

OMB NO.: 1219-0089  
1/2017

### **NOTE TO REVIEWER**

This Information Collection Request (ICR), control number OMB 1219-0089 is a revision request to make the clearance consistent with the final rule, RIN: 1219-AB87, Examinations of Working Places in Metal and Nonmetal Mines. MSHA solicited and received comments on record keeping requirements for §§ 56/57.18002 during the public comment period. This document includes the public comments and MSHA's response to those comments. This ICR is intended to help the public understand the changes to the requirements due to the final rule.

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## **SUPPORTING STATEMENT**

Information Collection Title: Safety Defects; Examination, Correction, and Records

Authorities: 30 CFR §§ 56/57.13015, 56/57.14100, 56/57.13030, 56/57.18002, 56/57.18002(b) and (c), and 56/57.18002(d) (pertains to metal and nonmetal (M/NM) surface and underground mines)

Collection Instrument(s): None

### **A. Justification**

**1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811 authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

Title 30 CFR §§ 56.13015 and 57.13015 require compressed-air receivers and other unfired pressure vessels to be inspected by inspectors holding a valid National Board Commission and in accordance with the applicable chapters of the National Board Inspection Code, a Manual for Boiler and Pressure Vessels Inspectors, 1979. Safety defects found on compressed-air receivers and other unfired pressure vessels have caused injuries and fatalities in the mining industry.

Records of inspections must be kept in accordance with the requirements of the National Board Inspection Code and the records must be made available to the Secretary or an authorized representative.

Title 30 CFR §§ 56.13030 and 57.13030 require that fired pressure vessels (boilers) must be equipped with water level gauges, pressure gauges, automatic pressure-relief valves, blowdown piping and other safety devices approved by the American Society of Mechanical Engineers (ASME) to protect against hazards from overpressure, flameouts, fuel interruptions and low water level.

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These sections also require that records of inspection and repairs be retained by the mine operator in accordance with the requirements of the ASME Boiler and Pressure Vessel Code, 1977, and the National Board Inspection Code (progressive records - no limit on retention time) and shall be made available to the Secretary or an authorized representative.

Title 30 CFR §§ 56.14100 and 57.14100 require operators to inspect equipment, machinery, and tools that are to be used during a shift for safety defects before the equipment is placed in operation. Defects affecting safety are required to be corrected in a timely manner. In instances where the defect makes continued operation of the equipment hazardous to persons, the equipment must be removed from service, tagged to identify that it is out of use, and repaired before use is resumed.

Safety defects on self-propelled mobile equipment account for many injuries and fatalities in the mining industry. Inspection of this equipment prior to use is required to ensure safe operation. The equipment operator is required to make a visual and operational check of the various primary operating systems that affect safety, such as brakes, lights, horn, seatbelts, tires, steering, back-up alarm, windshield, cab safety glass, rear and side view mirrors, and other safety and health related items. Any defects found are required to be either corrected immediately, or reported to and recorded by the mine operator prior to the timely correction.

A record is not required if the defect is corrected immediately, i.e. a defect that the operator can fix without a mechanic such as a light bulb that needs to be turned tighter. The precise format in which the record is kept is left to the discretion of the mine operator.

Reports of uncorrected defects are required to be recorded by the mine operator and kept at the mine office from the date the defects are recorded, until the defects are corrected.

Title 30 CFR §§ 56.18002 and 57.18002 require that a competent person designated by the operator examine each working place at least once each shift for conditions which may adversely affect safety or health. A record of such examinations must be kept by the operator for a period of one year and must be made available for review by the Secretary or an authorized representative.

Final §§ 56/57.18002 require a competent person designated by the operator to examine each working place at least once each shift before miners begin working in that place. The operator must also notify miners of any conditions that may adversely affect health or safety and take appropriate action to correct the conditions. If conditions noted by the competent person are an imminent danger, the operator must withdraw person from the area. 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. 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. 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.

**2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

The records are used by industry management and maintenance personnel to ensure that defects are not overlooked, that repairs are made, and to monitor when and how often maintenance is performed on certain equipment, machinery, and tools. Additionally, the inspection records denote any hazards that were discovered and how the hazards or unsafe conditions were abated. Federal mine inspectors use the records to ensure that unsafe conditions are identified and corrected.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

No improved information technology has been identified that would reduce the burden; however, to comply with the Government Paperwork Elimination Act, MSHA allows mine operators to retain the records in whatever method they choose, which may include using computer technology.

**4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

There are no similar records that could be used or modified for use in lieu of the required records. The Agency requires a record to be kept to comply with requirements of 30 CFR §§ 56.14100 and 57.14100 only when safety defects are not corrected immediately. Title 30 CFR §§ 56.13015, 57.13015, 56.13030, 57.13030, 56.18002 and 57.18002 require that records be kept of inspections. MSHA uses such records to ensure that a regular inspection schedule is maintained and/or that any unsafe conditions are discovered and corrected.

**5. If the collection of information impacts small businesses or other small entities describe any methods used to minimize burden.**

MSHA has undertaken measures to minimize any burden on small businesses or entities subject to these requirements. MSHA's Technical Support Directorate (Tech Support) frequently answers phone calls and emails from small businesses and other small entities about conducting these inspections. This assistance from Tech Support helps the businesses comply with these standards and helps reduce their associated burden.

**6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

Further reductions of these requirements could allow unsafe equipment to remain in operation; thereby, jeopardizing the safety of miners. Section 101(a)(9) of the Mine Act prohibits any regulatory action which would reduce the protection given miners by an existing standard.

**7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

- requiring respondents to report information to the agency more often than quarterly;
- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- requiring respondents to submit more than an original and two copies of any document;
- requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;
- in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

- **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

This collection of information is consistent with the guidelines in 5 CFR § 1320.5.

**8. If applicable, provide a copy and identify the data and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB.**

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 notice in the Federal Register (81 FR 58422) extending the deadline for submission of comments from September 6, 2016, to September 30, 2016.

Final rule §§ 56/57.18002(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 notice 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 notice, 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 §§ 56/57.18002(a)(1), like the proposed rule, incorporate requirements from existing §§ 56/57.18002(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 §§ 56/57.18002(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 §§ 56/57.18002(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 §§ 56/57.18002(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 §§ 56/57.18002(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 §§ 56/57.18002(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 §§ 56/57.18002(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 §§ 56/57.18002(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 §§ 56/57.18002(d), like the existing standards and proposed §§ 56/57.18002(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.

**9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

MSHA does not provide payments or gifts to respondents.

**10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

There is no assurance of confidentiality provided to respondents. The operators maintained the records.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

There are no questions of a sensitive nature.

**12. Provide estimates of the hour burden of the collection of information. The statement should:**

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.**

Burden cost figures used in this section are based on hourly wage rates obtained from Bureau of Labor Statistics (BLS), Occupational Employment Statistics (OES) May 2015 survey.<sup>1,2</sup> The hourly wage rate of a miner, including benefits, is \$34.06 per hour; and the hourly wage rate of a clerical person is \$22.43 per hour. Approximately 11,660 mines are subject to the standards.

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1 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 Extraction Workers (Standard Occupational Classification code, SOC, 475000) and Office Clerks, General (SOC 43-9061) 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 examples of higher and lower values, but the national average is the appropriate value for an entire industry.

2 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  $1 + (\text{benefit percentage}/(1-\text{benefit percentage})) = 1+(0.3265/(1-0.3265)) = 1.48$ .

**30 CFR §§ 56.13015 and 57.13015**

The standards require that compressed-air receivers and other unfired pressure vessels be inspected by inspectors holding a valid National Board Commission and in accordance with the applicable chapters of the National Board Inspection Code, a Manual for Boiler and Pressure Vessels Inspectors, 1979. The standards also require that records of inspections be kept and made available in accordance with the requirements of the National Board Inspection Code. There are approximately 3,400 compressed-air receivers and other unfired pressure vessels that must be inspected annually. MSHA estimates that the time required for a miner to make the record would be approximately 10 minutes per vessel.

3,400 vessels x 1 record/vessel x 10 minutes = 567 hours

564 hours x \$34.06/hour = \$19,312

**TOTAL BURDEN: 567 HOURS**  
**TOTAL COST: \$19,312**

**30 CFR §§ 56.13030 and 57.13030**

The standards require that records of inspections and repairs be retained by the mine operator in accordance with the requirements of the ASME Boiler and Pressure Vessel Code and the National Board Inspection Code and made available to MSHA. There are approximately 500 fired pressure vessels (boilers) that must be inspected annually. MSHA estimates that the time required for a miner to make the record would be approximately 10 minutes.

500 vessels x 1 record/vessel x 10 minutes = 83 hours

83 hours x \$34.06/hour = \$2,827

**TOTAL BURDEN: 83 HOURS**  
**TOTAL COST: \$2,827**

**30 CFR §§ 56.14100 (d) and 57.14100 (d)**

These standards require that an inspection be made for every shift for equipment that is to be used. Further, a record is required to be made of any defects affecting safety that are not corrected immediately. MSHA estimates that a defect not able to be corrected immediately and therefor requiring a record to be made would occur, on average, 15 percent of the time.

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MSHA estimates that it will take a miner, earning an hourly wage rate of \$34.06 per hour, an average of 5 minutes to record the required information. Burden hours and costs are shown below:

- 24,286 hours = 10,451 mines with 1-19 employees x 15 percent x 1.1 shifts per day x 169 workdays per year x 5 minutes;
- 7,612 hours = 1,187 mines with 20-500 employees x 15 percent x 1.8 shifts per day x 285 workdays per year x 5 minutes; and
- 195 hours = 22 mines with 501+ employees x 15 percent x 2.2 shifts per day x 322 workdays per year x 5 minutes.

32,093 hours x \$34.06/hour = \$1,093,088

**TOTAL HOUR BURDEN: 32,093 HOURS**  
**TOTAL COST: \$1,093,088**

**30 CFR §§ 56.18002 and 57.18002**

These standards require that a competent person designated by the mine operator examine each working place at least once each shift for conditions which may adversely affect safety or health. A record that such examinations were conducted shall be kept by the operator for a period of one year and shall be made available for review by the Secretary or her authorized representative. MSHA estimates that the time required for the recordkeeping activities would be approximately 12 minutes per mine. Burden hours and costs are shown below:

- 388,568 hours = 10,451 mines with 1-19 employees x 1.1 shifts per day x 1 exam record x 169 workdays per year x 12 minutes;
- 121,786 hours = 1,187 mines with 20-500 employees x 1.8 shifts per day x 1 exam record x 285 workdays per year x 12 minutes; and
- 3,117 hours = 22 mines with 501+ employees x 2.2 shifts per day x 1 exam record x 322 workdays per year x 12 minutes

513,471 hours x \$34.06/hour = \$17,488,822

**TOTAL HOUR BURDEN: 513,471 HOURS**  
**TOTAL COST: \$17,488,822**

**30 CFR §§ 56/57.18002(b) and (c)**

Final §§ 56/57.18002(b) and (c) revises the existing provisions in §§ 56/57.18002(b)(1) and (2). Final §§ 56/57.18002(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 x 1.1 shifts per day x 1 exam record x 169 workdays per year x 5 additional minutes;
- 50,744 hours = 1,187 mines with 20-500 employees x 1.8 shifts per day x 1 exam record x 285 workdays per year x 5 additional minutes; and
- 1,299 hours = 22 mines with 501+ employees x 2.2 shifts per day x 1 exam record x 322 workdays per year x 5 additional minutes.

213,946 hours x \$34.06/hour = \$7,287,001.

**TOTAL HOUR BURDEN: 213,946 HOURS**  
**TOTAL COST: \$7,287,001**

**§§ 56/57.18002(d)**

This is a new provision added to this collection. Final §§ 56/57.18002(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 x 10 percent x 1.1 shift per day x 169 workdays per year x 1 minute;
- 5,074 hours = 1,187 mines with 20-500 employees x 50 percent x 1.8 shifts per day x 285 workdays per year x 1 minute; and
- 260 hours = 22 mines with 501+ employees x 100 percent x 2.2 shifts per day x 322 workdays per year x 1 minute.

8,572 hours x \$22.43/hour = \$192,270.

**TOTAL HOUR BURDEN: 8,572 HOURS**  
**TOTAL COST: \$192,270**

**GRAND TOTAL HOUR BURDEN: 768,728 HOURS**  
**GRAND TOTAL COST: \$26,083,320**  
**RESPONDENTS: 11,660**  
**RESPONSES: 3,470,695**

**13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).**

- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

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 x \$0.15 per page). Burden Costs are shown below:

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

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

**14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.**

Records are examined by Federal mine inspectors in the course of routine mine inspections. Therefore, these requirements do not result in additional cost to the Federal government.

**15. Explain the reasons for any program changes or adjustments reported on the burden worksheet.**

Adjustments have been made to update respondent numbers, responses, and hours. A program change was made by adding a new provision 56/57.18002(d) due to the rule which added 8,572 hours. Changes are as follows.

Burden hours have decreased from 1,145,141 to 768,728 hours.  
Responses have decreased from 10,368,771 to 3,470,695.  
Costs have increased from \$0 to \$154,300.  
Respondents decreased from 12,375 to 11,660.

**16. For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

MSHA does not intend to publish the results of this information collection.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

MSHA is not seeking approval to not display the expiration date for OMB approval of this information collection.

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**18. Explain each exception to the topics of the certification statement identified in “Certification for Paperwork Reduction Act Submissions.”**

There are no certification exceptions identified with this information collection.

**B. Collection of Information Employing Statistical Methods**

This information collection does not employ statistical methods.