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THE WHITE HOUSE

WASHINGTON

March 25, 1976

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR:

JAMES T. LYNN

FROM:

JAMES E. CONNOR *JEC*

SUBJECT:

Should the Mining Enforcement & Safety
Administration be Transferred from the
Department of Interior to the Department
of Labor

Confirming phone call to Jim Jura of your office this morning, the President reviewed your memorandum of March 24 on the above subject and approved the following recommendation:

"Keep MESA in Interior, Notify Departments, they should resolve jurisdictional problems administratively, and encourage Interior to strengthen MESA management and enforcement."

Please follow-up with appropriate action.

cc: Dick Cheney

STAFFING

March 24, 1976

MR PRESIDENT:

OMB Memo dated 3/24/76
Should the Mining Enforcement and
Safety Administration be Transferred
from the Dept. of Interior to the Dept.
of Labor

The attached memorandum was staffed to Messrs.
Cannon and Seidman and they both concur with the OMB
Recommendation to maintain MESA in Interior.

Paul O'Neill informs us that your prompt decision is
necessary as an official of the Interior Department will
be testifying on this subject tomorrow.

Jim Connor

3/24

President decided
should stay
at Interior

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: *mark* 24, 1976

Time:

FOR ACTION:

cc (for information):

JAMES CANNON
BILL SEIDMAN

FROM THE STAFF SECRETARY

DUE: Date: *mark* 24, 1976

Time:

SUBJECT:

IMMEDIATE TURN AROUND REQUESTED
THIS IS DUE TO BE IN PRESIDENT'S OFFICE BY 5:00 PM TODAY

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Lynn memo to President of 3/24 SHOULD the Mining Enforcement and Safety Administration be Transferred from the Department of Interior to the Department of Labor

*copy to Bob Linder for review
4:30 PM*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James E. Connor

THE WHITE HOUSE
WASHINGTON

Bob Linder -

The attached was staffed while
I was working in Room 84 --
I think you should see. Note the
request for a quick turnaround.

Trudy Fry

A handwritten signature in black ink, appearing to read 'TFry', written in a cursive style.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAR 24 1976

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: JAMES T. LYNN *Ohler*

SUBJECT: Should the Mining Enforcement and Safety Administration be Transferred from the Department of Interior to the Department of Labor

During the 93rd and 94th Congressional sessions, several bills have been introduced to transfer the Mining Enforcement and Safety Administration (MESA) from the Department of the Interior to the Department of Labor. The two departments were asked to write a joint issue paper (attached) for your decision.

Hearings were held by a House Education and Labor Subcommittee in 1975 on H.R. 9318 (introduced by Congressman Dominick Daniels) to transfer the non-coal mine safety and health duties of MESA to the Labor Department. This subcommittee will soon report out a clean bill to transfer all of MESA and to amend the Federal Metal and Non-metallic Mine Safety Act. No hearings have been scheduled in the Senate but are anticipated in March. This memorandum outlines the Labor and Interior positions and presents OMB's recommendation.

Background

MESA was established in 1973 by the Secretary of the Interior to separate administration of the Metal and Non-metallic Mine Safety Act and the Coal Mine Health and Safety Acts from energy development activities of the Bureau of Mines. It promotes mine health and safety through development and enforcement of standards, technical support, and training. However, the Bureau of Mines continues to do research on coal mine health and safety.

MESA has been criticized for numerous problems. Among them are the following:

Labor Union Criticism:

- Slowness in developing adequate standards, especially for metal mines.
- Failure to cite violations and levy strong penalties under the coal act.
- Delays in collecting fines imposed under the coal act.

Business Criticism:

- Imposing fines for minor violations not strongly related to health or safety conditions.
- Emphasizing enforcement rather than providing technical and other assistance to employers.
- Delaying certification of new mining equipment.

OMB Criticisms:

- Failure to examine alternatives, set priorities, or to use basic data in making decisions.
- Emphasis on Federal enforcement rather than working to bring unions, industry, and the States together on cooperative improvements.

OSHA was established by the Occupational Safety and Health Act of 1970. Like MESA, OSHA develops and enforces job safety and health standards. It also provides education and consultation but no specific technical services for employers as MESA does. The OSHA regulatory jurisdiction includes all private sector workplace health and safety conditions not regulated under some other law. Although DOL is very hopeful about the effects of new management, OSHA is also widely criticized.

Labor Union Criticism:

- Lenient monitoring of State enforcement programs allowed under the OSH Act.
- Having too few Federal inspectors.
- Slowness in developing standards, especially job health standards.

Business Criticism:

- Poor quality and targeting of inspections.
- Quality of standards and their relevance to accidents and job health.
- Citing minor violations not closely related to safety and health conditions.
- Emphasizing enforcement rather than assistance, especially for small businesses.
- Unclear or overlapping jurisdictional boundaries with other Federal safety and health agencies and overlapping, sometimes inconsistent standards.

OMB Criticism:

- Failure to reach agreements with other Federal agencies to define jurisdictions and move toward one set of clear and consistent standards for the public.
- Failure to allocate inspections selectively to achieve maximum impact; and, more generally, failure to develop an enforcement strategy for combined targeting of inspections with other OSHA tools (standards, education, consultations, agreements with labor and industry groups).

MESA and OSHA have a history of troublesome disagreement over jurisdiction that led to a 1974 interagency agreement. This has not solved all problems and Interior requested an executive order to resolve disputes in 1975. No action has been taken on the request pending resolution of the transfer issues.

Labor Department Position

The Department of Labor claims that passage of the transfer bills would be assured with Administration endorsement. It claims that co-location of MESA and OSHA in the Labor Department would:

- Simplify Federal health and safety organization for the public.
- Promote more consistent regulations and standards.

- Link prevention activity with the Labor Department role in black lung compensation.
- Create opportunity for economies of operation.
- Eliminate existing jurisdictional disputes between OSHA and MESA.
- Encourage cross-fertilization of program ideas and approaches.
- Satisfy organized labor.
- Eliminate the possibility of conflicting mission goals that comes from having mine safety and health regulation and resource development in one department.

Interior Department Position

Interior opposes transfer and claims that many of the complaints related to industry conditions prior to formation of MESA or during MESA's formative period come from poor legislation. It has proposed changes in both the coal mine and metal and non-metallic safety acts. They have not been cleared for transmission to Congress pending resolution of the transfer issue. Also, it claims 60 percent reduction in coal mine fatalities between 1970 and 1975. Also, Interior claims some progress in improving MESA has taken place in the past several months. Recent appointment of an acceptable (to organized labor) MESA Administrator means transfer now would only further dilute potential progress, without first waiting to see what improvements could be made.

In summary, Interior claims that transfer would:

- Disrupt current MESA management improvement efforts.
- Disrupt mining and processing activity.
- Disconnect MESA from critical research and development support in the Bureau of Mines.
- Not result in any operational cost savings because reductions in MESA or reallocation between MESA and OSHA after transfer would be very difficult or impossible.

- Compound DOL problems in administering OSHA.
- Be unnecessary to answer charges of conflict of interest between MESA safety and health duties and Bureau of Mines development duties, since they are now under separate administration in Interior.

Public and Congressional Positions

Organized labor supports transfer, but this is contingent on preservation of MESA's separate identity and not reducing funding or manpower after transfer.

Mining industry management generally opposes transfer. However, bills have been introduced in both Houses of Congress and action is expected early this session.

In the Senate, there are indications Senator Williams plans to have hearings on his transfer bill sometime in March. In the House, the Daniels subcommittee is in the process of redrafting H.R. 9318 and may soon report a bill to the full committee. Congressman Quie and Sarazin are key opponents of transfer, but are not likely to have sufficient support to block passage without Administration backing. In short, substantial support is behind transfer in both Houses; however, key Congressional staff believe Administration opposition would be very helpful in preventing transfer.

OMB Analysis

Transfer would help solve jurisdiction problems between the two departments and facilitate communications between MESA and OSHA. But transfer is only one solution for these problems since administrative remedies are available.

Transfer would be criticized by the mining industry. While support for transfer might please some in organized labor in the near term (under the assumption that DOL would be more responsive to their concerns), it would guarantee no longer term respite for MESA from criticism; some of the severest critics of DOL administration of the OSH Act come from organized labor.

The DOL proposal implies continued separate organizations for MESA and OSHA after transfer, foreclosing most opportunities for savings to the government. Indeed, transfer could eventually result in higher costs from pressure to fund and staff OSHA to levels of parity with MESA.

Moving MESA to the Labor Department may be more efficient and economical in theory, but ignores the practicalities of maintaining key relationships between MESA and research and development functions in Interior. It would ignore Interior's significantly improved record of mine safety since 1970 and put MESA into a department that has been severely criticized for its management of OSHA and that is not better equipped than Interior to solve MESA's management problems. New management in Interior, including a new MESA administrator, should be given an opportunity to solve its problems.

Aside from asserting that bringing MESA into DOL would link accident and prevention with black lung compensation, DOL has not spelled out any advantages that might result from such linkage. Moreover, all other compensation for job-related injuries and illnesses in mines remain a State responsibility, as does almost all such compensation in areas subject to OSHA.

Although mining technology is unique and causes unique occupational hazards, each unique or high-technology industry does not require a separate job health and safety enforcer.

On the other hand, transfer could establish a dangerous precedent of moving a safety and health responsibility excluded from OSH Act coverage to the Labor Department when OSHA and other Federal agencies fail to solve problems of jurisdiction and inconsistency of standards.

Attached for your information are comments submitted by Labor during the process of clearing this memo. They are primarily related to OMB analysis and repeating again their position in support of transfer.

Recommendations:

Labor: Transfer MESA to Labor

Interior: Maintain MESA in Interior

OMB: Maintain MESA in Interior

Decision:

A. Transfer MESA to Labor, Notify Departments

B. Keep MESA in Interior, Notify Departments, they should resolve jurisdictional problems administratively, and encourage Interior to strengthen MESA management and enforcement.

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

October 10, 1975

MEMORANDUM FOR THE PRESIDENT

From: John T. Dunlop Dale K. Frizzell
Secretary of Labor Acting Secretary of the Interior

John T. Dunlop *Dale K. Frizzell*
ISSUE: Should Mine Health and Safety Responsibility be
Transferred from the Department of the Interior
to the Department of Labor

BACKGROUND:

Legislation has been introduced which would transfer some or all mine safety and health responsibilities from the Department of the Interior's Mining Enforcement and Safety Administration to the Department of Labor.

Both Departments agree that current legislative options that would involve splitting the Mining Enforcement and Safety Administration (MESA) by partial transfer (e.g., only metal and non-metal responsibility) would not be workable. Both Departments also support strengthening of existing legislation by appropriate amendments unrelated to the transfer question. However, the Department of Labor favors the transfer of MESA in its entirety from Interior to Labor while the Department of the Interior favors keeping MESA where it is.

EXISTING LABOR DEPARTMENT LEGISLATION:

The Department of Labor currently administers the Occupational Safety and Health Act of 1970. This legislation placed responsibility upon the Department of Labor for promulgating and enforcing occupational safety and health standards for

private sector employees in all industries except mining and atomic energy. It also consolidated existing Federal safety and health laws with the exceptions noted above and pre-empted State occupational safety and health laws. Further, it directed the Secretary of Labor to report to Congress with recommendations for avoiding unnecessary duplication and achieving coordination between the Occupational Safety and Health Act and other Federal laws.

EXISTING INTERIOR DEPARTMENT LEGISLATION:

The Department of the Interior has been responsible for Federal mine health and safety efforts since the creation of the Bureau of Mines in 1910. During the ensuing years, Federal mine health and safety activities were characterized by the enactment of increasingly stringent legislation, which culminated in the passage of two statutes: (1) The Federal Metal and Nonmetallic Mine Safety Act of 1966, which brought the non-coal mining industry for the first time within the scope of Federal regulation; and (2) The Federal Coal Mine Health and Safety Act of 1969, which continues to be a benchmark for progressive occupational health and safety legislation.

The principal objective of the Coal Mine Health and Safety Act of 1969 is to provide the coal miner with a safe and healthful environment in which to work. This Act provides for enforcement through inspection of coal mines, assessment of civil penalties for violations of the Act, collection of such assessments, and grants to States to assist in financing safety improvements.

The principal objective of the Federal Metal and Nonmetallic Mine Safety Act of 1966 is to promote health and safety and prevent, to the maximum possible extent, occupational deaths, injuries, and illnesses to workers employed in noncoal mines

and mills. The Act requires the development of health and safety standards and their enforcement through a program of mine inspections supplemented by education and training and other related support activities.

Each of these statutes recognizes the unique character of mining and the occupational hazards it presents, and the Congress specifically provided in the Occupational Safety and Health Act of 1970 that nothing in that Act should apply to working conditions with respect to which other Federal agencies exercised statutory authority affecting occupational safety or health.

ARGUMENTS:

PRO (Department of Labor Position)

The goal of the Department of Labor's Occupational Safety and Health Program is to ensure, as far as possible, that all workers in American industry subject to the Act are provided a safe and healthful place of employment. This is a legislatively established goal which was proposed by the Administration in 1969 and received overwhelming bipartisan support. When the legislation was enacted in 1970, it was clearly recognized that there would be areas of duplication in coverage and that jurisdictional questions would arise after enactment. Congress therefore directed the Secretary of Labor to report back to Congress with recommendations to eliminate unnecessary duplication and achieve coordination.

The most significant sector where there is almost complete duplication in terms of program goals is in the occupational safety and health provisions applicable in the mining industry. Some coordination between OSHA and MESA has been achieved through an interagency memorandum of understanding, but this has not eliminated all of the overlap of the programs and

employers in this industry remain subject to the safety and health jurisdiction of two Federal agencies.

The Department of Labor believes that transfer of MESA from the Interior Department to the Labor Department would be consistent with Administration goals for regulatory reform and government efficiency and effectiveness. A transfer would eliminate many of the jurisdictional questions which have arisen in the mining area as a result of separate statutes administered by different agencies and would facilitate the rapid resolution of any remaining such questions. Administration under a single Secretary would also facilitate more consistent regulations, uniform standards where appropriate and maximum cross-fertilization between the occupational safety and health programs. It would also allow for the development of a single adjudicatory system under a unified administrative procedure. Such uniformity would, in turn, lead to a consistency of judicial interpretation and would eliminate the confusion presently facing employers covered by both statutes (see TAB A).

The transfer of MESA would also allow the Department of Labor to couple the responsibility for preventing conditions giving rise to occupational illness and injury with its present responsibility for administering compensation programs for occupational illness and injury. Such a coupling of responsibility would facilitate a beneficial interchange and feedback helpful to both programs and to the workers they are designed to benefit. The consolidation within a single Department of the personnel administering both type of programs would also permit the direct interchange of expertise and experience.

A transfer of MESA would also provide both labor and management with a single Department responsible for all standard-setting,

training, enforcement, technical assistance and public information programs regarding employee safety and health programs.

The transfer of MESA presents possibilities for ultimate reductions in Federal expenditures arising out of duplicative efforts and facilities in the management and administrative support areas. Many of the functions, such as standards promulgation and review, inspections, training and adjudications, now performed by MESA are the same or similar to those performed by OSHA. In fact, some of OSHA's horizontal standards (those which cross industry lines) were adopted by MESA as their own since the hazards to be protected against were the same (see TAB B). Although it is difficult to quantify at this time, definite savings could be achieved as a result of using shared equipment and facilities and joint mechanisms for management, administrative support and general overhead functions.

The Department of Labor has also looked into the administrative aspects of a transfer and it believes that the transfer of MESA intact could be accomplished with minimal program disruption. The Department already has the ongoing relationships with HEW and NIOSH which would be required if the transfer were to take place and it also has the necessary management and administrative support systems in place because of its present safety and health responsibilities which cover some 62 million workers and 5 million establishments.

Enactment of legislation providing for the transfer of MESA to the Department of Labor would be assured with Administration endorsement. Senator Williams and 39 bipartisan co-sponsors have already introduced such legislation in the Senate (S.1302, attached at TAB C) and the House is considering similar legislation (H.R. 9773, attached at TAB D). Legislation to transfer MESA has the full support of the AFL-CIO and the United Mine Workers of America (see TAB E). Employers are

generally opposed to the transfer of MESA although those subject to the dual jurisdiction of MESA and OSHA are still unhappy with the situation (see TAB A).

In summary, transferring MESA to the Department of Labor makes sense organizationally, it would eliminate duplication, it would provide for more effective and efficient administration of occupational safety and health programs and it could result in cost savings to the Federal government. It is also an issue upon which the Administration, organized labor and Congress can agree.

If the transfer were to be approved, the Department of Labor would propose that it take place at the beginning of FY'77. This would allow sufficient time for planning a smooth transition.

CON (Department of the Interior Position)

MESA should not be transferred from the Department of the Interior to the Department of Labor for the following reasons:

- o The MESA record to date is extremely positive and continually improving. Since 1970, annual fatalities in the coal industry have been reduced by 50 percent, and the frequency rate per million man-hours reduced by 60 percent. Nonfatal injuries have been reduced by 40 percent, to the lowest rate in history. Education and training has doubled in the past three years, and more than 5,000 mine closure orders were issued in 1974 alone.
- o Transfer of MESA would inevitably disrupt its ongoing efforts. The maximum impact of such disruption would occur over the next two years. This could seriously impede reaching either or both of our national goals of increased energy and mineral self-sufficiency and increased mine health and safety.

- o OSHA has received major public criticism from labor, consumer and employee interest groups. Transfer at this time would be seen by critics of OSHA as a weakening of Administration commitment to Mine Health and Safety.

- o In passing OSHA the Congress expressly recognized that the specialized Mine Health and Safety program should not be joined with the general OSHA program. The same compelling reasons for this separation exist today.
 - Mining is a unique and highly specialized industry, with methods and technologies which have no counterpart in other industries. It gives rise to unique occupational hazards not properly relevant to other occupations.

 - Unlike other industries, the Government has since 1910 assumed a direct role in research and the development of new mining and minerals production technology. It is impossible effectively to divorce programs related to this mission from either safety related research and development or standard setting and enforcement. Each program depends directly upon the others, and dividing responsibilities between two departments would decrease administrative efficiency and increase the overall cost to the administration of both efforts.

It has been argued in support of transfer that consolidation of employee protection in one agency is desirable; that potential conflict of interests between production and employee protection missions exist with MESA located in Interior; and that transfer would achieve substantial cost savings. None of these arguments is valid.

- o In this industry, employee protection and production are intimately related. This requires the closest

possible interaction between employee protection efforts and the major related support facilities as to which Interior alone has expertise. Consolidation based upon "employee" status would in this unique case exalt the form of alleged bureaucratic efficiency over the substance of maximum programmatic efficiency.

- o No conflict of interest exists. Both MESA and the Bureau of Mines are now to be headed by Presidential appointees, confirmed by the Senate, and formal and factual independence is assured. Resolution of policy disputes may take place at the most efficient and knowledgeable level, that of the Secretary of the Interior. Transfer to Labor would elevate any such dispute to the Secretarial level, and require ultimate resolution by the President.

- o Major Interior facilities which support MESA are also necessary to Interior's other ongoing energy and minerals missions. Transfer of MESA would inevitably require duplication of some or all of such facilities in both Labor and Interior. In addition, a new or greatly expanded administrative hierarchy with expertise in mining would be required in Labor. As a result, transfer would increase substantially the overall cost of fulfilling all relevant missions. Any administrative cost savings to Labor achieved by combination of staff support such as personnel would be negligible and, in our view, more than fully offset by proportionate decreased administrative efficiency in Interior.

Congressional, labor and industry positions on transfer

- (1) Congress. The key Administration support on critical energy issues in the Congress generally favor retention of MESA in Interior. Other members of Congress who have been polled on this issue, including some nominal sponsors of pending legislation to transfer MESA, have been split. Many key Senators and Representatives from mining States say they oppose the transfer.
- (2) Labor. Some organized labor leaders have supported transfer. Despite this public endorsement, some union leaders are letting it be known off the record that their earlier enthusiasm has waned. The reasons for this change appear to be: (1) fear that instead of retaining mine safety as a separate entity, the transfer would result in a melding of mine safety into OSHA, with a consequent dilution of mine safety funds and dispersal of the specially trained mine inspector force; and (2) a lack of trust in the capacity of the Labor Department to administer mine safety legislation.
- (3) Industry. The mineral industry now uniformly opposes the transfer notwithstanding its generally strong objection to MESA's vigorous enforcement efforts.

Industry opposition is becoming more and more vocal, and is based primarily on (1) a lack of confidence in Labor performance to date; and (2) a preference for inspection and regulation by the Department with the overall technical proficiency in mining and milling to provide prompt technical help in solving identified mine health and safety problems.

Mineral producing organizations and associations which have expressed their opposition to transfer include the American Mining Congress, the National Crushed Stone Association, the Salt Institute, the National Limestone Institute, and many other national, regional and local organizations representing a vast segment of the mineral and solid fuel production of the Nation.

Attached hereto are Appendices which address each element of the above rationale in more detail, including a Statement by the Bureau of Mines and a resolution of the American Mining Congress, adopted September 30, strongly opposing transfer.

Conclusion

Meeting the Administration's goals of increased energy and mineral self-sufficiency will require doubling coal production in the coming decade. In the short term, this will require a greater than 6 percent production increase in both 1976 and 1977. To meet this goal without proportionate increase in mine fatalities and injuries will require the full commitment of all available resources to increased research and development, inspection and enforcement.

Transfer now would accomplish no important Administration goals, and impede reaching the critical ones mentioned above.

DECISION

- Transfer MESA to the Department of Labor
- Retain MESA in the Department of the Interior