 60 days after the date an agency convenes the panel process.[19] The committee does not believe that 60 days or less of comment would delay or block any rulemaking process. Since the panel process occurs prior to the issuance of a proposed rule, the committee agrees with the SBA that S. 1114 would help lessen or eliminate future opposition and concerns about MSHA's rules. In addition, the committee notes that OSHA's general intention of promulgating an ergonomics standard and opposition to past drafts of such a standard existed prior to SBREFA's enactment.

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[15] Id at 29 and 30.

[16] Letter from Peggy Taylor, Director, Department of Legislation, AFL–CIO, to Chairman James Jeffords, Chairman, Senate Committee on Health, Education, Labor and Pensions (November 2, 1999). A complete copy of the Taylor letter is appended at the conclusion of the Committee Views.

[17] Id at 1.

[18] Ibid.

[19] 5 U.S.C. § 244(b)(5).

Finally, the letter suggests that S. 1114's process contradicts MSHA's current rulemaking procedures. The United Mine Workers of America (UMW) shared similar concerns in a letter to Senator Enzi on November 2, 1999.[20] These concerns are similar to those raised by Assistant Secretary McAteer and answered in the previous section entitled "MSHA's Concerns." The committee believes that union opposition to S. 1114 lacks merit and is based solely on partisan grounds—not on the safety and health concerns of our nation's miners. The committee appreciates receiving the UMW's comments on S. 1114 in writing prior to any further consideration of this bill. Although Mr. Main's written testimony on behalf of UMW at the May 26, 1999 hearing provided a thorough review of fraudulent coal dust sampling and exposure to diesel fumes, chemicals and noise, neither his oral or written testimony at the hearing discussed the UMW's position on S. 1114.[21]

Conclusion

S. 1114 is bipartisan, common sense legislation that reflects the simple requirement of SBREFA and reaffirms Congress' commitment to address small business concerns about regulatory and paperwork burdens objectively during the development of rules. The committee notes that SBREFA was also a bipartisan bill when considered by Congress four years ago. In addition, the Senate Small Business Committee this year unanimously approved legislation that would expand SBREFA panels to the Internal Revenue Service (IRS). The process that would apply to the IRS would be no different than that required by S. 1114 to MSHA.

V. Bill Summary

S. 1114 would establish a more cooperative and effective method for rulemaking with respect to mandatory health or safety standards that takes into account the special needs and concerns of small companies that engage in mining. The bill would amend the Mine Safety and Health act of 1977 and SBREFA to include MSHA as a covered agency required to establish a small business advocacy review panel prior to publication of an initial regulatory flexibility analysis.

As required by SBREFA, MSHA would notify the Chief Counsel for Advocacy of the Small Business Administration and provide information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected. No later than 15 days after the date of receipt of this information, the Chief Counsel must identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations about the potential impacts of the proposed rule. MSHA would then convene a review panel consisting wholly of full time federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regu-

[20] Letter from Cecil Roberts, International President, UMW, to Senator Mike Enzi, Chairman, Senate Subcommittee on Employment, Safety and Training (November 2, 1999). A complete copy of the Roberts letter is appended at the conclusion of the Committee Views.

[21] Senate Hearing 106–166 (Oral and written statement of Joe Main, Administrator of the Department of Occupational Safety and Health for the United Mine Workers of American, Washington, DC), at 38 to 46.

latory Affairs within the Office of Management and Budget, and the Chief Counsel. The panel would then review any material the agency has prepared, including any draft proposed rule, collect advice and recommendations of each individual small entity representative identified by the agency after consultation with the Chief Counsel. No later than 60 days after the date MSHA convenes a review panel, the review panel would report on the comments of the small entity representatives and its findings, provided that such report shall be made public as part of the rulemaking record.[22]

VI. Application of Law to Legislative Branch

Section 102(b)(3) of Public Law 104–1, the Congressional Accountability Act (CAA), requires a description of the application of this bill to the legislative branch. S. 1114 would amend the Mine Safety and Health Act of 1977 and the Small Business Regulatory Enforcement Fairness Act of 1996, requiring MSHA to establish small business advocacy review panels prior to publication of an initial regulatory flexibility analysis. This requirement only pertains to MSHA and would not apply to the legislative branch.

VII. Regulatory Impact Statement

The committee has determined that there will be only a negative increase in the regulatory burden of paperwork as a result of this legislation.

VIII. Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, November 30, 1999.

Hon. James M. Jeffords,
Chairman, Committee on Health, Education, Labor, and Pensions, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1114, the Small Mine Advocacy Review Panel Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Charles Betley.

Sincerely,

Robert A. Sunshine
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1114—Small Mine Advocacy Review Panel Act

CBO estimates that implementing S. 1114 would cost about $1 million per year during the 2001–2004 period, assuming appropriation of the necessary amounts. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. The bill contains no intergovernmental or private-sector

[22] 5 U.S.C. § 244.

mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

Under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), before publishing regulations, the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) must convene panels to analyze the potential impact of those regulations on small businesses. Panels consist of employees of the agency proposing the regulation, the Small Business Administration (SBA), and the Office of Management and Budget (OMB). Panels collect advice from representatives of the small businesses that would be affected and submit a report to the agency proposing the regulation.

S. 1114 would amend SBREFA to require the Mine Safety and Health Administration (MSHA) to follow the same procedures for convening small business advisory panels as EPA and OSHA before issuing regulations. Based on the number of regulations issued by MSHA in recent years, CBO assumes the bill would apply to about six proposed regulations each year. Based on the experience of EPA and OSHA, and assuming enactment by October 1, 2000, CBO estimates that implementing S. 1114 would cost MSHA about $1 million in fiscal year 2001 and each subsequent year. In addition, CBO estimates that participating in additional panel reviews with MSHA would cost OMB and SBA less than $500,000 a year.

The CBO staff contact for this estimate is Charles Betley. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

IX. ADDITIONAL VIEWS OF SENATOR JEFF BINGAMAN

As a co-sponsor of S. 1114, the Small Mine Advocacy Review Panel Act of 1999, I am pleased that the Committee reported the bill and look forward to working with my colleagues to bring it to the floor of the Senate. I would especially like to commend my colleague, Senator Enzi for his work on the measure.

I believe that S. 1114 builds on efforts Congress has made over the past few years to bring small businesses into the process by which federal regulations are made and implemented. Already, the Small Business Administration conducts small business review panels in conjunction with OSHA and EPA and it is my understanding that these panels have been helpful to those agencies in understanding, and taking into consideration, the special concerns of small businesses. It is my hope that passage of S. 1114 will provide a similar opportunity for MSHA and small mine operators in my state.

At the mark up of S. 1114, one of the main concerns raised was the 500 employee threshold for what is considered a "small mine". While I support S. 1114, I believe that a reasonable agreement on the definition of a "small mine" can be reached and look forward to working with Senator Enzi and others to address that concern.

JEFF BINGAMAN.

X. MINORITY VIEWS

INTRODUCTION

S. 1114 would require the Mine Safety and Health Administration (MSHA) to convene industry-dominated advocacy panels before proposing regulations to protect the safety and health of miners. The Minority believes there are many instances in which the special needs and circumstances of small businesses need to be addressed in the regulatory process.[1] However, S. 1114 would do nothing to improve the representation of smaller mines, as opposed to larger mines, in MSHA rulemaking. In fact, existing procedures for the involvement of small mine operators in MSHA rulemaking are superior to those mandated by S. 1114. The most significant impact of S. 1114 would be to give added weight in MSHA's rulemaking to the interests of mine operators—large and small—over those of miners, thus reversing the Mine Act's statutory presumption in favor of miner safety and health.[2] The procedures mandated by S. 1114 would be inappropriate for the mining industry, duplicative, counterproductive, bureaucratic, centralized, wasteful, dilatory, and detrimental to the safety and health of American miners. For these reasons, the U.S. Department of Labor, the United Mineworkers of America,[3] the AFL–CIO,[4] and the undersigned members of the Minority all oppose S. 1114.

S. 1114 WOULD DO NOTHING TO IMPROVE THE REPRESENTATION OF SMALLER MINES IN MSHA RULEMAKING

Smaller mine operators are better represented under existing MSHA rulemaking procedures than they would be under S. 1114. Because of limited resources, S. 1114 would force MSHA to replace a balanced and decentralized rulemaking process that effectively involves smaller mine operators from the outset with a centralized, bureaucratic procedure dominated by larger mines and Washington trade associations representing the entire industry.

MSHA already involves small mines in the rulemaking process

The Majority argues that S. 1114 would "formally open doors between MSHA and small mine companies"; that there is not reason for excluding [small mine operators'] participation from day one of

[1] In fact, members of the Minority, including Employment, Safety, and Training Subcommittee Chairman Wellstone, have supported the Small Business Regulatory Enforcement Fairness Act (SBREFA), as well as the recent addition of the Internal Revenue Service to the list of agencies required to convene SBREFA panels.

[2] The Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1977).

[3] See Letter from Cecil E. Roberts, United Mineworkers of America, to members of the U.S. Senate (November 2, 1999). A complete copy of the UMW letter is appended at the conclusion of the Minority Views.

[4] See Letter from Peggy Taylor, AFL–CIO Director of Legislation, to Chairman Jeffords (November 2, 1999). A complete copy of the AFL–CIO letter is appended at the conclusion of the Minority Views.

the rulemaking process"; and that under S. 1114 "MSHA would formally solicit the comments and concerns of small mine companies at the beginning of the process, rather than attempt to remedy such concerns during late stages of the proposed rule's comment period." However, the doors between MSHA and small mine companies are already open, small mine operators are *not* excluded from MSHA's rulemaking process, and their comments and concerns are already formally solicited as the beginning of the process.

MSHA already involves smaller mines in the rulemaking process *before* issuing proposals. Secretary Herman writes, "MSHA is in a unique position to seek advice and input from the mining industry well before the rulemakinig process formally begins, and continues to involve all members of the mining community throughout the rulemaking process."[5] MSHA holds forums in mining communities around the country to solicit public input, and it notifies every mine operator directly of every meeting. MSHA also notifies every mine operator directly of every forthcoming regulation. Assistant Secretary McAteer's testimony before the Employment, Safety, and Training Subcommittee on May 26, 1999 addressed these procedures in detail.[6]

MSHA has a close relationship with small mines

While the special concerns and needs of small businesses in other industries may be neglected by regulating agencies, it cannot be argued that small mines are neglected by MSHA. Because virtually the entire mining industry consists of relatively small mines,[7] and because there are so few mine operators in the United States, MSHA has a very close relationship with small mine operators. Secretary Herman writes that the Mine Act

> provides MSHA with a unique set of responsibilities. These include conducting a minimum number of annual inspections at all mines, investigating all fatalities and other serious accidents, and collecting data relating to accidents, injuries, and illnesses that occur in the mining industry. As a result, MSHA has specific knowledge of the safety and health hazards miners face on a daily basis, and is uniquely positioned to interact on safety and health matters, including its rulemaking activities, with *every* mine operator in the Nation [emphasis in original].[8]

MSHA regulates only 14,000 mines. It is therefore able to inspect *every* underground mine four times a year, and *every* surface mine twice a year. Between January and November 1999, MSHA sent more than 70 separate mailings to every mine operator in the country. These mailings included copies of proposed regulations, announcements of public meetings, announcements of workshops, requests for information in advance of rulemaking, "Fatal Alert Bulletins," notices about injury trends and injury prevention, and copies of new publications. In 1999, MSHA mailed more than 3.5 mil-

[5] Letter from Labor Secretary Alexis Herman to Chairman Jeffords (November 2, 1999) hereinafter referred to as the Herman Letter), at 1–2.
[6] Hearing on Increasing MSHA and Small Mine Cooperation, 106th Congress, 1st Session (May 26 1999) (hereinafter cited as MSHA Hearing), at 79–81, 212–213.
[7] See discussion, infra.
[8] Herman Letter, at 1–2.

lion pieces of printed material to the mining community, in response to 40,000 requests.

The Majority justifies the procedures mandated by S. 1114 by analogy to SBREFA panels convened by the Occupation Safety and Health Administration (OSHA). The Majority writes that MSHA is OSHA's "sister-agency" and its mission mirrors OSHA in both intent and administrative procedure." However, the Majority is overlooking significant differences between the two agencies. OSHA regulates 6 million workplaces, compared to 14,000 mining operations regulated by MSHA. MSHA has a much closer relationship, and much more frequent contact, with small mines than OSHA could possibly maintain with 6 million work sites. Unlike OSHA, MSHA is therefore able to involve small mine operators at the very beginning stages of the rulemaking process.

S. 1114 would duplicate existing procedures and drain MSHA resources

S. 1114's duplicate and unnecessary procedures would likely replace current MSHA procedures because they would drain MSHA's scarce resources. Secretary Herman writes,

> S. 1114 also has resource implications for MSHA. MSHA uses enforcement, technical support, and education and training staff to encourage the mining community's participation in its safety and health activities, including rulemaking. This approach works efficiently because these staff members are at mine sites, interacting with miners and mine operators virtually on a daily basis. The formal panels required by S. 1114, however, would require MSHA to devote specific personnel to prepare materials, convene and participate in panels, prepare reports, and develop findings on the issues raised during the formal panel process.[9]

In response to the Majority's questions following the Subcommittee's May 26 hearing, MSHA added, "extending the [SBREFA] panels to MSHA would require the Agency to divert its limited resources from current consultation practices to a formalized process without adding appreciable benefits." [10]

It would be extremely regrettable if S. 1114 forced MSHA to forego its current procedures providing for public involvement in the rulemaking process. MSHA's existing procedures are in every respect superior to the procedures established under S. 1114.

S. 1114 would disadvantage smaller mines

Substituting SBREFA-like panels for current MSHA procedures would actually disadvantage smaller mines. Currently, small mine operators are able to participate in MSHA forums in their own communities. Yet realistically, only a small number of operators would likely participate in S. 1114's advocacy panels. These would undoubtedly be larger operators, since virtually the entire industry

[9] Ibid., at 2.
[10] MSHA Hearing, at 81.

would qualify as small businesses under S. 1114.[11] Secretary Herman writes,

> the formal panels could have representation from mines employing 400–500 workers as well as those employing fewer than 20 workers. Given the disparity in resources between small and large mines, we are very concerned that the formal panels would be dominated by the larger operations. In our view, S. 1114 could actually result in diminished opportunity for meaningful participation in MSHA's rulemaking activities by operators of small mines.[12]

Moreover, MSHA has expressed its concern that S. 1114 would allow Washington trade associations, rather than small mine operators, to wield disproportionate influence in the rulemaking process. In response to the Majority's questions following the May 26 Subcommittee hearing, MSHA wrote, "We are concerned that convening special panels could result in addressing the issues of concern to a select group, often represented by associations and other groups, which could be less fair to mine operators and miners than the mechanisms MSHA currently uses."[13] It added that "MSHA's current rulemaking process does not restrict access to select 'representatives' of a small business panel, whose interests and perspectives may not generally coincide with those of each and every small business operator. * * * The attached letters, which are on the SBA's web site, confirm the role that Washington associations play in this process."[14]

Senator Wellstone offered an amendment that would have excluded "representatives of trade associations" from participation in S. 1114's advocacy panels. The Wellstone amendment was defeated by voice vote.

S. 1114 WOULD GIVE DISPROPORTIONATE WEIGHT TO THE INTERESTS OF MINE OPERATORS—LARGE AND SMALL—OVER THE INTERESTS OF MINERS

While S. 1114 would do nothing to improve the representation of smaller mine operators in MSHA's rulemaking process, it would give priority to the interests of mine operators over those of miners. This would constitute an entirely inappropriate reversal of the statutory presumption of the Mine Act, and could lead to regulatory delays that would adversely affect miner safety and health.

S. 1114 would apply to virtually all mines, not just smaller mines

While the Majority claims that S. 1114 establishes special procedures for small businesses, its procedures would apply to almost all mine operators, effectively regardless of size. In a letter to Chairman Jeffords dated November 2, 1999, Secretary of Labor Alexis Herman writes,

> The Small Business Administration defines a small mine as one employing 500 or fewer workers. Under this defini-

[11] See discussion, infra.
[12] Herman Letter, at 2.
[13] MSHA Hearing, at 81.
[14] Ibid., at 80–81.

> tion, more than 99 percent of the Nation's mines are "small" and eligible to participate in the formal panels.[15]

In fact, only 40 of the 14,000 mines regulated by MSHA employ more than 500 workers. All other mine operators in the country would be eligible to participate in S. 1114's "small business" panels. S. 1114's advocacy panels would therefore represent virtually the entire mining industry, not just smaller-sized mines.

This is true regardless of whether the precise percentage of small mine operators with fewer than 500 employees is 99 percent or 95 percent. The Majority disputes the higher figure, but concedes that "over 95 percent of mine companies meet S. 1114's and SBA's definition of small business." Even assuming the Majority's lower figure, S. 1114's advocacy panels would represent the interests of virtually the entire mining industry, not merely smaller-sized mines.

In any event, the appropriate figure is 99 percent. S. 1114 gives the term "small mine operator" the same "meaning given the term 'small business concern' under section 3 of the Small Business Act (including any rules promulgated by the Small Business Administration) as such term relates to a mining operation." The Majority contends that "the SBA's current definition of small business includes all of a company's employees, not just those at a particular mine site." This distinction accounts for the discrepancy between the 95 and 99 percent figures.

However, since enactment of the Regulatory Flexibility Act in 1980, NSHA's Reg Flex analyses have always been based on the number of employees within an establishment—not the number of employees within a taxpaying unit or parent company. The SBA has never rejected or challenged MSHA's analyses on this basis. In fact, the SBA Office of Advocacy has written that MSHA "complied with RFA by certifying the rule based on this proper definition."[16]

S. 1114 reverses the Mine Act's presumption of the priority of miner safety and health

The Majority concedes that S. 1114 would give over 95 percent of the mining industry preferential consideration in MSHA rulemaking, but argues that this is appropriate because mining companies are almost all small businesses and are the ones most affected by MSHA regulations. The Majority goes so far as to argue against "equal participation" of miners in S. 1114's panels because "MSHA enforcement * * * overwhelmingly applies to mine companies."[17] In effect, the Majority is arguing for a reversal of the statutory presumption of the Mine Act for the priority of miner safety and health.

The Mine Act clearly establishes such a presumption. The Mine Act's very first finding is that "the first priority and concern of all in the coals or other mining industry must be the health and safety

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[15] Herman Letter, at 2.

[16] Letter on Proposed Rule for Occupational Noise Exposure from Jere W. Glover, Chief Counsel for Advocacy, U.S. Small Business Administration, to J. Davitt McAteer (November 19, 1996) (see SBA website).

[17] The Majority also writes, "The fact that over 95 percent of mine companies meet S. 1114's and SBA's definition of small business is the reason this committee seeks to apply the SBREFA panel process at MSHA. If the panel's concerns represent the vast majority of mine companies, the more reason for enacting S. 1114 so that they are formally made part of MSHA's rulemaking process."

of its most precious resource—the miner." As for the mine operators, the Mine Act gives them "primary responsibility" for preventing unsafe and unhealthy conditions.[18] Given this statutory presumption, it would be untenable to argue that the interests of mine operators should be given priority or preferential consideration in MSHA's rulemaking process. Yet this is precisely what S. 1114 does. The fact that 99 percent of mine operators meet the SBA definition of "small business" does not make it any more acceptable to give the mining industry priority consideration over miners and affected communities.

S. 1114 would give mine operators preferential treatment

S. 1114 would upset MSHA's delicate balance between the interests of miners, mine operators, and mining communities. MSHA currently solicits input on forthcoming regulations through public meetings in mining communities, outside of Washington, D.C., at which all interested parties are invited to attend. Under these procedures, it is difficult for any one party to exert undue influence over the regulatory process. S. 1114, by contrast, would give mine operators—large and small—preferential treatment in the consideration and review of proposed regulations, without any participation of miners or affected communities in its advocacy panels. Yet MSHA has stated that S. 1114 would not produce any information not currently obtained through existing procedures.

To restore some measure of balance to S. 1114's rulemaking process, Senator Wellstone offered an amendment that would have ensured "equal participation of mine workers and members of affected local communities" in its advocacy panels. Absent this improvement, S. 1114 would exclude miners and affected communities from initial consideration of MSHA rules, thereby skewing the rulemaking process in favor of mine operators—the largest among them as well as the smallest. The Wellstone amendment was defeated by voice vote.

Mining is an extremely dangerous industry

The reason why the Mine Act carries a presumption in favor of miner safety and health is that mining is one of the most dangerous industries in the country. As Joseph A. Main of the United Mineworkers of America testified at the Subcommittee's May 26 hearing, the mining industry has the highest fatality rate in the country.[19] This is also why the Mine Act imposes strict liability on mine operators.

One reason why coal mining, in particular, is so dangerous is the widespread overexposure of miners to coal dust. In 1998, an expose by the Louisville Courier-Journal detailed pervasive violation of the Mine Act by coal mine operators.[20] As Senator Wellstone stated at the May 26 Subcommittee hearing, "The Courier-Journal found that four out of five of this country's underground coal mine opera-

[18] 30 U.S.C. § 801(a), (e) (1977).

[19] Testimony of Joseph A. Main, Administrator, Department of Occupational Safety and Health, United Mineworkers of America, MSHA Hearing, at 42. Nevertheless, the Mine Act has achieved dramatic success in reducing worker injuries and fatalities over the past 20 years. See Testimony of Assistant Secretary Davitt McAteer, MSHA Hearing, at 12–13.

[20] *See* "Dust, Deception, and Death," Louisville Courier-Journal (April 19–May 3, 1998). *See also* Testimony of Assistant Secretary of Labor Davitt McAteer, MSHA Hearing, at 26–29.

tors had submitted [coal dust] test samples that were statistically impossible. At 48 percent of the mines, over 15 percent of test samples showed impossibly low levels. Several mine officials admitted the fraud was deliberate."[21] Widespread cheating on coal dust samples has also been evidenced by 117 guilty pleas or convictions for violations of the Mine Act since the early 1990s.[22]

Incidentally, smaller mines are especially hazardous to the health and safety of miners. MSHA statistics reveal that smaller mines and non-union mines both have higher-than-average rates of fatalities and injuries.[23] Based on its analysis of 24,380 federal coal dust records and other sources, the Louisville Courier-Journal concluded that small non-union mines generally pay lower wages and cheat more often on coal-dust testing.[24]

Miners need speedier rulemaking, not additional delay

Miners need speedier promulgation of regulations to protect their health and safety, not more delays resulting from S. 1114. In response to Majority questions following the May 26 hearing, MSHA wrote that "adding this (advocacy panel) requirement to the rulemaking process could delay safety and health rules that would protect miners from serious injuries and illnesses."[25]

The mining industry has already succeeded in delaying much-needed regulation for years, including regulations necessary to stop rampant cheating on coal dust sampling that results in the deaths of thousands of coal miners every year.[26] S. 1114 would constitute an additional opportunity for delay of this and other critical safety and health protections.

Several MSHA regulations opposed by the mining industry have been inexcusably delayed. As Subcommittee Chairman Wellstone noted at the May 26 hearing, "the noise rule originated with the Bush Administration. The diesel particulate matter regulation was first proposed in the Reagan Administration. Single-shift sampling should have been implemented years ago."[27]

The single-shift sampling rule is of particular significance.[28] This rule has already been delayed far too long due to the delaying tactics of mine operators. The single-shift rule is necessary for MSHA to take coal dust testing out of the hands of mine operators, an initiative supported by industry and miners alike. This takeovers is critically important for MSHA to put a stop to rampant and widespread violation of the Mine Act.

THE ADMINISTRATION OPPOSES S. 1114

The Majority incorrectly claims that "MSHA endorsed Senator Enzi's proposal." On the contrary, MSHA unequivocally opposes S.

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[21] Opening Statement of Senator Paul Wellstone, MSHA Hearing, at 7.
[22] MSHA Hearing, at 184–199.
[23] MSHA Hearing, at 92–95, 170.
[24] "Black Lung, Cheating Worse at Small, Non-Union Mines," Louisville Courier-Journal (April 21, 1998).
[25] MSHA Hearing, at 79. Similarly, Secretary Herman writes, "Resources devoted to the formal panels would not be available for other issues, thus possibly delaying new or enhanced safety and health protections for the men and women working in the Nation's mines." Herman Letter, at 2.
[26] See MSHA Hearing, at 88–90.
[27] Ibid., at 8.
[28] Ibid., at 176–183.

1114. In his testimony before the Subcommittee Assistant Secretary McAteer said, "We support the notion, the idea, of involving small operators," but he argued that current MSHA existing procedures achieve this goal more effectively than the procedures established by S. 1114.

MSHA has made known its opposition to S. 1114 on multiple occasions: in Assistant Secretary McAteer's testimony before the Subcommittee, in responses to the Majority's follow-up questions, and in Secretary Herman's letter. In Secretary Herman's letter to Chairman Jeffords dated November 2, 1999, she wrote,

> MSHA has long-standing mechanisms and approaches that effectively involve all segments of the mining community in its rulemaking activities. In our view, requiring formal panels would not add any appreciable benefits beyond MSHA's current efforts to involve small businesses in rulemaking, and could delay safety and health rules necessary to protect miners' safety and health. Consequently, the Administration opposes S. 1114.

In response to the Majority's questions following the May 26 Subcommittee hearing, MSHA wrote, "the Administration opposes extending the [SBREFA] panels to MSHA."[29] In fact, immediately following the exchange from the May 26 hearing excerpted by the Majority, Assistant Secretary McAteer said, "We think that the proposed advocacy panels do not achieve the results but simply add another layer of bureaucracy and another layer of Washington associations being part of the process."[30]

DEMOCRATIC AMENDMENT

Senator Wellstone offered an amendment that would have significantly improved S. 1114. The Wellstone amendment provided for "equal participation of mine workers and members of affected local communities at every stage of the process," including S. 1114's advocacy panels. The Wellstone amendment expanded participation in S. 1114's panels because it is very hard to justify excluding miners and affected communities when 99 percent of mine operators would be eligible for participate.

The Wellstone amendment also changed the definition of "small entities" in S. 1114, reducing the employees threshold from 500 to fewer than 20. The Wellstone amendment thus made S. 1114 conform to MSHA's traditional definition of small mine operators.[31] Even under the more restrictive definition in the Wellstone amendment, more than 80 percent of all mine operators would be eligible to participate in S. 1114's advocacy panels.[32]

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[29] MSHA Hearing, at 79,213.

[30] McAteer Testimony, at 30.

[31] The Majority "notes that MSHA's definition of small business is 20 employees or less," while the Wellstone amendment would have limited eligibility for participation in SBREFA panels to small businesses with 19 employees or less. Actually, the Wellstone amendment was consistent with MSHA's definition of small mines. "MSHA and the mining industry have traditionally defined a small mine as one employing *fewer than* 20 workers." Herman letter, at 2 [emphasis added]. See also MSHA Hearing, at 212; Opening Statement of Senator Paul Wellstone, ibid., at 8.

[32] There are 14,000 mining operations in the United States. Of those 14,000, approximately 11,100—or 80 percent—have 20 or fewer miners.

The Majority mischaracterizes the content and import of the Wellstone amendment. The Majority writes, "The amendment would have changed the bill so that existing SBREFA panel requirements for small business participation would be replaced by local community participation." On the contrary, the Wellstone amendment would have supplemented, not replaced, "small business" participation in S. 1114's advocacy panels. The Majority also claims that "miners and local communities are not excluded from participating in the rulemaking process." But they are excluded from participating in S. 1114's advocacy panels.

The Wellstone amendment was defeated on a voice vote.

CONCLUSION

S. 1114 is ill-conceived, inappropriate, and unnecessary legislation. It would do nothing to improve the representation of smaller mines in MSHA's rulemaking procedures. As compared to existing MSHA procedures, it would actually disadvantage smaller mines. The fact that 99 percent of mine operators would meet S. 1114's definition of "small business concern" makes it clear that the primary effect of S. 1114 would be to give preferential treatment to the interests of mine operators over those of miners. This reversal of the Mine Act's presumption of a priority for miner safety and health is entirely inappropriate. S. 1114 would replace MSHA's current decentralized and balanced procedures with duplicative, wasteful, bureaucratic, and unbalanced procedures rigged in the interest of mine operators. For these reasons, we oppose S. 1114.

EDWARD M. KENNEDY.
TOM HARKIN.
PAUL WELLSTONE.
JACK REED.
CHRIS J. DODD.
BARBARA A. MIKULSKI.
PATTY MURRAY.

Enclosures.

UNITED MINE WORKERS OF AMERICA,
Washington, DC, November 2, 1999.

DEAR SENATOR: I am urging you to oppose Senate Bill 1114 (S. 1114)—a proposal that would amend Section 101(a)(2) of the Federal Mine Safety and Health Act to give mine operators an unfair advantage in making health and safety rules that protect miners.

S. 1114 is nothing more than special-interest legislation for big business. It would give operators a special right to challenge health and safety regulations put in place to protect miners from job-related illness, injury or death. The bill creates a mechanism that gives operators the opportunity to change proposed regulations before miners are allowed any input.

S. 1114 would further bog down an already painfully slow process in which miners get sick and die waiting for regulatory protection. Perhaps most appalling, S. 1114 is relief for an industry notorious for killing its workers. Defiance and disregard for health and safety regulations on the part of mine operators and owners has killed more miners than workers in any other industry in the country.

If enacted, S. 1114 would be a terrible blow to miners. Below is a brief outline of why you should fight this proposed legislation.

S. 1114

Creates special rights for operators at the expense of miners' health and safety. S. 1114 would require the Mine Safety and Health Administration (MSHA) to obtain advice and recommendations from representatives of mining operators that would be affected by any proposed rule under MSHA's consideration. A special panel of representatives from the Small Business Administration (SBA), the Office of Management and Budget and MSHA would then file a report based on the their review of each operator's recommendations.

Only operators, not miners, would be given this early chance for input into the process. As a result, reports and recommendations on proposed health and safety rules would reflect the needs and interests of operators, not miners. S. 1114 would given the industry a protected opportunity to get involved and undercut the regulatory process before miners even get a look at proposals concerning their health and safety. S. 1114 changes to process of promulgating mining health and safety regulations—supposedly democratic—to give operators an unfair advantage.

MSHA currently provides direct notice and holds public forums on proposed rules to get input from the entire mining industry. Any amendment giving operators more input should give workers the same opportunity.

Proclaims to cover only small mines, which actually make up 99% of the U.S. mining industry. Proponents of this legislation say that it will apply to small mines—implying that it would effect only a few operations and a small number of miners. But S. 1114 defines "small mine operators" as does the SBA as: operations that employ up to 500 workers. MSHA statistics show that approximately 99% of operating mines fit that description. S. 1114 is really an attempt to give operators more control over a regulatory process that costs them money and miners their lives.

Would make mining even more dangerous for workers. Since 1900, more than 104,000 coal miners have tragically lost their lives in coal mining accidents and over 100,000 have died from the suffocating disease of pneumoconiosis, or black lung. In the past 10 years, nearly 1,000 miners were killed and nearly 2.5 million more were injured or became ill while working. And black lung continues to kill. The latest federal studies show that more than 1,500 miners—one every six hours—die each year from the disease. If these numbers seem high, they are.

Last year, 80 miners (coal, metal and nonmetal) died on the job; 11,500 more were injured. A 1998 Centers for Disease Control Study found that—from 1980 through 1994—the mining industry had the most occupational deaths than any other industry in the nation. The death rate per 100,000 workers in mining was 30.5, while the next closest industries were agriculture, forestry and fishing at 20.5.

These grim numbers are a result of an already hamstrung process. Regulations to protect miners from coal dust, diesel fumes, chemicals, noise and other health and safety threats already take

10 to 20 years to be finalized. For example, a rule requiring operators to notify miners before bringing dangerous chemicals into the workplace has been "under development" for about 12 years—during which miners have been dying from exposure to toxic chemicals.

Rules that would give mines protection from exposure to unhealthy levels of coal dust and the cancer-causing diesel exhaust spewed out by diesel machinery are also caught in the regulatory maze. Miners need a faster and more efficient process when it comes to health and safety regulations, not one that forces them to work longer without potentially life-saving protections.

Gives regulatory relief to those who least need it. Research shows that small-mine operators have dismal compliance records and show blatant disregard for the health and safety of the workers in their employ. A 1998 investigation of mines in Kentucky by the Louisville Courier-Journal showed that operators of small mines consistently ignored regulations protecting miners from coal dust and blatantly cheated in the dust-sampling process—further undermining a health and safety protection. This snap-shot of violations perpetrated by Kentucky mine operators and owners is, sadly, played out around the country—in the past 10 years, mine operators have been cited 1.3 million times for ignoring health and safety regulations.

For the reasons I've outlined here, I ask that you oppose S. 1114.

Sincerely,

CECIL E. ROBERTS.

AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, DC, November 2, 1999.

Hon. JAMES M. JEFFORDS,
Chairman, Committee on Health, Education, Labor & Pensions, Dirksen Office Building, Washington, DC.

DEAR MR. CHAIRMAN: On November 3, 1999, the Senate Committee on Health, Education, Labor and Pensions is scheduled to mark-up S. 1114, the Small Mine Advocacy Review Panel Act. S. 1114 is an unnecessary measure that would give mining corporations new special rights in the regulatory process at the expense of miners' safety and health. The AFL–CIO urges you to oppose this legislation.

S. 1114 proposes to amend the Federal Mine Safety and Health Act of 1977 to make MSHA rules subject to the regulatory review procedures under the Small Business Regulatory Enforcement Act (SBREFA). Under these procedures representatives of mining companies are given a special opportunity to review and provide input on draft agency rules and regulatory analyses before a proposed rule is issued, before all other parties have a change to be heard. The SBREFA regulatory process only allows input from mine operators. Miners and other interested parties are not permitted to participate. The only issues required to be addressed are the impacts of the rule on so-called "small" business, not the safety and health concerns of miners.

Contrary to the claims of supporters, S. 1114 is not a small business bill. The bill's definition of small business—that used by the SBA—includes all mining employers with 500 or fewer employees. This definition covers more than 95% of all the nation's mines.

Experience under the existing SBREFA law shows that industry groups have used the review procedures not as a means to address concerns of small business, but rather as a platform in their campaigns to delay or block needed safety and health rules, such as OSHA's ergonomics standard.

MSHA's current rulemaking procedures provide extensive opportunities for input on safety and health regulations. Public forums are held on issues where the agency is considering regulatory authority and public hearing when rules are formally proposed. Unlike S. 1114, the current procedures provide equal opportunity for all interested parties—miners, mine operators and members of the public—to be heard.

Over the past century more than 100,000 miners have lost their lives in mining accidents, hundreds of thousands have suffered disabling disease or early death from black lung. While progress has been made, today the mining industry remains as one of the most dangerous industries in this country with high rates of fatalities and injuries. Regulations to protect miners need to be strengthened and issued faster, not weakened and delayed.

The Congress should support a fair, democratic regulatory process where all parties have equal rights. The AFL–CIO urges you to oppose S. 1114.

Sincerely,

PEGGY TAYLOR,
Director, Department of Legislation.

SECRETARY OF LABOR,
Washington, DC, November 2, 1999.

Hon. JAMES M. JEFFORDS,
Chairman, Committee on Health, Education, Labor and Pensions, U.S. Senate, Washington, DC.

DEAR CHAIRMAN JEFFORDS: This letter presents the views of the Department of Labor on S. 1114, the "Small Mine Advocacy Review Panel Act." This bill would amend Section 609(d) of Title 5 of the United States Code to include the Mine Safety and Health Administration (MSHA) in the list of agencies required to convene a panel to obtain advice and recommendations on the potential impacts of proposed rules on small entities. Currently, the Occupational Safety and Health Administration and the Environmental Protection Agency are required to convene such panels.

We appreciate the desire to ensure that operators of small mines are given adequate opportunity to voice their needs and concerns in the rulemaking process. However, MSHA has long-standing mechanisms and approaches that effectively involve all segments of the mining community in its rulemaking activities. In our view, requiring formal panels would not add any appreciable benefits beyond MSHA's current efforts to involve small businesses in rulemaking, and could delay safety and health rules necessary to pro-

tect miners' safety and health. Consequently, the Administration opposes S. 1114.

MSHA is responsible for protecting the safety and health of the more than 350,000 men and women working in the Nation's mines. To address the inherently hazardous nature of the mining environment, and to ensure that the men and women working in the mines do not suffer occupationally related injuries or illnesses, MSHA's authorizing statute, the Federal Mine Safety and Health Act of 1977 (Mine Act) provides MSHA with a unique set of responsibilities. These include conducting a minimum number of annual inspections at all mines, investigating all fatalities and other serious accidents, and collecting data relating to accidents, injuries, and illnesses that occur in the mining industry. As a result, MSHA has specific knowledge of the safety and health hazards miners face on a daily basis, and is uniquely positioned to interact on safety and health matters, including its rulemaking activities, with every mine operator in the Nation.

Currently, MSHA uses a variety of mechanisms—ranging from formal advisory committees to "best practices" workshops—to address safety and health issues in the mining industry. In addition, MSHA is in a unique position to seek advice and input from the mining industry well before the rulemaking process formally begins, and continues to involve all members of the mining community throughout the rulemaking process.

S. 1114, on the other hand, would require MSHA to use a formal panel process to obtain the views of small businesses. MSHA and the mining industry have traditionally defined a small mine as one employing fewer than 20 workers. However, the Small Business Administration defines a small mine as one employing 500 or fewer workers. Under this definition, more than 99 percent of the Nation's mines are "small" and eligible to participate in the formal panels. Consequently, the formal panels could have representation from mines employing 400–500 workers, as well as those employing fewer than 20 workers. Given the disparity in resources between small and large mines, we are very concerned that the formal panels would be dominated by the larger operations. In our view, S. 1114 could actually result in diminished opportunity for meaningful participation in MSHA's rulemaking activities by operators of small mines.

S. 1114 also has resource implications for MSHA. MSHA uses enforcement, technical support, and education and training staff to encourage the mining community's participation in its safety and health activities, including rulemaking. This approach works efficiently because these staff members are at mine sites, interacting with miners and mine operators virtually on a daily basis. The formal panels required by S. 1114, however, would require MSHA to devote specific personnel to prepare materials, convene and participate in panels, prepare reports, and develop findings on the issues raised during the formal panel process. Resources devoted to the formal panels would not be available for other issues, thus possibly delaying new or enhanced safety and health protections for the men and women working in the Nation's mines.

The Office of Management and Budget advises that there is no objection to the transmittal of this report from the standpoint of the Administration's program.

Sincerely,

ALEXIS M. HERMAN.

XI. CHANGES IN EXISTING LAW

In compliance with rule XXVI paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute or the part or section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL MINE SAFETY AND HEALTH ACT OF 1977

* * * * * * *

SUBCHAPTER I—GENERAL

Sec. 811. Mandatory safety and health standards (a) Development, promulgation, and revision

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(2) The Secretary shall publish a proposed rule promulgating, modifying, or revoking a mandatory health or safety standard in the Federal Register. If the Secretary determines that a rule should be proposed and in connection therewith has appointed an advisory committee as provided by paragraph (1), the Secretary shall publish a proposed rule, or the reasons for his determination not to publish such rule, within 60 days following the submission of the advisory committee's recommendation or the expiration of the period of time prescribed by the Secretary in such submission. In either event, the Secretary shall afford interested persons a period of 30 days after any such publication to submit written data or comments on the proposed rule. Such comment period may be extended by the Secretary upon a finding of good cause, which the Secretary shall publish in the Federal Register. *The procedures for gathering comments from small entities as described in section 609 of title 5, United States Code, shall apply under this section and small mine operators shall be considered to be small entities for purposes of such section. For purposes of the preceding sentence, the term "small mineoperator" has the meaning given the term "small business concern" under section 3 of the Small Business Act (including any rules promulgated by the Small Business Administration) as such term relates to a mining operation.* Publication shall include the text of such rules proposed in their entirely, a comparative text of the proposed changes in existing rules, and shall include a comprehensive index to the rules, cross-referenced by subject matter.

TITLE 5—UNITED STATES CODE

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Sec. 609. Procedures for gathering comments

(a) * * *

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(d) For purpose of this section the term "covered agency" means the Environmental Protection [Agency and] *Agency, the Mine Safety and Health Administration and* the Occupational Safety and Health Administration of the Department of Labor.

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