

Report from MSHA's Stakeholder Meeting for Final Rule on Examinations of Working Places in Metal and Nonmetal Mines

On May 1, 2018, MSHA's Kevin Strickland led the meeting in Bloomington, Illinois from start to finish as industry folks learned about how the new, final rule for Examinations of Working Places in Metal and Nonmetal Mines will affect the way mining companies operate day-in and day-out beginning later this year.

Using the twenty slide PowerPoint presentation you can find on MSHA's website here www.msha.gov/regulations/stakeholder-meetings, Strickland explained how the new rule is similar and different than the current rule in place for workplace exams. He noted that the effective date for this changeover is June 2, 2018, when you are expected to begin doing examinations under the new guidelines outlined below; however, MSHA will not be enforcing the new regulation until October 1st (unless operators are flagrantly violating the new rule after June 2nd) giving mine operators and miners time to develop policies and procedures to ensure compliance. MSHA inspectors will be visiting your mine during June through September to assure you are fully informed and MSHA has even offered to do special presentations to your workforce upon request.

The final rule requires that mine operators do five things. Bolded words in 1, 3, and 5 designate the requirements that are different than the current workplace exams rule and the chart below explains this in some detail.

1. Designate a 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 or health
2. Promptly initiate corrective action when adverse conditions are found.
3. **Promptly notify miners in affected areas if adverse conditions are found and not corrected before miners are potentially exposed.**
4. Withdraw all persons from affected areas when alerted to any conditions that may present an imminent danger, until the danger is abated;
5. **Make a working place examination record before the end of the shift** for which the examination was conducted.

Mike Mudd (RiverStone Group and IAAP Safety Committee Vice-chair) characterized this informational meeting as, "A good step for open communication on the new rule. I'm encouraged to learn that MSHA will be working with industry this summer so that everyone has time to convey to miners what is expected of them. By October, everything will be in place and all will understand MSHA's expectations."

Overview –Existing and New Standards

Existing Standards		Final Standards
Who conducts the working place exam	Competent persons designated by the mine operator	No change
When to conduct working place exam for conditions that may adversely affect safety or health	At least once each shift	At least once each shift before work begins or as miners begin work in the working place
Notification to miners	Not Required	Promptly notify miners in any affected areas of any conditions found that may adversely affect safety or health that are not corrected before miners are potentially exposed
Corrective action for adverse conditions	Promptly initiate appropriate action to correct such conditions	No change
Conditions that present an imminent danger	Notify operator immediately and withdraw all persons in affected areas until danger abated	No change
When to make exam record	No time specified	Before the end of the shift
Contents of exam record	Record that exam was made	Name of person conducting exam; date; locations of areas examined; description of each adverse condition that is not corrected promptly; date of corrective action for each adverse condition that is not corrected promptly
Record retention	1 year	No change
Record availability	Available for review by MSHA	Available for inspection by MSHA and miners' representatives; provide a copy upon request

Some items were stressed by Strickland as well as MSHA's Don Vickers and North Central District Manager, Chris Hensler, who helped to clarify points and answer some of the audience's questions. Strickland said, "Doing a working place exam before work begins can help get fatalities to zero. MSHA appreciates your efforts to accomplish zero fatalities." Before October, MSHA inspectors can help you determine working areas and how detailed the records should be for your situations.

Examination and Recordkeeping

The competent person must be task trained in doing the working place examination, conduct the exam before work begins in that area (and again before the next shift begins in that area) and file the report, which must include the examiner's name (not a signature), before the end of their shift. Examination reports may be paper or in electronic format but each report becomes a record which must be kept for at least one year and you must be able to print a copy of the examination report. Each working place exam record must be available to MSHA inspectors as well as miners and a copy must be made upon request. Examination reports do not necessarily need to be in a checklist format but all required information must be included in one record. If the designated competent person works beyond the end of their regular shift, he or she must file the examination report before the end time of their usual shift.

These working place examinations must be completed in a reasonable time before work begins and are not required where work will not be done; however, roads used to travel to a working area must be examined before miners going to that area use the road. If the same area is being worked in subsequent shifts, the exam must be completed before the next shift starts and can be done by a competent person from the earlier shift towards the end of his shift. Contractors do not need to do a working place exam if a competent person has already done an exam in that place; however, if conditions have changed then a new exam must be completed. Of course, if hazardous conditions have been identified, you must warn the contractor coming into the area. If a hazardous condition is identified and can be corrected during that shift, the hazardous condition does not need to be included in the filed working place examination report.

The working place report should include details about any hazardous conditions that could not be abated during that shift and the details of the condition should be adequate enough so that the examiner and crew on the next shift entering that area will fully understand the hazard. The previous working place examination report should be reviewed by the person doing the next report. MSHA recommends, but does not require, that you carry forward all identified hazards in subsequent reports until the condition is rectified. Then the first report, where the hazard was identified, must be modified to include the date the hazard was abated but you are not required to add the name of the person who abated the hazard nor the name of the person adding the date of abatement (examination reports that carried forward details of the hazardous condition do not need to be modified with the abatement date, only the first report, but as you file these later reports, you should indicate that the hazard was first identified in the earlier report). After identifying a hazard, you should barricade it and inform all miners that will be exposed to that area (in some situations, barricades may not be necessary if all miners are aware of the hazard). Barricades can include cones and caution tape but MSHA strongly recommends that you also include a sign explaining the hazard unless you are able to verbally warn all miners that may enter the area.

Promptly Warn Miners

The duty to "promptly" warn miners of hazardous conditions applies to all miners that may be exposed and you should withdraw all miners that may be in imminent danger. The test MSHA inspectors may use, when considering writing a citation, is to determine if a miner was inside the

barricaded area. The only people allowed inside the barricaded area are ones working to abate the hazardous condition.

Answers to some concerns from industry perspective

Regarding adequate barricades, MSHA's Don Vickers said they must be maintained and in some cases are not effective, especially caution tape by itself.

Kevin Strickland said inspectors will not use these reports to find hazardous conditions that can or should be cited and workplace exams records cannot be used to demonstrate negligence.

When an inspector writes a citation, you should not automatically receive a second citation for an inadequate workplace exam.

Additional questions and answers are available on the MSHA website and transcripts from these informational stakeholder meetings are to be posted in the coming weeks.