

Service

Workplace Safety &
Health

New Mine Safety Rule May Be On Hold — Again

On February 22, 2017, the Mine Safety and Health Administration (MSHA) notified industry stakeholders and key members of Congress that it will again pause efforts to implement its new workplace examinations final rule, pending further policy review by the new administration. The rule imposes significant new requirements on metal and non-metal mine operators that may warrant new compliance procedures.

The announced “pause” is yet another twist in the roller-coaster rollout of the rule. (See our recent alert for details of the rule.) MSHA completed the rule in the final days of the Obama administration, but the rule did not appear in the Federal Register until several days into the Trump administration. As a result, the Mining Coalition and others urged MSHA to retract the rule, in keeping with the new White House’s instructions to pull back last-minute regulations for review. Initially, MSHA suggested it would withdraw the rule for a 60-day review, but then the agency announced it had completed that review and would proceed with implementation. Now, with new administration officials beginning to fill out the ranks of the Department of Labor, the rule’s rollout is again on hold.

MSHA conveyed the news of the pause in private telephone calls to industry stakeholders, including the Mining Coalition (a client of Husch Blackwell), national industry associations and members of Congress. However, MSHA has not taken any formal steps to change the May 23, 2017, effective date of the rule, leaving mine operators in a vulnerable position as they still must invest in trying to comply with the rule’s significant new regulatory requirements. (Our recent alert includes recommended action steps.) Given the cost of compliance and uncertainty about how long the new implementation pause will last, the Mining Coalition, other industry groups and members of Congress are likely to continue efforts to obtain a more formal delay or withdrawal of the rule.

What This Means to You

Many groups are opposing the rule through informal conversations with the new administration and Congress. As the effective date approaches and remains unchanged, however, others may also decide to challenge the rule in a U.S. court of appeals. The rule may be particularly vulnerable to legal challenge given that MSHA stated it could not quantify the benefits of the rule. The deadline for filing a legal challenge is March 23, 2017, but it is not clear that MSHA intends to complete its internal review of the rule before that deadline.

Contact Us

For questions or advice on making arrangements to comply with the new rule, contact Avi Meyerstein or another member of Husch Blackwell's Safety & Health group.