
From: Jay Stem <jay@ncaggregates.org>
Sent: Wednesday, September 21, 2016 10:02 AM
To: zzMSHA-Standards - Comments to Fed Reg Group
Subject: RIN 1219-AB87 or Docket No. MSHA-2014-0030
Attachments: Workplace Exams comment letter - September 2016.doc

SEP 21 2016

Comment letter on MSHA proposing to amend the standards for the examination of working places in M/NM mines.
Docket No. MSHA 2014-0030
RIN 1219-AB87

Thank-you,
Jay

Jasper G. Stem, Jr., P.E.
Executive Director
North Carolina Aggregates Association
353 East Six Forks Road, Suite 270
Raleigh, NC 27609
919 782-7055
Fax: 919 782-7060
ncaa@ncaggregates.org

Serving the Aggregates Industry Since 1964



P. O. Box 30603
Raleigh, NC 27622
Representing Producers and Suppliers in the Aggregates Industry

September 19, 2016

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

RIN: 1219-AB87

Reference: MSHA 2014-0030 (Proposed Examinations of Working Places in Metal/Nonmetal Mines)

To Whom It May Concern:

With over 120 locations in our state, the North Carolina Aggregates Association (NCAA) represents over eighty percent of the companies that produce crushed stone and gravel in North Carolina. Our member companies and their employees are dedicated to ensuring that every miner is operating in a safe environment and in compliance with Mine Safety and Health Administration's (MSHA) standards and procedures.

NCAA is writing to voice our concerns over MSHA's proposed changes to the rule for examinations of working places in metal/ nonmetal mines - 30 CFR 56/57.18002.

The proposed rule is unnecessary based on MSHA's intended goal. MSHA states that the purpose of the proposed rule is to –

- ensure that mine operators identify and correct conditions that may adversely affect miners' safety or health,
- that an examination of the working place be conducted before the miners begin work in an area,
- that the competent person conducting the examination sign and date the examination record before the end of each shift,
- that the record includes information regarding adverse conditions found and the corrective actions taken.

The current rule and Program Policy Letter's (PPL) already require the examinations of workplaces and the reporting of any hazards.

PPL No. P15-IV-01 (July 22, 2015) addresses the proposed reasons that MSHA states for needing the new rule. Two excerpts from the PPL:

...the operator shall examine each working place at least once each shift for conditions which adversely affect safety or health, that the examination must be conducted by a competent person, and the a record of the examination must be maintained and made available for review by the Secretary or his authorized representative.

Regarding the requirement that operators keep records of examinations, MSHA historically has taken the position that a meaningful record should contain the following: (1) the date the examination was made; (2) the examiner's name; and (3) the working places examined. See Program Policy Letters P10-IV-3 (2010), P11-IV-01 (2011) and P14-IV-01 (2014). The purpose of workplace examinations is to identify and correct conditions which may adversely affect safety or health. For this reason, it is a best practice also to include a description of such conditions in the examination record to facilitate correction and to alert others at the mine of conditions that may recur or in other ways affect them. Under the record retention requirements in §§ 56/57.18002(b), operators must retain workplace examination records for the preceding 12 months. Evidence that a previous shift examination was not conducted or that corrective action was not promptly initiated constitutes a violation of §§ 56/57.18002(a). This evidence may include information which demonstrates that safety or health hazards existed prior to the shift on which they were found.

PPL's, as stated by MSHA, are used as an integral part of their inspections, so why is there a need for rulemaking, when the PPL addresses the proposed changes?

The major focus of the proposed rule change has centered on conducting the work place examination prior to beginning work, instead of being conducted during the shift. Even if an examination is conducted prior to beginning work, the conditions at most mines are changing and not static; so examinations are being conducted during the shift. As proposed, the component person could conduct the workplace examination several hours before the miners began work, but the conditions changed between the examination and the work beginning. Again the focus should be on the safety of the miners and not just completing a form.

The new requirement for a signature on the examination record will discourage miners from conducting the examinations because of the personal liability that accompanies signing the document. The current rule already requires the name of the competent person that conducted the inspection, so why change the rule to have a signature and subject them to potential personal liability?

The proposed rule makes a connection between workplace examinations and the Rules to Live By standards. Most of the Rules to Live By are behavior based standards not condition based. MSHA must take into account that human behavior plays a significant role in at least eighty percent of accidents and these behaviors are not impacted by work place exams.

In closing, we urge MSHA to withdraw this proposed rule and focus on enforcing the existing rule. To reduce injuries and fatalities, the emphasis needs to be focused on the behavior of the miners instead of creating a subjective process that will increase the likelihood of more citations and missing the point of making the workplace safer – which should be everyone’s goal.

Sincerely,

Jasper G. Stem, Jr.

Jasper G. Stem, Jr., P.E.
Executive Director

North Carolina Aggregates Association
353 East Six Forks Road, Suite 270
Raleigh, NC 27609
ncaa@ncaggregates.org
(919) 782-7055

Federal E-rulemaking portal:

<http://www.regulations.gov>, follow instructions for submitting for docket number MSHA-2014-0030.

Email: zzMSHA-comments@dol.gov