

[View this email in your browser](#)



MINE Update
MINING INDUSTRY NEWS E-COMM UPDATE

Issue 56 | November 10, 2021

Brought to you by the National Mining Association

This Week in the News

Following strong Republican turn out for elections in Virginia, New Jersey and elsewhere, House Democrats along with a handful of Republicans broke the logjam to approve the \$1 trillion bipartisan infrastructure package that previously passed the Senate this summer. With the fate of a larger tax and social programs package still uncertain, the situation on Capitol Hill remains dynamic. With both chambers in recess for Veterans Day this week, the National Mining Association (NMA) remains focused on actively engaging to advance mining's interests at both ends of Pennsylvania Avenue. Plus, we have updates on how the mining and energy markets are faring.

Safety Share

The end of Daylight Savings Time has some [safety implications](#). (It's also a great time to change your smoke alarm batteries.)

Infrastructure and Reconciliation Legislation Update



Around 1 a.m. on Saturday, the House of Representatives finally passed the bipartisan infrastructure bill that the Senate passed in early August. The House had already tried twice to pass the bill; however, both times Democratic members denied the votes necessary to pass the bill because of delays in being able to consider and vote for the larger reconciliation bill. Friday was still full of drama as Democratic progressive caucus members and moderate members argued throughout the day about whether to vote on infrastructure without a vote on reconciliation. Ultimately, six Democratic members voted against the infrastructure bill with 13 Republican members supporting it, providing the necessary votes to pass that bill. The infrastructure bill now goes to the President's desk for signature.

With Congress moving two trillion-dollar-plus pieces of legislation, there are a lot of

questions on what is and what is not included in both bills. NMA President and CEO Rich Nolan outlined in a [memorandum to NMA's membership](#) what NMA priorities were included in the just passed bipartisan infrastructure bill. The memorandum also provided an update on NMA priorities in the reconciliation bill – what's in, what's out and the work left to do in the coming weeks.

House leadership and progressive caucus members wanted to vote on the reconciliation bill last week as well but it simply was not ready. Cost estimates for the bill and even final text for the reconciliation bill were not available. In fact, House leaders were still making changes to the reconciliation bill through Friday. You can find the most recent version of the bill [here](#) and other resources, redlines and previous iterations of the House's reconciliation bill [here](#).

House leadership has announced that it plans a full House vote on the reconciliation bill the week of November 15. However, a House vote only means the bill then goes to the Senate for consideration where senators and Senate committee chairs envision some principal changes to whatever the House passes. With the Thanksgiving holiday and a target adjournment of December 10, which no doubt will slip into the week of December 13 and likely further, Congress only has about 20 legislative days to complete, negotiate and pass the reconciliation bill, meet the December 3 deadline of passing legislation to fund the federal government and raise the debt limit, and still pass other annual legislative priorities like the National Defense Authorization Act. The next few weeks of the congressional session will be some of the busiest of the year.

OSHA Interim Final Rule on Mandatory Vaccines or Weekly Testing



PATH OUT OF THE PANDEMIC

PRESIDENT BIDEN'S COVID-19 ACTION PLAN

The Department of Labor's Occupational Safety and Health Administration (OSHA) last week issued an interim final [rule](#) to implement a key component of President Biden's COVID-19 Action Plan, "[Path out of the Pandemic.](#)" Specifically, the rule requires businesses with at least 100 employees to mandate workers get fully vaccinated or be tested weekly for Covid-19. The rule takes the form of an emergency temporary standard (ETS) that allowed for an expedited interagency review process and elimination of the requirement for public comment prior to going into effect. OSHA has the authority to establish an ETS when necessary to protect workers from a "grave danger." The ETS was supposed to go into effect immediately but its implementation has been stayed by the U.S. Court of Appeals for the Fifth Circuit in response to legal challenges. Additionally, OSHA is requesting comments on whether the ETS should become a final rule. Comments are due on Dec. 6.

The ETS is anticipated to apply to more than 84 million private-sector workers. The primary requirement is for employers to either (1) mandate employees be vaccinated by Jan. 4, 2022, or (2) institute a policy that requires vaccination *or* weekly testing and mandatory face coverings for nonvaccinated employees. While testing requirements would not go into effect until Jan. 4, please note other ETS requirements including: mandatory face masks for unvaccinated employees; providing paid time off for workers to get vaccinated and to recover from any side effects; and complying with reporting and recordkeeping provisions, go into effect on Dec. 5, 2021. Notably, the ETS does not require employers to provide or pay for weekly employee testing.

In contrast to the OSHA rule, the Mine Safety and Health Administration (MSHA) recently announced during a conference call that the OSHA ETS does not apply to MSHA or any

mining operations and that MSHA will not issue its own vaccine ETS. The decision was justified by the statement that the Mine Safety and Health Act is one of the world's strongest worker protection laws, allowing MSHA to take enforcement measures unavailable to OSHA.

USGS Proposes Updated Critical Minerals List

The U.S. Geological Survey (USGS) this week published a [proposed updated list of minerals](#) considered critical pursuant to the 2017 Executive Order (EO) 13817, "A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals." 86 Fed. Reg.62199. Recall, USGS issued an initial list of 35 critical minerals in May 2018. The Energy Act of 2020 requires the USGS, in consultation with the Secretaries of Defense, Commerce, Agriculture, and Energy and the United States Trade Representative, to review the list and methodology every three years.

As a result of that review, USGS is proposing to expand the list of mineral commodities to 50. Please note, however, that besides the addition of nickel and zinc, the increase in the number of mineral commodities is the result of splitting the rare earth elements and platinum group elements into individual entries rather than including them as mineral groups. The proposed list removes helium, potash, rhenium, and strontium as no longer meeting the criteria for listing. In addition, USGS did not retain uranium as a critical mineral due to the 2020 Energy Act's explicit exclusion of fuel minerals from the definition of a critical mineral. Comments on the draft list are due by Dec. 9.

EPA Decides to Reconsider the Ozone NAAQS

The Environmental Protection Agency (EPA) recently announced its decision to reconsider the 2020 ozone National Ambient Air Quality Standards (NAAQS) in a [filing](#) with the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit). In December 2020, EPA

retained, without changes, the 2015 ozone NAAQS of 70 parts per million; a decision challenged by Democrat-led states and environmental and public health organizations. EPA filed a motion in *this consolidated litigation* to continue to hold the cases challenging EPA's 2020 decision in abeyance because the agency plans to complete a notice-and-comment rulemaking proceeding to reconsider that decision. EPA stated that it plans to complete the reconsideration process by the end of 2023 and asks the court to hold the cases in abeyance until Dec. 15, 2023.

EPA provided little detail about the reconsideration process, except that it anticipates convening an ozone-specific panel to support the Clean Air Scientific Advisory Committee (CASAC) and update one or more documents (presumably the Integrated Science Assessment and Policy Assessment). In a response to EPA's motion, the environmental and public health organizations challenging the 2020 decision provided additional detail about the agency's plans. According to its filing, EPA plans to: (1) complete an ozone-specific review panel nomination process by early spring 2022; (2) conduct CASAC public meetings by summer 2022; (3) issue a proposed rule by spring 2023; and (4) issue a final rule by December 2023. Texas and five other Republican-led states that intervened in the litigation opposed EPA's motion and urged the court to let the case move forward "without further delay." The court has not yet issued an order granting EPA's motion.

Corps Pausing Permits in Response to Court Vacatur of CWA 401 Certification Rule



The NMA has received reports from several members that their Army Corps of Engineers (Corps) districts have “paused” making final decisions on certain permits. Specifically, Corps district offices have been instructed by Corps Headquarters not to finalize permitting decisions that rely on certification or waiver of the 2020 Clean Water Act (CWA) section 401 certification rule, which was vacated by a federal district court in California last month. We understand that this “pause” applies to individual permits as well as activities authorized under the 16 nationwide permits (NWPs) finalized earlier this year.

Corps headquarters has not yet released a statement or press release announcing or explaining this pause. We understand the Corps district staff will continue to work on permits but are unable to make any final decisions until receiving further guidance from the EPA and Department of Justice. The NMA continues to work with our allies and the agencies to seek answers and will keep you informed as developments occur.

NMA and Third Party Voices

In [his latest President's blog](#), the NMA's Rich Nolan discusses the importance of minerals in the global race to electrified transportation, and how punitive fees and taxes previously proposed (but removed) as part of reconciliation and as updates to the general mining law would hamper the administration's electric vehicle goals.

The NMA released and is promoting across its social networks [a new video](#) on the global energy crisis.

Mining and Energy News

Speaking from climate talks in Scotland this week, [John Kerry claimed America](#) "will not have coal plants" by 2030, a statement that the State Department immediately had to walk back. [Politico Pro](#) reported that “consign coal power to history” has become a rallying cry

of the meetings, but in reality, the world is burning more coal than ever.

[Bloomberg](#) reported that President Biden's carbon-capture plan may be handing a lifeline to coal plants if they install carbon-capture systems, an incentive that environmental groups say may delay the retirement of dozens of facilities.

[Mining Magazine](#) and others reported on Canadian Prime Minister Justin Trudeau's COP26 climate conference announcement last week that Canada will end thermal coal exports by 2030 and is working to phase out coal-powered electricity by 2030. In the U.S., [Argus Media reported](#) that U.S. coal exports were up in September for both thermal and metallurgical coal despite hurricane impacts in the Gulf.

[Politico reported](#) that the U.S. committed along with other countries to stop financing fossil fuel projects abroad by the end of next year, in a seismic shift that could stem the construction of natural gas and oil facilities in lower-income nations.

[Argus Media \(subscription\) reported](#) that coal-fueled generation in the PJM Interconnection, the U.S.' largest electric grid region, fell to a 17-month low in October despite increased demand and multi-year high natural gas prices.

POWER published: "India's 'unprecedented' coal shortages [paralyzing power generation](#)."

U.S. Energy Information Administration reported consumption and production of natural gas [decreased while exports grew](#) in 2020. Wall Street Journal reported on how natural gas exports have [lifted prices](#) for U.S. utilities.

Bloomberg published: "[Texas isn't ready](#) for another deep freeze."

[Reuters](#) reported that the ambitions of COP26 would be impossible without mined materials like copper, aluminum, cobalt, lithium and nickel.

[Mining.com reported](#) that UN Secretary General Antonio Guterres inexplicably pleaded for a stop to mining at COP26, despite the importance of critical minerals use in low-carbon

technologies needed as part of clean energy transitions.

[KPMG](#) reported on the 2020 Fraser Institute survey results showing Idaho was ranked as the most mining-friendly jurisdiction in the world, displacing Finland, which ranked first the prior year.



Copyright © 2021 National Mining Association, All rights reserved.

Want to change how you receive these emails?

You can [update your preferences](#) or [unsubscribe from this list](#).