
From: Steve Arney <steve.arney@vantacore.com>
Sent: Wednesday, April 26, 2017 3:23 PM
To: zzMSHA-Standards - Comments to Fed Reg Group
Cc: Steve Arney
Subject: re: VantaCore Partners Comments on MSHA Metal/Non-Metal Workplace Exams Rule Delay of Effective Date, RIN 1219-AB87, Docket No. MSHA-2014-0030
Attachments: VantaCore - Workplace Exam comments - NS edits (April 26).pdf

Attached are comments from VantaCore Partners regarding RIN 1219-AB87, Docket No. MSHA-2014-0030 Pre-Shift Workplace examination.

Regards,

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April 26, 2017

Mine Safety and Health Administration
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Via: zzMSHA-comments@dol.gov

re: VantaCore Partners Comments on MSHA Metal/Non-Metal Workplace Exams Rule Delay of Effective Date, **RIN 1219-AB87, Docket No. MSHA-2014-0030**

It is the opinion of VantaCore Partners that the final rule for workplace exams does not further safety for our miners, but instead is nothing more than a new tool for MSHA to increase enforcement against the Metal/Non-Metal mining industry, and that the effective date should be indefinitely postponed.

VantaCore Partners' comments regarding the final MSHA workplace examination rule for Metal/Non-Metal Mines are detailed below:

1. The Metal/Non-Metal industry, specifically the mining of aggregates and limestone, is very different from underground coal mining. MSHA's final rule on workplace examinations for the Metal/Non-Metal industry is attempting to mimic the coal industry and most of the items are not applicable. For example, in a coal mine a pre-shift examination before work begins is required to detect methane or other gas buildup. This is a remote possibility in Metal/Non-metal mining due to the geologic formation and lack of methane in rock strata. This final rule, if it becomes effective, will not further safety, but only provide ample opportunity for inspectors to issue citations for errors in paperwork.
2. It is clear that there are other areas of concern to which MSHA should redirect resources rather than an unnecessary new workplace exam rule. For example, it is evident from Metal/Non-Metal fatalities records that from 2012 through 2016 power haulage and slips/fall of person are areas which MSHA should place as a priority over increased workplace examination regulation and enforcement. A new regulation does not enhance safety. Training and actual practice enhances safety.

3. The rule is concerning due to the amount of ambiguity contained within the new requirements and the opportunities for inspector subjectivity during enforcement. Both the requirement to notify miners before entering a work area, as well as the scheduling of repairs for potentially adverse conditions identified during the examinations are areas ripe confusion and unnecessary enforcement, especially given inspector's preference for believing miners over mine management. For example:

a. If an employee is notified of a potential hazard from the workplace exam prior to beginning work in the area, and then an MSHA inspector asks the employee if he was informed of the hazard, what happens if the employee forgets the he was notified by management of the potentially adverse condition? Will this result in a citation for the operator;

Or

b. If a potentially adverse condition is noted on the workplace exam in an area that is not going to be worked in until later in the shift, and the potentially adverse condition is scheduled to be corrected before miners work in the area, will this result in a citation if an inspector arrives before the scheduled correction and observes the potentially adverse condition? Furthermore, in this example, will this result in higher negligence given the previous identification of the potentially adverse condition?

Regards,

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