Interstate Mining Compact Commission

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The Honorable George Miller
Chairman
House Education and Labor Committee
Room 2181 RHOB
Washington, DC 20515

Dear Mr. Chairman:

We are writing with regard to H.R. 5663, the "Miner Safety and Health Act of 2010", which you introduced on July 1. The member states of the Interstate Mining Compact Commission (IMCC) commend you for your efforts to protect our Nation's miners by addressing some of the key issues and concerns in the mine safety and health arena. We especially appreciate the Committee's efforts to bring the states into the process of reviewing and providing input on portions of the legislation as it was being drafted.

While there are many different amendments to the Mine Safety and Health Act of 1977 on the table, there is one in particular with which we are particularly concerned as it goes to the heart of the state/federal relationship under the Act. This amendment (Section 507) involves the "certification of personnel" and requires the establishment of various requirements and procedures for certification, registration, qualification or other similar approvals, as well as renewals and revocations. These programs are currently implemented by the states for various competencies in the mine safety and health arena.

Our overarching concern with respect to any amendment addressing certification programs is the impacts that it could have on the existing role of state governments pursuant to our respective regulatory programs. While states do not technically have primary regulatory control in the area of mine safety and health, unlike under some national environmental programs like the Surface Mining Control and Reclamation Act (SMCRA), numerous states have robust mine safety and health programs which enforce state mining laws, sponsor quality certification programs, provide technical assistance, and conduct effective training programs. Many of these state programs pre-date federal mine safety laws and in some cases are more stringent than their federal counterpart.

In the area of certification of various competencies that attend the operation of coal and metal/nonmetal mines, the states have always taken the lead, pursuant to their own programs. And while there are differences among the states in how they address certification, recertification, decertification and reciprocity, this particular

aspect of the overall mine safety and health statutory and regulatory scheme has consistently worked well. We are aware of no instances in the recent past where the states' implementation of their certification programs has been criticized or taken to task for ineffectiveness or inadequacy.

Given the significant role that the states have played in the past in this area, we particularly appreciate the inclusion in new Section 118 of a provision that requires the Secretary, in developing standards and requirements for certification, to consult with the states to ensure effective coordination with existing state standards and requirements. This section goes on to state that these standards ***may*** provide that state certification programs will satisfy the Secretary's certification requirements if the state's program is no less stringent than the standards established by the Secretary. In order to give full force and effect to state certification programs, we request that the word "may" be changed to "shall". Otherwise, the recognition of and deference to state certification programs is a hollow promise and could go unrealized.

In developing federal standards for a national certification process or program, it should be made clear that states will continue to take the lead in this area as long as their programs are no less stringent than the federal standards, as provided in new Section 118 (b)(2). Given the differences between the states, a degree of discretion and flexibility should be incorporated into the process. And it should be provided that if a state is unable or unwilling to take on the full certification program for some reason, this will not preclude the state from continuing to operate those portions of the program that comply with the federal standards.

The importance of coordination with the states in the certification program is critical. For instance, to the extent that there is a belief that certain gaps exist in our programs that need to be filled, they should be specifically enumerated. Again, while we are well aware that differences exist among how the states handle certifications, this has not been identified as a particular problem in the past. We are willing to engage in a coordinated effort with MSHA to identify and agree upon these gaps but this will obviously take some time. Following the conclusion of that effort, decisions will need to be made about the states' willingness and ability to take on additional responsibilities, especially from a resource perspective.

It is for this reason that we believe it is essential that the states be brought into any rulemaking or policy development process as soon as possible to identify potential adjustments to the certification process and programs. We do not see ourselves as just another stakeholder in this process, but rather as co-regulators and full partners with MSHA in addressing this component of the mine safety and health program. And to the extent that changes or enhancements are justified and agreed upon, depending upon their nature and extent, additional funding under Section 503 of the Mine Safety and Health Act may be necessary to allow the states to expand their existing programs. Given this reality, we strongly support the proposed amendment to Section 503(h) that would adjust the authorized level of funding for state grants from $10 million to $20 million per annum so that adequate grant funding is available for the states to take on any expanded responsibilities. This would include not only certification, but also new training requirements, mine mapping and mine rescue responsibilities.

Another concern involves MSHA's greater involvement in the certification process. To date, this process has rested solely with the states. To the extent that Section 507 requires a larger role for MSHA in terms of developing federal standards for a national certification program, we believe the states must be directly involved in that process, as is provided for in new Section 188 (b)(2). This involvement should occur early and often, prior to the release of any proposed rules. In order to insure that all affected states are identified and brought into the process, we believe that the Interstate Mining Compact Commission should serve as the designated convener for state action and input. In this regard, we believe it would be useful for IMCC and MSHA to develop Memoranda of Understanding that delineate our respective roles and responsibilities. These MOUs could also address other areas of intergovernmental cooperation and coordination beyond certification. It may also be useful to consider the development of MOUs between MSHA and individual states on key issues of concern.

We also believe that any involvement by MSHA beyond the development of the national certification standards should be limited. We are opposed to an aggressive federal oversight authority where state decisions are second-guessed and potentially undermined. Once a state receives approval of its certification program from MSHA, this should be the end of the matter, other than monitoring any grant funding that may be received by the states. We believe that a heavy hand by MSHA in overseeing state certification programs will simply erode their effectiveness, waste resources and cause undue friction between governments.

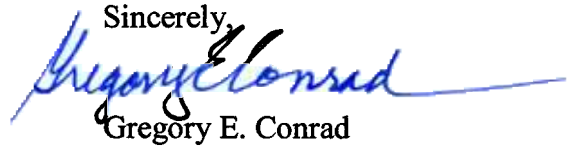
In this regard, we are concerned about the meaning of language in new section 118(b)(1)(C) that refers to the Secretary responding to requests for revocation. If a state is implementing an approved certification program and the Secretary receives a request for revocation, the Secretary should pass this request on to the states for resolution. This appears to be the appropriate route given the state's primary role. A different result could undermine the state's authority and credibility with respect to revocations specifically and certification in general.

With regard to reciprocity, we believe that this should primarily be left to the states to arrange, with general input from MSHA. We see value in a national database that tracks state certifications, de-certifications and those certifications that are revoked. We would welcome the opportunity to work with MSHA in designing such a system. It will also be necessary to provide the necessary resources to develop and implement such a system. From our experience with the Applicant/Violator System under SMCRA, we know first-hand that startup costs for such a system can be significant.

With regard to the new fee structure established in Section 118 (c), we assume that this structure applies only to a certification program developed and implemented by MSHA. To the extent that states continue to implement their own certification programs (pursuant to the approval mechanism discussed above), we understand that our current fee structures will remain in place and operational.

Thank you for the opportunity to present our views and concerns on this important issue. We hope to continue working with you as the bill progresses and as you develop accompany report language.

Sincerely,



Gregory E. Conrad
Executive Director