

Public Hearing on Proposed Rule
Examinations of Work Areas in Underground Coal Mines
for Violations of Mandatory Health and Safety Standards

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The UMWA supports MSHA's proposal to revise the existing standards to require that violations of mandatory health and safety standards are identified and recorded by mine examiners. This is what Congress intended when passing the 1977 Mine Health & Safety Act and the Agency is correct in restoring language to the standards to require mine examiners to identify and record violations of mandatory health and safety standards. The current rule simply requires the examiner to look for "hazards" which is subject to the mine examiner's opinion as to what constitutes a hazard. Reinserting language to require identifying and recording violations can only improve upon the examination requirements and the overall mine health and safety.

A mine examiner's task becomes simplified and more straightforward when they are required to identify and record all violations of mandatory health and safety standards. This removes the "judgement call" that mine examiners must now make to determine whether a violation of a mandatory health and safety standard is a "hazard." The proposal should result in a more thorough mine examination in which all violations are identified, recorded and corrected. The operator will continue to prioritize and correct conditions reported based on the seriousness of the hazard they present. However, as MSHA points out there have been numerous fatal accidents wherein the mine examiner did not record violations of mandatory health and safety standards which contributed to the accident. The examiner may have overlooked the condition because he/she did not believe it to be a hazard. So restoring this language to the rule will be beneficial.

Although we support the rule, there are a few things that we believe will enhance its effectiveness. I will summarize those as follows:

1. Requiring Uniform "Reasonable Time: for Abatement

The language of the rule should specify that operators must abate health and safety violations within "a reasonable time" as the Mine Act requires for violations that MSHA cites. We recognize that mine operators must be granted reasonable time to abate conditions, but the proposed rule itself fails to specify any time limits for correcting conditions. The UMWA supports the "two day rule" currently used by MSHA. As part of this requirement, a record must be kept of each step taken to correct the condition. If additional time is justified, it could be granted. However, the operator must make a serious effort to correct conditions by devoting sufficient materials and manpower to fix the unsafe condition.

2. Miners' Representative Role

The rule should incorporate the valuable role of the designated miners' representative in identifying hazards in the mine. At least one miners representative must be included in the quarterly review process. Miners' representative are more familiar with the condition of the mine through regularly traveling with MSHA on inspections and often dealing with health and safety issues through their Union and could contribute much to the quarterly review process. All miners' representatives must have a protected right to access the written record of the mine examiners in case they have a concern about a particular condition in the mine.

3. Mine Examiner Training

Since the new proposal will require mine examiners to identify and record violations of mandatory health and safety standards, they will need to be adequately trained to perform this task. The mine examiners should have the same training as an MSHA inspector because they will be basically doing the job of an MSHA inspector. Because they will be expected to identify and record violations, the mine examiners must be kept abreast of any regulatory change, change in MSHA enforcement policies or legal decisions affecting enforcement. For this reason the

operator must submit a detailed plan to MSHA for approval outlining the training to be provided to the mine examiners. The training must be conducted at minimum on an annual basis with refresher training when need to update the mine examiners on changes to the regulations.

4. Mine Examiners Authority

The UMWA believes that the mine examiner must have no superiors when performing their duties to examine the mine. The proposal must have a provision added making it a violation if any operator tries to direct or influence the mine examiner while they are carrying out their duties to examine the mine. Much attention has been focused on recent mine disasters and how the mine foremen and examiners have been discouraged from reporting hazardous conditions and violations of mandatory health and safety standards. The mine examiner must have no superior while performing their duties, nor should they be influenced or discouraged from reporting conditions found.

Hourly employees who are certified should have the right to refuse to be required to use their certification to perform mine examinations if they so choose. Many UMWA miners who have a mine foreman certification are often forced to make mine examinations or serve as a section foreman whether they want to or not. Those who hold such certification should have the choice as to whether they use this certification.

I thank you for the opportunity to testify today. I am here to enter this statement into the record on behalf of the United Mine Workers. If the panel has any questions, I would ask that you reserve those for our Department of Occupational Health and Safety Staff who will be testifying at the hearing on June 15, 2011 in Arlington, VA. Thank you.