



Alamo Cement – 6055 West Green Mountain Rd – San Antonio, TX 78265

November 5, 2021

MSHA, Office of Standards, Regulations and Variances  
201 12<sup>th</sup> Street South, Suite 4E401  
Arlington, VA

Subject: RIN 1219-AB91

Dear MSHA, Office of Standards, Regulations and Variances:

The Mine Safety and Health Administration (MSHA) is proposing a rule to require mine operators employing six or more miners to develop and implement a written safety program for mobile and power haulage equipment (excluding belt conveyors) at surface mines and surface areas of underground mines.

Alamo Cement Company operates a cement plant in its current location since 1981. This manufacturing facility produces a quality product 24 hours per day all year long. Alamo Cement employs 122 miners, all of whom strive to maintain a safe and healthy workplace.

Alamo Cement Company appreciates MSHA's efforts and dedicated devotion to keeping our nations miners safe as we work together to achieve our common goal of zero accidents.

The safety and health of workers across all industry sectors, including mining, improves when a close relationship and consensus exists between regulating agencies and the industries they serve to create the safest workplaces possible. Consensus is best achieved when proposed regulations are free of ambiguity, clearly defined, and are strategic in nature to offer a new focus on workplace safety to reduce accidents.

Alamo Cement Company extends its comments on this proposed rule in an effort to build consensus. Thank you in advance for your consideration.

Sincerely,

**Jorge  
Espinosa**

Digitally signed by Jorge  
Espinosa  
Date: 2021.11.05 15:16:29  
-05'00'

Jorge A Espinosa  
Alamo Cement – Plant Manager

AB91-COMM 22

**MSHA's proposal of Subpart U – Safety Program for Surface Mobile Equipment includes the addition of the below regulatory standards to 30 CFR Parts 56, 57 and 77. Comments are included below each section (Part 56 is referenced).**

**§ 56.23000 - Purpose and scope.**

This subpart requires mine operators employing six or more miners to develop, implement, and update a written safety program for surface mobile equipment to reduce the number and rates of accidents, injuries, and fatalities. This subpart applies to surface mobile equipment at surface metal and nonmetal mines. The purpose of this safety program is to promote and support a positive safety culture and improve miners' safety at the mine.

**Comments:**

Alamo Cement continually strives to achieve safety excellence and promote a positive safety culture to ensure the safety and health of our employees and anyone who comes in contact with our work. We believe that growing a positive safety culture is paramount to our success and is accomplished through management leadership, accountability, employee training, and most importantly, a commitment to our employees.

The overwhelming majority of workplace injuries and accidents in the United States are a result of unsafe behaviors. Alamo Cement understands that preventing unsafe behavior is accomplished through safety leadership, employee training and continuous observation and oversight of work practices.

The proposed rule states that the purpose and scope is to promote a positive safety culture and improve miners' safety. Alamo Cement does not believe that the proposed regulatory standards requiring a written safety program for surface mobile equipment will improve safety culture, reduce at risk behaviors, or lead to a reduction in accidents due to the ambiguous nature of the proposed standards and definitions, as well as regulatory redundancy.

For example, the definition of surface mobile equipment under the proposed rule includes, *"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 mines and in surface areas of underground mines."* According to the definition, equipment such as push carts, welding carts, cylinder carts, and basic hand trucks are all subject to the proposed rule. However, belt conveyors are excluded. The rationale to include this type of equipment under the definition is ambiguous and not understood.

**§ 56.23002 - Written safety program.**

- (a) Each operator subject to this subpart shall develop and implement a written safety program for surface mobile equipment that contains the elements in this subpart, no later than [DATE 6 months after the effective date of the final rule].
- (b) Each operator subject to this subpart shall designate a responsible person to evaluate and update the written safety program, no later than [DATE 6 months after the effective date of the final rule].

**Comments:**

If the proposed rule becomes final rule as currently written, Alamo Cement believes that 6 months from the effective date of the final rule is sufficient time to develop a written safety program for surface mobile equipment and to designate a responsible person.

**§ 56.23003 - Requirements for written safety program.**

- (a) The mine operator shall develop and implement a written safety program that includes actions the operator would take to:
- (1) Identify and analyze hazards and reduce the resulting risks related to the movement and the operation of surface mobile equipment;
  - (2) Develop and maintain procedures and schedules for routine maintenance and non-routine repairs for surface mobile equipment;
  - (3) Identify currently available and newly emerging feasible technologies that can enhance safety at the mine and evaluate whether to adopt them; and
  - (4) Train miners and other persons at the mine necessary to perform work to identify and address or avoid hazards related to surface mobile equipment.
- (b) The responsible person shall evaluate and update the written safety program annually or as mining conditions or practices change, as accidents or injuries occur, or as surface mobile equipment changes or modifications are made.

**Comments for § 56.23003(a) (1):**

Hazard assessment and correction is an integral process in our efforts to prevent all accidents and injuries and is both completed and documented before beginning every job task. There are existing regulations in Part 56 used to enforce identification and correction of hazards in all work areas and for all equipment, including surface mobile equipment (§56.14100 – Safety defects; examination; and correction of records and §56.18002 – Examination of working places). This section is redundant when compared to existing Part 56 regulations and does not provide a new or strategic focus that advances mobile equipment safety.

**Comments for § 56.23003(a) (2):**

All Alamo Cement mobile equipment is serviced at regular intervals or as needed either by internal mechanics, or third party contractors. Additionally, and as required by existing regulation §56.14100(a), mobile equipment to be used during a shift is inspected for defects affecting safety by the equipment operator before being placed in operation during that shift. If defects affecting safety are found on any equipment, including mobile equipment, the equipment is immediately tagged and removed from service until the defects are corrected as currently required by §56.14100(c). These existing regulations already require mine operators to inspect and maintain mobile equipment to ensure there are no defects affecting safety before operation. The very essence of these existing regulations requires operators to implement programs and procedures to effectively comply. Therefore, this section is redundant when compared to existing Part 56 regulations and does not provide a new or strategic focus to advance mobile equipment safety.

Additionally, this section appears to be ambiguous and serves as a “catch all” standard if an operator is found not following a service manual recommendation for a piece of mobile equipment. In the event an inspector finds that an operator is not following a particular service manual recommendation for a piece of mobile equipment; the inspector has the authority to make a far reaching determination and issue a violation under this section for a failure to follow that manufacturer recommendation because he or she feels it could lead to a hazard. It is worth noting that many mobile equipment service manuals do not contain procedures or schedules for non-routine repairs including frame cracks, or other major mechanical component damage. When this is the case, is the mine operator responsible for developing procedures on its own? Ambiguity

and subjectivity of certain existing Part 56 regulations has been a source of longstanding frustration in the M/NM industry, and it's recommended to avoid these qualities in any proposed rules going forward.

**Comments for § 56.23003(a) (3):**

Alamo Cement has evaluated and implemented a variety of current and newly emerging technologies to assist in the prevention of at risk behavior leading to mobile equipment accidents including seat belt alarms, mobile equipment cameras, proximity detection systems and more. This standard does not appear to require mine operators to implement newly emerging technologies. Instead, it appears to simply require evaluations. Most mine operators likely already do evaluate newly emerging technologies if they save money or improve safety. Sales calls, virtual meetings, safety conferences, vendor visits, promotional emails, brochure mailings, etc. are all examples of methods currently used to inform operators of newly emerging technologies to elicit evaluation and feasibility.

This section of the standard is also ambiguous and it is not clear how it would be enforced or advance mobile equipment safety. For example, if a mine operator was aware of a fully automated technology that removes human operators from the equipment to improve safety, but did not perform an evaluation of that new technology, can the operator be cited under this standard? Additionally, to what extent, does MSHA have the authority to require a mine operator to implement a new technology under this proposed rule?

**Comments for § 56.23003(a) (4):**

Like all responsible mine operators, Alamo Cement has historically and continues to train employees and other persons at the mine to effectively identify, address, and avoid hazards related to surface mobile equipment as part of MSHA's existing Part 46 training requirements (see 46.11(d), 46.5 (b)(2) and 46.6(b)(1)). Therefore, this section is another example of regulatory redundancy and does not provide a new or strategic focus to advance mobile equipment safety.

**Comments for § 56.23003(a) (b):**

No comments for this section.

**§ 56.23004 - Record and inspection.**

The mine operator shall make the written safety program available for inspection by authorized representatives of the Secretary, miners, and representatives of miners, and provide a copy, upon request.

**Comments for § 56.23004 - Record and inspection.**

No comments for this standard.

Respectfully submitted,

**Jorge  
Espinosa**

Jorge Espinosa

Plant Manager, Alamo Cement

Digitally signed by Jorge  
Espinosa  
Date: 2021.11.05 15:17:21  
-05'00'