US Mine Safety and Health Administration Proposes New Workplace Examination Rule; Requests Information Regarding Exposure of Underground Miners to Diesel Exhaust

Article By Matthew C. Cooper
Squire Patton Boggs (US) LLP
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On June 8, 2016, the US Mine Safety and Health Administration (MSHA) published the following two documents in the Federal Register, seeking information and comments from industry stakeholders: (1) a proposed rule addressing “Examinations of Working Places in Metal and Nonmetal Mines (MNM)”; and (2) a Request for Information (RFI) on “Exposure of Underground Miners to Diesel Exhaust.” The comment period for both publications ends September 6, 2016.

Examinations of Working Places in Metal and Nonmetal Mines

MSHA considers workplace examinations—which the Agency requires for the intended purpose of timely recognizing and correcting hazards—to be one of the most essential and effective accident prevention strategies. MSHA has historically put a significant focus on implementing and conducting effective workplace examinations. (See, e.g., MSHA Program Policy Letters: PPL No. P96-IV-2
The current workplace examination rules, 30 C.F.R. §§ 56.18002 and 57.18002, require: (1) 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; (2) that the operator promptly initiate appropriate action to correct any hazardous conditions; (3) that the operator withdraw persons from an area where conditions may present an imminent danger; and (4) that the operator keep workplace examination records for one year and provide a copy to authorized representatives for the Secretary of Labor upon request.

Under the proposed workplace examination rule, MSHA is proposing to expand these requirements to include the following:

- examination of a working place before miners begin work in an area;
- operators to notify miners in the working place of any conditions found that may adversely affect their safety or health;
- a competent person to include additional information in the workplace examination regarding: (a) the locations of all areas examined; (b) a description of each condition found that could adversely affect the safety or health of miners; and (c) a description of the corrective actions taken;
- all records available to miners and their representatives.

The purpose behind the proposal’s primary change—to have a competent person conduct examinations prior to starting work—is to encourage proactive discovery of any potential hazards before miners enter into a potentially dangerous area. In this regard, 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) and whether MSHA should require that the competent person conducting a working place examination have a minimum level of experience or particular training or knowledge.

Similarly, the proposed notification requirements for miners in affected areas is intended to allow for necessary precautions to be taken. Notably, the publication pays particular attention to notifying miners of conditions that violate MSHA’s Rules to Live By Standards (RTLB).

The Agency believes the new rules would help mine operators, miners, and miner representatives become more aware of potential dangers and more proactive in their communications and approach to correcting these issues.

**Exposure of Underground Miners to Diesel Exhaust**

Epidemiological studies by the National Institute for Occupational Safety and Health (NIOSH) and the National Cancer Institute (NCI) have found that exposure to diesel exhaust, which has been classified as a human carcinogen by the International Agency for Research on Cancer (IARC), increases miners’ risk of death due to lung
cancer. As a result, MSHA is reviewing and evaluating the Agency’s existing standards (30 CFR 75, Subpart T; 30 CFR 72, Subpart D; 30 CFR 70, Subpart T; and 30 CFR 57, Subpart D) and policy guidance regulating miners’ exposure to diesel exhaust. To this end, MSHA has published a Request for Information, specifically soliciting comments, informational materials, data, and other pertinent information by all interested and affected parties.

**Comment Periods**

MSHA will accept comments on the proposed examination rule and RFI in the form of written responses, data, and information for the record from any interested party. With regard to the proposed rulemaking, there will be hearing dates on July 19 (Salt Lake City, UT), 21 (Pittsburgh, PA), 26 (Arlington, VA), and August 4 (Birmingham, AL), 2016 to provide the public with an opportunity to present oral statements, written comments, and other information on this rulemaking. The comment period for both of these publications closes on **September 6, 2016**.

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