

CLIENT ALERT

MSHA Regulatory Update

Fall 2014

Proposed changes to Part 100: On July 31, the Mine Safety and Health Administration (MSHA) issued a proposed rule that, if finalized, would make significant changes to the current scheme for assessing civil penalties for safety and health violations. MSHA has held two public hearings on the proposed rule and will hold two more in coming weeks. Comments are currently due no later than January 9, 2015; however, MSHA has stated that it will extend the comment period until approximately 30 days after the conclusion of the last of the hearings.

Self-contained self-rescuers (SCSRs): In 2012, the National Institute for Occupational Safety and Health (NIOSH) revamped the requirements for SCSRs intended for use in underground coal mines. After April 9, 2015, all new SCSRs sold must be approved by NIOSH as being in compliance with the new requirements. (Mine operators are allowed to continue to use the SCSRs they have on hand until the shelf life of those SCSRs expires.) So far, however, NIOSH has not certified any new SCSRs. We anticipate an announcement by NIOSH in the Federal Register that the April 9 deadline will be extended to allow SCSR manufacturers additional time to obtain NIOSH approval and manufacture sufficient quantities of SCSRs to meet the anticipated demand for the new units.

Refuge alternatives for underground coal mines: In December 2008, MSHA issued a final rule establishing requirements for refuge alternatives for underground coal mines, and in August 2013 the agency published a Request for Information asking for "information on escape and refuge options that may present more effective solutions than the existing rules for miners' escape and safety." The deadline for comments has been extended a number of times, and the comment period is now expected to close in early April 2015, after which we expect that MSHA will propose major changes in the current rule. In the meantime, concerns persist about whether the current fleet of portable inby refuge alternatives adequately ensures miner safety in an emergency. NIOSH is currently studying the refuge alternative issue.

Proximity detectors: MSHA proposed a rule requiring proximity detectors for continuous mining machines in underground coal mines back in 2011, but that rule has not yet been finalized. According to the agency's entry in the federal government's Semi-Annual Regulatory Agenda, the proposal was scheduled to be finalized this month (December 2014). It remains to be seen whether MSHA follows through. Additionally, MSHA says that it plans to propose a second rule that would mandate the use of proximity detectors on other types of mobile equipment in underground mines. According to MSHA, that proposal will be published in January 2015. (It is not yet clear whether the more general requirements will apply only to coal mines, or to all underground mines.)

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- [FAA and Drones: Mining the Regulatory Gap](#)
- [MSHA Regulatory Update](#)
- [Coal Industry Awaits Oral Argument and Decision on Merits of MSHA's Final Rule for Lowering Miners' Exposure to Respirable Coal Mine Dust](#)

Crystalline silica: MSHA's Regulatory Agenda, published in November, indicates that the agency plans to propose a rule establishing new standards for metal/non-metal miners' exposure to respirable crystalline silica. MSHA currently projects that the proposal will be published by October 2015 – but that deadline is aspirational only and seems extremely unlikely to be met. The Occupational Safety and Health Administration (OSHA) issued a proposed rule on Occupational Exposure to Crystalline Silica in the autumn of 2013, and MSHA has stated publicly that it plans to build on OSHA's work, adapting OSHA's approach to fit the particular needs of the mining community. The OSHA rulemaking docket is very large due to the numerous comments and public hearings and related proceedings, and it is therefore very unlikely any new rule will issue before the end of 2015, which in turn could cause MSHA to adjust expectations for its own rule.

Diesel exhaust: Although no formal request for information has yet been published, there is no doubt (and MSHA's Regulatory Agenda confirms) that one is forthcoming. MSHA currently regulates miners' exposure to diesel particulate matter (DPM), but in June 2012, the International Agency for Research on Cancer (IARC) classified diesel exhaust, of which DPM is a component, as a known human carcinogen. Both NIOSH and the National Cancer Institute have identified diesel exhaust as a possible cause of lung cancer. NIOSH plans to undertake a formal risk assessment in order to quantify the potential effects of diesel exhaust; however, the starting date for this project is uncertain. We anticipate that MSHA will publish its planned request for information as a prelude to further regulation. Although the projected date for publication is currently April 2015, that deadline might be too optimistic.

Workplace examinations: As part of the agency's attempt to better address fatalities in metal/non-metal mines, MSHA plans to issue a request for information about how workplace examinations are carried out in that sector. The focus of the request will be on who conducts workplace exams, how the exams are carried out, and the record-keeping that goes with them. According to MSHA's Regulatory Agenda, the request for information will be published in June 2015.

Upper Big Branch investigation: MSHA plans to publish a request for information on recommendations that came out of the investigation into the April 2010 explosion at the Upper Big Branch (UBB) coal mine and the agency's internal review of its own actions at UBB. This request for information will cover issues relating to rock dusting, ventilation, mine examinations, certified persons, and MSHA-approved instructors. MSHA says the information request will be published in January 2015, but that projection, too, may be overly optimistic.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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