



DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

[Docket No. MSHA-2014-0030]

RIN 1219-AB87

Examinations of Working Places in Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; extension of comment period; close of record.

SUMMARY: In response to stakeholder requests, the Mine Safety and Health Administration (MSHA) is extending the comment period for Agency's proposed rule on Examinations of Working Places in Metal and Nonmetal Mines. The document also clarifies and seeks additional comments on selected proposed provisions.

DATES: The comment period for the proposed rule published on June 8, 2016 (81 FR 36818), is extended. Comments must be received or postmarked by midnight Eastern Daylight Savings Time on September 30, 2016.

ADDRESSES: Submit comments and informational materials, identified by RIN 1219-AB87 or Docket No. MSHA-2014-0030, by one of the following methods listed below:

- *Federal E-Rulemaking Portal:*
<http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *E-Mail:* zzMSHA-comments@dol.gov.
- *Mail:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202-5452.
- *Hand Delivery or Courier:* 201 12th Street South, Suite 4E401, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 4th floor East, Suite 4E401.
- *Fax:* 202-693-9441.

Instructions: All submissions for the proposed rule must include RIN 1219-AB87 or Docket No. MSHA-2014-0030. MSHA posts all comments without change, including any personal information provided. Access comments electronically on <http://www.regulations.gov> and on MSHA's Web site at <https://www.msha.gov/regulations/rulemaking>.

Docket: The proposed rule for Examinations of Working Places in Metal and Nonmetal Mines was published on June 8, 2016 (81 FR 36818). The document is available on <https://www.regulations.gov> and on MSHA's Web site at <https://www.msha.gov/regulations/rulemaking/examinations-working-places-metal-and-nonmetal-mines>. Review comments in person at the Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202-5452. Sign in at the receptionist's desk on the 4th floor East, Suite 4E401.

E-mail Notification: To subscribe to receive e-mail notification when MSHA publishes rulemaking documents in the Federal Register, go to <https://www.msha.gov>.

FOR FURTHER INFORMATION CONTACT: Sheila A. McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at mcconnell.sheila.a@dol.gov (e-mail), 202-693-9440 (voice); or 202-693-9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 2016 (81 FR 36818), the Mine Safety and Health Administration (MSHA) published a proposed rule on

Examinations of Working Places in Metal and Nonmetal (MNM) mines. The purpose of this proposed rule is to ensure that mine operators identify and correct conditions that may adversely affect miners' safety or health. MSHA conducted public hearings on the proposed rule on July 19, 21, 26, and August 4, 2016. In response to stakeholder requests, MSHA is providing additional time for interested parties to comment on the proposed rule. MSHA is extending the deadline for comments from September 6, 2016, to September 30, 2016.

I. Request for Comments and Close of Record

Under proposed §§ 56.18002(a)(1) and 57.18002(a)(1), MSHA proposed that metal and nonmetal mine operators promptly notify miners in any affected areas of any conditions found that may adversely affect safety or health and promptly initiate appropriate action to correct such conditions. MSHA received comments and testimony requesting that the Agency clarify the proposed requirement "to promptly notify miners." Upon consideration of such comments and testimony, MSHA clarifies that "to promptly notify miners" means any notification to the miners that alerts them to adverse conditions in their working place so

that they can take necessary precautions to avoid an accident or injury before they begin work in that area. This notification could take any form that is effective to notify affected miners of the particular condition: verbal notification, prominent warning signage, other written notification, etc. MSHA believes that, in most cases, verbal notification or descriptive warning signage would be needed to ensure that all affected miners received actual notification of the specific condition in question.

MSHA also clarifies that a "prompt" notification would occur before miners are potentially exposed to the condition; e.g., before miners begin work in the affected areas, or as soon as possible after work begins if the condition is discovered while they are working in an area. For example, this notification could occur when miners are given work-shift assignments. MSHA seeks comments on proposed §§ 56.18002(a)(1) and 57.18002(a)(1).

MSHA also clarifies that the proposed rule would not change existing standards regarding conditions that present imminent danger. Like the existing rule, the proposed §§ 56.18002(a)(2) and 57.18002(a)(2) continue to require that conditions that may present an imminent danger which

are noted by the person conducting the examination shall be brought to the immediate attention of the operator who shall withdraw all persons from the area affected (except persons referred to in section 104(c) of the Federal Mine Safety and Health Act of 1977) until the danger is abated.

As MSHA stated during the public hearings, the proposed rule would not change the existing definition of working place. Existing §§ 56.2 and 57.2 define "working place" as: "any place in or about a mine where work is being performed." Regarding the timing of the examination, some commenters expressed concern that the proposed rule would require mine operators to conduct an examination of the entire mine before the start of each shift. It is not MSHA's intent for the mine operator to examine the entire mine before work begins. The proposal would require an examination of "each working place" "before work begins in an area." A "working place" is not the entire mine unless miners will be working in all areas of the mine. "Before work begins in an area" may or may not coincide with the start of any particular shift; it depends on when miners actually will be working in any particular working place. The proposed rule, like the existing rule, would require

examinations in only those areas where work will be performed. As MSHA stated in the preamble, a "working place" applies to all locations at a mine where miners work in the extraction or milling processes. (81 FR 36821.) MSHA clarifies that consistent with the existing definition of "working place," this includes roads traveled to and from a work area.

MSHA further explained that 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. Unless required by other standards, mine operators would only be required to examine isolated, abandoned, or idle areas of mines or mills when miners have to perform work in these areas during the shift.

In MSHA's June 8, 2016 Federal Register proposed rule (81 FR 36826), the introductory text of §§ 56.18002(b) and 57.18002(b) stated that the person conducting the examination would be required to sign and date the record before the end of the shift for which the examination was made. MSHA has received a number of comments and heard testimony at the public hearings on stakeholder concerns

that the proposed requirement to sign the examination record would increase the potential for liability of miners under section 110(c) of the Mine Act for those who conduct workplace examinations. MSHA notes that Mine Act liability as an "agent" of an operator under section 110(c) relates to the substantive duties and delegated responsibilities of the person in question. The proposed rule language would not change the qualification requirements for the "competent person" (although MSHA asked for comments on this issue). The proposal also would not change the substantive requirements either for the areas to be examined or the adverse conditions for which the examination would be made. While the degree of responsibility a particular person may have at any given mine may vary widely, the single act of printing one's initials or name, as opposed to signing one's name, adds no more and no less to the substantive duties and qualifications of the person who conducts the examination.

Nonetheless, some commenters were concerned that the signature requirement would discourage miners from conducting working place examinations and would have a negative impact on the quality of the examination. MSHA

seeks comments on an alternative approach of simply requiring that the name of the competent person, rather than the signature, be included in the examination record.

MSHA received a number of comments and heard testimony at the public hearings seeking clarification on the recordkeeping requirements for adverse conditions found that are immediately corrected. Some commenters were concerned that recording every condition and every corrective action would be an excessive burden to mine operators, especially for small operators. As MSHA stated, the Agency believes that making and maintaining a record of adverse conditions found and corrective actions taken would help mine operators and miners and their representatives become more aware of potential dangers and more proactive in their approach to correcting these issues before they cause or contribute to an accident, injury, or fatality. (81 FR 36819). MSHA seeks information on how mine operators have used the examination record to identify and correct systemic adverse conditions that may contribute to an accident, injury, or fatality. In addition, MSHA seeks comment on possible limitations that would be placed on the mine operators' ability to use the examination record to

identify and correct systemic adverse conditions if a record of an adverse condition that is immediately corrected is not made.

MSHA received a number of comments and heard testimony at the public hearings asking if MSHA would require the person conducting the working place examination to wait until the end of the shift to make the record. MSHA clarifies that the proposed rule would allow the competent person conducting the exam to make the record any time before the end of the shift.

II. Paperwork Reduction Act of 1995

MSHA's proposed rule contains changes that would affect the burden in an existing OMB Control Number 1219-0089. MSHA, the Department of Labor, and the Office of Management and Budget are particularly interested in comments related to the recordkeeping requirement that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of

information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

MSHA solicits comments from the mining community on all aspects of the proposed rule. Commenters are requested to be specific in their comments and to provide sufficient detail in their responses to enable proper Agency review and consideration. All comments must be received by September 30, 2016.

Joseph A. Main,

August 17, 2016
Date

*Assistant Secretary of Labor for
Mine Safety and Health.*

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