

Advocacy Recommends That MSHA Re-Assess Impact of Drug and Alcohol Testing Rule, Consider Alternatives

On November 6, 2008, the U.S. Small Business Administration's (SBA) Office of Advocacy (Advocacy) submitted comments on the Mine Safety and Health Administration's (MSHA's) proposed Alcohol- and Drug-Free Mines: Policy, Prohibitions, Testing, Training, and Assistance rule ("Drug and Alcohol Testing" rule). [73 Fed. Reg. 52136 (September 8, 2008).]

MSHA's proposed rule would establish a uniform standard for drug and alcohol testing programs at all mines. Mine operators would be required to establish an alcohol- and drug-free mine program, including 1) a written policy, 2) employee education, 3) supervisory training, 4) alcohol- and drug-testing for miners that perform safety-sensitive job duties and their supervisors, and 5) referrals to assistance for miners who violate the policy. The proposed rule would designate substances that cannot be possessed on or around mine property or used while performing safety-sensitive job duties, except when used according to a valid prescription. The rule would also require those who violate the prohibitions to be removed from the performance of safety-sensitive job duties pending completion of recommended treatment and confirmation of their alcohol- and drug-free status by a return-to-duty test.

Following publication of the proposed Drug and Alcohol Testing rule, a number of small business representatives contacted Advocacy and expressed concerns about the proposed rule. In response, Advocacy hosted a small business roundtable on October 30, 2008 to obtain small business input on the proposed rule and to consider less burdensome alternatives.

A complete copy of Advocacy's letter to MSHA is available at: www.sba.gov/advo/laws/comments/.

- Small business representatives are concerned that MSHA's rule would cause disruptions to their existing drug and alcohol programs. Many would prefer that MSHA adopt a performance standard that establishes mandatory, minimum requirements for a drug and alcohol program and leaves it to the mine operator to implement.
- Small business representatives are also concerned that MSHA has understated the cost of the proposed rule, particularly with respect to the development and implementation of a drug and alcohol program.
- Small business representatives question whether MSHA has sufficient data about drug and alcohol use at mines or the degree to which drugs and alcohol have been contributing factors in mine fatalities and injuries.
- Advocacy recommends that MSHA provide additional economic analysis about the impact of the rule on smaller mines, especially those that do not have an existing drug and alcohol program in place.

For more information about proposed rule, please visit Advocacy's Web page at www.sba.gov/advo or contact Bruce Lundegren, Assistant Chief Counsel, at (202) 205-6144 (or bruce.lundegren@sba.gov).