


JULY 13, 2023 | MSHA LEADERSHIP, RULEMAKING &amp; STANDARDS

# MSHA Publishes Proposed Rule for Respirable Crystalline Silica Exposure

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The Mine Safety & Health Administration's ("MSHA") long-awaited proposed rule for [Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection](#) has finally been published. MSHA released an early copy of the proposed rule recently on June 30<sup>th</sup>, but the official version was published on July 13<sup>th</sup>, on the Federal Register. 

Industry stakeholders have heard of MSHA's plans for a new rule regulating Respirable Crystalline Silica ("RCS") exposure in the mining industry for more than a decade, and across three presidential administrations if not longer. What MSHA published today is unsurprisingly similar to what stakeholders expected in 2016 when momentum was building for MSHA to adopt the Occupational Safety & Health Administration's ("OSHA") new (at that time) RCS standard, although there are some notable differences. Here are some key takeaways from the proposed rule:

- **New Permissible Exposure Level and Action Level:** MSHA has proposed a Permissible Exposure Level ("PEL") of 50  $\mu\text{g}/\text{m}^3$  as a time weighted average over an 8-hour shift. This cuts in half the existing MSHA PEL of 100  $\mu\text{g}/\text{m}^3$ . Further, MSHA proposes an Action Level ("AL") of 25  $\mu\text{g}/\text{m}^3$ . If this sounds familiar, that is because the PEL and AL are the same as those in the OSHA regulation on RCS. MSHA does note in the proposed rule that it considered lowering the PEL to 25  $\mu\text{g}/\text{m}^3$ , but MSHA did not believe it was feasible for all mines to comply with such a PEL.
- **Baseline Sampling:** MSHA has proposed that each mine operator perform baseline sampling for its workforce within six months (180 days) of the effective date of the rule. This would apply to each miner who "is or may reasonably be expected to be exposed to respirable crystalline silica."
- **Periodic Sampling:** Similar to what OSHA requires when sampling indicates an exceedance of the PEL or AL, MSHA proposes that operators conduct sampling within three months of a result above the AL, but below the PEL, until two consecutive samples are collected under the AL, at which point periodic sampling can discontinue.
- **Medical Surveillance:** MSHA proposes a requirement that all Metal/NonMetal miners undergo medical surveillance. While an existing requirement in the coal mining industry, this is a significant departure from the norm for the approximately 11,500 Metal/NonMetal mines in the country. Surveillance would be required for new miners upon hire, with a follow-up within three years, and then operators would need to offer the

examination at least every five years to all miners under the proposal.

- **Respiratory Protection:** The proposal would not allow for the use of respiratory protection to meet compliance with the standard except for in limited circumstance, such as during the installation of engineering controls, and proposes to incorporate by reference ASTM F3387-19 for respiratory protection program requirements.
- **Semi-Annual Evaluation:** Under the proposed rule, MSHA would require operators to conduct semi-annual evaluations of the mine site and operations to determine if there are processes, equipment, or controls that “may be reasonably expected to result in new or increased respirable crystalline silica exposures.” MSHA has also proposed that operators document this evaluation and maintain a record of the evaluation.
- **Methods of Compliance:** MSHA’s proposed rule is meant to drive engineering controls and states that “mine operators must install, use, and maintain feasible engineering and administrative controls to keep miners’ exposure to respirable crystalline silica below the proposed PEL.” The proposed rule also expressly prohibits compliance through the rotation of miners as an administrative control, and that respiratory protection can only be used temporarily or under non-routine, limited conditions.

#### Next Steps:

MSHA seeks comments on the topics addressed above and many additional aspects of the proposed rule such as feasibility, burdens of cost for implementation and recordkeeping, and whether alternative protection similar to those found in 30 CFR §90 for the reassignment of miners to jobs not impacted by RCS should be incorporated.

Written comments are due 45 days from today, or August 28<sup>th</sup>. Additionally, MSHA is holding two in-person stakeholder meetings on August 3<sup>rd</sup> in Arlington, VA, and August 21<sup>st</sup> in Denver, CO where stakeholders will be able to present oral statements on the record.

For an in-depth review of MSHA’s proposed rule for [Lowering Miners’ Exposure to Respirable Crystalline Silica and Improving Respiratory Protection](#), join the Conn Maciel Carey LLP MSHA practice team for a complimentary webinar on Wednesday, July 19, 2023.



[Click here to register](#) for the July 19th webinar.

[Contact](#) MSHA Practice Group Chair, Nick Scala ([nscala@connmaciel.com](mailto:nscala@connmaciel.com)) if you have any questions on the proposed rule or would like any additional information about how your organization can participate in the rulemaking process.