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Nevada Mining Association  
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November 8, 2021

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

RE: Nevada Mining Association Comments on the Proposed Safety Program for  
Surface Mobile Equipment RIN 1219–AB91 (Submitted via Regulations.gov.)

Dear Sir/Madam:

The Nevada Mining Association (NVMA) has been in existence for more than 100 years, serving as the united voice of the Nevada mining industry. NVMA currently has over 650 member companies, covering nearly every part of the mining supply chain. NVMA represents its membership in policy discussions, public and community relations, workforce development, and workplace safety. The health and safety of the over 15,000 Nevadans directly employed in mining is the industry's highest priority and is represented by having one of the state's lowest vocational injury rates. As such, the Nevada Mining Association and its members are actively committed to improving health and safety through management systems, procedures, and rulemaking.

On behalf of our members, NVMA submits comments regarding the Mine Safety and Health Administration's (MSHA) proposed Power Haulage rulemaking 86 Fed. Reg. 50496, published in the Federal Register on September 9, 2021.

The Nevada Mining Association agrees with the Mine Safety and Health Administration (MSHA) that a Written Safety Program for surface mobile equipment is beneficial to maintaining equipment, identifying potential defects, and a building a system to address potential issues. NVMA also agrees with the reference to National Mining Association's (NMA) CORESafety framework, as this is an excellent starting point in developing a mining specific policy. Several Nevada mine operators already have written policies in place that comply with this section of the proposed rule.

However, there are several areas of the proposed rulemaking that the Nevada Mining Association cannot support. Please see below for detailed explanations regarding our concerns and opposition.

Defining a responsible person – While NVMA understands how identifying a single person to manage a Powered Haulage Written Safety Program provides a clear path for enforcement activities, having a responsible person named provides challenges in multiple facets of an operating mine.

Many mines are large properties with vast quantities of mobile equipment. Identification of a single individual to be responsible for the array of equipment creates disadvantages in ensuring the program's success. Surface mines utilize several different types of equipment, and the maintenance and management of each piece is often split among divisions of operation. Light duty vehicle maintenance is not always performed directly on a mine site and may employ outside repair/maintenance facilities. Large equipment is almost always maintained on site but may not be performed directly by the mine operator. Skid steers, forklifts, lift equipment and various other small pieces of mobile equipment may further complicate and burden the maintenance process.

Changes in personnel and responsibilities will require operations to consistently update the employee responsible to maintain specific pieces of equipment. The responsible employee may pick up additional responsibilities during interim periods, requiring a temporary replacement. This can result in placing unreasonable expectations on a single employee, especially in larger operations where they may be responsible for the maintenance of hundreds of pieces of equipment.

In short, NVMA does not see a benefit in identifying a single responsible person. Instead, allowing mine management to train and utilize multiple departments and experts to optimize an overall Written Safety Plan for Surface Mobile Equipment will benefit miners and mine operations in the long term. NVMA supports NMA's recommendation of replacing "responsible person" with "operator".

NVMA disagrees with the proposal requiring mine operators to integrate existing compliance processes with manufacturer recommendations in their safety program, and to assure that hazards in all phases of work be examined and analyzed. NVMA believes operators should have flexibility when it comes to manufacturer recommendations, as maintenance and repairs are often not reflective of how the equipment is used in day-to-day operations. Such recommendations reflect some standard of "normal use and routine timeframes" of a piece of equipment when site-specific conditions may require the equipment to be used at greater or lesser frequency.

Furthermore, there are already several regulations on proper equipment maintenance in section 56/57.14100. The section requires mobile equipment be inspected before use and

taken out of service if identified defects cannot be corrected. 30 C.F.R. §§ 56/57.14100. Thus, proposed Section 56/57.23003(a)(2) duplicates the existing Section 56/57.14100 by requiring monitoring and correction of defects on mobile equipment. Proposed 56/57.23003(a)(2) should therefore be stricken from the proposed rule.

The Nevada Mining Association supports the open use of testing and integrating technology to improve safety in mining operations, however the approval and implementation process should be streamlined in separate rulemaking. There are many areas of concern related to testing and implementing new technologies into existing equipment, potentially creating safety hazards. Integration may not work the way a manufacturer intended, causing equipment to be non-functioning or in need of maintenance.

There have been situations where new technologies have been rushed into rulemakings, creating major issues at mine sites. As an example, please see "Proximity Detection Systems for Underground Mobile Machines in Underground Mines", a rulemaking was that was pushed forward before the technology was ready.

NVMA also shares the concerns National Mining Association and National Sand, Stone and Gravel Association have expressed. These provisions may expose operators, responsible persons, and contractors to unintended allegations of negligence. Should an incident occur where it is presumed a "feasible" technology may have prevented an incident, then an operator, responsible person, or contractor may be deemed negligent for not evaluating the available technology, or for not implementing it. Following an incident, an operator or contractor may be open to a citation or charges of negligence should they not implement a safety technology that may prevent such an occurrence in the future. Another scenario operators could be considered negligent is during the development of their mobile equipment safety program. While collecting data, they may be held responsible for not implementing a "feasible" technology that would address a previous accident but are not yet comfortable with using. There are legitimate reasons to not implement a new technology such as cost, lack of evidence a new technology would correct a situation, incompatibility with production practices, etc.

It is also unclear how the proposal applies to contractors and are only mentioned three times throughout it. If they employ miners, contractors have their own obligations and liabilities. MSHA should make it clear that contractors operating mobile equipment must have their own

program under the rule and should clarify how contractor programs should be integrated with programs at specific operations their employees work at.

While many fatal incidents may have been prevented with a mobile equipment plan in place, most incidents are strongly connected to human behaviors. NVMA recommends MSHA add a new classification to their fatal incident tracking, allowing proper identification of incidents. Simply because an incident occurred in or around a piece of equipment does not mean it should be classified as a powered haulage incident. Throughout the last 20 years of data, the impacts of human behavior can be seen time and time again. Proper classification of these incidents could lead to increasingly effective regulations. However, if incidents are being placed into misleading categories, is challenging to identify pathways to truly fix the underlying issues.

### **Conclusion**

The Nevada Mining Association believes that implementing safety management systems could be an effective tool in improving overall workplace safety if done right. Accordingly, NVMA asks that the agency consider how operators would meet these proposed requirements and modify this rule to account for the issues raised in these comments. Thank you for the opportunity to provide these comments. We look forward to working with MSHA as it takes next steps to establish a workable program that incorporates the key concepts of effective safety management systems.

Sincerely,



Tyre L. Gray, Esq., President  
Nevada Mining Association