

From: ben@metcoalproducers.com
To: [zzMSHA-Standards - Comments to Fed Reg Group](#)
Subject: RIN 1219-AB36, MCPA Comments
Date: Monday, September 11, 2023 9:45:31 AM
Attachments: [image001.png](#)
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[09-11-2023 MCPA Comments RIN 1219-AB36 Silica Dust Rule.pdf](#)

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Dear Director Noe:

Please see attached comments from the Metallurgical Coal Producers Association for the proposed rule *"Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection"* (**RIN 1219-AB36, Docket No. MSHA-2023-000**).

Sincerely,

Ben Beakes
President



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AB36-Comm-99



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September 11, 2023

VIA EMAIL: zzMSHA-comments@dol.gov

S. Aromie Noe, Director
MSHA, Office of Standards, Regulations and Variances
201 12th Street South, Suite 4E401
Arlington, VA 22202-5450

RE: Comments for RIN 1219-AB36, Docket No. MSHA-2023-0001

Dear Director Noe:

Thank you for the opportunity to share our comments on the proposed rule “*Lowering Miners’ Exposure to Respirable Crystalline Silica and Improving Respiratory Protection*.” The Metallurgical Coal Producers Association (MCPA) is a non-profit organization made up of metallurgical coal producers and those who support producing members’ operations. The MCPA’s emphasis is on metallurgical coal used for steelmaking, the issues related to it, and the opportunities metallurgical coal brings to the region in which MCPA’s producing members operate. The association actively advocates and promotes the metallurgical coal industry in the eastern U.S. and specifically Central Appalachia. Metallurgical coal used in steelmaking is a critical component of growth and progress of the U.S. economy.

The MCPA shares MSHA’s priority to provide the safest operations possible to ensure the well-being, health, and safety of the men and women who work at our coal mines. Our comments are focused on the technical details, potential discrepancies, and practicality of the proposed rule. The MCPA is confident that together, with the cooperation and partnership of MSHA, we can make a difference in the lives of coal miners. To that end, we encourage MSHA to consider the following comments and questions:

1. We ask MSHA to consider a “phase in” approach for the proposed silica rule like the respirable dust rule (*Lowering Miners Exposure to Respirable Coal Mine Dust, including use of Continuous Personal Dust Monitors*) of 2016. Specifically, the MCPA proposes a 24-month phase in approach. Operators are required to conduct baseline sampling during the first 180 days to all miners who are or reasonably expected to be exposed to respirable crystalline silica in addition to current quarterly respirable dust sampling. It is practically challenging for mine operators to be able to comply with both requirements within the first 180 days of final rule. For safety reasons, miners should not be expected to wear two sampling pumps and other PPE (proximity device, radio, tracking tag, multi gas detector, SCSR, hand tools, etc.). More time is necessary due to the above as well as the availability of gravimetric pumps (CMDPSU sampling device). And, has MSHA considered how it plans to certify samplers with gravimetric pumps (CMDPSU)? MSHA is challenged to maintain operator certifications under the current *Lowering Miners Exposure to Respirable Coal Mine Dust Final Rule*.
2. The MCPA supports utilizing objective data for baseline evaluation period such as MSHA’s historical quartz results.
3. The MCPA supports eliminating the reduced respirable dust standard (*30 CFR 70.101*).

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4. Has MSHA assessed the actual action level (AL) and permissible exposure level (PEL) which is not 25ug/m3 and 50ug/m3 respectively? The current proposed formula equates to an AL and PEL of 20.4ug/m3 and 40.8ug/m3.
- a. The current proposal requires the below formula be used by both Coal and Metal/ Non-Metal (MNM) that normalizes the shift length to 480 minutes which is not historically done in coal. The average miner in the coal industry works 9-9.5-hour shifts.

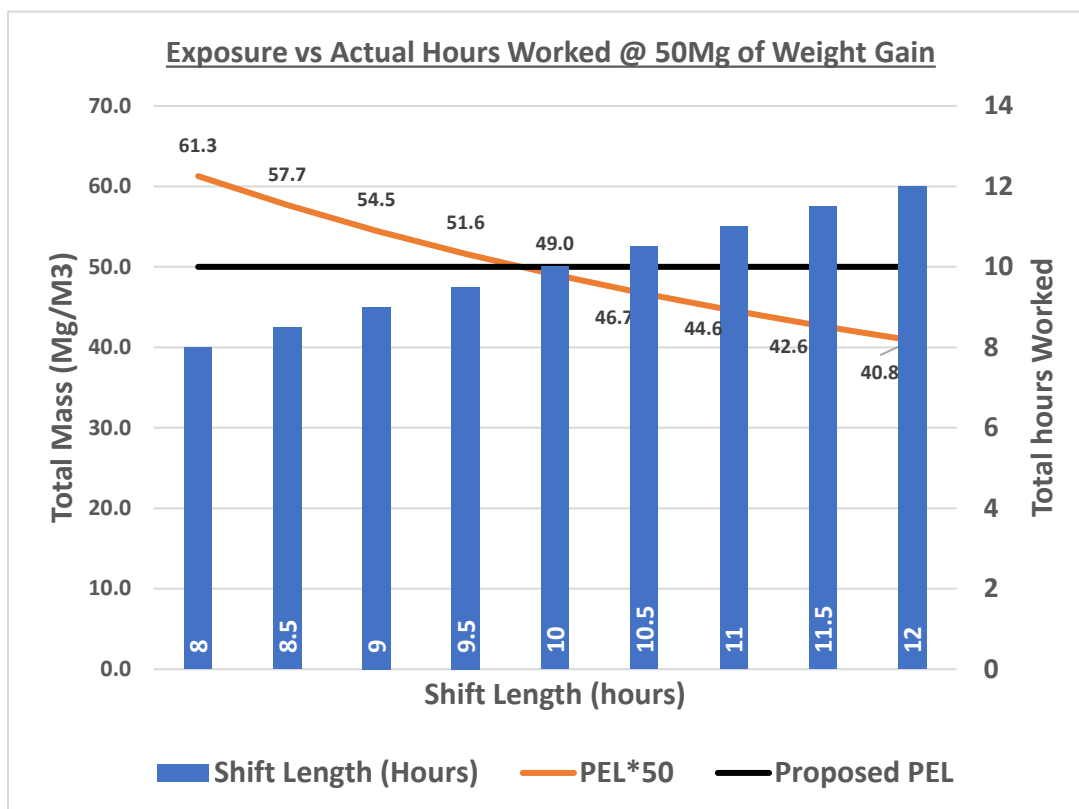
$$X \text{ (result)} / 1.7 \times 480 \times 0.001$$

Note: the above formula results in an AL and PEL at 20.4ug/m3 and 40.8ug/m3 respectively despite shift length.

- b. In lieu of the proposed formula, MSHA should consider the following:

$$X \text{ (result)} / \text{LPM} \times \text{shift length} \times 0.001$$

Note: above formula utilizing 1.7 LPM and 540 minutes (9 hour) results in an AL and PEL respectively at 27 and 54.



Shift Length (Hours)	PEL*	AL*	Current PEL	Proposed PEL	Proposed AL
8.0	61.3	30.6	100	40.8	20.4
8.5	57.7	28.8	100	40.8	20.4
9.0	54.5	27.2	100	40.8	20.4
9.5	51.6	25.8	100	40.8	20.4
10.0	49.0	24.5	100	40.8	20.4
10.5	46.7	23.3	100	40.8	20.4
11.0	44.6	22.3	100	40.8	20.4
11.5	42.6	21.3	100	40.8	20.4
12.0	40.8	20.4	100	40.8	20.4

5. MSHA should adopt Excessive Concentration Values (ECV) like the ECV tables associated with the single, full-shift ECV tables found in the *Lowering Miners Exposure to Respirable Coal Mine Dust, including use of Continuous Personal Dust Monitors* Final Rule that were developed with a statistical confidence level of 95%.
6. Will MSHA's Part 7 approval process be expedited to accommodate the development and approval of engineering controls, respiratory equipment, including powered air-purifying respirators (PAPRs) and sampling devices related to this proposed ruling? The current Part 7 approval process is years behind other countries' approval and acceptance process. Implementing the rule with only one approved sampling device available to operators adds unnecessary roadblocks. MSHA's reluctance to recognize the potential of PAPRs is notable. An excellent example of this is the redundancy of petition for modifications that mine operators must submit to use the 3M Versaflo TR-800 and Cleanspace EX PAPRs at underground mining locations. MSHA could have encouraged the use and development of a PAPR designed exclusively for underground coal mine use and led the effort. Efforts to develop a PAPR or respiratory device that is designed, engineered, and implemented for the health and comfort of miners can significantly reduce, if not cease the occurrence of Silicosis and Pneumoconiosis. The standards of ASTM F3387-19 may discourage the use of respirators. The antiquated fit testing requirements fail to recognize the benefits of positive pressure air purifying respiratory devices. Under these guidelines, miners would have to be clean shaven and the PAPR fit-tested under negative pressure. This means the unit will not be turned on and operating in its designed fashion. Obviously, this will be an impediment to voluntary respirator use programs put into place by some mine operators.
7. Will operators be afforded the right to conduct engineering samples of specific tasks to minimize the time an employee may have to wear a respirator and to help focus the operators' efforts on developing engineering controls? Requiring a respirator to be worn an entire shift over a single sample is too rigorous to the employee and can be ineffective in protecting the employee during certain tasks (effective communication, riding in mantrip, eating lunch, moving CM, loading bolter, chewing tobacco, drinking water, etc.).
8. In reference to 60.13(b), will the operator be permitted to deem which engineering controls are effective based upon on-site specific testing and laboratory results?

9. Semiannual evaluations (60.12 (d)) are unnecessary due to MSHA sampling quarterly for respirable coal mine dust and respirable crystalline silica dust.
10. The requirement to sample seven (7) days apart does not expedite the implementation of engineering controls or provide relief to the affected employees who must wear a respirator under the proposed rule. Has MSHA considered the time it takes to obtain sample results from a laboratory? If an operator fails a sample on October 1st, he/she may be required to wear a respirator for 3-4 weeks due to sampling seven (7) days apart and waiting for laboratory results despite the effective implementation of engineering control(s).
11. Will MSHA's analysis laboratory be available to operators? Current rule requires a third party approved laboratory to be utilized, which poses concerns (cost and variance in results). Will third party vendors be agreeable to be parties in any investigations?
12. Medical Evaluations and Fit Testing requirements are too rigorous. MSHA needs to consider the cultural attributes of a coal miner (for instance, the coal miner's desire to have a beard wherein Fit Testing requires miners to be clean shaven). Certain barriers could exist where a miner fails medical evaluations simply due to personal desires. This puts an undue burden on the operator to staff their mine in the event a specific occupation fails a sample, and no other operators are available that can legally wear a respirator. Respirators adversely affect an employee's effective communication among all miners.
13. Use of respiratory protection should be voluntary to all miners, but be made available by operators, including training.
14. Regarding 60.12 (h) *Sampling Records*, while never mentioned in other sections of the proposed rule or any arguments given in the preamble, it states that the operator shall make a record of respirable dust concentrations in addition to crystalline silica concentrations. This will be an additional unnecessary cost to the mine operator to have the respirable dust concentration analyzed. Will the agency be investigating excessive respirable dust concentrations under this part and issuing citations? Under 60.12(f)(2)(ii), the occupational environmental samples are collected only in accordance with 70.201 (c), 71.201(b) and 90.201(b). Respirable dust samples cannot be considered for validation in the absence of other requirements detailed in Parts 70, 71, and 90. This requirement should be omitted from the final rule, not only for the aforementioned reasons, but also in recognition of the abundance of respirable dust samples the operators are currently obligated to take.
15. The MCPA requests MSHA file a supplemental proposed rule in the Federal Register and allow for reasonable comment period (180 days). It is apparent that many facets of the final rule may not resemble the proposed rule. Because of vagueness and generalizations of the proposed rule as well as its technical nature, it is essential that the agency publish a supplemental proposed rule to address any major changes made.

16. Prior to the publishing of the “Lowering Miners’ Exposure to Respirable Coal Mine Dust, including Continuous Personal Dust Monitors; Final Rule,” MSHA fully engaged the larger coal companies and developed partnerships that helped construct the final rule. MSHA, however, never afforded the same opportunities to smaller operators. Smaller operators were not privy to the discussions between MSHA and large coal operators, therefore they struggled once the final rule was implemented. Partnerships are necessary and critical to the successful development and implementation of any rule of this magnitude.
17. Effective outreach once the final rule is implemented is essential as well. Many small operators depend on professional counsel from MSHA employees and need assistance with technical expertise. In the past there have been challenges with the rollout of complex rules where small operators struggled to get the assistance needed. MSHA must educate all their personnel to be knowledgeable in any rule that is imposed on the industry and effective outreach is of utmost importance. MSHA and industry need to be partners as it relates to implementation.
18. Program Policy Manuals and Program Information Bulletins must be an integral part to successfully implement any final rule. Otherwise, districts may implement parts of the rule contradictory to the intent of the policy. The absence of official written guidance creates ambiguity and confusion.
19. The MCPA strongly encourages the MSHA central office to consult with its coal community field office employees and experts who will be charged with enforcing the final rule. Their expertise is crucial to address the practicality of implementation. MSHA field offices communicate regularly with coal operators and miners and can provide valuable feedback.
20. In general, the proposed rule leans too heavily on subjective variables and is susceptible to much interpretation within each district instead of implementing a consistent objective approach.

Again, thank you for the opportunity to provide comments on the proposed rule. We look forward to working with MSHA to ensure consistent roll-out across the country.

Sincerely,



Benjamin R. Beakes
President