

# 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-2018-0016-0156

Comment from United Steelworkers

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## Submitter Information

**Email:** ssallman@usw.org

**Organization:** United Steelworkers

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## General Comment

See attached file for USW Comments on MSHA Safety Program for Surface Mobile Equipment.

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## Attachments

USW Comments - MSHA Safety Program for Surface Mobile Equipment (Final 11-8-2021)

**Comments of the United Steel, Paper and Forestry, Rubber, Manufacturing,  
Energy, Allied Industrial and Service Workers International Union (USW)  
on the  
Mine Safety and Health Administration's Proposed Rule  
on  
Safety Program for Surface Mobile Equipment  
Docket Number: MSHA-2018-0016  
Regulation Identification Number: 1219 AB91  
November 8, 2021**

The USW is the predominant labor union in North American metal and non-metal mining, representing approximately 20,000 miners in the United States and an equivalent number in Canada. Our members work in underground and surface mines and quarries, using many different mining methods and equipment, mining almost every commodity. The exception is coal, and while our members in the United States are not exposed to the hazards of mining coal, they do face every other health and safety hazards in the mining environment.

We commend MSHA for acting on the alarming number of 109 fatalities from 2003 to 2018, as well as injuries miners suffered from while working at surface mines and surface areas of underground mines. USW members are exposed to the hazards of surface mobile equipment and belt conveyors. When mine operators do not eliminate or control hazards, our members can be injured, made ill, and/or worse yet, get killed. Unfortunately, ten USW represented mines have experienced fatalities since 2007 related to surface mobile equipment – not to mention a number of injuries in our records. It is worth noting that one of those fatalities involved both, mobile equipment, and a belt conveyor. We support MSHA in the oversight, identification, correction, and elimination of hazards in an effort to reduce and/or eliminate occupational deaths, injuries and illnesses.

The proposed rule can be improved and the USW offers our recommendations in several key areas:

**1. Miners and their Representatives' Participation**

The proposed rule does not do enough to require miners and their representatives' actively engaged participation. As MSHA recognized in the Federal Register, many resources are available for employers to provide a safe workplace. MSHA reviewed several types of organizations (e.g., American Society of Safety Professionals (ASSP), Occupational Health and Safety Management Systems, ANSI/ASSP Z10-2012 (R2017): and the International Standards Organization (ISO), Occupational Health and Safety Management Systems – Requirements with Guidance for Use, and many others. One of the elements of those systems is, "worker involvement" or in this case, we suggest "miners and

representatives” participation. Miners and representatives are an essential component of all widely recognized occupational health and safety management systems. Miners and their representatives’ must have meaningful participation in this proposed rule; be included in the process, adequately trained, paid by their employer during their participation, and selected by other employees or their representatives, rather than management. As a matter of fact, federal law gives the authorized collective bargaining representative – i.e. the Union – the exclusive right to select employee representatives.

Miners and their representatives must also be free to participate without fear of retaliation for voicing an opinion or participating in the process. In the proposed rule at .23004 “Record and inspection.” The mine operator is required to make available a copy of the written safety program for inspection and provide a copy upon request. This is good, but it needs to clarify the written safety program is to be provided at no-cost to miners and their representatives’. The USW has active health, safety & environment committee members who have proven to be a valuable asset for mine operators to achieve compliance, and most importantly, protect miners. USW health, safety & environment representatives also meet on a regular basis, conduct assessments and investigations to proactively identify and rectify problems with management. Miners and their representatives’ participation are key for a mine operator to maintain safe and healthy working conditions. MSHA’s educational materials and enforcement efforts must bring attention to this fundamental element.

## **2. Belt Conveyors Need to be Included – Not Excluded**

Material handling is just one part of a mining process. Mobile and powered haulage equipment, with trained miners, have an important role in production and moving materials. Belt conveyors also move materials, accordingly, MSHA needs to include belt conveyors in the proposed rule – not exclude them. MSHA has data on fatalities and injuries associated with belt conveyors, so we request including belt conveyors in the proposed rule. Additionally, mine operators may use belt conveyors as part of the hierarchy of controls when hazards with mobile equipment cannot be controlled or conditions change. Should MSHA agree and add belt conveyors to the proposed rule, MSHA should consider changing the title of the proposed rule from “Safety Program for Surface Mobile Equipment” to **“Safety Program for Surface Mobile and Material Handling Equipment.”**

## **3. Section .23000, Purpose and Scope – Edits Needed**

We suggest modifying the first sentence of the “Purpose and scope” to, *“This subpart requires mine operators ~~employing six or more miners~~ to develop, implement, and update a written safety program for surface mobile **and material***

*handling equipment to prevent, as well as reduce the number and rates of accidents, injuries, illnesses, and fatalities.”*

The last sentence of this section also needs modified. We suggest the following revised sentence, “*The purpose of this safety program is to promote and support ~~a positive safety culture~~ Occupational Health and Safety Management Systems and improve miners’ safety at the mine.*” MSHA cannot regulate “safety culture” but can inspect the mine operator’s Occupational Health and Safety Management Systems. Furthermore, MSHA does not have a definition of the term “safety culture” and we do not believe there is a definitive model, so it is futile for MSHA to focus on “safety culture.” MSHA should stay focused on the organizational and management practices at the mine that have a direct impact on miners’ safety and health. The mine operator’s “Responsible person” must also develop and implement the written safety program with the active and meaningful participation of miners and their representatives.

Mine operators shall include miners and their representatives to be actively engaged and participate in the writing, development, implementation, evaluation, editing, and revising of the mine’s health, safety and environmental programs, policies and/or systems, including but not limited to:

- i. Evaluating mine operations to identify hazards and risks resulting from operating and working near surface mobile equipment and belt conveyors,
- ii. Evaluating technologies,
- iii. Review of findings and assist with the development of a written safety program, policies, or systems,
- iv. Obtain and review reports about any proposed changes for the mine that could affect safety and health conditions (including new materials, equipment, processes, ways of organizing/restructuring work, etc.),
- v. Identify how these changes could cause or contribute to work-related hazards, and what would prevent/eliminate/reduce associated hazards.
- vi. Reevaluating workplace activities due to changes in technology, conditions and processes,
- vii. Materials or equipment,
- viii. Conducting on-site examinations and analysis,
- ix. Identifying trends and where there are system failures,
- x. Evaluating the strength of hazard controls,
- xi. Annual review and update of the written safety program or systems.

#### **4. Section .23001, Definitions – Edits Needed**

The definition of “Responsible person” needs improvement. The “Responsible person” should not only be given authority and responsibility, but have the skills and the capability of identifying existing and predictable hazards in the workplace and its surroundings, or working conditions which are hazardous, or dangerous

to miners, and who has authorization to take prompt corrective measures to eliminate or control them.

## 5. Section .23003, Requirements for Written Safety Program – Edits Needed

We are pleased to see and fully support MSHA's proposed .23003 (a)(2) with the following edit: *"develop and maintain procedures and schedules for routine maintenance and non-routine repairs for surface mobile **and material handling equipment**;"* Paragraph (a)(2) also needs, the following, **"If at any time mobile equipment or belt conveyors are found to be in need of repair, defective, or in any way unsafe, the equipment shall be immediately taken out of service until it has been restored to safe operating condition."** Mobile equipment and belt conveyors cannot be run to failure, but mine operators have cut corners in this area and contracted out maintenance. This puts miners in a predicament, trying to decide when is it no longer acceptable to operate unmaintained and/or unsafe equipment due to production pressures. The same also goes for the back-up or spare equipment as it can be in a worse condition. That said, we suggest adding a new paragraph (a)(5) that reinforces a miner's right to refuse unsafe work per the Federal Mine Safety and Health Act of 1977.

Mine operators need to, with the active assistance of the miners and their representatives, develop and use a pre-use checklist for each piece of equipment. The list will determine, based on which items are being checked, for the equipment to automatically and immediately be removed from service during the pre-use inspection process. The checklist would eliminate unnecessary pressure on the miners for when to determine if a piece of equipment is unsafe to use or operate, and will help to determine and schedule when equipment needs servicing and/or maintenance.

Work organization must also be considered in a mine operator's written safety program. Downsizing, job combinations, long/hours of work, understaffing, etc., effect miners' safety and health. Work organization factors have led to what our members refer to as "green-on-green" or new-miners training new-miners. Mine operators must recognize the hazards of "green-on-green" and address this problem in their written safety program. Additionally, mine operators must train miners and address the inherent blind spots associated with mobile and powered haulage equipment. Apply advances in technology with the assistance of miners and their representatives'.

In paragraph (b) of .23003, the "Responsible person" should also consider changes with personnel, including changes in staffing levels, staff experience, or contracting out that directly impact mine safety, and policy changes such as budget cutting. The written safety program acts as a control point (or stopping point) when organizational changes result in or could be reasonably expected to result in, changes that can affect mine safety. Organizational changes also

necessitate changes to processes, chemicals, technology, equipment, procedures, or facilities, and the written safety program would be required to ensure that resulting changes are managed and implemented in a manner that assures continued safe operations, as well as ensure that operations remain safe under normal production and emergency upset conditions. Budgetary changes can have a similar effect. For example, a significant cut in a maintenance department's budget could require a mine operator to alter its procedures concerning the timeliness or frequency of tests, inspections, repairs, or replacement equipment.

**MSHA must add to Proposed 56.23003(b), 57.23003(b) and 77.2103(b)**  
**If a mine operator determines, after reviewing the safety program with miners and their representatives, that the controls and procedures identified in the safety program are not effective (or are no longer relevant), further measures would need to be identified and implemented to assure miners' safety.**

MSHA must add a new **paragraph (c)** in .23003 as follows:

***(c) Miners and their representatives' participation.***

***Mine operators shall do the following:***

***(c)(1) Develop a written plan of action regarding the inclusion of miners and their representatives' active participation required by this paragraph.***

***(c)(2) Consult with miners and their representatives on the conduct, planning, development and implementation of the written safety program, including the other elements of this standard.***

***(c)(3) Provide to miners and their representatives' access to the written safety program and all other information required under this standard at no-cost.***

MSHA must approve the mine operator's written Safety Program for Surface Mobile Equipment. MSHA already approves a number of written programs and plans submitted by mine operators, such as, but not limited to: roof control plans, ground control plans and ventilation plans for example. Without MSHA oversight, mine operators will have generic programs that will not be mine specific or include meaningful participation from miners and their representatives'. Furthermore, MSHA must also review the written safety program at least annually, and where there are changes at the mine.

The written safety program, procedures, training and related elements of this standard shall be delivered in a language that the miners and their representatives' can understand. The mine operator shall also provide training whenever there are changes in the written safety plan.

## **Conclusion**

The USW requests MSHA to seriously consider our recommendations to improve the proposed rule and give miners and their representatives' meaningful participation. Mine operators must develop and implement a written safety program for mobile and powered haulage equipment and include belt conveyors at surface mines and surface areas of underground mines. The written safety program acts as a control point for mine operators to identify hazards and risks, apply the controls needed to eliminate/reduce hazards miners are exposed to, and prevent/reduce accidents, injuries, and fatalities.

Finally, the USW thanks MSHA for acting and considering these comments regarding the proposed rule on Safety Program for Surface Mobile Equipment.

Respectfully submitted,

Steve Sallman  
Director of Health, Safety and Environment  
United Steelworkers