

SWVA BLA Chapter 2 silica rule comment 2023

The Southwest Virginia Black Lung Association Chapter II is based in Norton, VA. Our membership consists of miners, their loved ones and supporters who are mostly from Wise, Lee, Scott and Dickenson Counties, in Virginia. Of the miners in the chapter, though only some have received black lung benefits, all have impaired breathing due to coal and silica dust inhalation while working in the mines. Our members who don't have their benefits go back year after year, as this disease only gets worse. The miners in our chapter are all retired or disabled, but many have children and other relatives and friends still working in the mines. We submit this comment to MSHA today on behalf of all miners in Southwest Virginia, and out of a particular concern for the younger generation of miners who are breathing worse dust than their daddies and granddaddies.

MSHA's current permissible exposure limit for silica of 100 micrograms of the toxin per cubic meter is a travesty. Allowing miners to be exposed to this level of silica dust has been a deadly policy. As noted in the [Appalachian Citizens' Law Center 2021 petition](#) submitted to MSHA requesting a new silica standard, the Department of Labor's Office of Inspector General found this level to be out of date. MSHA's new draft standard of 50 micrograms of silica dust per cubic meter is a long overdue step in the right direction. We support this change, and we thank the MSHA personnel who are working to make this official policy. However, there are serious problems with enforcement and monitoring provisions in the draft rule.

First, the proposal primarily relies on coal companies — despite their long history of under-reporting coal dust — to honestly report silica samples to MSHA. If coal company data is going to be the basis for determining compliance or noncompliance with the new rule, the rule will just not work. It is an open secret throughout the mining industry that miners, at the behest of their employers and often under threat of firing or other retribution, have ways of manipulating dust and silica samples. Instead, MSHA inspectors should bear the primary responsibility for collecting samples, and this should be done during inspections that last several days at a time and occur with no advance

notice to mine operators, in order to reduce the chances that working conditions will be changed all of a sudden in order to appear compliant when the inspector is on site. Even if MSHA doesn't have the resources to hire and deploy inspectors in this way, the agency's rule should be based on what is necessary to control silica dust. It will be for Congress to then respond and allocate the necessary resources, and the Black Lung Association will be loud and persistent in our insistence that Congress do so.

Second, the proposal as it is written will allow companies to require workers to keep working in mines with dangerous levels of silica dust, so long as they are wearing respirators. There are many issues with this — including how uncomfortable respirators can be in hot environments, leading to low compliance; issues with how well the respirators are fitted to individual miners; safety concerns when respirators cause safety goggles to fog up, and questionable effectiveness of respirators in filtering out ultra-fine particles even when used properly. The proposed rule purports to only allow coal companies to “temporarily” rely on requiring respirators for miners in high dust areas, but “temporary” is not defined. Generations of experience tells us that coal companies will shirk the regs intended to protect the miners given any opportunity, and this undefined “temporary” creates a massive loophole that companies will exploit. In the final rule, MSHA should disregard temporary reliance on respirators in noncompliant dust levels altogether, and instead require companies to withdraw workers from noncompliant mining environments until operators can improve ventilation plans and any other engineering and design strategies necessary to reduce silica levels.

Third, the proposed rule is also unclear about when monetary fines will be imposed on companies that are out of compliance. Fines should be imposed against any mine that violates the new standards, and those fines should be high enough to compel companies to compel diligent compliance with the limit.

Finally, some of our members became afflicted with black lung in their forties after cutting a slope more than 200 ft through mostly sandstone strata over a number of months before ever reaching any coal. During that time, no silica sampling was

conducted because this activity was not considered “normal mining activity.” The final rule should require regular silica sampling whenever miners might be exposed to high levels during every aspect of the mining process.

On behalf of our members and supporters, thank you for receiving these comments.

Marcy Tate, President SWVA Black Lung Association Chapter II