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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-2018-0016-0153
Comment from National Mining Association

Submitter Information

Organization: National Mining Association

General Comment

See attached file(s)

Attachments

Final MSHA Safety Program for Haulage Equipment Comments

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

Dear Sir/Madam:

The National Mining Association (NMA) appreciates the opportunity to submit comments on the Mine Safety and Health Administration's (MSHA) proposed safety program for surface mobile equipment. 86 Fed. Reg. 50496 (Sept. 9, 2021). Safety is the top priority for NMA's members. We acknowledge that surface mobile equipment remains a leading cause of injuries and fatalities at mine sites and agree that a flexible approach to reducing such hazards and risks would be more effective than MSHA imposing universal mandates. Given the novelty of MSHA proposing this type of program, NMA provides some recommendations below to ensure that its implementation is achievable and consistent with the principles that underlie safety management systems.

The NMA is a national trade association that includes the producers of most of the nation's coal, metals, industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; and the engineering and consulting firms, financial institutions and other firms serving the mining industry. NMA's members have a long history of developing and implementing processes and technology that increase miners' safety and health protections.

Overarching Comments

- MSHA's Acknowledgement of the Role of Safety Management Systems

The NMA welcomes MSHA's explicit acknowledgement in the proposal that safety programs can be a more effective tool than universal mandates in protecting workers.

As the association and others noted in comments on the 2018 request for information that preceded this proposal, safety programs are as important as technology in improving safety in the use of surface mobile equipment and reducing accidents, injuries, and fatalities.

In particular, NMA appreciates the inclusion of its safety and health management system, **CORE**Safety, in the list of programs that MSHA reviewed before determining a safety program was the right solution for addressing hazards associated with surface mobile equipment. Developed in 2011, **CORE**Safety is a scalable safety and health management system specifically designed for U.S. mining operations that provides a comprehensive pathway to achieve within five years the goal of eliminating fatalities and reducing the rate of mining injuries by 50 percent. Using **CORE**Safety, NMA participating member companies have achieved continuous and sustained safety excellence. Other NMA members have developed and utilize their own effective safety frameworks.

- Ability to Tailor Safety Management Systems is Key to Effectiveness

A key component of any safety management system is the ability to customize or tailor the system to the specific business conditions of the user, including integration with existing safety practices and protocols. Safety management systems recognize that a one-size-fits-all approach can be counterproductive because it fails to factor in site specific conditions. As MSHA notes in the proposal:

> The Agency agrees . . . that mine operators should be allowed to tailor safety programs specifically to their mining conditions and operations, so that operators could: (1) Systematically and continuously evaluate their mine operations to identify hazards and (2) determine how to eliminate or mitigate risks and hazards related to operating and working near surface mobile equipment, which includes mobile and powered haulage equipment (except belt conveyors). The Agency further agrees that such a flexible approach to reducing hazards and risks (e.g., not imposing universal mandates) would be more effective since mine operators would be able to develop and implement safety programs that work for their operation, mining conditions, and miners.

MSHA is on the right track with in trying to establish a flexible safety program for surface mobile equipment that allows operators to create a program that works best for them. As our comments below detail, however, NMA recommends some changes to the proposed approach to ensure the necessary operator flexibility and to ease implementation.

- Scope of Proposal

MSHA limits the scope of the proposed rule to "surface mobile equipment." 86 Fed. Reg. at 50511-12. MSHA should clarify that the proposal's scope—particularly the required safety program—pertains specifically to the mobile equipment itself and not ancillary considerations such as ground control, roadway maintenance or response to weather. Other MSHA standards address these physical conditions and operational controls, and it would be inappropriate for the proposed rule to be misconstrued as addressing issues other than those related to the mobile equipment itself.

Specific Comments

- Responsible Person Definition (Proposed 30 CFR §§ 56.23001, 57.23001 and 77.2101)

The NMA objects to the use of the term "responsible person" in the context of the proposed program and recommends that the term and its definition be removed from the standard. The terminology is problematic because it (1) implies a single person could or should be responsible for the program's design and implementation and (2) potentially places legal liability on the responsible person. We propose a simple solution – replace the term "responsible person" with "operator." The Mine Act already imposes strict liability on operators to comply with MHSA standards, regardless of actions by their individual employees. Adding an extra layer of individual responsibility, therefore, does nothing to further compliance with the proposed rule. Rather, it would do nothing more than raise the prospect of individual liability under Section 110(c) of the Mine Act, 30 U.S.C. § 820(c), for a specifically identified individual.

To the extent that the final rule includes a "responsible person" provision, MSHA should amend this language to clearly allow for multiple persons to be designated as a "responsible person." There are many practical reasons to have additional people in this position, especially as it is highly unlikely one individual would have the expertise to address all aspects of the program. There is also precedent for this, as MSHA allows for multiple individuals to be named as the Person Responsible for Safety and Health, per the Part 46 Compliance Guide.

- Surface Mobile Equipment Definition (Proposed 30 CFR § 56.23001)

The proposed definition of "surface mobile equipment" specifically includes "rail-mounted equipment." 86 Fed. Reg. at 50511-12. MSHA should clarify that this definition does not include railroads and trains on mine sites. Railroads and trains are significantly distinguishable from the types of mobile equipment generally contemplated by the proposed rule. Additionally, railroad activity is generally regulated by the Federal Railroad Authority.

- Procedures/Schedules for Routine/Non-routine Maintenance and Repairs (Proposed 30 CFR §§ 56.23003(a)(2), 57.23003(a)(2) and 77.2103(a)(2))

The proposal requires the mine operator to integrate existing compliance processes with any manufacturer's recommendations into the safety program and to assure that hazards in all phases of work be examined and analyzed. NMA believes operators should have additional flexibility when it comes to manufacturers recommendations. Manufacturers recommendations for maintenance and repairs are often not reflective of how the equipment is used at a given operation. 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, section 56/57.14100 already requires that mobile equipment be inspected before use, that defects affecting safety be corrected, that equipment with defects that cannot be corrected be taken out of service and that such uncorrected defects be documented. 30 C.F.R. §§ 56/57.14100. Thus, proposed Section 56/57.23003(a)(2) is duplicative of existing Section 56/57.14100 in that both impose duties on operators with respect to monitoring for and correction of defects on mobile equipment. Proposed 56/57.23003(a)(2) should therefore be stricken from the proposal.

If these provisions are not stricken, NMA strongly recommends the scope of maintenance and repairs contemplated by these provisions should be refined to include only those that are safety sensitive and involve potential hazards that may result in fatalities, such as brakes, mirrors, glass and steering. Such clarification would be in keeping with the purpose of the proposal. In that regard, MSHA has stated that the proposed safety program, which would include maintenance procedures and schedules, should be aimed at "finding and fixing hazards" and the impetus for developing the proposed rule is aimed at prevention of fatalities. 86 Fed. Reg. at 50497 and 50498. Therefore, repairs and maintenance addressed in safety programs under the proposed rule should be focused on those that could cause hazards that may lead to fatalities.

- Identification of Newly Emerging Technologies (Proposed 30 CFR §§ 56.23003(a)(3), 57.23003(a)(3) and 77.2103(a)(3))

The proposal also requires that the program include actions the mine operator would take to evaluate currently available and newly emerging feasible technologies that can enhance safety and evaluate whether to adopt them. The safety program would include a process by which operators would periodically evaluate new and existing technologies that could enhance safety.

NMA appreciates the role that technology plays in keeping our workers safe. Ultimately, technology may be the answer to reduce risks and hazards related to surface mobile equipment. However, NMA is concerned that not all mining operators have the expertise to evaluate newly emerging technologies. The feasibility of new technologies goes

beyond the question of whether the technology does what it is intended to do but whether it can be feasibly used with existing technologies and under specific site conditions. Rapid introduction of unproven technology can pose unforeseen safety risks.

As MSHA and the mining industry learned with integrating proximity detection technology with existing safety technology, problems can arise when new meets old. In NMA's 2015 comments on the proposed "Proximity Detection Systems for Underground Mobile Machines in Underground Mines" rule, we detailed problems that arose when unrealistic deadlines are imposed to install and implement technology that has not been thoroughly tested. Only significant effort and increased cooperation among industry, the National Institute of Occupational Safety and Health (NIOSH) and MSHA allowed us to overcome those early missteps.

The NMA also shares the concerns of the National Sand, Stone and Gravel Association that these provisions could open operators, responsible persons, and contractors to unintended allegations of negligence. For example, should an accident occur, and it is presumed that an available "feasible" technology may have prevented the accident, then an operator, responsible person, or contractor may be deemed negligent for either not evaluating the available technology or evaluating but not implementing it. Following an accident, an operator or contractor may also 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 – although there are sound reasons to not implement new technologies such as cost, lack of evidence technology would address the situation, incompatibility with production practices, etc. Finally, another key time all operators could be open to negligence is during the initial data collection and analysis when creating the mobile equipment safety program, should an operator not implement a "feasible" technology that would potentially address a previous accident.

Matching unique mine environments with mine equipment and its safety technology requires thorough testing to reach the level of accuracy and reliability miners deserve. Rather than place this obligation solely on the operator through the proposed program, NMA believes that mine operators, working in cooperation with their employees as well as equipment manufacturers, MSHA and NIOSH provide the best environment to facilitate research and development into safety systems that work. As such, these provisions should be removed from the proposal.

To the extent that the final rule contains a provision requiring operators to include actions they would take to "evaluate currently available and newly emerging feasible technologies that can enhance safety and evaluate whether to adopt them," it needs to clarify what sort of evaluation the operator must undertake and what benchmark MSHA would employ in enforcing the standard. And, in doing so, MSHA should clarify that operators are expected to utilize a risk management approach aimed at preventing fatalities to evaluate new and different technologies. Such clarification would be in

keeping with the intent and purpose of the proposed rule. MSHA has stated that the proposed rule is intended to "provide mine operators with the flexibility to tailor the written safety program to meet the needs of their operations and unique mining conditions." 86 Fed. Reg. at 50499. With respect to the provision addressing evaluation of new technologies, MSHA has stated that the purpose of this provision is "to identify controls that prevent or mitigate [identified] hazards." 86 Fed. Reg. at 50499. Importantly, the concern that gave rise to the proposal is the elimination of mobile equipment-related fatalities. Therefore, evaluation of new technology under the proposed rule should be designed to manage risks of hazards that may result in fatalities identified at particular mine sites. It is through this lens that this provision of the proposed rule should be viewed.

- Training

Proposed §§ 56.23003(a)(4), 57.23003(a)(4) and 77.2103(a)(4) would require operators to train miners and other persons at the mine necessary to perform work (e.g., office workers) to identify and address or avoid hazards related to surface mobile equipment. Most responsible operators already have procedures and programs in place that will satisfy the training requirements of the rule as proposed. For example, task training under Part 46 requires that such training include "the health and safety aspects of the task to be assigned." 30 C.F.R. § 46.7(a). Likewise, under Part 48, task training must include "[h]ealth and safety aspects and safe operating procedures for work tasks, equipment, and machinery." 30 C.F.R. §§ 48.7(a)(1) and 48.27(a)(1). Thus, the provision in proposed Section 56/57.23003(a)(4) is duplicative of existing task training provisions as both impose duties with respect to training miners on hazard identification and safe practices related to mobile equipment tasks. It should be stricken accordingly.

- Inclusion of Contractors

The proposal is not clear about how the program applies to contractors. Contractors are only mentioned three times throughout the proposal. Contractors have their own obligations and liabilities as operators if they employ miners. 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 site programs.

- Implementation of the Program

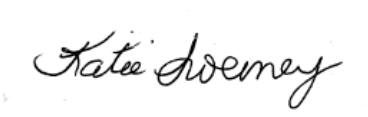
While six months is a sufficient amount of time for operators to develop their programs, MSHA should provide an additional grace period when no citations are issued. Such an approach would increase consistency of how the rule will be enforced and provide time for operators to effectively implement their programs. NMA recommends that MSHA provide a six to twelve-month grace period where no citations related to this rule will be given. While six months is enough time to develop a plan, there is always an

enforcement learning curve when a new rule is implemented. A grace period 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 carried out. A twelve-month grace period has the advantage of ensuring each operator will have the opportunity to discuss their plan with at least one inspector and have it go through an inspection before citations are issued. Twelve months is preferable to six months because some surface operations may have both of their annual inspections in the last six months of the year; therefore, if MSHA only gave a six-month grace period, some operations may never have the opportunity of discussing their plan with an inspector before citations are issued.

Conclusion

The NMA strongly believes that safety management systems are effective in improving safety records. Over time, it has become increasingly evident that compliance with regulations, albeit incredibly important, is insufficient to prevent adverse safety outcomes. We are pleased that the proposed safety program for surface mobile equipment acknowledges the important role that safety management systems can play in worker protection. The proposal, however, needs to be revised as detailed above to allow additional flexibility for operators to tailor the program to work best for their operations, mining conditions, and miners. 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 the most effective safety management systems.

Sincerely,



Katie Sweeney