



September 11, 2023

S. Aromie Noe
Director, Office of Standards, Regulations, and Variances
Mine Safety and Health Administration
201 12th St South, # 401
Arlington, VA 22202

Re: RIN 1219-AB36 – Proposed silica standard

Dear Director Noe:

Thank you for the opportunity to comment on the proposed standard for occupational exposures to respirable crystalline silica at mining operations.

The California Construction and Industrial Materials Association is the trade association for aggregate and industrial mineral producers in California, as well as concrete and asphalt producers. In all, member companies operate 500 mines and production plants in California that support the state's infrastructure development and provide the necessary minerals to support construction, agriculture, manufacturing, and green technology.

Comments

CalCIMA supports the overall intent and thresholds of the proposed rule. As you may know, California mining operations are already under the provisions of the federal OSHA rule, since Cal/OSHA has adopted it and has jurisdiction over mining operations (enforced through Cal/OSHA's Mining & Tunneling Unit).

We request the proposed standard be changed to reduce overlap and inconsistencies for mining operations that are already under the federal OSHA standard, as administered by states. Without allowance for mines operating under the OSHA silica standard, there will be a double standard for compliance--all while achieving the same permissible exposure limits and action levels!

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In essence, each mining operation in California will need two sets of procedures, testing schedules, and monitoring plans, all to achieve the same objective. We strongly encourage MSHA to align more closely with the provisions of the OSHA standard, or at least include accommodation for mining operations already subject the OSHA standard.

Another key concern is with the prescriptive approach MSHA has taken. The long list of actions and schedules is not only complex, but completely without precedent. Given that OSHA has had a performance-based approach for over 6 years, MSHA should follow that and build on the work that OSHA has done.

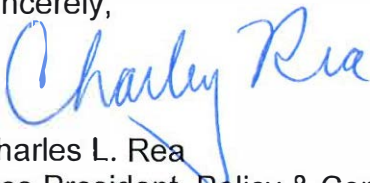
Other Important Considerations

- Allow an exclusion where a mine operator can show there is no possibility of silica exposure. In essence, this proposed standard will require monitoring and surveillance even if there is no silica in the rock. This is particularly a concern in states like California where much of the geology is volcanic and, thus, does not have silica. This exception is in the OSHA standard.
- Adopt exposure assessment and scheduled monitoring options similar to OSHA's. MSHA has proposed 4 new categories of sampling and programmed scheduling, which is confusing and can only result in testing for the sake of testing. It makes more sense to require sampling when there are changes to operations that might cause exposure for employees. Many mine operators have collected monitoring data over the course of several years and have data to show that certain job classifications have exposures under the 50 ug/m³ PEL and/or the 25 ug/m³ action level. This data should be permitted to satisfy the baseline monitoring requirement for those miner or job classifications.
- Medical surveillance should be offered to employees when they are exposed above the action level. Offering it to every miner regardless of circumstances makes no sense. Again, this consideration is in the OSHA standards.
- Thirty days is too short a time frame to conduct initial medical surveillance and receive results. In some areas, appointments to conduct the medical surveillance requirement by this proposed standard can take weeks. Some miners quit within 30 days. The time frames should correspond with common ones for probationary periods for new hires. Furthermore, this is inconsistent with other MSHA rules. For example, the hearing standard does not require the baseline hearing test for 6 months. A more reasonable timeframe to conduct the required initial medical surveillance would be 6 months.
- This proposed standard also sets an unreasonable timeframe of 120 days to establish a baseline. Coupled with disallowing use of prior monitoring results, this provision is unworkable. Some barriers to completing the baseline monitoring are scheduling resources to conduct the monitoring and the weather. Depending on when the new standard would go into effect, the weather could result in a considerable delay due to winter weather or rain. A more reasonable timeframe to complete the baseline monitoring would be one year from the effective date of the new standard.

- Ironically, MSHA proposes a lesser standard for medical surveillance programs. The prescriptive provisions and requirements would make current medical surveillance less comprehensive, cover less of the workforce, disrupt access to medical records, and set inconsistent timetables that will cause logistical issues for scheduling mobile testing at distant and remote mine sites. There must be a more straightforward way to do this and with understanding of the geographic location challenges posed by mining operations.
- The proposed standard should allow employee rotation as a control measure. It increases and enhances the available control measures. Again, it is in the OSHA standard and is NIOSH recommended. MSHA should stay with what works.
- The proposed standard should allow temporary use of respirators when that is the only control measure available, or for limited exposure situations, such as maintenance.
- There does not appear to be consideration in the proposed standard for operations that have a superior program compared to MSHA's proposal. These programs could potentially be penalized for not meeting their standards, which may still be superior to MSHA's. Nor does it address situations where an operator has taken action to correct a situation. If MSHA's intent is to incentivize and promote high level and pro-active programs, then it should include measures to incentivize, not disincentivize.
- Importantly, many miners at some mine sites are contractors. MSHA's proposal does not address whether contractors will need to comply with the proposed standard and how they will have to comply. This is especially true with contractors that work at both MSHA and OSHA locations.

In summary, MSHA should consider major changes to this proposed standard. MSHA should make this proposed standard a seamless fit with the OSHA silica standard.

Sincerely,



Charles L. Rea
Vice President, Policy & Communications