

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-2018-0016-0154

Comment from Alabama Mining Association

Submitter Information

Email: patrick@alabamamining.org

Organization: Alabama Mining Association

General Comment

Please see the attached comments from the Alabama Mining Association

Attachments

11-08-2021 AMA's Comments to MSHA Re-PH Proposal



November 8, 2021

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

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

Dear Ms. Senk,

The Alabama Mining Association (AMA) is a nonprofit trade association representing all sectors of our state's mining industry. Our mission is to promote the safe and sustainable mining of the natural resources that strengthen our infrastructure and grow our economy. We appreciate the opportunity to comment on the Mine Safety and Health Administration's (MSHA) proposed Safety Program for Surface Mobile Equipment, which we will refer to as the "Proposed Rule."

In addition to the comments we provide below, we wish to incorporate by reference the comments submitted by the National Stone, Sand and Gravel Association (NSSGA) and the National Mining Association, both of which AMA is a member.

First, we want to commend MSHA for the agency's diligent work to understand and explore ways to reduce the risks proposed by surface mobile equipment. We support the agency's goal and appreciate the flexibility afforded by the proposed rule. We also recognize the difficulty in drafting a rule that is comprehensive enough to potentially produce the desired change, while also making it flexible enough to fit a wide array of variables. As you will see, the need to incorporate additional flexibility into the final version of the proposed rule is a common theme in our comments.

We also encourage MSHA to approach this proposed rule as an additional tool that can help enhance miner safety in instances where existing safety programs and regulatory tools have left gaps that need to be filled. A tool is an instrument that can be used to help fix a problem, but the tool itself is not a solution to the problem. This new tool will be most useful at mines where existing programs and regulations have failed to keep miners safe. To that end, we encourage MSHA to view this Proposed Rule as another tool in the mine safety toolbox and not a replacement for existing programs that are producing the desired results.



- **If a mine has a successful safety program that is producing the desired outcome, that existing plan should be considered acceptable under the final version of this Proposed Rule.**

The impact this Proposed Rule will have on reducing mine accidents and fatalities will vary from mine to mine based on factors such as the effectiveness of a mining operation's safety program prior to the enactment of this proposed rule. The mining companies that have invested the resources necessary to develop and implement a successful mine safety program should be allowed to continue their existing program without having to complete duplicative administrative tasks.

- **Contractors should be required to have their own written safety plan for surface mobile equipment.**

We agree with and fully support the comments filed by NSSGA explaining why the Proposed Rule should be modified to require contractors to develop their own written safety plan for surface mobile equipment. We offer the following to examples provided by our members which highlight the practical need for contractors to have their own written safety plan for surface mobile equipment.

Example One: Under the current Proposed Rule, a company that provides contract blasting services at both coal and metal/ nonmetal mines around the United States would be required to follow the maintenance schedules for their fleet of bulk blasting product pumping trucks listed in their customers written safety plan for surface mobile equipment. It would be impractical for one company to be required to maintain its fleet of equipment according to the schedule contained in 100 different safety plans written by a dozen different mining companies. It would also discourage the adoption of new safety equipment or technology because it would require their customers to amend their written safety plan, which would then apply to all equipment used at that mine site including equipment used by other contractors.

Example Two: Under the current Proposed Rule, an underground mining company that hires a contractor to construct a new, mine shaft, mine portal, elevator, and parking lot would have to amend their written safety plan to include procedures to maintain or repair mobile construction equipment used for the project, even though the mining company's employees will never operate or be responsible for maintaining or repairing that equipment.

If MSHA grants this request and modifies the Proposed Rule to require contractors to develop their own written safety plan for surface mobile equipment, then we ask that a second comment period be provided so that stakeholders can provide input on the changes. Issues such as the number of miners that triggers the requirement for a company to develop a written safety plan for surface mobile equipment will need to be reconsidered if contractors are required to develop their own plan.



In addition the comments explained in detail above, AMA offers the following general comments.

- Underground mining equipment should be expressly excluded from the Proposed Rule even when it is being operated at the surface area of an underground mine.
- MSHA should provide more guidance on the information that must be contained in a written safety plan for surface mobile equipment and should consider providing example plans or templates.
- We strongly encourage MSHA to provide additional guidance on the types of safety hazards that should be included in an initial written plan and issue specific and objective standards explaining when a written safety plan must be updated.
- §56.23003(a)(3), which would require “mine operators to evaluate currently available and newly emerging feasible technologies that can enhance safety and evaluate whether to adopt them” should be removed from the Proposed Rule. The potential unintended consequences of this section are significant and the goal of this provision can be accomplished through existing means, including MSHA’s authority to promulgate a separate rule requiring the use of new safety technology.
- The “responsible person” provision in the Proposed Rule should be removed completely or amended to include more than one person. The ongoing COVID-19 pandemic has illustrated the need for contingency planning. Furthermore, mining companies are responsible and legally liable for the actions taken by their employees so the designation of a “responsible person” is unnecessary to ensure compliance with the Proposed Rule.

Thank you for this opportunity to comment on the Proposed Rule. We look forward to reviewing MSHA’s response to our comments as well as those submitted by stakeholders throughout the mining industry.

Sincerely,

A handwritten signature in black ink that reads "Patrick V. Cagle". The signature is written in a cursive, flowing style.

Patrick V. Cagle
President of AMA