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MSHA OUTLOOK & MOBILE EQUIPMENT SAFETY PROGRAM

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NICK SCALA

CHAIR OF CONN MACIEL CAREY'S MSHA • WORKPLACE SAFETY GROUP

NICHOLAS W. SCALA

nscala@connmaciel.com • 614.418.6048

Nick Scala is a Chair of the national MSHA • Workplace Safety Practice at **Conn Maciel Carey LLP** and a Certified Mine Safety Professional. He focuses on all aspects of mine safety and health law:

- Represents mine operators and independent contractors in inspections, investigations & enforcement actions involving MSHA
- Advises clients in all phases of involvement with MSHA, particularly guiding companies through contest proceedings before the Federal Mine Safety and Health Review Commission
- Prepares clients for and manages incident, fatality, and special investigations conducted by MSHA, and defends company representatives in section 110 proceedings, and represents companies in discriminations/interference investigations and proceedings



MSHA'S SURFACE MOBILE EQUIPMENT RULE



MSHA'S FINAL RULE

SAFETY PROGRAM FOR SURFACE MOBILE EQUIPMENT

- *Final rule published December 20, 2023, in Federal Register*
- *Became effective January 19, 2024*
- *Enforceable as of July 17, 2024*
- *Creates new regulation in 30 C.F.R.*
 - **§56.23000 – 23004**
 - **§57.23000 – 23004**
 - **§77.2100 – 2104**

MSHA'S FINAL RULE

SAFETY PROGRAM FOR SURFACE MOBILE EQUIPMENT

- *Why did MSHA issue promulgate rule?*
- [§ 56.23000](#) Purpose and scope.

This subpart requires operators to develop, implement, and update a written safety program for surface mobile equipment to reduce the number and rates of accidents, injuries, and fatalities.

This subpart applies to surface mobile equipment at surface metal and nonmetal mines. The purpose of this safety program is to promote and support a positive safety culture and improve miners' safety at the mine.

- ***All production operators and part 45 independent contractors must have a written safety program for surface mobile equipment at surface mines and surfaces areas of underground mines.***

MSHA'S FINAL RULE

SAFETY PROGRAM FOR SURFACE MOBILE EQUIPMENT

- *What equipment is covered?*
- [§ 56.23001](#) Definitions.

Surface mobile equipment means wheeled, skid-mounted, track-mounted, or rail-mounted equipment capable of moving or being moved, and any powered equipment that transports people, equipment, or materials, excluding belt conveyors, at surface metal and nonmetal mines.

- *This is often called the Powered Haulage rule, but that is not entirely correct.*

MSHA'S FINAL RULE

SAFETY PROGRAM FOR SURFACE MOBILE EQUIPMENT

- *What equipment is covered?*
- *MSHA Guidance on Covered Mobile Equipment*
 - *Examples of wheeled mobile equipment include trucks (haul, flatbed, fuel, service, bulk tanker, water, tractor-trailers, etc.), forklifts, front end loaders, wheeled skid-steer loaders, cranes, self-propelled aerial lifts, graders, self-propelled earthmoving scrapers and roller/compactors.*
 - *Examples of rail-mounted mobile equipment include locomotives, railcars, railcar movers, and overhead and gantry cranes.*
 - *Examples of track-mounted equipment include bulldozers, excavators, backhoes, power shovels, draglines, tracked, multi-terrain and skid-steer loaders, and drills.*
 - *Examples of skid-mounted equipment include light plants, fuel tanks and portable equipment on frames, plates, rails or pallets. This equipment can be moved about the mine or mill, but normally remains in one location or in storage. The rule applies only when this equipment is being moved or relocated.*

MSHA'S FINAL RULE

SAFETY PROGRAM FOR SURFACE MOBILE EQUIPMENT

- *What equipment is covered?*
- *MSHA Guidance on Covered Mobile Equipment, exceptions...The rule does NOT apply to:*
 - *Mobile equipment used in underground mines and brought to the surface for maintenance or repair;*
 - *Manually powered tools such as wheelbarrows, hand carts, push carts, welding carts, cylinder carts, basic hand trucks, or dollies.*
 - *Belt conveyors, radial or fixed-position stacking conveyors, or circular or longitudinal stackers and reclaimers;*
 - *Portable crushers or screening plants;*
 - *Boats or dredges;*
 - *Towed equipment such as air compressors, welding machines, non-selfpropelled aerial lifts, and light plants mounted on wheeled chasses. However, mobile equipment performing the towing are covered.*

MSHA'S FINAL RULE

SAFETY PROGRAM FOR SURFACE MOBILE EQUIPMENT

- *What do we have to do moving forward?*
- [§ 56.23002](#) Written safety program.

(a) Each operator shall develop and implement a written safety program for surface mobile equipment that contains the elements in this subpart, no later than July 17, 2024.

(b) Each operator shall designate at least one responsible person to evaluate and update the written safety program, no later than July 17, 2024.

Responsible person means a person with authority and responsibility to evaluate and update a written safety program for surface mobile equipment.

There can be more than 1 Responsible Person for each mine site

MSHA'S FINAL RULE

SAFETY PROGRAM FOR SURFACE MOBILE EQUIPMENT

- *What does the program have to include?*
- [§ 56.23003](#) Requirements for written safety program.
 - (a) The operator shall develop and implement a written safety program that includes actions the operator will take to:*
 - (1) Identify and analyze hazards and reduce the resulting risks related to the movement and the operation of surface mobile equipment;*
 - (2) Develop and maintain procedures and schedules for routine maintenance and non-routine repairs for surface mobile equipment;*
 - (3) Identify currently available and newly emerging feasible technologies that can enhance safety at the mine and evaluate whether to adopt them; and*
 - (4) Train miners and other persons at the mine necessary to perform work to identify and address or avoid hazards related to surface mobile equipment.*

MSHA'S FINAL RULE

SAFETY PROGRAM FOR SURFACE MOBILE EQUIPMENT

MSHA Guidance on these sections:

- ***(1) Identify and analyze hazards and reduce the resulting risks related to the movement and the operation of surface mobile equipment:***
 - ***Examples of actions to identify and analyze hazards can include:***
 - 1) a review of workplace examination records;***
 - 2) a review of accident data and information on close calls or near misses;***
 - 3) a review of best practices materials; and***
 - 4) consulting miners and their representatives about workplace hazards.***

MSHA's FINAL RULE

SAFETY PROGRAM FOR SURFACE MOBILE EQUIPMENT

MSHA Guidance on these sections:

- ***(2) Develop and maintain procedures and schedules for routine maintenance and non-routine repairs for surface mobile equipment:***

- *“We are not as interested in what you are doing to maintain the equipment, but how you are doing it...”*

Q. Does the production operator or part 45 independent contractor need to develop new maintenance and repair procedures?

A. No, unless the operator does not have them already in place. The safety program can reference existing procedures and schedules for maintenance and repair.

- **Based on MSHA comments this section will likely be enforced from a training / task training perspective on safe repair procedures.**

MSHA'S FINAL RULE

SAFETY PROGRAM FOR SURFACE MOBILE EQUIPMENT

MSHA Guidance on these sections:

- ***(3) Identify currently available and newly emerging feasible technologies that can enhance safety at the mine and evaluate whether to adopt them:***

Q. How does a production operator or part 45 independent contractor demonstrate compliance with the standard to evaluate new and emerging technologies?

A. Examples of actions that production operators or part 45 independent contractors could take to demonstrate compliance include

- 1) attending industry, NIOSH, MSHA, or other meetings that discuss available or newly emerging technologies;***
- 2) attending mine safety and health conferences that include vendor exhibits and equipment demonstrations;***
- 3) requesting and reviewing equipment vendor material;***
- 4) interviewing or obtaining demonstrations from vendors or sales engineers;***
- 5) obtaining vendor quotations; or***
- 6) testing technologies on mine property to determine their effectiveness in improving safety.***

MSHA'S FINAL RULE

SAFETY PROGRAM FOR SURFACE MOBILE EQUIPMENT

MSHA Guidance on these sections:

- ***(3) Identify currently available and newly emerging feasible technologies that can enhance safety at the mine and evaluate whether to adopt them:***

Q. Are production operators or part 45 independent contractors required to purchase any particular technology?

A. No. Production operators or part 45 independent contractors are required to identify and evaluate currently available and newly emerging technologies that enhance miners' safety working on or near surface mobile equipment.

Q. What are examples of currently available or newly emerging technologies?

A. Currently available or newly emerging technology may include:

- *seat belt interlocks that affect equipment operation when a seat belt is not fastened;*
- *seatbelt notification systems that alert management when the seatbelts are not worn;*
- *collision warning systems and collision avoidance systems that may prevent accidents by alerting equipment operators to hazards located in blind areas;*
- *technologies that use global positioning systems to provide equipment operators with information regarding their location when pushing and dumping material;*
- *as well as cameras, curvilinear mirrors, and other vision enhancements.*
- *MSHA has posted examples of technology-related informational material on its website.*

MSHA'S FINAL RULE

SAFETY PROGRAM FOR SURFACE MOBILE EQUIPMENT

- *What does the program have to include?*
- [§ 56.23003](#) Requirements for written safety program.

(b) The responsible person shall evaluate and update the written safety program at least annually, or as mining conditions or practices change that may adversely affect the health and safety of miners or other persons, as accidents or injuries occur, or as surface mobile equipment changes or modifications are made.

(c) The operator shall solicit input from miners and their representatives in developing and updating the written safety program.

MSHA'S FINAL RULE

SAFETY PROGRAM FOR SURFACE MOBILE EQUIPMENT

- *MSHA Guidance on Responsible Person(s)*
- What is a Responsible Person?
 - *The responsible person must have experience and knowledge about mining conditions and practices, including surface mobile equipment, necessary to evaluate and update the written safety program.*
- Can be multiple person(s), and this is likely a good idea to designate multiple responsible persons for each program
- Person does not have to be present at the mine, can be corporate representative or safety personnel
- MSHA will consider this person to be an “agent” of the company
- *The responsible person is designated by a production operator or a part 45 independent contractor to evaluate the safety program, take actions to correct any hazards, and update the safety program to address the hazards.*

MSHA'S FINAL RULE

SAFETY PROGRAM FOR SURFACE MOBILE EQUIPMENT

- *How do we solicit input and prove it was done?*
- **MSHA Guidance states:**
 - **Examples of evidence of miner participation may include**
 - ***copies of written recommendations submitted by individual miners or department groups;***
 - ***signed meeting minutes; or***
 - ***verbal confirmation from miners that they were involved and what topics constituted their input.***
- Safety committees will serve to assist in this process and can be easily documented as long as there is well rounded participation
- Also consider making this a topic at annual refresher training and/or an annual safety meeting which can document attendance by our miners

MSHA'S FINAL RULE

SAFETY PROGRAM FOR SURFACE MOBILE EQUIPMENT

- *What does the program have to include?*

- [§ 56.23004](#) Record and inspection.

(a) The operator shall make the written safety program available for inspection by authorized representatives of the Secretary and provide a copy upon request.

(b) The operator shall make the written safety program available for inspection by miners and their representatives and, at no cost, provide a copy upon request.

- *Can be hard copy or electronic, as long as it can be provided upon request*
- *The record will need to be produced to MSHA within 1 business day of the request*

MSHA'S FINAL RULE

SAFETY PROGRAM FOR SURFACE MOBILE EQUIPMENT

Application of the rule to mines, portable operations, and contractors

- This rule applies to ALL mines, portable operations, and contractors
 - The proposed rule excluded mines with fewer than 6 miners
 - Part 45 Contractors must have their own program

Q. Who is a part 45 independent contractor?

*A. A part 45 independent contractor is a **contractor who has a part 45 identification number and performs construction or services at the mine***

- *MSHA expects production operators and part 45 independent contractors to communicate and coordinate with each other on their respective safety programs. MSHA expects most independent contractors will develop and implement their own safety program. Production operators and part 45 independent contractors can integrate their safety programs. If they agree to integrate their safety programs, the independent contractor does not need to develop a separate safety program.*

MSHA'S FINAL RULE

SAFETY PROGRAM FOR SURFACE MOBILE EQUIPMENT

Application of the rule to mines, portable operations, and contractors

- MSHA's fall back option, dual enforcement and requiring production operators to police contractor compliance...

Q. I am a production operator with several contractors working at the mine site. Am I responsible for ensuring that contractors at the mine have a safety program?

A. A production operator must ensure that the part 45 independent contractors have a safety program that complies with the standard or that the part 45 independent contractors' safety programs are integrated into the production operator's safety program.

Contractors without a part 45 identification number are not required to develop and implement a safety program under the standard. However, the production operator's safety program must include the contractors' surface mobile equipment in their safety program.

MSHA'S FINAL RULE

SAFETY PROGRAM FOR SURFACE MOBILE EQUIPMENT

Enforcement of the rule:

- Relatively little enforcement upon rollout
- Inspectors mostly looked to ensure a program was in place, but did not scrutinize operator programs
- Expect enforcement to increase as rule becomes more established, and when incidents involving mobile equipment occur
- Expect MSHA to continue to review this document at each inspection

MSHA's FINAL RULE

SAFETY PROGRAM FOR SURFACE MOBILE EQUIPMENT

Enforcement of the rule:



Fatality Alert

MINE FATALITY – On September 20, 2024, a miner died after he fell approximately six feet from a front-end loader while attempting to replace a bulb on the right front headlight.



Best Practices

- Develop and implement a Safety Program for Surface Mobile Equipment that includes actions taken to identify hazards and risks to reduce accidents, injuries, and fatalities related to surface mobile equipment.
 - Identify hazards and risks.
 - Take corrective actions to eliminate / reduce risks.
- Provide and maintain safe access to all workplaces and establish safe work procedures.



MSHA LOOKING FORWARD



MSHA'S FINAL SILICA RULE

- *Final rule published in the Federal Register: April 18, 2024*
- *Final rule effective date: June 17, 2024*
- *Compliance deadlines extended by MSHA:*
 - *Coal: April 14, 2025*
 - *M/NM: April 8, 2026*
- ***THE RULE IS NOT YET ENFORCEABLE***
- *Litigation is pending in the 8th Circuit (St. Louis) with challenges by 7 state and national associations.*

MSHA'S UNDER TRUMP ADMIN 2.0

- *We do not yet know who will be the Secretary of Labor or Asst. Secretary of MSHA*
- *Rep. Lori Chavez-DeRemer was recently named as the presumptive nominee to be Secretary of Labor*
 - *A historically pro-union Republican from Oregon*
- *Historically, Republican administration nominate industry veterans to run the agency, like Trump did in his first term with Asst. Secretary for MSHA Dave Zatezalo*
- *Unfortunately, it is very unlikely that the new administration will be able to roll back the Surface Mobile Equipment or Silica rules*
- *Do not expect new rulemaking efforts to be pushed over the next few years*

QUESTIONS?





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CONTACT INFORMATION



NICK SCALA

CHAIR, MSHA • WORKPLACE SAFETY GROUP

CONN MACIEL CAREY LLP

614.418.6048

NSCALA@CONNMACIEL.COM

@MSHA_GUY (TWITTER)