HUSCH BLACKWELL

750 17th St. N.W., Suite 900
Washington, DC 20006-4675
Main: 202.378.2300
Fax: 202.378.2319

October 28, 2019

Sheila A. McConnell, Director
Office of Standards, Regulations, and Variances
Mine Safety and Health Administration
201 12th Street South, Suite 4E401
Arlington, Virginia 22202-5452

Re: RIN 1219-AB36; Docket No. MSHA-2016-0013, Respirable Silica (Quartz)
Comments of the Mining Coalition

Dear Ms. McConnell:

On behalf of the Mining Coalition (the "Coalition"), we are pleased to submit the following comments in response to the Mine Safety and Health Administration's ("MSHA") Respirable Silica (Quartz) – Request for Information, 84 Fed. Reg. 45452 (Aug. 29, 2019) (the "RFI").

The Mining Coalition is an informal group of metal and non-metal mining production and service companies, which support continuing safety improvements and sound regulations. Together, the Coalition members employ thousands of people and share MSHA's goals of advancing miner safety and health. The Coalition appreciates MSHA's efforts to prevent potential overexposure of miners to respirable silica and shares this same goal. We share the information below so that MSHA's information collection for respirable crystalline silica can benefit from the Coalition members' experiences and ideas.

I. Mining is different from other industries, and metal/non-metal mining is different from coal mining. Any MSHA silica rule should address these industries distinctly.

MSHA's RFI appears to cover both coal mining and metal/non-metal mining, two industries with little in common when it comes to silica issues. MSHA's apparent interest in developing new regulations for silica seems to stem largely from a concern over increased incidences of "black lung" disease (*e.g.*, coal worker's pneumoconiosis or "CWP"), specifically progressive massive fibrosis ("PMF"), among coal miners in certain geographic locations, including Kentucky, West Virginia, and Virginia. The work environment in an underground coal mine, the tasks performed in that environment, and the presence of both coal dust and respirable silica may well be combining to create this problem in some coal mines. It is, however, clearly

and quite obviously a problem that is specific to coal mining and to the particular coal mines in those areas.[1]

Metal/non-metal mining includes a wide range of different types of mines and facilities, both underground and on the surface. For example, MSHA regulates cement plants, lime plants, alumina refineries, open pit copper mines, open pit gold mines, underground narrow-vein gold mines, oil mines, underground salt and trona mines, and underground zinc mines as "metal/non-metal mines." Quite obviously, the differences between metal/non-metal mines and facilities and underground coal mine are legion. A cement plant does not look or operate like a coal mine. An alumina refinery is more of a chemical plant than coal mine. An underground zinc mine does not have much in common with a coal mine.

The RFI does not cite to any information suggesting that metal/non-metal mining has any of the same kinds of illness trends or silica health concerns. Indeed, the types of dust sources and the nature of a workplace atmosphere can affect silica exposures. Underground metal/non-metal mines can have wide open spaces dozens of feet high, vastly different atmospheres, and much greater ventilation. Surface operations in the metal/non-metal industry function more like manufacturing facilities, which process raw materials in enclosed vessels and systems. Many miners in open pit metal/non-metal mines work in enclosed vehicle and mobile equipment cabs with clean, filtered air. Such mines increasingly feature automation that further limits worker exposure to processes.

The Mine Act recognizes the clear, obvious differences between coal and metal/non-metal mines when it comes to protecting miners from airborne contaminants. In Sections 201 and 202, for instance, the Act limits how coal mines may use respirators to protect workers while no such limits exist in the metal/non-metal industry. MSHA has promulgated different sets of regulations, one for coal and the other for metal/non-metal. Exposure concerns in one environment do not apply in the same way or to the same degree in the other. Solutions that work in one mine type may not be effective in another. That which is feasible in coal may not be in metal/non-metal.

For all of these reasons — and to continue to provide each miner with maximum protection — MSHA should continue to address silica in these two very different industries in a ways that reflect the unique nature of each. As discussed further below, giving operators different means of complying based on the circumstances at each mine will ease implementation, increase overall compliance, and better achieve the goals of miner health and safety.

[1] Of course, miners working in mines or at facilities that MSHA regulates as "metal/non-metal mines" are typically not exposed to coal dust. Moreover, we are not aware of any change in the declining incidence of silicosis and other diseases associated with occupational exposure to silica in miners at metal/non-metal mines and facilities. If MSHA has information that suggests otherwise, we encourage MSHA to immediately share that information with the public.

II. Clear rules will increase compliance. MSHA can thus enhance silica regulation by adopting an "OSHA Table 1"-type list of tasks and clear protective measures to comply. Because mining often features confined and defined environments, there is no need for, or benefit from, a separate action level.

As mentioned above, mines come in all shapes and sizes. Conditions in an open pit are likely to be very different from a small, confined space. As a result, industry-specific requirements that focus on the hazards miners are likely to encounter at a given workplace will likely result in the best safety outcomes. One measure might be totally inapplicable or even counter-productive in one mine, whereas it might be absolutely essential in another.

However, mines also share certain tasks, processes, and environments, which can be characterized by the extent to which they may release respirable silica, mechanisms for doing so, and effective exposure controls. MSHA could propose controls that address each such case in a format similar to Table 1 in OSHA's construction silica rule, 29 C.F.R. § 1926.1153. As in the case of OSHA, it could be an alternative that provides a safe harbor. Mine operators could choose between adopting their own controls and being held accountable to a permissible exposure limit ("PEL") or alternatively, following the pre-set controls in the table to know they are compliant.

This approach has many advantages. Normally, complying with an airborne dust standard can be time-consuming, expensive, and complicated. It requires multiple rounds of sampling and analysis, industrial hygiene expertise, a search for sources of dust, trial-and-error experimentation with controls, and often repeating this process until exposure levels come down appropriately. This process is beyond the reach of many small operators and can be cumbersome even for more sophisticated ones. Individual miners, moreover, do not have these tools at their disposal to ensure that their workplaces are compliant.

But a clear list of controls to implement for each type of task, exposure, or process simplifies this effort. It puts compliance within everyone's reach. In this way, regardless of what the PEL is, giving mine operators and miners an alternative means to comply by following straightforward exposure controls for given situations should help more facilities comply and thus spread the benefits even of the existing PEL. MSHA could start by reviewing OSHA's Table 1 to determine which elements are appropriate and effective for mining before adding new solutions of its own. The opportunity to clarify compliance with a Table 1-type approach also highlights the confined and defined environments in mining. In such environments, a separate action level does not offer additional benefit.

III. Exposures should be monitored periodically in active working areas where exposures are reasonably expected to be above the PEL or where operations/processes have changed in a way that is reasonably expected to increase or decrease exposure.

For operators that do not elect to follow defined Table 1-type controls, exposure monitoring need not occur everywhere or constantly. Operators will know the areas where higher

levels of respirable silica may be present and will be in a position to take appropriate protective action. Likewise, they will be in a position to assess whether operations or processes have changed in such a way as to increase or decrease respirable silica exposure. Rather than requiring blanket sampling or exposure monitoring across a mine, health concerns would be better served by allowing operators to focus on "hot spots" for potential exposure above the PEL. These are areas where exposures may be reasonably expected to be above the PEL. Ultimately, operators will be responsible for meeting the PEL in all areas. Exceeding the PEL anywhere will still be a violation. But, this reasonable approach to monitoring gives operators important flexibility to comply and direct resources appropriately.

IV. PAPRs and supplied air helmets are effective micro-engineering controls and should be recognized as such. When engineering or administrative controls cannot reasonably reduce atmospheric exposures below the PEL, the proper use of respirators should be considered compliant.

In recent years, a new control has become more widely available, has been proven to be very effective, and is increasingly popular: powered, air-purifying respirators ("PAPRs"). Rather than fitting snugly on a worker's face and creating breathing resistance or heat, these devices create a cool, comfortable, purified atmosphere around each worker's breathing zone. They do not require fit testing or medical clearance to be used effectively. In this way, they function as micro-environmental engineering controls, an even more personalized version of the kind of single-user atmosphere created by a sealed mobile equipment cab.

PAPRs and supplied-air helmets work like engineering controls. Thus, MSHA could encourage their use without abandoning the hierarchy of controls that requires first exhausting feasible engineering controls. It need only recognize that PAPRs are not "respirators," as they existed and were understood when the Mine Act passed. They possess none of the drawbacks that have long made respirators a last-choice method of protection. Better health outcomes would be achieved by allowing operators and miners to use all effective tools at their disposal to maintain compliance.

In addition, nothing in the principle of hierarchy of controls or in the Mine Act prevents using even traditional respirators as a means of complying with a PEL once other feasible control methods are exhausted. MSHA cites to Sections 201 and 202 of the Mine Act in the RFI and suggests that respirators may not be used to comply with the PEL even when sufficient engineering controls are infeasible. It bears repeating that these Mine Act sections explicitly apply only to underground coal mines: "The provisions of sections 202 through 206 . . . shall be interim mandatory health standards applicable to all underground coal mines." 30 U.S.C. § 842(a). Congress explicitly did not place such limitations on the metal/non-metal mining industry. Traditional respirators may not be a tool of first choice in controlling miner exposures to silica. But, they are definitely important tools in the toolbox, especially when engineering controls cannot completely and feasibly bring exposures below acceptable levels. MSHA should not place artificial roadblocks in the way of their effective use.

The Mining Coalition appreciates the opportunity to submit these comments and would be glad to provide further information as may be helpful.

Sincerely,

Erik Dullea
R. Brian Hendrix
Donna Pryor
Avi Meyerstein
Mark Savit

Counsel for the Mining Coalition

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Comment from Avi Meyerstein, The Mining Coalition

Submitter Information

Name: Avi Meyerstein
Address:
750 17th St NW #900
#900
Washington, DC, 20006
Email: avi.meyerstein@huschblackwell.com
Phone: 202-378-2384
Organization: The Mining Coalition

General Comment

Attached please find the comments from the Mining Coalition regarding Respirable Silica (Quartz).

Attachments

2019-10-28 RIN 1219-AB36 Coalition Comment on Silica RFI