

**§§ 70.45–70.52 [Reserved]****Subpart D—Public Records and Filings****§ 70.53 Office of Labor-Management Standards.**

(a) The following documents in the custody of the Office of Labor-Management Standards are public information available for inspection and/or purchase of copies in accordance with paragraphs (b) and (c) of this section.

(1) Data and information contained in any report or other document filed pursuant to sections 201, 202, 203, 211, 301 of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 524–28, 530, 79 Stat. 888, 73 Stat. 530, 29 U.S.C. 431–433, 441, 461).

(2) Data and information contained in any report or other document filed pursuant to the reporting requirements of 29 CFR part 458, which are the regulations implementing the standards of conduct provisions of the Civil Service Reform Act of 1978, 5 U.S.C. 7120, and the Foreign Service Act of 1980, 22 U.S.C. 4117. The reporting requirements are found in 29 CFR 458.3.

(3) Data and information contained in any report or other document filed pursuant to the Congressional Accountability Act of 1995, 2 U.S.C. 1351, 109 Stat. 19.

(b) The documents listed in paragraph (a) of this section are available from: U.S. Department of Labor, Office of Labor-Management Standards, Public Disclosure Room, N–1519, 200 Constitution Avenue NW., Washington, DC 20210. Reports filed pursuant to section 201 of the Labor-Management Reporting and Disclosure Act of 1959 and pursuant to 29 CFR 458.3 implementing the Civil Service Reform Act of 1978 and the Foreign Service Act of 1980 for the year 2000 and thereafter are also available at <http://www.union-reports.dol.gov>.

(c) Pursuant to 29 U.S.C. 435(c) which provides that the Secretary will by regulation provide for the furnishing of copies of the documents listed in paragraph (a) of this section, upon payment of a charge based upon the cost of the service, these documents are available at a cost of \$ .15 per page for record copies furnished. Authentication of copies is available in accordance with the fee schedule established in Sec. 70.40. In accordance with 5 U.S.C. 552(a)(4)(A)(vi), the provisions for fees, fee waivers and fee reductions in subpart C of this part do not supersede these charges for these documents.

(d) Upon request of the Governor of a State for copies of any reports or documents filed pursuant to sections

201, 202, 203, or 211 of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 524–28, 79 Stat. 888; 29 U.S.C. 431–433, 441), or for information contained therein, which have been filed by any person whose principal place of business or headquarters is in such State, the Office of Labor-Management Standards will:

(1) Make available without payment of a charge to the State agency designated by law or by such Governor, such requested copies of information and data, or

(2) Require the person who filed such reports and documents to furnish such copies or information and data directly to the State agency thus designated.

**§ 70.54 Employee Benefits Security Administration.**

(a) The annual financial reports (Form 5500) and attachments/schedules as filed by employee benefit plans under the Employee Retirement Income Security Act (ERISA) are in the custody of the Employee Benefits Security Administration (EBSA) at the address indicated in paragraph (b) of this section, and the right to inspect and copy such reports, as authorized under ERISA, at the fees set forth in this part, may be exercised at such office.

(b) The mailing address for the documents described in this section is: U.S. Department of Labor, Employee Benefits Security Administration, Public Documents Room, 200 Constitution Avenue NW., Washington, DC 20210.

**Appendix A to Part 70—FOIA Components**

The following list identifies the individual agency components of the Department of Labor for the purposes of the FOIA. Each component is responsible for making records in its custody available for inspection and copying, in accordance with the provisions of the FOIA and this part. Unless otherwise specified, the mailing addresses for the following national office components are listed below. Updated contact information for national and regional offices can be found on the DOL Web site at <http://www.dol.gov/dol/foia>.

U.S. Department of Labor  
200 Constitution Avenue NW.  
Washington, DC 20210.

1. Office of the Secretary (OSEC).
2. Office of the Solicitor (SOL).
3. Office of Administrative Law Judges (ALJ), 800 K Street NW., Suite N–400, Washington, DC 20001–8002.
4. Office of the Assistant Secretary for Administration and Management (OASAM).
5. Office of the Assistant Secretary for Policy (OASP).
6. Office of the Chief Financial Officer (OCFO).
7. Office of Congressional and Intergovernmental Affairs (OCIA).

8. Office of Disability Employment Policy (ODEP).

9. Office of Federal Contract Compliance Programs (OFCCP).

10. Office of the Inspector General (OIG).

11. Office of Labor Management Standards (OLMS).

12. Office of Public Affairs (OPA).

13. Office of Workers' Compensation Programs (OWCP).

14. Bureau of International Labor Affairs (ILAB).

15. Bureau of Labor Statistics (BLS), Postal Square Building, Room 4040, 2 Massachusetts Avenue NE., Washington, DC 20212–0001.

16. Employment and Training Administration (ETA). Job Corps (part of ETA).

17. Mine Safety and Health Administration (MSHA), 201 12th Street, South, Arlington, Virginia 22202.

18. Occupational Safety and Health Administration (OSHA).

19. Employee Benefits Security Administration (EBSA).

20. Veterans' Employment and Training Service (VETS).

21. Employees' Compensation Appeals Board (ECAB).

22. Administrative Review Board (ARB).

23. Benefits Review Board (BRB).

24. Wage and Hour Division (WHD).

25. Women's Bureau (WB).

**Appendix B to Part 70—[Reserved]**

**Thomas E. Perez,**

*Secretary of Labor.*

[FR Doc. 2017–00453 Filed 1–19–17; 8:45 am]

**BILLING CODE P**

**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.

**SUMMARY:** The Mine Safety and Health Administration's final rule amends the Agency's standards for the examination of working places in metal and nonmetal mines. This final rule requires that an examination of the working place be conducted before miners begin working in that place, that operators notify miners in the affected areas of any conditions found that may adversely affect their safety or health, that operators promptly initiate corrective action, and that a record be made of the examination. The final rule

also requires that the examination record include: The name of the person conducting the examination, the date of the examination, the location of all areas examined, a description of each condition found that may adversely affect the safety or health of miners, and the date of the corrective action. In addition, the final rule requires that mine operators make the examination record available for inspection by authorized representatives of the Secretary and miners' representatives and provide a copy upon request.

**DATES:** Effective date: May 23, 2017.

**FOR FURTHER INFORMATION CONTACT:** Sheila A. McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at [mccconnell.sheila.a@dol.gov](mailto:mccconnell.sheila.a@dol.gov) (email); 202-693-9440 (voice); or 202-693-9441 (facsimile).

**SUPPLEMENTARY INFORMATION:**

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**Availability of Information**

*Federal Register Publications:* Access rulemaking documents electronically at <http://www.msha.gov/reginfo.htm> or <http://www.regulations.gov> [Docket Number: MSHA-2014-0030]. Obtain a copy of a rulemaking document from the Office of Standards, Regulations, and Variances, MSHA, by request to 202-693-9440 (voice) or 202-693-9441 (facsimile). (These are not toll-free numbers.)

*Email Notification:* MSHA maintains a list that enables subscribers to receive an email notification when the Agency publishes rulemaking documents in the **Federal Register**. To subscribe, go to <http://www.msha.gov/subscriptions/subscribe.aspx>.

**I. Introduction**

Under the Mine Act, mine operators, with the assistance of miners, have the primary responsibility to prevent the existence of unsafe and unhealthful conditions and practices. Operator compliance with safety and health standards and implementation of safe

work practices provide a substantial measure of protection against hazards that cause accidents, injuries, and fatalities. The Mine Safety and Health Administration (MSHA) has determined that examinations of working places are an important part of an effective accident prevention strategy; they are a first line of defense because they allow operators to find and fix conditions. The existing standards for metal and nonmetal (MNM) mines requiring that workplace examinations be conducted at least once each shift potentially expose miners to adverse conditions during the shift because mine operators can perform the workplace examination anytime during the shift, which exposes miners to adverse conditions during the shift before any corrective action is taken. The final rule, like the proposed rule, amends this provision to require that each working place be examined before miners or other employees begin work in that place. The new requirement that mine operators notify miners of adverse conditions in their working places will make miners aware of such conditions and allow them to take appropriate protective measures or avoid the adverse conditions altogether until such conditions are corrected.

The existing standards do not require the operator to include in the record adverse conditions that may contribute to an accident, injury, or fatality, or to document that corrective actions were taken. MSHA believes that by making a record of adverse conditions, mine operators and miners will become more proactive in their approach to correcting adverse conditions and avoiding reoccurrences, thereby improving the protection of miners.

In addition, the final rule requires that mine operators make the examination record available for inspection by authorized representatives of the Secretary and miners' representatives and provide a copy upon request. Under the Mine Act, mine operators, with the assistance of miners, have the primary responsibility to prevent the existence of adverse conditions, which is why MSHA concluded that the final rule should require operators to make examination records available to miners' representatives as well as provide copies of such records to them upon request.

The final rule will result in more effective and consistent working place examinations by helping to ensure that adverse conditions will be timely identified, communicated to miners, and corrected, thereby improving miners' safety and health.

*A. Statutory and Regulatory History*

On July 31, 1969, MSHA's predecessor, the Department of the Interior's Bureau of Mines, published a final rule (34 FR 12503) addressing health and safety standards for Metal and Nonmetallic Open Pit Mines; Sand, Gravel, and Crushed Stone Operations; and Metal and Nonmetallic Underground Mines. These standards were promulgated pursuant to the 1966 Federal Metal and Nonmetallic Mine Safety Act (MNM Act). The final rule included some mandatory standards and some advisory standards. The final rule set forth advisory standards at §§ 55.18-8, 56.18-8, and 57.18-8 stating that each working place "should be visited by a supervisor or a designated person at least once each shift and more frequently as necessary to insure that work is being done in a safe manner."

The Federal Mine Safety and Health Act of 1977 (Mine Act) amended the Federal Coal Mine Health and Safety Act of 1969 (Coal Act) to include MNM mines and repealed the MNM Act. The Mine Act retained the mandatory standards and regulations promulgated under the Coal Act and the MNM Act. In addition, section 301(b)(2) of the Mine Act required the Secretary of Labor to establish an advisory committee to review all advisory standards under the MNM Act and to either revoke them or make them mandatory (with or without revision). On August 17, 1979 (44 FR 48490), MSHA revised, renumbered, and made mandatory the Agency's advisory standards regarding working place examinations. This resulted in standards, set forth at §§ 55.18-2, 56.18-2, and 57.18-2, that were the same as the language that currently exists at §§ 56.18002 and 57.18002.

On January 29, 1985 (50 FR 4048), MSHA combined and recodified the standards in 30 CFR parts 55 and 56 into a single part 56 that applies to all surface MNM mines. As a part of this effort, the MNM working place examination standards were redesignated as 30 CFR 56.18002 (surface) and 57.18002 (underground). No change was made to the language of the standards.

On June 8, 2016 (81 FR 36818), MSHA published a proposed rule on Examinations of Working Places in Metal and Nonmetal Mines. The Agency received comments on the proposed rule and held four public hearings in July and August 2016. These hearings were held in Salt Lake City, Utah; Pittsburgh, Pennsylvania; Arlington, Virginia; and Birmingham, Alabama. On August 25, 2016, in response to

stakeholder requests, MSHA published a document in the **Federal Register** (81 FR 58422) extending the deadline for submission of comments from September 6, 2016, to September 30, 2016.

### *B. Executive Order 12866 Summary*

MSHA is not claiming a monetized benefit for this rule. MSHA anticipates, however, that there will be benefits from the final rule as a result of more effective and consistent working place examinations that will help to ensure that adverse conditions will be timely identified, communicated to miners, and corrected. MSHA anticipates that the enhanced record requirements will improve accident prevention by helping mine operators identify any patterns or trends of adverse conditions and preventing these conditions from recurring. In response to comments, MSHA reviewed studies that examined the effectiveness of programs for the monitoring, detecting, and correction of hazards. Maxey (2013)<sup>1</sup> found that injury and illness prevention programs help employers find hazards and fix them before injuries, illnesses, or deaths occur. Maxey's article notes one study which showed that after a short period, five States that implemented injury and safety programs that have the basic elements common in safety and health programs saw reductions in accidents ranging from 17.4 to 23 percent (Huang et al., 2009). In another study cited by Maxey, the author found that mandatory injury and illness prevention programs were effective in reducing injury and illness incidence rates (Smitha et al., 2001).

In response to comments, MSHA also notes that it is not the only regulatory agency to recognize the importance of working place examinations and records of examinations. The West Virginia Office of Miners' Health, Safety and Training revised its rules that govern the safety of those employed in and around quarries. The new rulemaking that went into effect July 1, 2015 requires daily inspection of working places and records, among other requirements, and this includes: (1) Examinations within 3 hours prior to the beginning of any shift; and (2) that records be made of hazardous conditions or violations and the action taken to correct them.

<sup>1</sup> Maxey, H., Safety & Small Business, 2013, pp.12–22. [http://www.asse.org/assets/1/7/Maxey\\_TheCompass.pdf](http://www.asse.org/assets/1/7/Maxey_TheCompass.pdf). The article points out that 34 states, OSHA, and many other nations require safety and health programs that include monitoring, detecting, and correction of hazards and that have resulted in substantial reduction in loss of life and reduced injuries.

MSHA estimates that the final rule will result in \$34.5 million in annual costs for the MNM industry: \$10.6 million for mines with 1–19 employees; \$22.2 million for mines with 20–500 employees; and \$1.7 million for mines with 501+ employees. The Agency estimates that the total undiscounted cost of the final rule over 10 years will be \$345.1 million; at a 3 percent discount rate, \$294.4 million; and at a 7 percent discount rate, \$242.4 million. Additional details on MSHA's analysis are found in Section III of this preamble.

### *C. Background Information*

Mining continues to be one of the nation's most hazardous occupations. Mining operations have dynamic work environments where working conditions can change rapidly and without warning. For this rulemaking, MSHA reviewed accident investigation reports from January 2010 through mid-December 2015. During this period 122 miners were killed in 110 accidents at MNM mines. MSHA conducted investigations into each of these 110 fatal accidents of which 16 accidents (18 fatalities) citations were issued to mine operators for unwarrantable failure to comply for purposes of Section 104(d) of the Mine Act. Because unwarrantable failures involve serious conditions that the operator should have known about, MSHA believes that for these 16 accidents, had the person making the examination recorded these adverse conditions, the records may have alerted operators to take prompt corrective action thus preventing the accidents.

## **II. Section-by-Section Analysis**

### *A. Sections 56.18002(a) and 57.18002(a)—Requirements for Conducting Working Place Examinations*

Final §§ 56.18002(a) and 57.18002(a), like the existing standards and proposed rule, require that a competent person designated by the operator examine each working place at least once each shift for conditions that may adversely affect safety or health. The existing standards permit the examination to be made at any time during the shift. The final rule, like the proposed rule, requires that the competent person examine each working place before miners begin work in that place.

In the proposed rule, MSHA requested specific comments on whether the Agency should require that examinations be conducted within a specified time period, (e.g., 2 hours) before miners start work in an area. Many commenters did not support the proposed provision but did support the

existing standards, which do not specify a time frame for the working place examination to be conducted. Some commenters rejected a 2-hour time frame before miners start work as arbitrary; other commenters with operations with shifts that begin before daylight opposed any specified time period. A commenter interpreted the 2-hour time period mentioned in the proposal to mean that, if miners do not enter the area within a 2-hour window, but instead enter 3 hours after the examination was made, the area would have to be reexamined. A few commenters suggested that the examination be performed as close to the start of the next shift as possible, but no more than 2 hours. One commenter who supported conducting the working place examinations before miners begin working in that place did support a 2-hour time period, unless only one employee is responsible for examining multiple areas. In that case, the commenter stated that additional time would be needed for the one employee to inspect each area properly.

Some commenters suggested that examinations should start immediately before a shift begins. One commenter stated that making the examinations prior to someone working in that area is common sense. Several commenters supported conducting the examination before work begins as this practice alerts miners of adverse conditions before they begin work.

Another commenter stated that the wording of the proposed rule, "before miners begin work" and "once each shift", creates ambiguity and implies that the working place examination would occur during each shift but before miners begin work. MSHA acknowledges that, in the existing rule, "once each shift" may have been interpreted to mean "once during each shift." However, for this final rule, MSHA clarifies that "once each shift" means that examinations must be conducted at least once for each separate shift.

The final rule provides mine operators flexibility on when to conduct an examination. Operators, however, should use their judgment to ensure that the time between the examination and the start of work is such that the operator would reasonably not expect conditions in the examined area to have been able to change adversely during that period. Thus, operators have the flexibility to determine how close in time the examination must be performed based on conditions in the mine and how dynamic those conditions are.

Moreover, examinations can be conducted before or after the shift begins, so long as the examinations are conducted close in time “before work begins.” We note that this allows for the competent person to examine a work area before workers begin working there, rather than requiring the competent person to examine all possible work areas before a shift can begin.

Another commenter opposed the requirement to conduct the examination prior to beginning work, noting that MSHA’s existing standards for surface coal mines in § 77.1713 requires an examination “at least once during each working shift, or more often if necessary.” The commenter further stated that, due to the physical and operational differences between underground and surface mining, conducting a workplace examination before work begins in a surface mine is more burdensome than in an underground mine. MSHA recognizes that there are operational differences between surface and underground mining. In recognition of these differences, the final rule only requires that the operator examine each working place before miners begin work in that place. As stated during the rulemaking process and as is the practice under the existing rule, if miners are not scheduled for work in a particular area or place in the mine, that place does not need to be examined. Similarly, if miners are not scheduled to work for some time (*e.g.*, 4 hours) after the shift begins; the final rule would only require that the examination be performed prior to the beginning of work. Therefore, the final rule provides mine operators the needed flexibility on how to structure workplace examinations so that operational differences between surface and underground mines can be addressed and limit any additional burden.

Other commenters indicated that the proposed provision would limit mine operators to a single examination. Some of these commenters stated that an examination before work begins may not ensure all hazards are addressed, noting that since mining is dynamic and conditions are always changing, adverse conditions need to be addressed as they occur. Another commenter stated that while an industry standard practice is to examine for unsafe conditions before miners begin work in an area, unsafe conditions can occur anytime during a shift. Therefore, these conditions must be identified and corrected throughout the shift, not just at the beginning.

MSHA agrees with comments indicating that because mine conditions are subject to change, mine operators

and miners need to be aware of conditions that may occur at any time that could affect the safety and health of miners. As discussed above, examinations must be conducted sufficiently close in time to the start of work that the operator would not reasonably expect conditions to have changed. Moreover, the final rule does not limit operators to a single examination or prevent ongoing examinations throughout the shift. The final rule, like the proposed rule, requires examinations “at least” once per shift before miners begin work in that place. However, operators should continue to identify and correct adverse conditions in the workplace regardless of when they occur.

A number of commenters representing both small and large operations were concerned that conditions such as lack of daylight and inclement weather make it impractical or impossible to conduct a workplace examination at the beginning of a shift or even within 2 hours of a shift. Some commenters suggested that MSHA modify the proposed requirement to allow mine examinations to begin at the beginning of a shift at daybreak and continue throughout a shift as mining conditions change. As stated earlier, under the final rule, operators must conduct a workplace examination before miners begin work in an area. The Agency assumes that if miners can work in an area, then weather and lighting conditions are sufficient to permit working place examinations to be conducted.

Some commenters stated that multi-shift operations will be at a disadvantage since all work would need to be halted to accommodate an examination before work begins, even if a company had a sufficient number of competent persons available to conduct the examination before the area would be deemed safe to proceed. A commenter stated that for some site-specific work conditions, personnel would be unable to do inspections between shift changes. Other commenters noted that conducting an examination before work begins would be difficult for operations with overlapping or maintenance shifts and questioned when an examination would be required. Other commenters noted that conducting an examination within a specified time period, *i.e.*, within 2 hours before the shift starts, is not practical for mines scheduled to operate on a 24-hour, 365-day basis with multiple crews working over multiple shifts. A few commenters suggested that MSHA consider allowing the previous

shift to conduct examinations for the next shift.

The final rule requires that a competent person conduct an examination before work begins so that conditions that may adversely affect miners’ safety and health are identified before they begin work and are potentially exposed. In response to these comments, MSHA’s final rule provides operators with flexibility on how to structure workplace examinations as long as they are conducted before miners begin work in that place. As noted previously, the final rule does not require a specific time frame for the examination to be conducted before work begins.

The purpose of the rule is to ensure that for each shift the examinations occur at a time that is sufficiently close to when miners begin their work. MSHA acknowledges that for mines with consecutive shifts or those that operate on a 24-hour, 365-day basis, it may be appropriate to conduct the examination for the next shift at the end of the previous shift to ensure that the examination is complete before the next shift begins work in those places. However, because conditions at mines can change, operators should examine at a time sufficiently close to the start of the shift, before miners begin work at that working place, to minimize potential exposure to conditions that may adversely affect their safety or health. For this reason, MSHA does not believe that the protective purpose of the examinations would be accomplished if, at single-shift mines for example, the examination for one day’s shift were performed at the end of the previous day’s shift.

In response to commenters’ concerns, if an examination was made for miners before work began in that place and incoming miners on an overlapping or maintenance shift are to begin work in that place, an additional examination is not needed provided that the incoming shift begins work close to when the examination was conducted and mining conditions would not be expected to have changed adversely.

The final rule, like the existing standards and the proposed rule, would continue to require that operators examine each working place at least once each shift. Existing §§ 56.2 and 57.2 define “working place” as “any place in or about a mine where work is being performed.” Some commenters expressed concerns that the phrase “working place” was vague or needed clarification. A number of commenters stated that the phrase “working place” needs to be defined beyond what is in existing §§ 56.2 and 57.2. Other

commenters stated that further clarification is needed to distinguish between regular working places and the occasional or sudden assignment that requires a miner to enter into a place that is not a regularly active production area or where mining activities are not present. For such areas, commenters asserted that the examination should occur when work begins, even if work begins in this location mid-shift. 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. Some of these commenters also stated that it is impractical to expect the entire mine to be inspected prior to the start of the shift because of changing work needs during the course of a shift.

It is not MSHA's intent for the mine operator to examine the entire mine before work begins, unless work is beginning in the entire mine. As previously noted, "before work begins," 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 final rule, like the existing standards and proposed rule, would require examinations in only those areas where work will be performed.

As MSHA stated in the preamble to the proposed rule, 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 (81 FR 58422). MSHA further clarifies 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 be required to examine isolated, abandoned, or idle areas of mines or mills only when miners have to perform work in these areas during the shift (81 FR 58423).

Final §§ 56.18002(a) and 57.18002(a), like the existing standards and the proposed rule, require that operators examine each working place for conditions that may adversely affect safety or health. Many commenters expressed concerns that the term "adverse" is ambiguous, lacks specificity, and is open to interpretation. A few commenters provided examples of conditions that could adversely affect safety and health such as slips, trips, and falls, or cause a fatal injury. MSHA notes that the final rule, like the existing standards,

requires that an operator examine each working place for conditions that "adversely affect safety or health." MSHA believes that the mining community understands the meaning of "adverse" in these standards because it has been in place since 1979.

One commenter stated that, even among MSHA inspectors from the same field office, there can be variability in judgments of inspectors whether a stated condition is "adverse." Another commenter noted that for mine operators to better train their competent persons, MSHA must better define "adversely affect" so that laymen can understand it and apply it consistently; otherwise, mine operators could be subject to ever-changing interpretations when MSHA inspects the mine.

MSHA regularly trains its inspectors and managers. A central focus of the Agency's enforcement training and retraining is consistency. In addition, MSHA will develop outreach and compliance assistance materials related to the final rule and will include these materials in stakeholder seminars to be held in locations accessible to the mining public. As part of this process, MSHA will identify best practices that can be shared with the mining community.

Final §§ 56.18002(a) and 57.18002(a), like the existing standards and the proposed rule, require that the working place examination be made by a competent person designated by the mine operator. Under §§ 56.2 and 57.2, a competent person means a person having abilities and experience that fully qualify him to perform the duty to which he is assigned. In Program Policy Letter (PPL) No. P15-IV-01, MSHA emphasizes that the competent person designated by the operator should be able to recognize hazards and adverse conditions that are expected or known to occur in a specific work area or that are predictable to someone familiar with the mining industry.<sup>2</sup> In this same PPL, MSHA states that a best practice is for a foreman or other supervisor to conduct the examination, and that an experienced non-supervisory person

<sup>2</sup> MSHA's PPL guidance on the meaning of "competent person" was informed by the Commission decision in *Secretary of Labor (MSHA) v. FMC Wyoming Corporation*, 11 FMSHRC 1622 (1989), which held that: "As with many safety and health standards, §§ 57.18002(a) and 57.2 are drafted in general terms in order to be broadly adaptable to the varying circumstances of a mine. *Kerr-McGee Corp.*, 3 FMSHRC 2496, 97 (November 1981). We conclude that the term 'competent person' within the meaning of §§ 57.18002(a) and 57.2 must contemplate a person capable of recognizing hazards that are known by the operator to be present in a work area or the presence of which is predictable in the view of a reasonably prudent person familiar with the mining industry."

may also be "competent." The PPL emphasizes that a competent person designated by the operator under §§ 56.18002(a) and 57.18002(a) must have the experience and training to be able to perform the examination and identify safety and health hazards.

In the proposed rule, MSHA requested comment on whether the Agency should require that the competent person conducting a working place examination have a minimum level of experience or particular training or knowledge to identify workplace hazards. Many commenters expressed concern over the possibility that MSHA might restrict the "competent person" to supervisors or foremen. Some commenters suggested that MSHA develop training and templates for workplace examinations for various commodities that would highlight hazards and typical work tasks in different mining environments. As previously stated, MSHA will develop outreach and compliance assistance materials to be made available at stakeholder seminars.

Other commenters suggested that there needs to be a minimum level of experience, ability, or knowledge to be a competent person. These commenters stated that such miners need specific task training in recognizing hazards. One commenter suggested at least 8 hours of retraining each year on identifying workplace hazards, while another suggested 24 to 40 hours of training. A few commenters were concerned that MSHA might require formal training for surface miners, as is required for underground miners in MSHA's system for certification of competency in underground coal mining. Other commenters suggested that mine operators, and not MSHA, should determine the training necessary for the competent person at their locations.

This final rule does not change the definition of "competent person" under existing §§ 56.2 and 57.2. MSHA believes that existing experience and training requirements allow for needed flexibility while still requiring the level of competency necessary to conduct adequate examinations. In the final rule, like the existing standards and the proposed rule, the competent person is designated by the mine operator.

Final rule §§ 56.18002(a)(1) and 57.18002(a)(1) are similar to the proposed rule. Like the proposal, they contain a provision requiring mine operators to notify miners in any affected areas of any conditions found that may adversely affect their safety or health. Miners need to know about adverse conditions in their working

place so that they can take protective measures or avoid the adverse conditions altogether. Several commenters expressed concern that there is no need to notify miners of conditions found, if such conditions, such as a hose across a walkway, were corrected immediately. Many commenters added that only conditions that cannot or have not been corrected require miner notification; if the hazard has been corrected, there is no benefit for requiring miner notification. The Agency recognizes that if adverse conditions are corrected before miners begin work, notification is not required because there are no “affected areas.”

MSHA received other comments addressing the notification provision. Many commenters stated that they already notify miners of hazards through tagging, signage, and posting. One commenter asked that MSHA suggest methods of notification to all miners for typical conditions found on a workplace examination. The commenter then requested clarification on who would receive the notification—that is, whether operators would be required to notify incoming shift workers not yet in the area or not yet at work. The same commenter also was concerned about the logistics for notifying miners when many examinations are being conducted at the same time. Another commenter stated that prompt notification to employees if they are not in an affected area could take considerable time and resources resulting in operational downtime and lost revenue. The commenter added that, as a logistical matter, this process will be nearly impossible to manage on a mine site with thousands of employees and contractors.

Another commenter wrote that the term “promptly notify” is vague. This same commenter was also concerned that the proposed rule was unclear about who would need to be notified. The commenter stated that notifying miners who are not affected by the hazard carries no safety benefit and distracts them, thereby risking work slowdowns. This commenter expressed concerns about diverting a mine’s resources to notify miners needlessly just to avoid MSHA citations for failing to communicate such hazards to all miners.

In its August 25, 2016, comment extension document in the **Federal Register** (81 FR 58422), MSHA clarified that to “promptly notify miners” means any notification to miners that alerts them to adverse conditions in their working place so that they can take necessary precautions to avoid the adverse condition. MSHA added that

this notification could take any form that effectively notifies miners of an adverse 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 any adverse condition. MSHA also clarified that a “prompt” notification is one that occurs 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 assignments (81 FR 58422). Consistent with the comment extension document, the final rule requires notification only of those miners “in any affected areas.” Therefore, not all miners need to be notified, only those miners that would be affected by the adverse condition.

Final rule §§ 56.18002(a)(1) and 57.18002(a)(1), like the proposed rule, incorporate requirements from existing §§ 56.18002(a) and 57.18002(a) that the mine operator promptly initiate action to correct conditions that may adversely affect miners’ safety or health that are found during the examination. A commenter suggested that the proposed requirement would encourage narrower examinations to avoid the need to engage in remedial efforts in non-working places, which could lead to more hazardous conditions if a miner wanders into these unexamined areas. A few commenters stated that the existing rule has long required mine operators to identify and “promptly initiate action to correct” any “conditions which may adversely affect safety or health.” The final rule is not changed from the existing standards.

Final rule §§ 56.18002(a)(2) and 57.18002(a)(2), like the proposed provisions, are redesignated from and substantively the same as existing §§ 56.18002(c) and 57.18002(c). These provisions require that if the competent person finds conditions that may present an imminent danger, these conditions must be brought to the immediate attention of the operator who must withdraw all persons from the area affected (except persons referred to in section 104(c) of the Mine Act) until the danger is abated. In response to comments, MSHA clarified that the proposed rule would not change the existing standards regarding conditions that present imminent danger (81 FR 58422). “Imminent danger” is defined in section 3(j) of the Mine Act as “the existence of any condition or practice

which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.” Although MSHA received comments on this aspect of the proposal, the final rule is not changed from the existing standards and is consistent with the statute.

#### *B. Sections 56.18002(b) and 57.18002(b)—Requirements for Records of Working Place Examinations*

Final rule §§ 56.18002(b) and 57.18002(b) require that a record of each examination be made before the end of the shift for which the examination was conducted. The requirement that the operator make a record is not a new provision; existing §§ 56.18002(b) and 57.18002(b) require a record that the examination was conducted. The final rule, like the proposal, requires the record to include: (1) The name of the person conducting the examination; (2) the date of the examination; (3) the location of all areas examined, and (4) a description of each condition found that may adversely affect the safety or health of miners. The final rule does not include the proposed requirements that the record contain: (1) The signature of the competent person conducting the working place examination and (2) the description of the corrective actions taken.

The Agency received a number of comments on proposed provisions of paragraph (b) 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 clarified that the proposal would allow the competent person conducting the examination to make the record at any time before the end of the shift (81 FR 58422).

As previously noted, final rule §§ 56.18002(b) and 57.18002(b), like the proposed rule, add requirements for the contents of the examination record. Final paragraph (b), unlike the proposed rule, does not require that the competent person conducting the working place examination sign the record; instead, the record must include only the name of the competent person. Many commenters stated that the proposed requirement to sign the examination record would increase the potential for liability under Section 110(c) of the Mine Act for miners who conduct workplace examinations. Some commenters were concerned that the designated competent person would be liable under 110(c) for individual civil penalties. Other commenters stated that the signature requirement is unproductive, does not improve safety, and that competent persons are taking

the risk that they will be criminally prosecuted for knowing and willful violations. Commenters stated that it is difficult to get individuals to take on the responsibility of becoming a competent person. 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 believes that the single act of signing one's name adds no more and no less to the substantive duties and qualifications of the person who conducts the examination. For that reason, MSHA does not agree with commenters who believe that a signature would increase exposure to personal liability under Section 110(c). However, as will be discussed, MSHA also believes that it is the identity of the examiner, rather than the signature, that is important to record. For this reason, the final rule does not require the signature of the competent person conducting the working place examination.

Some commenters were not in favor of including the name of the competent person in the record. MSHA maintains that, like a signature, printing one's initials or name adds no more and no less to the substantive duties and qualifications of the person who conducts the examination. Historically, MSHA has taken the position that a meaningful record should at least contain the name of the competent person who conducted the examination. In addition, MSHA believes that the mine operator would need to know who conducted the working place examination. It is important to know the identity of the examiner for a number of reasons, such as clarifying the condition noted or following up with the examiner regarding areas examined or conditions noted.

Final rule §§ 56.18002(a) and 57.18002(b), like the proposal, require that the record be dated. A few commenters supported including the date in the record; some stated that they already include the date in their examination record. MSHA has determined that dating the record is a key element for record management and for identifying trends that would be useful in promoting a mine's safety and health efforts.

Final rule §§ 56.18002(a) and 57.18002(b), like the proposal, also require that the record contain the location of all areas examined and a description of each condition found that may adversely affect the safety or health of miners.

Many commenters opposed including in the record the locations of all areas examined and a description of each condition that may adversely affect the safety and health of miners, citing burden and cost concerns. A few commenters objected to recording every work location examined, indicating that this provision was costly and burdensome and would not improve miners' safety. These commenters also noted that the proposed requirement to include the locations of all areas examined would increase the number of records significantly. Several of these commenters recommended that MSHA allow operators to use a form or checklist for the examination record, noting that this would reduce burden and assist in operators' compliance with this requirement. Some commenters questioned how specific the description of adverse conditions should be because requiring more detail would limit the use of forms or checklists. Several other commenters supported the provision to include the locations of all areas examined and noted that they are currently including this information as part of their examination records. MSHA has determined that requiring that the record include locations of areas examined ensures that the mine operator is aware that all locations in a working place have been examined.

The final rule allows mine operators the flexibility to record the results of an examination using a checklist or any other format, as long as the record includes the information listed in paragraph (b). Regarding the specificity of a description of an adverse condition, MSHA clarifies that the description should provide sufficient information which allows mine operators to notify miners of the condition and to take prompt corrective action.

Several commenters supported the proposed provision to record a description of each condition found that may adversely affect the safety or health of miners. Another commenter noted that many companies follow the "best practices" MSHA advocated in its policy documents in terms of memorializing what hazards are identified. Other commenters objected to including a description of all adverse conditions found in the examination record. Specifically, one commenter stated that requiring a description of every adverse condition is a burdensome requirement and does not provide any benefit to miners if it was immediately corrected by the competent person who performed the examination. This commenter stated that only the adverse conditions that cannot or have not been corrected should be required to

be documented as these could affect miners. The commenter noted that this would provide an incentive to immediately correct adverse conditions. Another commenter stated that there are certain adverse conditions that occur regularly during normal mining operations. The commenter provided an example of entering an area in which a round of explosives has recently been blasted creating adverse conditions such as unsupported ground at the face, loose rock that presents tripping hazards, and dusty conditions caused by the blast. The commenter believed that requiring the competent person conducting the examination to record these regularly occurring adverse conditions and the corrective actions, would add no value since these conditions will be expected. The commenter further stated that this would unnecessarily add to the duties of the competent person conducting the examination.

MSHA believes that, by making a record of adverse conditions, mine operators and miners will become more proactive in their approach to correcting the conditions and avoiding recurrence, thereby improving protections for miners. The Agency believes that a record that notes the adverse conditions prior to miners working in an area expedites the correction of these conditions, notwithstanding the regularity in which the adverse conditions occur. Also, MSHA believes that recording all adverse conditions, even those that are corrected immediately, will be useful as a means of identifying trends. This information should help inform mine management regarding areas or subjects that may benefit from increased safety emphasis.

Some commenters questioned if correcting the condition takes a significant amount of time, would the adverse condition have to be recorded each shift until it is corrected. MSHA clarifies that if not immediately corrected, the continuing adverse condition does not need to be recorded each shift. The final rule requires that, once the condition is corrected, the record include, or be supplemented to include, the date of corrective action.

Regardless of how long an adverse condition has existed, mine operators must ensure that all affected miners are promptly notified of all adverse conditions on each shift as required in final paragraph (a)(1), so that miners can take the necessary precautions to avoid an accident or injury.

Another commenter stated that requiring that examinations include descriptions of unsafe conditions would require separate records for each and every examination. The commenter

added that for medium and large-sized operations this requirement would necessitate the generation, management, and storage of hundreds of thousands of individual examination records each year. The commenter stated that this may not be feasible for many operators, or would require the operators to add additional personnel and incur the associated costs without any proven benefit.

MSHA believes that a key element in any safety and health program includes the identification of adverse conditions. MSHA further believes that this information is essential to inform operators and miners of these conditions, so that they can be found and fixed before miners are exposed to them. Under the existing standards, a competent person is not required to record adverse conditions. MSHA's experience is that if adverse conditions are not recorded, these conditions may exist for more than one shift, causing or contributing to an accident, injury, or fatality. The final rule allows mine operators the flexibility to record the results of an examination using electronic or hard copy checklists or any other format, as long as the record includes the information listed in paragraph (b). In addition, MSHA has reduced the recordkeeping requirements in the final rule to address commenters' concerns regarding costs and burden.

Many commenters were concerned that the Agency will use the examination record to write citations based solely on the adverse conditions identified in the record. This is not MSHA's intent, nor do we plan to train our inspectors to do this. MSHA reiterates that the Agency's intent is to ensure that conditions that adversely affect the safety or health of miners are found and fixed before miners begin work.

MSHA proposed in §§ 56.18002(b)(2) and 57.18002(b)(2) that the record include a description of the corrective action taken and the date it was taken, the name of the person who made the record of the corrective action, and the date the record of corrective action was made. The final rule in paragraph (c), similar to the proposed rule, requires when a condition that may adversely affect safety or health is corrected, the examination record must include the date of the corrective action. The final rule, unlike the proposed rule, does not require that the name of the person who made the record of the corrective action be included in the record.

Many commenters opposed the proposed requirement that the record contain a description of every corrective action, stating that this was

burdensome, especially for small operations. One commenter noted that for conditions not immediately corrected, the proposal would result in leaving open indefinitely the mandatory records, raising the potential for records to be misplaced. Other commenters noted that including a description of corrective actions in the examination record is duplicative since operators have systems in place that track work orders and repairs that document corrective actions taken. Other commenters stated that this provision would not enhance miners' safety. In response to these comments, the final rule does not require that the record include a description of corrective action. MSHA believes that a single requirement to record the date the corrective action is completed will result in similar safety benefits for less time and cost, as it will still encourage prompt corrective action.

Many commenters did not support the provisions in proposed paragraph (b)(2) to record the name of the person who made the record of the corrective action, the date the corrective action was taken, and the date the record of corrective action was made, stating that they were unnecessary and confusing. These commenters added that these proposed requirements may overly complicate recordkeeping and add little protective value. MSHA notes that while the final rule does not require the name of the person who made the record of corrective action, it does require that the record include the date of the corrective action. MSHA expects that most corrective actions will be completed before the end of the shift on which the adverse condition was found and that, therefore, the date of the corrective action will be the same as the date of the examination. However, regardless of when the corrective action is completed, the examination record noting the adverse condition must include or must be updated with the date of the corrective action. MSHA believes that including the date of corrective action alerts the mine operator, the authorized representative of the Secretary, and miners' representatives whether adverse conditions have been corrected.

A few commenters stated that the person taking the corrective action is not necessarily the same person who dates the record of corrective action. Recognizing these commenters' concerns, MSHA clarifies that under the final rule, unlike the preamble discussion to the proposed rule, the person who takes the corrective action does not need to be the person who records the date of corrective action under final paragraph (c).

MSHA received comments requesting that the Agency allow alternative means of documenting corrective action other than the examination record, such as closed-out work orders or invoices. MSHA believes, however, that all information related to adverse conditions should be in one record, including the date of corrective action, to ensure a complete record is available for inspection and the Agency will not accept alternate documentation for corrective action taken.

Final rule §§ 56.18002(d) and 57.18002(d), like the existing standards and proposed §§ 56.18002(b)(3) and 57.18002(b)(3), require that the operator maintain the examination records for one year and make them available to the Secretary or his authorized representative. The final rule, like the proposed rule, adds requirements that: (1) The record also be made available for inspection by miners' representatives and (2) that a copy be provided to the Secretary or his authorized representative and miners' representatives upon request.

Some commenters suggested that the requirement for a one-year record retention period be changed to six months since MSHA inspections are on a six-month inspection schedule. Historically, mine operators have been required to retain examination records for one year. The Mine Act requires that surface mines be inspected at least twice a year but does not mandate that the inspections be six months apart; inspection schedules vary. Also, retaining examination records for one year allows operators and miners to identify trends that may not be apparent in a shorter period of time. The final rule retains the existing requirement.

A few commenters suggested that examination records be made and kept electronically since they currently complete these records electronically. MSHA agrees; however, when records are collected electronically, such records must be secured in a computer system that is not susceptible to alteration. These electronic records must be made available for inspection by authorized representatives of the Secretary and representatives of miners, and an electronic or paper copy must be provided upon request.

Several commenters opposed the proposed requirement to make records available upon request to representatives of miners. They stated that obligating an operator to make its examination records available to the miners' representatives and to provide copies upon request will not improve or benefit safety. One commenter stated that making records available for review

by MSHA to confirm compliance is one thing, but forcing operators to make books and records available to its rank-and-file personnel shows lack of respect by MSHA for the integrity of mine management. Several commenters did not oppose making the records available to miners and their representatives.

MSHA notes that the final rule, like the proposal, includes the requirement that records be made available for inspection by miners' representatives. This is consistent with the Mine Act which requires miners be provided with information concerning safety and health hazards. Under the Mine Act, mine operators, with the assistance of miners, have the primary responsibility to prevent the existence of adverse conditions, which is why MSHA concluded that the final rule should require operators to make examination records available to miners' representatives as well as to provide copies of such records to them upon request. Also, under other MSHA safety and health standards, operators provide records to miners' representatives.

A few commenters suggested that mine operators have a "workplace inspection program", which could be documented or submitted to MSHA for

approval, noting that MSHA could use this document to check for compliance. Other commenters suggested additional miner training could be an alternative to modifying the existing standards. MSHA did not propose or solicit comments regarding a workplace inspection program or additional miner training; either would have necessitated a discussion of various options in the proposed rule. For this reason, both of these issues are beyond the scope of this rulemaking.

### III. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Executive Orders (E.O.) 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Under E.O. 12866, a significant regulatory action is one that meets any of a number of specified conditions, including the following: Having an annual effect on the economy of \$100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. MSHA has determined that the final rule is an "other significant" regulatory action because it raises novel legal and policy issues. However, MSHA has determined that this final rule will not have an annual effect of \$100 million or more on the economy and, therefore, will not be an economically significant regulatory action pursuant to section 3(f) of E.O. 12866.

#### A. Population at Risk

The final rule will apply to all MNM mines in the United States. In 2015, there were approximately 11,660 MNM mines employing 144,408 miners, excluding office workers, and 74,465 contractors working at MNM mines.

Table 1 presents the number of MNM mines and employment by mine size.

TABLE 1—MNM MINES AND EMPLOYMENT IN 2015

Mine size	Number of mines	Total employment at mines, excluding office workers
1–19 Employees .....	10,451	52,310
20–500 Employees .....	1,187	74,545
501+ Employees .....	22	17,553
Contractors .....		74,465
<b>Total .....</b>	<b>11,660</b>	<b>218,873</b>

Source: MSHA MSIS Data (reported on MSHA Form 7000–2) September 21, 2016.

The U.S. Department of the Interior (DOI) estimated revenues of the U.S.

mining industry's MNM output in 2015 to be \$78.3 billion.<sup>3</sup> Table 2 presents the

hours worked and revenues for MNM mines by mine size.

TABLE 2—MNM TOTAL HOURS AND REVENUES IN 2015

Mine size	Total hours reported for year	Revenue (in millions of dollars)
1–19 Employees .....	88,661,855	\$22,149
20–500 Employees .....	159,361,570	43,652
501+ Employees .....	37,470,328	12,499
<b>Total .....</b>	<b>285,493,753</b>	<b>78,300</b>

Source: MSHA MSIS Data (total hours worked at MNM mines reported on MSHA Form 7000–2) and estimated DOI reported mine revenues for 2015 by mine size.

<sup>3</sup> Production revenue estimates are from DOI, U.S. Geological Survey (USGS), Mineral Commodity Summaries 2016, February 2016, page 8.

**B. Benefits**

The purpose of this final rule is to ensure that MNM mine operators identify and correct conditions that may adversely affect miners' safety or health. Effective workplace examinations are a fundamental accident prevention tool; they allow operators to find and fix adverse conditions and violations of safety and health standards before they cause injury or death to miners.

Under MSHA's existing standards, mine operators can perform the examinations anytime during the shift. If the examination is performed after miners begin work, miners may be exposed to conditions that may adversely affect their safety and health. In addition, the existing standard does not specify the contents of the examination record.

Over the years, MSHA has issued Program Policy Letters (PPL) regarding working place examinations. The PPLs are MSHA's guidance and best practices regarding compliance with the existing standards. In the PPLs, MSHA provided guidance on what the examination record should include, such as: (1) The date of the examination; (2) name of the person conducting the examination; (3) the working places examined; and (4) a description of the conditions found that adversely affect safety or health. In the Agency's experience, despite MSHA guidance and best practices, under the existing standard working place examinations are not always done at a point during the shift when the results of the examination would provide the necessary protections as intended by the Mine Act and the existing standard.

MSHA's final rule amends the existing standards to require that the examination of each working place be conducted at least once each shift before miners begin work in that place, and that mine operators notify miners in affected areas of any conditions found

that may adversely affect their safety or health. The final rule also requires that the examination record contain the name of the person conducting the examination, the date of the examination, the location of all areas examined, a description of each condition found that may adversely affect the safety or health of miners, and the date the corrective action was made.

A number of commenters observed that MSHA was unable to quantify the benefits of the proposed rule. Another commenter stated that MSHA should show that the Agency's proposed revision of the existing rule will not negatively impact the safety and health of miners as required by the Mine Act. Under the Mine Act, MSHA is not required to use monetized benefits or estimated net benefits as the basis for the Agency's decision on standards designed to protect the health and safety of miners. However, in the proposed rule, MSHA stated that, while the Agency was unable to quantify the benefits, it anticipated there would be unquantified benefits from the proposed requirements.

MSHA recognizes that under the existing standards, many mine operators have safe workplace operations and safety programs that include many of the provisions in this final rule. However, as noted above, the Agency's experience is that there is a significant degree of variability in how safety programs are operationalized. MSHA has concluded that the final rule will reduce the variability in how operators conduct examinations of working places and thereby improve miners' safety and health. MSHA believes that several features of this rule will contribute to this reduction in variability in workplace examinations and reporting. These features are conducting the workplace examination before work begins; and a record that will include

locations examined, a description of adverse conditions found, and the date they were corrected. Under the existing standard, MSHA does not specify the timing of the examination or the contents of the record. In addition, the final rule adds a new requirement that mine operators notify miners of adverse conditions in their working places that will ensure that miners are aware of such conditions and avoid them until they are corrected. MSHA anticipates that there will be benefits from these provisions that will result in more effective and consistent workplace examinations and ensure that adverse conditions will be timely identified, communicated to miners, and corrected.

However, MSHA is unable to separate the benefits of the new requirements under the final rule from those benefits attributable to conducting a workplace examination under the existing standards. The Agency has concluded that the combined effect of all the provisions (existing standards that have been in place since 1979 and the final rule) will improve miners' safety and health. While unable to quantify the benefits, the Agency has concluded that the final rule will have benefits.

MSHA also anticipates that there will be additional unquantifiable financial benefits, such as reduced insurance premiums, from effective working place examinations that will help mine operators, miners, and their representatives to become more aware of potential dangers, and be more proactive in correcting adverse conditions and violations of health and safety standards before these conditions cause an accident.

**C. Compliance Costs**

MSHA estimated the costs for MNM mine operators to comply with the final rule. Table 3 provides a summary of the annual costs by mine size.

**TABLE 3—SUMMARY OF ANNUAL COSTS TO MNM MINE OPERATORS \***  
[\$ millions]

Requirement	Mine size			Totals
	1–19	20–500	501+	
56/57.18002 (a) Conduct Exam Before Work Begins .....	\$4.96	\$20.22	\$1.69	\$26.88
56/57.18002 (b)& (c) Additional Time to Make Record .....	5.51	1.73	0.04	7.29
56/57.18002 (d) Provide Miners' Representative a Copy of Record .....	0.13	0.21	0.01	0.35
* Totals (may not sum due to rounding) .....	10.61	22.16	1.75	34.51

Examination of Working Places—Final §§ 56.18002(a) and 57.18002(a)

Final §§ 56.18002(a) and 57.18002(a) require that a competent person

designated by the operator must examine each working place at least once each shift, before miners begin work in that place, for conditions that may adversely affect safety or health.

In the proposed rule, MSHA believed that the cost associated with examining areas before miners begin work in that area would be de minimis. However, several commenters stated that requiring

the working place examination to occur before miners can begin work would impose additional costs on mine operators. Commenters also expressed concern that there could be considerable downtime and lost productivity as miners waited for a working place examination to be completed before starting work. Some commenters stated that it could take between two to six hours for larger mines to conduct the examination, which they stated might require paying overtime to the competent person to arrive well before the shift begins.

Based on these comments, MSHA concludes that MNM mine operators will use a variety of scheduling methods to conduct an examination of a working place before miners begin work. In developing this cost estimate, MSHA considered the following variables: (1) Percent of mine operators currently compliant with this requirement; (2) number of shifts by mine size; (3) average time to conduct a workplace examination by mine size; (4) hourly wage rate; and (5) number of days a mine operates, on average, by mine size. Operators may use overtime, use different people to backfill for the time shifted to the examination, and perhaps lengthen the examination time to comply with the final rule. Based on analysis of comments received about overtime, MSHA assigned an overtime rate to the new time adjustments to appropriately estimate the change to costs.

Small mine operators, with 1–19 employees, represent 90 percent of all MNM mines. Of these small mines, 62 percent have 1–5 employees. It is MSHA's experience that small mine operators with 5 or fewer employees are currently in compliance with the final rule or will be able to adjust work schedules to comply without incurring additional costs and burden. MSHA also determined from the public comments that a greater percentage of larger mines will incur compliance costs due to large physical spaces, complex work schedules, and larger numbers of miners assigned to such schedules. In response to comments, the Agency estimated that 15 percent of mines with 1–19 employees, 65 percent of mines with 20–500 employees, and 85 percent of mines with 501+ employees will incur some additional cost as a result of requiring operators to conduct working place examinations before miners begin work in those places.

For the proposed rule, MSHA assumed that mines with 1–19 employees operated 1 shift per day, while those with 20 or more employees operated 2 shifts per day. Five

commenters submitted concerns about 24/7 operations or overlapping shifts in large mines. MSHA re-examined the availability of internal data and revised the number of shifts. For the final rule, MSHA estimates that, on average: A mine with 1–19 employees operates 1.1 shifts per day; a mine with 20–500 employees operates 1.8 shifts per day; and a mine with 501+ employees operates 2.2 shifts per day. As with all averages, the data include a range of values.

In response to comments and based on the Agency's experience, MSHA estimates that, on average, the time to conduct workplace examinations before work begins is: 20 minutes in mines with 1–19 employees; 1 hour in mines with 20–500 employees; and 2.5 hours in mines with 501+ employees.

In the proposed rule, MSHA assumed that all MNM mines operate 300 days per year. Commenters provided various estimates on the number of days that MNM mines operate. In response to comments, MSHA reevaluated the Agency's estimate. MSHA reviewed employment, average shifts per week, and average hours per employee to estimate average days per year worked in MNM mines for 2015.<sup>4</sup> MSHA's estimate shows that, on average, a mine with 1–19 employees operates 169 days per year, a mine with 20–500 employees operates 285 days per year, and a mine with more than 500 employees operates 322 days per year.

In the proposed rule, MSHA used a 2014 hourly wage rate of \$31.14 (including benefits). One commenter stated that \$51.25 was the 2016 average miner hourly wage rate for large mines that the commenter represents. Another commenter stated that for the mine operators it represents the pay, on average, is \$35 to \$55 per hour, excluding benefits. However, this commenter did not specify whether this hourly wage rate range was for a supervisor or a miner. Another commenter provided calculations that used MSHA's proposed wage rate of \$31.14 per hour.

The hourly wage rate used in MSHA's analysis assumes an average rate for all MNM mines. For the final rule, like the proposal, MSHA used wage data from BLS's Occupational Employment Survey (OES).<sup>5</sup> For the final rule, the

<sup>4</sup> MSHA MSIS data, 2015.

<sup>5</sup> OES data are available at <http://www.bls.gov/oes/tables.htm> or at [http://www.bls.gov/oes/oes\\_queries.htm](http://www.bls.gov/oes/oes_queries.htm). The employment-weighted mean wage is for Extraction Workers (Standard Occupational Classification code, SOC, 475000) for Metal Ore Mining (NAICS 212200) and Nonmetallic Mineral Mining and Quarrying (NAICS 212300). The OES wages represent the average for the entire industry

hourly wage rate, updated for 2015, is \$34.06 (including benefits).

As noted above, several commenters stated that compliance with §§ 56.18002(a) and 57.18002(a) would require a mine operator to pay overtime for a competent person to arrive before the shift begins to conduct the working place examination. In response to comments, MSHA estimated the cost for overtime as time and a half (\$51.09/hr = \$34.06 × 1.5). MSHA estimates that it will cost approximately \$26.9 million per year for mine operators to comply with the final provision that requires mine operators to examine each working place at least once each shift before miners begin work. This annual cost consists of:

- \$5 million = 10,451 mines with 1–19 employees × 15% × 20 minutes × 1 hr/60 min × \$51.09 wage × 1.1 shifts per day × 1 exam × 169 workdays per year;
- \$20.2 million = 1,187 mines with 20–500 employees × 65% × 1 hour × \$51.09 wage × 1.8 shifts per day × 1 exam × 285 workdays per year; and
- \$1.7 million = 22 mines with 501+ employees × 85% × 2.5 hours × \$51.09 wage × 2.2 shifts per day × 1 exam × 322 workdays per year;

Records of Working Place Examinations—Final §§ 56.18002(b) and (c) and 57.18002(b) and (c)

The requirement that the operator make a record is not a new provision; existing §§ 56.18002(b) and 57.18002(b) require that a record of the examination be made. The final rule revises §§ 56.18002(b) and 57.18002(b) to require that the record of each examination be made before the end of the shift for which the examination was conducted. The record shall contain: (1) The name of the person conducting the examination; (2) the date of the examination; (3) the location of the areas examined; and (4) a description of

and are used nationally for many federal estimates and programs. As with any average, there are always examples of higher and lower values but the national average is the appropriate value for a rule regulating an entire industry.

<sup>6</sup> The wage rate without benefits was increased for a benefit-scalar of 1.48. The benefit-scalar comes from BLS Employer Costs for Employee Compensation access by menu <http://www.bls.gov/data/> or directly with <http://download.bls.gov/pub/time.series/cm/cm.data.0.Current>. The data series CMU2030000405000P, Private Industry Total benefits for Construction, extraction, farming, fishing, and forestry occupations, is divided by 100 to convert to a decimal value. MSHA used the latest 4-quarter moving average 2015 Qtr. 3–2016 Qtr. 2 to determine that 32.65 percent of total loaded wages are benefits. The scaling factor is a detailed calculation, but may be approximated with the formula and values  $1 + (\text{benefit percentage} / (1 - \text{benefit percentage})) = 1 + (0.3265 / (1 - 0.3265)) = 1.48$ .

each condition found that may adversely affect the safety or health of miners. Under final §§ 56.18002(c) and 57.18002(c), the record also must include the date of corrective action.

Under the proposed rule, the mine operator would have been required to record a description of the adverse conditions found during the examinations and a description of the corrective actions taken. MSHA received numerous comments and heard testimony at the public hearings opposing these requirements.

Commenters were concerned that recording every condition and every corrective action would be an excessive burden to mine operators, especially small operators. Several commenters noted that MSHA's estimate of 5 minutes to complete the record was an underestimate. One commenter stated that MSHA's proposed estimate was not enough time to document every hazard found in every active part of the mine and all corrective actions. In response to comments, the final rule does not require the record to include a description of the corrective action taken. However, the final rule retains the requirement that the record include the date when corrective action was made.

MSHA proposed that the competent person conducting the working place examination would be required to sign and date the record before the end of the shift for which the examination was made. MSHA received numerous comments and testimony opposing this requirement. In response to the concerns from commenters, the final rule does not require that the competent person who conducted the examination sign the record. However, the final rule requires that the examination record contain the name of the person conducting the examination.

The proposed record requirements were interpreted by commenters as requiring substantially more time than the 5 minutes the Agency estimated. For purposes of this final rule, MSHA accepts that the proposed record requirements may have required more time than MSHA's estimate. However, the Agency now has clarified and narrowed the record requirements in the final rule. MSHA has concluded the original time estimates are appropriate given these changes. The Agency estimates that it will take all MNM mine operators an additional 5 minutes to record the information as required. MSHA estimates that a miner, earning \$34.06 per hour, will take 5 additional minutes to include into the existing record the additional information required by final §§ 56.18002(b) and (c)

and 57.18002(b) and (c). MSHA estimates that the annual cost for this provision will be approximately 7.3 million. This annual cost consists of:

- \$5.5 million = 10,451 mines with 1–19 employees × 1.1 shift per day × 1 exam record × 169 workdays per year × 5 additional minutes × 1 hr/60 min × \$34.06 per hour;
- \$1.7 million = 1,187 mines with 20–500 employees × 1.8 shifts per day × 1 exam record × 285 workdays per year × 5 additional minutes × \$34.06 per hour; and
- \$44,235 = 22 mines with 501+ employees × 2.2 shifts per day × 1 exam record × 322 workdays per year × 5 additional minutes × \$34.06 per hour.

Making Records Available to Miners' Representatives—§§ 56.18002(d) and 57.18002(d)

Final §§ 56.18002(d) and 57.18002(d) require that the operator maintain the examination records for at least one year, make the records available for inspection by authorized representatives of the Secretary and the representatives of the miners, and provide these representatives a copy on request. Several commenters have stated that this requirement would place an additional burden on mine operators without MSHA showing any benefit. MSHA did not estimate a cost for this provision in the proposed rule. The existing information collection already allows time for record keeping and making copies for representatives of the Secretary. MSHA believes that on average the time already allowed for recordkeeping and providing copies to the Secretary's representative will increase only slightly with regard to providing information to the mining representative. MSHA has increased the time for the copying from 20 seconds to an average of 1 minute. For the final rule, MSHA estimates that the number of times a copy of the examination record will be requested is: 10 percent in mines with 1–19 employees; 50 percent in mines with 20–500 employees; and 100 percent in mines with 501+ employees. Also, MSHA estimates that it will take a clerical employee, earning \$22.43 per hour,<sup>7 8</sup> 1

<sup>7</sup> OES data are available at <http://www.bls.gov/oes/tables.htm> or at [http://www.bls.gov/oes/oes\\_ques.htm](http://www.bls.gov/oes/oes_ques.htm). The employment-weighted mean wage is for Office Clerks, General (Standard Occupational Classification code, SOC, 439061) for Metal Ore Mining (NAICS 212200) and Nonmetallic Mineral Mining and Quarrying (NAICS 212300). The OES wages represent the average for the entire industry and are used nationally for many federal estimates and programs. As with any average, there are always higher and lower values but the national average is the appropriate value for a rule regulating an entire industry.

minute to make a copy of the examination record and provide it to the representative of the miners, and that copying costs will be \$0.30 per examination (2 pgs. × \$0.15 per page). Thus, MSHA estimates that the compliance costs for mine operators to make copies of examination records for the representative of the miners will be \$346,578 annually. This annual cost consists of:

- \$130,916 = 10,451 mines with 1–19 employees × 10 percent × 1.1 shifts per day × 169 workdays per year × ((1 minute × \$22.43 per hour) + \$0.30 copy costs);
- \$205,160 = 1,187 mines with 20–500 employees × 50 percent × 1.8 shifts per day × 285 workdays per year × ((1 minute × \$22.43 per hour) + \$0.30 copy costs); and
- \$10,502 = 22 mines with 501+ employees × 100 percent × 2.2 shifts per day × 322 workdays per year × ((1 minute × \$22.43 per hour) + \$0.30 copy costs).

#### Summary of Compliance Costs

The total annual compliance cost of the final rule is \$34.5 million: \$10.6 million for mines with 1–19 employees; \$22.2 million for mines with 20–500 employees; and \$1.7 million for mines with 501+ employees.

#### Discounting

Discounting is a technique used to apply the economic concept that the preference for the value of money decreases over time. In this analysis, MSHA provides cost totals at zero, 3, and 7 percent discount rates. The zero percent discount rate is referred to as the undiscounted rate. MSHA used the Excel Net Present Value (NPV) function to determine the present value of costs and computed an annualized cost from the present value using the Excel PMT function.<sup>9</sup> The negative value of the

<sup>8</sup> The wage rate without benefits was increased for a benefit-scalar of 1.48. The benefit-scalar comes from BLS Employer Costs for Employee Compensation access by menu <http://www.bls.gov/data/> or directly with <http://download.bls.gov/pub/time.series/cm/cm.data.0.Current>. The data series CMU2030000405000P, Private Industry Total benefits for Construction, extraction, farming, fishing, and forestry occupations, is divided by 100 to convert to a decimal value. MSHA used the latest 4-quarter moving average 2015 Qtr. 3–2016 Qtr. 2 to determine that 32.65 percent of total loaded wages are benefits. The scaling factor is a detailed calculation, but may be approximated with the formula and values  $1 + (\text{benefit percentage}/(1 - \text{benefit percentage})) = 1 + (0.3265/(1 - 0.3265)) = 1.48$ .

<sup>9</sup> Office of Management and Budget, Office of Information and Regulatory Affairs, Regulatory Impact Analysis: Frequently Asked Questions, February 7, 2011. [[http://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a004/a-4\\_FAQ.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a004/a-4_FAQ.pdf)].

PMT function provides the annualized cost over 10 years at 3 and 7 percent discount rates.

MSHA estimates that the total undiscounted cost of the final rule over a 10-year period will be approximately \$345.1 million, \$294.4 million at a 3 percent discount rate, and \$242.4 million at a 7 percent discount rate. The total undiscounted cost annualized over 10 years will be approximately \$34.5 million, \$33.5 million at a 3 percent discount rate, and \$32.3 million at a 7 percent discount rate.

#### IV. Feasibility

##### A. Technological Feasibility

MSHA concludes that the final rule is technologically feasible because it requires only that the operator conduct the working place exam before work begins in that place and requires additional information to be included in the operators' existing examination records. There are no technology issues raised by the final rule.

##### B. Economic Feasibility

MSHA has traditionally used a revenue screening test—whether the yearly impacts of a regulation are less than one percent of revenues—to establish presumptively that the regulation is economically feasible for the mining community. The final rule is projected to cost \$34.5 million per year and the MNM industry has estimated annual revenues of \$78.3 billion. The final rule cost is less than one percent of revenues. Therefore, MSHA concludes that the final rule will be economically feasible for the MNM mining industry.

MSHA intends to conduct a retrospective study beginning January 20, 2022. Using the results of this study, MSHA will determine to what extent the provisions of the final rule ensure that operators find and fix adverse conditions and violations of safety and health standards before they cause injury or death to miners, and reduce the variability in how operators conduct examinations of working places and thereby improve miners' safety and health. Under the Department's Plan for Retrospective Analysis of Existing Rules, MSHA intends to consult with industry, labor, and other stakeholders in conducting this review.

This retrospective study will be conducted in accordance with the Department of Labor's Plan for Retrospective Analysis of Existing Rules which complies with Executive Order

(E.O.) 13563 "Improving Regulation and Regulatory Review" (76 FR 3821).

#### V. Regulatory Flexibility Analysis and Small Business Regulatory Enforcement Fairness Act

Pursuant to the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA has analyzed the impact of the final rule on small entities. Based on that analysis, MSHA certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The Agency, therefore, is not required to develop an initial regulatory flexibility analysis. The factual basis for this certification is presented below.

##### A. Definition of a Small Mine

Under the RFA, in analyzing the impact of a rule on small entities, MSHA must use the Small Business Administration's (SBA's) definition for a small entity, or after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not established an alternative definition and, therefore, must use SBA's definition. On February 26, 2016, SBA's revised size standards became effective. SBA updated the small business thresholds for mining by establishing a number of different levels. MSHA used the new SBA standards for the screening analysis of this final rule.

The SBA uses North American Industry Classification System (NAICS) codes, generally at the 6-digit NAICS level, to set thresholds for small business sizes for each industry. See the SBA size standard tables and methodology at <https://www.sba.gov/contracting/getting-started-contractor/make-sure-you-meet-sba-size-standards/summary-size-standards-industry-sector>.

MSHA has also examined the impact of the final rule on MNM mines with fewer than 20 employees, which MSHA and the mining community have traditionally referred to as "small mines." These small mines differ from larger mines not only in the number of employees, but also in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, the impact of MSHA's rules and the costs of complying with them will also tend to differ for these small mines. This analysis complies with the requirements

of the RFA for an analysis of the impact on "small entities" using both SBA's definition as well as MSHA's traditional mine size definition.

##### B. Factual Basis for Certification

MSHA initially evaluates the impacts on small entities by comparing the estimated compliance costs of a rule for small entities in the sector affected by the rule to the estimated revenues for the affected sector. When estimated compliance costs are less than one percent of the estimated revenues, the Agency believes it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. When estimated compliance costs exceed one percent of revenues, MSHA investigates whether further analysis is required. MSHA evaluated a number of data sources related to the number of firms, employment, and revenue. MSHA concluded that the most useful data was MSHA's 2015 MSIS MNM mine data (datasets are publicly available at <http://arlweb.msha.gov/OpenGovernment/Data/OGIMSHA.asp>). MSHA summed employment using the MSHA data element "Controller"<sup>10</sup> to best align with the SBA concept of firm as either an owner or exercising decision making. Each mine was assigned a size of large or small using the SBA size standard for each NAIC code in the MSHA data. MSHA estimated mine revenue as it has in the past using U.S. Geological reports (USGS, 2016) to obtain national revenue numbers for 2015 that MSHA then allocated to mines on a dollar per hour basis. Using the traditional definition of small, MSHA estimated that final compliance costs for MNM mines with 1 to 19 employees is \$10.6 million, which is less than one percent of the \$22.1 billion in revenues for these mines in 2015. Table 4 shows the estimated revenues, costs, size standards (Feb. 2016), and the summary level screening test results. The summary level data is consistent with evaluating the impact on a mine-by-mine basis without providing detail on the approximately ten thousand small mines. MSHA identified numerous data records that were either incomplete or numerous mines that are intermittent with very few producing hours during the year. For these reasons, the analysis by NAICS code does not exactly match the total mine count or totals using MSHA's traditional methodology. However, the error is small enough to not affect MSHA's decision to certify that there is no significant economic

<sup>10</sup> Official definition in data set: Legal Entity acting as a controller of an operator.

impact on a substantial number of small entities.

TABLE 4—SUMMARY OF SCREENING ANALYSIS BY NAICS CODE

NAICS	NAICS description	Small standard (maximum employees)	Number small mines	Estimated revenue small mines (\$millions)	One percent of revenues (\$millions)	Cost to small mines (\$millions)	Cost exceeds 1 percent
212210	Iron Ore Mining	750	26	\$1,803.7	\$18.0	\$0.5	No.
212221	Gold Ore Mining	1,500	137	2,357.2	23.6	0.9	No.
212222	Silver Ore Mining	250	9	223.8	2.2	0.1	No.
212231	Lead Ore and Zinc Ore Mining	750	5	439.5	4.4	0.2	No.
212234	Copper Ore and Nickel Ore Mining	1,500	17	1,383.6	13.8	0.3	No.
212291	Uranium-Radium-Vanadium Ore Mining	250	5	109.7	1.1	0.0	No.
212299	All Other Metal Ore Mining	750	28	726.4	7.3	0.3	No.
212311	Dimension Stone Mining and Quarrying	500	793	2,821.7	28.2	1.6	No.
212312	Crushed and Broken Limestone Mining and Quarrying.	750	1,415	7,375.5	73.8	4.1	No.
212313	Crushed and Broken Granite Mining and Quarrying ..	750	152	1,162.8	11.6	0.6	No.
212319	Other Crushed and Broken Stone Mining and Quarrying.	500	963	3,069.8	30.7	1.7	No.
212321	Construction Sand and Gravel Mining	500	5,684	9,358.9	93.6	5.1	No.
212322	Industrial Sand Mining	500	271	1,395.2	14.0	0.8	No.
212324	Kaolin and Ball Clay Mining	750	11	293.0	2.9	0.2	No.
212325	Clay and Ceramic and Refractory Minerals Mining	500	243	1,459.7	14.6	0.8	No.
212391	Potash, Soda, and Borate Mineral Mining	750	9	650.4	6.5	0.3	No.
212392	Phosphate Rock Mining	1,000	8	529.5	5.3	0.3	No.
212393	Other Chemical and Fertilizer Mineral Mining	500	45	667.0	6.7	0.4	No.
212399	All Other Nonmetallic Mineral Mining	500	185	1,044.1	10.4	0.6	No.
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing.	500	3	53.1	0.5	0.0	No.
327310	Cement Manufacturing	1,000	50	2,513.3	25.1	1.4	No.
327410	Lime Manufacturing	750	30	849.9	8.5	0.4	No.
331313	Alumina Refining and Primary Aluminum Production	1,000	7	1,467.3	14.7	0.4	No.
Grand Total.			10,096	41,755.1	417.5	21.0	No.

VI. Paperwork Reduction Act of 1995

A. Summary

This final rule contains changes that affect the burden in an existing paperwork package with OMB Control Number 1219-0089 (Safety Defects-Examination, Correction, and Records). MSHA estimates that the final rule will result in an additional 222,519 burden hours with an associated additional cost of \$7.6 million annually. Public comments relating to collection requirements were also applicable to the cost analysis section. MSHA has not repeated those comments as they appear above in this preamble.

Burden for Final §§ 56.18002(b) and (c) and 57.18002(b) and (c)

Final §§ 56.18002(b) and (c) and 57.18002(b) and (c) require the existing record to include the following additional information: The name of the person conducting the examination; the date of the examination; the location of all areas examined; a description of each condition found that may adversely affect the safety or health of miners; and the date when a condition that may adversely affect safety or health is corrected. MSHA estimates that a MNM competent person, earning \$34.06 per hour, will take 5 additional minutes to add the information required by the

final rule to the existing record. Burden hours and costs are shown below:

- 161,903 hours = 10,451 mines with 1–19 employees × 1.1 shifts per day × 1 exam record × 169 workdays per year × 5 additional minutes;
- 50,744 hours = 1,187 mines with 20–500 employees × 1.8 shifts per day × 1 exam record × 285 workdays per year × 5 additional minutes; and
- 1,299 hours = 22 mines with 501+ employees × 2.2 shifts per day × 1 exam record × 322 workdays per year × 5 additional minutes.

Total additional burden hours for final §§ 56.18002(b) and (c) and 57.18002(b) and (c) are 213,946 hours.

Burden Hour Costs

Total burden hour costs for final §§ 56.18002(b) and (c) and 57.18002(b) and (c) are \$7,287,001 (213,946 hours × \$34.06 per hour).

Burden for Final §§ 56.18002(d) and 57.18002(d)

Final §§ 56.18002(d) and 57.18002(d) require that the operator provide miners' representatives with a copy of the examination record on request. MSHA estimates that a MNM clerical employee, earning \$22.43 an hour, will take 1 minute to make and provide a copy of the examination record to the representative of the miners. MSHA

estimates that the number of times that a copy of the examination record will be requested is: 10 percent in mines with 1–19 employees; 50 percent in mines with 20–500 employees; and 100 percent in mines with 501+ employees. Burden hours and costs are shown below:

- 3,238 hours = 10,451 mines with 1–19 employees × 10 percent × 1.1 shift per day × 169 workdays per year × 1 minute;
- 5,074 hours = 1,187 mines with 20–500 employees × 50 percent × 1.8 shifts per day × 285 workdays per year × 1 minute; and
- 260 hours = 22 mines with 501+ employees × 100 percent × 2.2 shifts per day × 322 workdays per year × 1 minute.

Total burden hours for final §§ 56.18002(d) and 57.18002(d) are 8,572 hours.

Burden Hour Costs

Total Burden Hour Costs for final §§ 56.18002(d) and 57.18002(d) are \$192,270 (8,572 hours × \$22.43 per hour).

Copy Cost Burden Related to Final §§ 56.18002(d) and 57.18002(d)

On average, MSHA estimates that copy costs will be \$0.30 (2 pages × \$0.15 per page). Burden costs are shown below:

- \$58,285 = 10,451 mines with 1–19 employees × 10 percent × 1.1 shift per day × 169 workdays per year × \$0.30 per copy;
- \$91,340 = 1,187 mines with 20–500 employees × 50 percent × 1.8 shifts per day × 285 workdays per year × \$0.30 per copy; and
- \$4,675 = 22 mines with 501+ employees × 100 percent × 2.2 shifts per day × 322 workdays per year × \$0.30 per copy.

Total copy costs for burden related to final §§ 56.18002(d) and 57.18002(d) are \$154,300.

## VII. Other Regulatory Considerations

### A. The Unfunded Mandates Reform Act of 1995

MSHA has reviewed the final rule under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). MSHA has determined that this final rule does not include any federal mandate that may result in increased expenditures by State, local, or tribal governments; nor will it increase private sector expenditures by more than \$100 million (adjusted for inflation) in any one year or significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act requires no further Agency action or analysis.

### B. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires agencies to assess the impact of Agency action on family well-being. MSHA has determined that this final rule will have no effect on family stability or safety, marital commitment, parental rights and authority, or income or poverty of families and children. Accordingly, MSHA certifies that this final rule will not impact family well-being.

### C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

Section 5 of E.O. 12630 requires Federal agencies to “identify the takings implications of final regulatory actions. . . .” MSHA has determined that this final rule does not include a regulatory or policy action with takings implications. Accordingly, E.O. 12630 requires no further Agency action or analysis.

### D. Executive Order 12988: Civil Justice Reform

Section 3 of E.O. 12988 contains requirements for Federal agencies promulgating new regulations or reviewing existing regulations to minimize litigation by eliminating drafting errors and ambiguity, providing a clear legal standard for affected conduct rather than a general standard, promoting simplification, and reducing burden. MSHA has reviewed this final rule and has determined that it will meet the applicable standards provided in E.O. 12988 to minimize litigation and undue burden on the Federal court system.

### E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

MSHA has determined that this final rule will have no adverse impact on children. Accordingly, E.O. 13045 requires no further Agency action or analysis.

### F. Executive Order 13132: Federalism

MSHA has determined that this final rule does not have federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, E.O. 13132 requires no further Agency action or analysis.

### G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

MSHA has determined that this final rule does not have tribal implications because it will not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Accordingly, E.O. 13175 requires no further Agency action or analysis.

### H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

E.O. 13211 requires agencies to publish a statement of energy effects when a rule has a significant energy action that adversely affects energy supply, distribution, or use. MSHA has reviewed this final rule for its energy effects because the final rule applies to the MNM mining sector. Although this final rule will result in yearly costs of approximately \$34.5 million to the

MNM mining industry, only the impact on uranium mines is applicable in this case. MSHA data show only three active uranium mines in 2015. The Energy Information Administration’s annual uranium report for 2015<sup>11</sup> shows 4 million pounds at an average price of \$42.86 per pound, for sales of approximately \$171.4 million. Using average annual costs of the final rule, the impact to all active uranium mine operators is \$57,010. MSHA has concluded that it is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Accordingly, under this analysis, no further Agency action or analysis is required.

### I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

MSHA has reviewed the final rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. MSHA has determined that the final rule will not have a significant economic impact on a substantial number of small entities.

## VIII. References

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<sup>11</sup> <http://www.eia.gov/uranium/production/annual/pdf/dupr.pdf>, page 6.

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#### List of Subjects in 30 CFR Parts 56 and 57

Explosives, Fire prevention, Hazardous substances, Metals, Mine safety and health, Reporting and recordkeeping requirements.

Joseph A. Main,

*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 chapter I of title 30 of the Code of Federal Regulations 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.

■ 2. Revise § 56.18002 to read as follows:

##### § 56.18002 Examination of working places.

(a) A competent person designated by the operator shall examine each working place at least once each shift before miners begin work in that place, for conditions that may adversely affect safety or health.

(1) The operator shall 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.

(2) Conditions noted by the person conducting the examination that may present an imminent danger 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.

(b) A record of each examination shall be made before the end of the shift for which the examination was conducted. The record shall contain the name of the person conducting the examination; date of the examination; location of all areas examined; and description of each condition found that may adversely affect the safety or health of miners.

(c) When a condition that may adversely affect safety or health is corrected, the examination record shall include, or be supplemented to include, the date of the corrective action.

(d) The operator shall maintain the examination records for at least one year, make the records available for inspection by authorized representatives of the Secretary and the representatives of miners, and provide these representatives a copy on request.

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

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

**Authority:** 30 U.S.C. 811.

■ 4. Revise § 57.18002 to read as follows:

##### § 57.18002 Examination of working places.

(a) A competent person designated by the operator shall examine each working place at least once each shift before miners begin work in that place, for conditions that may adversely affect safety or health.

(1) The operator shall 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.

(2) Conditions noted by the person conducting the examination that may present an imminent danger 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.

(b) A record of each examination shall be made before the end of the shift for which the examination was conducted. The record shall contain the name of the person conducting the examination; date of the examination; location of all areas examined; and description of each condition found that may adversely affect the safety or health of miners.

(c) When a condition that may adversely affect safety or health is corrected, the examination record shall include, or be supplemented to include, the date of the corrective action.

(d) The operator shall maintain the examination records for at least one year, make the records available for inspection by authorized representatives of the Secretary and the representatives of miners, and provide these representatives a copy on request.

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#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[EPA–HQ–OAR–2016–0764; FRL–9958–26–OAR]

#### Extension of Deadline for Action on the November 28, 2016 Section 126 Petition From Delaware

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** In this action, the Environmental Protection Agency (EPA) is determining that 60 days is insufficient time to complete the technical and other analyses and public notice-and-comment process required for our review of a petition submitted by the state of Delaware pursuant to section 126 of the Clean Air Act (CAA). The petition requests that the EPA make a finding that Conemaugh Generating Station, located in Indiana County, Pennsylvania, emits air pollution that significantly contributes to nonattainment and interferes with maintenance of the 2008 and 2015 ozone national ambient air quality standards (NAAQS) in the state of Delaware. Under section 307(d)(10) of CAA, the EPA is authorized to grant a time extension for responding to a petition if the EPA determines that the extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of the section 307(d) notice-and-comment rulemaking requirements. By this action, the EPA is making that determination. The EPA is, therefore, extending the deadline for acting on the petition to no later than August 3, 2017.

**DATES:** This final rule is effective on January 23, 2017.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2016–0764. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is