



**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**30 CFR Parts 56 and 57**

**[Docket No. MSHA-2014-0030]**

**RIN 1219-AB87**

**Examinations of Working Places in Metal and Nonmetal Mines**

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Proposed rule; Notice of public hearings.

**SUMMARY:** The Mine Safety and Health Administration (MSHA) is proposing to amend the Agency's standards for the examination of working places in metal and nonmetal (MNM) mines. The purpose of this proposed rule is to ensure that mine operators identify and correct conditions that may adversely affect miners' safety or health. MSHA is proposing to require that an examination of the working place be conducted before miners begin work in an area and that the operator notifies miners in the working place of any conditions found that may adversely affect their safety or health. MSHA is also proposing that the competent person conducting the examination sign and date the examination record before the end of each shift, that the record includes information regarding adverse conditions found and corrective actions taken, and that operators make

such records available to miners and their representatives. The proposal would enhance the quality of working place examinations in MNM mines and help assure that violations of mandatory health or safety standards are identified and corrected, thereby improving protections for miners.

**DATES:** Comments must be received or postmarked by midnight Eastern Time on [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

*Hearing Dates:* July 19, 2016, July 21, 2016, July 26, 2016, and August 4, 2016. The locations are listed in the Public Hearings section in the SUPPLEMENTARY INFORMATION section of this document. Post-hearing comments must be received by midnight Eastern Standard Time on September 6, 2016.

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

- *Federal E-Rulemaking Portal:*  
<http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *E-Mail:* [zzMSHA-comments@dol.gov](mailto:zzMSHA-comments@dol.gov).
- *Mail:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202-5452.

- *Hand Delivery or Courier:* 201 12th Street South, Suite 4E401, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 4th floor East, Suite 4E401.
- *Fax:* 202-693-9441.

*Information Collection Requirements:* Comments concerning the information collection requirements of this proposed rule must be clearly identified with RIN 1219-AB87 or Docket No. MSHA-2014-0030, and sent to both MSHA and the Office of Management and Budget (OMB). Comments to MSHA may be sent by one of the methods in the ADDRESSES section above. Comments to OMB may be sent by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503, Attn: Desk Officer for MSHA.

*Instructions:* All submissions must include RIN 1219-AB87 or Docket No. MSHA-2014-0030. Do not include personal information that you do not want publicly disclosed; MSHA will post all comments without change, including any personal information provided.

*Docket:* For access to the docket to read comments received, go to <http://www.regulations.gov> or

<http://www.msha.gov/currentcomments.asp>. To read background documents, go to <http://www.regulations.gov>. Review the docket in person at MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. EST Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 4th floor East, Suite 4E401.

*E-Mail Notification:* To subscribe to receive an e-mail notification when MSHA publishes rules in the *Federal Register*, go to <http://www.msha.gov>.

**SUPPLEMENTARY INFORMATION:**

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## I. Introduction

### A. Public Hearings.

MSHA will hold four public hearings on the proposed rule to provide the public with an opportunity to present oral statements, written comments, and other information on this rulemaking. The public hearings will begin at 9 a.m. and end after the last presenter speaks, and in any event not later than 5 p.m., on the following dates at the locations indicated:

Date	Location	Contact Number
July 19, 2016	Homewood Suites by Hilton Salt Lake City--Downtown 423 West 300 South Salt Lake City, UT 84101	(801) 363-6700
July 21, 2016	Hyatt Place Pittsburgh--North Shore 260 North Shore Drive Pittsburgh, PA 15212	(412) 321-3000
July 26, 2016	Mine Safety and Health Administration Headquarters 201 12th Street, South Rooms 7W204 & 7W206 Arlington, VA 22202	(202) 693-9440
August 4, 2016	Sheraton Birmingham Hotel 2101 Richard Arrington Jr. Boulevard North Birmingham, AL 35203	(205) 324-5000

The hearings will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. You do not have to make a

written request to speak; however, persons and organizations wishing to speak are encouraged to notify MSHA in advance for scheduling purposes.

Speakers and other attendees may present information to MSHA for inclusion in the rulemaking record. The hearings will be conducted in an informal manner. Formal rules of evidence or cross examination will not apply.

A verbatim transcript of the proceedings will be prepared and made a part of the rulemaking record. Copies of the transcript will be available to the public. The transcript may also be viewed on MSHA's web site at <http://arlweb.msha.gov/currentcomments.asp>, under Comments on Public Rule Making. MSHA will accept post-hearing written comments and other appropriate information for the record from any interested party, including those not presenting oral statements.

#### *B. 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 at §§ 55.18-8, 56.18-8, and 57.18-8 set forth an advisory standard 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 mirrored 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 and 57.18002. No change was made to the language of the standards.

## **II. 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. Under the Mine Act, mine operators with the assistance of the miners have the primary responsibility to prevent the existence of unsafe and unhealthful conditions and practices. Compliance with safety and health standards and adoption of safe work practices provide a substantial measure of protection against hazards that cause accidents, injuries, and fatalities. MSHA has determined that effective accident prevention strategies include an examination of working places.

Under existing §§ 56.18002 and 57.18002, MSHA requires 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, that the operator promptly initiate appropriate action to correct

such conditions, and that the operator keep records for one year that the examinations were conducted. These standards also require the operator to withdraw persons from an area where conditions may present an imminent danger, except those persons referred to in section 104(c) of the Mine Act, until the danger is abated.

The proposal would require that operators promptly notify miners of any adverse conditions found that may adversely affect safety or health. It would also require that the examination record include additional information that MSHA believes would help assure that adverse conditions are identified and corrected, and that the record be made available to miners and their representatives so that they can be made aware of these conditions. MSHA is proposing that the record include: (1) the locations of all areas examined and a description of each condition found that could adversely affect the safety or health of miners; and (2) a description of the corrective action and date the corrective action was taken. The proposal would also require that the competent person who conducted the examination sign and date the examination record before the end of each shift.

MSHA believes that making and maintaining a record of adverse conditions found and corrective actions taken would

help mine operators and miners and their representatives become more aware of potential dangers and more proactive in their approach to correcting these issues before they cause or contribute to an accident, injury, or fatality. Under this proposed rule, MSHA anticipates that improved communication at the mine site about adverse conditions and the best practices used to correct the conditions will encourage awareness and participation at all levels, fostering a culture of safety and health at the mine.

In developing the proposed rule, MSHA reviewed accident investigation reports and the Agency's enforcement data 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 and issued 252 citations and orders for violations of 95 different mandatory safety and health standards. MSHA's analysis of the accident investigations further revealed that in more than 60 percent of the fatal accidents (67 out of 110), the Agency had issued at least one citation or order for a violation of a mandatory safety or health standard identified in MSHA's Rules to Live By (RTLB) initiative, launched in February 2010. Violations of the 19 MNM RTLB standards represent the conditions or

practices that have been most frequently cited as causing or contributing to fatal accidents.

At this point, MSHA believes that most operators and miners should be familiar with the RTLB standards. Under the proposal, the additional communication that would be required by operators (1) notifying miners of conditions that violate RTLB standards and other adverse conditions and (2) recording additional information about these conditions in the examination record should further serve to educate miners, their representatives, and operators about adverse conditions and encourage prompt corrective action. In this way, MSHA believes the proposal will help prevent fatalities and other accidents.

Over the years, MSHA has issued Program Policy Letters (PPL) regarding working place examinations, including PPL No. P94-IV-5 (1994); PPL No. P96-IV-2 (1996); PPL No. P10-IV-3 (2010); PPL No. P14-IV-01 (2014); and PPL P15-IV-01 (July 22, 2015). The PPLs are MSHA's guidance and best practices regarding compliance with the existing standards. MSHA inspectors, miners, mine operators, trainers, and the mining community use these PPLs as guidance in determining how best to comply with MSHA's standards on working place examinations.

As discussed in PPL No. P15-IV-01 and other PPLs, MSHA believes that, for a record to provide meaningful information, it should contain the following: (1) the date of the examination; (2) the examiner's name; and (3) the working places examined. As reflected in the PPLs, MSHA also believes that, as a best practice, the record should include a description of the conditions found that adversely affect safety or health.

Effective working place examinations are a fundamental accident prevention tool; they allow operators to find and fix adverse conditions and violations of health and safety standards before they cause injury or death to miners. MSHA believes that notifying miners of adverse conditions in their working place allows the miner to take appropriate precautions until the adverse condition is corrected. Records alert operators to take prompt corrective action. The following are recent examples of adverse conditions that existed for more than one shift prior to causing or contributing to a fatal accident.<sup>1</sup> MSHA believes that, had the person making the examination noted these conditions prior to miners working in an area, had the conditions been

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<sup>1</sup> Examples of accidents cited may be in litigation.

recorded, and had the operator warned miners about these conditions, the accidents may have been prevented.

In March 2011, a contract supervisor was fatally injured when he was struck by a section of pipe. He was supervising the operation of joining two ends of pipe using a pipe-fusion machine. The positioning cylinder was defective and had been removed from the pipe-fusion machine eight days prior to the accident. Since the positioning cylinder was removed, the machine could not hold the pipe in place. MSHA believes that, had a competent person identified and recorded the adverse condition before miners used the machine, the operator could have warned miners and removed the machine from service until the cylinder was repaired and replaced, thus preventing the fatal accident.

In January 2015, a fatal accident occurred at a phosphate rock mine. A heavy equipment operator was operating an excavator near a water-filled ditch when the excavator tipped on its side, into the water, trapping the miner inside the nearly submerged cab. The equipment operator was rescued from the cab and hospitalized, but died later that day. Three days prior to the accident, several inches of rain fell in the area causing the ditch to fill with water and overflow, making the ditch invisible to persons working in the area. MSHA believes that had a

competent person conducted a workplace examination before miners started working in the area the hazard would have been identified; notification to affected miners of the water-filled ditch would have made them aware of the hazardous condition; and a record of the hazardous condition would have prompted corrective action and prevented the fatality.

Another fatal accident in March 2015 involved a haul truck driver at a sand and gravel mine. The driver was driving on an elevated roadway on an embankment next to the mine's dredge pond. The roadway, which was recently established, had no berm as a barrier to the drop-off as required by MSHA standards. The truck went off the roadway into the pond. The driver was hospitalized and died two days later. MSHA believes that the operator should have recognized during a workplace examination that a berm was not in place along the banks of the elevated haul road and warned miners before miners started work in that area. MSHA also believes that a record of this hazard likely would have prompted corrective action and that these actions would have prevented the accident that occurred.

From 2013 through 2015, there were 68 fatalities at MNM mines, as compared with 54 fatalities in the preceding three years (2010-2012). To reduce fatalities at MNM

mines, MSHA has engaged, and continues to share best practices and training materials with stakeholders in the MNM industry. The Agency has provided stakeholders with guidance and compliance assistance materials to help mine operators find and fix violations of mandatory safety and health standards. These efforts included stakeholder conferences, online training sessions, and a "walk and talk" safety initiative in which MSHA's inspectors and field staff provided operators and miners information about potentially hazardous tasks and conditions, as well as best mining practices to prevent accidents, injuries, and fatalities. These efforts, however, have not been sufficient to address the increase in fatalities that began in 2013.

This proposed rule is intended to strengthen MSHA's requirements for MNM working place examinations to help prevent the kind of accidents discussed above. MSHA believes that the proposed requirements that operators examine working places before miners begin work in an area and notify miners of any adverse conditions that may adversely affect safety or health would assure that miners and operators are aware of hazards and take proactive actions to correct hazards. In addition, the record

required under the proposed rule would help assure that adverse conditions are identified and corrected promptly.

### **III. Section-by-Section Analysis**

This proposed rule would help reduce common causes of accidents, injuries, and fatalities at MNM mines by enhancing the effectiveness of working place examinations.

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

Proposed §§ 56.18002(a) and 57.18002(a) would require an examination of each working place at least once each shift, before work begins in an area, for conditions that may adversely affect the safety or health of miners.

Existing §§ 56.2 and 57.2 define the phrase "working place" as: "any place in or about a mine where work is being performed." In PPL No. P15-IV-01, MSHA clarifies that "working place" applies to all locations at a mine where miners work in the extraction or milling processes. The Agency further explains that this includes areas where work is performed on an infrequent basis, such as areas accessed primarily during periods of maintenance or clean-up, if miners will be performing work in these areas during the shift. As discussed in previous guidance, the "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. 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.

The existing standards for examinations of working places in MNM mines in §§ 56.18002(a) and 57.18002(a) require that a competent person designated by the mine operator examine each working place at least once per shift for conditions that may adversely affect safety or health and promptly initiate appropriate action to correct such conditions. While the existing standards permit the examination to be made at any time during the shift, MSHA is proposing that the examination start before work begins in an area. MSHA believes that the proposal is consistent with the remedial intent of the Mine Act and the existing standards. MSHA also believes that the proposed requirement that operators conduct an examination of working places before work begins in an area would provide better protection of miners. MSHA requests 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. Please provide specific rationale for your position, and include the merits for your argument.

Like the existing rule, the proposed rule would require that the examination be made by a competent person designated by the mine operator. In PPL No. P15-IV-01, MSHA emphasized that the competent person designated by the operator to conduct working place examinations 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. MSHA states in various PPLs that, although a best practice is for a foreman or other supervisor to conduct the examination in most cases, an experienced non-supervisory person may also be "competent." The PPLs emphasized that a competent person designated by the operator under §§ 56.18002(a) and 57.18002(a) must already have the experience and training to be able to perform the examination and identify safety and health hazards.

MSHA requests 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. The Agency requests information on whether a competent person should have a certain ability, experience, knowledge, or training that would enable the person to recognize conditions that could adversely affect safety or

health. Please provide the rationale, including supporting documentation.

Proposed §§ 56.18002(a)(1) and 57.18002(a)(1) incorporate the existing requirements in §§ 56.18002(a) and 57.18002(a) that the mine operator promptly initiate action to correct conditions that may adversely affect safety or health that are found during the examination, and would add a new requirement that the operator promptly notify the miners in any affected areas of any adverse conditions found during the working place examination. MSHA believes that miners need to know about adverse conditions in their working place so that they can take precautions to avoid an accident or injury.

Proposed §§ 56.18002(a)(2) and 57.18002(a)(2) are substantively the same as existing §§ 56.18002(c) and 57.18002(c). These provisions would 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. The operator must immediately withdraw all persons from the affected area until the danger is abated, except persons referred to in section 104(c) of the Mine Act who are necessary to eliminate the imminent danger.

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. From January 2010 through December 2015, MSHA has issued 1,819 imminent danger orders under section 107(a) of the Mine Act in MNM mines.

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

MSHA believes that, to be effective, working place examinations must be timely, made by a competent person, and made in the areas where miners work. MSHA is proposing that working place examination records include additional information the Agency believes is necessary to accomplish the intent of the standards.

The proposed rule would add new requirements addressing the contents of the examination record. The introductory text to proposed §§ 56.18002(b) and 57.18002(b) would continue to require that a record of the working place examination be made. The proposed rule would add the requirement that the competent person who conducted the examination sign and date the record before the end of the shift for which the examination was made. Proposed §§ 56.18002(b)(1) and 57.18002(b)(1) would require the

record to include the locations examined and a description of any adverse conditions found. MSHA believes that this proposed requirement for a description of the adverse conditions found would expedite the correction of these conditions. Proposed §§ 56.18002(b)(2)(i) through (iii) and 57.18002(b)(2)(i) through (iii) are new provisions; they would require that, if any adverse condition is found, the record must include:

- A description of the action taken to correct the adverse condition,
- The date that the corrective action was taken, and
- The name of the person who made the record of the corrective action and the date the corrective action was taken. (MSHA expects that the person taking the corrective action would make this record.)

The proposed rule would redesignate the requirement for recordkeeping in existing §§ 56.18002(b) and 57.18002(b) as proposed §§ 56.18002(b)(3) and 57.18002(b)(3). Existing §§ 56.18002(b) and 57.18002(b) require that a record that such working place examinations were conducted shall be kept by the operator for a period of one year and shall be made available for review by the Secretary or his authorized representative. The proposed

rule would add new requirements that the record also be made available to miners and their representatives and that a copy be provided to the Secretary or his authorized representative or a miners' representative when they request a copy. MSHA solicits comments on these proposed requirements.

*C. Request for Comments*

Please provide any other data or information that would be useful to MSHA as the Agency evaluates its proposal related to working place examinations in MNM mines. Please provide the rationale and sufficient detail in your comments to enable proper Agency review and consideration. Where possible, include specific examples to support the rationale and other relevant information, including past experience, studies and articles, and standard professional practices. Include any related cost and benefit data with your submission, and information on economic and technological feasibility.

Based data reported on MSHA Form 7000-2, 90 percent of MNM mines employ fewer than 20 miners. In addition, almost all (98 percent) of MNM mines are surface operations. Over half of all MNM mines are surface sand and gravel or crushed stone operations that operate intermittently or seasonally and employ five or fewer miners. For this

reason, MSHA is particularly interested in comments related to the impact of the proposed rule on small mines, particularly comments and suggestions on alternatives and best practices that small mines might use to implement more effective working place examinations.

**IV. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review**

Executive Orders 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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Under Executive Order (E.O.) 12866, the Agency must determine whether a regulatory action is "significant" and subject to review by the Office of Management and Budget (OMB). Section 3(f) of E.O. 12866 defines a "significant regulatory action" as an action that is likely to result in a rule: (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a

sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Based on its assessment of the costs and benefits, MSHA has determined that this proposed rule would not have an annual effect of \$100 million or more on the economy and, therefore, would not be an economically significant regulatory action pursuant to section 3(f) of E.O. 12866. MSHA requests comments on all cost and benefit estimates presented in this preamble and on the data and assumptions the Agency used to develop estimates.

#### *A. Population at Risk*

The proposed rule would apply to all MNM mines in the United States. In 2014, there were approximately 11,800 MNM mines employing 145,800 miners, excluding office workers, and 75,800 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 2014

Mine Size	No. of Mines	Total Employment at Mines, Excluding Office Workers
1-19 Employees	10,599	52,328
20-500 Employees	1,162	73,253
501+ Employees	26	20,186
Contractors	--	75,762
Total	11,787	221,529

Source: MSHA MSIS Data (reported on MSHA Form 7000-2) August 26, 2015.

The U.S. Department of the Interior (DOI) estimated the value of the U.S. mining industry's MNM output in 2014 to be \$77.6 billion.<sup>2</sup> Table 2 presents the hours worked and revenue produced at MNM mines by mine size.

Table 2: MNM Total Hours and Revenues in 2014

Mine Size	Total Hours Reported for Year	Revenue (In Millions of Dollars)
1-19 Employees	86,704,486	\$23,539
20-500 Employees	156,402,789	\$42,461
501+ Employees	42,730,947	\$11,600
Total	285,838,222	\$77,600

Source: MSHA MSIS Data (total hours worked at MNM mines reported on MSHA Form 7000-2) and estimated DOI reported mine revenues for 2014 by mine size.

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<sup>2</sup> Production revenue estimates are from DOI, U.S. Geological Survey (USGS), Mineral Commodity Summaries 2015, February 2015, page 8.

## *B. Benefits*

The proposed rule would require additional recordkeeping provisions to assure that adverse conditions are recorded and corrected. The proposed rule would provide for more detailed examination records that include essential information that the operator can use to correct recognized hazards and protect miners. The proposed provisions to record the adverse conditions found during the examinations and the corrective actions taken to mitigate the hazards, and to notify miners of the adverse conditions that may adversely affect safety or health, would better achieve the protections intended under the existing requirements. The additional information recorded in the examination records would assist MSHA, mine operators, and miners in focusing efforts on correcting hazardous conditions.

MSHA is unable to quantify the benefits from this proposed rulemaking, including the proposed provisions that an examination of the working place be conducted before miners begin work in an area; that the operator notify miners in the working place of any conditions found that may adversely affect their safety or health; and that the examination record include a description of the adverse conditions found and the corrective actions taken. MSHA

anticipates, however, that there would be benefits from the proposed requirements, such as expedited correction of adverse conditions, which would be expected to result in fewer injuries and fatalities. MSHA requests information and data on the benefits from this proposed rulemaking. Please be specific to facilitate any benefits quantification that may be possible.

Net benefits under MSHA's current analysis would be negative (zero quantified benefits minus quantified costs). MSHA also believes that there would be a financial benefit to MNM mine operators who conduct working place examinations to find and fix adverse conditions and violations of health and safety standards before these conditions cause injury or death. Mine operators who conduct effective working place examinations could achieve a financial benefit from reduced penalties. From January 2010 through December 2015, penalties for MNM mine operators were \$152 million for violations of all mandatory safety and health standards.

### *C. Compliance Costs*

The quantified cost associated with this proposed rule would be the additional cost for the expanded recordkeeping requirements. Some mine operators already conduct and record working place examinations that satisfy the proposed

requirements and would have little or no additional cost. Many adverse conditions found during the working place examination are corrected immediately before miners have an opportunity to encounter the condition; therefore, MSHA also believes that the cost associated with examining areas before miners begin work in that area and with notifying miners of any adverse conditions would be de minimis. MSHA requests information and data on the costs of this proposed rulemaking.

For the purpose of this analysis, MSHA estimates that the competent person making the record of the examination of working places would earn \$31.14 (including benefits). The wage rate is from U.S. Metal and Industrial Mineral Mine Salaries, Wages, and Benefits - 2012 Survey Results, InfoMine USA, Inc., 2012. MSHA updated rates from 2012 to 2014 for inflation using a percent change of 3.8 percent derived from the BLS Employment Cost Index (CIU2010000405000I), total compensation for private industry workers in construction, extraction, farming, fishing, and forestry occupations (Index available at <http://data.bls.gov/timeseries/CIU2010000405000I>).

MSHA also estimates that—

- Mines with 1-19 employees operate one shift per day, 300 days per year; and

- Mines with 20+ employees operate two shifts per day, 300 days per year.

MSHA recognizes that there are many seasonal and intermittent mines that would be covered by this proposed rule. MSHA requests information and data on the Agency's estimates on the number of days per year a mine operates; the number of working place examinations made each shift; the number of competent persons required to conduct multiple examinations during a single shift; the amount of time required to record the examination and record corrective actions taken; and the number of shifts per day, by mine size.

#### Records of Working Place Examinations

The proposed rule would revise existing §§ 56.18002(b) and 57.18002(b) by adding requirements that the record of the examination include the locations of all areas examined and a description of each adverse condition found, and that the competent person conducting the examination sign and date this record before the end of the shift for which the examination was made. Also, if an adverse condition is found, the record must include a description of the actions taken to correct the adverse condition, the date that corrective action was taken, and the name of the person updating the record as well as the date the record was

updated. MSHA expects that the person taking the corrective action would update the record on completion of the corrective action. MSHA has no data on the number of corrective actions that would be recorded under this proposed rule. However, the Agency believes that the time to record the corrective actions would be minimal at best.

MSHA estimates that it will take a competent person approximately 5 additional minutes to make the record after each examination. MSHA estimates that the annual cost of making this record for all MNM mines is approximately \$10.1 million:

- \$8.3 million in mines with 1-19 employees (10,599 mines x 1 exam/day x 300 days/yr x 5 mins x \$31.14/hr);
- \$1.8 million in mines with 20-500 employees (1,162 mines x 2 exams/day x 300 days/yr x 5 mins x \$31.14/hr); and
- \$40,482 in mines with 501+ employees (26 mines x 2 exams/day x 300 days/yr x 5 mins x \$31.14/hr).

#### 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>3</sup> The negative value of the PMT function provides the annualized cost over 10 years at a 3 and 7 percent discount rate.

#### Summary of Costs

MSHA estimates that the total undiscounted cost of the proposed rule over a 10-year period would be approximately \$101.0 million, \$86.2 million at a 3 percent rate, and \$70.9 million at a 7 percent rate. The total undiscounted cost annualized over 10 years would be approximately \$10.1 million per year, \$9.8 million per year at a 3 percent rate, and \$9.4 million per year at a 7 percent rate.

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<sup>3</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]

## **V. Feasibility**

### *A. Technological Feasibility*

The proposed rule contains recordkeeping requirements; the proposed rule is not technology-forcing. MSHA concludes that the rule is technologically feasible.

### *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 proposed rule is projected to cost approximately \$10.1 million per year and the MNM industry has estimated annual revenues of \$77.6 billion, which is less than one percent of revenues. MSHA concludes that the proposed rule would be economically feasible for the MNM mining industry.

## **VI. 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 proposed rule on small entities. Based on that analysis, MSHA certifies that the proposed rule would 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. The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees.

MSHA has also examined the impact of the proposed rule on 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 for small entities in the mining industry and MSHA's traditional 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 projects that the proposed compliance costs of \$10.1 million for MNM mines with 1 to 500 employees is less than one percent of the \$66 billion revenue of these mines in 2014. Proposed compliance costs for MNM mines with 1 to 19 employees is \$8.3 million, which is less than one percent of the \$23.5 billion revenue of these mines in 2014.

## **VII. Paperwork Reduction Act of 1995**

### *A. Summary*

This proposed rule contains changes that affect the burden in an existing paperwork package with OMB Control Number 1219-0089. MSHA estimates that the proposed rule will result in 324,375 additional burden hours with an associated additional cost of approximately \$10.1 million annually. MSHA requests information and data on the Agency's estimates used to calculate the additional burden hours in the information collection package for this proposed rule.

#### Records of Working Place Examinations

Proposed §§ 56.18002(b)(1) and (2) and 57.18002(b)(1) and (2) would revise the existing provisions in §§ 56.18002(b) and 57.18002(b) by requiring competent persons to include in the record of the examination: 1) the locations of all areas examined, 2) a description of any adverse condition found, 3) a description of the actions taken to correct the adverse condition, and 4) the date that corrective action was taken. The competent person must sign and date this record before the end of the shift for which the examination was made. Also, if the record is updated, it must include the date and name of the person updating the record.

MSHA estimates that a MNM competent person who conducts working place examinations earns \$31.14 an hour (includes benefits, see cost section above). MSHA estimates that—

- Mines with 1-19 employees operate one shift per day, 300 days per year;
- Mines with 20-500 employees operate two shifts per day, 300 days per year; and
- Mines with 501+ employees operate two shifts per day, 300 days per year.

MSHA's estimates of MNM mine operators' additional annual burden hours and burden hour costs for examination records are presented below.

#### Additional Burden Hours

- 10,599 mines (with 1-19 employees) x 1 exam x 300 days x 5 min = 264,975 hr
- 1,162 mines (with 20-500 employees) x 2 exams x 300 days x 5 min = 58,100 hr
- 26 mines (with >500 employees) x 2 exams x 300 days x 5 min = 1,300 hr
- Total Burden Hours = 324,375 hr

### Additional Burden Hour Costs

- Total Burden Hour Costs = 324,375 hr x \$31.14/hr =  
\$10,101,038

There are no other associated burden hour costs because the proposed rule only adds documentation requirements to a record already required by existing standards.

#### *B. Procedural Details*

The information collection package for this proposed rule has been submitted to OMB for review under 44 U.S.C. § 3504, paragraph (h) of the Paperwork Reduction Act of 1995, as amended. Comments on the information collection requirements should be sent to both OMB and MSHA. Addresses for both offices can be found in the ADDRESSES section of this preamble.

### **VIII. Other Regulatory Considerations**

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

MSHA has reviewed the proposed rule under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). MSHA has determined that this proposed 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 proposed 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 proposed rule would not impact family well-being.

*C. Executive Order 12630: Government Actions and Interference with Constitutionally Protected Property Rights*

Section 5 of Executive Order (E.O.) 12630 requires Federal agencies to "identify the takings implications of proposed regulatory actions ...." MSHA has determined that this proposed 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 Executive Order (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 proposed rule and has determined that it would 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 proposed 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 proposed 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 proposed 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*

Executive Order 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 proposed rule for its energy effects because the proposed rule applies to the metal and nonmetal mining sector. Although this proposed rule will result in yearly costs of approximately \$10.1 million to the metal and nonmetal mining industry, only the impact on uranium mines is applicable in this

case. MSHA data show only three active uranium mines in 2014. The Energy Information Administration's annual uranium report for 2014<sup>4</sup> shows 4.7 million pounds at an average price of \$39.17, for sales of approximately \$185.9 million. Using average annual costs, the impact to all active uranium mine operators is less than \$4,000. 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 proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

**IX. References**

Salzer, Krista Noyes, survey results compilation "2012 U.S. Coal Mines Salaries, Wages, and Benefits—2012, U.S. Metal

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<sup>4</sup> <http://www.eia.gov/uranium/production/annual/pdf/dupr.pdf>, page 6.

and Industrial Mineral Mine Salaries, Wages, and Benefits", InfoMine USA, Inc.

U.S. Department of the Interior, U.S. Geological Survey, Mineral Commodity Summaries 2015, February 2015, page 8.

U.S. Department of Labor, Bureau of Labor Statistics, Employment Cost Index CIU2010000405000I, total compensation for private industry workers in construction, extraction, farming, fishing, and forestry occupations, Index.

U.S. Energy Information Administration, Independent Statistics & Analysis: Domestic Uranium Production Report 2014, April 2015.

U.S. Office of Management and Budget, Office of Information and Regulatory Affairs, Regulatory Impact Analysis: Frequently Asked Questions, February 7, 2011.

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

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

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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 proposing to amend 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 adverse 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 and the person conducting the examination shall sign and date the

record before the end of the shift for which the examination was made.

(1) The record shall include the locations of all areas examined and a description of each condition found that may adversely affect the safety or health of miners.

(2) The record also shall include:

(i) A description of the corrective action taken,

(ii) The date that the corrective action was taken,

and

(iii) The name of the person who made the record of the corrective action and the date the record of the corrective action was made.

(3) The operator shall maintain the examination records for at least one year; shall make the records available for inspection by authorized representatives of the Secretary and the representatives of miners; and shall 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 adverse 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 and the person conducting the examination shall sign and date the record before the end of the shift for which the examination was made.

(1) The record shall include the locations of all areas examined and a description of each condition found that may adversely affect the safety or health of miners.

(2) The record also shall include:

(i) A description of the corrective action taken,

(ii) The date that the corrective action was taken,  
and

(iii) The name of the person who made the record of  
the corrective action and the date the record of the  
corrective action was made.

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

[FR Doc. 2016-13218 Filed: 6/7/2016 8:45 am; Publication Date: 6/8/2016]