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To: zzMSHA-Standards - Comments to Fed Reg Group

Cc: Meintjes, Charles; Burggraf, Chuck; Barras, Chad; Ponikvar, Dianna; Benner, Tom; Davis, E. Jason; Hurtte, James; Wells, Richard E.

Subject: RIN 1219-AB75

Please find attached Peabody Energy's comments on the proposed rule on "Examinations of Work Areas in Underground Mines for Violations of Mandatory Health and Safety Standards"

AB75-Comm-14

Peabody Energy's Comments on MSHA's proposed rulemaking on Examinations of Work Areas in Underground Coal Mines for Violations of Mandatory Health and Safety Standards

RIN 1219-AB75

The current requirements for workplace examinations have been well understood and complied with for many years. Mine examiners are experienced at the work they must do in the short period of time allotted by state and federal regulators. They carry a heavy burden to make sure that the areas that they examine are safe for their fellow miners to enter. With few exceptions, these dedicated people take their responsibilities very seriously and do their work to the best of their ability. Their experience is trusted by the other miners and this has worked well to identify true hazards and to remove them or bar access to such areas until they are safe.

This newly proposed requirement to make these same examiners now find and record all violations of federal law is unnecessary and burdensome. Examiners will have to spend an inordinate amount of time on issues that do not represent a hazard to any miner and increases the likelihood that real hazards will be missed as a result. MSHA states that it "does not intend that the proposal would significantly change the general scope of examinations under the existing standards. Examiners would not be required to perform additional tests, take additional measurements, or open and examine equipment or boxes." (pg. 81167). Yet in each of the various types of examinations required, the new proposed rule requires the certified person to "examine the area for hazardous conditions and violations of mandatory health and safety standards..." The preamble and the regulation seem to be in opposition to each other. This places the certified person in a very vulnerable position. Each time an inspector finds a violation of the law, that inspector will likely write a second violation for failure to conduct a proper examination. This is being done currently when the inspector feels that the examiner should have detected a hazardous condition. This practice will only increase with the new proposal, and the examiners will increasingly become a target of greater scrutiny and 110-c investigations. Most operators are already having a difficult time getting qualified miners to get their certification as examiners and foremen. This will make it even harder to enlist the right kinds of individuals to take these important positions.

The agency, for a preshift examination, "estimates that it would take a certified examiner... an additional 30 minutes to identify and record violations along with corrective actions." (pg81171) Then the agency estimates that for a weekly examination, "it would take a

certified examiner... an additional 15 minutes to identify and record violations of mandatory health and safety standards and the corrective action taken." (pg. 81172) I find that to be a gross underestimation. MSHA expects certified persons, working for the operator, to examine a mine in its entirety in three hours before the start of each shift, and to find and record all hazards, and now all violations of the mandatory standards. This opens additional areas for conflict as examiners will be second guessed as to what constitutes a hazard and/or a violation. Our experience shows that there are grey areas in the regulations, as evidenced by the high rate of contested violations within the industry over the past several years. This will only exacerbate the problematic backlog of citations before the courts.

On page 81170 of the proposed rule, there is a discussion on respirable dust. It states that, "examiners check section and outby ventilation controls and the respirable dust control parameters which are key factors in reducing miner's exposure to respirable coal mine dust." Certified examiners are already required to check ventilation controls and to assure that the air is moving in its proper course and volume, so it is hard to understand how this will improve exposures by crediting this to the new regulation. Currently, in 75.362 (2) "A person designated by the operator shall conduct an examination to assure compliance with the respirable dust control parameters specified in the mine ventilation plan." This person has not been required to be certified, therefore, the new regulation is in fact adding measurements and additional tests to a certified person's responsibilities. Therefore, the agency's stated intention not to "change the general scope of examinations" on page 81167 has been violated.

The recordkeeping requirements of each type of examination will generate a substantial burden on the mine examiners. Again, the agency grossly underestimates the time required for this. On page 81173 of the proposed rule, it states, "MSHA estimates that it would take a certified examiner an average of 3 minutes (0.05 hrs.) out of the total time needed to perform the examination to record the violations along with any corrective actions taken." We have done a few time studies of our own on how long it takes an MSHA inspector to write a violation. It takes them anywhere from 15 to 45 minutes for each violation, and this is with the aid of a computer template provided by the agency. Certified examiners will be required to identify the violation, correct it if possible, record it in their notes underground and then repeat the handwritten record in a record book on the surface. Each violation will take at least 30 additional minutes and this will jeopardize the likelihood that the required examination will be completed in the allotted time. If the examination is not completed in its entirety within the three hour window, the oncoming shift of miners will not be allowed to enter the mine until another entire examination has been completed. This proposed rule does not anticipate that this will ever happen and has made no allowance for miner's lost wages and the negative impact on the tonnages mined nor the profitability of the mine.

The agency has stated that they believe, "that three additional fatalities could have been prevented by the proposed rule by identifying violations of mandatory health and safety standards and making necessary corrective actions." It is clear that the conditions that lead to fatalities would be considered as hazards, and as such would normally be found by a certified examiner under the current regulations. If mine examiners have not been diligent in the performance of their duties, the agency has rightly cited the operator for those few instances. This proposed rule is unnecessary, as I am unaware of any contributory violation of a mandatory standard that resulted in a fatality or injury that was not a hazard. By definition, if something is non-hazardous, it does not expose someone to serious risk.

For the reasons stated above, the agency has not made the case for this proposed rule and has grossly underestimated its impact on the industry. It is therefore recommended that the agency withdraw this flawed rulemaking.