

# PUBLIC SUBMISSION

As of: 11/8/17 9:44 AM  
Received: October 30, 2017  
Status: Posted  
Posted: November 08, 2017  
Tracking No. 1k1-8zie-1jjk  
Comments Due: November 13, 2017  
Submission Type: Web

**Docket:** MSHA-2014-0030

Examinations of Working Places in Metal and Nonmetal Mines. 30 CFR Parts 56 and 57

**Comment On:** MSHA-2014-0030-0179

Examinations of Working Places in Metal and Nonmetal Mines - Proposed rule, limited reopening of the rulemaking record; notice of public hearings; close of comment period.

**Document:** MSHA-2014-0030-0225

Comment from Ed Thomas, The Fertilizer Institute

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## Submitter Information

**Name:** Ed Thomas

**Organization:** The Fertilizer Institute

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## General Comment

The Fertilizer Institute (TFI), on behalf of its member companies, submits the attached comments on the Mine Safety and Health Administration's (MSHA or Administration) proposal to reopen the rule making, "Examination of Working Places in Metal and Nonmetal Mines" (hereinafter "Mine Examination Record Reopening"). The Mine Examination Record Reopening was published in the Federal Register on September 12, 2017 and appears at 82 Fed. Reg. 42,757.

TFI represents the nation's fertilizer industry including producers, importers, retailers, wholesalers and companies that provide services to the fertilizer industry. TFI members provide nutrients that nourish the nation's crops, helping to ensure a stable and reliable food supply. TFI's full-time staff, based in Washington, D.C., serves its members through legislative, educational, technical, economic information and public communication programs.

All of TFI's phosphate and potash mining members are subject to the "Examination of Working Places in Metal and Nonmetal Mines" provisions.

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## Attachments

09-12-2017 MSHA Examination Re-opened rulemaking PR Comments

AB87-COMM-159

11/8/2017



# The Fertilizer Institute

Nourish, Replenish, Grow

October 30, 2017

## VIA WWW.REGULATIONS.GOV

Sheila A. McConnell  
Director  
Mine Safety and Health Administration  
Office of Standards, Regulations, and Variances  
201 12<sup>th</sup> Street South, Suite 4E401  
Arlington, VA 22202-5402  
<http://www.regulations.gov>

**RE: *Comments on the "Examination of Working Places in Metal and Nonmetal Mines," proposed rule, limited reopening of the rule making record; notice of public hearings; close of comment period, MSHA-2014-0030***

Dear Ms. McConnell:

The Fertilizer Institute (TFI), on behalf of its member companies, submits these comments on the Mine Safety and Health Administration's (MSHA or Administration) proposal to reopen the rule making, "*Examination of Working Places in Metal and Nonmetal Mines*" (hereinafter "*Mine Examination Record Reopening*"). The *Mine Examination Record Reopening* was published in the *Federal Register* on September 12, 2017 and appears at 82 Fed. Reg. 42,757.

### Statement of Interest

TFI represents the nation's fertilizer industry including producers, importers, retailers, wholesalers and companies that provide services to the fertilizer industry. TFI members provide nutrients that nourish the nation's crops, helping to ensure a stable and reliable food supply. TFI's full-time staff, based in Washington, D.C., serves its members through legislative, educational, technical, economic information and public communication programs.

All of TFI's phosphate and potash mining members are subject to the "*Examination of Working Places in Metal and Nonmetal Mines*" provisions.

### Introduction

In 2015 alone, the U.S. fertilizer industry invested \$5.1 billion in capital infrastructure projects. These investments create jobs, increase worker and community safety, and help conserve energy, land, water, and air resources. The U.S. fertilizer industry is one of the world's largest. The United States is the world's fourth largest producer of nitrogen-based fertilizers and the second largest producer of phosphate fertilizer. The U.S. fertilizer industry generates more than \$155

billion in economic benefit and provides more than 89,000 direct jobs and 406,000 indirect jobs for a total of more than 495,000 U.S. jobs.

### **TFI Comments**

The Mine Safety and Health Administration (MSHA) has proposed to amend the Agency's final rule, "*Examinations of Working Places in Metal and Nonmetal Mines*," published on January 23, 2017. The proposed changes would require that an examination of the working place be conducted before work begins or as miners begin work in that place, and that the examination record include descriptions of adverse conditions that are not corrected promptly. These changes offer additional flexibility for operators to manage their safety and health programs more efficiently while reducing burden without compromising miner's safety and health.

TFI offers the following comments on the *Mine Examination Record Reopening*:

#### **I. TFI Supports the Revised Changes to the Requirements in 30 CFR 56.18002(a)**

TFI submitted comments on the proposed "*Examination of Working Places in Metal and Nonmetal Mines*", published in the Federal Register on June 8, 2016, which outlined our concerns with the provision in 30 CFR 56.18002(a). The provision requires a competent person (designated by the mine operator) to examine working places before miners begin work for conditions affecting safety and health.

TFI members are concerned that a pre-shift workplace exam would delay the start of the shift to provide time for the exam to be completed and communicated, or would require personnel to arrive prior to the start of the shift to perform this exam. This would result in overtime pay and/or delay of work. TFI at a minimum agrees that the proposed clarification in rule language allowing the examination of each working place "as miners begin work in that place for conditions that may adversely affect safety or health" will provide sufficient flexibility for operators to conduct an inspection while not interrupting the transition of shifts. Such an approach also maintains safe working conditions. As such, TFI supports the proposed changes that allow an examination of the working place before, or as minors begin work.

TFI also requests that EPA provide final rule preamble language that explains examples of how the clarification will be implemented and the inherent site specific conditions that may exist at different mining locations:

1. Outgoing shift personnel shall be authorized to prepare the pre-shift work place exam for the incoming crew;
2. Routine inspections and reporting of hazardous conditions are on-going activities and are part of standard operating procedures at phosphate and potash mines. This type of SOP would suffice as the inspection at shift

changes;

3. Some areas such as roads and remote inactive mining locations take an entire shift to complete an inspection (e.g. employees have found hazardous road conditions, reported them, marked them, and initiated a response during routine inspections.) For these types of conditions, the Administration must recognize that site specific work conditions preclude personnel from doing inspections between shift changes.

## **II. TFI Requests Preamble Language in the Final Rule to Provide Clarity for the Definition of “Prompt” in 30 CFR 56.18002(a)(1)**

The Administration has proposed adding a requirement that if during an examination, adverse safety or health conditions are found then “prompt” action must be taken to notify miners of hazardous conditions not corrected. TFI requests the Administration include in the final rule preamble, language that the following activities satisfy compliance with the “prompt” requirement contained in 30 CFR 56.18002(a)(1):

1. Recognize that physical warning communications (e.g., signage, barricades, etc.) put into place by or at the direction of the competent person will suffice as notification both to workers in the area as well as to those workers who may go outside of their assigned duty location. (e.g. this would be applicable when a road or berm is damaged/washed out and the equipment that must be scheduled to perform repairs is not immediately available, or to the tag out of equipment that cannot be operated until repairs are made);
2. Acknowledge that depending on the severity of the defect, notification of miners in affected areas could include many methods of verbal notification including radio broadcasts; and
3. The first step to prompt appropriate corrective action is the initiation of a work order. The competent person initiating the work order must have the flexibility to assess the degree of hazard, complexity, and the appropriate timing for corrective action.

## **III. TFI Supports the Revised Changes to the Requirements in 30 CFR 56.18002(b) and 56.18002(c)**

EPA has proposed to modify 30 CFR 56.18002(b) and 56.18002(c) to require that the examination record include the date of corrective action for any adverse condition that is not promptly corrected. TFI supports the proposed clarification. Many times adverse conditions are corrected immediately during routine operations or during daily examinations. Removing the requirement to document all adverse conditions that are corrected will provide incentive for operators to make corrective actions immediately and reduce unnecessary regulatory burdens.

**Conclusion**

TFI appreciates MSHA's consideration of these comments on the *Mine Examination Record Reopening*. Please contact me by telephone at (202) 515-2714 or via e-mail at [ethomas@tfi.org](mailto:ethomas@tfi.org) if you would like to further discuss our recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Thomas", followed by a horizontal line.

Ed Thomas  
Director, Regulatory Affairs