PUBLIC SUBMISSION

As of: 10/28/21 1:38 PM
Received: October 28, 2021
Status: Posted
Posted: October 28, 2021
Tracking No. kva-ws5r-lixt
Comments Due: November 08, 2021
Submission Type: Web

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-2018-0016-0111
Safety Program: Surface Mobile Equipment

Document: MSHA-2018-0016-0132
Comment from Part46Compliance.com

Submitter Information

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General Comment

Please find attached the comments from Part46Compliance.com concerning the proposed rule, RIN 1219-AB91

Attachments

Part46Compliance.com Comments - RIN 1219-AB91

PART 46
COMPLIANCE

October 28, 2021

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

Re: RIN 1219-AB91 (Docket No. MSHA-20018-0016)

To whom it may concern:

I, Timothy King, owner and spokesperson of Part46Compliance.com, hereby submits the foregoing comments in response to the Mine Safety and Health Administration's request for comments concerning the proposed Safety Program for Surface Mobile Equipment.

Thank you for your consideration of these comments.

Sincerely,

Timothy A. King, CMSP
Owner

Part46Compliance.com

Comments of Timothy King, CMSP, owner of Part46Compliance.com
U.S. Mine Safety and Health Administration
Safety Program for Surface Mobile Equipment (RIN 1219-AB91)
Submitted September 23, 2021

Before I begin with my comments, I wish to commend the Mine Safety and Health Administration (MSHA) on their continual push to protect America's most valuable resource, the Miner. It is because of this push that mining fatalities have dropped to levels one-tenth of professional fishing workers; one-fourth of logging workers, roofers, and airplane pilots; one-half of refuse workers; and less than grounds maintenance workers, farmers, construction supervisors, and truck drivers. As we see, through the diligent work of the Mine Safety and Health Administration working in cooperation with the mining industry, mining has become one of the safer trades ("Census of fatal occupational injuries", 2020).

The safety and health of those in the mining industry, in any industry, calls not only for a symbiotic marriage between the industry and the regulating body, but also defined unambiguous Standards that are easily followed and enforced. In looking at the proposed Safety Program for Surface Mining Equipment, one does not find such a Standard.

In presenting my arguments in the following analysis, I will reference the Part 56 Standards; however, due to the Part 56 content being the same as the Part 57 and Part 77 Standards, please consider my analysis as being to all.

I. 56.23000 Proposed Standard – Analysis
a. 56.23001 - Definitions

In reviewing the definitions for the proposed new Standards, 56.23001, 57.23001, and 77.2101, we find two new definitions:

> *Responsible person* means a person with authority and responsibility to evaluate and update a written safety program for surface mobile equipment.

Surface mobile equipment means wheeled, skid-mounted, track-mounted, or rail-mounted equipment capable of moving or being moved, and any powered equipment that transports people, equipment, or materials, excluding belt conveyors, at surface metal and nonmetal mines.

For the new *responsible person* definition, we see where this person is not only responsible for the evaluation and updating of a written safety program, but also a person having the authority to do so. In reviewing the preamble to this definition in conjunction with the proposed definition of surface mobile equipment, we find that this new person would need to be omnipotent in knowledge of all equipment designed to move people, equipment, and materials, excluding belt conveyors, at mining locations. I say this based on the proposed *surface mobile equipment* definition. When one dissects this definition in a legalistic and definitive manner, one is left with a definition that encompasses all equipment (except belt conveyors) that is capable of moving an item from point A to point B, regardless of any motor or power source. This Standard may be submitted as one to protect miners from the hazards of powered haulage, yet by its very definition it not only leaves out the terms *powered* or *self-propelled*, but it specifically excludes one of the most hazardous items in a mine site, belt conveyors. By the very wording of the definition given for surface mobile equipment, hand carts to haul trucks are considered to be the same, for a hand cart is a wheeled piece of equipment that transports material at a mine location, just as a haul truck does, albeit a different material and in a different manner. To say a hand cart is the same as a 250-ton

Caterpillar 793 is extreme and absurd, yet per this definition it is a true statement to say they are the same. In using the same proposed definition, a belt conveyor with rollers, head and tail pulleys, and skirting pinch points is to be excluded, yet a fully-encased bucket elevator falls under this Standard; where is the logic in this?

If one reviews the Federal Register, Rules and Regulations, Volume 53 Number 165, documentation dated August 25, 1988, Page 32504, one finds the preamble to a similar section in the Title 30 Code of Federal Regulations (CFR), Section 56/57.14100 Safety Defects; Examinations, Corrections and Records. In the discussion about the comments received for this section of the CFR, one finds where there had been discussion on whether this Section should cover all mobile equipment, or only self-propelled. As is stated in this document, I quote, *"In MSHA's view, the inclusion of all mobile equipment within the scope of this Standard would unnecessarily increase recordkeeping requirements; therefore, the final rule continues to limit this requirement to self-propelled mobile equipment."* For this Section of the 30 CFR, it was found that the focus should be on self-propelled mobile equipment and not just on mobile equipment, for the recordkeeping burden was unnecessary. In the event Section 23000 goes forth with the proposed definition of *surface mobile equipment*, the paperwork burden will be beyond anything fathomable.

In further review of the *surface mobile equipment* definition, two further glaring issues are found. First, is the removal of belt conveyors; second, is the removal of all items underground. When reviewing the Accident Injuries Dataset retrieved from MSHA.gov on October 4, 2021, one finds that since the year 2000, 245,683 recordable incidents have been registered with the Mine Safety and Health Administration, with 148,002 incidents occurring at surface locations.
Of those 245,683 total incidents, 17,812 were classified as Powered Haulage, with 10,983 being at surface locations.
Of those 245,683 total incidents, 1,046 fatalities occurred, with 644 of those

fatalities being at surface locations.
Of those 245,683 total incidents, 313 Powered Haulage fatalities were registered, and 211 of those fatalities were at surface locations.
Of the 245,683 total incidents, 42 fatalities were classified as Belt Conveyor related, and 28 were at surface locations.
Of the 245,683 total incidents that occurred in mining between the year 2000 and now, 183 Powered Haulage fatalities occurred at surface locations that were not Belt Conveyor related.

In looking at these numbers, we see just as many powered haulage fatalities occur underground, and many are associated with belt conveyors; so why negate them from the new proposed Standard, if the Standard is truly aimed at saving lives?

b. 56.23002 – Written Safety Program

A written safety program is a good thing, for it provides guidance and consistency; however, to state that a program must contain all of the elements of this subpart is beyond comprehension when the definition of *surface mobile equipment* is applied, and I will expound upon this further in Bullet III. In addition, why define a singular person, a czar, over this program when there is already a person designated as responsible for the health and safety of all on the mine site? What is the reasoning behind designating a possibly separate individual as being responsible? Is there a sound reason for such minutiae oversight?

c. 56.23003 – Requirements for written safety program

Mine operators constantly identify and analyze hazards for the purpose of reducing risks to their employees, as it is the basics of sound business practices. However, to require a program that states an operator must follow each service manual and manufacturer recommendation, is in essence the creation of a 'catch-all' Standard for the generations of citations, and is not founded in promoting safety.

For example, if I have a bucket elevator designed to transport raw feed at my cement plant and the manufacturer states that each bucket attachment bolt should be inspected for tightness every 500 hours, and my Maintenance Manager states they will be checked every 1,000 hours, is this citable? Is this a safety hazard? Does this really matter in the world of safety? Most mine operators follow recommended maintenance schedules due to the investment they have in their equipment, and as such, a Standard need not be written to direct us as if we were careless children.

A requirement of identifying 'currently available and newly emerging feasible technologies that can enhance safety at the mine and evaluate whether to adopt them', is written out in 56.23003(a)(3). Does this mean that if I have a 1995 skid steer loader, that I should review placing a rearward facing camera system and proximity detection system on it? This requirement states I need to evaluate the feasibility of adding such technology to make my equipment safer. If I review the technology and objectively evaluate what is available, without a doubt I will find newly emerging technologies that could make that 1995 skid steer safer – at a cost. If I am operating a 1995 piece of equipment, it is because I cannot afford to purchase the newest bells and whistles; yet, because I am safely operating an older plain-Jane piece of equipment, I will be penalized and forced to install items I do not need and cannot afford, for I am now open to citations. What is to stop an overzealous inspector from coming onto my site and citing me for every piece of equipment that does not have the newest technology? What is to stop an inspector from citing me for not being knowledgeable on all of the newly emerging feasible technologies that can enhance safety at a mine? Is the responsible person required to document each newly emerging feasible technology as soon as it comes available, or will they be allowed a certain timeframe before a citation can be issued? Will a set procedure be required to evaluate the adoption of such technology?

Concerning the evaluation and updating of the written safety program, if a new style hand cart is purchased, will the program need to be updated to reflect such change? If a new oil is used in a pickup truck, is this to be added to the maintenance section of the safety program?

d. 56.23004 – Record and inspection

Due to the sheer size that this program could be and the amount of printing that may be involved, is there a timeframe on the providing of a copy of the written safety program? Or, for definition, does the term 'written' mean electronically written and stored, or does it mean captured on paper?

II. Enforcement

According to the proposed Rule, the written safety program will not need approval. To not require approval of each and every program is a wise decision, for the task of officially approving tens of thousands of programs would be unfathomable. However, as the programs are not officially approved, a myriad of programs will be written ranging from a basic singular page, to a complex legalese series of manuals, programs, and policies covering several thousands of pages. With the written safety program not requiring approval, the program's validity comes into question anytime a citable condition is found. If an authorized representative of Labor, an inspector, cites an operator for not researching the newest technology in a timely manner, what is to stop that inspector from issuing a citation towards the written program itself? Once that citation is issued, the only effective way to terminate the citation would be to modify the written program in a way that satisfies the inspector, and this action in turn makes this program effectively approved. However, what is to stop the next inspector from citing this now approved program if it fails to address, to their satisfaction, some other nuance of this Standard? As many operators can attest to, what satisfies one inspector does not always satisfy the next, for as is observed in any enforcement review, inspectors

are people too; therefore, interpretations and personal feelings come into play during any enforcement action.

III. Conclusion

The MSHA is a commendable agency that serves one of the greatest purposes of any agency, and that is the protection of the lives of the American workers. Through the multitude of Rules, Regulations, and Standards written over the years, MSHA has strived to place the life of our most valuable resource first and foremost. With this said, if the Mine Safety and Health Administration is proposing this Rule for the purpose of generating revenue, the implementation of this Rule fits that bill. If the MSHA is proposing this Rule to save lives, this Rule falls far from the mark.

References:

Mine Safety and Health Administration, Labor. (2021, September 9). *Safety program for Surface Mobile Equipment - Govinfo.gov*. Federal Register. Retrieved October 26, 2021, from https://www.govinfo.gov/metadata/granule/FR-2021-09-09/2021-18791/mods.xml

U.S. Bureau of Labor Statistics. (2020, December 22). *Census of fatal occupational injuries (CFOI) - current and revised data.* U.S. Bureau of Labor Statistics. Retrieved September 21, 2021, from https://www.bls.gov/iif/oshcfoi1.htm#

Respectfully submitted,

Timothy A. King