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## MSHA's New Administration & 2026 Outlook

DECEMBER 2, 2025

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**Nick Scala** is a Chair of the national MSHA • Workplace Safety Practice at **Conn Maciel Carey LLP** and a Partner in the firm's OSHA • Workplace Safety Practice. He focuses on all aspects of occupational and mine safety & health law:

- Represents employers in inspections, investigations and enforcement actions involving OSHA & MSHA
- Manages investigations of serious workplace accidents and discrimination/whistleblower complaints
- Handles all aspects of OSHA & MSHA litigation and rulemaking advocacy
- Provides compliance advise to employers by administering privileged audits and investigations
- Chambers USA ranked OSHA/MSHA attorney and Certified Mine Safety Professional



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# MSHA Leadership



# Secretary of Labor - Rep. Lori Chavez-DeRemer

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- Former representative of Oregon's 5<sup>th</sup> district
- Known as the most pro-union Republican in Congress
  - Co-sponsored the *Protecting the Right to Organize Act*
  - Supported the *Public Service Freedom to Negotiate Act*
- While Trump will choose the next Assistant SOL of Labor for MSHA, Rep. Chavez-DeRemer will influence workplace safety and health rulemaking and enforcement

# Senate Expedites Trump Nominees

## Senate Republicans turn to 'nuclear option' to speed confirmation of Trump nominees



By Barbara Sprunt (WASH)  
Sept. 12, 2025 10:40 a.m.



Senate Majority Leader John Thune, R-S.D., speaks to the media following a Senate policy luncheon at the U.S. Capitol on Tuesday. Senate Republicans have voted to change the chamber's rules in order to speed confirmation of President Trump's nominees. Kevin Dietsch / Getty Images

Senate Republicans have voted to change the rules to make it easier to confirm President Trump's nominees, allowing the chamber to confirm certain nominees in groups rather than by individual vote.

The vote Thursday comes after months of Republican lawmakers criticizing their Democratic counterparts for dragging out the confirmation process, one of the few elements of power the minority party has in GOP-united government.

## As Senate goes 'nuclear,' dozens of Trump nominees are confirmed

By Patricia Zengerle

September 18, 2025 6:39 PM EDT - Updated 13 hours ago



The U.S. Capitol Building's dome is seen in Washington, U.S., September 9, 2025. REUTERS/Elizabeth Frantz/ File Photo Purchase Licensing Rights

Summary Companies

- High-profile nominees Guilfoyle, Gingrich become ambassadors
- Vote along party lines, as partisan divisions deepen
- Federal judges and heads of cabinet agencies not affected

# MSHA Politically Appointed Leadership



**Wayne Palmer**

(Nominated) Assistant Secretary for  
Mine Safety and Health



**James (Jim) McHugh**

Deputy Assistant Secretary for  
Policy



**Julie Ann Schmidt**

Chief of Staff

# Assistant Sec'y Nominee- Wayne Palmer



- 2/11/25 - Trump nominated **Wayne Palmer** for **Assistant Sec'y of Labor for MSHA**
- Principal Deputy to Assistant Sec'y Dave Zatezalo during first Trump Administration
- Served as Executive Vice President at the Essential Minerals Association July 2021 – January 2025
- His nomination **passed before the Senate HELP Committee on May 22, 2025**
- 10/3/25 - **Confirmed by batch vote in the Senate**

# Deputy Assistant Sec'y – James McHugh

- Appointed as Deputy Assistant Sec'y - Apr. 21, 2025
- Previously worked as an attorney in mining, construction, and civil litigation out of Charleston, WV
- Formerly a prosecutor and served in the USMC
- Brings experience working with large coal operators and unions in West Virginia



# Chief of Staff – Julie Ann Schmidt



- Previously Founder and CEO of a global event and project firm.
- Engineering degree from the University of North Dakota School of Engineering & Mines
- Experience in environmental matters
- Years of experience developing training content

# Staffing at MSHA

## 2016-2021 Trump

- MSHA Assistant Sec'y confirmed November 2017, appointed Acting-Assistant Sec'y by August 2017
- 1<sup>st</sup> time in OSHA's history, OSHA did not have a permanent, Senate-approved Assistant Secretary for an entire presidential term

## Biden's MSHA

- Prioritized filling political leadership positions at MSHA & OSHA
- Nominated and confirmed an Assistant Sec'y of Labor Williamson for MSHA (March 2022)
- Emphasis restaffing MSHA inspectors ranks, enforcement driven compliance, and active rulemaking

## 2025 - Under Trump

- Already-confirmed Labor Secretary
- Immediately installed a Dep. Ass't Sec'y
- Confirmed Ass't Sec'y of MSHA (October 2025)
- Day 1 EOs affecting OSHA staffing:
  - Halt federal hiring, except military
  - Return to work in-person full time
  - Office closures / Shutter Area Offices
  - “Fork in the Road” severance email



# MSHA in Trump 2.0

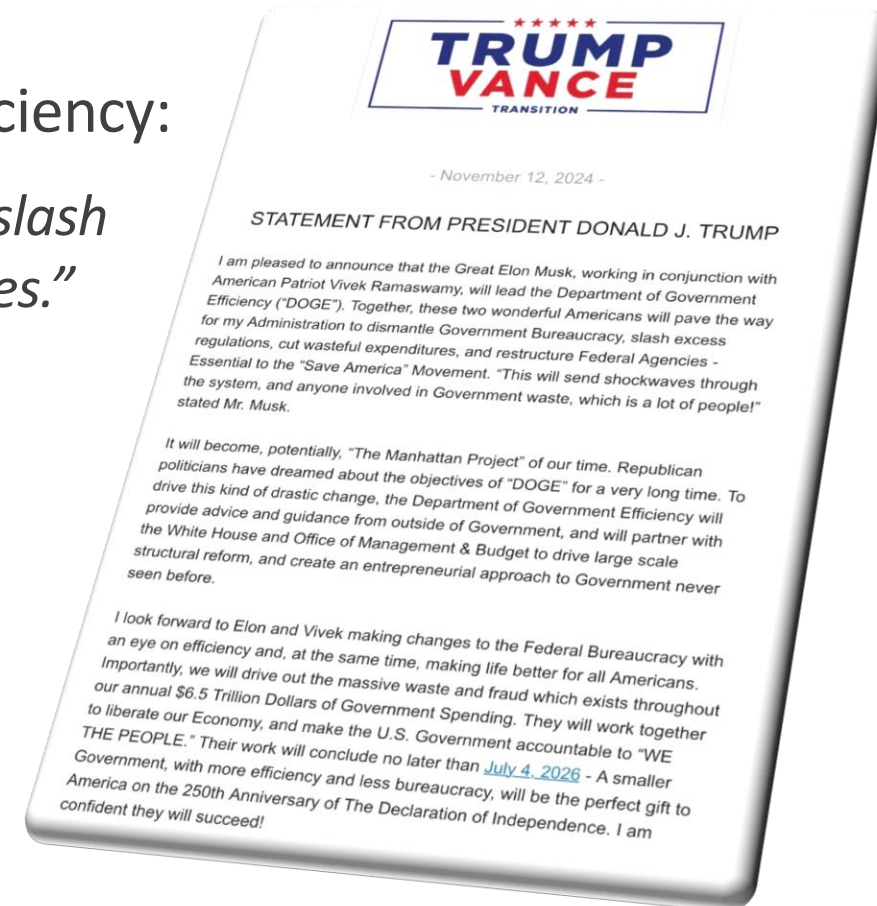


# MSHA Under a 2<sup>nd</sup> Trump Administration

- New Policymakers – New Enforcement and Rulemaking Philosophy
- Slash DOL Budget
- Expect MSHA under Trump to scale back Enforcement-Heavy Philosophy
- Rescind Impact Inspection Policy, reconsider approach to POV monitoring, cease rulemaking efforts, shifting priorities in enforcement and compliance assistance

# “DOGE” Plan to Reform (Slash) Government

- Project 2025 proposed massive cut to DOL Budget
- Trump on the newly-conceived Dept. of Government Efficiency:  
*“Pave the way for my Admin. to dismantle Gov’t Bureaucracy, slash excess regs, cut wasteful spending, and restructure Fed Agencies.”*
- DOGE:
  - Aim to cut \$500B (or \$2T) from annual federal spending
  - Rely on Exec Orders and court rulings (to rollback agency authority and actions)
  - “Mass head-count reductions across the fed bureaucracy”



# Changes (or not) at MSHA

## MSHA Inspections

- President proposed budget cut, but Senate committee kept FY25 levels
- Impact inspections not reported
- Inspectors rehired

## MSHA Office Closures

- 34 announced, 4 implemented
  - Pineville, WV
  - Mt. Pleasant, PA
  - Beaver Dam and Prestonburg, KY

## NIOSH Changes

- Pittsburgh/Spokane mine research labs closed
- CWHSP remains for now, lawsuit pending in WV federal court

## Pattern of Violations / Impact Inspections

- One POV terminated, one remains
- No POV notices issued during President Trump's first term
- No Impact Inspection in 2025

# New Tools from MSHA

- CASH (Compliance Assistance in Safety & Health)
  - *MSHA's proactive response to the anticipated surge in U.S. domestic mining productivity*
  - *New Operator Toolkit*
  - *Training Resources*
  - *Safety & Health Resources*
  - *Contact Compliance Assistant*
- MSHA Information Hub
  - Consolidates MSHA resources into a single page on website
  - More than 30 links topics
    - Policy
    - Rulemaking
    - Data/trends
    - AskMSHA email

# New Final Rules Under Biden's MSHA

## Respirable Crystalline Silica

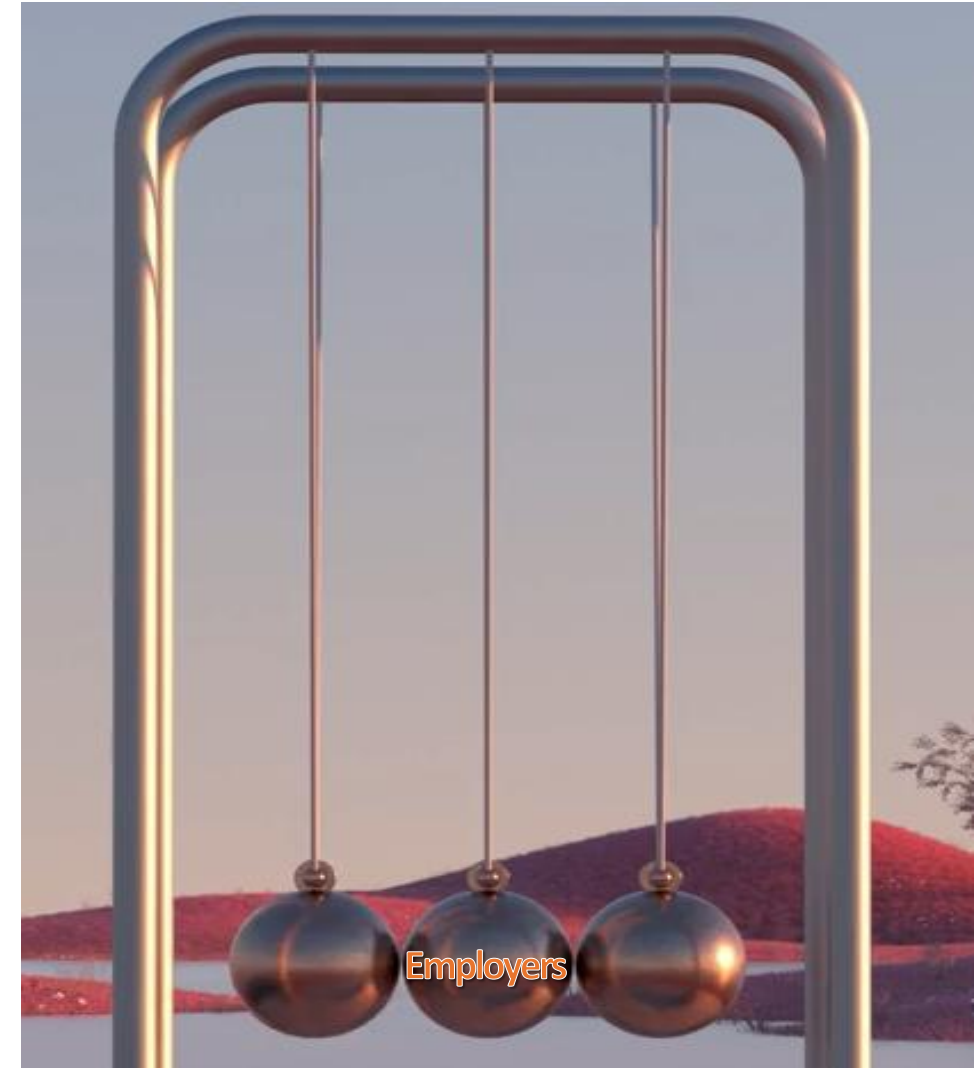
- Lowered PEL by 50% and created Action Level at 25% the existing TLV
- Mandatory sampling, submitting exceedances to MSHA, medical examinations for M/NM, respiratory protection programs
- Prohibits use of respirators for compliance or rotating miners

## Surface Mobile Equipment

- Requires creation of surface mobile equipment safety program for each mine, identifying and mitigating risks associated with mobile equipment
- Requested to evaluate feasible emerging technologies to implement

## Part 18

- Rule updating the process for approval/certification of electrical equipment of machines in gassy mines



# Silica Rule Update

- MSHA adopted new silica standard in April 2024
  - 50  $\mu\text{g}/\text{m}^3$  PEL, 25  $\mu\text{g}/\text{m}^3$  action level
  - Medical monitoring, sampling, engineering, and administrative controls
  - Reporting results of samples to MSHA
  - Compliance – coal mines: April 2025
  - Compliance – MNM mines: April 2026
- Challenged in litigation in 2024
- Currently stayed by court order
- Will the rule change?
  - PEL / action level
  - Controls / respirators
  - Monitoring and sampling
  - Statutory restrictions
- How should operators prepare?

# Proposed Rulemaking

- In June 2025, MSHA proposed rescinding or modifying 18 regulations/standards

## Plan Approvals: Roof Control and Ventilation (Coal Mines), Training (All Mines)

- Eliminates District Manager authority to require anything in plan that is not independently required by statute or MSHA standards

## Powered Air Purifying Respirators (PAPRs) & Electronic Surveying Equipment

- Allows use in underground mines without petition for modification
- Operators with granted petitions for modification can choose to comply with terms of petition or new standard

## HazCom

- Operator can provide hard copy or electronic versions

# Proposed Rulemaking

## Diesel Particulate Matter

- M/NM – Revise 56.5060 to removes aspects of rule which were interim in nature and allowed for greater exposure than current PEL )(160TC  $\mu\text{g}/\text{m}^3$ )
- Coal – Revise 75.500/.501/.503, limiting emission of DPM in underground coal mine to 2.5 grams per hour

## Approved Conveyors

- Revise 75.1108 to require all conveyors in UG coal be approved under Part 14

## Drill equipment & area inspection

- Rescinds 56.7002/.7003 which require the correction of defects before the use of drilling equipment and inspection of drill area



# FMSHRC Updates & Decisions to Know



# FMSHRC membership



**Mary Lu Jordan**

Chair

Term expires August 30,  
2026



**Timothy J. Baker**

Commissioner

Term expires August 30,  
2026



**Moshe Z. Marvit**

Commissioner

Term expires August 30,  
2028



**Marco M. Rajkovich, Jr.**

*Confirmed*

Previous Commissioner  
Term expires August 30,  
2030

## Marco M. Rajkovich, Jr. Confirmed as FMSHRC Commissioner

- FMSHRC term will expire on August 30, 2030.
- Previously served as FMSHRC Commissioner 2019-2024
- Previously served as engineer and foreman for U.S. Steel Mining Company before moving into private legal practice.
- Likely to be named the Chairperson of FMSHRC (again)



# Constitutional issues affecting FMSHRC

## Presidential control of independent agencies

- Executive Order 14215, “Ensuring Accountability for All Agencies”
- Attorney General, not independent agency, says what the interpretation of the law is

## Removal protections for Commissioners

- Commissioners can be removed by the President for “inefficiency, neglect of duty, or malfeasance in office”
- Supreme Court has allowed removal of members of similar multimember agencies

## Seventh Amendment right to jury trial

- *S.E.C. v. Jarkesy* (Supreme Court 2024)
- Challenges being raised before FMSHRC ALJs, FMSHRC, and federal court of appeals

## Removal protections for ALJs

- ALJs may be removed by the Commission “only for good cause” and subject to review by Merit Systems Protection Board
- DOJ is not defending these protections

# Significant Decision – MSHA Jurisdiction

*Jones Brothers, Inc. (6th Circuit 2023)*



- *Issue: “mine” or “borrow pit”?*
- Interagency Agreement has 5 factors to show operation is a borrow pit:
  - Overburden is extracted
  - Extraction is one-time only or intermittent
  - Used as fill, more for bulk than intrinsic qualities
  - No milling except the scalping screen
  - Extraction near the area where fill is to be used
- This operation was a “mine”
- All five Interagency Agreement factors must be met to be a “borrow pit”
- Extraction was not one-time only or intermittent
- Materials were used for both fill and intrinsic properties, but *more* for intrinsic properties than for bulk

# Case to Watch – MSHA Jurisdiction

## *KC Transport (D.C. Circuit)*



- *Issue: Does the definition of “mine” include facilities and equipment used in” mining but not located on a physical mine site?*
- MSHA’s position is that MSHA has jurisdiction over equipment “used in mining” even if it is not on a mine site
  - Will MSHA change its position?
- If MSHA wins, KC Transport will likely seek Supreme Court review, which could prolong the case by another year or more

# Significant Decision – Flagrant Violations, 110(c) Liability

## *Northshore Mining Co. (8th Circuit 2022)*



- *Issue: “reckless” flagrant violations*
  - MSHA does not need to establish “heightened” recklessness
  - Test is “if a mine operator knows, or should know to ameliorate a known violation, but fails to make reasonable efforts to fix the violation”
    - But this relies on *Chevron* deference to the agency
- *Issue: 110(c) liability*
  - Not just whether the agent has the ability to remedy the violative condition (e.g., authorize repairs or prohibit access)
  - Must consider other factors
    - Actions taken or not taken
    - Whether conduct was aggravated
    - Authority to act on safety and health generally

# Significant Decision – Pattern of Violations

*Morton Salt, Inc. (August 2024)*



- *Issue: Can FMSHRC review MSHA's decision to issue a Pattern of Violations notice to a mine?*
- MSHA has unreviewable discretion to issue a Pattern of Violations notice
- Unlikely to be used during this administration (was not used in first Trump administration) but may have future impacts
- FMSHRC still ultimately decides whether there is a pattern of violations

# Cases to Watch – Settlements

## Settlement Cases (D.C. Circuit)

- *Issue: Can MSHA vacate contested citations, or modify contested S&S citations to non-S&S, without FMSHRC approval?*
  - MSHA’s position is that it has unreviewable discretion – FMSHRC and the courts cannot make MSHA justify that decision, and no party can challenge the decision
  - FMSHRC rejected that position
- Cases pending at the D.C. Circuit; decision likely next year
- Major implications for parties’ ability to settle cases

# Cases to Watch

## ***Nally & Hamilton Enterprises (FMSHRC)***

- *Issue: adequacy of workplace examinations (30 C.F.R. 77.1713(a))*
- Will FMSHRC take the approach that an accident = an inadequate exam?

## ***Cactus Canyon Quarries (FMSHRC)***

- *Issue: 15-minute report of injury with “reasonable potential to cause death”*
- FMSHRC recognizes need to clarify, but will a decision provide clarity?

# Issues to Watch

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FMSHRC authority to reopen final orders

Test for S&S violations

Standard of proof in 105(c) cases

Temporary reinstatement

# Questions?



# 2025 MSHA Webinar series



## MSHA's 2024 Review / 2025 Preview and SCOTUS

Thursday, January 30<sup>th</sup>

## Navigating MSHA Complaints and Accident Investigations

Tuesday, February 18<sup>th</sup>

## MSHA's Silica Rule

Thursday, March 13<sup>th</sup>

## MSHA Whistleblower Update and Understanding 105c

Tuesday, April 22<sup>nd</sup>

## Converging Compliance: Navigating OSHA and MSHA In Construction and Mining Operations

Tuesday, June 12<sup>th</sup>

## MSHA Mid-Year Review of Significant Decision Update

Tuesday, August 19<sup>th</sup>

## Protect Your Interest: Workplace Crisis Management

Wednesday, September 10<sup>th</sup>

## Navigating OSHA & MSHA During a Government Shutdown

Wednesday, October 15<sup>th</sup>

## Deep Dive into Unwarrantable Failures

Wednesday, November 19<sup>th</sup>

# 2025 OSHA Webinar series



## OSHA 2024 in Review and 2025 Forecast

Tuesday, January 28<sup>th</sup>

## How to Avoid the Five Most Cited General Industry OSHA Standards

Thursday, March 20<sup>th</sup>

## Massage Therapy/ART and Other Cutting-Edge Recordkeeping Issues

Wednesday, May 14<sup>th</sup>

## What You Should Know About OSHA Formal Letters of Interpretation

Tuesday, June 17<sup>th</sup>

## Top 5 Construction Industry OSHA Citations

Wednesday, August 13<sup>th</sup>

## OSHA's PSM Standard, EPA's RMP Rule, the CSB, and Cal/OSHA's PSM

Thursday, October 16<sup>th</sup>

## New Approaches to Performance Management (HOP) Auditing and Enforcement

Tuesday, December 16<sup>th</sup>

## Key Considerations in IH (Chemicals & Dust)

Monday, February 10<sup>th</sup>

## CMC's Heat Illness Prevention Rulemaking Coalition Meeting

Thursday, April 24<sup>th</sup>

## OSHA and MSHA in Construction and Mining Operations

Tuesday, June 10<sup>th</sup>

## Developments in the Retaliation and Whistleblower Landscape

Wednesday, July 9<sup>th</sup>

## Protect Your Interest: Workplace Crisis Management

Wednesday, September 10<sup>th</sup>

## Workplace Violence Prevention Strategies

Thursday, November 13<sup>th</sup>

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