



**AUG 14 2020**

The Honorable Joe Manchin III  
United States Senate  
Washington, D.C. 20510

Dear Senator Manchin:

The Department of Labor (Department) received a copy of your letter to President Donald J. Trump, which requests the Mine Safety and Health Administration (MSHA) issue an emergency temporary standard (ETS) in response to the COVID-19 pandemic.

MSHA can issue an ETS only if it determines that miners are exposed to a grave danger and that an ETS is necessary to protect them from that danger.<sup>1</sup> In its 42-year history, MSHA has issued only a handful of ETSs—each prompted by specific, grave dangers widely acknowledged in the aftermath of serious mining disasters. At this time, MSHA has determined it lacks evidence that COVID-19 poses a grave danger specific to miners.

Your letter focused on conditions and practices in underground mines, particularly those where coal is mined. Underground mining has largely continued to operate throughout the pandemic. As of July 22, 2020, there were 147 underground coal mines and 196 underground metal/nonmetal mines actively producing in this country, which constitute a majority of such mines.

While MSHA appreciates the seriousness of COVID-19 in the U.S. population generally, no data available at this time suggest higher incidence rates among miners specifically, despite the fact that so many mines have generally continued to operate. MSHA's three Regional Administrators and 15 District Managers continually monitor the mines in their areas and promptly report to headquarters any cases of COVID-19 of which they become aware. To date, the Agency has no evidence of high incidence rates among miners or at individual mines.

The data shows that the risks miners face from COVID-19 have been similar to or less than that of the general population. The average COVID-19 incidence rate for the top ten states in terms of underground miners is below the national average for the general population, according to the official U.S. Government tracking site maintained by Johns Hopkins Center for Systems Science and Engineering. In West Virginia, which employs the most underground miners in the country, the incidence rate is far lower—only 25 percent of the national average.

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<sup>1</sup> See 30 U.S.C. § 811(b)(1).

It is important to note that surface mines vastly outnumber underground mines in this country, at a ratio of 24 to 1. There are 4.76 surface miners for every 1 underground miner. The average COVID-19 incidence rate for the top 10 states in terms of all types of miners—including surface miners—is still below the national average for the general population.

Your letter mentioned unique challenges certain miners face, including working underground and in close proximity to one another, but these realities of the mining industry have prompted mandatory standards which are adaptable to the threat of COVID-19. Existing mandatory standards regarding, for example, sanitation and respiratory protection in mines, actually render MSHA more equipped, not less, to address the threat of COVID-19.

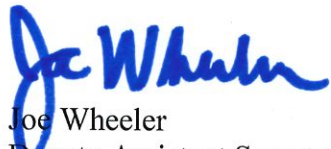
MSHA has stated from the beginning of the pandemic that, as long as miners continue to work in mines, MSHA will continue to perform its essential functions, and the agency has an arsenal of enforcement tools to combat violations and encourage compliance. Operators are strictly liable for violations of mandatory standards and must abate every alleged violation within a timetable MSHA establishes, regardless of whether they contest the violation. MSHA may obtain injunctions against operators who refuse to comply with MSHA's orders or that interfere with or refuse MSHA's enforcement of the Mine Act. MSHA may assess civil penalties against individual agents for knowing violations of mandatory standards. And, the Mine Act imposes criminal penalties for willful violations. In addition to assessing penalties, MSHA has the authority to order miners withdrawn and kept away from parts of a mine or even the entire mine until the violation or hazard is abated. MSHA can do so if it discovers an imminent danger, that an operator failed to timely abate a violation, or violations that are the result of an operator's unwarrantable failure to comply with mandatory standards. MSHA may also withdraw untrained miners and has required that COVID-19 training be a part of an operator's training plan.

Through its Accident and Hazard Reporting Hotline, MSHA has received miner complaints pertaining to COVID-19. MSHA investigates all complaints that are within its jurisdiction. Where such investigations have resulted in findings, MSHA has issued citations under its existing standards. Moreover, during the pandemic MSHA has proactively issued more citations under those same standards during the routine course of inspections not prompted by miner complaints. If a complainant suffers repercussions at work, MSHA may pursue a case of discrimination for adverse action after filing such a complaint.

The ETS issue was recently litigated in federal court. On June 15, 2020, the United Mine Workers of America (UMWA) and United Steelworkers filed in the D.C. Circuit a petition for a writ of mandamus, seeking to compel MSHA to issue an ETS for infectious diseases (focusing on COVID-19). MSHA filed a response arguing that its determination not to issue an ETS is reasonable. On July 16, 2020, the D.C. Circuit issued a unanimous order denying the UMWA's petition. MSHA will continue to evaluate the developing situation in light of the pandemic, enforce the law, and offer guidance to mine operators and miners to keep America's mines safe.

The Department appreciates hearing your support for our nation's miners. If you have any further questions, please contact the Office of Congressional and Intergovernmental Affairs at (202) 693-4600.

Sincerely,

A handwritten signature in blue ink that reads "Joe Wheeler". The signature is written in a cursive, flowing style.

Joe Wheeler  
Deputy Assistant Secretary