
From: Dan Eichholz <dan@iaap-aggregates.org>
Sent: Thursday, April 20, 2017 10:02 AM
To: zzMSHA-Standards - Comments to Fed Reg Group
Cc: Shawn McKinney
Subject: Comments RE: RIN 1219-AB87
Attachments: IAAP comments following delay of rule.pdf

Please find attached comments from the Illinois Association of Aggregate Producers regarding RIN 1219-AB87.

Thanks,

Dan Eichholz, Executive Director
Illinois Association of Aggregate Producers
1115 S. 2nd Street
Springfield, IL 62704
217.241.1639
dan@iaap-aggregates.org
www.iaap-aggregates.org



Illinois Association of Aggregate Producers

1115 S. 2nd Street • Springfield, Illinois 62704

Phone (217) 241-1639 Fax (217) 241-1641 www.iaap-aggregates.org

Dan Eichholz, Executive Director
Shawn McKinney, Outreach Manager
Jodi Perez, Office Manager

dan@iaap-aggregates.org
shawn@iaap-aggregates.org
jodi@iaap-aggregates.org

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

RE: RIN 1219-AB87

To Whom It May Concern:

The following comments are submitted on behalf of the Illinois Association of Aggregate Producers (IAAP), the trade association representing companies that produce and sell crushed stone, sand, gravel, and industrial minerals in Illinois.

The IAAP's 92 producing members range in size from "mom and pop" operations that manufacture less than 100,000 tons of these products each year to companies that produce well over 20,000,000 tons annually. Aggregate and industrial mineral producers in Illinois employ more than 3000 miners and support personnel at over 230 surface and underground mines and processing plants in all regions of Illinois.

MSHA has requested comments regarding delay of implementation of the new rule on Examinations of Working Places in Metal and Nonmetal Mines so that it can be reviewed at a policy level. That review is not yet complete and the current status of the rule is unclear. The IAAP and its member mining companies support a continued delay because as outlined below it will not improve upon current rules, may cause unnecessary confusion, a false sense of security, and is likely to be overly burdensome on operators of aggregate and industrial mineral mining companies when compared to existing rules and standard operating procedures for examinations of working places in mining operations.

Although the IAAP and other industry groups as well as mining companies and safety professionals submitted comments on the proposed rule, it remains vague on what constitutes a working place, conditions that may adversely affect safety and prompt notification. Once the rule goes into effect, aggregates operations will require compliance assistance from MSHA. And without an appointed Assistant Secretary to administer MSHA, we have little confidence that this rule will not be another example of inconsistent enforcement.

We urge MSHA to delay indefinitely the effective date of Examinations of Working Places in Metal and Nonmetal Mines until the rule is reviewed and its status finalized. Furthermore, the IAAP supports the ultimate withdrawal of this new rule because it will not improve the safety of miners.

Requiring workplace examinations before miners begin work in a given area provides no added safety benefit beyond requirements currently in place.

Industry standard practice has been to examine for unsafe conditions prior to miners commencing work in an area. To assume that unsafe conditions will best be found at the beginning of a shift makes no sense. Workplace exams are an ongoing process that continues throughout the shift. Further, requiring the workplace exam at the start of the shift may give miners a false sense of security, implying that unsafe conditions would not develop during the course of the shift. This could serve to swing the focus away from the current practice of vigilance when entering or returning to an area to perform work.

In most operations, all employees, with the exception of newly hired, inexperienced miners, are considered by the company to be competent persons for the purpose of conducting workplace exams. All employees are responsible for watching out for unsafe conditions and reporting them to the appropriate supervisor. If foreman or supervisors are to be the only qualified persons to conduct workplace exams then the experience and familiarity of the working place possessed by employees whose previous responsibility it was to conduct workplace exams will be discounted. Limiting who is qualified to conduct workplace exams will also result in significant diminishment of production and miner productivity each day.

The rule also brings into question issues that exist with the vague definition of working place, work, and competent person. For example, if an operation has 5 miles of conveyors, multiple screening towers, multiple tunnels and so on, that are all controlled from a central location, is the operator required to conduct a workplace exam on all 5 miles of conveyors, and every floor of every screening tower before the plant can be started, or is it acceptable and appropriate to only inspect those areas that miners are entering into for scheduled work, and then only immediately prior to that work commencing? And if a piece of equipment must be started in order to do a proper exam, has work begun when the equipment is started, without a completed exam? Finally, if the designated examiner is a competent person but is required to have a certain amount of experience, ability or knowledge, is he or she also considered an agent of the company and subject to Section 110(c) of the Mine Act under which monetary penalties and criminal actions can be assessed against individuals? If so, few, if any, miners would be willing to accept this responsibility.

In this rule, mandating operators to promptly notify miners of any conditions that may adversely affect safety creates no burden but also no benefit.

Under current rules, if an operator knows of an unsafe condition, that condition is being communicated to those miners that may be exposed to it. Operators do not knowingly and willfully send miners into areas with unsafe conditions without first correcting or barricading the unsafe conditions, and notifying miners if the condition is barricaded. Additionally, the presence of a barricade in the immediate area of the unsafe condition

serves as a notification to miners working in the area that the condition exists. Requiring more notification, or to a broader audience, invites confusion.

No safety benefit will be realized from mandating that exam records include a description of the location, conditions, and date of corrective actions taken.

While many operators, as a best practice, currently keep exam records including the location, conditions found, and date of corrective actions taken, mandating that they do so will require additional time for those individuals completing the workplace exam to complete their daily paperwork in a manner that will pass MSHA inspector scrutiny that may vary from District to District and inspector to inspector. Additionally, since the exams must be completed prior to work starting in an area, and the regulations only require that the record of the workplace exam be completed by the end of the shift, there is a risk that locations, conditions, or corrective actions will inadvertently not get properly recorded, resulting in possible citations. Further, if the operator does not deem a condition to require immediate corrective action, but instead schedules corrective action at a later date, additional burden is placed on the operator to go back through workplace exam records to record the corrective action to the appropriate workplace examination. Again, this could open the operator up to potential citations if a delayed corrective action is improperly recorded.

Currently, unsafe conditions found during workplace examinations are being corrected in a timely manner under existing regulations, so there would be no additional safety benefit resulting from implementation of this new rule, only confusion.

The IAAP acknowledges the role MSHA has assumed in ensuring workplace safety for America's miners.

Your vigilance has made the industry better and safer. However, we urge MSHA to delay indefinitely the effective date of this new rule on Examinations of Working Places in Metal and Nonmetal Mines until the rule is reviewed and its status finalized. Furthermore, the IAAP supports the ultimate withdrawal of this new rule because it will not improve the safety of miners. Instead, work with the industry and its stakeholders to ensure safety for miners while not imposing unnecessary burdens on operators contributing to the economic prosperity of the United States.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dan Eichholz". The signature is stylized with a large, looping "D" and "E".

Dan Eichholz
Executive Director
Illinois Association of Aggregate Producers