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

Dear Ms. Senk,

On behalf of the National Stone, Sand and Gravel Association (NSSGA), I am pleased to submit the following comments in response to the Mine Safety and Health Administration's (MSHA) proposed Safety Program for Surface Mobile Equipment[1] (the "proposed rule" or "rule").

NSSGA is a trade association that represents crushed stone, sand and gravel, and industrial sand producers (consisting of approximately 6,000 operations) and the manufacturing and service providers who serve the industry. Our producer members primarily operate surface quarries, and those who operate underground quarries have surface operations affected by this proposed rule.

NSSGA works with its members on health and safety issues through its Health and Safety Subcommittee, which brings together health and safety professionals from across the membership to advance shared industry goals. NSSGA is also a proud, longstanding member of the MSHA-NSSGA Alliance, where we work in collaboration with the agency to promote health and safety practices and awareness through communications, training, and supporting resources.

In response to the proposed rule, NSSGA offers the following comments:

1. All facilities, regardless of the number of miners employed, should be covered by the rule.

2. While six months is a sufficient amount of time for operators to develop their programs and designate responsible persons, MSHA should provide an additional grace period of at least six months when no citations are issued.

3. The responsible person provision in the proposed rule should be stricken. To the extent the final rule contains any responsible person provision, facilities should be able to designate more than one responsible person.

[1] 86 Fed. Reg. 172, pp 50496-50513 (September 9, 2021)

4. Definitions of surface mobile equipment covered in the rule should be clarified.

5. MSHA should provide a template for operators to follow, which will provide much needed clarity and assurance of what actions MSHA will accept to meet the standard.

6. Some requirements in the program, such as maintenance procedures and training, are duplicative standards covered elsewhere in MSHA regulations. Duplicative requirements should reference the existing standards.

7. While the intent of §56.23003(a)(3) regarding evaluation of technologies is well-intended, carrying out this requirement in practice is not feasible. This section should be stricken from the rule.

8. MSHA should clarify that contractors, as "operators," are required to have their own written safety programs for mobile and powered haulage equipment.

9. Additional items throughout the proposed rule require clarification.

Below, please find further discussion of each key item.

1. All facilities, regardless of the number of miners employed, should be covered under the rule.

The primary mission of MSHA is to protect the mining industry's most precious resource: the miner. Regardless of whether a facility employs one miner or one hundred miners, each individual should be protected equally as they are throughout all other MSHA rules and regulations. There is no precedent for an MSHA standard that applies to all but the smallest mines and such precedent should not begin now. Furthermore, there is no consistent, discernable difference between a facility with five miners compared to one with six, making the five-miner cutoff arbitrary. Although MSHA states that, "Based on Agency experience and data, a mine operator with five or fewer miners would generally have a limited inventory of surface mobile equipment. These operators would also have less complex mining operations, with fewer mobile equipment hazards that would necessitate a written safety program,[2]" this observation does not account for all types of hazards associated with surface mobile equipment that would be covered in a mobile equipment safety program. While a lesser number of vehicles in a quarry may reduce the likelihood of a vehicle vs. person or vehicle vs. vehicle incident, it has no bearing on hazards like an operator not wearing a seatbelt or a vehicle going over a highwall. Finally, if an operator employs five miners or less, it is possible that additional vehicles or persons, such as contractors, or the hiring of additional miners will increase the number of miners on site. Particularly in the case of hiring more miners, an operator would be open to an MSHA citation for not having a written mobile equipment safety plan in place as soon as the sixth miner was hired. Such an operator would be at a disadvantage from not having the same six-month implementation period that current operators with more than five employees will have when the final rule is published. Having the rule apply to all mines

[2] 86 Fed. Reg at 50499

regardless of the number of miners employed will minimize confusion, enhance safety practices, and increase consistency across U.S. mines and throughout MSHA enforcement.

While NSSGA appreciates and recognizes that MSHA seeks to minimize the burden on small operations, we do not believe a mobile equipment safety program will present an undue economic burden on operators with less than six miners if MSHA provides clear guidance regarding what is expected in such a program and eliminates those requirements set out in this proposed rule which are untenable (discussed further later in these comments).

Finally, should MSHA decide to maintain a threshold number of miners for application of the rule, it should be clear how this number will be determined. For example, many sites increase the number of miners on site throughout the year based on seasonal schedules and demand, meaning a site could fluctuate above or below five miners. MSHA could decide to base this number on the average number of employees at a site based on quarterly reporting. Regardless of how the agency decides to determine the number of miners, it should be made very clear in writing, so operators know when the rule applies to them and when it does not.

2. **While six months is a sufficient amount of time for operators to develop their programs and designate responsible persons, MSHA should provide an additional grace period of at least six months when no citations are issued.**

To increase consistency of how the rule will be enforced and provide time for operators to effectively implement their programs, MSHA should provide a six to twelve-month grace period where no citations related to this rule will be given. While six months is enough time to develop a plan and designate responsible person(s), there is always an enforcement learning curve when a new rule is implemented. Therefore, we strongly recommend MSHA provide at least a six-month grace period, which will give both inspectors and operators the chance to discuss what inspectors expect, answer questions regarding plans, and get a better understanding of how enforcement will be carried out. MSHA should consider a twelve-month grace period to ensure each operator will have the opportunity to discuss their plan with at least one inspector and have it go through an inspection before citations are issued. Twelve months is preferable to six months because some surface operations may have both of their annual inspections in the last six months of the year; therefore, if MSHA only gave a six-month grace period, some operations may never have the opportunity of discussing their plan with an inspector before citations are issued.

3. **The responsible person provision in the proposed rule should be stricken. To the extent the final rule contains any responsible person provision, facilities should be able to designate more than one responsible person.**

The Proposed Rule includes a requirement that operators designate a "responsible person" who would "have the authority and responsibility to evaluate and update a written surface program for surface mobile equipment." 86 Fed. Reg. at 50500. Proposed Section 56/57.23003(b) "would require the responsible person to evaluate and update the written safety program at least annually or as mining conditions or practices change, accidents or injuries occur or as surface mobile equipment changes or modifications are made." 86 Fed. Reg. at 50501. NSSGA believes that the requirement of designating a "responsible person" should be stricken from the Proposed Rule. The

requirement serves no purpose in furtherance of its goals. The Mine Act imposes strict liability on operators to comply with MSHA standards, regardless of the actions taken by their individual employees. See Asarco, Inc.- Northwestern Mining Department v. FMSHRC, 868 F.2d 1195 (10th Cir. 1989). Operators, therefore, would be responsible for complying with the substantive requirements of Section 56/57.23000, et seq., irrespective of the actions of an individual employee, i.e., a "responsible person." Adding an extra layer of individual responsibility, therefore, does nothing to further compliance with the Proposed Rule. Rather, it would do nothing more than raise the prospect of individual liability under Section 110(c) of the Mine Act, 30 U.S.C. § 820(c), for a specifically identified individual. We do not believe this is the agency's intent; therefore, we strongly recommend that MSHA includes language in the preamble stating the rule is not intended to subject "responsible persons" to individual liability.

To the extent that the final rule includes a "responsible person" provision, MSHA should amend this language to clearly allow for multiple persons to be designated as a "responsible person." There are many practical reasons to have additional people in this position, such as if one designee is out sick, on vacation, or leaves the company then there is still a designated responsible person on-site. There is also precedent for this, as MSHA allows for multiple individuals to be named as the Person Responsible for Safety and Health, per the Part 46 Compliance Guide[3].

4. Definitions of surface mobile equipment covered in the rule should be clarified.

The proposed rule covers a wide array of surface mobile equipment. However, some equipment such as small boats, dredges, portable screening plants, portable crushers, auger conveyors, hydraulic conveyors, and others do not cleanly fit into the definition. MSHA should clearly indicate which pieces of equipment will be covered and which will not. We do not believe the rule was intended to address the equipment listed above and suggest that MSHA either amend the rule's language to clarify that such pieces of equipment are not included or create a supplementary, clarifying guidance document. Furthermore, discussions and clarifications around precisely which pieces of equipment are covered in the rule will likely occur during the first twelve months following implementation; this is another reason to provide a grace period when MSHA can refine what equipment is covered and what is not and communicate expectations with its stakeholders.

5. MSHA should provide a template for operators to follow, which will provide much needed clarity and assurance of what actions MSHA will accept to meet the standard.

NSSGA appreciates that a pillar of the proposed rule is flexibility so operators can write plans based on the individual needs of each unique operation rather than using a one-size-fits-all approach. However, the proposed rule currently contains too much grey area with little guidance on what MSHA will deem an acceptable written program. For example, what actions or data would be sufficient when an operator must, "identify, collect, and review information about hazards at their mines[4]" to inform and create their program? Particularly because these plans will not go through a formal approval process (NSSGA does not believe the written programs should go through an approval process, as is seen in Part 48 training plans), MSHA should provide further guidance to provide operators with confidence their plans will sufficiently protect miners and cover

[3] Reference: https://arlweb.msha.gov/training/part46/compguide/compguide.pdf
[4] 86 Fed. Reg at 50500

items MSHA intended. NSSGA recommends this guidance be in the form of a Safety Program for Surface Mobile Equipment Template.

A Safety Program for Surface Mobile Equipment Template is practical, has precedent, and would have multiple benefits.

First, it would reduce the burden on all operators – particularly smaller operators who do not currently "already have a number of procedures and processes in place that would meet the requirements of this proposal,[5]" which MSHA stated in the proposed rule many operations may already have. A template would provide all operators a place to start, and no operation would be starting from scratch. It would also provide a roadmap for operators and organizations who serve the industry, like associations and state grantees, to build and refine mobile equipment safety programs.

Second, a template would provide assurance that key items are addressed, and an operator's program would be 'approved' by MSHA, as is seen in Part 46 training plans. The aggregates industry believes the creation and implementation of Part 46 training using MSHA's template has been very successful and supports this process being used again in the creation of a mobile equipment safety program.

Third, a template would reduce subjectivity between inspectors on what is expected in a program and increase consistency of how the rule is enforced across the country.

Fourth, MSHA's Education, Field, and Small Mine Services (EFSMS) is already poised to support operators in developing and improving such programs: "For mines employing five or fewer miners, MSHA's Educational Field and Small Mine Services (EFSMS) would provide assistance in the development and improvement of safety programs for mine operators and contractors in the mining community.[6]" Should MSHA create a template and use the expertise of EFSMS, then those staff would still carry out the original intent seen in proposed rule of supporting small mines – but their work would also reach and benefit all MSHA-regulated operators.

Finally, a template can still be created that maintains the pillar of flexibility essential in this rule. For example, not all sections of a template will apply to all sites, which would make "N/A" an appropriate answer. Additionally, operators should be able to create their own written programs without using the template, as is seen in Part 46 training plans.

We strongly support the creation of a template to guide implementation and enforcement of this rule. Should MSHA move forward in the creation of a template, then stakeholders should be involved in its creation in the beginning stages and throughout the process.

6. **Some requirements in the program, such as maintenance procedures and training, are duplicative standards covered elsewhere in MSHA regulations. Duplicative requirements should reference the existing standards.**

[5] 86 Fed. Reg. at 50505
[6] 86 Fed. Reg. at 50497

Certain of the requirements of the Proposed Rule are duplicative of existing standards in Parts 56 and 57. In the civil penalty context, the Review Commission has held that citations are impermissibly duplicative if they do not "impose separate and distinct duties on an operator." See Western Fuels-Utah, Inc., 19 FMSHRC 994, 1003 (Rev. Comm. June 1997) (citing Cyprus Tonopah Mining Corp., 15 FMSHRC 367, 378 (Rev. Comm. March 1993); Southern Ohio Coal Co., 4 FMSHRC 1459, 1462-63 (Rev. Comm. Aug. 1982); El Paso Rock Quarries, Inc., 3 FMSHRC 35, 40 (Rev. Comm. Jan. 1981)). An impermissibly duplicative citation must be vacated. See Western Fuels-Utah, 19 FMSHRC at 1005. Analogously, in the rulemaking context, a provision of a proposed rule that is duplicative of an existing regulatory requirement should be stricken.

Such is the case with respect to several of the provisions in the Proposed Rule, including:

•Proposed Section 56/57.23003(a)(2) would require an operator's safety program to "develop and maintain procedures and schedules for routine maintenance and non-routine repairs for surface mobile equipment." 86 Fed. Reg. at 50511 and 50512. However, existing Section 56/57.14100 already requires that mobile equipment be inspected before use, that defects affecting safety be corrected, that equipment with defects that cannot be corrected be taken out of service and that such uncorrected defects be documented. 30 C.F.R. §§ 56/57.14100. Thus, proposed Section 56/57.23003(a)(2) is duplicative of existing Section 56/57.14100 in that both impose duties on operators with respect to monitoring for and correction of defects on mobile equipment. Proposed 56/57.23003(a)(2) should therefore be stricken from the Proposed Rule.

•Proposed Section 56/57.23003(a)(4) would require an operator's safety program to address "train[ing of] miners and other persons at the mine necessary to perform work to identify and address or avoid hazards related to surface mobile equipment." 86 Fed. Reg. at 50512. However, existing task training regulations already impose these requirements. For example, task training under Part 46 requires that such training include "the health and safety aspects of the task to be assigned." 30 C.F.R. § 46.7(a). Likewise, under Part 48, task training must include "[h]ealth and safety aspects and safe operating procedures for work tasks, equipment, and machinery." 30 C.F.R. §§ 48.7(a)(1) and 48.27(a)(1). Thus, the provision in proposed Section 56/57.23003(a)(4) is duplicative of existing task training provisions as both impose duties with respect to training miners on hazard identification and safe practices related to mobile equipment tasks. It should be stricken accordingly.

Additionally, although NSSGA strongly feels that §56.23003(a)(2) should only reference current standards, should MSHA maintain such language in the rule, then "non-routine repairs" should be removed because it is impractical. Operators cannot plan for "non-routine" repairs because they are not planned for; therefore, it is not possible to develop or maintain procedures and schedules for the unknown.

NSSGA also recommends against mandating that operators solely adopt manufacturer's maintenance plans. While this may be recommended as a best practice or an option operators may adopt when creating their plans, it should not be mandated because it could have unintended negative consequences. For example, many operators have alternative products used in their maintenance procedures – for example, oil changes – that do not follow manufacturer's

recommendations but provide the same safety benefits in a more efficient manner. Requiring operators to follow manufacturer's recommendations would open companies in such situations to citations, limit their options, and not necessarily have a positive safety effect. Including this requirement would increase the economic burden on operations' rather than increase safety. Furthermore, requiring operators to follow manufacturer's recommendations would make enforcement of the rule unrealistic for inspectors who could spend hours poring over paperwork including owner's manuals for various equipment of differing makes and models and cross-referencing them with maintenance records.

7. **While the intent of §56.23003(a)(3) regarding evaluation of technologies is well-intended, carrying out this requirement in practice is not feasible. This section should be stricken from the rule.**

Although the intent behind §56.23003(a)(3) is commendable, the requirements of this section are unrealistic, vague, and could open operators to negligent liability.

First, there are several subjective terms in the preamble, including "feasible", "evaluate", and "periodically" that do not provide operators a clear understanding of what criteria MSHA, or its inspectors, would deem acceptable. For example, what actions, amount of time spent, or number of technologies reviewed would constitute sufficient "evaluation" of a technology? Furthermore, part of determining a technology's feasibility is the cost; MSHA should not have jurisdiction over economic decisions made by an operator or influence business decisions. While we do not believe this was the agency's intent, as written, this rule would overstretch MSHA's sphere of influence beyond its health and safety mandate.

Second, this section of the rule could open operators, responsible persons, and contractors to unintended allegations of negligence. For example, should an accident occur, and it is presumed that an available "feasible" technology may have prevented the accident, then an operator, responsible person, or contractor may be deemed negligent for either not evaluating the available technology or evaluating but not implementing it. Following an accident, an operator or contractor may also be open to a citation or charges of negligence should they not implement a safety technology that may prevent such an occurrence in the future – although there are sound reasons to not implement new technologies such as cost, lack of evidence technology would address the situation, incompatibility with production practices, etc. Finally, another key time all operators could be open to negligence is during the initial data collection and analysis when creating the mobile equipment safety program, should an operator not implement a "feasible" technology that would potentially address a previous accident.

Third, due to the lack of clear requirements or expectations, consistency of enforcement will be very difficult – and enforcement consistency is already a prevalent challenge for the agency. There are many unknown circumstances that would likely arise from this section of the rule. For example, should an accident occur, and an inspector is aware of a safety technology that an operator was not using, under this rule a citation could be issued for the lack of evaluation and/or implementation of this technology. There is also a significant potential for undue citations should two or more separate facilities owned by the same parent company implement different safety technologies. While NSSGA members understand these situations and potential citations are not what MSHA

intends with the rule or the section regarding safety technology, they would nonetheless become real issues upon implementation and enforcement. Its inclusion would increase time spent conferencing citations that do not have a direct effect on health and safety, but rather focus on paperwork and opinions about evaluating feasible technologies. Increased time spent having such debates would take time away from MSHA's mandate to protect miners and address health and safety hazards. It would be a disservice to the industry and MSHA to include such a subjective section in this new rule, particularly when the goals can be achieved in other ways.

Mine operators and contractors are interested in learning more about technologies that improve health and safety at their operations, but not all have the time, resources, or expertise to fully evaluate available options and their efficacy. This section would place an undue burden on operators that would weigh most heavily on small operations. Because NSSGA believes this rule should apply to all sites, this provision should be removed to both address the issues outlined above and greatly reduce the burden on small operators. Furthermore, MSHA is well-poised to provide educational opportunities for its stakeholders about current and emerging mobile equipment safety technologies because it has the resources, time, expertise (e.g., within EFSMS), and partnerships that can be utilized. The National Institute for Occupational Safety and Health's (NIOSH) active Mine Automation and Emerging Technologies Health and Safety Partnership is an invaluable resource that brings together international experts on mine safety technologies and addresses exactly this topic. In fact, one of the partnership's goals is to:

> "Provide a forum for review, evaluation and discussion of specific technical and scientific questions, such as those posed in the MSHA Request for Information on Safety Improvement Technologies for Mobile Equipment at Surface Mines (Docket MSHA-2018-0016), and the NIOSH Request for Information on Mining Automation and Safety Research Prioritization (Docket CDC-2019-0016). This includes identifying existing controls and best practices used by mine operators and other industries to minimize mine worker exposure to hazards associated with automated machines and maximize the benefits of new technology.[7]"

MSHA is a key stakeholder in the partnership, has presented during both the partnership's 2020 and 2021 virtual meetings, and is well-equipped to effectively disseminate key information from these meetings to mining stakeholders.

NSSGA strongly recommends §56.23003(a)(3) be removed. In lieu of mandating operators evaluate currently available and newly emerging technologies, the whole mining community (not just surface operations) would be better served if MSHA were to provide educational opportunities through EFSMS, inspector walk and talks, MSHA's Training Resources Applied to Mining (TRAM) annual conference, quarterly stakeholder calls, guidance documents, existing Alliances with various stakeholder groups, NIOSH's Mine Automation and Emerging Technologies Health and Safety Partnership, etc. to support operators and provide guidance.

8. **MSHA should clarify that contractors, as "operators," are required to have their own written safety programs for mobile and powered haulage equipment.**

[7] Reference: https://www.cdc.gov/niosh/mining/content/automationpartnership.html

The Proposed Rule is largely silent as to the effect of its requirements on independent contractors. Indeed, throughout its 19 pages of text, the term "contractor" is used only three times, none of which provides clarification as to where contractors fit within the scope of the proposed rule.[8] The Proposed Rule should clarify the effect of its requirements on independent contractors. And, it should state explicitly that independent contractors are required to have their own written safety programs for mobile and powered haulage equipment.

This is for two reasons. First, it would be legally correct. Section 3(d) of the Mine Act defines an "operator" to mean "any owner, lessee, or other person who operates, controls, or supervises a coal or other mine or any independent contractor performing services or construction at such mine." 30 U.S.C. § 802(d) (emphasis added). Likewise, MSHA's regulations at 30 C.F.R. Part 45, which sets forth procedural requirements for independent contractors working at mine sites, state that such requirements exist "to facilitate implementation of MSHA's enforcement policy of holding independent contractors responsible for violations committed by them and their employees." 30 C.F.R. § 45.1. Therefore, as a matter of law, independent contractors, as "operators," should be required to meet the requirements of Proposed Section 56/57.23000, et seq., including the development of their own safety program.

Second, if independent contractors are not required to have their own written safety programs, it would be untenable to require production operators to account for contractor equipment in their own safety program. A production operator may have any number of contractors on its property on a given day, each of whom may bring its own mobile equipment. Each contractor may bring different mobile equipment to a mine site each day, something the production operator has no control over. If the Proposed Rule intends for contractor equipment to be covered in a production operator's safety program, is the production operator required to revisit its program because "surface mobile equipment changes" when a contractor brings different equipment? Would the production operator be responsible for a maintenance plan with respect to contractor equipment? Would the production operator be required to plan for consideration of new technology with respect to its contractors' mobile equipment? Such scenarios are nonsensical and practically unworkable but would appear to be the upshot of the proposed rule if contractors are not required to have their own safety programs.

Finally, to parallel NSSGA's recommendation that MSHA create a template for operators, the agency should also create a contractor-specific template because many contractors face the unique challenge of working at numerous locations. Contractors and operators should be involved in the creation of this template in the beginning stages and throughout the process.

9. Additional items throughout the proposed rule require clarification.

Clarify if the Written Program Must be a Standalone Document

MSHA should clarify if the written program must be a standalone document or if having the contents of the program spread throughout other various documents will be acceptable. The

[8] In the first such instance, MSHA states that its Educational Field and Small Mine Services (EFSMS) office would aid in the development of safety programs "for mine operators and contractors" with five or fewer miners. 86 Fed. Reg. at 50499. In the second, MSHA states that among the duties of the responsible person is "to communicate the goals of the safety program to all miners, including contractors." 86 Fed. Reg. at 50500. The third is in referencing the name of a website used to report NAICS codes for purposes of the Regulatory Flexibility Analysis. 86 Fed. Reg. at 50507.

preamble states, "Indeed, mine operators with existing effective safety programs would likely need to make few adjustments, if any, to their existing programs and practices to meet the requirements of this proposal.[9]" While it is clear that programs may already exist, operators will benefit from clarity on how the program is expected to be maintained and presented.

Clarify Programs are on an Individual Facility Basis
MSHA should clarify either in the rule or preamble that each facility would maintain its own program and emphasize that companies with more than one mine site do not have to maintain the same program across all their facilities.

Clarify How the Responsible Person is to Communicate Program Goals
The preamble states, "The responsible person must communicate the goals of the safety program to all miners, including contractors[10]," however there is no elaboration on how this will be evaluated. Should MSHA maintain the "responsible person" provision, then the agency should clarify what will be acceptable communication practices or strike this unclear language from the preamble because it could open responsible person(s) up to individual liability. For example, even if the goals of the program are communicated in some fashion, should a person claim they "didn't know" the goals of program, then the responsible person(s) could be held individually liable if the communication methods are not seen as sufficient.

Clarify and Narrow the Definition of when the Program Must be Updated
Proposed §§ 56.23003(b), 57.23003(b) and 77.2103(b) "would require the responsible person to evaluate and update the written safety program at least annually or as mining conditions or practices change, accidents or injuries occur, or as surface mobile equipment changes, or modifications are made.[11]" Evaluations would also have to be made, "during seasonal weather condition changes or whenever work processes or practices change," and MSHA indicates that the time spent annually to make such updates and evaluations would be 20 hours[12]. We have numerous concerns with this language and the evaluation of how much time operators would spend annually updating their programs.

"Mining conditions" can change daily at quarries. Similarly, "modifications" can be made daily and "surface mobile equipment changes" occur when rental equipment arrives on site, a new fleet truck is purchased, a contractor arrives with an upgraded model of a previous piece of equipment, etc. Updating a facility's mobile equipment safety program would be a full-time job if it had to be updated each time one of these circumstances arose. Due to the frequency of these changes and MSHA's evaluation that only 20 hours would be spent annually to update the program, we do not believe these items were intended to be included in this rule – therefore the language should be modified.

We recommend the following: Proposed §§ 56.23003(b), 57.23003(b) and 77.2103(b) "would require the responsible person to evaluate and update the written safety program at least annually or as mining practices change, or accidents occur." We believe that any significant changes in

[9] 86 Fed. Reg. at 50499
[10] 86 Fed. Reg at 50500
[11] 86 Fed. Reg at 50501
[12] 86 Fed. Reg at 50506, Table 8 – Safety Program Development Costs

equipment are covered under the provision of "mining practices" changing. This language will capture large-scale changes the agency intended to cover without including small, non-significant changes within a quarry.

Last, note that we also recommend the removal of "injuries" from this language because most Powered Haulage injuries are not in fact the result of something that can meaningfully be addressed in a safety program. For example, an operator who slams their finger in the door of their pickup truck or pulls a muscle climbing on or off a loader has sustained a Powered Haulage injury, but they are not injuries that warrant reevaluation of the program. "Accidents," however, should be maintained and is a reasonable time to reevaluate the program.

Thank you for the opportunity to comment and your consideration of these comments. We appreciate MSHA's commitment to miner safety and health and look forward to working with the agency. Please do not hesitate to reach out with any questions or clarifications at (703) 678-9483 or at lpritchard@nssga.org.

Respectfully,

Elizabeth "Libby" Pritchard
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National Stone, Sand & Gravel Association