

# PUBLIC SUBMISSION

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

**Comment On:** MSHA-2014-0030-0179

Examinations of Working Places in Metal and Nonmetal Mines - Proposed rule, limited reopening of the rulemaking record; notice of public hearings; close of comment period.

**Document:** MSHA-2014-0030-0239

Comment from Josh Roberts, United Mine Workers of America

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## Submitter Information

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**Organization:** United Mine Workers of America

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## General Comment

See attached file(s)

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## Attachments

Comments on the Proposed Rule for Examinations of Working Places in MNM Mines

AB87-COMM-178 11/13/2017

**United Mine Workers of America**  
**Comments On**  
**The Reopening of the Rulemaking Record for Examinations of Working**  
**Places in Metal and Nonmetal Mines**  
**November 9, 2017**

The Mine Safety and Health Administration (MSHA) is seeking comments on the proposal to amend the Agency's final rule on examinations of working places in metal and nonmetal mines that was published in January 2017. The proposed changes would require that an examination of the working place be conducted before work begins or as miners begin work in that place, and that the examination record include descriptions of adverse conditions that are not corrected promptly and the dates of corrective action for these conditions. MSHA states that "the proposed rule would provide mine operators additional flexibility in managing their safety and health programs and reduce regulatory burdens without reducing the protections afforded miners." While the proposed changes would definitely benefit the operators in that it would provide them with more flexibility and less regulatory burden. It does not provide the same level of protections to the health and safety of the miners.

Our first concern is the fact that we are even revisiting a rule that has been through the rulemaking process and published as a final on January 23, 2017. The rule was scheduled to take effect May 23, 2017, and should be in effect today. Instead, the Agency chose to delay the rule's effective date until October 2, 2017, and now has chosen once again to delay the rule as well as reopen the rule to undo two important protections it provided and reinstate rulemaking on a rule that should already be in place. We find it both disturbing and frustrating that the Agency charged with protecting our nation's miners would suddenly exhibit such a change of heart from its original rule. MSHA's Fact Sheet previously issued on the Proposed Rule summarized the need for this rule eloquently:

*"The Mine Safety and Health Administration proposed rule would enhance the quality of working place examinations in Metal and Nonmetal Mines, improve protections for miners and save lives.*

*MSHA believes it has taken a **common sense** approach with this proposed rule – (1) Require mine operators to conduct working place examinations to identify hazards **before** work begins in an area, (2) record the hazards before the end of each shift, and also record the corrective action and the date they are corrected, and (3) make sure miners are aware of potential hazardous conditions.*

*Effective working place examinations are a fundamental accident prevention tool that under Section 2 of the Federal Mine Safety and Health Act will "provide more effective means*

*and measures for improving the working conditions and practices in the Nation's . . . mines in order to prevent death and serious physical harm . . . “*

*Recent fatal and other accidents at MNM mines make clear the need to do more to prevent mining deaths and injuries. These accidents support that miners would benefit from rigorous working place examinations, conducted by a competent person, **to better identify hazards so they can be addressed before miners get injured or killed.***

*From January 2010 through mid-December 2015, there have been 122 miners killed in 110 accidents at MNM mines, and more than 60 percent of those deaths were linked to violations of the “Rules to Live By” standards, which are standards that most frequently cause mining deaths. **Sixty miners** have died just since October 2013. **MSHA believes many of these fatalities could have been prevented with better working place examinations.***

*One of those deaths was Michael Jay Nickels, a haul truck driver, who was killed in March 2015 when his truck drove off an elevated haul road embankment and into the mine's dredge pond. The roadway had no berm or barrier to stop the truck. An examination of the work area should have identified this hazardous condition.*

*MSHA believes that the additional communication that operators would be required to make under this proposed rule should encourage prompt corrective action and help prevent fatalities and other accidents. While MSHA has been encouraging the mining industry to improve mine workplace examinations to prevent these deaths, MSHA has concluded that the time has come to require these improve examinations.”*

Why the change of heart? What has happened between then and now to warrant changing to this rule? How could sending the miners into their workplace before an examination has been conducted possibly be safer than identifying those hazards beforehand, correcting them, and informing the miners of such hazards before they begin their work? By MSHA's own statement, a total of sixty miner's deaths could have been prevented by better work place examinations

Examinations are the fundamental tool for assessing the overall safety condition of the mine. A proper pre-shift examination includes all areas where miners are scheduled to work or travel during the shift. The examiner focuses on discovering both existing and developing hazards, such as gas accumulations, bad roof, water accumulations, unstable highwalls, missing berms, and determining the effectiveness of the mine's ventilation system. These examinations are particularly effective in the discovery and correction of hazardous conditions and practices before they lead to injuries or fatalities. That is if they are conducted before miners are exposed. Conditions in the mining environment can change rapidly, therefore recurring examinations are necessary to ensure the safety of the miners. A timely workplace examination for hazardous conditions ensures the safety of the miner on a routine basis. The standard should not be changed to allow examinations after miners are already exposed.



The second part of this rule change involves recordkeeping of conditions that have been corrected. The original proposal required that all hazardous conditions found in workplace examinations to be recorded. This new proposal only requires a record of hazardous conditions that have not been corrected. All conditions found during a workplace examination should and must be recorded. If hazards are not recorded, how will it be evident that trends are developing? Issues with roof or rib control would be a good example of this. If the examiner repeatedly finds a roof control issue, but installs extra support and then does not record it, there is no evidence that a roof condition may be developing that would warrant changes to the roof control plan. Likewise with ventilation issues or any hazardous condition that may become a larger issue that may need further action to address. If there is no record, how will it be identified? This also shows the operator and/or the examiner are diligent in identifying and correcting hazards.

As MSHA pointed out in its Fact Sheet:

*Mining conditions change continuously as materials are mined, transported, and processed, exposing miners to new conditions and hazards. It is important that these changing conditions are constantly monitored and examined to protect the miners that may be exposed to them.*

*MSHA believes that making and maintaining a record of adverse conditions found and corrective actions taken would help mine operators, miners and their representatives to become more aware of dangerous and unhealthful conditions and more proactive in correcting these hazards before an accident, injury, or fatality occurs.*

It is essential to keep records of all conditions found to provide some insight into the ever-changing conditions in a mine and to look for patterns of developing problems which need attention.

We believe that the current federal law is nowhere near stringent enough to adequately protect miners from hazards that can adversely affect their health and safety. Proper workplace exams are extremely important and have a vital role in preventing accidents and injuries. Proper workplace examinations by a competent person that has the proper experience and training in recognizing hazardous conditions, violations of mandatory safety standards, imminent dangers, and adverse conditions are vital to the safety of the miners working at that mine.

These requirements are nothing new. Historically, the coal mining community has conducted pre-shift and on-shift examinations with recordkeeping requirements. Additionally, it is the UMWA's understanding that many Authorized Representatives of the Secretary has already transferred from the coal sector to the metal and nonmetal sector, taking countless years of experience in recognizing and reporting hazards with them. Therefore, this should be an easy

transition for the metal and nonmetal mining community being that record books, training programs, work practices, and so forth are a longstanding requirement in the coal mining community. A simple introduction and training should be all that is necessary for a smooth transition into compliance with this standard.

Making the examination prior to the miner working in an area is just common sense. This gives the miners coming into the next shift knowledge of what conditions and hazards may be present before they arrive. The UMWA suggest that the examinations be performed as close to the start of the next shift as possible but no more than 2 hours prior to. We would also suggest that the person performing these exams have a mine foreman or assistant mine foreman certification as well. This would ensure that they have the experience and knowledge in recognizing hazards that could adversely affect the health and safety of miners.

The requirement to record the location, hazards found, corrective action taken, and the date action was taken must be required to ensure proper documentation as well as ensure the hazard was corrected. This would also help make the operator as well as the miners more aware of the hazards so that they cannot say that they were not aware of a hazard and not correct it. Many hazards will be able to be corrected during the time of the exam but some will require time and manpower to correct and this requirement will show what progress is being made in a particular area and hazard. It's also important for miners and their representatives to have access to these records to see what hazards they may encounter and what actions are/were being taken to correct those hazards.

It is essential to keep records of all conditions found to provide some insight into the ever-changing conditions in a mine and to look for patterns of developing problems which need attention.

We ask that the full and original exam rule, published in January 2017, be implemented.