

Portland Cement Association
1150 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4104
202.408.9494 Fax 202.408.0877
www.cement.org

December 31, 2018

Ms. Sheila A. McConnell, Director
Office of Standards, Regulations, and Variances
Mine Safety and Health Administration
U.S. Department of Labor
Suite 4E401
201 12th Street South
Arlington, VA 22202-5452

Subject: Preliminary Recommendations by the Portland Cement Association to MSHA on Regulatory Reform Opportunities under E.O. 13777

Filed via E-Mail: zzMSHA-OSRVRegulatoryReform@dol.gov

Dear Ms. McConnell:

The Portland Cement Association (PCA) appreciates the opportunity to provide recommendations for MSHA regulations and guidance deserving repeal, replacement, or modification pursuant to President Trump's Executive Order (E.O.) 13777, issued on February 24, 2017.

PCA, founded in 1916, is the premier policy, research, education, and market intelligence organization serving America's cement manufactures. The PCA's members represent 93 percent of the United States' cement production capacity and have facilities in all 50 states. Cement and concrete product manufacturing, directly and indirectly, employs approximately 600,000 people in our country, and our collective industries contribute over \$100 billion on our economy. Portland cement is the fundamental ingredient in concrete. The Association promotes safety, sustainability, and innovation in all aspects of construction fostering continued improvement in cement manufacturing and distribution and promotes economic growth and sound infrastructure investment.

In these initial comments, PCA is recommending 33 targeted fixes to current MSHA regulations to address ambiguous, duplicative, or otherwise burdensome requirements that provide little to no health or safety benefits. In addition, PCA supports the recommendations provided by the following commenters:

- Buzzi Unicem USA, submitted December 6, 2018 (COM 077-1);
- National Sand Stone and Gravel Association (COM 060-1); and
- National Lime Association (COM 035-1).

We thank you again for the opportunity to comment and look forward to further conversation on these and other regulatory reform opportunities that can increase MSHA's effectiveness in carrying out its health and safety mission. Please do not hesitate to contact me at 202-719-1977 or cfranklin@cement.org if you would like to discuss these comments further.

Sincerely,

Charles L. Franklin
Vice President & Counsel
Government Affairs

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| # | Current Regulatory Language | Recommended Regulatory Reform Issue |
|----|---|---|
| 1. | <p>30 C.F.R. Part 41 - Notification of a Legal Identity</p> <p>§41.12 Changes; notification by operator. Within 30 days after the occurrence of any change in the information required by §41.11, the operator of a coal or other mine shall, in writing, notify the appropriate district manager of the Mine Safety and Health Administration in the district in which the mine is located of such change.</p> | <p>Occasionally there is a typographical error in filling out the form (e.g. phone numbers transposed). These minor errors should not require a citation or written notice to correct once discovered and resolved.</p> |
| 2. | <p>30 CFR PART 46—TRAINING AND RETRAINING OF MINERS ENGAGED IN SHELL DREDGING OR EMPLOYED AT SAND, GRAVEL, SURFACE STONE, SURFACE CLAY, COLLOIDAL PHOSPHATE, OR SURFACE LIMESTONE MINES.</p> | <p>Make an allowance for fewer training hours (e.g. 8 hours) for people / contractors who are not miners and who do not benefit from 24 hours of new miner training to do work at a metal/nonmetal mine.</p> |
| 3. | <p>46.2(g)(2). "The definition of "miner" does not include scientific workers..."</p> | <p>Provide a definition of what or who qualifies as a "scientific worker."</p> |
| 4. | <p>46.9 Records of Training "(a) You must record and certify on MSHA Form 5000-23, or on a form that contains the information listed in paragraph (b) of this section, that each miner has received training required under this part. (b) The form must include:...[detailed list of content requirements]"</p> | <p>Harmonize the requirements between Part 46 record requirements and those established for underground workers in Part 48 for what must be recorded on a training record – everyone should be able to use the same form without having to make modifications</p> |

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| 5. | <p>46.9 Records of Training "(b) The form must include:...(3) The name of the mine or independent contractor, MSHA mine identification number or independent contractor identification number, and location of training (if an institution, the name and address of the institution)."</p> | <p>Mine operators are reporting they are being cited by MSHA for inaccurate or incomplete contractor training records, and/or failing to audit contractor training records.</p> <p>The current regulation contains no requirement the operator conduct such audits and mine operators should not be cited for checking (or not checking) the accuracy and thoroughness of contractor training records. MSHA should revise the regulation or issue definitive guidance clarifying that no such audit requirement exists and mine operators are not required to audit or review contractor training programs, and enforcement asserting such a duty is inappropriate.</p> |
| 6. | <p>30 CFR Part 47 - Hazard Communication.</p> <p>Subpart E - Container Labels and Other Forms of Warning</p> <p>Subpart F - Material data sheets.</p> | <p>Modernize and standardize this standard with OSHA hazard communication and GHS requirements. Subparts E and F are out-of-date due to relatively new GHS requirements found in the OSHA standard.</p> |
| 7. | <p>30 CFR PART 48 - Training and Retraining of Miners</p> | <p>Don't require contractors, who work under a Part 48 training plan, to notify the District office when they do work in a new district. This is a bureaucratic requirement that does not improve safety.</p> |

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| 8. | <p>30 CFR 56.2 Definitions – Flammable</p> <p>"Flammable means capable of being easily ignited and of burning rapidly."</p> | <p>This definition is vague and lacks technical guidance. Adopt the standard definition of "flammable" as used by NFPA (i.e. a flammable liquid has a flash point \leq 100 °F, whereas a "combustible" liquid has a flash point $>$ 100 °F). This clarification assists inspectors and operators in more fully understanding the degree of hazard posed by common liquids in use on mine property.</p> |

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| 9. | <p>30 CFR 50.10 - Immediate Notification</p> <p>"The operator shall immediately contact MSHA at once without delay and within 15 minutes at the toll-free number, 1-800-746-1553, once the operator knows or should know that an accident has occurred involving:(a) A death of an individual at the mine;(b) An injury of an individual at the mine which has a reasonable potential to cause death;(c) An entrapment of an individual at the mine which has a reasonable potential to cause death; or(d) Any other accident."</p> | <p>a. 15 minutes is too short a time to allow for solid decision making during an incident that may require a notification to MSHA, particularly where an injury occurs. If an injury occurs, the safety and health of the miner is the most important task at hand, and an immediate reporting obligation diverts resources that should be applied. It may be necessary to those critical response efforts. The reporting time should be extended to at least 30 minutes, and preferably to an hour or an 8-hour shift. This is a case where the risk and safety factors at metal/nonmetal mines are distinctly different from those of underground coal mines. Unlike in underground coal mines, MSHA does not mount an emergency response team to surface metal / nonmetal mines that needs to mobilize quickly to assist with rescue or recovery operations – making rapid notification a moot (and potentially counterproductive) point at metal/nonmetal mines. Consistent with this point, OSHA’s requirements for notifications are much more reasonable in terms of reporting response time frames.</p> <p>b. Immediate notification should not be required when someone is stuck in an elevator, unless there is a known medical emergency. The way that MSHA currently applies this notification requirement does not seem consistent with the original intent of the criteria – that is, actual entrapment in a mine due to a collapse, etc.</p> |

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| 10. | <p>§50.30 Preparation and submission of MSHA Form 7000-2— Quarterly Employment and Coal Production Report.</p> | <p>MSHA needs to standardize and provide clearer instructions for how to record hours worked, especially for river dredging operations where the dredge may be associated with a fixed plant location, but the dredge moves its location on the river to better source and mine raw materials. MSHA inspectors routinely seem to change their interpretation of how to report hours and then threaten citations if there isn't immediate compliance with the ever-changing interpretations.</p> |

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| 11. | <p>§56.5006 Restricted use of chemicals.The following chemical substances shall not be used or stored except by competent persons under laboratory conditions approved by a nationally recognized agency acceptable to the Secretary.</p> <ul style="list-style-type: none"> (a) Carbon tetrachloride. (b) Phenol, (c) 4-Nitrobiphenyl, (d) Alpha-naphthylamine, (e) 4,4-Methylene Bis (2-chloroaniline), (f) Methyl-chloromethyl ether, (g) 3,3 Dichlorobenzidine, (h) Bis (chloromethyl) ether, (i) Beta-naphthylamine, (j) Benzidine, (k) 4-Aminodiphenyl, (l) Ethyleneimine, (m) Beta-propiolactone, (n) 2-Acetylamino fluorene, (o) 4-Dimethylaminobenzene, and (p) N-Nitrosodimethylamine. | <p>This is an outdated standard that does not reflect the capability of certain operations to handle and dispose of these substances in a safe, well-regulated manner. The standard should be updated to more modern criteria for who should be able to use / handle such materials.</p> |
| 12. | <p>56.11001 – Safe Access</p> <p>“Safe means of access shall be provided and maintained to all working places.”</p> | <p>This standard is vague enough to be used as a catch-all citation and is sometimes used as a substitute for the housekeeping regulation (56.20003). There should either be a housekeeping regulation or a safe access regulation but not both.</p> |

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| 13. | <p>56.11002 – Handrails and toeboards.</p> <p>“Crossovers, elevated walkways, elevated ramps, and stairways shall be of substantial construction provided with handrails, and maintained in good condition. Where necessary, toeboards shall be provided.”</p> | <p>Clarify what is meant by “handrails” (<i>e.g.</i> top rail; midrail; handrail on at least one side of a stairway; etc.) and what is meant by “Where necessary, toeboards shall be provided” – the “Where necessary” portion of this statement is too vague.</p> <p>Recommend utilizing similar clarity as seen in OSHA definitions under 1910.23 Guarding Floor and Wall Openings and Holes.</p> |
| 14. | <p>56.11016 – Snow and ice on walkways and travelways.</p> <p>“Regularly used walkways and travelways shall be sanded, salted, or cleared of snow and ice as soon as practicable.”</p> | <p>The “as soon as practicable” portion of this regulation is too vague and leads to inconsistent and unfair enforcement. Some inspectors interpret this to mean that in the middle of a snow storm, all walkways and travelways must be cleared – a near impossibility. Also, some inspectors claim such surfaces must be immediately treated upon arrival at a mine site after an overnight snow / ice event has covered everything; they make no allowance for time needed to assess the situation, organize an effort to control the problem, and apply the treatment without getting hurt in the process.</p> |

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| 15. | <p>56.12016 – Work on electrically-powered equipment.</p> <p>“Electrically powered equipment shall be deenergized before mechanical work is done on such equipment. Power switches shall be locked out or other measures taken which shall prevent the equipment from being energized without the knowledge of the individuals working on it. Suitable warning notices shall be posted at the power switch and signed by the individuals who are to do the work. Such locks or preventive devices shall be removed only by the persons who installed them or by authorized personnel.”</p> | <p>This standard is out-of-date and does not reflect the realities of a large manufacturing mine site where group lockout procedures are commonly used; it is not practical, or even safe in some cases, to have every person go around to lockout points to place signed tags. This standard needs to make allowance for modern group lockout procedures. Also, some work may need to be done where there is at least some control voltage present so that adjustments can be properly made (robotic equipment provide examples of this situation).</p> |
| 16. | <p>56.12028 – Testing grounding systems.</p> <p>“Continuity and resistance of grounding systems shall be tested immediately after installation, repair, and modification; and annually thereafter. A record of the resistance measured during the most recent tests shall be made available on a request by the Secretary or his duly authorized representative.”</p> | <p>This regulation was never intended to apply to extension cords or cords on handheld tools. MSHA has overextended its consideration and definition of “circuit”. Moreover, this standard is confusing at best and is enforced in different ways by inspectors of varying electrical backgrounds.</p> <p>MSHA should remove or clarify this standard to say exactly what needs to be done for such cords and the methodology that is acceptable for accomplishing the task.</p> |
| 17. | <p>56.12034 – Guarding around lights.</p> <p>“Portable extension lights, and other lights that by their location present a shock or burn hazard, shall be guarded.”</p> | <p>This standard needs to be clarified – say exactly under what conditions lights must be guarded. Inspectors routinely write this as a citation and make statements about events that are generally unlikely to occur, or which are exaggerated.</p> |

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| 18. | <p>56.13021 – High pressure hose connections</p> <p>“Except where automatic shutoff valves are used, safety chains or other suitable locking devices shall be used at connections to machines of high-pressure hose lines of 3/4 -inch inside diameter or larger, and between high-pressure hose lines of 3/4 -inch inside diameter or larger, where a connection failure would create a hazard.”</p> | <p>a. Modernize the language in this standard to make it clearer that quick-connect hose fittings are permissible.</p> <p>b. Under the Coal standards, high-pressure is established as greater than 100 psi. MSHA should clarify this same standard applies to Metal/Nonmetal.</p> |
| 19. | <p>56.14100 (b) – Defects affecting safety.</p> <p>“Defects on any equipment, machinery, and tools that affect safety shall be corrected in a timely manner to prevent the creation of a hazard to persons.”</p> | <p>This standard is routinely mis-applied to all types of shop or field-built tools. Inspectors make assumptions that a homemade tool is unsafe without any evidence to support the contention. In fact, such tools are often made to make the job safer to do.</p> |
| 20. | <p>56.14132 – Horns and backup alarms.</p> <p>(a) Manually-operated horns or other audible warning devices provided on self-propelled mobile equipment as a safety feature shall be maintained in functional condition.</p> <p>(b)(1) When the operator has an obstructed view to the rear, self-propelled mobile equipment shall have—</p> <ul style="list-style-type: none"> (i) An automatic reverse-activated signal alarm; (ii) A wheel-mounted bell alarm which sounds at least once for each three feet of reverse movement; (iii) A discriminating backup alarm that covers the area of obstructed view; or (iv) An observer to signal when it is safe to back up. <p>(2) Alarms shall be audible above the surrounding noise level.</p> <p>(3) An automatic reverse-activated strobe light may be used at night in lieu of an audible reverse alarm.</p> <p>(c) This standard does not apply to rail equipment.</p> | <p>This standard needs to make allowance for new technologies used to sense people or obstacles and to stop operation of equipment before contact can be made, or at least warn the operator that a hazard exists.</p> |

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| 21. | <p>56.14207 – Parking procedures for unattended equipment.</p> <p>“Mobile equipment shall not be left unattended unless the controls are placed in the park position and the parking brake, if provided, is set. When parked on a grade, the wheels or tracks of mobile equipment shall be either chocked or turned into a bank.”</p> | <p>Employees make fun of this standard and chock hand-carts, golf carts, and other equipment that should not need a wheel chock.</p> <p>Employees laugh at chocking tracked equipment and direct-drive equipment like Genie or JLG lifts.</p> <p>This standard needs to be refined to be more practical and sensible. One recommendation is to use a 5 or 10% grade as a minimum requirement for wheel chocks.</p> |
| 22. | <p>56.15005 – Safety belts and lines.</p> <p>“Safety belts and lines shall be worn when persons work where there is danger of falling; a second person shall tend the lifeline when bins, tanks, or other dangerous areas are entered.”</p> | <p>Upgrade this standard to modern requirements. Establish a minimum height at which fall protection is required – like OSHA does and like MSHA attempted to do with a PPL.</p> |

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| 23. | <p>56.16002 – Bins, silos, hoppers, tanks, and surge piles.</p> <p>(a) Bins, hoppers, silos, tanks, and surge piles, where loose unconsolidated materials are stored, handled or transferred shall be—</p> <p>(1) Equipped with mechanical devices or other effective means of handling materials so that during normal operations persons are not required to enter or work where they are exposed to entrapment by the caving or sliding of materials; and</p> <p>(2) Equipped with supply and discharge operating controls. The controls shall be located so that spills or overruns will not endanger persons.</p> <p>(b) Where persons are required to move around or over any facility listed in this standard, suitable walkways or passageways shall be provided.</p> <p>(c) Where persons are required to enter any facility listed in this standard for maintenance or inspection purposes, ladders, platforms, or staging shall be provided. No person shall enter the facility until the supply and discharge of materials have ceased and the supply and discharge equipment is locked out. Persons entering the facility shall wear a safety belt or harness equipped with a lifeline suitably fastened. A second person, similarly equipped, shall be stationed near where the lifeline is fastened and shall constantly adjust it or keep it tight as needed, with minimum slack.</p> | <p>This standard as written is a poor substitute for a confined space regulation. Modernize this standard and make appropriate allowances for entry once hazards are controlled or eliminated.</p> |

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| 24. | <p>56.16009 – Suspended loads.</p> <p>“Persons shall stay clear of suspended loads.”</p> | <p>This standard says nothing about using taglines but that is the way it is applied and interpreted. Clarify this standard so that everyone will know exactly what is required / allowed.</p> |
| 25. | <p>56.17001 - Illumination –</p> <p>“Illumination sufficient to provide safe working conditions shall be provided in and on all surface structures, paths, walkways, stairways, switch panels, loading and dumping sites, and work areas.”</p> | <p>This standard should include required lighting levels in foot-candles, lux, etc. for designated areas, just as OSHA requires (see 29 CFR 1926.56, Table H-120.1 -- Minimum Illumination Intensities in Foot-Candles). Hand-held, accurate light meters are readily available, and their required use would eliminate the subjectivity of this regulation.</p> |

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| <p>26.</p> | <p>56.18002 – Examination of Working Places.</p> <p>§56.18002 Examination of working places.</p> <p>(a) A competent person designated by the operator shall examine each working place at least once each shift before work begins or as miners begin work in that place, for conditions that may adversely affect safety or health.</p> <p>(1) The operator shall promptly notify miners in any affected areas of any conditions found that may adversely affect safety or health and promptly initiate appropriate action to correct such conditions.</p> <p>(2) Conditions noted by the person conducting the examination that may present an imminent danger shall be brought to the immediate attention of the operator who shall withdraw all persons from the area affected (except persons referred to in section 104(c) of the Federal Mine Safety and Health Act of 1977) until the danger is abated.</p> <p>(b) A record of each examination shall be made before the end of the shift for which the examination was conducted. The record shall contain the name of the person conducting the examination; date of the examination; location of all areas examined; and description of each condition found that may adversely affect the safety or health of miners and is not corrected promptly.</p> <p>(c) When a condition that may adversely affect safety or health is not corrected promptly, the examination record shall include, or be supplemented to include, the date of the corrective action.</p> <p>(d) The operator shall maintain the examination records for at least one year, make the records available for inspection by authorized representatives of the Secretary and the representatives of miners, and provide these representatives a copy on request.</p> | <p>Keep the standard as amended in April 2018.</p> |
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| 27. | <p>§56.20003 – Housekeeping.</p> <p>“At all mining operations—</p> <p>(a) Workplaces, passageways, storerooms, and service rooms shall be kept clean and orderly;</p> <p>(b) The floor of every workplace shall be maintained in a clean and, so far as possible, dry condition. Where wet processes are used, drainage shall be maintained, and false floors, platforms, mats, or other dry standing places shall be provided where practicable; and</p> <p>(c) Every floor, working place, and passageway shall be kept free from protruding nails, splinters, holes, or loose boards, as practicable.”</p> <p>§56.11001 Safe access.</p> <p>“Safe means of access shall be provided and maintained to all working places.”</p> | <p>Keep the Housekeeping standard at 56.20003 or the Safe Access standard at 56.11001, but not both.</p> <p>Inspector consistency with enforcing this standard is problematic as well. This standard is appropriate when applied inside buildings. However, this standard is also applied to outside walkways around rock crushing equipment. Each inspector has a different interpretation of how much dirt/buildup is acceptable. Some inspectors take into consideration the rocked area that was walked on to reach a walkway. Some inspectors will write a citation if they see any type of footprint in any dust. Some inspectors will write a citation if they see even one or two stones bigger than 1” in diameter on a walkway.</p> |
| 28. | <p>56.20005 – Carbon Tetrachloride –</p> <p>“Carbon tetrachloride shall not be used.”</p> | <p>56.20005 – Carbon Tetrachloride – this standard is outdated and fails to acknowledge the capabilities of certain facilities to safely and legally handle and dispose of materials that may contain carbon tetrachloride.</p> |

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| 29. | Part 62 | <p>a. PPE such as earplugs and respirators need to be considered prior to establishing that a person is overexposed. Not giving an operator credit for having employees use respirators, earplugs or other PPE and citing them for an overexposure is not accurate, particularly when employees are using the provided PPE with a PPE rating that brings them to within exposure limits.</p> <p>b. The MSHA noise standard should be consistent with the OSHA standard. Noise is noise no matter whether it is generated in a mine, at a construction site, or in a manufacturing facility. There is no reason to have multiple standards to address this common issue.</p> |
| 30. | Part 100.3 – Determination of Penalty Assessments | MSHA should revisit its policies and procedures for assessing Repeat Penalty per Inspection Day points (RPID). The use of RPID as a penalty multiplier can be, and is, easily manipulated by MSHA inspectors to increase penalties beyond reasonable amounts. If RPID is retained, there should be a strict review to determine the reasonableness of the penalty without the need for mine operators to incur the cost of going to court. |
| | Part 100.3 – Determination of Penalty Assessments | MSHA should not include any citation in an operator’s citation history that it takes the Agency more than six months to assess. |
| 31. | Part 100.6 – Review of citations and request for conference – | MSHA District Managers should not have the ability to deny requests for informal conferences. |
| 32. | Part 104.2 – Pattern criteria – | MSHA should be required to be completely transparent about the POV criteria and honor the right of operators to have due process whenever the potential exists for being placed on the POV list. |
| 33. | CFR 100.6 - Change the Right to Conference days from 10 days to 30 days from date of citation. | Multi-day/week inspections do not allow enough time to adequately respond to Right to Conference before the 10 days are up from time citation was written. |