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Mine Safety and Health Administration (MSHA) Regulatory Plan Backs Off On New Silica Rule, Keeps Workplace Exams Rule

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Mine Safety and Health Administration (MSHA) has a distinctly less ambitious regulatory plan on its plate with the start of the Trump Administration, in line with the campaign promises the President made last year to reduce regulatory burdens across the board.

In a key development for mine operators, a plan to issue new regulations targeting silica exposures in mines has been put on the proverbial back burner; so has a set of new regulations on proximity detection. Both of these  have been watched by mine health experts.

The last regulatory agenda under the Obama Administration had five new mine safety and health rules in the works, a fairly heavy lift for a comparably sized federal agency. However, the [new regulatory agenda](#), the first unified agenda under Trump, reduces that workload to just three rulemaking plans. Some of them are worth watching closely.

Silica No Longer Top Priority

Following the Occupational Safety and Health Administration's (OSHA) issuance last year of controversial new regulations lowering caps on allowable exposures to silica particles, it was widely expected that MSHA would follow through and bring mining standards in line with OSHA's general industry and construction standards.

At the close of the Obama presidency this was still on the agenda, but – perhaps not all that surprisingly – has been moved to “long-term actions,” the regulatory version of inertia since no further action will be taken unless someday revived by the White House.

Considering that industry, citing science and economic impact, has put up strong opposition to OSHA's tighter regulations on silica, MSHA retrenching on the same issue aligns with the new Administration's stance. However, that has not stopped MSHA from aggressively enforcing current exposure regulations in the Metal/Nonmetal industry. The recent spike in exposure citations for respirable silica dust also appears to carry more significant action requirements operators to terminate the citations, with MSHA requesting both short- and long-term action

plans to reduce a potential exposure.

It's worth noting in this context that Trump's OSHA, in April, delayed enforcement of the construction side of the silica rule for several months, saying "additional guidance is necessary due to the unique nature of the requirements in the construction standard." While such a delay isn't that uncommon for a complex rule and doesn't point to an effort to reverse the entire rule, it does show Trump's OSHA is sensitive to industry concerns about its impact.

MSHA has not said previously what the final exposure cap would be, but noted that the National Institute for Occupational Safety and Health (NIOSH) has recommended a 50 ug/m³ exposure limit to respirable crystalline silica in mining. In notations about the rulemaking the agency pointed out that OSHA has done some of the heavy lifting already:

"MSHA will regulate based on sound science to eliminate or reduce the hazards with the broadest and most serious consequences. MSHA intends to use OSHA's work on the health effects and risk assessment of silica, adapting it as necessary for the mining industry."

Though the silica rule for MSHA is nowhere near officially abandoned, we do know from this recently published agenda that a final rule won't be published anytime soon.

Additionally, MSHA has another item in long-term actions that used to be an active rulemaking: proximity detection systems for mobile machines in underground mines. This had been in the proposed rule stage under Obama.

Diesel Exhaust in Prerule Stage

MSHA still has several rules in the works, and one of them is a set of regulations to address diesel exhaust hazards. This is listed in the prerule stage, just as it was in the last Obama blueprint.

In the rulemaking, MSHA noted that epidemiological studies found that "diesel exhaust presents health risks to workers" and these possible health effects "range from headaches and nausea to respiratory disease and cancer." Noting findings of health effects from diesel exhaust, MSHA says in explaining the planned rule:

"Because of the carcinogenic health risk to miners from exposure to diesel exhaust, MSHA is requesting information on approaches that would improve control of [diesel particulate matter] and diesel exhaust."

MSHA appears to indicate the current regulatory work in this area is focused on evaluating comments from public meetings and a request for information, which closes January 9, 2018.

Workplace Exams Rule Taking Effect

Another rulemaking that has generated considerable interest in the mining sector has been plans to revise workplace examination rules ([You can find a detailed blog we wrote on the impact of this rule here.](#))

By all indications, enforcement of this rule will be implemented this fall (the work that has already gone into this rule may be one reason the Administration has not backtracked). There have been several delays in rolling out

the final rule, issued in January. The latest regulatory plan notes a delay in the effective date, with the rule now going into effect on October 2, 2017.

As MSHA explained in the reasoning behind the rule:

“This final rule requires that an examination of the working place be conducted before miners begin working in that place, that operators notify miners in the affected areas of any conditions found that may adversely affect their safety or health, that operators promptly initiate corrective action, and that a record be made of the examination.”

MSHA also has an active rulemaking on refuge alternatives for underground coal mines. This has to do with a D.C. Circuit Court decision remanding part of the final rule on this issue. An action on this is currently expected by next April.

Conclusion

Three rules were withdrawn from the agenda, including the controversial Criteria and Procedures for Proposed Assessment of Civil Penalty (Part 100) reform, two were designated as long-term actions, including a new silica standard, and the workplace exam rule continues to roll towards the October effective date.

We heard a lot from Trump on the campaign trail, especially in mining-heavy states like West Virginia, about his desire to jump-start the mining sector, with a high priority on deregulating. While he was mostly talking about environmental regulations, what went largely unspoken was that MSHA’s rulemaking plans could also be curtailed.

The industry can probably expect to see similar agendas going forward, at least for the next three years, and should expect additional clarity once an Assistant Secretary of Labor for Mine Safety and Health is tapped and in place.