

**STATEMENT OF DAVID D. LAURISKI
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MINE SAFETY AND HEALTH
BEFORE THE
SUBCOMMITTEE ON LABOR, HEALTH AND HUMAN SERVICES, AND
EDUCATION
COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE
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Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before you today to discuss two MSHA proposed rules designed to limit miners' exposure to respirable coal mine dust and its devastating effects. As I announced on June 24, MSHA has stopped all work on finalizing the proposed rules.

We have recognized for some time the need to reduce miners' risk of disease, improve the coal mine dust sampling program, and restore miners' confidence in it. Since the mid 1970s, MSHA has sought development of fast-response, direct-readout respirable dust monitors for measuring the concentration of respirable dust. An MSHA Task Group reviewed the sampling program in 1991 and made recommendations for improvement. The Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Workers made recommendations in 1996. MSHA took prompt action on certain recommendations, for example initiating a nationwide awareness program on the hazards associated with exposure to excessive levels of respirable coal mine and quartz dust and on ways to prevent occupational lung disease. With NIOSH, we also implemented a special screening initiative called the Miners' Choice Health Screening Program (Miners' Choice) as part of the "End Black Lung Now and Forever" campaign. Miners' Choice offered chest x-rays for both underground and surface coal miners. Thousands of miners participated. Other Advisory Committee recommendations required rulemaking; in response, MSHA proposed two rules in July 2000 on the same subject as the proposals we are discussing today, accepted public comment, and conducted public hearings.

When I arrived at MSHA in May 2001, I reviewed the state of miners' health and concluded that coal miners continued to be exposed to excessive concentrations of dust and that there remains an unacceptable risk of miners developing coal workers' pneumoconiosis, or black lung disease. I found that personal dust monitors (PDMs) were still in the development stage and not commercially available. With this knowledge, and with knowledge of the comment received on the 2000 proposed rules, I determined that the Agency should repropose one of the 2000 proposals and re-open the record on the other.

The first proposed rule, called “Verification of Underground Coal Mine Operators’ Dust Control Plans and Compliance Sampling for Respirable Dust,” or “Plan Verification,” would require mine operators to verify and periodically monitor the effectiveness of their mine ventilation plans in limiting miners’ exposure to dust. The second proposal, “Determination of Concentration of Respirable Coal Mine Dust,” or “Single Sample,” reopened the record on the joint finding by the National Institute for Occupational Safety and Health (NIOSH) and MSHA that the average concentration of respirable dust can be accurately measured over a single shift. Both of these proposals were designed with the goal of sending more miners home healthy every working day.

As you know, the past decades have seen great strides in reducing miners’ overexposure to respirable coal mine dust and thereby lowering the prevalence of black lung disease. The percentage of dust samples taken by mine operators that exceeded the 2-milligram per cubic meter standard has decreased from 54 percent in 1970 to 8 percent in 2002. However, NIOSH and MSHA recently documented that black lung continues to occur and everyone agrees that the current rate of black lung disease is unacceptably high and that we need to increase our efforts to further reduce levels of respirable dust in coal mines. We are aggressively using all the tools that the law provides -- enforcement, education and training and technical assistance to address miners’ health. However, MSHA and our nation’s coal miners are working with a respirable coal mine dust program that has not fundamentally changed since 1980, and the current program has distinct weaknesses that only regulatory action can change.

One concern is the laborious and cumbersome process that is required to identify a violation of the coal mine dust limits. MSHA is the only worker health and safety enforcement agency that needs to take several full-shift samples and average the results in order to identify a violation of a health standard. This is a crucial concern because taking an average can mask overexposures that may affect the health of miners.

In March of this year, we published a new regulatory proposal on plan verification and, along with NIOSH, we reopened the rulemaking record on the use of a single sample for compliance determinations. These proposals are designed to reduce miners’ overexposure to dust, thereby reducing the prevalence of black lung. One would require mine operators to verify the effectiveness of their mine ventilation plans in limiting miners’ exposure to dust; the other would allow MSHA to make compliance determinations based on a single sample, rather than an average of multiple samples, which can mask overexposures. As you know, the rulemaking process is designed to elicit comment from stakeholders affected by the proposals. As part of that process, we received 62 written comments on the proposals. In May we held a series of six public hearings to receive additional comments. These hearings were held in Pennsylvania, West Virginia, Indiana, Kentucky, Alabama and Colorado and drew 177 speakers and over 450 attendees.

Commenters recognized the Agency’s intent to create greater protections for miners’ health. However, during the hearings, representatives of both industry and miners, as well as individual miners, told us very clearly that they preferred we wait for

the results of testing of new PDM technology before proceeding with the rulemakings. A PDM is designed to produce a real-time readout of dust exposure so that, if there is a problem, action can be taken promptly to correct the problem and reduce the risk of miners' overexposure to respirable dust. By deferring action on this rulemaking, we will be able to gather data and build a consensus on identifying, developing, and implementing the most effective technology to address this issue.

In our proposal, we provided for optional use of PDMs, should they prove feasible and be approved for use. At the same time, we felt that we ought to take feasible action as soon as possible to improve the coal mine dust control program, rather than delay until completion of the development and testing of the PDMs, since there is no certainty regarding how long that might take to complete.

After reviewing the public comments, we consulted with NIOSH and found that the initial test results of a prototype PDM were promising. At that point, we suspended work on the rules. On June 24, we formally announced that we had stopped all work on finalizing the proposals. Should the PDM prove to be accurate and reliable, we would then examine how the PDM could provide optimum benefit in a regulatory scheme for controlling dust overexposures.

MSHA is working with NIOSH to complete the in-mine tests of the prototype PDMs in mines located in Pennsylvania, West Virginia, Alabama and Utah. It will be necessary to successfully complete this testing before we move on to a production model. From what we have learned so far from the prototype testing, the PDM is truly promising, but still not ready for regular usage by miners.

Once testing of the prototype PDM has been concluded, and upon a positive finding by NIOSH and MSHA, each agency has agreed to contribute \$150,000 to purchase production prototype PDMs for further testing. Last week, MSHA and NIOSH staff met to discuss the progress of the research and the requirements of future research for the production prototype units. Next week, we are consulting with the parties involved in the current NIOSH in-mine testing and the PDM manufacturer. We will be getting input on plans for the next step -- collaborative research where production prototypes will be tested at coal mining operations throughout the United States.

As we proceed with the testing, we believe it best serves the mining community to leave the current rulemaking record open. The long history of the reform of the Federal coal mine respirable dust program contained in this extensive rulemaking record should be preserved. The record contains all public comment from the July 7, 2000 and March 6, 2003 rulemaking proposals, transcripts of the 2000 and 2003 public hearings, the 1996 recommendations of the Advisory Committee on the Elimination of Pneumoconiosis, and other evidence relevant to the rulemaking. Moreover, because we have extended the comment period indefinitely, the results of the current in-mine testing of the prototype PDMs will become a part of the public record. An open record ensures that all information obtained during these discussions will be available to the public. We believe that is important. The record will remain open until a decision is made on our next step.

MSHA of course will continue to enforce the current respirable coal dust rules during the interim period while the PDMs are tested and developed.

Mr. Chairman, like many, I come from a coal mining family. My father went to work underground as a coal miner in his teens in order to help support his family. His mining career spanned nearly 50 years of underground work, the majority of which was spent in the face of the mine. He had evidence of black lung disease and suffered from heart disease, which I believe was exacerbated by his years in the mines. Improving miner safety and health and addressing the issues related to black lung disease are of personal importance to me.

Again, thank you for your interest in the health of our Nation's miners and the opportunity to discuss these important issues with you today. I would be pleased to answer any questions.