

FACT SHEET

MSHA's Final Rule for Examination of Working Places in Metal and Nonmetal Mines

Introduction

The Mine Safety and Health Administration's (MSHA) rule enhances the quality of working place examinations in Metal and Nonmetal (MNM) mines, improves protections for miners and saves lives.

MSHA has taken a common sense approach with this final rule. It improves miners' safety and health by requiring mine operators to: (1) conduct working place examinations to identify hazards before work begins in an area, (2) notify affected miners of hazardous conditions that are not corrected immediately; and (3) record the locations examined, the adverse conditions found, and the date of the corrective action. A number of operations voluntarily have safety and health programs in place that include these requirements.

MSHA has determined that examinations of working places are an important part of an effective accident prevention strategy; they are a first line of defense because they allow operators to find and fix conditions before such conditions can adversely affect the safety or health of miners.

Effective working place examinations are a fundamental accident prevention tool that, consistent with Section 2 of the Federal Mine Safety and Health Act (Mine Act), will "provide more effective means and measures for improving the working conditions and practices in the Nation's ...mines in order to prevent death and serious physical harm."

Recent fatal and other accidents at MNM mines make clear the need to do more to prevent mining deaths and injuries. These accidents indicate that miners would benefit from timely and rigorous working place examinations and better communication regarding hazards and other adverse conditions identified, so they can be addressed before miners are injured or killed.

From January 2010 through mid-December 2015, 122 miners were killed in 110 accidents at MNM mines. For 16 of these accidents (18 fatalities), mine operators were issued citations for unwarrantable failure to comply under Section 104(d) of the Mine Act. Unwarrantable failure violations involve serious conditions that the operator should have known about. MSHA believes that for these 16 accidents, had the person making the examination recorded these conditions, the records of the adverse conditions would have alerted operators to take prompt corrective actions thus preventing the accidents. Also, when miners are notified of these types of conditions immediately, they can be more proactive in helping to prevent injury, illness, and death.

MSHA believes that the additional required communication – making sure miners are aware of potentially hazardous conditions – under this final rule will encourage prompt

corrective action and help prevent fatalities and other accidents. Miners deserve nothing less.

Major Provisions of the Final Rule

This final rule is the result of a deliberative process in which the Agency closely examined the rulemaking record, weighed the facts and arguments presented, and ultimately incorporated many of the suggestions and concerns of commenters. Specifically, in response to a number of comments, MSHA eliminated the proposed requirement that the record include a description of the corrective actions taken and the name of the person recording the corrective action. MSHA also eliminated the signature requirement for the examination record – only the name of the examiner is now required.

In addition, this final rule strengthens and improves MSHA's existing standards for MNM working place examinations by requiring that:

- A competent person examine the working place before miners begin work in that place;
- Mine operators promptly notify miners of any conditions that may adversely affect their safety or health and promptly initiate appropriate corrective action;
- The examination record include the name of the person conducting the examination; date of the examination; location of all areas examined; description of each condition found that may adversely affect the safety or health of miners the date the corrective action was made; and
- Records be made available for inspection by MSHA and miners' representatives, and operators provide a copy of the records upon request.

The final rule builds on existing concepts, definitions and responsibilities so that the new notification and recording requirements can be easily adopted by mine operators. The final rule does not change the existing definitions of "competent person" and "working place" used in §§ 56/57.18002 and defined in §§ 56/57.2.

Consistent with prior guidance, MSHA also reiterates in the preamble to the final rule that a "working place" applies to all locations at a mine where miners work in the extraction or milling processes, including roads traveled 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. In addition, unless required by other standards, mine operators would be required to examine isolated, abandoned, or idle areas of mines or mills only when miners have to perform work in these areas during the shift.

Effective Date

The rule takes effect on May 23, 2017. MSHA will develop outreach and compliance assistance materials related to the final rule and will provide these materials to stakeholders on the Agency's website and at stakeholder seminars held in locations accessible to the mining public. As part of this process, MSHA will identify best practices that can be shared with the mining community.

Cost and Benefits

MSHA estimates that the final rule will result in \$34.5 million in annual costs for the MNM industry: \$10.6 million for mines with 1-19 employees; \$22.2 million for mines with 20-500 employees; and \$1.7 million for mines with 501+ employees. The Agency estimates that the total undiscounted cost of the final rule over 10 years will be \$345.1 million; at a 3 percent discount rate, \$294.4 million; and at a 7 percent discount rate, \$242.4 million.

MSHA is not claiming a monetized benefit for this rule because the prior examinations rule had already anticipated all the benefits of effective examinations. However, all of those benefits have not been realized, and this rule is expected to improve the effectiveness of examinations. MSHA anticipates this rule will result in benefits due to more effective and consistent work place examinations that will help to ensure that adverse conditions will be timely identified, communicated to miners, and corrected.

In addition, MSHA anticipates that the enhanced record requirements will improve accident prevention by helping mine operators: 1) identify any patterns or trends of adverse conditions and 2) prevent these conditions from recurring by addressing root causes.