

**April 22, 2005**

In the matter of:  
Apple Jacks Coal Company, Inc.  
No. 3 Mine  
I.D. No. 44-06939

Petition for Modification  
  
Docket No. M-2004-043-C

PROPOSED DECISION AND ORDER

On October 15, 2004, a petition was filed seeking a modification of the application of 30 CFR 75.1710-1(a) to Petitioner's No. 3 Mine, located in Dickenson County, Virginia. The Petitioner alleges that the application of the standard will result in a diminution of safety to miners and requests that the mine's self-propelled electric face equipment be required to have substantially constructed cabs or canopies only when the mining height is greater than the 42 inches specified in the standard.

MSHA personnel conducted an investigation of the petition and filed a report of their findings and recommendations with the Administrator for Coal Mine Safety and Health. After a careful review of the entire record, including the petition and MSHA's investigative report and recommendation, this Proposed Decision and Order is issued.

Finding of Fact and Conclusion of Law

It has been determined that the application of 30 CFR 75.1710-1 to the subject mine will not result in a diminution of safety to miners for the following self-propelled electric face equipment in mining heights (floor to roof) of 42 inches:

- a) Joy Continuous Mining Machine, Model 14 CM2-11AH, S/N 3550;
- b) Joy Continuous Mining Machine, Model 14 CM5-10BKK, Co. No. P3020;
- c) Fletcher Roof Bolter, Model DDO-15-C, S/N 81105
- d) Joy Shuttle Cars(s), Model 21SC-2-56 ASHE, S/Ns ET-15604, ET-11396, and ET-11421; and,
- e) Joy Shuttle Car (located outside during investigation), Model 21SC02-56 AHE, S/N ET-16226.

On the basis of the petition and the findings of MSHA's investigation, Apple Jacks Coal Company, Inc. is not granted a modification of the application of 30 CFR 75.1710-1(a) to its No. 3 Mine.

ORDER

Wherefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Coal Mine Safety and Health, and pursuant to Section 101(c) of the Federal Mine Safety and

Health Act of 1977, 30 U.S.C., Sec. 811(c), it is ordered that Apple Jacks Coal Company, Inc.'s Petition for Modification of the application of 30 CFR 75.1710-1(a) in its No. 3 Mine is hereby:

**DENIED**

Any party to this action desiring a hearing on this matter must file in accordance with 30 CFR 44.14, within 30 days. The request for hearing must be filed with the Administrator for Coal Mine Safety and Health, 1100 Wilson Boulevard, Arlington, Virginia 22209-3939.

If a hearing is requested, the request shall contain a concise summary of position on the issues of fact or law desired to be raised by the party requesting the hearing, including specific objections to the proposed decision. A party other than Petitioner who has requested a hearing shall also comment upon all issues of fact or law presented in the petition, and any party to this action requesting a hearing may indicate a desired hearing site. If no request for a hearing is filed within 30 days after service thereof, the Decision and Order will become final and must be posted by the operator on the mine bulletin board at the mine.

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John F. Langton  
Deputy Administrator for  
Coal Mine Safety and Health