

Sparse Regulatory Agenda Belies Coming Final MSHA Rule on Civil Penalties

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Workplace Safety and Health

The good news is that the Mine Safety and Health Administration has set forth a sparse regulatory agenda over the next six months, but the bad news is that agenda is topped by the agency's intent to issue an unpopular final rule reforming its civil penalty procedures.

MSHA said it would issue a final rule on Criteria and Procedures for Proposed Assessment of Civil Penalties in March 2016. MSHA claims the proposed rule, released in July 2014, will promote consistency, objectivity, and efficiency in the proposed assessment of civil penalties by making changes in the measures inspectors use to evaluate violation criteria, such as negligence and gravity. The result would be fewer areas of disagreement and earlier resolution of enforcement issues, the agency predicted. The proposed language also would restrict the role played by the Federal Mine Safety and Health Review Commission in independently evaluating alleged violations and setting penalty amounts during appeals. Operators are concerned the changes could be a backdoor for raising penalties and object to limiting the Commission's independence.

Three other agency initiatives are in the proposal stage. One amending current standards that address examinations of working places in the metal/non-metal sector is scheduled for release in February 2016. Under existing standards, working places are to be examined by a competent person for adverse safety and health conditions once each shift, with the aim of taking corrective action, where needed, and a record kept of these examinations. MSHA wants to make three changes: clarify requirements for the abilities and experience of the competent person, require task training specifically for those who conduct workplace examinations, and change recordkeeping requirements to facilitate correction of hazardous conditions and alert others at the mine of conditions that may recur or may affect them.

Like the Occupational Safety and Health Administration, MSHA also plans eventually to issue a rule on crystalline silica, and has set April 2016 for release of a proposed rule. The agency claims its existing protection is outdated and that evidence indicates miners are contracting a silica-related lung disease known as silicosis. In developing the rule, MSHA intends to borrow from OSHA's work on health effects and risk assessment. The agency proposed a rule in September governing proximity detection devices on mobile machines in underground coal mines, but has given no date for release of a final rule.

MSHA listed three initiatives in the pre-rule state: refuge alternatives for underground coal mines, an information request for improving miner health and safety and preventing accidents in underground coal mines, and diesel exhaust exposure in underground mines. No dates for further regulatory action were specified. MSHA said it would issue a request for information on diesel exposure in February 2016.

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