December 3, 2018

Sheila A. McConnell
Director, Office of Standards, Regulations, and Variances
Mine Safety and Health Administration
201 12th Street South, Suite 401
Arlington, Virginia 22202-5452

RE: Request to Revise the 30 CFR Part 100 Safety and Health Citation / Order Conferencing Procedures

Filed via Email: zzMSHA-OSRVRegulatoryReform@dol.gov

Dear Ms. McConnell:

Alliance Coal, LLC ("Alliance Coal") is the largest coal producer in the Illinois Basin and the second largest coal producer in the eastern United States. The company is a diversified producer and marketer of coal primarily to major United States utilities and industrial users. Alliance Coal began mining operations in 1971 and, in 2017, the underground mining operations produced approximately 37.8 million tons of coal. As of December 31, 2017, Alliance Coal has approximately 1.67 billion tons of coal reserves in Illinois, Indiana, Kentucky, Maryland, Pennsylvania and West Virginia. Alliance Coal currently operates nine underground mining complexes in Illinois, Indiana, Kentucky, Maryland and West Virginia, as well as a coal loading terminal on the Ohio River in Mt. Vernon, Indiana, and has approximately 3,500 employees across all operations.

On February 24, 2017, President Donald Trump signed Executive Order 13777, entitled "Enforcing the Regulatory Reform Agenda," directing each agency to review existing regulations to assess compliance costs and reduce regulatory burden. Since that time, the Mine Safety and Health Administration ("MSHA") requested stakeholders' assistance in identifying those regulations which could be repealed, replaced, or modified without adversely affecting miners' safety and health. Pursuant to the Executive Order and MSHA's request, Alliance Coal respectfully recommends MSHA revise the 30 Code of Federal Regulations ("CFR"), Part 100, Safety and Health Citation / Order Conferencing Procedures to remove the District Manager as the final decision maker.

The District Manager has ultimate responsibility for enforcing the provisions of the Mine Act in his or her district. As currently structured, the Conference Litigation Representatives ("CLRs") in each district work directly for the District Manager. However, their function is much different than the enforcement-driven mandate of the District Managers. CLRs should serve a more objective, fact-driven role consistent with the intent of the 30 CFR in providing operators an objective review of a

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citation prior to its assessment. Unfortunately, based upon Alliance Coal's experience in the districts in which it operates, that is not the case.

It appears District Managers have stripped CLRs of their ability to make an independent decision to modify a citation or order without first obtaining approval from the District Manager. In many cases, a District Manager is directly involved in the issuance or gravity and negligence determinations of a citation. At the very least, he or she has a strong incentive to uphold any citation or order issued by the inspectors. To then have that same person be the ultimate arbiter of the operator's conference under 30 CFR Section 100.6 is a conflict of interest and undermines the intent of affording an operator the right to conference a citation. In most cases, CLRs are experienced miners and MSHA inspectors who are trained on the applicable law and judicial interpretation of it. However, as they currently report to District Managers, their ability to independently exercise their judgment is hindered. In fact, the District Manager is responsible for conducting the annual performance review of CLRs and the results of that review determine the amount of bonus money awarded to a CLR. Such a management structure does not create the level of independence and objectivity that should be present in the CLR program.

The safety and health conferencing process should be transparent and provide the mine operator the opportunity to provide additional information which may not have been properly considered during the issuance of the citation or order. Most importantly, the process should provide an independent review of the issuing inspector's decision. With the CLRs being directly supervised by the District Manager, the current process does not allow for a fair, balanced, and unbiased decision. It is our recommendation that the effectiveness and objectivity of the conference process would be better served by CLRs reporting to a program area outside the district office, such as the Office of Accountability or the Solicitor's Office. Not only would this create more faith among operators in the conferencing process, but it would also provide better communication and improved consistency of enforcement between CLRs in different districts.

Thank you in advance for taking time to consider this recommendation. If you have any questions, or if you would like to meet to further discuss the need to revise the current conferencing procedures, please do not hesitate to contact me.

Sincerely,

Kenneth A. Murray

Kenneth A. Murray
Vice President of Operations
Alliance Coal, LLC