



**Billing Code: 4520-43-P**

**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**Petition for Modification of Application of Existing Mandatory Safety Standards**

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

**DATES:** All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. Electronic Mail: [zzMSHA-comments@dol.gov](mailto:zzMSHA-comments@dol.gov). Include the docket number of the petition in the subject line of the message.
2. Facsimile: 202-693-9441.
3. Regular Mail or Hand Delivery: MSHA, Office of Standards, Regulations, and Variances, 201 12<sup>th</sup> Street South, Suite 4E401, Arlington, Virginia 22202-5452, Attention: Sheila McConnell, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite

4E401. Individuals may inspect a copy of the petition and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

**FOR FURTHER INFORMATION CONTACT:** Barbara Barron, Office of Standards, Regulations, and Variances at 202-693-9447 (Voice), barron.barbara@dol.gov (E-mail), or 202-693-9441 (Facsimile). [These are not toll-free numbers.]

**SUPPLEMENTARY INFORMATION:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44 govern the application, processing, and disposition of petitions for modification.

#### I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

## **II. Petition for Modification**

Docket Number: M-2017-008-C.

Petitioner: Excel Mining LLC, 4126 State Highway 194 West, Pikeville, Kentucky 41501.

Mine: Excel Mining #4 Mine MSHA I.D. No. 15-19515, located in Pike County, Kentucky.

Regulation Affected: 30 CFR 75.1909(b)(6) (Nonpermissible diesel powered equipment; design and performance requirements).

Modification Request: The petitioner requests a modification of the existing standard to allow use of a six-wheeled Dapco Roadbuilder, model DP-10G, serial number 003, as it was originally designed without front brakes. The petitioner states that:

(1) The Dapco Roadbuilder has a braking system on the four rear wheels that is designed to prevent loss of braking due to a single brake system component failure.

(2) The petitioner will train the grader operator to limit the maximum speed of the Roadbuilder to 10 miles per hour (MPH) by permanently blocking out any gear that would provide a higher speed than 10 MPH, to use transmission and differential ratios that would limit the maximum speed to 10 MPH, to recognize the appropriate speeds to use on different roadway conditions and different grades/undulations, and to lower the front push blade, grader blade, or digger forks for additional stopping capability in emergency situations.

The petitioner asserts that the design of the Dapco Roadbuilder guarantees no less than the same measure of protection afforded by the existing standard because the

machine's braking system is adequate to stop the machine due to the weight distribution over the four rear wheels.

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Sheila McConnell  
Director  
Office of Standards, Regulations, and Variances

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