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Mine Safety & Health Administration  
Ms. April Nelson, Acting Director  
Office of Standards, Regulations, & Variances  
1100 Wilson Boulevard, Room 2350  
Arlington, Virginia 22209-3939

**Re: 30 CFR Part 75 RIN 1219-AB75 "Examinations of Work Areas in Underground Coal Mines for Violations of Mandatory Health and Safety Standards"**

Dear Ms. Nelson:

These comments are submitted by Arch Coal, Inc. (Arch) in response to a proposed rule announced by MSHA in the Federal Register on December 27, 2010. The announcement provides for comments from interested parties on the Proposed Rule entitled "Examinations of Work Areas in Underground Coal Mines for Violations of Mandatory Health and Safety Standards".

Arch is the second largest coal producer in the United States. Our corporate office is located in St. Louis, Missouri. Our subsidiary companies employ over 4,600 individuals and operate mines in Colorado, Kentucky, Utah, Virginia, West Virginia and Wyoming.

Safety is a core value at Arch Coal, Inc. and that is why our operating subsidiaries are constantly striving to improve our safety processes year after year. Our guiding principle is to make sure that every miner returns home safe and healthy at the end of every shift. We along with MSHA share a common desire to improve health and safety conditions for miners.

Examinations are the mine operator's fundamental tool for assessing the overall safety condition of the mine. During the pre-shift examination, which includes all areas where miners are scheduled to work or travel during the shift, the examiner focuses on discovering both existing and developing hazards, such as methane accumulation, bad roof and water accumulation, and determining the effectiveness of the mine ventilation system. The examination has proven to be particularly effective in the discovery and correction of hazardous conditions and practices before they lead to injuries or fatalities. Because conditions in the underground mining environment can change rapidly, recurring examinations are necessary to ensure the safety of the miners underground. A timely preshift examination for hazardous conditions ensures the safety of the environment on a routine basis.

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On-shift, Supplemental and Weekly Examinations are equally as important in assessing the overall safety condition of the mine. Historically, these examinations have been a primary means of determining the effectiveness of an underground coal mining operation, and of detecting hazardous conditions and practices.

Considering the speed at which underground conditions can change, examinations are necessary to detect and allow time for correcting developing hazards such as methane gas, ventilation deficiencies, roof and rib and other commonly occurring hazards that build up over time in the mine. The fact that mines may be somewhat safer today than they were in the past does not change the fact that the hazards still exist. Miners and operators must be vigilant in dealing with methane accumulation, roof and rib deterioration and water accumulation, as well as other hazards. Technological advances that enhance safety, such as atmospheric monitoring systems, communications and tracking systems, refuge chambers, additional SCSR's, gas detecting equipment, etc., supplement the proper use of examinations.

We believe that examinations are crucial to the safe operation of coal mines and that examiners should not be deterred in their quest to discover hazards by searching for violations of mandatory health and safety standards unless they are, in fact, obvious hazardous conditions. To add this burden to mine examiners (pre-shift, on-shift, supplemental and weekly) will undoubtedly interfere with the most important task at hand, which is determining if the mine or work area is safe for the miners. This is simply too large a responsibility to place on the examiner.

It is our belief that most hazards are violations of mandatory health and safety standards to start with. In most cases, such as the examination of conveyor belts, return entries, seals, idle sections and outby areas of the mine, the "examiner" is often an hourly employee. The hourly employee typically receives extensive training to perform his/her job, however, the employee is not adequately trained, or paid, to perform the job of an MSHA inspector....."to look for all violations regardless of whether they involve a distinct hazard." For example, a Coal Mine Inspector (CMI) receives extensive training over the course of one full year, in excess of 2,000 hours. The CMI training course involves a combination of classroom training and hands-on training, mentored by trained/experienced CMIs in actual field inspection conditions. The CMI Trainee's training over the course of one year is structured to train the CMI to identify all hazards and all violations. Upon completion of the training course the new CMI will be fully trained to travel into the mine to scrutinize an hourly pre-shift examiner's judgment as to what constitutes a violation of the standard.

In most underground coal mines the belt pre-shift examiner and beltman are one in the same. As a beltman, he/she is responsible for maintaining the belt during the course of the shift (which also includes the 3-hour window he is conducting his required pre-shift examination). During a normal daily 3-hour pre-shift examination the examiner's duties may also include limited shoveling, maintenance of rollers, alignment of rollers, scrapers, adjustment of scraper pressures, alignment of conveyor belt, etc. All of which are critical to the safe operation of an underground conveyor system. If the proposed

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regulations are finalized, the pre-shift examiner will now become an "Inspector" (so to speak), coal companies will be forced into hiring additional personnel in order to adequately maintain the conveyor system to our current standard.

Under the proposed regulation, the examiner may be forced into walking both sides of the conveyor belt. At the current time examiners walk one side of the belt. This, in itself, would double the time belt pre-shift examiners walk on each shift, each day. The examiner would be required to walk one side of the belt and subsequently walk the opposite side of the belt (or require two men to walk the belt). Due to the length of our underground conveyor system at one of our mines, this would result in an additional 6.5 miles of examination each shift, 19.5 miles per day and 136.5 miles per week. Failure to examine both sides of the belt entry would subject the examiner (and coal operator) to scrutiny from MSHA enforcement personnel, e.g., off-walkway side belt roller examination, belt alignment (contacting brackets), coal accumulations, ventilation control leakage/damage, loose roof/airslacking, etc. The additional off-walkway side belt examination alone would result in double the pre-shift examiners.

Additionally, with regard to hourly employee pre-shift examinations, the hourly employee may or may not hold themselves to the same level of standards, work ethics and commitment, as a salaried employee. Yet, MSHA will hold each and every examiner to the same set of standards. During recent discussions with pre-shift examiners at our operation, the employees expressed concern that MSHA demands with respect to the adequacy of pre-shift examinations are unreasonable, resulting in excessive citations or the consistent threat of issuing citations. The pre-shift examiners argue the fact they do not get paid for the increasing extra responsibility MSHA requires of them. Moreover, the biggest complaint examiners have is the inconsistency of the agency, i.e., several inspectors walk the area in question and have no problem. Consequently, the examiner assumes it is acceptable due to the fact there were no issues. The next inspector will issue a 104(a) S&S citation with High Negligence under the same conditions. This inconsistency justifiably leads to examiner uncertainty.

Many health and safety standards are subjective in nature to start with and may or may not be a violation depending on which set of eyes are looking at it. For example - 75.403 – which requires that when rock dust is used, it shall be distributed upon the top, floor and sides of a coal mine and maintained in such quantities that the incombustible content of the combined coal dust, rock dust and other dust shall be not less than 65 per centum (and under the ETS – 80%). The examiner has no means of determining the incombustible content except for his/her experience and accepted practice, which, in turn, depends on which MSHA inspector is currently inspecting the mine and what is acceptable to him/her. If an examiner determines that the area is within compliance guidelines and a MSHA inspector later disagrees – who is right? What are the consequences? There are countless other potential violations (such as equipment guards of which the adequacy varies in many MSHA inspectors opinions) that may be subjective at best and it is very difficult for the examiner and MSHA to see eye to eye in all cases. If they did, the backload of litigation cases would not exist.

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The proposed rule also begs several questions as to how extensive the examination must be. Must he/she examine each piece of equipment that will be operated? Why not hold a miner accountable for examining his/her piece of equipment prior to placing it in service? Will the examiner be required to examine for electrical violations even though he/she may or may not be certified to perform electrical work? Examiners are trained to look for hazardous conditions such as exposed leads (in plain view) on a cable or arcing batteries on a scoop but not to make electrical examinations. MSHA trains inspectors for many months before requiring them to perform mine inspections but would MSHA expect mine examiners to do the same without the training? Again, it is simply too large a burden to place on the examiner and the current system of examining for hazardous conditions in order to assure that the workplace is safe for the miners, is of paramount importance.

These subjective situations will only lead to double (or more) citations from the MSHA inspector which in turn, would not improve safety but add cost to the company's bottom line. A citation will likely be written for the subjective condition and then a citation for failure to perform the appropriate examination. The possibility could exist for failure to perform an adequate examination for pre-shift and on-shift due to the same condition. For example, if a MSHA inspector cites the mine for inadequate rock dust in the late afternoon, could he also issue a citation for an inadequate pre-shift examination and also an inadequate on-shift examination? This same type condition could exist in outby areas as well as in the face and for countless situations. Again, this is simply too much to ask of an examiner that has not been trained as an MSHA inspector. Examining for hazardous conditions in order to provide a safe work area for the miners is crucial. Adding the additional responsibility on examiners for searching for violations is unreasonable.

MSHA is present in most coal mines every day and there is no need to make inspectors out of examiners. Would MSHA eliminate inspectors by requiring the operator to perform inspections? Not likely, it is obvious that the intent is to hold the operator accountable for violations that should have been seen during the examination. There are also State agencies in most states that coal is mined that inspect the mine in addition to MSHA. These inspections are almost constantly occurring yet mine conditions still change which sometimes results in hazardous conditions. Requiring more inspections is not the answer. There are already measures in the law for MSHA to deal with those situations where an operator failed to correct hazardous conditions or knowingly allowed violations to continue. This proposed rule is unnecessary.

We also believe that this proposed rule will result in a diminution of safety for the miners in that the examiner will be deterred in his/her examination for hazardous conditions by using unnecessary time to examine for violations of health and safety standards that are not necessarily hazardous conditions. This may cause the examiner to miss something that may be hazardous and not necessarily a violation of a standard because he/she is required to look for violations.

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While it is difficult to determine how much additional time it will take for examiners to inspect for violations of mandatory health and safety standards, you can easily estimate that time based upon what happens now. Currently the examiner takes approximately 3 hours to conduct the pre-shift examination. Using the approximate time an MSHA inspector takes to do an inspection of a typical working section, it is obvious that it would be extremely difficult, if not impossible for a typical section foreman to be able to do both the examination for hazardous conditions and the inspection for violations of mandatory health and safety standards within a reasonable amount of time. This is especially true given his/her overall responsibility for what goes on in his/her work area including the safety of his/her employees (which should be his/her primary responsibility).

For example, if you consider that an MSHA inspector usually takes about 5 shifts to complete a working section inspection, you can easily assume it will require 13.3 examiners to complete the same task on a 3 hour pre-shift examination as an MSHA inspector when he/she inspects the section. Since most mines have multiple mining units and vast outby areas to examine, and the multiplier must be added for on-shift, supplemental and weekly examinations also, the number of added employees to complete examinations (with added responsibility of inspecting for violations) and the associated costs could become mind boggling. MSHA has apparently ignored these facts.

Under the proposed rule, recordkeeping requirements will increase dramatically. At the current time mine examiners are required to complete their required 3-hour examination and subsequently call the results to an AMS operator (an hourly employee), who transcribes the verbal information into the appropriate examiners book. The competent person receives numerous back-to-back callouts from examiners prior to the end of the 3-hour time period (on each shift). Has MSHA considered the amount of time it takes for one of its inspectors to do his or her notes and write citations and corrective actions? If so, it should be easy to determine that this load will be monumental to the examiner and the competent person receiving the call out as well.

The proposed recordkeeping requirement that all hazards and violations (including minor violations) be recorded, will significantly increase the call-out time and backlog the system. If we double our belt pre-shift examiners, the callout requirements will, at a minimum, double.

In addition to recording vital information in the appropriate book, the competent person will shoulder the additional responsibility for communicating hazards and/or violations to the appropriate personnel for corrective action.

This brings up several key points regarding countersigning by a certified person: 1) Does the notation in the examiners book (citation) require a certified person's signature (prior to the end of the shift)? 2) Can an hourly employee correct hazards/violations in the required book, with a notation "corrected"? 3) In most situations, the person that countersigns the book is not the person that identified or corrected the condition;

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4) Will this situation ultimately result in the Shift Coordinator, Mine Foreman or certified person traveling to all areas of the mine where a hazard and/or violation existed, to verify if corrective action was completed?

Bottom line, recordkeeping requirements will undoubtedly require additional personnel on each shift, seven days per week. This will result in a minimum of four additional people, for an annual cost of approximately \$400,000 per mine (including wages and benefits).

In conclusion, we believe that the proposed rule is not only unnecessary but will likely lead to a diminution of safety to the miners for all the above reasons. We believe that MSHA has failed to consider all the aspects of performing examinations for violations of mandatory health and safety standards and grossly underestimated the amount of time it will take to add examination for violations of mandatory health and safety standards as well as the costs associated that the operator will incur.

Sincerely,



Doug Conaway  
Corporate Safety Director  
Arch Coal, Inc.