

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-2018-0016-0141

Comment from North Carolina Aggregates Association

Submitter Information

Email: ncaa@ncaggregates.org

Government Agency Type: State

Government Agency: North Carolina Aggregates Association

General Comment

See attached file(s)

Attachments

Powered Haulage Letter November 2021



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

November 2, 2021

Jessica Senk
Office of Standards, Regulations, and Variances
Mine Safety & Health Administration
201 12th Street South, Ste. 4E401
Arlington, VA 22202-5452

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

Dear Ms. Senk,

On behalf of the North Carolina Aggregates Association (NCAA), I am pleased to submit the following comments in response to the Mine Safety and Health Administration's (MSHA) proposed Safety Program for Surface Mobile Equipment.

NCAA is a trade association that represents crushed stone, sand, and gravel producers and the manufacturing and service providers that serve our industry. Our producer members operate over 100 surface mines in North Carolina.

NCAA works with the members on the Safety and Health Committee, bringing together professionals to advance shared industry goals on health and safety issues, while working in collaboration with MSHA to promote best practices and awareness through communications, training, and supporting resources.

In response to the proposed rule, NCAA offers the following comments:

1. All facilities, regardless of the number of miners they employ, should be subject to the rule. Whether a facility employs one miner or one hundred miners, each individual should be protected equally as they are in all MSHA rules and regulations. There is no precedent for a MSHA standard that applies to all, but the smallest mines and such precedent should not begin now.
2. The responsible person provision in the proposed rule should be amended. To the extent the final rule contains any responsible person provision, facilities should be able to designate more than one responsible person. MSHA allows for multiple individuals to be named as the Person Responsible for Safety and Health, per the Part 46 Compliance Guide.
3. The rule should clarify the definition of surface mobile equipment. To alleviate confusion, the rule should clearly indicate what types of mobile equipment will be covered and which will not.
4. To increase consistency of how the rule will be enforced and provide time for operators to effectively implement their programs, MSHA should provide a six to twelve-month grace period where no citations related to this rule will be issued. While six months is enough time to develop a plan and designate responsible person(s), there is always an enforcement learning curve when a new rule is implemented. Therefore, we strongly recommend MSHA provide at least a six-month grace period, which will give both inspectors and operators the chance to discuss what inspectors expect, answer questions regarding plans, and get a better understanding of how enforcement will be conducted.

5. MSHA should provide a template that will help operators create their own program. A template would provide assurance that key items are addressed, and an operator's program would be 'approved' by MSHA, like Part 46 training plans. The aggregates industry believes the creation and implementation of Part 46 training using MSHA's template has been very successful and supports that process being used again in the creation of a mobile equipment safety program. A template would reduce the program's subjectivity between the inspectors and increase the consistency of enforcing the rule across the country.
6. Some requirements in the program, such as maintenance procedures and training, are duplicative standards that are covered in the existing Standards - Parts 56 & 57. The FMSHRC has stated, if language in a proposed rule is identical to an existing regulatory requirement, the proposed language should be stricken.
7. NCAA recommends against mandating that operators solely adopt manufacturer's maintenance plans. While this may be recommended as a best practice or an option operators may adopt when creating their plans, it should not be mandated because it could have unintended negative consequences. For example, operators may not follow the manufacturer's recommendations for oil changes, seat belt replacement, routine maintenance, etc. but have inhouse programs that provide the same safety benefits but in a more efficient way. Requiring operators to follow manufacturer's recommendations would limit their options and open operators in these situations to citations without providing any positive effect to the safety program.
8. While the intent of §56.23003(a)(3) regarding evaluation of technologies is well-intended, the requirements of this section are unrealistic, vague, and could open operators to negligent liability. Subjective terms in the preamble, like "feasible", "evaluate", and "periodically" do not provide operators a clear understanding of what criteria MSHA would deem acceptable. This section should be stricken from the rule.
9. MSHA should clarify that contractors (as operators) are required to have their own safety programs under the proposed rule. The Rule should state explicitly that independent contractors are required to have their own written safety programs for mobile and powered haulage equipment.
10. Additional items throughout the proposed rule require clarification.
 - a. Clarify if the written Program must be a standalone document.
 - b. Clarify that the Programs are specific to each facility.
 - c. Clarify how the Responsible Person is to communicate the Program's goals to all miners and contractors.
 - d. Clarify and narrow the definition of when the Program must be updated because mining conditions can change daily.

Thank you for the opportunity to comment on MSHA's proposed Safety Program for Surface Mobile Equipment. We appreciate MSHA's commitment to miner safety and health and look forward to working with the agency. Please do not hesitate to contact me if you have any questions.

Sincerely,

Jasper G. Stem, Jr.

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