

PUBLIC SUBMISSION

As of: 11/9/21 1:43 PM Received: November 08, 2021 Status: Posted Posted: November 09, 2021 Tracking No. kvr-a601-672z Comments Due: November 08, 2021 Submission Type: Web
--

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-2018-0016-0155

Comment from West Virginia Coal Association

Submitter Information

Email: jbstic@wvcoal.com

Organization: West Virginia Coal Association

General Comment

Attached, please find the comments of the West Virginia Coal Association on MSHA's proposed Safety Program for Surface Mobile Equipment

Attachments

WVCA Comments MSHA Surface Safety Program MSHA-2018-0016



West Virginia Coal Association

200 Association Dr. Suite 160, Charleston WV 25311 • (304) 342-4153 • Fax 342-7651 •

www.wvcoal.com

November 8, 2021

Ms. Jessica Senk

Director

Office of Standards, Regulations & Variances

U.S. Mine Safety & Health Administration

201 12th Street South, Suite 4E401

Arlington, VA 22202-5452

Docket I.D. No. MSHA-2018-001

Filed via the e-rulemaking portal: <http://www.regulations.gov>

Dear Ms. Senk:

The West Virginia Coal Association (hereinafter, “WVCA”) is a non-profit state coal trade association representing the interests of the West Virginia coal industry on policy and regulation issues before various state and federal agencies that regulate coal extraction, processing, transportation, and consumption.

WVCA’s general members are coal-producing companies that account for upwards of 90 percent of the Mountain State’s underground and surface production of both thermal and metallurgical coal. WVCA’s membership also includes mine equipment manufacturers, mine supply companies and mine vendors, land companies and a wide range of mine reclamation, excavation and mine maintenance companies and contractors that supply an array of services to the mining industry in West Virginia.

WVCA’s primary goal is to enhance the viability of the West Virginia coal industry by supporting efficient, safe and responsible coal removal and processing through reasonable, equitable and achievable state and federal policy and regulation. WVCA is the largest state coal trade association in the nation.

Initially, we appreciate the opportunity to comment on the proposed rule requiring mining companies to develop and implement safety programs for equipment and powered haulage, published in the Federal Register on September 9, 2021. Additionally, we commend MSHA for crafting a proposal that recognizes the flexibility that mine operators in both the coal and metal/nonmetal industries need to tailor a safety program to the specific equipment, conditions, and resources of their operations.

WVCA and its members respectfully offer the following comments in an effort refine the proposal to better serve our shared goal of significantly reducing powered haulage accidents.

A. Sections 56.23000, 57.23000 and 77.2100 — Scope and Purpose— WVCA supports the overall scope and purpose of the proposed rule as it pertains to Parts 56, 57, and 77, and has no comments.

B. Sections 56.23001, 57.23001 and 77.2101— Definitions

The Proposed Rule defines and places isolated responsibility onto a “responsible person” that must be identified within six (6) months of the effective date of the final rule. WVCA recommends that this definition be deleted and the requirement for developing the program and updating it annually be the responsibility of the mine operator, in general. MSHA’s inclusion of a responsible person appears grounded in a similar requirement for underground coal mines to designate a “responsible person” underground to take charge in the event of a mine emergency. The requirements for that “responsible person” codified in Section 75.1501(a)(1) appear comparable to what MSHA believes the “responsible person” in the proposal should know in section II(B) of the proposal. Whereas having a single person responsible in the event of an underground emergency makes sense to coordinate efforts in a situation where time is

of the essence, no such circumstances are present here. In fact, designating one person to be responsible for evaluating and updating the written safety program, and all the elements that go into it, could have an adverse effect. At larger operations, one person might have the requisite knowledge to properly identify hazards or risks related to surface equipment, while another person might be better suited to weigh in on maintenance schedules. Using the collective knowledge of all persons at the mine, who bring with them varying talents and experiences, will lead to a more robust, and ultimately, effective safety program for powered haulage. As such, WVCA believes the proposed recommended definition of “responsible person” should be removed from the proposed rule.

C. Sections 56.23002, 57.23002 and 77.2102 — Written Safety Program

1. WVCA questions the six months provided for in the proposed rule for developing the Written Safety Program. More time may be required based on the size and complexity of a given mine or if an operator has multiple mining operations.
2. WVCA previously recommended the deletion of the “Responsible Person” definition from the proposed rule. Consistent with that recommendation, WVCA recommends that the responsibility for submitting and annually updating the written safety program be the responsibility of the mine operator.

D. Sections 56.23003, 57.23003 and 77.2103 — Requirements for Written Safety Program

This proposed section delineates four (4) types of actions that would be incorporated into the written safety program that operators would take to reduce accidents, injuries, and fatalities. These four (4) actions include the following:

1-Identify and analyze hazards and reduce the resulting risks related to the movement and operation of surface mobile equipment. WVCA believes the identification of potential hazards, and more importantly, steps to avoid the risks posed by those hazards, is very important. WVCA fully supports inclusion of this element in the safety program.

2-Develop and maintain procedures and schedules for routine maintenance and non-routine repairs for surface mobile equipment. WVCA agrees that proper maintenance is a key element in reducing the risks posed by powered haulage vehicles. However, this provision also purports to integrate “manufacturers recommendations” into the required mine maintenance procedures. To this point, WVCA notes that recommendations from the manufacturer are a valuable resource for equipment operators and maintenance personnel, but often are designed with product liability and litigation avoidance in mind, rather than optimizing safe operating procedures. Respectfully, WVCA believes that the mine operator, through its well-trained equipment operators and maintenance personnel, should retain the autonomy to tailor its maintenance procedures and schedules in the safety program. Such autonomy would be consistent with MSHA’s language in the proposal, recognizing that the most effective safety programs are specifically tailored to the mining conditions at their mines.

3-Evaluate currently available and newly emerging technologies that can enhance safety and evaluate whether to adopt them.

Again, consistent with MSHA’s overarching directive to give operators the autonomy to craft a safety program that best serves the miners at each individual operation, WVCA is concerned about a mandate that operators evaluate “currently available and emerging technologies”. In no way does WVCA mean to diminish the importance of striving for technological advancement in mine safety and health. Countless lives have likely been

saved in our nation's mines thanks to the development of technology designed to protect miners. However, mine operators, especially at smaller operations, might not be well suited to properly evaluate technology to determine if it is suitable for the specific conditions of their mine site.

Additionally, the language of the standard is ambiguous regarding what equipment could be considered "currently available" or "newly emerging". Some safety technologies might be feasible for coal operations, but not metal/nonmetal or vice versa. Some technologies might be suited for certain brands of equipment, but not others. Some technologies might work in certain areas of a coal or metal/nonmetal mine but become ineffective or less effective as the equipment moves around the mine site. Only through on-site testing and evaluation of health and safety technology on specific types of equipment can operators truly know if it will positively impact the health and safety of its coal miners.

For those reasons, WVCA would recommend that MSHA strike subsection (a)(3) from the requirements of the safety program in the proposal. Alternatively, if MSHA does wish to create some element of responsibility on a mine operator to evaluate technologies in its safety program, then WVCA recommends that MSHA allow operators a grace period of six (6) months to implement the equipment on a trial basis, without incurring any enforcement action arising out of the use of that technology. WVCA believes that such a grace period will provide operators with the incentive to evaluate new technologies and incur the expense of deploying them on equipment, without the added burden of enforcement penalties.

4-Train miners and other persons at the mine necessary to perform work to identify and address or avoid hazards related to mobile equipment.

WVCA and its members recognize the importance of training to ensure a safe workplace. Inclusion of training in the safety program is consistent with a mine's training obligations under Part 48, and WVCA has no comments regarding this requirement.

(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.

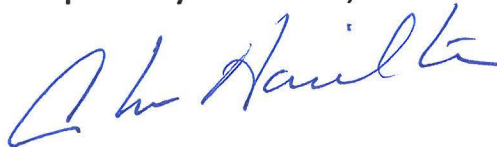
Consistent with previous recommendations, WVCA believes "responsible person" should be changed to "mine operator".

E. Sections 56.23004, 57.23004 and 77.2104—Record and Inspection. WVCA supports the record and inspection requirements of the proposal and has no comments.

The last comment we offer relates to MSHA's cost analysis and assumption that \$500 per piece of surface mobile equipment in the first year. WVCA believes this figure underestimates the actual cost of new technology purchases, existing technology repairs and modifications.

Thank you in advance for your consideration of these comments.

Respectfully Submitted,



Chris R. Hamilton

President & CEO