


SEPTEMBER 12, 2017 | MSHA LEADERSHIP, RULEMAKING & STANDARDS

Mine Safety and Health Administration (MSHA) Delays Effective Date (Again) and Proposes Limited Changes to Final Rule For Examinations of Working Places in Metal and Nonmetal Mines

By: [Nicholas W. Scala](#)

New Effective Date: March 2, 2018

Mine operators will not have to comply with MSHA's much anticipated final rule for the Examinations of Working Places in Metal and Nonmetal Mines by October 2, 2017, as the rule's effective date was once again delayed. Finalized on January 23, 2017, and subsequently delayed in May and July, [MSHA now proposes the rule go into effect on March 2, 2018](#). 

The agency credits the additional delay to the need for more time to prepare compliance assistance materials, interface with operators regarding the new rule and to train the MSHA inspector enforcement personnel. These reasons should sound familiar, as MSHA has previously cited similar grounds for delaying the rule's effective date, yet industry has seen little results in the form of compliance assistance materials to date.

[For further analysis and explanation of the rulemaking see previous MSHA Defense Report Post](#)

Proposed Changes to Examination "Before Work Begins" and Recordkeeping Requirements

[MSHA also proposed two changes to the final rule](#), which the agency claims "would provide mine operators additional flexibility in managing their safety and health programs and reduce regulatory burdens without reducing protections afforded miners."

First, MSHA proposed a change to the provision of the rule requiring workplace exams take place **before** miners beginning work in an area, to also allow workplace exams to occur **while** miners begin their shifts. The new proposed language for §56/57.18002(a) will:

"require the competent person to 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 and health"

While still a departure from the current requirements, that workplace exams need at least once be completed once per shift, this change would allow operators to begin work while the exam is in progress. However, MSHA did not propose any changes to the new prompt notification requirements, which could lead to some confusion if a miner is exposed to a potentially hazardous condition while the exam is in progress and the competent person had yet to observe or to promptly notify the miners.

MSHA will maintain the final rules' current definition of *promptly*, defined as "*before miners are potentially exposed to the adverse condition.*"

Second, the agency proposed a change to the recordkeeping requirements, specifically relieving the operator of the obligation to record conditions which are promptly corrected. This modification of §§56/57.18002(b) would no longer require operators to document all potentially hazardous conditions observed during the exam, but instead require:

"the examination record include only those adverse conditions that are not corrected promptly."

Correspondingly, MSHA is considering a related change to §§56/57.18002(c). This modification reduce the burden of the supplemental recording of the date of corrective action, limiting this requirement to conditions which were not promptly corrected – or the conditions which are required to be documented in the workplace exam record.

In conjunction with this proposal, MSHA will be holding four public hearing on the proposed changes and accepting limited stakeholder comments. Specific hearing locations can be found in the [Proposed Rule](#), but include:

- October 24, 2017 (9:00 a.m.) – Arlington, VA
- October 26, 2017 (9:00 a.m.) – Salt Lake City, UT
- October 31, 2017 (9:00 a.m.) – Birmingham, AL
- November 2, 2017 (9:00 a.m.) – Pittsburgh, PA

The comment period will end 60 days after the proposed rule's date of publication in the Federal Register, scheduled for September 12, 2017, which makes the comment deadline November 11, 2017, unless extended at a later date.

MSHA seeks industry comments on the proposed changes of 1) permitting workplace exam as miners begin work and 2) limiting the notation of adverse conditions and corrective dates to those not promptly corrected.

Operators and other stakeholders interested in submitting comments can contact Nick Scala, nscala@connmaciел.com, from the [MSHA Practice Group](#) at [Conn Maciel Carey LLP](#) for further information and assistance.