Rules to Live By: Surviving MSHA's Enforcement Initiative

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Rules to Live By Enforcement

• On March 15, 2010, MSHA launched the first of three enforcement campaigns covering 13 M/NM and 11 Coal standards which MSHA maintains cause fatalities.

• 2011's “Rules to Live By II” focused on nine additional standards, all applicable to underground coal mining.

• On April 1, 2012, MSHA began the “Rules to Live By III: Preventing Common Mining Deaths” enforcement campaign, covering eight coal standards and 6 M/NM standards.

• On May 12, 2016, MSHA announced the “Rules to Live By IV,” adding one coal standard and one M/NM standard to the list.
MSHA Announces “Enhanced Enforcement” of RTLB

• On July 1, 2016, MSHA began enhanced enforcement of the Rules to Live By program.

• MSHA states inspectors will utilize the Rules to Live By and Part 75 Exam Rule Calculators to compare your mine’s citation rate to the national average.

• Operators with RTLB violations exceeding the industry average are eligible for additional impact inspections or spot inspections.
What It Means …

• Agency encourages increased scrutiny for violations of these standards

• MSHA instructed inspectors to “review” carefully the gravity/negligence findings (expect presumptive S&S findings and high negligence because of “advance warning” of this campaign)

• All violations will be considered for special assessments (higher penalties, outside Part 100 formula)
What it means ...

- MSHA instructed inspectors to review each mine's history before an inspection for previous violations of the RTLB standards. MSHA will use previous violations to justify elevated negligence for citations under these standards.
- All violations will be considered for special assessments (higher penalties, outside Part 100 formula)
Due to the strict liability nature of the Mine Act, Administrative Law Judges have upheld violations of this citation where the operator had taken “reasonable steps” to prevent an accident and was not negligent with regard to the accident.

Frequently cited after mobile equipment accidents, even where operator is not negligent.

Make sure roadways have posted speed limits, and prepare to explain how the speed limit was determined (based on condition of roads, grade, traffic patterns, width) – if possible, have an engineer to back you up as some inspectors are “second guessing” posted limits.
"Operating speeds and control of equipment"

- MSHA’s “Haul Road Inspection Handbook” contains a chapter on traffic rules and signs.
- Ensure that signs do not become blocked by vegetation or become illegible from dirt or deterioration.
- Additional signs may be needed as traffic changes or new mining areas are developed.
- MSHA recommends installation of speed limit signs, stop signs, yield signs, signs indicating right-of-way and signs indicating the percent grade "especially any grade at or over 10%."

Please do not enter the dangerous area beyond this gate! You quite possibly will get hurt, then you will sue, then a protracted court battle will ensue exhausting your financial resources and you will lose because this sign that warned you will be "Exhibit 1".
30 CFR § 56/57.14207
Parking procedures for unattended equipment

• MSHA’s alert discusses parking procedures for mobile equipment.

• This standard requires that operators must ensure unattended vehicles are placed in a park position with the parking brake set and the wheels must be chocked or turned into a bank if parked on a grade.

• If you have independent contractors regularly visiting your mine site, ensure that chocks are available for their vehicles, as MSHA may issue concurrent citations to the contractor and mine operator for a failure to properly chock vehicles.
RTLB I

- 56.14101(a) – Brake performance
- Type of condition(s) leading to fatalities:
  - Service brakes not capable of stopping and holding equipment with its typical load on maximum grade it travels.
  - Parking brakes not capable of holding equipment with its typical load on maximum grade it travels.
  - A brake system component not maintained in a functional condition.
• **56.14105** – Procedures during repairs or maintenance
  • “Repairs or maintenance of machinery or equipment shall be performed only after the power is off, and the machinery or equipment blocked against hazardous motion. Machinery or equipment motion or activation is permitted to the extent that adjustments or testing cannot be performed without motion or activation, provided that persons are effectively protected from hazardous motion.”

• Broad enforcement of this standard:
  • Breaking up rocks which are clogging a crusher constitutes “repairs or maintenance.” Walker Stone Co. v. Secretary of Labor, 156 F.3d 1076 (10th Cir. 1998).
  • Each person working on equipment must have their own individual lock –56.12017 – Work on power circuits

• **56.14130(g)** – Seat belts shall be worn by equipment operators
  • **Type of condition(s) leading to fatalities:**
    • Failure to wear seatbelts while operating mobile equipment.

• **56.14131(a)** – Seat belts shall be provided and worn in haul trucks
  • **Type of condition(s) leading to fatalities:**
    • Seatbelts not worn when operating or riding in haul truck.

**NOTE: MSHA PPM says seat belt violations presumptively S&S, and failure to provide seatbelts will be 104(d) in absence of mitigating circumstances!**
• **56.14205** – Machinery, equipment, and tools used beyond design
  - **Type of condition(s) leading to fatalities:**
    - Using machinery, equipment, or tools beyond design capacity intended by manufacturer.

• **56.15005** – Safety belts and lines
  - **Type of condition(s) leading to fatalities:**
    - Persons not wearing fall protection when exposed to fall hazard.

• PPL No. NO. P14–IV–02, issued March 2014, states that "In many cases, compliance with OSHA's fall protection standard will satisfy the requirements of MSHA's 30 C.F.R. §§ 56/57.15005 standard."

• OSHA's policy requires "Each employee on a walking/working surface (horizontal and vertical surface) with an unprotected side or edge which is 6 feet (1.8 m) or more above a lower level shall be protected from falling by the use of guardrail systems, safety net systems, or personal fall arrest systems."
§75.203(a) The method of mining shall not expose any person to hazards caused by excessive widths of rooms, crosscuts and entries, or faulty pillar recovery methods.

§75.223(a) Revisions of the roof control plan shall be proposed by the operator when conditions indicate that the plan is not suitable...

§75.333(h) All ventilation controls, including seals, shall be maintained to serve the purpose for which they were built.

§75.337(f) Welding, cutting, and soldering with an arc or flame are prohibited within 150 feet of a seal.

§75.360(a)(1) A certified person must make a preshift examination within 3 hours preceding the beginning of any 8-hour interval during which any person is scheduled to work underground.

§75.360(b)(3) Preshift examinations shall include the working places, approaches to worked-out areas and ventilation controls on these sections. The examination shall include tests of the roof, face and rib conditions on these sections and in these areas.

§75.370(a)(1) The operator shall develop and follow a ventilation plan approved by the district manager. The plan shall be designed to control methane and respirable dust and shall be suitable to the conditions and mining system at the mine.

§75.1504(a) Each miner shall participate in a mine emergency evacuation training and drill once each quarter.

§75.1505(b) All maps shall be kept up-to-date and any changes shall be shown on the maps by the end of the shift on which the change is made.
• 30 CFR §46.7(a) – New task training – "You must provide any miner who is reassigned to a new task in which he or she has no previous work experience with training in the health and safety aspects of the task to be assigned, including the safe work procedures of such task, information about the physical and health hazards of chemicals in the miner's work area, the protective measures a miner can take against these hazards, and the contents of the mine's HazCom program. This training must be provided before the miner performs the new task."

• Inspectors trained to observe the work habits and operation of mobile equipment for any abnormal activities.

• Ensure that equipment operators are trained in conducting pre-shift inspections on all equipment they operate.
• **30 CFR § 56.3130** – Wall, bank, and slope stability – Mining methods shall be used that will maintain wall, bank, and slope stability in places where persons work or travel in performing their assigned tasks. When benching is necessary, the width and height shall be based on the type of equipment used for cleaning of benches or for scaling of walls, banks, and slopes."

• Benching only required “where necessary” – subjective standard.

• Greater hazard: MSHA's Program Policy Manual advises if the bench immediately above an area where miners work or travel is no longer adequate to catch material sending miners and equipment onto the bench to clean it presents a greater hazard than raveling or sloughing. Other measures may include placing a berm at the base of the wall, bank, or slope to prevent the overtravel of material into the area where miners work or travel or ceasing mining in the affected area.
• **30 CFR § 56.3200** – Correction of hazardous conditions – Ground conditions that create a hazard to persons shall be taken down or supported before other work or travel is permitted in the affected area. Until corrective work is completed, the area shall be posted with a warning against entry and, when left unattended, a barrier shall be installed to impede unauthorized entry."

• Inspectors trained to review workplace examinations, ensure all noted conditions have been corrected.

• Install berms preventing access to any non-working areas.
RTLB III

- **30 CFR § 56.14100(b); 30 CFR § 57.14100(b)** – Safety defects; examination, correction and records – "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."

- The language of this standard negates the strict-liability aspect of the Mine Act and requires that operator have time to discover and remedy a violation.

- If equipment, machinery, or tools are not in use at time of inspection and operator can testify that it functioned properly during last use, operator did not have time to discover and remedy the condition. See *Loudoun Quarries, Div. of Chantilly Crushed Stone Inc.* (ALJ Koutras 2012) and *Good Construction*, 7 MSHN 421 (ALJ Melick, 2000).

- Does not apply to defects with specific standards, such as horns and brake lights.
30 CFR § 56.15020 – Life jackets and belts – "Life jackets or belts shall be worn where there is danger from falling into water."

Inspectors trained to check condition of life jackets used at a mine.

MSHA has the burden to establish danger of his falling into water. Fleniken's Sand & Gravel, Inc., 10 FMSHRC 1509 (ALJ Koutras, 1988).
On May 12, 2016, MSHA added two new standards to the Rules to Live By program, bringing the total number of standards to 49.

- **30 CFR § 77.207 – Illumination** – “Illumination sufficient to provide safe working conditions shall be provided in and on all surface structures, path, walkways, stairways, switch panels, loading and dumping sites, and working areas.

- **30 CFR § 57.3201 – Location for Performing Scaling** – “Scaling shall be performed from a location which will not expose persons to injury from falling materials, or other protection from falling materials shall be provided.”
Other Issues: “Guidance”

• MSHA has published many pages of “recommendations” on website concerning these standards
  • will failure to adopt constitute knowing/willful “violation”? 
• Recommendations go beyond plain language of codified standards
  • does this constitute illegal rulemaking by MSHA? 
• Is knowledge of these new “recommendations” imputed to all mine operators by virtue of being on www.msha.gov?
Examples of MSHA “Recommendations”

• Use rear cameras to prevent over-travel of equipment at dump points
• Use of Collision Avoidance and Proximity Detection Systems
• Installation of prominent emergency shutdown/motion arrest switches on mobile equipment
• Installation of high-back seats with headrest support
• Keeping operator manuals in cabs of all mobile equipment (with weather protection) and require them to be read by operator before equipment use
• Use solar powered signs for improved night warnings
• Establish road grade limits with precautions for grades > 10 percent, and eliminate grades > 15 percent
Defensive Strategies

• REMEMBER: MSHA still has the burden of proving the actual violation, plus the level of negligence and gravity! Do not assume these are correctly characterized.

• Any special assessments can be challenged and may be able to reduce penalties to "regular" under 30 CFR 100.3 even if citation is not altered

• Consider:
  • For negligence: who (if anyone) had actual knowledge, is MSHA just inferring "knowledge" based on the requirements, was the mine cited for this in the past, how long did condition exist, was it obvious, were the miners involved trained properly, is there enforcement of rules; were contractors involved (and do contracts and training place them on notice of MSHA requirements)
  • For gravity: if citations were issued in past for similar conditions, how were they rated; were miners actually exposed to a hazard (e.g., was equipment in operation); do circumstances make it likely that an injury would occur; if an injury would occur, would it require medical treatment or only first aid?
Defensive Strategies

• Check parking areas for grade and post chocking signs – furnish chocks as needed to third parties who park on mine site

• Include references to chocks, seatbelt use, fall protection, equipment inspection (mobile equip, tools etc.), staying away from suspended loads, LOTO requirements etc. in site-specific hazard training …
  • And document training for mine personnel on these 13 standards in annual refresher training.

• Review manufacturers’ manuals for limitations on equipment use (MSHA is!) and follow these recommendations.

• Insist that MSHA perform brake tests properly (using chart for service brakes, and not forcing operator to try and “drive through” the parking brake).

• Ensure that barricades and warning signs are maintained and are visible (possibly bi-lingual?) … MSHA currently says “tape” is not acceptable, but it is in the 56.2 definition of “barricade” so would seem to be permissible
Defensive Strategies

• Check seatbelt condition regularly and replace on manufacturer’s suggested cycle (MSHA is citing for this in some areas, but not all)
• Be prepared to explain to inspector how you enforce seatbelt use (random checks, discipline, video surveillance etc.) for miners and contractors
• Ensure that seat belts are an item listed on equipment pre-op inspection reports
Questions?

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