

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-2018-0016-0111

Safety Program: Surface Mobile Equipment

Document: MSHA-2018-0016-0138

Comment from Virginia Transportation Construction Alliance

Submitter Information

Email: rob@VTCA.org

Organization: Virginia Transportation Construction Alliance

General Comment

See attached file(s)

The Aggregate Producer Members for the Virginia Transportation Construction Alliance offer the attached comments relating to the MSHA Proposed Powered Haulage Rule.

Attachments

VTCA Comments - MSHA Powered Haulage Rule

AB91-COMM 17



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November 7, 2021

Jessica Senk
Office of Standards, Regulations, and Variances
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Re: Safety Program for Surface Mobile Equipment; Docket No. MSHA-2018-0016 (RIN 1219-AB91)
(Powered Haulage Rule)

Dear Ms. Senk:

The Virginia Transportation Construction Alliance (VTCA) represents the transportation construction industry in Virginia. Our membership is comprised of nearly 300, Highway Contractors, Consulting Engineers, Aggregate Producers, and Associates. VTCA Aggregate Producing Members represent 93% of all the metal/nonmetal mineral production in the Commonwealth. A large portion of our Aggregate Membership produces construction aggregate – crushed stone and sand and gravel. That furnish building materials for infrastructure construction and maintenance projects.

In response to the above referenced proposed Powered Haulage Rule VTCA offers the below comments. These comments have been developed through our Safety and Health Committee and supported by our Board of Directors.

Our interpretation of MSHA's goal in developing the Safety Program for Surface Mobile Equipment (Powered Haulage Rule or Rule) is to protect the health and safety of every miner. Be assured, that also is the goal of *every* VTCA Aggregate Producer member. However, the Rule only applying operation with six or more miners defeats the purpose of protecting all miners. Even though data may indicate less frequency of serious accidents at smaller operations, all miners and operations should be covered.

§ 56.23001 Definitions

Surface mobile equipment - The Definition of Surface Mobile Equipment is vague and certain equipment on mine sites may or may not meet the definition of Surface Mobile Equipment. Listed below are some (but not limited to) examples of equipment that may be in question:

Small Boats
Portable Crushers

Dredges
Auger Conveyors

Portable Screening Plants
Hydraulic Conveyors

VTCA suggests more clarity in what equipment is subject to the Rule, perhaps developing a finite list of equipment that would be either subject to or exempt from the Rule.

§ 56.23002 Written safety program.

VTCA believes that development of Powered Haulage Safety Plan within 6 months of Final Rule is not ample time for Operators to develop and implement Powered Haulage Safety Plans. VTCA suggests MSHA consider a one year time frame for Plan development with and an additional grace period of one year for MSHA to review and advise Plan implantation without operators facing the threat of receiving notices of violations.

Additionally, VTCA suggests MSHA train Education, Field and Small Mine Services personnel to assist operators develop and implement any new Powered Haulage Rule and plans.

§ 56.23003 Requirements for written safety program.

§ 56.23003 (a) (1) Identify and analyze hazards - VTCA believes the requirements of this section are consistent with and redundant to requirements already set forth in Part 46 of the 30 CFR .

§ 56.23003 (a) (2) Develop and maintain procedures and schedules. - VTCA contends existing requirements set forth in and referenced in this Proposed Rule – defined in sections 56.14100, 56.14105, 56.14211, of 30 CFR are sufficient to meet requirements set forth in this proposed standard.

§ 56.23003 (a) (3) Identify currently available and newly emerging feasible technologies. - This is an unrealistic requirement that has no ability to be quantified. Furthermore, this requirement may expose operators to potential undue negligent liability. MSHA could consider mechanisms to inform industry of new technologies rather than require industry to constantly explore for any new technologies.

§ 56.23003 (a) (4) Identify and analyze hazards.. - VTCA believes the requirements of this section are consistent with and redundant to requirements already set forth in Part 46 of 30 CFR

§ 56.23003 (b) The responsible person shall evaluate and update the written safety program annually.. – This regulation is also covered by Part 56 of 30 CFR and is redundant. Additionally, this may be unfairly subject Responsible Persons to unjustified liability.

§ 56.23004 Record and inspection.

The Aggregate Producer members of the Virginia Transportation Construction Alliance wholly supports MSHA in their efforts to keep all miners safe while on the job. However, many of the requirements established via the proposed Powered Haulage Rule are redundant with existing Part 46 and Part 56 regulations within 30 CFR. Initiatives that are new and directly related to powered haulage safety that are not covered by current regulations could be incorporated into existing regulations and operator's training plans. It is the belief of VTCA that imposing redundant rules exposes operators to additional violations for the same infraction. MSHA could consider developing a Powered Haulage Safety Plan template that would be incorporated into the existing safety and training plans developed and administered by operators. This would ensure consistency in the plan.

In conclusion, rather than develop and impose the proposed Powered Haulage Regulations MSHA should consider amending the Proposed Rule where it can become a component of operators already existing safety and training plans. VTCA agrees Powered Haulage accidents are a serious concern and applauds MSHA's initiative to further ensure the safety of all miners from Powered Haulage incidents, however, MSHA must take care not to add unwarranted yet burdensome regulations for operators to develop and administer.

In addition, VTCA understands that the National Stone and Sand & Gravel Association, (NSSGA) will also be submitting more detailed comments relating to the Powered Haulage Rule, VTCA has reviewed NSSGA Comments and supports their positions.

Please feel free to contact either myself or Rob Lanham, VTCA Aggregates Program Manager, if you have any questions or need additional information. Additionally, VTCA would be willing to participate, as industry representation, with any advisory group or panel that may be formed to refine the Proposed Powered Haulage Rule.

Thank you!

Sincerely

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

Gordon Dixon
Executive VP