

# PUBLIC SUBMISSION

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**Docket:** MSHA-2018-0016

Safety Improvement Technologies for Mobile Equipment at Surface Mines, and for Belt Conveyors at Surface and Underground Mines.

**Comment On:** MSHA-2018-0016-0163

Safety Program: Surface Mobile Equipment

**Document:** MSHA-2018-0016-0166

Comment from Industrial Minerals Association - North America

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## Submitter Information

**Email:** waynepalmer@ima-na.org

**Organization:** Industrial Minerals Association - North America

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## General Comment

See attached file(s)

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## Attachments

IMA-NA Supplemental Comments on MSHA Surface Mobile Equipment NPRM 10 Feb 2022



February 10, 2022

Ms. Sheila McConnell  
Office of Standards, Regulations, and Variances  
Mine Safety and Health Administration  
201 12<sup>th</sup> Street South  
Suite 4E401  
Arlington, VA 22202-5452

Re: RIN 1219-AB91; Docket No. MSHA 2018-0016, *Safety Program for Surface Mobile Equipment*

Filed via the Federal eRulemaking Portal: <http://www.regulations.gov>

Dear Ms. McConnell:

Thank you for reopening the rulemaking record for public comments on the Mine Safety and Health Administration's ("MSHA") proposed rule addressing Safety Program for Surface Mobile Equipment, and for the opportunity to testify before the January 11 virtual public hearing.

In my testimony, I raised an issue related to the small mines exemption in the draft rule. Specifically, we are concerned that while all IMA member companies would exceed the threshold of five employees, as companies have reviewed the draft rule's potential financial impact, it became clear that our segment of the industry would be forced to absorb a disproportionate share of the compliance burden when compared to other mining sectors covered by this rule.

We note that in its drafting process, pursuant to the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA analyzed the impact of the proposed rule on small entities. MSHA's threshold analysis concluded that there is no significant economic impact on a substantial number of small entities, given that estimated compliance costs would be less than one percent of estimated industry revenues.

This threshold analysis evaluated "the impacts on small entities by comparing the estimated compliance costs of a rule for small entities in the sector affected by the rule to the estimated revenues for the affected sector." MSHA evaluated data related to the number of firms, employment, and revenue. The 65 percent of small entities that employ fewer than six miners would bear no compliance cost. However, the remaining 35 percent of mines and facilities considered to be small entities would be required to comply with the proposed rule because they employ six or more miners.

We recognize that MSHA does not have access to profit margin data for individual mine operators, and therefore could not include it as a factor in the threshold analysis. However, IMA's

members fall on the smaller end of the scale—larger than the exempted mines, but far smaller than the large operators when looking at mine size in terms of tonnage, valuation, and employees. Unlike multinational metal/nonmetal mining companies that typically operate on net profit margins ranging from 10 to 25 percent, industrial minerals are low-margin products that require significant financial commitments to long-term projects—and higher post-extraction processing costs relative to other sectors. Falling above the rule’s small business exemption but well below the scope and resources of larger metal/nonmetal mining companies, industrial minerals producers will, in a relative sense, be disproportionately impacted financially by the proposed rule.

I appreciated your receptiveness during the hearing to how MSHA could level the playing field with regard to our sector. In the written comments IMA-NA previously submitted on November 8, 2021, we asserted generally that the proposed compliance period does not provide mine operators sufficient time to comply with the final rule. We suggested a longer, phased compliance period. IMA respectfully submits that the Small Business Administration’s (SBA) Small Business Size Standards could serve as the basis for such a phased compliance period.

As you know, in analyzing the impact of a rule on small entities, MSHA must use SBA’s definition for a small entity, or after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the *Federal Register* for notice and comment. Accordingly, for its threshold analysis MSHA relied on the data for Sector 21 – Mining, Quarrying, and Oil and Gas Extraction in the Table of Small Business Size Standards Matched to North American Industry Classification System Codes:

**Sector 21 – Mining, Quarrying, and Oil and Gas Extraction**

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
211120	Crude Petroleum Extraction		1,250
211130	Natural Gas Extraction		1,250
212111	Bituminous Coal and Lignite Surface Mining		1,250
212112	Bituminous Coal Underground Mining		1,500
212113	Anthracite Mining		250
212210	Iron Ore Mining		750
212221	Gold Ore Mining		1,500
212222	Silver Ore Mining		250
212230	Copper, Nickel, Lead, and Zinc Mining		750
212291	Uranium-Radium-Vanadium Ore Mining		250
212299	All Other Metal Ore Mining		750
212311	Dimension Stone Mining and Quarrying		500
212312	Crushed and Broken Limestone Mining and Quarrying		750
212313	Crushed and Broken Granite Mining and Quarrying		750
212319	Other Crushed and Broken Stone Mining and Quarrying		500
212321	Construction Sand and Gravel Mining		500
212322	Industrial Sand Mining		500
212324	Kaolin and Ball Clay Mining		750
212325	Clay and Ceramic and Refractory Minerals Mining		500
212391	Potash, Soda, and Borate Mineral Mining		750
212392	Phosphate Rock Mining		1,000
212393	Other Chemical and Fertilizer Mineral Mining		500
212399	All Other Nonmetallic Mineral Mining		500
213111	Drilling Oil and Gas Wells		1,000
213112	Support Activities for Oil and Gas Operations	\$41.5	
213113	Support Activities for Coal Mining	\$22.0	
213114	Support Activities for Metal Mining	\$22.0	
213115	Support Activities for Nonmetallic Minerals (except Fuels)	\$8.0	

We recognize that assigning a different compliance period for operators that fall under each of the different Size Standards in the table (500 employees, 750 employees, 1,000 employees, etc.) would be too complex to administer. However, perhaps MSHA could extend to all operators who qualify under SBA's small entity definition an additional 12 months beyond that required of larger operators, which under the proposed rule is six months, for a total of 18 months.

Thank you again for reopening the rulemaking record, and for your consideration of IMA's supplemental comments in response to the proposed rule for Surface Mobile Equipment. We would be happy to supply additional information in support of your rulemaking, should you require it.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Greissing", written in a cursive style.

Chris Greissing  
President  
Industrial Minerals Association – North America