

# New Rules on Silica, Workplace Exams, and Eventually Diesel Particulate Matter Top MSHA's New Agenda

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With just seven months left in the *Obama* administration, ***Mine Safety and Health Administration, MSHA***, published this week its [Spring 2016 Semiannual Regulatory Agenda](#). The Agenda, pasted below, lists rulemaking efforts which MSHA plans to undertake in the near future. MSHA's rulemaking to-do list is substantial. Three of the most significant potential issues in metal/non-metal mining are:

## 1. Diesel Particulate Matter.

Just when it seems as if the particulates have barely just settled from MSHA's last, hotly-contested DPM rulemaking, MSHA indicates that as early as next month, it intends to issue a "request for information" regarding "approaches that would improve control of DPM and diesel exhaust." The implication appears to be the potential for further DPM rulemaking. The full statement on DPM says:

Epidemiological studies have found that diesel exhaust presents health risks to workers. These possible health effects range from headaches and nausea to respiratory disease and cancer. MSHA's existing regulations address the health hazards to underground metal and nonmetal miners (66 FR 5706) and coal miners (66 FR 5526) from exposure to diesel particulate matter (DPM). DPM is a component of diesel exhaust. MSHA also has limits for miners' occupational exposure to selected components of the gaseous fraction of diesel exhaust. In June 2012, the International Agency for Research on Cancer classified diesel exhaust as a known human carcinogen. The National Institute for Occupational Safety and Health and the National Cancer Institute also have stated that diesel exhaust exposure has important public health implications, including increasing the risk of death from lung cancer. Because of the carcinogenic health risk to miners from exposure to diesel exhaust, MSHA is requesting information on approaches that would improve control of DPM and diesel exhaust.

Everyone will be paying close attention to the request for information to try to understand what is prompting this new action and to guess at MSHA's future direction with it.

## 2. Silica.

Following OSHA's recent silica final rule, MSHA reports that it expects to issue a proposed rule on silica as soon as September of this year. MSHA says that its silica rule will be "based on sound science" and that "MSHA intends to use OSHA's work on the health effects and risk assessment of silica, adapting it as necessary for the mining industry." It seems reasonable to expect that the fundamentals of an MSHA silica rule will be the same as OSHA's, including the significant reduction in permissible exposure levels.

## 3. Workplace examinations.

As you may recall, last year, MSHA issued a [Program Policy Letter on workplace examinations](#) that said it is a "best practice is for a foreman or other supervisor to conduct the examination; an experienced non-supervisor miner may also be 'competent.'" Some MSHA inspectors have issued more serious citations to operators who had supervisors perform exams, arguing that a violation of the workplace exam standard was highly negligent because a supervisor was involved. In addition, MSHA suggested that it expected operators to examine "areas where work is performed on an infrequent basis" and to task-train those conducting exams.

Now, MSHA says it expects to release a proposed rule next month "to clarify the requirements for the abilities and experience of the competent person (examiner); and to specify record-keeping requirements that will facilitate correction of hazardous conditions and to alert others at the mine of conditions that may recur or in other ways affect them." MSHA says it will act in June, so we could know within a few weeks whether the new rule would simply codify (and hopefully, clarify) the PPL or go even further.

**The full MSHA rulemaking agenda with links is below** (and for those following OSHA, [here](#) is a write-up on the OSHA rulemaking agenda):

DOL/MSHA	Prerule Stage	Refuge Alternatives for Underground Coal Mines	<a href="#">1219-AB79</a>
DOL/MSHA	Prerule Stage	Request for Information to Improve the Health and Safety of Miners and to Prevent Accidents in Underground Coal Mines	<a href="#">1219-AB85</a>
DOL/MSHA	Prerule Stage	Exposure of Underground Miners to Diesel Exhaust	<a href="#">1219-AB86</a>
DOL/MSHA	Proposed Rule Stage	Respirable Crystalline Silica	<a href="#">1219-AB36</a>
DOL/MSHA	Proposed Rule Stage	Examination of Working Places in Metal and Nonmetal Mines	<a href="#">1219-AB87</a>
DOL/MSHA	Final Rule Stage	Proximity Detection Systems for Mobile Machines in Underground Mines	<a href="#">1219-AB78</a>
DOL/MSHA	Final Rule Stage	Refuge Alternatives for Underground Coal	<a href="#">1219-AB84</a>

		Mines; Limited Reopening of the Record	
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Needless to say, there are often more items on the agenda than an agency can accomplish in a short time period. But, the coming end of an administration often tempts agencies to accelerate rulemaking efforts to the extent possible. Stay tuned for news about these MSHA efforts!

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