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**To:** zzMSHA-Standards - Comments to Fed Reg Group  
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I am all in favor of MSHA pushing off the implementation of their new WPE Rule until such time as District Offices, Field Offices, and inspectors can consistently answer the very necessary questions that will absolutely arise from its' implementation.

I believe that EVERY employee should examine their working place for hazards, prior to beginning work there. Just as we expect every operator to examine their mobile equipment for safe conditions, so should every operator of a welding unit, saw, blasting line, crusher, hammer, wheel barrow, or shovel. Safety should never be delegated to "someone else", and I feel that MSHA's implied insistence that some designated inspector should look at and note what hazards I might be exposed to is a horrible idea. I am responsible for my safety. Asking me to trust someone else to inspect an area or piece of equipment, and tell me "Don't worry, it's safe, I promise" is stupid. I don't work under someone else's lockout lock. Why would I work under someone else's inspection?

I feel it is wrong of MSHA to ban the use of electronic recordkeeping. Technically, they allow it, but only in a computer system that is not susceptible to alteration. There's no electronic system available that can't be edited, altered, have incorrect information input, changed, corrected, etc.. Thus, MSHA allows the use of a system, and then totally prescribes against it, making an impossible standard for the system to attain.

I feel they are being disingenuous by failing to clearly define what "adverse conditions" are. Trotting out the old "We'll know them when we see them" excuse (worded as "industry knows what they are") is laughable. No two inspectors could define or agree on a list of items that would be "adverse conditions". This broad, undefined language will simply allow MSHA to write a citation today, tomorrow, next week, next year, and in five years, each time an inspector feels the need to up his citation count (and I come from the west region, where a former district manager stated in a public meeting "if my inspectors aren't writing a citation every hour, they aren't doing their jobs!"). Today, that air hose in the walkway isn't an adverse condition. Next year, it suddenly will be. If the term is so easily trained and understood, MSHA should be able to provide concrete examples for industry to understand, especially since finding an adverse condition requires further action.

MSHA estimates that it will take my cement plant an hour to do these inspections. One person, one hour, to inspect all working places in my entire plant. I would challenge anyone at MSHA to come to my plant, and do a workplace exam of all working places, in an hour. Conversely, if this can be done, will our MSHA inspections suddenly become shorter? If I can do an adequate workplace exam of all working places in a cement plant in an hour, why does it take an inspector some 80 to 100 hours to do an inspection?

I have concerns about the recordkeeping: if I have multiple inspectors that note a condition (say, icy sidewalks) on an exam, that means that I will have multiple exam copies to find and record the corrective action date upon. And each one of those must be done, or I can be cited. If all 100 of my employees are doing their exams, that could mean on a snowy day, 100 copies of records I must amend/find, and date. If I get 99 of them done, but miss one: I still get a citation. This is a punitive system for generating citations. I get no credit for being nearly perfect, I get punished for any minor failure. And while MSHA might say they would never do this, I personally received a citation for failing to use bold letters on a training checklist. So, if MSHA is willing to cite me for a font failure, they will be willing to cite me for any error in the recordkeeping I may do.

I have a workplace inspection program that requires every employee to examine their working areas prior to beginning work there. They do so across the entirety of the plant, where ever they may be called to work. Hazards they find they can fix on the spot, and report for a reward. Hazards they find that they can't fix on the spot are reported, and escalated, so fixes can be undertaken. My employees are noting things like extra heavy traffic, rain/slippery steps, and even things like mud or gravel in the roadways. They are taking this to their hearts, and reminding others to watch their backs while lifting, to slow down going through doorways, etc.. far beyond the standard ideas of "mine hazards". And yet, I will have to toss this program out, and do something else entirely, because it does not qualify/meet the new WER, and would be almost impossible for me to make comply.

I would like to challenge MSHA to literally come to my plant (or any other large surface operation) and demonstrate ANY idea they have of an acceptable Workplace Inspection Program. Video tape it, so that all of industry can see what they mean, what they do, and how they do it. MSHA should have, with their expertise, no trouble in simply demonstrating a basic, simple, common plan that industry could follow. They should put their expertise in the field, and demonstrate an acceptable, workable solution to the problem they just designed.

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