S. Aromie Noe, Director
Office of Standards, Regulations, and Variances
Mine Safety and Health Administration
201 12th Street South
Suite 4E401
Arlington, Virginia 22202-5450
Re: RIN 1219-AB36; Docket No: MSHA-2023-0001

Dear Director Noe:

Overview
Appalachian Voices is a non-profit organization working for healthy communities and ecosystems and for a fair and just economy in central and southern Appalachia. Our membership is national, but is primarily concentrated in the Appalachian states of Virginia, West Virginia, Kentucky, Tennessee and North Carolina, where we also work with countless community partners. Since 2017, Appalachian Voices staff working out of our office in Norton, Virginia have been working with local chapters of the Black Lung Association, a grassroots organization composed of miners with black lung and their families, supporting their priorities and helping connect the chapters to additional resources

We appreciate this important step MSHA has taken to protect miners from respirable silica and the opportunity to provide comments on the Mine Safety and Health Administration (MSHA) proposed rule. A rule to ensure miners have adequate protection from silica exposure is long overdue. Appalachian Voices supports a reduction in the permissible exposure limit (PEL) to 50 micrograms per cubic meter of air. However, we have serious concerns about sampling and enforcement mechanisms in the rule, and we believe that there is too much room in the rule for operators to evade compliance.

A vast body of evidence demonstrates a causal relationship between high levels of respirable silica and an increased occurrence of black lung disease. Thanks to peer-reviewed papers penned by researchers such as Dr. Robert Cohen at the University of Illinois-Chicago, as well as investigative reporting by Howard Berkes of NPR and other journalists, we know that black lung is now occurring at its highest levels in decades, that it is affecting miners younger than it did in previous generations, and that the disease is more frequently occuring in its most severe form, progressive massive fibrosis, or complicated black lung. In addition to peer-reviewed science and investigative journalism, Appalachian Voices' position on the proposed updates to MSHA’s respirable silica standard is informed by our staff's direct relationships and frequent communication with individuals afflicted by this disease.

It's vital that this rule is stringent enough to protect the current and next generation of miners from black lung disease. This epidemic has worsened in Central Appalachia,[1] and we are concerned that the modeling conducted for this rule doesn't incorporate data that medical clinics in Appalachia have reported since 2010. In the rule's preamble MSHA estimates that over a 60-year period, only 63 coal miner deaths would be averted and just 244 coal miners would avoid contracting severe pneumoconiosis due to silica exposure. Recent investigative reporting has indicated "that more than 4,000 cases of PMF identified by black lung clinics and the National Institute for Occupational Safety and Health (NIOSH) since 2010; more than 1,500 diagnoses in just the last five years alone."[2] While not all of these can be attributed directly to silica exposure, this and other reporting over the last 15 years lead medical experts to believe that silica is a significant driver of the increased prevalence of severe black lung disease in Central Appalachia, and therefore, any rule designed to reduce silica exposure should have larger effects on morbidity and mortality. We encourage MSHA to review data from black lung clinics in Central Appalachia to ensure a more realistic accounting of current morbidity and set a higher goal for future morbidity. The final rule must meet the obligations set out in the Federal Mine Safety & Health Act – "to prevent death and serious physical harm…" and "to prevent occupational diseases originating" in coal mines and other mines.[3]

Appalachian Voices agrees that the final rule should be effective 120 days after its final publication. Coal miners have been waiting nearly 50 years for protection from silica dust exposure, and any further delay is unconscionable. Further, the technologies and practices necessary to reduce dust and silica exposure are well-known – mine operators know what changes to mining practices are necessary to comply with the rule. Many mine operators have been neglecting their responsibility to protect miner health for decades, and have had ample warning that this rule was forthcoming. Quick implementation of the final rule is achievable and necessary.

We have concerns and request clarifications of the sampling regime that MSHA is proposing in the rule. The baseline sampling required under the rule should not include objective data in lieu of an actual sample. Further, it is uncertain whether a mine that becomes newly operational sometime after the rule comes into effect would be required to conduct baseline sampling. Section 60.12(a) (1) states "The mine operator shall perform baseline sampling within the first 180 days after [publication of the final rule] to assess the full shift, 8-hour TWA exposure of

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[1] Berkes, Howard. "New Studies Confirm A Surge In Coal Miners' Disease." National Public Radio. 22 May 2018.
https://www.npr.org/2018/05/22/613400710/new-studies-confirm-a-surge-in-coal-miners-disease
[2] Berkes, Howards and Hicks, Justin. "Federal Fix for Silica Dust Understates What We Found: Thousands of Coal Miners Still Sick and Dying." Public Health Watch. 31 Aug 2023.
https://publichealthwatch.org/2023/08/31/the-federal-fix-for-silica-dust-understates-what-we-found-thousands-of-coal-miners-still-sick-and-dying/
[3] Federal Mine Safety & Health Act of 1977,
Public Law 91-173. https://arlweb.msha.gov/REGS/ACT/ACT1.HTM#1

respirable crystalline silica for each miner who is or may reasonably be expected to be exposed to respirable crystalline silica." MSHA should clarify that this will apply to future mines as well.

Regarding periodic sampling, it appears that under Section 60.12(b), operators wouldn't be required to conduct periodic sampling unless a new baseline sample, corrective actions sample, or a post-evaluation sample, or samples from MSHA's inspections indicate respirable silica levels over the proposed action level. However, it is unclear why or when an operator would be required to conduct its own silica sampling, after the baseline, that would trigger this periodic sampling, save for a self-reported change in production methods, but this relies too heavily on operators to act in good faith. It's possible that during MSHA's own inspections that it may find elevated silica levels which could lead to periodic sampling. But, as miners have told us and as MSHA has heard at its proposed rule hearings, operators often have advance notice of inspections and can work hard to clean up a mining operation on the day of inspection.[4] MSHA should require routine and extensive periodic sampling, over a period of multiple and consecutive shifts, for silica just as it does for coal dust.

The baseline sampling, periodic sampling, and all policies and procedures regarding enforcement should specifically include slope cutting, roof bolting, and other non-direct coal production work within the definition of "typical mining activities." Miners with black lung disease have told us innumerable stories of spending weeks, months, and in at least one case, years cutting through quartz.

Further, in our conversations with miners, we have heard that employees who work in non-production positions at mines can nonetheless be exposed to high levels of coal and silica dust and could get diagnosed with black lung disease. At MSHA's Beckley hearing on August 10th, at least two miners shared stories about themselves or colleagues that fit this description. One miner told of a coworker who fixed equipment in an aboveground shop that was frequently dusty despite ventilation, and this coworker was diagnosed with black lung disease. Another miner spoke about conditions in which coal dust is blown out of the mine and workers who work near the entrance are exposed. This interpretation of the "reasonably be expected" threshold should be expanded to include or consider non-production work aboveground, including maintenance shops and offices.

[4] We understand from MSHA staff statements at the rule hearings that inspections are not scheduled in advance or officially noticed to mine operators. But as noted at MSHA's hearings, miners report operator changes to mine conditions just before MSHA inspections occur. Possible reasons for this include mine employees seeing inspectors' vehicles in town or at nearby mines and then notifying their coworkers or bosses; mine employees hearing from colleagues about inspections at nearby mines, an employee at the gate calling ahead, or other communications between employees at different mines or different parts of a mine. Because mines are often in very remote locations, the presence of an MSHA inspector may be conspicuous. We encourage MSHA to think creatively about how to ensure mine operators are not given advanced warning of inspections that are intended to be unannounced.

Section 60.12(d) and (e) would require operators to conduct semi-annual evaluations starting 18 months after the effective date of the rule to evaluate changes in production and whether those changes would result in increased silica exposure. We recommend that at minimum, MSHA revise these semi-annual evaluations to start 12 months after the effective date rather than 18 months. If mines are required to submit baseline samples within 6 months of the rule, they should be able to submit semi-annual evaluations starting 6 months later. However, we are concerned that these semi-evaluations won't have their intended effects for two major reasons. One, silica exposure can change day-to-day, and 6 months may be too long of a delay to adequately protect miners and won't reflect the full picture of the mine's operating conditions. Second, allowing operators to evaluate their own changes in production, controls, and other factors is a risk that should not be taken lightly. MSHA must ensure that operators provide accurate, thorough evaluations and MSHA should regularly audit these.

Regarding the use of respirators as a temporary control measure, we are concerned about both the definition and length of "temporary" and which activities will be allowed. Coal miners that we have talked to concerning this rule have been vocal that it is unreasonable to place the burden of compliance on individual miners and require them to wear respirators over a long period of time in underground mining. Conditions can be hot, dark, and cramped, especially when working in low coal. Respirators can quickly fog up a miner's safety glasses and they make it hard to communicate, which is crucial when working underground around heavy, loud machinery. If miners are found or reasonably thought to be working in conditions in which the PEL is above 50 micrograms of silica, they should be immediately withdrawn from coal mining production. Miners should not be expected to continue coal production when silica levels are known to be above the PEL. Only miners or engineers who are working to install controls and corrective actions to bring respirable silica levels below the PEL should be permitted to remain in the affected area, and only while wearing respirators. The "temporary non-routine use of respirators" in Section 60.14 should explicitly exclude coal production and mine construction. If MSHA retains provisions allowing operators to use respirators on a temporary basis, a specific time limit should be imposed.

We encourage MSHA to clearly outline monetary penalties and citations in the final rule, and those fines should be high enough to compel compliance. The Department of Labor Inspector General Audit on respirable silica, referenced in the report, recommended that MSHA "Establish a separate standard for silica that allows MSHA to issue a citation and monetary penalty when violations of its silica exposure limit occur." The proposed rule does not mention a mechanism for handling citations, other than requiring periodic sampling until levels are brought under the PEL.

All records regarding sampling, violations, ventilation plans, etc. should be retained for the life of the mine operation and for an additional time after. Silicosis and black lung disease can be

diagnosed years after a miner's employment ends, and miners should have access to all relevant information that would be useful for future claims. There is no reason for this rule to deviate from the OSHA standard.

Coal miners and their families have been waiting for decades for MSHA to take stronger action regarding silica protection and enforcement. Again, we support a reduction of the PEL to 50 micrograms. We believe our comments and submissions from black lung advocates will encourage MSHA to reduce gaps within the rule that could allow operators to violate the rule's spirit and intent. We recognize that the rule as written, and with the technical changes that advocates concerned about miner health are requesting, could require a substantial amount of MSHA capacity. Appalachian Voices and other miner advocates are working to raise awareness of this issue at both the local and federal level with the goal of increasing funding for MSHA in order to fully implement this rule and other coal miner protection efforts.

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