

# PUBLIC SUBMISSION

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Examinations of Working Places in Metal and Nonmetal Mines. 30 CFR Parts 56 and 57

**Comment On:** MSHA-2014-0030-0001  
Examinations of Working Places in Metal and Nonmetal Mines

**Document:** MSHA-2014-0030-0030  
Comment from Brian Bigley, CalcIMA

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## Submitter Information

**Name:** Brian Bigley  
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## General Comment

Testimony re MSHA's Proposed changes to Workplace Inspections (Docket No. MSHA-2014-0030)

please see the attached file for CalcIMA's comments on the proposed rule.

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## Attachments

calcima public comments

AB87-COMM-21

**Testimony re MSHA's Proposed changes to Workplace Inspections (Docket No. MSHA-2014-0030)**

**Introduction**

Thank you for the opportunity to speak today. My name is Brian Biglely. I am safety manager of Lehigh SW Cement's Tehachapi Plant in California.

Today, I am also here to speak on behalf of the California Construction and Industrial Materials Association (CalCIMA). It is the trade association for aggregate and industrial mineral companies in California. The members of CalCIMA include over 250 mining operations in California, producing everything from local aggregates and minerals for construction and agriculture, to unique commodities key to the nation's manufacturing, high tech, and green technology industries.

**Opening**

I think it is important to keep in perspective how important safety is to the industry, and, how much mine safety has improved over the years.

We take mine safety seriously. I believe I can speak for everyone in this room, and all mine operators, that one fatality is too many.

In addition, we believe the work place exam is an important safety tool. The goal of every operation should be to ensure that miners enter a safe work place.

We also believe that any new regulation or standard should be carefully considered for how it will further the goal of mine safety. With this in mind, we have some comments and concerns about specific aspects of this new rule. We have a general concern that this rule is creating a new paperwork requirement without really advancing safer workplaces.

We think it important that a proposed rule—especially one that appears to have a far reaching administrative impact—have a well-defined nexus to a problem or concern.

While the stated intent is to reduce fatalities, no objective evidence is offered to support this conclusion. While this is admittedly difficult to quantify, if this is the entire reason for this regulatory change, some evidence should be provided to prove that it is necessary and will achieve the actual benefits claimed, as a counterbalance to the cost needed to comply, both in terms of dollars and time.

### **Definitions of key parameters:**

A key concern is that this regulation, as proposed, is ambiguous in several aspects and will expand beyond its intent. This has often been the case with MSHA regulations. Imprecise wording has caused inspectors to gradually expand jurisdiction, until a standard is applied to miscellaneous things for which it was never intended.

One example of our concern is how the rule proposes to define “adversely affect”? With this new program, all hazards that “adversely affect” a miner’s safety need to be communicated. Does an extension cord on the ground, a tripping hazard, “adversely affect” the health and safety of miners that could come across it? Is a pile of material that could be walked around an adverse effect? If an examiner comes across something that adversely affects safety, this regulation requires certain actions. In the interest of training our examiners, it would be nice if MSHA could better define this term, so that laymen could utilize it. Otherwise, we are at the mercy of every inspector and the ever changing definitions of “adversely affects” that they bring with them each inspection.

### **Comments on Practicality of Specific Provisions**

There are several requirements of the proposed rule that appear difficult to implement, or seem to lack clarity in how they will be implemented.

For one, the rule will require operators to communicate to miners the potential hazards found in an exam. What methods of hazard communication does MSHA suggest for typical items found on a workplace examination? How does an examiner communicate

to all miners what has been found? One difficulty with the wording as stated is that they notify miners “in the area” What does this mean? Miners that might be entering the area later? How is that best communicated? Through tags/signs/postings? What about twitter, or tweeting?

Is an announcement over a radio sufficient for communicating hazards? How would this be done in a mine with a 50 workers going about their exams? Must the operator communicate all hazards found, or only those they can't abate? For instance, if you find material in a walkway, and clean it up yourself, must you note it, communicate it, or since you abated it immediately, you don't need to? Since MSHA would prefer the inspection be done prior to work, who gets communicated to? Incoming shift workers, not yet in the area? Not yet at work? Again, it would be helpful if MSHA can be clear on what is required.

There is another proposal in the rule to require recordkeeping. How would MSHA best proposed mine operators do Recordkeeping of hazards abated. For example, the examiner finds a pile of material encroaching a walkway. Typically, they would notify an area crew to clean the pile/remove it. Perhaps the crew can achieve that later in the afternoon, or early the next day. Who then records the completion/abatement of the hazard on the workplace exam form? A light out in a rarely used building. It is one of four lights, so the priority to replace is low. Two weeks go by, and the light is replaced. Who updates the workplace exam with the abatement time/notations? A guard is found to be loose, but still in place. The motor is scheduled to be replaced on the next down day, one month from now. Who updates the workplace exam(s) that note the loose guard when it is replaced? Again, clarity would be helpful.

### **Conflict/Duplication of efforts**

MSHA states that a description of the corrective action and the date the corrective action was taken is required as part of the workplace exam record. Many operators already have systems in place to track work orders, repairs, etc., including completion. When such systems are in place, requiring this same detail on the workplace exam itself is duplicative and provides no benefit; moreover it would increase administration time

without making the workplace safer. In fact, duplicative efforts would take time that could be spent in making the workplace safer, and eliminating hazards. We hope MSHA can consider how this new requirement does not duplicate what is already being done.

### **Regulatory Experience: The GOTCHA laws**

A real concern for mine operators is that this new rule may have the unintended consequence of being just another way to cite mine operators. For this rule to have validity with the workforce, it will need to be seen as protecting workers, not just a punitive tool.

MSHA wants operators to find conditions that may affect safety and health of workers, sign and date the record, document findings and corrective actions, notify employees of these conditions and make records available to MSHA and miners. If MSHA wants all this documentation provided openly, for the purposes of creating a safer workplace and preventing injuries, then MSHA needs to provide protections to operators such that doing so does not result in “preparing the case against them” for purposes of issuing citations. Good faith efforts should be encouraged, not punished, yet current law does not allow for this protection.

These concerns are not far-fetched, as these recent examples attest:

- Being cited for a sign that stated “No Smoking, Matches or Open Lights in this area”, because the standard requires the sign to say ‘No smoking or open FLAMES”.
- Being cited for using the incorrect font on a site specific training checklist
- Being cited for not including the middle name of an employee on a task training certificate

### **Suggestion**

While we have concerns with the proposal as drafted, we offer this suggestion to improve it.

The standard requires workplace inspections be done. Rather than create an ambiguous big stick, use the carrot approach instead:

Require that every operator create and implement a workplace inspection program, similar to an operator having to create a training plan. You can have them meet certain criteria (when well defined by MSHA), and when a plan is created, it can be submitted for approval, or, like a part 46 plan, simply documented/shown to MSHA. Then, MSHA can simply ask the operator to demonstrate compliance to their own plan. Is the operator doing what they said they would do? Good, no citations. Are they not? Then issue a "failure to abide by the written/submitted/approved Workplace Inspection plan" citation.

This will give operators an incentive to be creative, to devise plans that work for THEIR situations, and follow them. And if they don't, there is no one to blame except themselves, for failing to do what they said they could do.

### **Conclusion**

Thank you again for the opportunity to comment. We appreciate consideration of our comments.