


AUGUST 23, 2016 | MSHA LEADERSHIP, RULEMAKING & STANDARDS

# Workplace Exam Rulemaking Update: MSHA Formally Extends Comment Period Until September 30 and Addresses Industry Concerns

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As discussed in the MSHA Defense Report [last week](#), during a Birmingham hearing, MSHA heard industry comments related the [Proposed Rule for Examinations of Working Places in Metal and Nonmetal Mines](#). On August 23, MSHA followed through on the mentioned comment extension and responded to feedback, providing clarification on the rule and releasing on the Federal Register an [Extension of Comment Period](#). 

Here are a few updates that caught our practice group's attention:

## Clarifying Notification of Miners of Hazards

The "promptly notify miners" provision left much to the imagination for operators and industry alike, as MSHA failed to describe what would satisfy the requirement. Due to requests for guidance, the agency included the following in the post released this week:

*"MSHA clarifies that "to promptly notify miners" means any notification to the miners that alerts them to adverse condition in their working place so that they can take necessary precautions to avoid an accident or injury before they begin work in that area. This notification could take any form that is effective to notify affected miners of the particular 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 the specific condition in question."*

The agency states the "prompt" requirement would involve notification before exposure to a condition, depending upon when a miner may work in an area.

## Defining Working Place

MSHA also touched on "working place" and how it would not include the entirety of a mine and its property, but instead an area where work takes place, or *"working place applies to all locations at a mine where miners work in the extraction and milling processes...this includes roads traveled to and from a work area."*

An important distinction made by MSHA is 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 mine standards..."* If the proposed rule is enacted in its current form, inspection of abandoned, idled or isolated areas would only occur when working at these locations.

### **Seeking Alternatives to Signature by Examiner**

MSHA appears to soften its stance on the proposed sign and date requirement by the examiner, before the close of each shift. As witnessed during the hearing, the requirement is one of the most contentious elements of the proposed rule – if not the most opposed provision. As mentioned in the MSHA Defense Report's [first post on the proposed rule](#), industry voiced significant concerns, including whether the requirement would increase liability under §110 by serving as a certification of a hazard free work place. Acknowledging the concern, MSHA has requested comments on an alternative to requiring a signature.

This week, MSHA also extended the deadline to submit comments on the proposed rule to September 30. Operators and other stakeholders interested in submitting comments can contact Nick Scala, [nscala@connmaciel.com](mailto:nscala@connmaciel.com), from the [MSHA Practice Group](#) at [Conn Maciel Carey PLLC](#) for further information and assistance.