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MSHA Releases Final Rule: Safety Program for Surface Mobile Equipment

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The Mine Safety & Health Administration ("MSHA") has finally published its final rule on [Safety Programs for Surface Mobile Equipment](#). This final rule has been a long time coming. MSHA originally published a Request for Information and held seven stakeholder meetings in 2018. In 2021, MSHA published a notice of proposed rulemaking, which we covered in [detail](#) more than two years ago. 

Following the close of the initial comment period in late 2021, MSHA reopened the rulemaking for another 30-day comment period, ending in February 2022. Almost a full two years later, MSHA published its final rule on December 20, 2023, and it became effective January 19, 2024.

However, the effective date is not the same as the compliance date. In the final rule, MSHA wrote in a deferred compliance date, giving operators a grace period to get into compliance with the new standards before the agency and its inspectors enforce the provisions during inspections. That compliance date is July 17, 2024.

This means that all operators and contractors operating surface mobile equipment at surface mines, or the surface areas of underground mines, will need to have compliant programs in place by July 17, 2024. This also means that MSHA cannot enforce the provisions of the final rule before that date.

Despite years of MSHA review since the proposed rule was published, the final rule largely looks the same, with a few small changes, which we will review here.

As in the proposed rule, this final rule creates new regulations incorporated into 30 C.F.R. §§56 and 57, for surface Metal/Nonmetal ("M/NM") and the surface areas of underground M/NM mines, and §77 for surface coal mining, and surface areas as underground M/NM and coal mines. These will be 30 C.F.R. §56.23000 – 23004, §57.23000 – 23004, and §77.2100 – 2104. The three standards as proposed contain the same obligations. For review purposes, below is the proposed language of §56.23000 – 23004.

56.23002 Written safety program.

(a) Each operator subject to this subpart 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 subject to this subpart shall designate a responsible person to evaluate and update the

written safety program, no later than [July 17, 2024].

56.23003 Requirements for written safety program.

(a) The mine operator shall develop and implement a written safety program that includes actions the operator would 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.

(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.

56.23004 Record and inspection.

The mine operator shall make the written safety program available for inspection

by authorized representatives of the Secretary, miners, and representatives of miners, and provide a copy, upon request.

The Final Rule Applies to ALL Surface Mine or Surface Area of Underground Mines

One of the few changes to the rule is that MSHA expanded its application. MSHA originally proposed that the rule would not apply to mines with 5 or fewer miners. That is no longer the case, and any surface mine, or surface area of an underground mine, that operates equipment covered by the definition of *surface mobile equipment* must comply. MSHA defines Surface Mobile Equipment as:

*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.*



With that broad definition, the likelihood is that all surface mines and surface areas of underground mines will be covered, and MSHA makes it clear that the final rule will apply regardless of the number of miners employed. So, all mines, even those with 5 or fewer miners must develop and implement a compliant program and adhere to the new standard's requirements.

MSHA further confirms that the rule does not apply to equipment which works underground, even if that equipment is brought to the surface for maintenance or repair. But, if equipment works underground and on the surface, the mobile equipment will be covered by the rule while when on the surface.

Contractors Must Comply When Working at Covered Mines/Areas

While the proposed rule was largely silent as to the rule's application to contractors, the final rule is not. MSHA specifically states that the rule applies to independent contractors working at surface mines or surface areas of undergrounds.

Consistent with MSHA's part 45 regulations and the Agency's longstanding policy regarding independent contractors, this final rule requires operators, including independent contractors with a part 56 identification number, to develop and implement a written safety program addressing surface mobile equipment.

Contractors will not be able to work under a production operator's program, and production operators should ensure that contractors coming on-site are aware of the new rule and have compliant programs in place by the July 17, 2024 deadline. Mine operators can include a copy of a contractor's program in its surface mobile equipment program, but it is not required.

Responsible Person(s) and Program Updates

Each operator will have to designate at least one – but there can be more than one – *responsible person*, defined as *a person with the authority and responsibility to evaluate and update a written safety program for surface mobile equipment*.

The program will have to be evaluated and updated at least annually, *"as mining conditions or practices change, as accidents or injuries occur, or as surface mobile equipment changes or modifications are made."*

MSHA clarified in the final rule, that the programs must be evaluated and updated *"when mining conditions and practices change **that may adversely affect the health and safety of miners.**"* What MSHA does not do is limit that to changes related to the use and operation of surface mobile equipment.

Further, MSHA maintains that the programs need to be evaluated and updated when accidents or injuries occur, but again these are not specifically limited to accidents and/or injuries involving the use or operation of surface mobile equipment. While reasonable minds would argue that the changes and accidents/injuries would be related to mobile equipment use to necessitate an update to the surface mobile equipment program, that is not what MSHA stated in the final rule. Operators and contractors should seek clarification on this during the compliance assistance process and monitor MSHA's enforcement closely, especially at the outset.

Maintenance Schedules

MSHA also provided some illumination regarding the rule's provision that operators *"develop and maintain procedures and schedules for routine maintenance and non-routine repairs for surface mobile equipment."*

Many operators, rightfully so, pushed back on this element of the proposed rule as scheduled maintenance programs are already in place for operators. Upon initial reading, it appeared that MSHA wanted operators to

duplicate efforts by "developing" additional procedures. While the question of what procedures or schedules MSHA will expect operators to develop for non-routine repairs, at least the agency lightened the load on what is included in the program.

In the final rule, MSHA states "[t]he procedures and schedules for maintenance and repairs for surface mobiles equipment developed for the written safety program can reflect or reference the operator's existing procedures and schedules."

So, operators have the option of transferring existing maintenance procedures and schedules into the program, rather than developing something new.

Feasible Technologies

MSHA retained the provision, which will likely be the most common pitfall, and cited provision once operators have their initial programs developed, especially in the event of a surface mobile equipment accident which MSHA investigates.

 The final rule still requires operators to "identify and evaluate currently available and newly emerging feasible technologies that can enhance safety at the mine."

This open-ended provision is likely to impose a considerable burden on operators as the years pass. By including this requirement, MSHA has essentially created a rule that will change with the times and technologies, rather than simply requiring operators to use backup cameras or seat belt interlocks. Now, operators will need to evaluate what technologies are available each year, and whether it is feasible to install these on surface mobile equipment. And, if the operator determines a technology is not feasible, be prepared to defend that position if MSHA comes to a different conclusion. MSHA claims it will help operators identify options on this front, but operators will still be obligated to independently conduct this evaluation and justify any decision made.

Miner Involvement and MSHA Review

As stated in the proposed rule, operators will need to solicit input from their miners not only during initial program development but also when updating the written safety program. The agency does not outline additional requirements on this front, other than to its belief that "for the safety programs to be successful, there must be active and meaningful participation from miners."

MSHA also clarifies that mine operators do not need to submit the program for review and approval by the agency. This program will become one of the regular records reviewed when MSHA is on-site for its mandatory safety and health inspections. The program can be maintained electronically or in hard copy for each mine, as long as it can be made available to MSHA, miners, or miners' representatives upon request. As with other document requirements, operators should be able to print physical copies for MSHA if requested.

MSHA claims that it will develop compliance assistance materials, including a template plan, for operators before the July 17, 2024 deadline for compliance. But, regardless of if or when the agency does release those materials, operators must have their programs developed and in place by July 17th.

If you have questions on the final rule, or you seek assistance in the development of your mine's program, do not hesitate to contact [Nick Scala](#), or another member of [Conn Maciel Carey's MSHA Practice Group](#), for assistance.