


JANUARY 2, 2020 | MSHA LEADERSHIP, RULEMAKING & STANDARDS

MSHA Begins Enforcing New Provisions of Workplace Exam Rule for M/NM Mines

By: [Nicholas W. Scala](#)

Happy New Year (*now you better be in compliance*)! For Metal/Nonmetal production operators and independent contractors, welcoming 2020 means the deadline to comply with MSHA's newest iteration of the Workplace Exam Rule for M/NM mines is here.

Effective January 1, 2020, MSHA's 90-day enforcement hold on the updated rule expired, and inspectors will now be issuing citations if a production operator or independent contractor is found in violation of the fully implemented 2017 Final Rule.

The process of altering the workplace exam rule from the 2018 Final Rule began in earnest this past June 2019, when the U.S. District Court for the District of Columbia found in favor a labor union challenge to the regulation. The Court found MSHA violated the "No Less Protection" clause of the Mine Act and parts of the Administrative Procedure Act with respect to its rulemaking process. As discussed in our [June 2019 blog](#), the Court ruled,  and subsequently ordered after MSHA sought review of the decision, MSHA must make the following changes to the 2018 Final Rule, effectively reinstating the first final version of the Workplace Exam rule from January 2017.

"In reinstating the 2017 Rule, the Court of Appeals put into effect two requirements operators previously did not have to comply with:

1. *All workplace exams must be done **BEFORE** miners enter a working area; and*
2. *All adverse conditions observed during a workplace exam must be recorded, even if corrected/abated prior to miners entering the working area.*

*The challenge to the 2018 Rule was two-fold, first, in the 2018 amendments, MSHA modified the requirement that the workplace exam must be done "before" miners enter a working area, allowing operators to conduct the exams "before **OR AS**" miners enter the workplace. This change was made to assist operators coping with what could have been a burdensome requirement (that workplace exams for all working areas of the mine be completed prior to any miner beginning work). . .*

Second, MSHA also amended the 2018 Rule to remove a small portion of the recordkeeping requirements for the

new workplace exams. The 2018 Rule required operators to record a description of any adverse condition that was not promptly corrected, e.g. corrected before any miner was exposed to the potentially hazardous condition. The initial 2017 Rule required operators to record all adverse conditions observed, including those immediately and/or promptly corrected. Under these terms, observing a condition such as a tool in a walkway, which can be easily and immediately corrected, must be recorded as an adverse condition on the workplace exam."

The 2017 Final Rule, and now current regulation under [30 C.F.R. 56/57.18002](#), went into effect on September 30, 2019, however, MSHA granted operators until January 1, 2020 to comply with the changes before enforcement. If an operator received a violation from MSHA for failing to adhere to the changes listed above before January 1, 2020, the operator should strongly consider contesting the citation or order, as there are likely strong arguments to have the issuance withdrawn. As part of the 90-day compliance grace period, MSHA also posted [compliance materials and presentations on its website to assist operators](#).

Additionally, if anyone has questions regarding the new requirements for Workplace Exams, I welcome you to reach out to me (nscala@connmaciel.com) and our [MSHA team](#), we would be happy to be a resource for your while finalizing any changes to your safety and health programs. For more on the procedural history of the Workplace Exam Rule for Metal/Nonmetal Mines, see our [September 2019 post](#).