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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: Final rule; stay of effective date; reinstatement of rules.

SUMMARY: The Mine Safety and Health Administration is staying the effective date of the Agency's January 23, 2017, final rule that amended standards for examination of working places in metal and nonmetal mines to June 2, 2018. MSHA also is reinstating the provisions of the working place examinations standards that were in effect as of October 1, 2017. This stay and reinstatement offers additional time for MSHA to provide stakeholders training and compliance assistance.

DATES: As of [insert date of filing for public inspection], 30 CFR 56.18002 and 57.18002 are stayed until June 2, 2018, and 30 CFR 56.18002T and 57.18002T are added until June 2, 2018.

FOR FURTHER INFORMATION CONTACT: Sheila A. McConnell,
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SUPPLEMENTARY INFORMATION:

I. Stay of Effective Date

On January 23, 2017, MSHA published a final rule in the Federal Register (82 FR 7680) amending the Agency's standards for the examination of working places in metal and nonmetal (MNM) mines (January 2017 final rule). The final rule was scheduled to become effective on May 23, 2017. On May 22, 2017, MSHA published a final rule delaying the effective date to October 2, 2017 (82 FR 23139). On September 12, 2017, MSHA proposed to further delay the effective date of the final rule from October 2, 2017 to March 2, 2018 (82 FR 42765). The comment period for the proposed delay of the final rule's effective date closed on September 26, 2017.

In the same issue of the Federal Register, MSHA reopened the rulemaking record and proposed to amend the January 2017 final rule with regard to the timing of the working place examination and contents of the examination record (82 FR 42757). MSHA has scheduled four public

hearings from October 24, 2017, to November 2, 2017, at various locations, to provide the members of the public an opportunity to present their views on the limited changes being proposed. The comment period for the proposed limited changes closes on November 13, 2017.

Most commenters on the proposed rule to delay the effective date of the final rule supported extending the date beyond October 2, 2017. One commenter who supported extending the effective date to March 2, 2018, stated that the extension of time would offer additional time for MSHA to provide stakeholders training and compliance assistance, would further permit MSHA to address issues raised by stakeholders during quarterly training calls and stakeholder meetings and compliance assistance visits, and would also provide MSHA more time to train its inspectors to help ensure consistency in MSHA enforcement. This commenter also supported a further delay of the effective date of the final rule, should such be required, if the Agency has yet to achieve its stated goals.

Many commenters stated that an extension beyond October 2, 2017 is necessary and appropriate and recommended an indefinite suspension of the effective date. The commenters maintained that, since substantive changes to the January 2017 final rule were proposed at the same

time as the proposed delay, it is imprudent to establish any effective date until an amended final rule is promulgated and the substance of the rule is known. In addition, they acknowledged MSHA's stated intent to provide compliance assistance to industry and specific training to inspectors prior to the effective date. The commenters expressed concern that, for any compliance assistance measures to have any meaning, it is necessary for the exact terms of the final rule to be known before the final rule's effective date. Then, after the period of compliance assistance from MSHA, mine operators will be required to develop appropriate compliance programs to comply with the final rule. Given the uncertainty of the final rule's provisions and the compliance assistance efforts to be scheduled, the commenters believed that an appropriate effective date cannot be established.

Other commenters stated that the proposed delay to March 2, 2018, was arbitrary and does not increase the likelihood that MSHA will complete all of the compliance assistance, outreach, and training tasks in that timeframe, or that the MNM industry will be ready to comply on the new effective date. They recommended that MSHA establish an effective date that is six months after the date on which

any changes to the final Examinations rule are published in the Federal Register.

MSHA agrees with commenters who support an extension beyond the proposed March 2, 2018 effective date so that the Agency will complete its stated goals by the effective date of the final rule. To ensure compliance readiness on that date, MSHA is developing compliance assistance materials to assist the industry. A stay beyond the proposed March 2, 2018, effective date will provide MSHA the time and flexibility to make these materials available to stakeholders and post them on MSHA's website (www.msha.gov); hold informational stakeholder meetings at various locations around the country; and focus on compliance assistance visits in other areas of the country, as well as ensure all issues at these meetings and visits are addressed. Additional time will also allow MSHA to train its inspectors to ensure consistent enforcement. MSHA will make the Agency's inspector training materials available to the mining community to assist miners and mine operators in effectively implementing the rule, thus enhancing the safety of miners.

Labor union commenters did not support the proposed delay in the effective date, stating that a delay was unnecessary and miners' health and safety would be affected

by an extension. Labor also stated that the January 2017 final rule made only minor changes.

Staying the effective date does not negatively affect miners' safety and health; the standards that have been in effect for many years are reinstated and MSHA will continue to enforce those standards. MSHA will also continue to proactively provide compliance assistance and training needed to assure that miners' safety and health are protected. Staying the effective date of the January 2017 rule is necessary so that the diverse MNM mining industry is provided the educational, technical, and compliance assistance to ensure miners' safety and health and to comply with final rule requirements. The diversity in the MNM mining industry relates not only to commodities produced at mines and mills, but also differences for small and large mines in complying with the final rule. Based on data reported to MSHA, 90 percent of over 11,000 MNM mines employ fewer than 20 miners and almost all (98 percent) are surface mines.

Since most MNM mines are small operations, MSHA recognizes that they have limited staff, including limited administrative staff, as well as limited resources, and many are located in remote areas. These small mines may have limited access or no access to the internet at the

mine site and may rely on stakeholder meetings and other types of MSHA assistance to acquire informational materials needed to comply with the rule. In MSHA's experience with previous changes to metal and nonmetal standards and regulations, outreach to these small mine operators requires MSHA to be flexible regarding different approaches that may be needed and regarding the time necessary to ensure that all miners and mine operators have the tools and the information to comply with the rule.

MSHA has concluded that miners are better protected when operators and miners are provided needed informational and instructional materials and training and technical assistance regarding the rule's requirements. The stayed effective date to June 2, 2018 provides MSHA the flexibility the Agency needs to promote compliance, thereby increasing protections for miners.

Further, staying the January 2017 rule without also reinstating the provisions that were in effect as of October 1, 2017, would leave miners unprotected. Reinstatement without delay is necessary to continue historical protection of metal and nonmetal miners through workplace examinations.

II. Other Issues

Some commenters raised concern that the substance of the final rule is uncertain because litigation is pending on the January 2017 final rule. The commenters suggested that MSHA delay the effective date indefinitely until the rule's status is finally resolved. These comments are outside the scope of the September 12, 2017, proposed rule, which was limited to delaying the rule's effective date to ensure compliance readiness.

III. Conclusion

Having given due consideration to all comments received, MSHA has determined that it is appropriate to stay the effective date until June 2, 2018, and to reinstate the workplace examinations rules that were in effect as of October 1, 2017. The stay will address commenters' concerns regarding sufficient time for MSHA to fully inform and educate the mining community on the rule's requirements. A June 2, 2018, effective date provides more time and flexibility for MSHA to complete development of compliance assistance materials and make them available to stakeholders, hold informational meetings for stakeholders and conduct compliance assistance visits at MNM mines throughout the country. In addition, the extension will permit more time for MSHA to address issues that have been or may be raised during quarterly training calls and

upcoming stakeholder meetings and compliance assistance visits and to train MSHA inspectors to help ensure consistency in MSHA enforcement. MSHA has determined that the educational, technical, and compliance assistance that will be provided to mine operators and miners during the period of the stayed effective date will enhance their understanding of the rule's requirements, thereby increasing protections for miners.

For the foregoing reasons, MSHA has concluded that it is appropriate to stay the effective date until June 2, 2018.

Accordingly, the effective date of the final rule published January 23, 2017 (82 FR 7680), delayed on May 22, 2017 (82 FR 23139), is stayed until June 2, 2018. The standards that were in effect as of October 1, 2017, are reinstated.

List of Subjects in 30 CFR Parts 56 and 57

Metals, Mine safety and health, Reporting and recordkeeping requirements.

Dated: October 3, 2017

Wayne D. Palmer
Acting Assistant Secretary of Labor
for Mine Safety and Health

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, as amended by the Mine Improvement and New Emergency Response Act of 2006, MSHA is amending parts 56 and 57 as follows:

PART 56—SAFETY AND HEALTH STANDARDS--SURFACE METAL AND
NONMETAL MINES

1. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811.

§ 56.18002 [Stayed]

2. Section 56.18002 is stayed until June 2, 2018.

3. Section 56.18002T is added until June 2, 2018 to read as follows:

§ 56.18002T Examination of working places.

(a) A competent person designated by the operator shall examine each working place at least once each shift for conditions which may adversely affect safety or health. The operator shall promptly initiate appropriate action to correct such conditions.

(b) A record that such examinations were conducted shall be kept by the operator for a period of one year, and shall be made available for review by the Secretary or his authorized representative.

(c) In addition, 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.

PART 57—SAFETY AND HEALTH STANDARDS--UNDERGROUND METAL AND
NONMETAL MINES

4. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

§ 57.18002 [Stayed]

5. Section 57.18002 is stayed until June 2, 2018.

6. Section 57.18002T is added until June 2, 2018 to read as follows:

§ 57.18002T Examination of working places.

(a) A competent person designated by the operator shall examine each working place at least once each shift for conditions which may adversely affect safety or health. The operator shall promptly initiate appropriate action to correct such conditions.

(b) A record that such examinations were conducted shall be kept by the operator for a period of one year, and shall be made available for review by the Secretary or his authorized representative.

(c) In addition, 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.

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