

# Mine Safety and Health Administration (MSHA) 2016: Year End Review



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As 2016 comes to a close and the coal and metal/nonmetal industries look forward to a prosperous 2017 it is important to consider significant Mine Safety and Health Administration (“MSHA”) actions. This article provides a brief review of MSHA proposed rules and actions, MSHA enforcement data, and a look at MSHA’s regulatory agenda.

## MSHA Proposed Rules and Actions

On November 18, 2016, MSHA sent its final rule on workplace examinations to the Office of Management and Budget for review. It is anticipated that the final rule will be published in December 2016 or January 2017.

Also in late November, MSHA announced that it would no longer seek to reform its Civil Penalty Assessment system – thanks in large part to comments submitted by concerned industry operators.

Effective August 1, 2016, MSHA announced changes to MSHA’s civil penalty amounts. Under 30 C.F.R. Section 100.3 – Regular Assessments – the new point range is 60 to 144 points (reduction from 144 points). The new maximum penalty amount is \$68,300.00 (down from \$70,000.00) with the new minimum penalty amount of \$127.00 (up from \$112.00). Under 30 C.F.R. Section 100.4 – Unwarrantable Failure and Immediate Notification – the new minimum penalty for Section 104(d)(1)

citations and orders is now \$2,277.00 (up from \$2,000.00) with the new minimum penalty for Section 104(d)(2) orders set as \$4,553.00 (up from \$4,000.00). The minimum penalty for failure to provide timely notification of death or entrapment is now \$5,692.00 (up from \$5,000.00) and the new maximum amount is \$68,300.00 (up from \$60,000.00). Finally, under 30 C.F.R. Section 100.5 – Special Assessment – the new penalty amount for failure to correct a violation for which a citation has been issued under Section 104(a) of the Mine Act is now \$7,399.00 (down from \$7,500.00). Likewise, the new penalty amount for a miner who violates the smoking standard is \$313.00 (down from \$375.00). Finally, the new maximum penalty for flagrant violations is \$250,433.00 (up from \$242,000.00).

## **MSHA Enforcement Data (data from January 1, 2016 to November 30, 2016)**

MSHA issued more than 86,000 enforcement actions through the first 11 months of 2016 of which 50,530 (59%) was issued to the metal/nonmetal industry with 35,673 (41%) issued to the coal industry. MSHA also issued 19,822 significant and substantial enforcement actions – 11,946 (60%) to metal/nonmetal operators and 7,876 (40%) to coal operators.

Not surprisingly, MSHA issued the majority of enforcement actions under Section 104(a) of the Federal Mine Safety and Health Act (“Mine Act”). That number includes 48,834 issued to metal/nonmetal operators and 34,680 issued to coal operators (or almost 97% of total enforcement actions issued).

MSHA also issued more than 60,000 enforcement actions classified as unlikely (34,219 to metal/nonmetal operators and 25,819 to coal operators). MSHA issued 11,651 enforcement actions to metal/nonmetal operators classified as reasonably likely with 7,706 issued to coal operators. MSHA issued a total of 470 enforcement actions to both metal/nonmetal and coal operators for enforcement actions classified as either highly likely or occurred.

More than 57% of the total number of enforcement actions were issued with lost workdays or restricted duty as the injury or illness expected. Interestingly, more than 15,000 enforcement actions were issued to metal/nonmetal and coal operators alleging that a fatal injury would occur, while slightly more than 13,000 enforcement actions were issued to both sides of the industry alleging that a permanently disabling injury would occur.

Finally, almost 75% of the total number of enforcement actions issued were alleged to have moderate negligence (60% to metal/nonmetal operators and 40% to coal operators). Metal/nonmetal operators were also issued almost 75% of the total number of high negligence enforcement actions issued by MSHA in 2016.

## **MSHA’s Regulatory Agenda**

MSHA Unified Semiannual Agenda was announced in late November 2016. The agenda contains eight items – three items in prerule stage; two items in proposed rule stage; and three items in long-term action stage.

The three items in prerule stage are Exposure of Underground Miners to Diesel Exhaust (RIN 1219-AB86) – which the Request for Information Comment Period ended November 30, 2016; Refuge Alternatives for Underground Coal Mines; Limited Reopening of the Record (RIN 1219-AB84) – which the original comment period closed December 16, 2013 and at this time MSHA anticipates a Final Rule by April 2017; and Examination of Working Places in Metal and Nonmetal Mines (RIN 1219-AB87) – which MSHA anticipates a Final Rule by December 2016 or January 2017.

The two items in the proposed rule stage are Respirable Crystalline Silica (RIN 1219-AB36) – which MSHA anticipates publishing a Notice of Proposed Rulemaking in April 2017 and Proximity Detection Systems for Mobile Machines in Underground Mines (RIN 1219-AB78) – which the Notice of Proposed Rulemaking Comment period was extended to December 15, 2016.

Finally, the three items in the long-term action stage include Criteria and Procedures for Proposed Assessment of Civil Penalties (RIN 1219-AB72) even though MSHA has indicated that it will not pursue this proposed rulemaking; Refuge Alternatives for Underground Coal Mines (RIN 1219-AB79) – which MSHA has listed as its next action as “undetermined”; and Request for Information to Improve the Health and Safety of Miners and to Prevent Accidents in Underground Coal Mines (RIN 129-AB85) – which again MSHA lists as its next action as “undetermined.”

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