



# MSHA Conducts Stakeholders' Meeting On Workplace Examinations

Insights

11.11.19

On Thursday, November 7, 2019, the Mine Safety and Health Administration (“MSHA”) held the second of five stakeholder meetings to discuss the implementation of the revised Workplace Examination standard for metal/non-metal mines, 30 C.F.R. §§ 56/57.18002 (“Rule”). The meeting focused on discussion of the two provisions from the January 2017 version of the Rule that were reinstated following the D.C. Circuit’s decision on June 11, 2019. A discussion of the reinstatement of the January 2017 version of the Rule can be found [here](#). The two provisions that were reinstated related to timing of the examination and record keeping. Specifically:

1. Examinations must be conducted prior to miners beginning work as opposed to as they begin work, which was allowed under the April 2018 revision to the Rule.
2. All conditions affecting safety and health found during the examination must be recorded in the examination record, including those that have been immediately corrected.

MSHA reiterated that enforcement and these provisions will begin in earnest on January 1, 2020.

The November 7 stakeholders meeting was not recorded and MSHA characterized it as an “informal conversation.” MSHA opened with a short presentation about the two provisions and then took questions.

With respect to the timing provision, MSHA stated that it is not necessary to examine the entire mine prior to the oncoming shift, only the portions where miners will be working. At operations that work around the clock, the examination may be conducted at the end of the previous shift so long as it is sufficiently “close in time” to the start of the next shift. The various MSHA presenters repeatedly stated that the metal/non-metal workplace examination rule is not intended to replicate the coal preshift rule, which contains specific times for conducting the examination. MSHA, however, did not offer with specificity what would constitute a timeframe that is sufficiently “close in time” to the start of an oncoming shift.

With respect to recordkeeping, MSHA advised that it is not necessary to repeatedly record a continuing adverse condition. Rather, it is only necessary to record it when it is found and then note on that exam record when it has been corrected. The examination record may be maintained electronically so long as it may be made available, as required. It is also not necessary for the individual conducting the examination to fill out the record book. MSHA further stated that the Rule

individual conducting the examination to fill out the record book. MSHA further stated that the Rule is not intended to allow inspectors to cite conditions recorded in the examination record that have been corrected.

In response to questions, MSHA also addressed various specific issues related to the Rule, including:

- Contractors: A production operator may rely on contractors to perform workplace examinations of areas where they are working but it is ultimately the production operator's responsibility to ensure that they have been conducted in accordance with the requirements of the standard.
- Multi-level plants: In response to a specific question about multi-level plants, MSHA stated that it is not necessary to examine all levels prior to the start of the shift. Rather, it is only necessary to examine those where personnel will be working.

Finally, MSHA pointed to additional resources that have been made available with respect to workplace examinations. The MSHA website includes an updated set of Frequently Asked Questions and templates for conducting examinations. The training program offered to inspectors will be posted on the website shortly. Anyone with additional questions is invited to email Donald Vickers at MSHA's Metal/Non-Metal Safety Division ([Vickers.donald@dol.gov](mailto:Vickers.donald@dol.gov)).

MSHA will be conducting three additional information sessions:

- November 12 in Bloomington, IL
- November 14 in Denver, CO
- November 21 in Pittsburgh, PA

Fisher Phillips will continue to monitor developments at the various stakeholders meetings.

### ***Related People***



**Arthur M. Wolfson**

Partner  
412.822.6625  
Email

## ***Service Focus***

Workplace Safety and Catastrophe Management