

Testimony of Linda Raisovich-Parsons
Representing the United Mine Workers of America
on the Proposed Rule for
Examinations of Work Areas in Underground Coal Mines for
Violations of Mandatory Health or Safety Standards
Arlington, VA
June 15, 2011

The United Mine Workers is in support of this proposed rule. The proposed rule would require that violations of mandatory health or safety standards are timely identified and recorded by mine examiners. The language to require mine examiners to record violations is required by Section 303 (d)(1) of the Mine Act. This proposal simply replaces the language of the Mine Act into the ventilation standards. Under current standards, a mine examiner conducting pre-shift, supplemental, on-shift and weekly examinations is only required to identify and record those conditions the examiner believes in their subjective opinion to be hazardous. The proposed rule addresses a glaring deficiency in the existing standard by replacing language to require examiners to look for violations of mandatory health and safety standards. The UMWA supports the Agency's decision to insert the requirement ~~back~~ back in the rule.

We point out that the mine operator has the primary responsibility to prevent unsafe and unhealthy conditions and they should be the first line of defense in identifying and correcting all unsafe and unhealthy conditions as well as violations. In a perfect world, the MSHA inspector's role should only be to confirm that operators are meeting this obligation and they should not be the first one to identify violations which the mine operator is equally able to find and correct.

Once the new rule is in place, with examiners identifying and recording violations of health and safety standard and operators abating them promptly, not only should there be the reduction in fatal and non-fatal accidents that MSHA projects, but we should be able to expect MSHA inspection to become more efficient. If operators are finding and correcting violations of health and safety standards as they arise, inspectors should begin to find fewer violations when they inspect. If MSHA inspections become quicker to complete, savings will be realized both for the government by nature of reducing MSHA manpower and related administrative costs. Further, if MSHA's inspections are streamlined, the time spent by the operator's representative

and miners' representative accompanying the MSHA inspector would also be reduced, saving the mine operator money. And finally, the sooner violations are detected and corrected, the better will be the miners' health and safety, which is the Mine Acts major goal.

Although the UMWA supports this proposed rule, we would like to see four basic changes made to improve upon the rule. I will describe each as follows:

1. Adding and Requiring Uniform "Reasonable Time" for Abatement

Under the new regulation .363 and .364 should specify that operators must abate health and safety violations within a "reasonable time" as the Act requires for the violations MSHA cites. MSHA's background information suggests that operator-found violations would have to be abated within a reasonable time, however the proposed rule itself fails to include this "reasonable time" language referenced in MSHA's commentary. We realize that the operator must be granted reasonable time to fix or abate violations, there have been far too many instances where abatement time has been extended beyond what we believe is "reasonable." The UMWA would support the "two day rule" currently used by MSHA and referenced in the proposal. We believe the Agency has been too often willing to extend abatement time without legitimate justification for such extensions.

The UMWA proposes a procedure for applying "reasonable time" standard. Once a violation of a mandatory health or safety standard is identified and recorded, abatement work should be implemented or at least concrete steps to abate immediately. The initial step would involve the devotion of resources to abate the violation in a timely manner. We would recommend that a written record be kept of each step taken until abatement has been achieved. The record would be made available to all parties. If MSHA determines that the operator has not designated enough manpower or equipment to complete the abatement in a timely fashion, the Agency should require the operator to increase its commitment.

2. Miners' Representative Role

The rule should incorporate the valuable role the miners' representative can play in identifying violations. The UMWA proposes that at least one miners' representative be included in the quarterly review process. The miners' representative should be provided the opportunity to review all conditions recorded by the examiner and have the right to provide a written description of safety concerns to both the mine examiner and mine operator. The miners' representative must also be provided access to the "secure book" or "computer system" required by the proposed rule for the purpose of recording results of examinations.

3. Mine Examiner Training

The Agency's proposal will add much responsibility to the mine examiner's role. They will now be responsible to identify and record violations of mandatory health and safety standards. With more responsibility the examiner will need adequate training to assume greater liability for the health and safety conditions of their mine. In fact the mine examiners should be provided the same training and equipment provided to MSHA inspectors. The content and frequency of such training and an inventory of the equipment provided to the mine examiner should be submitted to MSHA for approval like any other mine plan. Refresher training should be provided on at least an annual basis. As with any other training requirement, a record must be kept and maintained for examination by interested parties at the mine.

The training must also include a requirement that any regulatory changes made by MSHA or policy updates must be reviewed with the mine examiners as soon as possible. If the mine examiner is expected to identify and record violations of mandatory health and safety standards, they must be kept abreast of any changes in those requirements.

4. Mine Examiners Authority

First and foremost, mine examiners must be granted ultimate authority to do their jobs as

they see fit. It is critical that the mine examiners have no superiors while conducting their examinations. Otherwise, some operators will try to direct the examiners or influence them not to report certain unsafe conditions in the record as has been done in past situations. It is very important that the mine examiner be granted uninfluenced authority to identify and report conditions.

Another problem that the UMWA experiences on a regular basis is operators requiring miners who hold a mine foreman's certification to fill in as examiners or section foremen. Hourly employees who are certified should be guaranteed the right to refuse to use their certification if they so choose. The only exception to this would be when regulations anticipate that miners who may perform their own pre-shift when working in remote area pumping water.

This concludes my testimony. I thank you for the opportunity to address the Union's position on this proposed rule.