

MSHA Launches Two New Safety and Health Initiatives

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The Mine Safety and Health Administration has introduced a pair of initiatives, one in response to a recent increase in fatalities in the metal/nonmetal (M/NM) sector of mining, and the other following a report by an agency watchdog, which concluded MSHA could do more to address alleged underreporting of accidents, injuries and illnesses among miners.

At a stakeholders' meeting July 22, MSHA unveiled a revised [Program Policy Letter](#) (PPL) that tightens agency policy concerning its standards for examination of working places at surface and underground non-coal mines. The two standards, at 30 CFR § 56/57.18002, require mine operators to designate a competent person to examine each working place for adverse safety and health conditions once per shift, take corrective action as necessary and keep a record of each examination.

The agency justified release of the PPL, which went into effect July 22, by saying that “[r]ecent fatalities and other accidents at metal/nonmetal mines suggest that miners would benefit from rigorous workplace examinations conducted by experienced and trained examiners.”

The latest iteration reflects changes from the official [version issued in March 2014](#), and has raised concern among mining stakeholders. Although the new PPL states that an experienced non-supervisory miner may be competent to conduct the workplace examination, MSHA's view that foremen or other supervisors should perform the examinations by describing management's role as a “best practice” is clear. Jackson Lewis attorneys Avi Meyerstein and Ross Watzman have noted this contradicts the agency's Program Policy Manual (PPM), which specifically states that competent persons need not be mine managers.

The attorneys go on to say, “Having a supervisor perform the exams of all areas not only imposes time and logistical challenges, it also means that any MSHA allegations that an exam was inadequate or not performed will involve potentially much greater liability [by serving] as the basis for unwarrantable failure allegations and individual civil penalties.” Unwarrantable failure refers to aggravated conduct beyond ordinary negligence.

In addition, the definition of “working place” has been expanded to include areas where work is performed infrequently, such as areas assessed during maintenance or cleanup. The language suggests these areas are to be examined on every shift regardless of whether or not work is to be done there during that period. MSHA's intent here needs to be clarified, Meyerstein and Watzman said. The change represents another deviation from the PPM, they added.

If the competent person misses multiple safety hazards or such hazards are overlooked by several competent persons, the PPL suggests a citation may be written for allegedly inadequate task training. According to the two attorneys, this represents a “new policy” that requires examiners first to complete task training in how to conduct workplace examinations (and keep a record of such training). As such, it could open the door to a third citation, on top of citations for the alleged hazard itself and for allegedly conducting an inadequate examination.

“Under the new PPL, MSHA may try to add yet another layer to the same violation: failure to task train the examiner,” Meyerstein and Watzman said.

Regarding recordkeeping, MSHA stated that a best practice is for the operator to record any hazardous conditions. However, current standards do not mandate that, the lawyers pointed out. Summarizing the potential impact of the changes, Meyerstein and Watzman said the PPL “could be interpreted to impose new compliance burdens and create significant new potential liability.”

At the July 22 meeting, agency officials also took the wraps off a [new interactive, online training](#) tool aimed at clarifying accident, injury and illness notification requirements under MSHA's Part 50

standards. The tool features one training course for operators and another for miners. In a press release announcing the initiative, MSHA chief Joe Main said the tool could serve “as a road map” for operators “to pinpoint where they are having problems and where they need to concentrate their efforts.” It also could help miners better understand mandatory requirements on reporting work-related injuries and illnesses, as well as enhance MSHA’s ability to evaluate and develop beneficial mine safety and health initiatives, he said.

The program was developed in partial response to a March 2014 audit report by the Department of Labor’s Office of Inspector General, which credited MSHA for taking steps to detect and deter alleged underreporting of accidents and occupational injuries and illnesses, but concluded that MSHA needed to do more.

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