

# MSHA Reopens Rulemaking on Workplace Examination Standard and Proposes to Delay Effective Date

Article By:

Margaret S. Lopez

---

On September 12, the Mine Safety and Health Administration (MSHA) published in the *Federal Register* two proposed rules on Examinations of Working Places in Metal and Nonmetal Mines, reopening the rulemaking to consider two very limited changes. The agency also has proposed extending the effective date of the workplace examination final rule from October 2, 2017 to March 2, 2018.

## Timing of Workplace Examinations

The final rule imposes a new requirement that workplace examinations must be completed prior to work beginning in a working place. The [first of the two proposed rules](#) would modify this requirement slightly to provide that the examination may “be conducted before work begins or *as miners begin work in*” a working place. (Emphasis added.)

MSHA explains in the preamble to the proposed rule that this would allow miners to enter a workplace to begin work at the same time that the competent person designated by the mine operator to examine each working place begins the workplace examination. MSHA then seems to narrow this requirement by stating that the timing of the examination still must provide for any adverse conditions to “be identified *before miners are exposed*.” (Emphasis added.)

It is this nuance that would render this proposed change not much of an improvement over the currently effective final rule’s requirement. Unless all miners are deemed the competent person conducting the workplace examination, it will be difficult—if not impossible—to ensure that mine operators can give miners timely notice. It also is important to note that the proposed rule’s notification requirement still mandates that miners be notified of adverse conditions before they may be exposed to the hazard. This will require many operators to revert back to adhering to the same requirement in the final rule, which requires that the workplace examination be completed before work begins in an area.

## Record of Adverse Conditions Found that Were not Immediately Corrected

The only other change in the proposed rule narrows slightly the requirement that adverse conditions be noted on the workplace examination record. The proposed rule removes from the recording

---

requirement adverse conditions that are corrected “promptly.” The agency defines “promptly” as before miners are potentially exposed to the adverse condition.

This change would be an improvement over the existing final rule, which requires operators to describe, in the workplace examination record, every adverse condition found in the examination, regardless of whether the mine operator corrected the condition immediately or not. MSHA justified this burdensome requirement in the final rule by claiming that it would help in identifying trends and work areas to emphasize in considering additional safety measures. It was apparent, however, that MSHA primarily intended this new requirement to provide information that inspectors could use to write citations, including elevated negligence findings.

The proposed rule does not remove this recording requirement entirely; therefore, the very real risk remains that inspectors will write citations based on adverse conditions that they see in workplace examination records. MSHA asserts that the proposed rule’s exemption from the recording requirement of adverse conditions that were promptly corrected will incentivize operators to address such conditions promptly. The exemption still leaves open room for inspectors to make the wrong assumptions as to how quickly a condition was corrected and thus, whether there was any exposure and whether there was a violation for not recording the condition on the workplace examination. MSHA has failed to provide any assurance to mine operators in the proposed rule that the agency will refrain from writing overlapping citations for a condition that existed in the past (even though the inspector may never have seen the condition) as well as for not recording it on the workplace examination.

## Remaining Provisions of Final Rule

The remainder of the rule is not affected by this rulemaking. Some of the key remaining provisions are as follows:

- A **competent person** must complete a workplace examination, at least once each shift, **for each working place where miners are scheduled to work**.
- Mine operators must provide to miners who will be working in that place **prompt notification** of conditions found that are not promptly corrected. Mine operators must **promptly initiate any corrective actions**.
- The examination **record must be completed prior to the end of the shift** and it must contain:
  - the **name of the person conducting the examination**;
  - the **date** of the examination;
  - the **location** of all areas examined;
  - a **description of each condition found that may adversely affect safety or health** (except conditions that are corrected promptly);
  - the **date the corrective action was taken**.
- The mine operator must keep the examination record for **one year** and **make the record**

---

available to MSHA and the miners' representative, with a **copy provided** upon request.

The proposed rule also has not altered MSHA's guidance in the final rule's preamble that examinations are to be conducted close enough to the start of work in an area such that conditions would not be expected to change.

## Public Hearings and Request for Comments

MSHA is accepting comments on these proposed changes until November 13, 2017. The agency also will be holding hearings on the proposal on October 24, 2017 in Arlington, Virginia, October 26, 2017 in Salt Lake City, Utah, October 31, 2017 in Birmingham Alabama, and November 2, 2017 in Pittsburgh, Pennsylvania.

## Postponement of Effective Date of the Final Rule

Simultaneously with publication of the proposed rule, MSHA issued [a second proposed rule to delay the effective date of the Workplace Examination final rule](#) to March 2, 2018. The additional time will allow MSHA to act upon its proposed changes to the final rule and to issue related guidance and conduct training.

## Takeaways

The proposed changes to the workplace examination final rule are a step in the right direction. However, mine operators will likely feel that the proposed changes do not go far enough in providing them the flexibility to tailor their workplace examination programs to their mines. The proposed changes also fail to address in any significant way the most burdensome requirements of the new standard.

© 2025, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., All Rights Reserved.

---

National Law Review, Volume VII, Number 257

Source URL: <https://natlawreview.com/article/msha-reopens-rulemaking-workplace-examination-standard-and-proposes-to-delay>