

**APPENDIX B: AGENCY'S RESPONSE TO THE REPORT**

U.S. Department of Labor

Mine Safety and Health Administration  
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OCT 27 2020

MEMORANDUM FOR: ELLIOT P. LEWIS  
Assistant Inspector General for Audit

FROM: DAVID G. ZATEZALO  
Assistant Secretary of Labor for  
Mine Safety and Health Administration

SUBJECT: Response to the Office of the Inspector General's (OIG) Draft  
Audit Report, *MSHA Needs To Improve Efforts To Protect Coal  
Miners From Respirable Crystalline Silica*

*David G. Zatezalo*

The Mine Safety and Health Administration (MSHA) appreciates the opportunity to comment on the OIG's report. Please see MSHA's response to the OIG recommendations below.

MSHA also appreciates the OIG recognizing the positive impact of MSHA's 2014 respirable coal mine dust rule. The 2014 rule lowered the concentration of respirable coal mine dust, increased the number of coal dust samples measured, and required operators to use Continuous Personal Dust Monitors to measure miners' exposure to respirable dust. As noted in the report, since the onset of 2014 rule, MSHA's silica/quartz levels in most coal mines dropped below 50 µg/m<sup>3</sup>, half the limit MSHA allows.

The OIG's draft report contains three recommendations. MSHA's response follows:

**Recommendation 1: Adopt a lower exposure limit for silica in coal mines based on recent scientific evidence.**

**Response:** At this time, MSHA cannot agree with this recommendation. MSHA will publish a proposed rule to address miners' exposure to respirable quartz. As you know with all rulemakings, at this point in the process, MSHA cannot presume either the substance of the proposed or final rule. Under Section 101(a) of the Federal Mine and Safety and Health Act of 1977, as amended by the Mine Improvement and New Emergency Response (MINER) Act of 2006, the proposal must go through the notice and comment process, which includes solicitation of comments from stakeholders. This allows the public opportunity to submit both written comments and to present testimony at public hearings, if requested. The substance of the final rule would be based on the comments and testimony received during the rulemaking process.

**Recommendation 2: Establish a separate standard for silica that allows MSHA to issue a citation and monetary penalty when violations of its silica exposure limit occur.**

**Response:** At this time, MSHA cannot agree with this recommendation. MSHA will publish a proposed rule to address miners' exposure to respirable quartz. As you know with all rulemakings, at this point in the process, MSHA cannot presume either the substance of the proposed or final rule. Under Section 101(a) of the Federal Mine and Safety and Health Act of 1977, as amended by the Mine Improvement and New Emergency Response (MINER) Act of 2006, the proposal must go through the notice and comment process, which includes solicitation of comments from stakeholders. This allows the public opportunity to submit both written comments and to present testimony at public hearings, if requested. The substance of the final rule would be based on the comments and testimony received during the rulemaking process.

**Recommendation 3: Enhance its sampling program to increase the frequency of inspector samples where needed (e.g., implementing a risk-based approach).**

**Response:** MSHA will study this recommendation, including a risk-based approach to whether any increase in the frequency of inspector sampling is needed, and if so, under what mining conditions.

MSHA appreciates the opportunity to comment on the report. If you have any questions or need further information, please contact Patricia W. Silvey, Deputy Assistant Secretary for Mine Safety and Health.