
# The International Brotherhood of Teamsters

**Comments On**

## *Occupational Exposure to Respirable Crystalline Silica*

**[Docket No. OSHA-2010-0034]**

**Occupational Safety and Health Administration (OSHA)**
**U.S. Department of Labor**

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## Introduction

The International Brotherhood of Teamsters (IBT) welcomes the opportunity to comment on the Occupational Safety and Health Administration (OSHA) Department of Labor's (DOL) Proposed Rulemaking and Request for Information and Comment on Occupational Exposure to Respirable Crystalline Silica. Exposed workers inhaling silica are at risk of experiencing significant adverse health effects and existing OSHA standards are too weak to protect workers. The IBT strongly urges OSHA to move forward quickly to issue a final rule.

The IBT represents approximately 1.4 million workers in the United States, Canada and Puerto Rico many of whom are exposed to concentrations of respirable crystalline silica as a part of their employment. Approximately 47,000 Teamster members are directly impacted by the silica standard including concrete production, ready mix drivers, and railroad maintenance-of-way workers.

An estimated 12,000 IBT members are exposed to respirable crystalline silica while handling concrete material as it moves through concrete batch plants and then into ready mix concrete trucks where it is delivered to construction work sites. Because our membership handles the material both at the production site and on construction sites they may experience exposures that have yet to be properly characterized.

The Brotherhood of Maintenance of Way Employes Division of the Teamster Rail Conference (BMWED) represents approximately 35,000 maintenance-of-way (MW) workers employed on Class I, commuter, and shortline railroads throughout the United States. Railroad MW workers are exposed to silica dust during various track maintenance activities conducted along the nation's railroad rights-of-way. Railroad MW workers are responsible for building, maintaining, inspecting and repairing the railroad roadbed including the rails, ties, ballast (rock), bridges, tunnels, and other components associated with the railroad track right-of-way. Maintenance-of-way work includes railroad infrastructure construction, inspection, repair, and maintenance utilizing specialized skills, hand tools, power tools, heavy equipment, and specialized on-track roadway maintenance machines.

This International Union is very concerned about the health, safety, and security of our membership. Together we have collaborated with the Building and Construction Trades Department (BCTD) and AFL-CIO Safety and Health Department to address the issues in the Standard concerning the Permissible Exposure Limit (PEL), medical surveillance and other issues that affect worker populations. We fully support the AFL-CIO and BCTD comments; in addition, the IBT is commenting on issues specifically relevant to the unique nature of our membership in various industries where silica exposure is a concern.

## The IBT's Position

The IBT supports a Respirable Crystalline Silica occupational exposure standard for both general industry, maritime, and construction workers.

## Profile of Affected Industries

Question #8

*In its PEA of the proposed rule, summarized in Section VIII of this preamble, OSHA presents a profile of the affected worker population. The profile includes estimates of the number of affected workers by industry sector or operation and job category, and the distribution of exposures by job category. If your company has potential worker exposures to respirable crystalline silica, is your industry among those listed by North American Industry Classification System (NAICS) code as affected industries? Are there additional data that will enable the Agency to refine its profile of the worker population exposed to respirable crystalline silica? If so, provide or reference such data and explain how OSHA should use these data to revise the profile.*

In the Preliminary Economic Analysis (PEA), OSHA identifies and attempts to define job categories for the ready mix industry as the material handler, batch operator, quality control technician, truck driver, and maintenance operator. With respect to drivers, OSHA suggests that a driver's (in this case mixer driver) exposure to silica as being limited to exposures that occur when the driver performs a non-routine task of removing hardened concrete from the barrel, i.e. "chipping the barrel". This job task has been well defined as a task that presents a significant source of silica exposure to the driver. OSHA explains that other activities of drivers are not considered because "truck drivers spend more than 75 percent of the shift (6 out of every 8 hours) making deliveries away from the plant" and they further explain that "the estimated typical exposure levels for normal workshifts that do not involve truck drum cleaning would be less than 25 percent of the levels experienced by material handlers in this industry. OSHA preliminarily concludes that these exposure levels are so minimal: concrete delivery drivers spend only a few minutes at the site, and they are typically on the perimeter of the site where construction dust levels are lowest."

The IBT determined that there are additional jobs listed within the driver category and that the workers who perform these jobs are potentially exposed to respirable silica. The ready mix industry employs several types of drivers and each of these "driver types" are discrete, perform unique jobs tasks within the industry, and consequently, have varied exposures to silica. The IBT identified four types of drivers:

- Mixer Driver
- Bulk Driver
- Block Driver
- Semi Driver

In the Preliminary Economic Analysis (PEA), OSHA states that "NIOSH investigators reported respirable dust exposure reductions of 97 and 98 percent, respectively, inside the cabin of a modified railroad ballast dumper in the railroad transportation industry (NIOSH HHE 92–0311, 2001)." However, the BMWED/IBT points out that those reductions may be attributed to results of just one modified piece of equipment, which was not a ballast "dumper" but a ballast regulator/broom. "Figure 1 [NIOSH HHE 92-0311] shows the real-time dust concentrations inside and outside the cab of a ballast regulator that had recently been modified to isolate the operators from dust. The TWA concentration outside the cab was more than 50 times that measured inside the cab."

OSHA's PEA further states, "Other researchers have reported particle reductions inside the operator cab greater than 90 percent (Hall et al., 2002)." The Agency correctly recognizes that although enclosed cabs have been proven to be an effective control method, they do not control exposures at the source. "In many circumstances, machine operators work alongside employees who are outside the enclosed cabs and are not protected by them." The real-time sampling by NIOSH in the HHE confirmed that "modified operator cabs can reduce risk of exposure for the workers. However, some samples did show that overexposure can still occur in cabs that have been modified." BMWED point out that the maintenance of filters, door seals, windows, HVAC, etc. on maintenance-of-way equipment has a significant impact on the effectiveness of these controls in modified cabs.

NIOSH HHE 92-0311 reported "sampling indicated the potential for overexposure to silica dust among ROW [i.e., maintenance of way] workers. This risk appears to be greatest among employees who work alongside the track, rather than among those situated in cabs." NIOSH also pointed out with regard to ballast dumping from rail cars that "even during remote operation, workers were observed walking within dust clouds alongside the moving cars, a result of the confines of some of the right-of-ways and the need to observe the dumping operations up close." "As shown in Tables 3 and 4, eighteen of the [185] personal sample concentrations exceeded the Occupational Safety and Health Administration (OSHA) Permissible Exposure Limit (PEL) for respirable dust, and 28 [of the 185] exceeded the NIOSH Recommended Exposure Limit (REL) for respirable quartz; these samples were obtained on ballast regulator, broom and tamper operators as well as track repairmen engaged in ballast dumping."

The IBT recommends that OSHA conduct further research to establish more complete exposure profiles for job tasks performed by drivers and other working personnel in the concrete industry as well as rail workers engaged in track maintenance activities. There is insufficient data to create an accurate exposure profile for these workers, but it is the IBT's belief that there is enough anecdotal data to suggest that there is a higher exposure to these workers based on what we found compiling job category and job task information from our worker population. These are detailed in our response to Question #9.

Question #9

*What are the job categories in which employees are potentially exposed to respirable crystalline silica in your company or industry? For each job category, provide a brief description of the operation and describe the job activities that may lead to respirable crystalline silica exposure.*

*How many employees are exposed, or have the potential for exposure, to respirable crystalline silica in each job category in your company or industry? What are the frequency, duration, and levels of exposures to respirable crystalline silica in each job category in your company or industry?*

**READY MIX INDUSTRY WORKERS**

The IBT represents approximately 12,000 commercial drivers in the ready mix industry who are directly affected by this proposed rulemaking. The primary responsibilities of these drivers include: loading and mixing of concrete; concrete delivery; block delivery; bulk bag delivery; monitoring the loading, mixing, delivery; washing out the concrete mixer at the end of the day; assisting in creating loads at the batch plants; and general yard maintenance at the batch plant.

OSHA identified a non-routine task performed by mixer drivers involving chipping the barrel as the only job task performed by drivers that may result in significant silica exposure. Chipping the barrel is a job task which requires a driver to enter inside the drum of a ready mix truck and use a tool to remove hardened concrete that builds up over time. However, it should be noted that there are other job tasks performed by mixer and other drivers that are likely to result in exposure to silica. The IBT obtained an industrial hygiene report from one of our ready mix concrete employers and air monitoring results indicated that yard workers at the batch plant experience respirable particulate exposures of 60µg/m3 TWA. Although the respirable particulate fraction that is crystalline silica was relatively low, yard workers and drivers are exposed to airborne particulates that could contain significant concentrations of silica, depending on the facility.

DRIVERS

*Mixer Driver*

The majority of Teamster ready-mixed concrete drivers work in the truck-mixed concrete sector of the industry. In the truck-mixed concrete sector, the ingredients are loaded directly into the truck mixer drum while the truck is at the batch plant. During the ingredient loading process, dry materials are loaded into the truck via a hopper that is located above the truck and this process typically generates a significant amount of dust. This process generally takes approximately 10 minutes and during this process, in some operations, drivers are positioned in close proximity to the hopper discharge chute where they manually add water and additives (antifreeze, pigments, etc.) to the mix and monitor the truck and ensure that the raw materials are being properly loaded into the mixer drum. In addition, there are other dust generating activities that are occurring during this time, e.g., adjacent trucks being loaded, raw materials being moved, and manufacturing and cutting of concrete blocks in adjacent work areas.

After the raw materials are loaded onto the truck, the concrete mix is transported to the discharge site (typically a construction site). During transit, the mixer drum is constantly rotated to mix the concrete raw materials and to maintain concrete quality. Upon reaching the discharge location, the driver maneuvers the truck to the point of discharge and readies the chute and dispensing mechanism. The concrete may be discharged into pumping stations, buckets, or directly into

place. It typically takes 15 to 20 minutes to fully discharge a truck. During this time, the driver is generally located on a truck ladder while he/she operates the discharge controls, and monitors the dispensing process. When the mixer drum is completely discharged, the driver hoses down the inside and outside of the truck to remove any concrete splashes and spills from the truck.

Construction sites vary greatly in regards to the kinds of tasks that are performed at each site. Job sites where Teamster drivers deliver concrete include, but are not limited to: highway jobs, high rise jobs, and mat pours. Generally at each of these sites there are various pieces of heavy equipment in operation and there is the potential for silica-containing dust to be generated. Drivers typically drive and unload in these areas, so there is a potential for additional exposures to dust. For example, at many high rise job sites, drivers are required to unload materials near dumpsters and trash chutes where waste materials from the job site are collected. Materials are dropped from elevated floors into dumpsters and a significant amount of potentially silica-containing dust is generated. During highway work, drivers deliver concrete to areas where dust generating tasks such as sandblasting and concrete cutting may occur.

In the PEA, OSHA estimated that drivers spend 6 of every 8 hours making deliveries away from the plant, and during this period, exposure to silica is minimal. It should be noted that whereas some drivers may spend 6 hours per day driving to and from delivery sites, most ready mixed drivers and nearly all Teamster drivers who work in this sector work 12 hour days and typically have 60 hour work weeks. In addition, as indicated above, during the remaining 6 or so hours of daily work time, drivers perform other job tasks while at the batch plant and at the delivery site(s) that may result in exposures to silica-containing dust. It is our opinion that OSHA has not fully characterized the exposures that drivers may experience beyond those regarding the non-routine task of chipping the barrel.

*Bulk Driver, Block Driver, Semi Driver*

In addition to mixer drivers the IBT represents bulk drivers, block drivers and semi drivers. A bulk driver hauls bagged cement as well as raw sand material. Block drivers and semi drivers deliver dry cement as bagged goods and deliver concrete block to construction sites. Block drivers typically operate a straight truck, i.e., a truck in which the storage compartment of the truck is attached to the frame, and bulk and semi-drivers operate trucks that are typically identified as tractor-trailers, where a large trailer is attached to the power unit of the truck by a coupling device known as a "fifth wheel".

The bulk, block and semi drivers perform job tasks at the concrete plant which requires them to stand outside the cab of the vehicle for approximately 20-30 minutes per load, while the truck is being loaded, and these drivers typically transport 4 to 5 loads per day. While at the delivery site (typically a construction site), drivers are required to monitor the unloading process which generally takes 30 minutes. The drivers have the potential for exposure to the raw material that is being unloaded, but they are also potentially exposed to silica as a result of the processes occurring in close proximity to where materials are being delivered. OSHA reports that driver activities are typically performed "on the perimeter of the site where construction dust levels are lowest." This is not the case as drivers are often required to unload directly to the location(s) where the materials are being used. As noted for mixer drivers, bulk and semi drivers typically

work 12 hour days (60 hour work week), and the time during which there is potential for exposure to silica is approximately 7 to 8 hours per day with the balance of the work day being used for completing driving tasks away from the plant or construction site(s).

## CONCRETE BLOCK PLANT WORKERS

### Block Attendants

The production of concrete blocks consists of four basic processes: mixing, molding, curing, and cubing. The sand and gravel are stored outside in piles and are transferred into storage bins in the plant by a conveyor belt as they are needed. As a production run starts, the required amounts of sand, gravel, and cement are transferred by gravity or by mechanical means to a weigh batcher where each ingredient is weighed and the proper amounts of each material is loaded into the batch. The dry raw materials are then transported via a chute into a stationary mixer where they are blended together for several minutes. After the dry materials are blended, a small amount of water is added to the mixer. The batch is then mixed for six to eight minutes and when the batch is thoroughly mixed, it is dumped into an inclined bucket conveyor and transported to an elevated hopper. From the hopper the concrete mixture is measured and the appropriate quantity is loaded in to a block machine where the material is molded into concrete blocks. The blocks are then transported to a curing kiln for curing.

This process is controlled and closely monitored by workers who are block attendants. These workers are potentially exposed to significant concentrations of silica-containing dust that is generated during the concrete block manufacturing process. In addition to controlling and monitoring this process, these workers are also responsible for performing housekeeping tasks such as sweeping, chipping, and shoveling materials that are wasted or spilled during the manufacture of the blocks. These workers typically work 12 hour workshifts and 60 hour work weeks.

### Forklift Drivers

Fork lift drivers are located primarily at the block plants or in warehouses where concrete blocks are stored. Primary tasks include loading and unloading trucks, moving blocks from production line to the storage yard. Forklift drivers who work in the warehouses load and unload raw materials and organize product as it arrives at the warehouse. Forklift drivers also typically perform housekeeping tasks such as using water to clean equipment, chipping dried concrete from hoppers and conveyor belts, and removing debris from the yard. These workers typically work 12 hour work days and 60 hour work weeks.

Front End Loaders

A front end loader driver works in the yard, in an area where they deliver rock, sand and dry materials to the locations in the block plant where the materials are used. Front end loaders are primarily responsible for movement of raw materials around the yard and for yard organization. These workers are in charge of making sure the silos are filled for truck servicing. They maintain the sand and gravel piles for the block plant to make sure all materials are present and stocked. These workers will oftentimes work with both concrete products and block plant operations. Other specialty job tasks include cleaning work areas, hosing down yard, and shoveling underneath belts to remove raw material. These workers may also be tasked to maintain underground loading hoppers where belts move raw materials. The belts often get material build up and must be cleaned and maintained to ensure flow of materials. Although this is non-routine work, it is done completely underground in a confined space where exposure has the potential to be higher than open air environments. These workers typically work 12 hours shifts and 60 hour weeks.

## RAILROAD TRACK MAINTENANCE WORKERS

Railroad job categories associated with maintenance-of-way track work include laborers, machine operators, heavy equipment operators, on-track roadway maintenance machine operators, welders, and foremen. BMWED-represented MW crews can range in size from 2 (two) to over 200 workers, depending on the size and scope of the maintenance activities to be performed. As documented by several NOISH Health Hazard Evaluations, "Potential exposure to silica-containing dust might occur during maintenance activities involving both the manual and automated manipulation of ballast" (NIOSH HETA 90-431-2288, 1993; NIOSH HETA 92-0311, 2001).

As discussed in the PEA found in Chapter IV, railroad track is most often supported by a bed of material called ballast. Ballast transmits and distributes the load of the track and rolling equipment evenly across the roadbed; controls movement of the track; maintains proper track cross-level, surface, and alignment; and provide drainage to the tracks. Virtually all railroads use crushed stone (especially granite, traprock, and limestone) or slag for ballast on mainline tracks. In 2001, granite (25 to 40 percent silica) accounted for approximately 46 percent of the total crushed stone sold for railroad ballast within the United States (ERG-GI, 2008).

Maintenance-of-way workers have a significant potential for exposure to silica because of the presence of silica in railroad ballast. Potential exposures are created whenever silica-containing ballast is disturbed or otherwise manipulated during track maintenance activities. Mechanical manipulation of ballast by on-track Roadway Maintenance Machines (RMMs)[1] such as ballast regulators, tampers, mechanical brooms, rotary scarifiers, and undercutters, often create visible clouds of ballast dust. Workers operating these types of on-track RMMs, as well as those working in conjunction with such equipment along the railroad right-of-way, are potentially

[1] (49 CFR 214.7, Definitions) On-track roadway maintenance machine means a self-propelled, rail-mounted, non-highway, maintenance machine whose light weight is in excess of 7,500 pounds, and whose purpose is not for the inspection of railroad track.

exposed to silica-containing dust whenever ballast is manipulated. While track surfacing (smoothing) operations are typically associated with the creation of visible concentrations of airborne dust, other track maintenance operations such as tie replacement, undercutting, and ballast dumping also have a high potential for exposing MW workers to silica-containing dust.

Roadbed ballast is often added or replenished during large scale track maintenance and construction activities. Ballast replenishment (i.e., ballast dumping) typically involves maintenance-of-way workers walking alongside moving ballast cars and manually or automatically (via radio remote control) opening hopper doors on moving ballast cars and dumping ballast alongside and onto the track bed. When ballast is dumped from ballast cars dry, it creates a dense visible cloud of dust which can envelop the workers (i.e., ballast dumpers, foreman/supervisors, train crew personnel, etc.) walking alongside the ballast cars. Depending on the scale of the planned track rehabilitation, maintenance-of-way workers could dump ballast over several miles of track in a day for multiple days, weeks or more in succession. The newly dumped ballast is thereafter mechanically tamped, regulated and broomed by "surfacing" crews using on-track roadway maintenance machines. These machines are often operated in close proximity to other workers assigned to work with the equipment or otherwise perform track and signal maintenance and repair. Members employed on track surfacing crews often remain on those positions for years and in some cases for their entire railroad careers spanning 30 or more years.

Question #13

*Has your industry or firm used outsourcing or subcontracting, or concentrated high exposure tasks in-house, in order to expose fewer workers to respirable crystalline silica? An example would be subcontracting for the removal of hardened concrete from concrete mixing trucks, a task done typically 2-4 times a year, to a specialty subcontractor.*

Much of the barrel chipping activities associated with ready mixed concrete has been subcontracted at many of the Teamster-represented batch facilities. However, some of our driver members continue to perform this job task.

## Technological and Economic Feasibility of the Proposed PEL

Question #17

*OSHA has made a preliminary determination that compliance with the proposed PEL can be achieved in most operations most of the time through the use of engineering and work practice controls. OSHA has further made a preliminary determination that the proposed rule is technologically feasible. OSHA solicits comments on the reasonableness of these preliminary determinations.*

OSHA proposed a PEL of 50 µg/$m^3$ for general industry/maritime and the construction industry. According to OSHA this level was recognized as being technologically feasible. OSHA found that while significant risk remains at the 50 µg/$m^3$ PEL, it is not feasible to control to a lower level.

The IBT agrees with OSHA's decision to set the PEL at 50µg/$m^3$ with an AL (action level) of 25µg/$m^3$ for all industries, including construction. According to OSHA's risk assessment, at the proposed PEL, there remains an excess lifetime risk of death of about 100/1,000 workers exposed. OSHA further estimates that the 50µg/$m^3$ standard would prevent 686 deaths and 1,585 cases of silica related disease a year. Reducing the PEL to 25µg/$m^3$ would prevent and additional 335 deaths and 186 cases of disease each year. The IBT would ideally like risk in the NOAEL (no observed adverse effect level) to LOAEL (lowest observed adverse effect level) range and therefore strongly encourage OSHA to maintain strong ancillary requirements as a component to this rule and not adopt regulatory alternative #7. Ancillary requirements include exposure assessment, respiratory protection, medical surveillance, recordkeeping, training, and regulated areas or access control etc. We support OSHA's statement in the preamble that states "…these ancillary provisions will reduce the risk beyond the reduction that will be achieved by a new PEL alone."

BMWED believes that the engineering controls required for certain Roadway Maintenance Machines (RMM's), as well as additional controls such as quarrying methods or processes that reduce the overall content of respirable silica in ballast, wetting down ballast cars prior to unloading, and using remote operation of dump doors on ballast cars are feasible controls for the reduction of silica exposure in the railroad work environment. BMWED concurs with OSHA's overall feasibility finding that the railroad transportation industry can achieve exposures below 50µg/$m^3$ for all workers in this industry through the use of appropriate additional controls.

## Overlapping and Duplicative Regulations

Question #25

*Do any federal regulations duplicate, overlap, or conflict with the proposed respirable crystalline silica rule? If so, provide or cite to these regulations.*

The Federal Railroad Administration (FRA) is responsible for certain aspects of the safety of railroad track maintenance workers (e.g., operational hazards such as ensuring that track workers are not hit by trains or other equipment moving along the right-of-way). In general, hazards "not related to the conditions and procedures necessary to achieve the safe movement of equipment on the rails" are deemed non-operational concerns which fall under OSHA's jurisdiction (FRA, 1978). OSHA regulations apply to non-operational hazards according to their terms, except with respect to the shipment or transportation of hazardous substances, which is controlled by the Department of Transportation Hazardous Materials Regulation, and the regulation of air contaminants in locomotive cabs and caboose environments.

OSHA correctly considers exposure to silica during track maintenance activities to be a non-operational hazard and its regulations apply according to those terms. However, OSHA standards do not apply to the design and safety appliances of on-track Roadway Maintenance Machines used to maintain the railroad. Therefore, in order to further the safety protection of its members, the BMWED petitioned the FRA in 1990 for a rulemaking to require environmental controls and protection systems for certain categories of newly manufactured dust-generating on-track equipment and machinery (i.e., Roadway Maintenance Machines).

FRA published a final rule on July 28, 2003, (Docket No. FRA-2000-8156), prescribing minimum safety standards for railroad on-track Roadway Maintenance Machines (RMM) and hi-rail vehicles. The purpose of these standards (49 CFR 214, Subpart D) is to protect roadway workers during the operation of this equipment from various hazards. The RMM regulation requires certain types and categories of on-track roadway maintenance machines to be equipped with safety appliances such as lights, horns, change of direction alarms, mirrors, fire extinguishers, etc. Significantly, the RMM regulations also require the incorporation of engineering controls into certain types of newly manufactured dust-generating RMMs to protect the operator from airborne contaminants such as silica dust. The FRA standard incorporates by reference OSHA§1910.134 and§1910.1000 for the protection of operators inside the cab of certain dust-generating RMMs under §214.505 in the event such engineering controls become ineffective:

**Sec. 214.505 Required environmental control and protection systems for new on-track roadway maintenance machines with enclosed cabs.**

(a) The following new on-track roadway maintenance machines shall be equipped with enclosed cabs with operative heating systems, operative air conditioning systems, and operative positive pressurized ventilation systems:

(1) Ballast regulators;

(2) Tampers;

(3) Mechanical brooms;

(4) Rotary scarifiers;

(5) Undercutters; and

(6) Functional equivalents of any of the machines identified in paragraphs (a)(1) through (a)(5) of this section.

(b) New on-track roadway maintenance machines, and existing on- track roadway maintenance machines specifically designated by the employer, of the types identified in paragraphs (a)(1) through (a)(5) of this section, or functionally equivalent thereto, shall be capable of protecting employees in the cabs of the machines from exposure to
air contaminants, in accordance with 29 CFR 1910.1000.

(c) An employer shall maintain a list of new and designated existing on-track roadway maintenance machines of the types identified in paragraphs (a)(1) through (a)(5) of this section, or functionally equivalent thereto. The list shall be kept current and made available to the Federal Railroad Administration and other Federal and State
agencies upon request.

(d) An existing roadway maintenance machine of the type identified in paragraphs (a)(1) through (a)(5) of this section, or functionally equivalent thereto, becomes "designated" when the employer adds the machine to the list required in paragraph (c) of this section. The designation is irrevocable, and the designated existing roadway maintenance machine remains subject to paragraph (b) of this section until it is retired or sold.

(e) If the ventilation system on a new on-track roadway maintenance machine or a designated existing on-track roadway maintenance machine of the type

identified in paragraphs (a)(1) through (a)(5) of this section, or functionally equivalent thereto, becomes incapable of protecting an employee in the cab of the machine from exposure to air contaminants in accordance with 29 CFR 1910.1000, personal respiratory protective equipment shall be provided for each such employee until the machine is repaired in accordance with Sec. 214.531.

(f) Personal respiratory protective equipment provided under paragraph (e) of this section shall comply with 29 CFR 1910.134.

(g) New on-track roadway maintenance machines with enclosed cabs, other than the types identified in paragraphs (a)(1) through (a)(5) of this section or functionally equivalent thereto, shall be equipped with operative heating and ventilation systems.

(h) When new on-track roadway maintenance machines require operation from non-enclosed stations outside of the main cab, the non-enclosed stations shall be equipped, where feasible from an engineering standpoint, with a permanent or temporary roof, canopy, or umbrella designed to provide cover from normal rainfall and midday sun. (*Emphasis added*)

The FRA regulations for Roadway Maintenance Machine Safety (49 CFR, 214 D) became effective September 26, 2003. In the preamble discussion of the final rule (*See Federal Register, July 28, 2003, volume 68, Number 144, pages 44387-44412*) FRA summarized the historical role of OSHA in regulating the maintenance-of-way work environment as follows:

> "Under this [FRA] regulation, OSHA environmental standards, which already govern the working environments of roadway maintenance machines, essentially remain in effect. By cross-referencing the OSHA standards contained in 29 CFR 1910.1000, FRA becomes the enforcing agency as to environmental controls over the selected types of equipment, rather than OSHA. Environmental controls in equipment not covered by this rule and the limiting of exposure to employees working outside equipment remain subject to OSHA enforcement, and the regulation is the same (29 CFR 1910.1000).
>
> It is important to note that the rule cross-references OSHA standards without limiting the references to OSHA standards in effect on a certain date. As with all regulatory agencies, OSHA from time to time revises and updates its standards. By cross-referencing the OSHA standards without limiting the references to standards in effect on a certain date, this regulation automatically references any revisions by OSHA to these standards so as to remain in conformance with any revised OSHA standards. This action prevents the undesirable result whereby operators of roadway maintenance machines covered by this regulation could receive less protection than other operators in the event that OSHA revises any of the referenced standards."

Under this regulatory framework, the OSHA §1910.1000 and §1910.134 standards apply equally to track workers outside the cab of FRA regulated RMMs, as well as those track workers located inside the cab of FRA regulated RMMs. The only difference is that FRA enforces the §1910.1000 and §1910.134 standards inside the FRA-regulated cabs of RMMs, and OSHA

enforces the §1910.1000 and§ 1910.134 standards outside of FRA-regulated RMM cabs. BMWED supports the continued shared jurisdiction between OSHA and FRA under the current regulatory framework which is in full compliance with Section 4(b)(1) of the OSH Act.

OSHA's proposed amendment to the Permissible Exposure Limits for silica will substantially reduce the risk to railroad track workers along the right-of-way, within RMM cabs not subject to the provisions of 49 CFR 214.505, and within the enclosed cabs of FRA-regulated RMMs. OSHA's proposed standard for airborne silica dust does not duplicate or conflict with the FRA's RMM regulation. It is clear from the preamble discussion above that FRA anticipated potential revisions to §1910.1000 and §1910.134 and will incorporated them by reference. BMWED encourages OSHA and FRA to collaborate on the application and effectiveness of engineering controls and work practices within the railroad industry to control rail workers' exposure to airborne silica in compliance with the pending silica rule.

## Provisions of the Standards Scope

Question #30

*OSHA's Advisory Committee on Construction Safety and Health (ACCSH) has historically advised the Agency to take into consideration the unique nature of construction work environments by either setting separate standards or making accommodations for the differences in work environments in construction as compared to general industry. ASTM, for example, has separate silica standards of practice for general industry and construction, E 1132 – 06 and E 2625 – 09, respectively. To account for differences in the workplace environments for these different sectors, OSHA has proposed separate standards for general industry/maritime and construction. Is this approach necessary and appropriate? What other approaches, if any, should the Agency consider? Provide a rationale for your response.*

The IBT supports a Respirable Crystalline Silica occupational exposure standard for general industry/maritime and construction. However, due to the nature of the work for ready mix truck drivers, who frequently travel to more than one work locations and may work at many different construction sites on any given day it is unclear as to which standard will cover these drivers. These workers are currently covered by the general industry standard; however they may work at construction sites and perform certain job tasks that could be considered to be construction work. The IBT recommends that the agency clarify which standard will cover the ready mixed drivers.

## Medical Surveillance

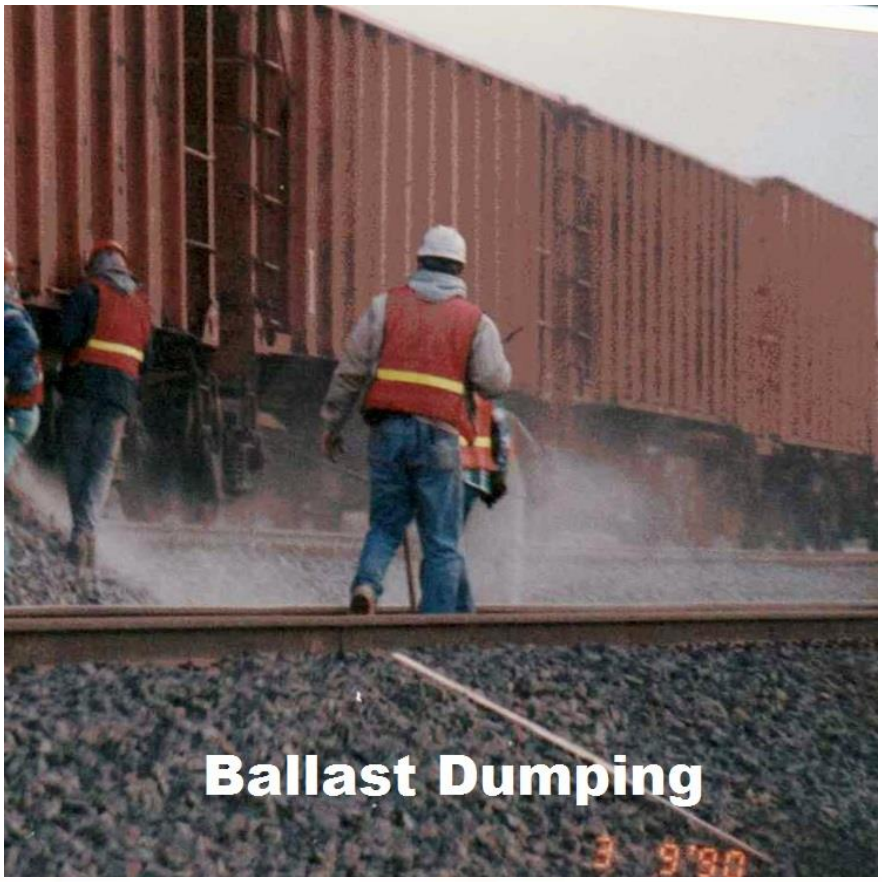
The IBT supports the comments of the BCTD and the AFL-CIO regarding specific details of the medical surveillance program. However, the IBT would like to emphasize that we are concerned that employers may have the opportunity to misuse medical information that is collected pursuant to the proposed standard. We believe that the proposed standard may enable employers to misuse employee medical information to discriminate or retaliate against workers who are identified as having a medical condition. Further, employers may use medical questionnaires to solicit medical information not related to silica exposure. Commercial drivers, including our driver members are required to submit to a bi-annual physical examination and are currently

required to possess a medical certificate according to the Federal Motor Carrier Safety Administration Regulations, and it has been our experience that motor carriers do use medical information to target certain drivers. We propose that medical questionnaires be concise and relevant to the employee's exposure to silica. Further, the employer shall not request medical information from the Physician or other Licensed Health Care Provider (PLHCP) that is not relevant to the employee's exposure to silica.

## Conclusion

The IBT commends OSHA for conducting rulemaking on this important worker health issue. As noted above, the agency should seriously consider reevaluating the types of jobs that are included in the driver classification. Further, the agency should provide guidance on how ready-mix drivers will be covered by the rule considering that they work at batch plants that are likely to be covered by the general industry/maritime standard and they work on construction sites.

For railroad MW workers, "NIOSH investigators determined that a health hazard existed for railroad track maintenance workers from occupational exposure to crystalline silica. The presence of this risk was indicated by personal measurements of airborne respirable crystalline silica that exceeded occupational exposure guidelines. The hazard was greatest for workers who operated ballast regulating, broom, and tamping machines and for track repairman who dumped ballast." "NIOSH sampling indicated that potential for overexposure to silica dust among ROW [right-of-way] workers. This risk appears to be greatest among employees who work alongside the track, rather than among those situated in [modified] cabs." (NIOSH HETE 92-0311) In light of NIOSH's determination that railroad track maintenance workers are at risk from occupational exposure to crystalline silica, and the availability and feasibility of engineering controls to protect workers both inside and outside the cabs of modified RMMs, the BMWED encourages OSHA to lower the PEL as proposed.


Ballast Dumping


Ballast Regulator Plowing Ballast


Ballast Regulator-Broom Machine 2


Ballast Regulator-Broom Machine 1