



DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: You may submit comments identified by Docket No. MSHA-2023-0037 by any of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments for MSHA-2023-0037.
2. *Fax:* 202-693-9441.
3. *Email:* petitioncomments@dol.gov
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202-5452,

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401.

Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202-693-9455 to make an appointment, in keeping with the Department of Labor's COVID-19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202-693-9440 (voice), Petitionsformodification@dol.gov (email), or 202-693-9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M-2023-018-C

Petitioner: The Coteau Properties Company, 204 County Road 15, Beulah, North Dakota 58523.

Mine: Freedom Mine, MSHA ID No. 32-00595, located in Mercer County, North Dakota.

Regulation Affected: 30 CFR 77.1607(u) (Loading and haulage equipment; operation).

Modification Request: The petitioner requests a modification of 30 CFR 77.1607(u) to permit the use of an engine driven hydraulic power pack, Kubota Model D1105, to tow disabled haulage trucks in lieu of a solid tow bar and safety chain.

The petitioner states that:

(a) The petitioner has a previously granted petition for modification, docket number M-2018-013-C, to use a Lambordini Model 9LD 625-2 engine driven hydraulic power pack to tow disabled haulage trucks.

(b)The petitioner is now requesting to use a Kubota Model D1105, serial number 1GZ1802, engine driven hydraulic power pack due to mechanical issues with the Lambordini Model 9 LD 625-2 engine driven hydraulic power pack. The Kubota Model D1105, serial number 1GZ1802, engine driven hydraulic power pack will be used under the same terms and conditions listed in the previously granted petition.

The petitioner proposes the following alternative method:

(a) The proposed towing system shall only apply to vehicles with a “fail safe” braking system and emergency steering capabilities.

(b) The tow ropes used to tow a disabled vehicle shall be a minimum of 3 5/8” Dyneema material, at least 50 feet in length, with an average breaking strength of 1,459,000 lbs., and maintained in good condition. Tow ropes shall be attached to both vehicles with tow balls or equivalent attachments. Connecting the towing ropes between vehicles shall be done when the vehicles are at a protected location and the engines are not running and both vehicles shall be blocked with wheel chocks prior to attaching or disconnecting nylon towing slings when the potential for rolling exists. Tow ropes shall be maintained and replaced as per manufacturer’s recommendations.

(c) Radio communications between the towed and the towing vehicles shall be maintained at all times when the vehicles are moving. The towed vehicle driver shall be able to see at least 10 feet in front of the vehicle. Towing speed shall not exceed 5 mph.

(d) The engine driven hydraulic power pack shall be adequately designed to supply the correct hydraulic pressure as recommended by the towed vehicle manufacturer.

(e) The power pack shall be securely mounted to the towed vehicle as to not impede the operation of the vehicle or pose safety hazards such as a broken hydraulic line or

exhaust fumes that may enter the operator's compartment. The power pack shall not impede the ability to exit the vehicle quickly.

(f) The power pack shall operate at all times when the vehicle is being towed to maintain normal braking and steering functions. The power pack shall be examined prior to each use by a qualified mechanic trained to perform the examination.

(g) Prior to towing operation, testing of the brakes and steering shall be performed at a protected location. The test shall include fully pressurizing the air system to ensure the brakes function properly and depleting the air system to ensure the "fail safe" brakes re-apply at the proper pressures.

(h) All qualified mechanics shall be trained to perform the installation of the power pack to tow a vehicle.

(i) Loaded haul trucks shall not be towed. Loads shall be dumped or otherwise removed prior to towing.

(j) Prior to towing operations, the route of travel shall be cleared of traffic and all persons in the affected area notified.

(k) No more than 60 days after this Proposed Decision and Order (PDO) becomes final, the petitioner shall submit revisions to its approved 30 CFR part 48 training plan that address the requirements in the PDO to the MSHA District Manager.

In support of the proposed alternative method, the petitioner submitted task training instructions on the operation of the Kubota Model D1105, serial number 1GZ1802, engine driven hydraulic power pack.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director,

Office of Standards, Regulations, and Variances.

