

MSHA Issues Final Workplace Examination Rule

Article By:

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On April 9, 2018, the Mine Safety and Health Administration (MSHA) will publish its [final rule on “Examinations of Working Places in Metal and Nonmetal Mines”](#) in the *Federal Register*. The rule will go into effect on June 2, 2018. The key features of the new rule are the same as those that appeared in the amendments that MSHA proposed in a rulemaking reopening that MSHA initiated on September 12, 2017.

In sum, the final rule includes the following provisions:

- A competent person must complete a workplace examination at least once each shift for each working place where miners are scheduled to work.
- The examination must be conducted “before work begins or as miners begin work in that place.”
- Mine operators must promptly initiate any necessary corrective actions for identified adverse health and safety conditions.
- Mine operators must provide timely notification of adverse conditions that are found but are not promptly corrected to miners who will be working in that place.
- 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 the safety or health of miners” (except conditions that are corrected promptly); and
 - the date that the corrective action was taken (except with regard to conditions that are corrected promptly and do not have to be recorded on the examination record).

- 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 preamble to the final rule has not altered MSHA's previous guidance 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 before miners enter the area. The preamble also provides that an examination need not be completed for the entire mine before or as work begins, unless work is beginning in the entire mine. The examination is only required for those areas where work will be performed in that shift.

The final rule states that miners must be given "prompt" notification of conditions found. MSHA states in the preamble that notification will be considered "promptly" given if the notice is given before miners are exposed to the adverse conditions found in the examination. Notification is not required if the conditions are corrected before miners are potentially exposed.

MSHA's [press release](#) announcing the publication of the final rule includes information about stakeholder meetings that MSHA will be holding to provide information about the rule.

Conclusion

Many in the mining industry are concerned that this rule will lead to increased enforcement by MSHA. The final rule leaves ample room for subjective interpretation by inspectors, including on such topics as what constitutes "prompt" correction of conditions or "prompt" notification to miners, as well as how close in time to the beginning of work an examination must be completed. The requirement for recording the date of correction of conditions is likely intended to aid inspectors in charging operators with not correcting conditions promptly. It also imposes a burdensome requirement for updating examination records.

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