



August 2, 2023

VIA ELECTRONIC SUBMISSION

The Honorable Christopher J. Williamson
Assistant Secretary of Labor for Mine Safety and Health
Mine Safety and Health Administration
U.S. Department of Labor
201 12th St South, Suite 401
Arlington, VA 22202-5450

RE: Recommend Extension of Comment Period for Proposed “Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection” (Respirable Crystalline Silica) Rule [Docket No. MSHA-2023-0001] (RIN 1219-AB36)

Dear Assistant Secretary Williamson:

On July 13, 2023, the Mine Safety and Health Administration (MSHA) published a proposed rule in the Federal Register on *Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection* (Respirable Crystalline Silica).¹ The comment period for the proposed rule is open for forty-five days and is scheduled to close on August 28, 2023. Based on input from small business representatives in the mining and related sectors, the Office of Advocacy (Advocacy) of the U.S. Small Business Administration (SBA) respectfully recommends that MSHA extend the public comment period by at least sixty days. The extension will give small businesses more time to comment and allow small business representatives time to consult their membership to provide more meaningful comments on this highly complex and technical proposed rule.

Advocacy Background

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within SBA, so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),² as amended by the Small Business

¹ 89 Fed. Reg. 44852 (July 13, 2023).

² 5 U.S.C. § 601 et seq.

Regulatory Enforcement Fairness Act (SBREFA),³ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy. The agency must include a response to these written comments in any explanation or discussion accompanying the final rule's publication in the Federal Register, unless the agency certifies that the public interest is not served by doing so.⁴

Advocacy's comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."⁵

An Extension of the Comment Period Would Allow Small Business Representatives to Provide More Meaningful Comments on the Proposed Rule

On July 13, 2023, MSHA proposed to amend its existing standards for occupational exposure to respirable crystalline silica to better protect miners and to improve respiratory protection for all airborne hazards. This is a highly complex and technical proposal that would impose significant implementation and compliance challenges to small business.

The proposed MSHA rule would:

- Set the permissible exposure limit of respirable crystalline silica at 50 micrograms per cubic meter of air (mg/m³) for a full shift exposure, calculated as an 8-hour time-weighted average, for all miners.
- Include other requirements to protect miner health, such as exposure sampling, corrective actions to be taken when miner exposure exceeds the permissible exposure limit, and medical surveillance for metal and nonmetal miners.
- Replace existing requirements for respiratory protection and incorporate by reference ASTM F3387–19, Standard Practice for Respiratory Protection.
- Adopt a uniform approach to respirable crystalline silica occupational exposure and improve respiratory protection for all airborne hazards to improve health protections for all miners and lower the risk of material impairment of health or functional capacity.⁶

³ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).

⁴ Small Business Jobs Act of 2010 (PL 111-240) § 1601.

⁵ *Id.*

⁶ 89 Fed. Reg. 44,852.

In response to publication of the proposed rule, a number of small business representatives have contacted Advocacy and sought assistance in obtaining an extension of the comment period. The extension would allow these groups to consult with their small business members about their operations and how the proposed rule would impact them. MSHA has determined under the RFA that the proposed rule would have a significant economic impact on a substantial number of small entities.⁷ As a result, Advocacy supports the small business representatives' request and recommends that MSHA extend the comment period by at least sixty days. Advocacy does not believe a sixty-day extension of the comment period would impair MSHA's rulemaking effort as this rulemaking has been underway for the past several years.⁸

Conclusion

Advocacy will be happy to host a small business roundtable to discuss the proposed rule and will welcome MSHA's participation. Advocacy recommends that MSHA extend the current comment period by at least sixty days. Please feel free to contact Bruce Lundegren at (202) 205-6144 or bruce.lundegren@sba.gov if you have any questions or require additional information about this recommendation.

Sincerely,

//Signed//

Major L. Clark, III
Deputy Chief Counsel
Office of Advocacy
U.S. Small Business Administration

//Signed//

Bruce E. Lundegren
Assistant Chief Counsel
Office of Advocacy
U.S. Small Business Administration

Copy to: Richard L. Revesz, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

⁷ *Id.* at 44,855.

⁸ *Id.* at 44,853.