

EXAMINATION OF WORKING PLACES

CURRENT PROPOSED RULE AND PREAMBLE CLUES TO ENFORCEMENT

- **§ 56/57.18002 Examination of working places.**
 - **(a) A competent person designated by the operator shall examine each working place at least once each shift before work begins or as miners begin work in that place, for conditions that may adversely affect safety or health.**

EXAMINATION

- **(1) The operator shall promptly notify miners in any affected areas of any conditions found that may adversely affect safety or health and promptly initiate appropriate action to correct such conditions.**

NOTIFICATION / CORRECTION

- **(2) Conditions noted by the person conducting the examination that may present an imminent danger shall be brought to the immediate attention of the operator who shall withdraw all persons from the area affected (except persons referred to in section 104(c) of the Federal Mine Safety and Health Act of 1977) until the danger is abated.**

IMMINENT DANGER

- **(b) A record of each examination shall be made before the end of the shift for which the examination was conducted. The record shall contain the name of the person conducting the examination; date of the examination; location of all areas examined; and description of each condition found that may adversely affect the safety or health of miners and is not corrected promptly.**

RECORDS

- **(c) When a condition that may adversely affect safety or health is not corrected promptly, the examination record shall include, or be supplemented to include, the date of the corrective action.**

**UPDATE RECORD WITH
CORRECTIVE ACTION DATE**

- **(d) The operator shall maintain the examination records for at least one year, make the records available for inspection by authorized representatives of the Secretary and the representatives of miners, and provide these representatives a copy on request.**

RECORD RETENTION/COPIES

- **56/57.18002 PREAMBLE**
 - **CLUES TO ENFORCEMENT**

PREAMBLE

- **The purpose of this final rule is to ensure that MNM mine operators identify and correct conditions that may adversely affect miners' safety or health.**
- **Effective workplace examinations are a fundamental accident prevention tool; they allow operators to find and fix adverse conditions and violations of safety and health standards before they cause injury or death to miners.**

PURPOSE

- **In the Agency's experience, despite MSHA guidance and best practices, under the existing standard, working place examinations are not always done at a point during the shift when the results of the examination would provide the necessary protections as intended by the Mine Act and the existing standard.**

TIMELINESS

- **Under MSHA's existing standards, mine operators can perform the examinations anytime during the shift.**
- **If the examination is performed after miners begin work, miners may be exposed to conditions that may adversely affect their safety and health.**

EXPOSURE

- **The purpose of the rule is to ensure that for each shift the examinations occur at a time that is sufficiently close to when miners begin their work.**

EXAMINATION

- It is not MSHA's intent for the mine operator to examine the entire mine before work begins, unless work is beginning in the entire mine.
- As previously noted, "before work begins," may or may not coincide with the start of any particular shift; it depends on when miners actually will be working in any particular working place.
- The final rule, like the existing standards and proposed rule **would require examinations in only those areas where work will be performed.**

BEFORE WORK BEGINS

- (b)~ and description of each condition found that may adversely affect the safety or health of miners and is not corrected promptly.
- (c) When a condition that may adversely affect safety or health is not corrected promptly, the examination record shall include, or be supplemented to include, the date of the corrective action.
- Consistent with the explanation in the preamble to the 2017 rule, MSHA interprets "promptly" to mean before miners are potentially exposed to adverse conditions.

PROMPTLY

- **In response to commenters' concerns, if an examination was made for miners before work began in that place and incoming miners on an overlapping or maintenance shift are to begin work in that place, an additional examination is not needed provided that the incoming shift begins work close to when the examination was conducted and mining conditions would not be expected to have changed adversely.**

OVERLAPPING

- As MSHA stated in the preamble to the proposed rule, a “working place” applies to all locations at a mine where miners work in the extraction or milling processes (81 FR 36821). MSHA clarifies that consistent with the existing definition of “working place,” this includes roads traveled to and from a work area (81 FR 58422).
- MSHA further clarifies that a working place would not include roads not directly involved in the mining process, administrative office buildings, parking lots, lunchrooms, toilet facilities, or inactive storage areas.
- Unless required by other standards, mine operators would be required to examine isolated, abandoned, or idle areas of mines or mills only when miners have to perform work in these areas during the shift (81 FR 58423).

WORKING PLACE

- MSHA clarified that to “**promptly notify miners**” means any notification to miners that alerts them to adverse conditions in their working place **so that they can take necessary precautions to avoid the adverse condition.**
- MSHA added that this notification could take any form that effectively notifies miners of an adverse condition:
 - verbal notification,
 - prominent warning signage,
 - other written notification, etc.
- MSHA believes that, in most cases, verbal notification or descriptive warning signage would be needed to ensure that all affected miners received actual notification of any adverse condition.

NOTIFICATION

- **MSHA also clarified that a “prompt” notification is one that occurs before miners are potentially exposed to the condition; e.g., before miners begin work in the affected areas, or as soon as possible after work begins if the condition is discovered while they are working in an area.**
 - For example, this notification could occur when miners are given work assignments (81 FR58422).
- **Consistent with the comment extension document, the final rule requires notification only of those miners “in any affected areas.” Therefore, not all miners need to be notified, only those miners that would be affected by the adverse condition.**

NOTIFICATION

- **The Agency recognizes that if adverse conditions are corrected before miners begin work, notification is not required because there are no “affected areas.”**

NOTIFICATION

- **Some commenters questioned if correcting the condition takes a significant amount of time, would the adverse condition have to be recorded each shift until it is corrected.**
- **MSHA clarifies that if not immediately corrected, the continuing adverse condition does not need to be recorded each shift.**

RECORDS

- Regardless of how long an adverse condition has existed, mine operators must ensure that all affected miners are promptly notified of all adverse conditions on each shift as required in final paragraph (a)(1), so that miners can take the necessary precautions to avoid an accident or injury.

NOTIFICATION

- **MSHA received comments requesting that the Agency allow alternative means of documenting corrective action other than the examination record, such as closed-out work orders or invoices.**
- **MSHA believes, however, that all information related to adverse conditions should be in one record, including the date of corrective action, to ensure a complete record is available for inspection and the Agency will not accept alternate documentation for corrective action taken.**

RECORDS

- MSHA anticipates that the enhanced record requirements will improve accident prevention by **helping mine operators identify any patterns or trends** of adverse conditions and preventing these conditions from recurring.

RECORDS/PATTERNS

CHALLENGES

- **CHALLENGES**

- **ENFORCEMENT**

- WE DON'T KNOW WHAT ENFORCEMENT IS GOING TO LOOK LIKE YET

- **HUMAN NATURE**

- WE HAVE TO OVERCOME DECADES OF HABIT...
- WORKPLACES EXAMS MUST BE PROACTIVE AND DONE WITH INTENT TO IMPROVE SAFETY AND ENSURE COMPLIANCE

- **"NOTIFICATION"**

- WHAT CONSTITUTES NOTIFICATION MAY PROVE TO BE A VERY SUBJECTIVE TOPIC IN THE FUTURE

- **RECORDS**

- TO ENSURE PREVENTION OF CITATIONS FOR PAPERWORK VIOLATIONS, DEVELOP A SYSTEM TO ENSURE THAT WORKPLACE EXAM RECORDS ARE PROPERLY UPDATED TO INCLUDE THE DATE OF CORRECTIVE ACTION FOR HAZARDS NOT "PROMPTLY" CORRECTED
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- **QUESTIONS/ COMMENTS?**
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- **27-304. Operator responsibility**
 - **C. The operator shall designate a person or persons to inspect as frequently as may be required by any rules or regulations for unsafe conditions and practices, defective equipment and materials, and where such conditions are found, to take appropriate corrective action.**

ASMI FUN FACT
