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Mine Safety and Health Administration
Office of Standards, Regulations, and Variances
201 12th Street South
Suite 4E401
Arlington, Virginia 22202-5452

RE: Roof Control Plan Criteria, Docket No. MSHA 2025-072, RIN 1219-AC18

On behalf of the members of the Pennsylvania Coal Alliance (PCA), please accept the following comments on the proposed rule concerning roof control plan criteria, Docket No. MSHA 2025-0018. PCA believes that the rule requires change, however, improvements to the proposed rule are needed to create an effective and efficient plan development and approval process. As such, PCA appreciates the opportunity to comment and suggests changes outlined below.

PCA represents Pennsylvania's underground and surface bituminous coal operators and associated businesses that rely on a strong coal economy. Our members annually produce over 95 percent of the state's coal, totaling over 41 million tons in 2024, making Pennsylvania the third largest coal producing state in the nation. The PCA has a significant interest in the proposed rule as our members include large longwall mines with extensive surface areas for cleaning plants and coal refuse disposal areas, underground coal mines which utilize continuous miners and maintain surface preparation plants and refuse disposal areas, and surface coal mines. All of PCA's underground producer member operations would be subject to the rule.

MSHA is proposing to revise its roof control plan standards to eliminate the provision that allows the District Manager to require inclusion of additional measures in plans, and believes the current regulation lacks statutory authority, violates the Appointments Clause of the U.S.

Constitution, and violates the Administrative Procedure Act (APA) by skipping notice and comment.

Roof Control Plan Approval Criteria

MSHA regulations detail criteria for the approval of roof control plans in 30 C.F.R. § 75.222. Specifically, the requirements for the installation of roof support using mining machines with integral roof bolters, pillar recovery, unsupported openings at intersections, Automated Temporary Roof Supports (ATRS) systems in working sections where the mining height is below 30 inches, and longwall mining system are addressed in §75.222. These criteria must be "…considered on a mine-by-mine basis in the formulation and approval of roof control plans and revisions." As such, the roof control plan has the force and effect of law at the mine, the mine may be cited for violation of the roof control plan, and mine personnel may be held personally liable, civilly and criminally, for violations of the roof control plan. However, §75.222 also gives the District Manager broad authority to add regulatory criteria prior to approving roof control plans which is neither described nor required by the regulations or 30 U.S.C. § 862(a). Specifically, the regulation currently states, without limitation, that: "[a]dditional measures may be required in plans by the District Manager."

MSHA is proposing to rescind the authority of District Managers as it relates to adding additional measures to roof control plans that are beyond the criteria set out in 30 C.F.R. §75.222 and the other requirements set forth in 30 C.F.R. §75.220-223. MSHA has reevaluated its standards and concluded that the authority and discretion granted to District Managers in 30 C.F.R. §75.222 to add "additional measures," not identified in the statute or mandatory safety standards, is not supported by statute, violates the Appointments Clause of the Constitution and the APA. Under this proposed rule mine operators would no longer be required to incorporate unspecified provisions or generalized requests not subject to rulemaking into their roof control plans at the discretion of the District Manager. This change does not impact any other existing requirements for roof control plans.

MSHA has routinely used its ability to require additional plan provisions to the detriment of operators in the plan approval process. Discussions on a plan provisions routinely involve an exchange of plan deficiencies that MSHA may perceive at any given submittal. Subsequent deficiency letters may include newly identified deficiencies, and such deficiencies often have no basis in the enumerated provisions of Section 75.222. This process is often prolonged, particularly when MSHA requires section specific plans, and can prevent plan approval and henceforth mining if the operator does not accept the terms of the District Manager the District Manager's staff. Often, staff drives the demand for additional conditions, and an operator has limited options to challenge a plan. If an operator does challenge the process it can take several years to resolve, akin to holding the operator hostage to the District Manager. See e.g. Secretary of Labor v. Knight Hawk Co., 991 F. 3d 1297 (D.C. Cir. 2021); Prairie State Generating Co. LLC v. Secretary of Labor, 792 F. 3d 82 (D.C. Cir. 2015). In addition, often plan negotiations

border the timeframe in which the operator needs plan approval, which provides the District Manager the leverage to require the operators to accept provisions that are often unnecessary and rarely justified, hindering long term planning and operational certainty.

It is unclear, however, what impact the proposed rule will have, especially since approval of the plan by the District Manager is still required. It is suggested that the proposed rule will require MSHA to review all existing plans within six months and remove any provisions that are not required by existing standards if the operator agrees. However, it is further unclear how novel mining issues will be addressed, or issues such as the use of two continuous miners in a section with rotating production, or where cuts longer than 20 feet are requested, or bleeder systems around longwall panels or districts are laid out. While the operators gain some leverage in plan negotiations under the proposed rule, the District Manager may decide he has no discretion to approve uncommon plans and refuse to approve them, thereby leading to uncertainty in the plan approval process.

It is the belief of PCA's members that the District Manager exercises too much discretion, however, it is not necessary and appropriate to eliminate this provision as MSHA proposes. Rather, it would be more appropriate to require the District Manager to justify the suggestions for proposed plan changes in writing and provide an informal and timely appeal process above the District Manager level.

The proposed rule should be changed to read as follows:

> Any additional provisions may be suggested by the District Manager if such provisions are justified by substantial safety considerations by the District Manager in writing. The basis for such suggestions may not be the fact that the provisions have been required at other mines. If such suggestions are not accepted by the operator, it may seek informal review by personnel outside the District. Such review shall be provided on an expedited basis.

Need for the Proposed Change

MSHA asserts that the current standard may violate statutory authority, the Appointments Clause of the Constitution by vesting significant regulatory authority in District Managers, and the APA by foregoing notice and comment requirements.

The relied upon rationale for the of lack of statutory authority is the Mine Act only requires that the Secretary approve plans, not the District Manager. To MSHA, this lack of statutory authority is contrary to Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024) and is an adequate reason to rescind the sentence that "Additional measures may be required in plans by District Managers." However, the difficulty with such reasoning is that Congress approved the negotiation process regarding Emergency Response Plans in 2006. See Senate Report 109-365,

The Mine Act at p. 4 (Dec. 6, 2006). It is also a process that has been recognized by Courts of Appeal. See also Secretary of Labor v. Knight Hawk Co., 991 F. 3d 1297 (D.C. Cir. 2021); Prairie State Generating Co. LLC v. Secretary of Labor, 792 F. 3d 82 (D.C. Cir. 2015). The Mine Act specifically states that the Secretary has the authority to approve plans and the District Manager is simply his delegate.

MSHA also asserts the significant discretion accorded by the District Manager in 30 C.F.R. §75.222 violates the Administrative Procedure Act. This standard essentially amounts to the unfettered ability of the District Manager to draft and create "laws" which are civilly and criminally enforceable, and without notice and comment rulemaking. Various statutory provisions, including 30 U.S.C. § 811, give the Secretary authority to issue health and safety regulations for mines. But, when these standards are substantive rules, with "general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy," 5 U.S.C. § 551(4), they are subject to the notice and comment process. MSHA must present the rulemaking to the public for comment, then issue a final rule responding to any comments. While 5 U.S.C. § 553. 30 C.F.R. 75.370(a) skips this process entirely when it vests District Managers with the authority to require undesignated roof control plan provisions, in MSHA's view, the District Manager, by adding additional criteria for roof control plans, is promulgating a new substantive rule of particular applicability, without any of the necessary process. Thus, MSHA asserts now that 30 C.F.R. § 75.222 violates the APA as it is adopted. We do not believe that the APA requires rulemaking unless the provision is of general applicability. In prior instances where MSHA has applied general policy (such as occurred with Emergency Response Plan) a rulemaking would be appropriate but for individualized requirements this would not be the case.

Plans are intended to be mine specific. If MSHA is relying on generalized policy, they should be forced to subject them to notice and comment rulemaking. The approach is different for mine specific conditions, and applying rulemaking before a plan can be implemented significantly or approved will create a wholly unworkable process. See Pocahontas Coal Company LLC, 38 FMSHRC 157, 163-64 (Rev. Comm. Feb. 2016) (dicta). Where MSHA attempts to use a plan template with generalized requirements beyond what is required in the rules, rulemaking would be required.

In addition, MSHA has asserted that federal government officials who exercise significant discretion when carrying out important functions are officers of the United States, and thus subject to the Appointments Clause. See Lucia v. SEC, 585 U.S. 237, 248 (2018); U.S. Const. Art. II, § 2, cl. 2. Under 30 C.F.R. § 75.371(a), District Managers are granted nearly unlimited discretion to add additional measures to ventilation plans as they deem appropriate, an important function. Accordingly, because District Managers are not appointed pursuant to the Appointments Clause, that substantial authority is unlawful in MSHA's view. This perceived conflict would not apply if the aforementioned proposed adjustment to rulemaking limits the District Manager's discretion.

Thank you for the opportunity to comment on the proposed rule. We are confident MSHA will take our suggested changes to the proposed rule into consideration.

Sincerely,

Rachel Gleason
Executive Director
Pennsylvania Coal Alliance