Bituminous Coal Operators' Association
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February 14, 2003

Mr. Marvin W. Nichols, Jr.
Director
Office of Standards, Regulations and Variances
Mine Safety & Health Administration
1100 Wilson Boulevard, Room 2313
Arlington, VA 22209-3939

Dear Mr. Nichols:

These comments are submitted on behalf of the members of the National Mining Association (NMA)and Bituminous Coal Operators' Association (BCOA) in response to the "direct final rule" that appeared in the Federal Register on January 22, 2003 (68 F.R. 2879). We appreciate having the opportunity to submit these comments and applaud the agency's efforts to streamline the regulatory process and bring-to-closure several initiatives that have languished on the regulatory agenda for far to long.

This proceeding represents the first time that MSHA has chosen to utilize the "direct final rule" process as authorized under § 553 of the Administrative Procedures Act. As such, we, like others, have some trepidation regarding its application and the protections that parties are afforded under this unique regulatory process. As we understand it, the direct-final rule process is premised on the belief that the underlying subject matter is largely non-controversial in nature and that it is not anticipated that any significant adverse comments will be submitted. Further, in the event that a "significant adverse comment" is submitted that challenges the rules underlying premise or approach, the rule would be withdrawn and subject, in this case, to the normal notice-and-comment process as provided for in § 101 of the Mine Act.

With this understanding we support the agency's decision to use this regulatory approach to update an existing regulation contained in 18 USC Subpart 18.41 that has become technologically outdated and may create a potential safety hazard. Of no less importance, we support this initiative because it will eliminate the need for operators to needlessly file petitions for modifications under the authority of § 101(c) of the Mine Act. As the agency is well aware, the petition for modification process has become a burdensome, untimely proposition. If many instances it has been used as a bargaining tool to achieve objectives totally unrelated to the underlying proposition. This runs counter to the principles upon which the petition for modification process was founded and has the potential to introduce unnecessary safety hazards into the workplace. While

not a part of this proceeding, we encourage the agency to review the rules governing the petition process to determine what actions are required to streamline and modernize it.

While we are supportive of the substantive changes being proposed, we should note however that conversations with mine operators that have been granted petitions to use the alternative locking devices indicate that the proposal goes beyond that contained in existing petitions by requiring under § 18.41(f)(3) the use of a "clearly visible warning tag that states: "DO NOT DISENGAGE UNDER LOAD."

While we understand the agency's rationale that gives rise to the use of tags and support methods to communicate potential hazards with our workers, we must note that the harsh conditions often experienced in the underground environment are not conducive to this means of communication. Regrettably, tags are often lost, misplaced or inadvertently defaced and they serve as a ready means for an inspector to issue a citation to an operator. This has been the case in other instances where the agency has required the use of tags and regrettably that will undoubtedly become the case in this application. Having stated this concern, however, we do not believe this is of the magnitude of a "significant adverse comment" that necessitates the withdrawal of this proceeding. Rather, we would hope that the agency could develop guidance for inspectorate to consider when examining the availability of tags on such connections.

MSHA' semi-annual regulatory agenda indicates that this is but the first of several "direct final rule" initiatives that will be undertaken. We encourage the agency to utilize this process judiciously. While we support efforts to streamline a regulatory process that has become arduous and taxing, care must be taken to ensure that the protections afforded interested parties under the Mine Act and Administrative Procedures Act and not diminished. This proceeding strikes, in our estimation, the proper balance and will advance miner safety and health while lessening the paperwork burdens on the industry and the agency.

Thank you for providing us the opportunity to comment on this matter.

Sincerely,

Joseph Lamonica Bruce Watzman