

FREQUENTLY ASKED QUESTIONS

Final Rule - Examinations of Working Places in Metal and Nonmetal Mines Updated: 11/22/2019

Requirements

Q.1 When does the reinstated Examinations rule take effect?

A. The reinstated January 2017 final rule was effective on September 30, 2019.

Q.2. When will MSHA enforce the reinstated Examinations rule?

A. MSHA will use the next 90 days to fully implement the reinstated rule.

Q.3. Who must comply with the Examinations rule?

A. Operators of metal and nonmetal mines, including independent contractors performing services or construction, must comply with the rule.

Q.4. What does the Examinations rule require?

A. Mine operators must:

- Have a competent person examine each working place for conditions that may adversely affect the safety or health of miners. The working place must be examined at least once each shift, before miners begin work in that place;
- Promptly initiate appropriate corrective action when adverse conditions are found;
- Promptly notify miners in any affected areas if adverse conditions are found and not corrected before miners are potentially exposed.
- Withdraw all persons from affected areas when alerted to any conditions that may present an imminent danger, until the danger is abated;
- Create an examination record before the end of each shift that includes:
 - The name of the person conducting the examination;
 - Date of the examination;
 - Location of all areas examined;
 - A description of each condition found that may adversely affect the safety or health of miners; and
 - The date when the described condition is corrected;
- Maintain the examination record for at least one year, and make the examination record available to MSHA and miners' representatives, with a copy provided upon request.

Q.5. How do the final Working Place Examination standards compare to the standards that went into effect on June 2, 2018?

A. The reinstated 2017 final rule changes timing and recordkeeping requirements. First, the 2017 final rule requires that an examination of a working place be conducted before work begins, not as miners begin work in that place. Second, the 2017 final rule requires that the examination record include descriptions of all adverse conditions found, not just those adverse conditions that are not corrected promptly.

Competent person

Q.1. The rule requires that a competent person designated by the operator conduct the working place examination. Has the definition of a “competent person” changed?

A. The definition of competent person is unchanged. A competent person continues to be defined as a person having abilities and experience that fully qualify him or her to perform the duty assigned. (See §§ 56.2 and 57.2) A competent person should be able to recognize hazards and adverse conditions that are expected or known to occur in a specific work area or that are predictable to someone familiar with the mining industry.

Q.2. In the past task training records have been used to identify competent persons to MSHA. Is this still the case?

A. The definition of “competent person” has not changed. The mine operator is responsible for designating competent persons to conduct working place examinations after determining that they have the required experience and ability to perform such duties. Task training on the task of conducting examinations would be an appropriate part of that.

Q.3. Does a miner designated by the operator to do examinations of working places become an agent of the company when conducting these examinations?

A. Conducting a workplace examination in and of itself does not make a miner an agent of the operator. That is, a competent person may be an agent based on the totality of his or her responsibilities at the mine, but the sole act of conducting a workplace examination does not make the miner an agent. The new requirement that the record must contain the name of the person conducting the examination does not change this.

Working place

Q.1. The final rule requires that each working place be examined. Has the definition of "working place" changed?

A. The definition of working place is unchanged. "Working place" continues to be defined as any place in or about a mine where work is being performed (see §§ 56.2 and 57.2). A working place applies to all locations at a mine where miners work in the extraction or milling processes.

Q.2. Are travelways considered working places?

A. Travelways are working places if they must be traveled to get to and from a work area. 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.

Q.3. At geographically-large mines with several working places, do examinations of the entire mine need to be conducted?

A. No, the mine operator is not required to examine the entire mine, unless miners begin work in each working place at the entire mine at the same time. If a miner needs to enter an area where a working place examination has not been conducted for that shift, a competent person must perform an examination before the miner begins work in that place.

Q.4. Are mine operators required to examine isolated, abandoned, or idle areas of mines or mills under this final rule?

A. Only if miners have to perform work in these areas during the shift.

Timing of Working Place Examination

Q.1. When must the working place examination be conducted?

A. The examination must be conducted at least once per shift before miners begin work in that place. The examination should be conducted sufficiently close in time to the start of work so that an operator would reasonably expect conditions to not adversely change before work begins in the examined area.

Q.2. My operation works 24/7. Is it acceptable to perform the working place examination at the end of one shift to cover the oncoming shift?

A. Yes. For mines with consecutive shifts or those that operate on a 24-hour basis, a working place examination for the next shift may be made at the end of the previous shift, as long as the examination includes all places where miners will be working and takes place sufficiently close to the start of the next shift.

Q.3. Can miners continue to work in a working place where a competent person finds an adverse condition that may affect miners' safety and health (e.g., loose ground)?

A. Miners can continue to work in a place where an adverse condition is found, but the miners must be promptly notified so that they can avoid the condition. Mine operators must promptly initiate corrective action of a condition that may adversely affect miners' safety and health.

Q.4. Can the working place examination be combined with other examinations that are required before miners begin work (e.g., safety defects under § 56.14100; ground conditions under § 56.3401)?

A. The working place examination must be conducted before miners begin work. Other examinations required under 30 C.F.R. Part 56 or 57 may be part of, or performed at the same time as, the working place examination.

Q.5. Are ongoing or additional examinations for adverse conditions required during the shift?

A. Working place examinations must be conducted at least once per shift before miners begin work in that place. The rule does not limit operators to a single examination or prevent ongoing examinations throughout the shift. MSHA recognizes that mining operations are dynamic work environments where conditions are always changing. Operators should continue to identify and correct adverse conditions in the working place regardless of when they occur.

Q.6. If a maintenance shift begins after the start of a production shift, does the maintenance shift have to complete a workplace examination?

A. Typically mines have 1, 2, or 3 production (main) shifts (with support shifts, such as a maintenance shift occurring within the production shifts). The examination should be conducted sufficiently close in time to the start of work so that an operator would reasonably expect conditions to not adversely change before work begins in the examined area.

Q.7. Our mine works one shift per day, from 6 a.m. until 6 p.m. Can the inspection be done the previous day for the following day? Say at the end of shift for the following day? We normally start so early in the morning that it's dark; hard to do an examination. So can that pre-shift exam be done at the end of the previous day's shift?

A. No. For a mine that operates one shift per day, an examination conducted towards the end of the prior shift would not be sufficiently close in time to the beginning of the next day's shift. Mining conditions could significantly change overnight; therefore, an examination would need to be conducted before miners begin working on the next day's shift.

Q.8. Our mine works two consecutive shifts each day, with the second shift crew arriving at the working place toward the end of the first shift to essentially relieve the first shift. Does the workplace exam conducted for the first shift still count or does the second shift have to conduct a different one?

A. A competent person must conduct an examination of the working place for each shift; therefore, in this case, a new examination must be conducted for the second shift.

Notification

Q.1. When must miners be notified of adverse conditions?

A. If adverse conditions are corrected before miners are potentially exposed, notification is not necessary. However, if adverse conditions cannot be corrected, miners working in affected areas must be notified “promptly.” Notification is considered “prompt” if it occurs before miners are potentially exposed to the condition; that is, before miners begin working in affected areas or as soon as possible after work begins if the condition is discovered while they are working in an affected area.

Q.2 How are miners in affected areas to be notified of adverse conditions?

A. Notification can take any form that effectively notifies miners of an adverse condition so that they can take necessary precautions. In most cases, verbal notification or prominent, descriptive warning signage (e.g., “Danger – loose wire”) would be needed to ensure that all miners in affected areas receive actual notification of the adverse condition.

Q.3. Does the warning signage need to specify what exact adverse conditions exist?

A. The signage must contain a warning sufficient to inform miners what the adverse condition is so that they can take necessary precautions to avoid the adverse condition when they enter the area.

Corrective Action

Q.1. Could withdrawing miners from the area affected by the adverse condition be considered initiating corrective action?

A. Yes, withdrawal could be considered initiating appropriate action to correct an adverse condition, but miners still must be notified of the condition.

Q.2. Some adverse conditions that may be found during the examination are easy to fix; such as a spill or broken ladder; others, such as missing guards on conveyor belts or a washed out travelway, may take longer than one shift to fix. How is the mine operator supposed to notify all affected miners across many shifts of uncorrected adverse conditions?

A. The operator may use a variety of methods to notify miners. For adverse conditions that remain for extended periods, for example, barricades with descriptive signage may be needed. It is the operator's responsibility to ensure miners are aware of known adverse conditions before they are potentially exposed so they can take the necessary precautions to avoid the adverse condition.

Examination Record

Q.1. When must the examination record be made?

A. The examination record may be made at any time before the end of the shift for which the examination was conducted.

Q. 2. Must an adverse condition be recorded again each shift until it is corrected?

A. A continuing adverse condition does not need to be recorded each shift. Once the condition is corrected, the record must include, or be supplemented to include, the date of corrective action.

Q.3. If a record is created for another purpose, such as a Job Task Analysis or Job Safety Analysis, can this record be used to meet the examination record requirement?

A. Any record that includes all information required under the Examinations rule is compliant.

Q.4. If no adverse conditions are found during a working place examination, must that be documented?

A. There is no requirement to affirmatively state that no adverse conditions existed; though a record of the conducted exam is still required.

Q.5. Can the examination records be maintained electronically?

A. Yes, the examination record can be maintained electronically. The records must be made available for inspection at the mine, and include all required information. Electronic records must be secure and not susceptible to unauthorized alteration.

Q.6. When do examination records need to be made available to miners' representatives?

A. Working place examination records, whether electronic or on paper, are required to be made available to miners' representatives, and a copy provided to them upon request.

Q.7. Can alternative means of documenting the corrective action date, such as closed-out work orders or invoices, be used in place of recording the date directly in the examination record?

A. All information the rule requires related to adverse conditions must be in one record, including the dates of corrective action. If a closed-out work order clearly shows the same adverse condition as described on the examination record and shows the date of correction, it may be stapled, inserted, or linked to the examination record to create one record, as an alternative to simply adding the date directly onto the examination record.

Q.8. If an operator chooses as a best practice to carry forward the reporting of an adverse condition that is not corrected for several days, does the operator need to enter the date of correction on every one of the examination records where the same adverse condition is carried forward?

A. No. If the mine operator carries forward the adverse condition in the examination record until the condition is corrected, recording the corrective action on the first record is sufficient.

Q.9. We use an electronic system of keeping records. Is this sufficient for keeping the examination records as long as it is secured?

A. Yes.

Q.10. What is a "secure" record?

A. There should be no unauthorized access to the examination records. Examination records, whether paper or electronic, should be complete and tamper-proof and any authorized change or addition to a record should be indicated so it is clear what the change was. The major security concerns with examination records, whether paper or electronic, are the accuracy, integrity, and accessibility of the required records.

Q.11. At our mine, competent persons doing working place examinations have always just initialed on the examination record. Is that going to be accepted under the revised rule?

A. No. The name of the competent person that performed the working place examination must be entered on the examination record.

Q.12. Does the person that goes back to supplement examination records by adding the date of each corrective action need to be a competent person or have past training on workplace exams?

A. No, as long as the person recording each date has knowledge that the corrective action was completed on that date. For example, the crew completing the corrective action to eliminate the adverse condition may call out to a clerical person who then enters the date.

Contractors

Q.1. Are contractors responsible for conducting workplace examinations in working places that they work in?

A. Contractors are “operators” subject to the examinations rule. However, production operators and contractors may arrange any number of ways to ensure that required workplace exams are completed. The revised working place examination standards do not change the relationship between operators and contractors.

Q.2. If a mine operator requires the contractor to do his own examinations of working places, where are contractor's examination records kept?

A. The records must be available to an MSHA inspector at the mine or to a representative of miners at the mine. The contractor could accomplish this by providing the production operator a copy of the records.

Q.3. When contract miners leave a working place that was examined by the mine operator at the beginning of the shift, is the operator required to conduct a new examination when its miners come back into that working place in the same shift?

A. The rule requires an examination for each shift. The relationship between an operator and the contractor is not changed by this revision to the examination of working places standards. The standards do not limit the mine operator to one examination per shift.