



216 16<sup>th</sup> Street, Suite 1250  
Denver, CO 80202  
Phone 303/575-9199  
Fax 303/575-9194  
e-mail  
[colomine@coloradomining.org](mailto:colomine@coloradomining.org)

Re: Public Hearing (Denver, CO)  
June 2, 2011  
30 CFR 75  
RIN 1219-AB75  
“Examinations of Work Areas in Underground Coal Mines for Violations of  
Mandatory Health or Safety Standards”

Good morning to all committee members. My name is Bill Olsen. I am speaking on behalf of the members of the Colorado Mining Association in regards to MSHA's proposed standard entitled “Examinations of Work Areas in Underground Coal Mines for Violations of Mandatory Health or Safety Standards.” We appreciate the opportunity to present our comments. The Colorado Mining Association was established in 1876 and includes 154 companies engaged in or related to mining. This includes seven underground coal mining operations that would be directly impacted by the proposed standard.

The proposed standard would require certified persons conducting pre-shift (including those conducted by pumpers), on-shift, supplemental and weekly examinations to not only inspect for hazardous conditions as is currently required, but to include an examination for all violations of mandatory health or safety standards. This is a significant departure from the current practice, and we believe that including the additional examination requirement of inspecting for violations of each and every mandatory health or safety standards will be detrimental to the safety of miners by distracting the attention of the examiner to focus attention on mundane and inconsequential conditions that may constitute technical violations of broad performance-based standards, but create no real potential for harm to miners. The examiner's limited inspection time will be compromised by this standard by requiring him to conduct compliance inspections rather than inspections for hazardous conditions that can immediately and adversely affect the miner's safety. The preamble states that the proposed standard would “require that certified mine examiners conduct more complete and thorough examinations, thereby providing a greater level of protection for underground coal miners.” We agree that complete and thorough examinations are necessary to ensure the safety of the miners, but the examinations should be geared towards truly hazardous conditions.

Clearly, not all violations of mandatory health or safety standards result in a hazardous condition. One such example is when an examiner simply forgets to record the date, time and initials (DT & I) of the exam at the designated location in a working place. The required examination was made as documented in the record book, however, the simple mental error of not recording the DT&I is a violation of a mandatory health or safety standard. Under the proposed standard, the examiner's time would be needlessly spent correcting and thereafter, recording this minor infraction instead of spending time looking for and correcting hazardous conditions. This is but one simple example, however, multiple similar circumstances exist should the proposed standard goes into effect. The regulatory history related to the proposed standard to require inclusion of mandatory safety or health standards as part of the examinations indicates the need to limit such examinations to hazards that a miner may be exposed to. The proposed and final standards associated with the 1992, 1994 and 1996 examination requirements clearly stated how critical it was to "focus the attention of the examiner on critical areas so that the examiner could identify conditions that pose a hazard to the miners." In fact, the preamble to the 1992 standards states "requiring the pre-shift examiner to look for all violations regardless of whether they involve a hazard could distract the examiner from the more important aspects of the examination. The pre-shift examination is designed to concentrate the examiner's efforts in those areas where they are most suitably applied." CMA members support the continuance of utilizing the examiner's time for looking for and correcting hazardous conditions, rather than all violations of mandatory health or safety standards. The goal of examining for and correcting hazardous conditions should not be compromised by diluting the examiner's concentrated efforts with a burdensome workload so broadly defined.

Certified mine examiners are required to pass an examination related to basic knowledge of the applicable MSHA standards. These examiners may spend several days to several weeks preparing for the examination by reading through the standards while trying to interpret exactly what the standards mean. Interpretation of the standards clearly varies from examiner to examiner as well as from inspector to inspector. If the interpretation was clear on every standard, there certainly wouldn't be as many contested citations. To contrast this preparation to that of an MSHA inspector, there is absolutely no comparison since an inspector's certification may take several months to over a year. This is apparently what MSHA considers to be adequate time to become qualified to examine a mine for violations of mandatory health or safety standards. After completing the training, MSHA inspectors then spend many hours inspecting a working section or outby areas of the mine. With all of their qualifications, an inspector cannot complete an inspection of the section within the three hour time period as the pre-shift examiner is required to do. Certainly the inspectors are performing more detailed examinations and performing additional testing during their examinations, but if the proposed standard becomes final, the expectation is the same for both the inspector and the examiner. That expectation is to identify, correct and record every violation of a mandatory health or safety standard. Through the examiner's experience, he is highly qualified to identify and correct hazards. By certification, he is not highly qualified to identify, correct and record every violation of a mandatory health or safety that is not a hazard.

Mine examiners from CMA companies have expressed concern that if the standard goes into effect, MSHA inspectors will further step up enforcement related to inadequate inspections. For example, if an examiner completes his inspection and

identifies, corrects and records all observed violations of mandatory health or safety standards and then is followed by a more qualified MSHA inspector who finds additional violations, not only will a citation be issued for the existence of the violation, but a second citation will be issued for an inadequate examination even though the violation may not be a true hazard. This will deter many miners from becoming certified examiners since they know they will never have the same training and qualifications as an MSHA inspector.

Mine examiners have also expressed concern that requiring examinations to be compliance examinations, rather than hazard specific, more time will be spent on compliance, rather than focusing on potential hazards. The preamble to the standard lists the top 10 cited standards and interpolates that at least 3 additional fatalities might have been prevented if examinations included violations of mandatory health or safety standards. Many of the cited standards truly relate to potential hazardous conditions such as loose roof or ribs, inadequate ventilation, missing guarding, etc. that should be identified and corrected during the examinations. However, other standards such as 30 C.F.R. § 75.1725(a), a "catch all" standard for mobile and stationary equipment, would require spending needless time examining equipment that would otherwise be checked during an equipment operator's pre-operational exam. The examiner's time would be much better spent looking for and correcting hazards such as loose roof and ribs, inadequate ventilation, etc.

Further, CMA members support the written comments submitted by the National Mining Association (NMA). The NMA states that the agency's justification for the proposed standard is flawed in that it requires a belief that if the top ten standards had been found by the examiners in the referenced accident reports, the injuries would not have occurred. This is contradictory to the Root Cause Analysis prepared by MSHA in these accident reports.

Once violations of mandatory health or safety standards are identified during the examinations, the preamble states that "MSHA would continue its practice under the existing standard that operators prioritize and correct violations based on the seriousness of the hazard." However, similar statements are not included in the standard itself. Of concern is that the mine foreman or other official in charge is required to prioritize the order of correction. The prioritization by the mine foreman may certainly differ from that of the inspector which may result in additional enforcement actions simply based on varying opinions of the potential hazard associated with the identified violation.

In closing, CMA members support reasonable and justifiable standards that enhance the safety and health of the miners. The proposed standard is neither reasonable nor justifiable and for the reasons previously stated, it will result in a diminution of miner safety. We encourage the agency to reconsider, as it has previously done, the necessity and basis for the standard.