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NATIONAL STONE, SAND & GRAVEL ASSOCIATION

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Mine Safety and Health Administration
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Suite 401
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Cc: Mine Safety and Health Administration Assistant Secretary Williamson

Re: RIN 1219–AB36
Docket No. MSHA–2023–0001

On July 13, 2023, The Mine Safety Health Administration (MSHA) published a proposed rule, "Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection." (Silica Standard). The Silica Standard provides for a public comment period of 45-days, which expires at midnight eastern time on August 28, 2023. The National Stone Sand & Gravel Association (NSSGA) requests an extension of the public comment period for an additional 60-days and proposes that the public comment period be extended until midnight eastern time on October 27, 2023. The reasons for the request are set forth below.

The NSSGA represents the nation's aggregates (crushed stone), sand and gravel and industrial sand companies. The NSSGA has over 450 member companies, and it represents over 9,000 member company operations with over 100,000 employees. Many NSSGA companies have significant experience managing occupational exposures to silica, including relevant experience on industrial hygiene sampling, medical surveillance, training, the use of respiratory protection and other issues relevant to the MSHA Silica Standard. NSSGA company health and safety personnel have worked with MSHA and NIOSH Mining for decades on projects to advance practical solutions to reduce silica exposures, e.g., helmet-CAM and EVADE technology, clothes cleaning booths and enclosed cab filtration and pressurization, to name just a few. NSSGA has been a member of the NIOSH Mine Safety Health Research Advisory Committee (MSHRAC) through member company and association staff for over a decade. NSSGA industrial sand company personnel co-authored the NIOSH and IMA-NA "Dust Control Handbook for Industrial Minerals Operations." NSSGA member companies have made their dust sampling and medical surveillance data available to researchers to further the science on silica health effects, which has led to the publication of several important data-supported articles. The industrial sand members of the NSSGA, through their prior organization (the National Industrial Sand Association), published a comprehensive occupational health program for silica in 1977, which included a medical surveillance program.

MSHA first published its intent to propose a Silica Standard in 2003. MSHA's Fall 2003 Regulatory Agenda included the title "Respirable Crystalline Silica Standard" and noted that Fall 2003

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was the first time that MSHA published regarding a new Silica Standard in the Unified Agenda. After 20 years, MSHA has finally published the long-anticipated Silica Standard: almost 500 pages of supporting materials in the middle of summer, with a 45-day public comment period that coincides with a time when it is difficult to assemble the myriad of people who need to review and assess the Silica Standard to provide input on the very wide range of issues presented by the materials MSHA has released. Furthermore, summer is the busy season for aggregate operators when construction is at its peak due to weather, making it even more difficult for the regulated community to dedicate time away from their jobs to understand and comment on the proposed silica rule.

This rule will affect the entire mining community, including the thousands of small operators. Data from MSHA's Mine Data Retrieval System (MDRS) shows there are over 3,100 stone, sand and gravel operators with 10 employees or fewer; these companies represent 73 percent of aggregate operators, and 88 percent or stone, sand and gravel operators have 20 employees or less. It is also worth noting that aggregate producers make up 73 percent of all mines, of all commodities, under MSHA's jurisdiction (aggregate producers with 20 or fewer employees make up 63 percent of MSHA's entire portfolio), meaning this rule will disproportionately affect this sector of the mining community. These small operators do not have industrial hygienists or other health and safety professionals on staff, and many do not have medical surveillance programs or conduct sampling for silica. These small operators will require additional time to understand the proposed rule, understand the effects it will have on their operations, and provide meaningful comments. Furthermore, these small operators need more time to weigh in on the proposed silica rule, as it will significantly affect their operations, but they will not be able to adequately do so with only 45 days, during their busiest time of the year.

The materials that MSHA released as part of the Silica Standard are, obviously, far broader and more voluminous than the Silica Standard itself. One set of materials published in support of the standard is a "Health Effects Summary," which the MSHA regulated community saw for the first time with the publication of the Silica Standard. The MSHA Health Effects Summary contains many disputed conclusions, e.g., "MSHA agrees with OSHA that exposure to respirable crystalline silica causes emphysema even in the absence of silicosis." The NSSGA intends to submit comments and materials in response to these controversial and disputed medical conclusions, among other items. Acting with diligence, NSSGA cannot adequately prepare responses to these medical conclusions by August 28th, given the breadth of the disputed medical conclusions and the substantial effort needed to assemble an adequate response.

The MSHA Silica Standard includes an extensive Preliminary Risk Analysis (PRA). Presumably, MSHA spent months if not years developing and drafting the PRA, which suggests by itself that a 45-day comment period to respond to the MSHA PRA is inadequate. The expertise to assess the PRA is not available in house at NSSGA, which means that the first step in responding to the MSHA Silica Standard PRA is to identify the proper expert(s). Acting diligently, it will take weeks to identify, qualify and engage the proper experts to evaluate the PRA, after which the expert(s) will need to analyze the MSHA PRA, then respond to it. It is impossible to do this within a 45-day comment period.

The NSSGA has similar issues with the other sections of the supporting materials MSHA published in support of the Silica Standard. The fact that we have not mentioned any other sections explicitly in this letter does not mean that we will not submit comments in connection with other sections, e.g., regulatory alternatives. The ability to assemble the proper experts to review and analyze the newly available materials, and for these experts to do the analysis and provide written comments, is impossible within the 45-day comment period.

MSHA outlined 43 questions for which it wants additional information. The NSSGA saw these 43 questions for the first time when the MSHA Silica Standard was published. We have done a preliminary assessment of the questions, and we believe that we will comment on more than half of the questions, e.g., the inclusion of a Table 1 in the MSHA Silica Standard similar to the Table 1 adopted by OSHA in its construction standard. Again, for the reasons discussed above, we cannot adequately submit comments in response to the questions in a 45-day public comment period expiring August 28.

The proposed rule itself is highly prescriptive, and NSSGA will work diligently to provide comments on how the proposed rule will work, or not, for member companies. The highly prescriptive nature of the rule (as opposed to it being in the form of a performance standard like Part 62) makes preparing comments more complicated and time consuming. The challenge is to assess the proposed rule from the perspective of a range of MSHA regulated NSSGA member companies: large multi-national producers, small family businesses, operations that quarry limestone, operations that mine and process industrial sand (>95% crystalline silica), dredge mining operations, hard rock mines, and so on. There is also a great variety in what the companies currently do regarding occupational exposure to crystalline silica and how that informs the comments that we will provide. For example, some companies do sampling and medical surveillance more extensively than set forth in the proposed Silica Standard, but the Standard poses problems for these companies. On the other hand, some companies do nothing now, and everything that MSHA proposes in the Standard will be new to them, so there may be different problems posed by the standard. And, as referenced above, the prescriptive nature of the Silica Standard increases the difficulty of providing comments to the Silica Standard within 45 days. A performance standard that says, for example, that the mine operators should sample each task with sufficient frequency to ensure that miners are not over exposed to silica warrants a form of response. A prescriptive standard that defines sampling as baseline, periodic, post-corrective action, or post-qualitative analysis, requires that mine operators perform baseline sampling on every miner, requires periodic sampling every three months for exposures between 25 and 50, and so on, requires far more extensive comments, covering a broader range of issues in the comments, with different company inputs that take far more time to prepare. The proposed sampling regime is new even to members with the most sophisticated programs. Many are familiar with performance-based standards, such as in the OSHA silica standard, but the new proposal will take additional time to analyze for companies across the whole spectrum of expertise.

NSSGA does not believe that the request for additional 60 days to submit comments will result in increased health risks to miners. As a matter of background, it is worth remembering that the US CDC in its Mortality and Morbidity Weekly Report (MMWR), lists the reduction in silicosis as one of the Ten Great Public Health Achievements – United States, 1900-1999 and states, "Work-related health problems, such as coal workers' pneumoconiosis (black lung), and silicosis -- common at the beginning of the century -- have come under better control" (CDC, 1999[1]). The decline in silicosis continued after 2000, again shown in the CDC's Morbidity and Mortality Weekly Report in 2015, stating, " "[t]he number of deaths from silicosis declined from 1,065 in 1968 to 165 in 2004," and that "[a] statistically significant decline in silicosis death rates was observed during 2001–2010" (CDC, 2015[2]). While the

[1] Center for Disease Control. (April 2, 1999). Ten Great Public Health Achievements -- United States, 1900-1999. *Morbidity and Mortality Weekly Report*. https://www.cdc.gov/mmwr/preview/mmwrhtml/00056796.htm

[2] Center for Disease Control. (February 13, 2015). Silicosis Mortality Trends and New Exposures to Respirable Crystalline Silica — United States, 2001–2010. *Morbidity and Mortality Weekly Report.* https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6405a1.htm

NSSGA believes in continuous improvement and the elimination of silicosis. We do not believe a 60-day extension presents an incremental risk to miners, as indicated by the information cited above. Additionally, as MSHA itself stated in the preamble to the proposed rule, about 6% of MNM silica samples between 2005-2019 were above the existing PEL of 100 µg/m3, and importantly, "Compared with the rates in 2005-2008, overexposure rates were substantially lower in 2009–2017, with a further drop in 2018–19." These findings show that over-exposures are rare and also continually declining, meaning an additional 60 days will not put miners at risk. Finally, we are aware through media reports on the problems in Central Appalachian coal, i.e., an increase in silicosis cases, an increase in PMF, and the presence of silicosis in younger workers. We cannot speak to coal, as we are not in coal, but we are familiar with silica and silicosis from managing exposures in our industries. If there are increases in the cases of silicosis and PMF, and if these cases are occurring in younger workers, then the problem is that existing standards are not being complied with – i.e., a younger worker who may have PMF developed it because of exposure to respirable silica at levels greater than 100 ug/m^3.

In conclusion, the current 45-days public comment period is insufficient for stakeholders to provide sufficient and meaningful comments due to the time of year it was released, the quantity and complexity of the supporting materials cited by MSHA, the number of technical questions (43) posed by MSHA in the proposed rule, and the sheer magnitude of the rule. Additionally, we submit that the requested extension will not result in additional health risks to miners.

For the reasons outlined in this letter, the NSSGA requests that MSHA extend the public comment period for the proposed Silica Standard by 60-days, to midnight October 27, 2023. We thank you in advance for your consideration of this request and are available to discuss this with MSHA if needed.

Sincerely,

Michael W. Johnson
President & CEO
National Stone, Sand & Gravel Association