IN THE MATTER OF:

LOWERING MINERS’ EXPOSURE TO RESPIRABLE CRYSTALLINE SILICA AND IMPROVING RESPIRATORY PROTECTION

Pages: 1 through 134
Place: Arlington, Virginia
Date: August 3, 2023
IN THE MATTER OF: )
) LOWERING MINERS’ EXPOSURE )
TO RESPIRABLE CRYSTALLINE )
SILICA AND IMPROVING )
RESPIRATORY PROTECTION )

Room 7W202
Mine Safety and Health
Administration Headquarters
201 12th Street South
Arlington, Virginia

Thursday,
August 3, 2023

The parties met remotely and in person, pursuant
to the notice, at 9:00 a.m.

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PROCEEDINGS

(9:00 a.m.)

MS. NOE: Good morning. It is 9:00. My name is Aromie Noe. I’d like to first introduce our Assistant Secretary, Chris Williamson. So, Chris, would you like to?

MR. WILLIAMSON: Okay. Well, I’m going to keep this brief. I mean, some of you I've met. Some of you have heard me speak before. I can be a little long-winded, but this is going to be a bit brief. Really just wanted to, you know, welcome everybody to MSHA Headquarters in Arlington, especially those of you that may have not been here before.

As you know, this is the first public hearing for our proposed silica rule that was in the Federal Register on July 13, and really just wanted to welcome everybody here and say that I appreciate those of you who are participating that are here in person and online.

I don't know how many participants we have online, but, you know, that’s part of the benefit of being able to have a hybrid system, right? You can have more participation, and that’s what this process is all about. So I just really wanted to say welcome. Appreciate everyone’s interest in the proposed rule,
and, you know, hopefully, we have a good day.

I know we have a number of people signed up
to speak, and look forward to hearing the comments and
testimony. And, again, just really appreciate
everyone’s interest and participation in the process.
So that’s it. Thank you all.

MS. NOE: Thank you.

So good morning again. My name is Aromie
Noe. I am the Director of Office of Standards,
Regulations, and Variances in the Mine Safety and
Health Administration for the U.S. Department of
Labor. I will be the moderator of this public
hearing.

As you heard, this is the first of three
public hearings that MSHA is holding to gather
testimony and written comments and other documentary
evidence on its proposed rule entitled Lowering
Miners’ Exposure to Respirable Crystalline Silica and
Improving Respiratory Protection.

And as you heard from Mr. Christopher
Williamson, we welcome all of you to this hearing.
And let me introduce the other members of the MSHA
panel here: Ms. Patricia W. Silvey, Deputy Assistant
Secretary for Operations; Tim Watkins, Deputy
Administrator for Mine Safety and Health Enforcement;
and Matthew Ward, Attorney Advisor in the Office of Solicitor; also, Jennifer Ledig, also Attorney Advisor in the Office of the Solicitor; and Bingxin Yu, Office of Standards, Regulations, and Variances, Economic Analysis Division Chief.

Congress declared in the Federal Mine Safety and Health Act of 1977 that “the first priority and concern of all in the coal and other mining industry must be the health and safety of its most precious resource, the miner.” In adhering to this guiding principle, MSHA’s mission is to prevent death, illness, and injury from mining and promote safe and healthful workplaces for miners.

On June 30th, the Agency shared with the public its proposal to Lower Miners’ Exposure to Respirable Crystalline Silica and Improve Respiratory Protection for all miners in both the coal and metal/nonmetal mines.

The July 13th issue of the Federal Register contains MSHA’s Notice of Proposed Rulemaking. The proposed rule contains the review of health literatures and conclusion of health effects, preliminary risk analysis, feasibility analysis, preliminary regulatory impact analysis and regulatory alternatives, and initial regulatory flexibility.
As explained in the proposal, crystalline silica, most commonly known as quartz, is found in many types of rock, including granite, sandstone, limestone, and shale. As a result, mining operations often expose miners to respirable crystalline silica. Small particles of silica dust can be inhaled and reach the alveolar regions of the lungs, where they can accumulate and cause disease. Exposure to silica dust can cause miners to suffer from chronic, irreversible, and potentially disabling or fatal diseases, including lung diseases like silicosis, progressive massive fibrosis, emphysema, and lung cancer, as well as kidney disease.

To better protect the health and safety of the nation’s miners, MSHA determined the Agency’s silica standard, including respiratory protection requirements, must be improved for miners. In the preamble, MSHA requests comments on 43 questions covering various aspects of the proposal, for example, health effects, preliminary risk analysis, technological feasibility, preliminary regulatory impact analysis, and initial regulatory flexibility analysis.

We attempted to be descriptive in the
questions, and we ask that in your responses, please be specific and provide your rationale and supporting information and data.

Now I’d like to provide a high-level overview of MSHA’s proposal. MSHA proposes to set the Permissible Exposure Limit, PEL, of respirable crystalline silica at 50 micrograms per cubic meter of air for a full-shift exposure, calculated as an eight-hour time-weighted average for all miners, coal and metal/nonmetal.

The proposed PEL is consistent with the National Institute for Occupational Safety and Health, NIOSH’s, recommended exposure limit, and also with the limit adopted by the Occupational Safety and Health Administration for general industry, maritime, and construction industry in 2016.

The proposal would also establish an action level of 25 micrograms per cubic meter of air for a full-shift exposure, calculated as an eight-hour time-weighted average. To meet the proposed PEL, mine operators would have to implement engineering controls, followed by administrative controls in the cases where supplemental protection is needed.

Under the proposal, use of respirators would be required on a temporary, non-routine basis. MSHA’s
proposal would require exposure monitoring, sampling and qualitative evaluations, and corrective actions when miners’ exposures exceed the proposed PEL.

Mine operators would be required to perform a baseline sampling for each miner who is or may reasonably be expected to be exposed to respirable crystalline silica. If the baseline sampling result and another sampling result or objective data indicate that miners’ exposures are below the proposed action level, then no additional sampling would be required.

If miners’ exposures are at or above the proposed action level but at or below the proposed PEL, operators would be required to conduct periodic sampling. Operators will stop sampling when two consecutive sampling results show that miner exposures are below the proposed action level.

Mine operators would be required to immediately take corrective action when a miner’s exposure is above the proposed PEL. Once corrective actions have been taken, operators would be required to conduct sampling to determine if the corrective action is effective and take additional corrective action until sampling indicates miners’ exposures are at or below the proposed PEL.

Under the proposal, mine operators would
also be required to evaluate every six months any changes in production, processes, engineering or administrative controls, or other factors that may result in new or increased silica exposure and to make a record of the evaluation.

As mentioned earlier, operators would be required to use respiratory protection as a temporary measure. Miners must use respirators when working in concentrations of silica above the proposed PEL, while controls are being developed and implemented, or where it is necessary by the nature of the work involved.

MSHA proposes to incorporate by reference a voluntary consensus standard, ASTM F3387-19, entitled “Standard Practice for Respiratory Protection.” Under the proposal, operators of metal and nonmetal mines would be required to provide periodic medical examinations for miners, including chest X-rays, spirometry, symptom assessment, and occupational history, at no cost to the miner.

This concludes the overview of the proposal, and MSHA invites comments on any aspect of the proposed rule and related documents either at this hearing, at future hearings, or at regulations.gov or MSHA.gov website. The public comment period is scheduled to end at midnight Eastern Time on Monday,

As mentioned earlier, this is the first of three public hearings. The second hearing will be held on Thursday, August 10th, in Beckley, West Virginia, and the third hearing will be held on Monday, August 21st, in Denver, Colorado. These public hearings are to provide to you, stakeholders and interested parties, an opportunity to present oral statements, written comments, and other information on the proposed rule.

So today’s hearing will be conducted in an informal manner, and we are here to take your testimony. We will take all your testimony and information into account as we finalize the silica proposal.

Speakers and other attendees may present information for the record. MSHA will accept comments and other information for the record from any interested party. If you have not already done so, please sign the attendance sheet at the back of the room so that we may have an accurate record of your attendance.

MSHA will make available a verbatim transcript of this public hearing in approximately 10 days. The transcript will be posted at the MSHA

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website, MSHA.gov, and at regulations.gov. If you have a copy of your testimony or presentation, please give it to the court reporter so it can be appended to the hearing transcript.

Now logistical information. Once all the pre-registered in-person and online speakers have spoken, we will open the floor to the audience to see if any of you wish to speak. If you are here in person, please raise your hand. Once you are called, please come to the table in the front.

And those of you who are participating online, please use the hand-raising icon located at the bottom of your screen to indicate your interest in speaking. For those online presenters, when it is your time to speak, you may want to unmute yourself to present your testimony.

Also, those of you who are participating online, please use the chat function to inform us of any technical difficulties you may be experiencing. You can send a chat message to Antwon Williams, whose name can be found in the participant list on the right hand of your screen.

And other information is here. Exits are here and there that most of you came by. There’s exits there, and also bathrooms outside on each side.
of the elevator. We have a bathroom code that is available on our table, so please use those numbers. And with that, I think we can start. And all speakers, please spell your first and last names when you start your presentation so the court reporter can have an accurate record. Thank you. So we will start now. Our first speaker -- by the way, our speaker list, those of you who registered in advance, we have your name on it, so that list is available in the back. And, also, I see on there three people who signed up this morning, but we will also open the floor later after all the speakers have spoken. The first speaker is Prianka Sharma. Please come to the table.

MS. SHARMA: Good morning.

MS. NOE: Good morning.

MS. SHARMA: My name is Prianka Sharma, P-R-I-A-N-K-A, S-H-A-R-M-A, and I am the Vice President and Counsel for Regulatory Affairs with the American Road and Transportation Builders Association. I’m joined virtually today by my colleague, Brad, B-R-A-D, Sant, S-A-N-T, who is the Senior Vice President for Safety and Education, and we’re here representing ARTBA’s approximately 8,000 members.
We appreciate MSHA’s proposal as our co-
members are committed to jobsite health and safety of
the men and women who build and repair our nation’s
transportation infrastructure network. Safety has and
continues to be paramount.

We represent all components of the
transportation construction industry, including
aggregate companies engaged in hard-rock mining
activities, many of whom are small businesses. So we
represent both stationary and portable mines.
Portable mine licenses travel with the equipment, and
these businesses locally source their materials as
close to the jobsite as possible, so this rule as
written is especially untenable for these businesses.

In reviewing the proposal, we’d first like
to formally request that MSHA extend the public
comment period for the rulemaking. We’re working
tirelessly to review all of the materials presented
and offer thorough and data-driven comments, but doing
so on a short deadline has created an impossible
scenario for us and our members.

We hope to provide MSHA with detailed
information that will be useful in producing a final
rule that is both feasible to industry and provides
maximum safety. As we work to prepare our formal
comments, we have the following initial remarks.

First, to the extent possible, MSHA should explore providing a Table 1 similar to the OSHA standard. This will streamline compliance by allowing companies to follow standardized protocols that will protect workers without the need for monitoring, air sampling, and other time-consuming mandates that may not be necessary and take away from the goal of protecting workers. It will also help recognize job classifications that have very low exposure.

Second, we ask that MSHA explore and recognize the hierarchy of exposure controls, including after-engineering controls, administrative controls, PPE, and job rotation, as viable options. This is especially important for hard-rock mining, where engineering controls alone may not be enough.

We also ask that MSHA consider a longer compliance period, which is especially beneficial for small businesses and those that need to employ additional engineering controls. Right now, the proposal includes four types of sampling, and ARTBA is still working with our members to determine what this would mean on the compliance side.

But we would ask that MSHA propose alternatives that are less onerous, such as language
included in the OSHA rule. Right now, it seems as though some businesses will be required to have four separate sampling schedules, and, again, for a small business, this is especially unworkable.

We look forward to providing more detailed information in our written comments, and thank you for the opportunity to present today.

MS. NOE: Thank you.

MS. SILVEY: Excuse me. Thank you for your comments, but just for clarification, and I appreciate some of the -- can’t you hear me? I’ll use my loud voice. Most people don’t even want to hear me.

MR. WARD: The back, they can’t hear you in the back. That’s why they can’t hear you speaking.

MS. SILVEY: No, I understand.

MR. WARD: No, they can’t hear you.

MS. SILVEY: Yeah. I said I understand.

MR. WARD: Okay.

MS. SILVEY: Yeah. I'm interested in the last statement you made. Do you mind repeating that, the four types of sampling? I mean dictating four types of sampling schedule?

MS. SHARMA: The sampling that’s being required now, it’s possible that those would be on different schedules, especially for the example that I
gave you about the portable mines where they’re going from site to site.

MS. SILVEY: Mm-hmm.

MS. SHARMA: And it’ll reset the sampling for each of those sites, as opposed to being a cumulative for those employees. And so what we’re asking is if you can explore an alternative at least in that particular business case that it would be cumulative for the employee rather than resetting at each individual site, because that isn’t actually representative of the exposure that they’re getting.

MS. SILVEY: Okay. So you weren’t really -- the statement that you made, you weren’t really saying that the proposed rule would -- I wrote down, “would require four sets of sampling.” That’s not really what you’re saying?

MS. SHARMA: It’s possible, and that’s something that we’re exploring with our members.

MS. SILVEY: Okay. Well, see, you know, that’s why. You were right to make the comments, but in regulations, words matter.

MS. SHARMA: Right.

MS. SILVEY: And I wanted to make sure exactly what you did say.

MS. SHARMA: I think that’s something that
MSHA should clarify in a final rule as to what the schedules are going to be because we have members who are of the understanding that they’re going to have to be on four separate sampling schedules right now, so it’s not clear, the text that is being proposed.

MS. SILVEY: Okay. I don't want to take up any more time than that, and so we will look at that because we -- just to be clear, can everybody in the room hear me? Can everybody in the room hear me now?

Okay. Four separate sampling schedules --

MS. SHARMA: Correct.

MS. SILVEY: -- that’s what you are concerned about.

MS. SHARMA: Correct.

MS. SILVEY: But, when Ms. Noe gave the overview, so that at least people are clear about what the proposal would require, would require a baseline sample. So, you know, that’s one sample, one and done, so to speak. And then periodic sampling if you fall in the category, if an operator falls in the category, between the action level but below the PEL, periodic sampling, until the operator gets under the action level, two confirmatory -- with two additional confirmatory samples.

So we want to -- at least we want to be
clear that people are of the same understanding about
the proposed rule. Then the operator could, in that
case, under the 25, the action level, the proposed
action level, with confirmatory samples, sampling
could cease.

And this is the way it is, really, under the
existing rule, but if there are changes in production
processes and things like that, and you all understand
that, and the operator reasonably believes that the
exposure would change, that’s when the operator would
have to reevaluate the exposure. We have evaluation
sampling and post-evaluation sampling.

MS. SHARMA: Right.

MS. SILVEY: So I was just trying to -- I
want everybody to understand the proposal within that
context. Okay. Thank you.

MS. SHARMA: Yeah. And I would just
appreciate if there could be clarifying language
inserted in the final rule so that our members knew
that that was clear. Thank you.

MS. SILVEY: Thank you.

MS. NOE: Our next speaker is Michael
Peelish.

MR. PEELISH: Thank you for the opportunity
to speak today. My name is Michael Peelish, M-I-C-H-
A-E-L, P as in Paul, E-E-L-I-S-H. I sit before you as someone who grew up in a small town located north of Sophia, West Virginia, named Beckley. I grew up the son of a mother and father who grew up in coal camps in Osage, West Virginia, and Raleigh, West Virginia.

I grew up the nephew of four uncles who contracted black lung between the 1940s and 1970s that hastened their deaths. I sit before you as a mining engineer who worked in the coal mines. I sit before you as someone who has implemented safety and health programs on four continents at metal/non-metal, coal, and OSHA facilities for almost two decades as head of safety.

As I say, I sit before you as someone who conducted over 70 exposure assessments at construction sites and general industry sites, collecting over 2,000 dust samples under the OSHA standard. I sit before you as someone who continues to conduct exposure samples under the current MSHA standard for metal/non-metal mines and sand plants.

I sit before you to help instruct MSHA to do the right thing so you don't have to do it over. I have eight points that I’d like to tell you.

The first time the idea of a silica rule appeared in the MSHA regulatory agenda was over 20
years ago, and MSHA wants to provide industry 45 days
to comment and six months to comply. This does not
work in your favor, and the courts will explain that
to you if you don't figure it out. I respect the
Assistant Secretary and all the Assistant Secretaries
before him that want to put their mark on the
industry, but rushing this rule through will not gain
that achievement. Do it right. Don't do it over.

Point number two, I understand that MSHA is
trying to lower the PEL, but I do not agree with how
MSHA is trying to achieve this objective. For
instance, OSHA has a 50 microgram PEL that is measured
over an eight-hour time-weighted average.

When I sample, I sample the typical worst
eight hours of any shift. MSHA relies on OSHA’s
health assessment but does not accept its PEL with an
eight-hour TWA. MSHA does not explain that point in
its preamble because the construction sites and
general industry facilities that I continue to sample
all work more than eight hours.

Point three, OSHA provides for the use of
respirators for compliance purposes. In fact, six out
of the 18 tasks contained in OSHA’s Table 1 provide
for the use of respirators during an eight-hour shift,
the tool is used and some after four hours of use. If it’s good for OSHA, then why not for MSHA?

From my way of thinking, that is difficult to justify. I know that MSHA will argue that the Mine Act does not allow respirators -- does not allow MSHA to use respirators in the mining industry. Well, that is your thinking, but you have the discretion to change that thinking and you chose not to do so in this proposed rule, and my question is, why?

I agree that engineering controls should be the first line of defense, but while production has gone up and the standards continue to be reduced, MSHA’s logic does not make sense any longer.

For instance, when you observe a bagging station at a sand plant where a miner will bag 2,000-plus bags in a day, the station has a dust collection system, but it cannot capture all the dust particles because of physics. The rooster-tails that happen each time the bag comes off the spout are not subject to dust collection. That causes overexposures.

Another example, MSHA mentions that respirators can be used for non-routine tasks. By my observations during sampling, all maintenance is non-routine, and all maintenance is not subject to engineering controls or administrative controls, or
work would never get done.

Has MSHA calculated the additional miners needed to meet the administrative control requirements? Some of my clients may only be able to work in an area for several hours. Then what do they do? Please explain how fixing equipment or areas in a plant are subject to engineering controls. You cannot because it’s not possible.

When you’re on a belt or on a chute doing engineering controls, there’s not an engineering device that you can install at that point. Yet, that person may be overexposed, and the data will show maintenance people are highly overexposed.

The respiratory devices of today are far better and different than when MSHA promulgated its regulations. MSHA’s obstinance in not allowing respirators for compliance purposes on a permanent basis, not a temporary basis, must end.

MSHA’s distrust of the industry must end. For crying out loud, MSHA never proved abnormal white center cases in the 1990s, so it needs to get over it. Here’s some practical advice from someone who’s been around almost as long as Pat Silvey: If there’s any provision in this proposed standard that will delay MSHA’s quick path to implementation, it is this
provision of not allowing respirators for compliance
purposes.

Point number four, operator rotation is
acceptable under OSHA per the General Industry
Frequently Asked Questions Number 30 and under other
nations’ laws, such as in Canada, particularly the
province of Alberta and British Columbia. And, in
fact, so are respirators accepted as engineering
controls.

Point five, semi-annual evaluation. OSHA’s
is annually and MSHA’s every six months. This is not
a risk control or ventilation plan in each situation
which require six-month reviews. If production or
process is changed, then evaluation is warranted
during that six-month period.

Point six, if MSHA decides to maintain the
action level, which I'm not in agreement with, then
sampling every three months is not necessary. OSHA
did maintain an action level, but they provide
sampling every six months.

MSHA has miscalculated the number of samples
over the action level that will require sampling every
three months. You’re only basing it on the MSHA
samples. My clients, my humble clients, they take far
more samples, and the action level has exceeded
anywhere from 47 to 90 percent more sampling required
to be done.

Table 8-3 at page 44926 is simply not
accurate as to sand and gravel, crushed limestone, and
stone because operators are taking far more samples
than MSHA and samples above the action level -- or
significantly more samples above that action level.

Further, considering OSHA’s acceptance of
sampling every six months, MSHA has not justified in
its preamble the need for this tight sampling
requirement. If you look at the calendar, operators
may have to rent pumps, then take samples, then return
the pumps, then send the cassettes to the lab, which
may take 14 days or more, unless you want to pay
extra, for those samples to be analyzed.

Based on MSHA’s assessment of how many
samples will need to be analyzed, the labs will not be
able to handle the increase in sampling demand, and
MSHA’s good-faith conclusion that labs will step up at
page 44923 is simply not reasonable.

Also, MSHA has miscalculated the number of
samples that would need to be analyzed just based on,
again, my humble client base, much less what the
entire industry would see. Each sampling cycle could
consume almost a month.

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Also, has MSHA calculated the amount of time and mine resources consumed by this effort since proper sampling protocols require a person taking the sample to observe the work habits of the employees being sampled? They just can’t put a pump on and walk away. That’s not good protocol. So now you’re consuming more time of an individual at a mine, and I don’t see that calculation in MSHA’s preamble.

Point number seven, MSHA mentions a closed cleaning boot as an effective administrative control. However, it should go further and codify its use in this standard. Operators at MSHA must not spend wasted time and resources filing petitions for modification for something that NIOSH and industry developed years ago. This is a simple fix by simply codifying the current petitions for modification. From my understanding, NIOSH is unnecessarily pulled into these discussions each time a petition for modification is requested, and this process is currently a waste of time and money.

Point number eight -- also to point seven, the same could be said for PAPRs, Purified Air Powered Respirators, in the coal industry under the issue of intrinsically safe. Those petitions are literally boilerplate now, and so MSHA should codify that. It’s
not time well spent.

Point number eight, MSHA states at page 44921 under sampling methods the type of particle size selective samplers that are approved for use. Under the same section of the preamble, they discuss the use of cyclones.

I’m going to submit an example of what’s called a “parallel particle impactor” that meets the ISO 7708:1995 standard. So there seems to be a disconnect between the use of the PPI cassette, which is essentially a contained cyclone, and the preamble.

The OSHA final silica rule includes the impactor based PPIs on page 16439 as an acceptable sampling device. I use these sampling cassettes exclusively when sampling under OSHA, and they’re easier to use, they’re less obtrusive to the worker wearing it, and they do not lend themselves to upset conditions, such as tipping of the brick pot, allowing oversized particles to be deposited. My understanding is that the analytical labs prefer the PPIs because of the lack of oversized particles.

I will submit more full written comments according to the timeline that is set, and I would like to submit this as an example of PPI filter.

MS. NOE: Okay.
MR. PEELISH: All right. Thank you very much.

MS. SILVEY: I have.

MR. PEELISH: I figured you would.

MS. SILVEY: Since you figured I would, I don't want to disappoint. The first question, not really a question, but asking you if you would do something. And, you know, I'm sure you all do that, some of you all, in terms of sampling of either your members or your clients. You said you did a lot of sampling, much more than we require.

And what I would like to ask you is if you would submit for the record some of your sampling data not by name of operator but in the aggregate so we could see some of the data and some of the exposures that you are having at your sites?

MR. PEELISH: I've had that discussion, Pat, and what you said there, these clients would submit it without their names being on it, and I think that would be the only way they would submit it.

MS. SILVEY: Okay. Without the -- that's fine.

MR. PEELISH: And these are the samples that they do for evaluation purposes --

MS. SILVEY: Right.
MR. PEELISH: -- for, you know, implementing controls and then sample, implement controls and sample. Those are not MSHA samples. And so the numbers that I see in Table 8 are woefully low relative to what I'm seeing in the field.

And I do a lot of sampling. I have an exposure assessment this month, in fact, at a sand plant. So, you know, being an engineer, I go down and I make those assessments, I give them ideas, and then I go back and I sample again to see if the ideas that we put in effect actually work.

MS. SILVEY: Okay. So, for everybody’s information, that is the purpose of this public rulemaking process, so that our rulemaking can be informed by the information that we gather during the process. So, if you would submit that data to us at some point before and the record closes, we would appreciate that. Anybody else has anything? Thank you.

MR. PEELISH: Thank you.

MS. SILVEY: Bye.

MR. PEELISH: Thank you.

MS. NOE: Thank you.

Our next speaker is DJ Schmutz. DJ Schmutz?

(No response.)
MALE VOICE: We’re having trouble hearing in the back.

MS. NOE: Sorry.

MALE VOICE: Can you turn the volume up?

MS. NOE: Next speaker is DJ Schmutz.

(No response.)

MS. NOE: I’m calling one more time. It’s initials D as in David, J as in John, last name is Schmutz, S-C-H-M-U-T-Z.

(No response.)

MS. NOE: Okay. Then we’ll go to our next speaker, who is Paul Krivokuca. Please forgive me if I didn’t pronounce your last name correctly.

MR. KRIVOKUCA: Of course. So Paul Krivokuca, P-A-U-L, K-R-I-V-O-K-U-C-A. So thank you very much for the opportunity to speak today. Thank you, Assistant Secretary Williamson, and all of your team here and in the field who have successfully worked to present the proposed silica rule to the mining community.

And thanks also for allowing me to speak on behalf of the National Mining Association and its members. The National Mining Association is the official voice of U.S. mining. Our membership includes more than 275 companies and organizations.
involved in every aspect of mining, from producers and equipment manufacturers to service providers. We represent all facets of the domestic mining industry and hundreds of thousands of American workers.

I, like, Michael, was interested to hear. I'm a fourth-generation coal miner with nearly five decades of mining experience. My grandfathers immigrated from Yugoslavia at the early 1900s. After arriving in the United States, they were placed in coal camps in western Pennsylvania, where health and safety was not a priority. One of my grandfathers was disabled from a roof fall at age 50 and never worked again. My father was also a miner and later an MSHA inspector. We support our family and his parents where my grandfather had black lung. I knew all too well growing up the consequences of lung disease.

I'm happy to say, though, that I've seen significant improvement since those days, making today's U.S. mining the safest across the globe. Collaborative efforts like this MSHA hearing where stakeholders can provide their comments and support our health and safety mining achievements.

We at the NMA are not surprised with a 50 microgram PEL and do not oppose the PEL. We are concerned that MSHA did not use the hierarchy of
controls like OSHA does. MSHA’s silica rule stops short of key areas that aren’t allowed. Unlike OSHA, MSHA does not allow the use of respirators and PAPRs for compliance.

Allowing the mining community to use all the tools in a toolbox is the best way to protect our miners. Administrative controls like job-sharing and shift rotations are practices currently used on a regular basis in metal/non-metal mining operations and should be considered for coal. Why is this administrative control strictly prohibited only in mining?

I do believe that the concern is around integrity of the sampling. I believe that MSHA does a great job of making sure the mining community know their miner rights and know that MSHA will respond to all concerns regarding miner safety and health.

The number of mines under the health surveillance today is 931. The new rule will add an additional 11,000 mines into the surveillance program. That will stretch resources to be effective, which is concerning to our membership.

With a lack of uniformity, a compliance factor of concern is the time-weighted average of an eight-hour shift is not consistent with a mining
community that work nine-, 10-, and sometimes 12-hour
shifts.

Occupational versus personal standards are
not consistent with keeping the sample with a person
and protecting their health. From sampling, nowhere
in the proposed silica rule are contractor
responsibilities addressed for sampling requirements,
compliance requirements. Clarity is needed there.

Sampler flow rates for gravimetric samplers
used in underground coal differ, and overall, sampling
instructions need clarification. The development of a
table of silica like Table 1 in the OSHA standard will
provide the mining community with clarity.

MSHA should provide a flow-chart showing the
actions for timing of sampling and compliance from
when the rule goes out. The flow-chart should include
when a citation would be issued. We recommend that a
working group of mining community members affected by
the silica rule be established, like the action taken
after the respirable coal dust when it became active.

Feedback from coal dust participants felt
that the guidance document with questions and answers
they developed was very helpful during the initial
stages when applying the coal dust rule.

Procuring materials for services in an
already tight market, more time is required to further research to each mine’s needs and determine if timeline expectations in the rule will be impacted. Concerning is the operators’ ability to obtain a petition for modification for highly effective Powered-Air-Purifying Respirators. It can take up to several months to receive approvals for use in some underground coal mines.

What our NMA members want is clarity and consistency in the standard. Providing clear direction and expectations will help both MSHA and the mining community achieve a successful outcome.

One of the most significant items not in the rule that was in the coal dust rule was the addition of personal dust monitoring devices with real-time analysis. We must all work together encouraging stakeholders to adopt new technology from the domestic or international mining community to better protect our most precious resource, our miners.

In summary, the issues raised in this proposed rule are very complex and require sufficient time to thoroughly analyze the proposal. The current comment period is simply insufficient to provide meaningful comment to better inform MSHA’s regulatory process.
We appreciate your consideration of our extension and request and ask that MSHA please provide a response as soon as possible. I want to thank you for your time, and I'm here to take any questions.

MS. SILVEY: Thank you. A couple of -- one question and one ask for clarification. You noted that this proposed rule would add 11,000 operations to the health surveillance. I’m assuming that you mean from the medical surveillance provision?

MR. KRIVOKUCA: Medical surveillance, yes, sorry.

MS. SILVEY: Okay. I thought so, but I wrote down exactly what you said.

MR. KRIVOKUCA: That is correct. That is correct.

MS. SILVEY: Okay. And the second thing -- and this is really for every commenter, please -- we have gotten a number of recommendations, suggestions that we incorporate in our proposal and thus to the final rule a Table 1 similar to what OSHA did in its final rule. So what we would like to ask all of you who are commenting and if you are not commenting today, but to include in any information you submit for the record, if you would include specific rationale for the Table 1?
Because, so far, what I've seen even in the Request For Information that we issued, I've seen conclusionary statements about we should have a Table 1, and I understand that, but could you give us the basis for that and your specific rationale and suggestions for how a Table 1 would work, specific suggestions? So we ask you if you will do that. And we look forward to your additional comments.

MR. KRIVOKUCA: We’ll provide that. Thank you.

MS. SILVEY: Okay. Thank you.

MS. NOE: Thank you.

Our next speaker is Thomas Harman.

MR. HARMAN: Robin and I are both speaking. Go ahead.

MS. MARKUSSEN: We both signed up.

MS. SILVEY: You’re fine. You’re fine.

MS. NOE: So you are Robin Markussen?

MS. MARKUSSEN: Right.

MS. NOE: Okay. Thank you.

MS. MARKUSSEN: I think I’m next. Good morning.

MS. NOE: Good morning.

MS. MARKUSSEN: I'm Robin Markussen, R-O-B-I-N--
MALE VOICE: We can’t hear.


MS. MARKUSSEN: Okay. Good morning. I’ve got my prepared, like everyone else, remarks, especially because I talk too much on things I want to talk about, so it’s best to control me. But I will go a little off script on the Table 1 since you brought it up, Pat.

So, hi, I'm Robin Markussen, and today I’m speaking on behalf of the Portland Cement Association, which I am the Chair of their Occupational Health and Safety Committee. I am also the Director of Occupational Health and Systems at Heidelberg Materials. I'm a Board-certified Industrial Hygienist and a Board-certified Safety Professional.

So I’d first like to thank all of you for the opportunity to share with the Administration our industry’s open comments, and we’d also like to congratulate you all on the development of this anticipated and important proposed rule. I think we all can agree on the importance of purposefully protecting our mining workforces from the hazards of
respirable silica.

The PCA and its members look forward to participating via written comment on the proposed rule, but directly, the industry felt that certain concerns are best shared early through the hearing process, so we’re here today.

We understand MSHA has developed the proposed rule, as Assistant Secretary Chris Williamson recently stated at the last stakeholders meeting, in consideration of OSHA’s promulgated respirable silica rules and also existing MSHA standards.

When we were reviewing the proposed rule, PCA also considers existing standards mentioned, as well as Industrial Hygiene, or IH, best practices and guidelines, and realistic feasibility of workplace practices within the industry.

So today I’d like to address four main subjects in brief if I may. These are timeline of commenting and implementation issues, quantitative exposure monitoring, medical surveillance, and PPE.

Under timeline issues, first, the comment period. While OSHA’s respirable silica rules were not implemented for the mining community, PCA members must comply with their requirements because cement materials are subject to general industry standards.
When OSHA first proposed its respirable silica rule in 2013, the Administration allowed for five months of comment period, plus three weeks of public hearings. This was followed by a 47-day extension. When MSHA proposed its respirable coal dust rule, the initial comment period was October 19, 2010, through February 28, 2011, and then MSHA gave two extensions, and the comments were filed May 31, 2011.

PCA recognized that the comments from both general industry silica rule and coal dust rule lend themselves to addressing some comments during MSHA’s rulemaking process for this proposal. PCA and its members also believe important differences exist from the OSHA rule in particular to merit careful comparison and review.

Additionally, there are certain companies in the mining industry not familiar with the OSHA rules and will therefore have a steep learning and review period.

PCA and its members believe that the 45-day comment period, due approximately in three weeks, is insufficient for the industry to gather that review data, compile results, and then communicate comments back to MSHA. PCA requests that the review and
comment period be extended 60 days at least to align more with past rulemaking review periods.

Under full compliance requirements timing, when OSHA issued its respirable silica standards, the agency allowed for an extended and phased-in two-year period for general compliance with all provisions except medical surveillance, which was based on exposure level. OSHA gave more time for industry to comply with the medical surveillance provision.

Another example of a regulation phased into compliance is the enacted beryllium standard, which allowed a year-and-a-half implementation and an additional two years for implementing engineering controls.

Even MSHA’s respirable coal mine dust rule allowed for a phased approach and an 18-month implementation period for a revised monitoring and sampling program, with the reduced standard effective 24 months after the effective date.

MSHA has proposed currently 30 days to complete baseline studies. But when you go 180 plus 120 -- you get 300, I’m sorry, 300 days, to complete baseline sampling in the silica proposal. This may not be feasible for many operators when you consider how many operators there are, how many sites each
operator actively works -- for instance, our company Heidelberg Material, operates over 300 sites, and as the proposal currently stands, we must complete baseline monitoring, two different days, 300 sites, within that many days.

We also rent equipment, as many other companies do, and will have to compete for equipment, media, professional resources, and timely analysis results from laboratories. From experience, we saw such equipment challenges and analysis delays after the final OSHA silica standard was implemented. PCA and its members recommend that MSHA consider similar phased-in timelines for both the OSHA silica rule and the OSHA coal dust rule for completing sampling.

Under quantitative exposure monitoring for the baseline sampling, according to the proposed rule, baseline sampling is required to be completed for any miner who is reasonably expected to be exposed to respirable silica at any level.

Language in OSHA’s respirable silica rule requires employers to assess the exposure of each employee who may reasonably be expected to be exposed to respirable silica at or above the action level.

This substantial language difference is important in that accepted IH practices recognize
creating Similar Exposure Groups, or SEGs, and that specify individuals who may be at risk for exposure and then those who may not be at risk so we can have a risk-based evaluation. It calls for exposure monitoring that focuses on health risks for an individual.

For reference, the AIHA strategy for assessing and managing occupational exposures outlines these best practices. Some SEGs are included in the OSHA’s 1 table. For the construction sector of silica rule, you know, for an example, these, in our industry, we look at things like for aggregate haul truck drivers in the cab, in the cabin controlled space, and Table 1 would identify exactly what the engineering controls are or for controlled room an operator.

Those types of positions are a SEG. They have similar exposure. You have similar opportunities for engineering controls, which those can be audited rather than simply constantly monitoring. As long as the engineering controls are in place and functioning, then that would be the line. That’s an example from Table 1 on a SEG.

I’ll just continue. Some SEGs are included in Table 1 for the construction sector silica rule
when prescriptive engineering controls are in place or
data proven by NIOSH and OSHA to be consistently
effective at protecting the worker below the action
level. So OSHA, with NIOSH, did many studies to
identify those SEGs and those engineering controls,
and that’s where the Table 1 background would. So
that’s a lot of research and information to be put in
there to not use.

In addition, miners may work -- I think I
jumped too fast, sorry -- at multiple job positions or
tasks throughout a shift or a workweek. So you might
have, like, an operator for a crusher or, in an area,
a laborer and then he might be an equipment work
operator for a loader, for instance. And they may do
different jobs within a day, and that might not always
be their same job, so we’re still looking at what is
the exposure group and when is the exposure to the
task not just for the day but for the job position.

Along these lines, PCA would recommend the
consideration of including a sub-paragraph in 60.12 or
other appropriate location that allows similar
exposure groups to be used when conducting baseline
sampling, and PCA will draft language for
consideration and submit during the public comment
period.
And second, inserting guidance into sub-
paragraph 60.11 or an appropriate location that is
similar to OSHA’s Table 1 to assist mine operators and
MSHA field inspectors in choosing feasible and
consistent engineering controls, understanding that
not all job positions can fit into Table 1, which they
don't in the construction rule.

Okay. Moving to medical surveillance, in
terms of risk-based programs, again, unlike that which
is included in OSHA’s respirable silica standard, the
beryllium standard, and other similar standards that
include medical surveillance, such as the one
established for lead, MSHA’s proposed rule does not
tie in medical surveillance to exposure risk.

All these listed OSHA rules initiate medical
surveillance when the worker is or is reasonably
expected to be exposed at or above the action level
for more than 30 days a year. This is consistent with
sound science and is significantly more manageable
than requiring medical evaluations for all miners
regardless of identified exposure risk levels.

PCA requests that consideration be given to
aligning medical surveillance programs with a risk-
based approach. PCA will elaborate on this issue in
comments.
And finally, PPE. NIOSH has long been the
gold standard for identification of and
recommendations for respiratory protection. MSHA
references NIOSH’s documents in the Agency’s inspector
guidance, agency regulations, and then proposed rules.

The current edition of the NIOSH Pocket
Guide for Chemical Hazards section for respirable
crystalline silica identifies the recommended
respiratory protection to be “any particulate
respirator equipped with an N-95, R-95, or P-95
filter, except quarter-mask respirators. The
following filters may also be used: M-99, R-99, N-
100, R-100.”

MSHA’s proposed rule allows only 100-series
filters. This is a significant change to the surface
mining industry that uses N-95s consistently and
constantly, as advised by NIOSH for many years. MSHA
states it believes air-purifying respirators with the
highest efficiency NIOSH classifications for
particulate protection are most suitable for
protecting miners. According to NIOSH, N-95
respirators protect surface miners’ health.

PCA therefore respectfully requests the
requirements for use of HEPA filters be revised to
allow for NIOSH-recommended respirators based on the
published NIOSH studies and recommendations to date
that recognize proper protection and support the
continued use of N-95 filters.

So, in closing, I reiterate that PCA and its
members look forward to continuing to assist MSHA in
developing this key rule. We appreciate the time
given here today to discuss our initial concerns about
timeframe, monitoring, medical surveillance, and PPE,
and look forward to participating by submitting
further written comments.

Finally, given the extensive and complicated
nature of the proposed rule, we again would ask for
more time in the comment period to provide meaningful
and valuable feedback, and we respectfully urge the
Agency to extend the comment period by at least 60
days. As always, we’re available for queries,
conversations, and any information we can provide.
Thanks very much for the time. Do you have questions?

MS. SILVEY: Thank you.

MR. HARMAN: I don't have anything to add.

No, I’ll go.

MS. SILVEY: You don’t have to.

MR. HARMAN: Pat, you had mentioned
historical survey data. PCA’s begun to collect that.
We collected it both from MSHA’s website as well as
our members. We collected sample results from 2020 to 2022 inclusively. We collected 411 samples; 84.4 percent of those samples were below the action level or non-detectable; 6.8 percent were above the proposed PEL; and 8.8 percent were between the action levels and PEL. So that’s what our profile is with current data. And we’re also going to supplement that with an industry survey at some point in time.

MS. SILVEY: Thank you. Thank you both. So, with respect to your sample data, do you mind submitting that for the record?

MR. HARMAN: Yes.

MS. SILVEY: In the aggregate. We’re not asking for any identifying information, just so people know. And so I do have a couple of questions. You mentioned, Robin, miners working at multiple jobs, and I know that happens, I know we show that, our data show that, within a workday or a workweek.

So let me ask you -- and I know you all have operations that are subject to the OSHA rule too -- would you be recommending Table 1 in that situation, miners working at multiple jobs, multiple tasks?

I’m going to ask you what I did ask everybody to give us specifics on Table 1, your suggestions for how it would work, et cetera, et
cetera, rationale, everything that you can provide us. But to my specific question that I asked you?

   MS. MARKUSSEN: And I know this is where I might talk too much, but I’ll try and be brief. So we are implementing our OSHA requirements already. Our program’s built with that very much in mind, and so we’re definitely, like, okay, what’s required here, what do we have to change to make our system work.

   And typical to industrial hygiene risk-based evaluations, it’s really more about the task versus the job position of the guy all day long, and tasks do not always take eight hours, and so we try and identify -- some of those, you identify them specifically because you know they might need -- the gentleman mentioned maintenance tasks. That is a huge challenge, and it is difficult to do maintenance without respiratory protection. So, you know, tasks in general, there are some IH practices, you know, which ones are the engineering controls need to be put in, which ones are they not working.

   So that’s our approach, and we also add that into our program as well.

   MS. SILVEY: Do we need to stop for a moment? Do we need to stop? Okay. Thank you.

   MS. MARKUSSEN: So, in general, that would
be the best approach to deal with these people who change the job during various times during the day. When we do the monitoring, we have a tracker. What did I do this day? Four hours here, four hours here, because we’re trying to highlight where was your exposure, where was the worst time.

And in my view, the Table 1 allows for that because it identifies more, not just the job position but a task, and it allows you to say, okay, for this task, I have this kind of engineering protection, for these tasks granted in OSHA they’ll allow for respiratory protection.

But it gives you a valuable goal to build around that task, sweeping tasks, housekeeping tasks, things like that, and that’s the value of it. Again, not every position or every task is going to be allowable on that, but where you can find something that if you have this engineering controls and this practices and that’s the key -- I mean, you can’t just put them in there and they’re not working -- that that’s the valuable part.

If that’s in place, then we know based on at least the research that NIOSH and OSHA did that those are controlling the risk there so we don’t have to go furthermore monitoring and monitoring because that’s
time-consuming too and waiting for the information, getting it right, and they’ve done valuable research that we can use.

MS. SILVEY: Okay. So I'm going to follow up on that one. And you mentioned that you were a certified industrial hygienist, and so I'm going to ask you to put on that hat for my next part of that.

With respect to Table 1 at your OSHA facilities -- I shouldn’t say I’m assuming -- do you all, you implement your engineering controls wherever that’s -- if that’s called for in Table 1.

MS. MARKUSSEN: Mm-hmm.

MS. SILVEY: But I'm assuming that you sample there too?

MS. MARKUSSEN: For sure. I'm not going to say we don't sample because we do, and that’s also just for the industrial hygiene. But it’s not the driver.

MS. SILVEY: Okay.

MS. MARKUSSEN: In other words, I can give you an example. Construction crews, okay? So they’re doing laying down, it’s in our aggregate. But it’s just an example because they are on the Table 1 list, and we did monitor, and they did have -- they were breaking up the roads and they did have elevated

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silica exposure. We went exactly and did what the table told us to do. We re-monitored. Perfect results. So, I mean, we saw right there that if we do what was required on those tasks, that can be the usefulness.

MS. SILVEY: Okay. The next one I'm going to kind of go out a little bit on a limb. You mentioned medical surveillance, and I'm not going to ask you whether you all have a medical surveillance program. I probably know the answer to that. But you mentioned a risk-based approach similar to OSHA’s, so let me ask you something there. A medical surveillance provision, risk-based approach similar to OSHA’s, do you think that’s feasible for your operations?

MS. MARKUSSEN: I do.

MS. SILVEY: I see that also.

MS. MARKUSSEN: I do.

MS. SILVEY: I mean, some other people in here are cringing, but anyway, go on.

MS. MARKUSSEN: We monitor. You know, we do.

MS. SILVEY: Okay.

MS. MARKUSSEN: And it’s a program built around IH best practices but also, you know, OSHA
influences.

MS. SILVEY: Okay.

MS. MARKUSSEN: But we do, and I feel that we know what SEGs are the exposure risk, and maybe not at this site, but this site, yes. So I would take that data and say all this SEG, crusher operator --

MS. SILVEY: Right.

MS. MARKUSSEN: -- they will be in the program because somewhere some of them have the risk. There are some other job positions that just don't have that risk and are never going to hit the action level.

MS. SILVEY: Okay. Thank you very much.

MR. WATKINS: I've got one question. Just real quick, one question. You talked about Table 1 and doing a lot of discussion about Table 1 already. Are you proposing a Table 1 for all occupations, the high-risk occupations or the low-risk or all occupations?

MS. MARKUSSEN: No, and I don't think the OSHA Table 1 provides for all of them either. It's just simply the ones that have good engineering controls and that they know that they work. I think even that can help, you know, and it does help, so I don't think you could capture all job positions and
throw it onto Table 1, but you can with the ones that
can be controlled very clearly by engineering
practices, and that would help.

MS. SILVEY: And that’s why I reiterate to
every commenter in the room, if you all have
suggestions on Table 1, be specific. Include your
rationale, specific information, and examples of how
you think Table 1 would work for the mining industry.
Just don't tell us, “Adopt Table 1.” As I always say,
you know, that’s not woefully useful information. You
all understand what I'm saying. Okay. Thank you,

MS. MARKUSSEN: Anyone else?

MS. SILVEY: Anybody else?

(No response.)

MS. NOE: Okay. Our next signed-up speaker

is Gary Ewart.

MR. EWART: Good morning.

MS. NOE: Good morning.

MR. EWART: My name is Gary Ewart, G-A-R-Y,

last name, E-W-A-R-T, and I am staff at the American
Thoracic Society. The American Thoracic Society is a
medical professional organization with over 15,000
scientists, physicians, respiratory therapists, and
nurses dedicated to the detection, prevention,
treatment, and cure of critical-care illness, sleep disorder breathing, and lung disease. In short, we are lung experts.

As lung experts, ATS members have significant experience in treating miners with occupational-related lung diseases. Our journals publish research on the diagnosis and treatment of occupational lung diseases and the latest research on findings of occupational respiratory health.

It is with this background that ATS offers the following comments. Allow me to start with the easy part. In general, the ATS supports the proposed MSHA silica dust exposure standards. In the proposed rule, MSHA accurately and comprehensively describes the known adverse health effects of exposure to silica dust, reports the science supporting these findings, and epidemiological evidence that document a need for urgent protection offered under this standard. In short, MSHA has set the stage appropriately.

Further, the ATS supports the proposed PEL of 50 micrograms per cubic meter. The ATS also supports the proposed action level of 25 micrograms per cubic meter.

Describing the problem and setting a more protective exposure standard and action level are the
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The more challenging part for MSHA to wrestle with is how to make compliance with exposure standards verifiable and enforceable. The ATS believes there is more MSHA can and should do to make the final silica standard more protective of miner health.

Exploratory or construction mining. There’s been some confusion and a number of colleagues have spoken on whether the proposed standard covers exploratory or construction mining. I spoke with experts who have concerns that it might not be and others who suggest it is. ATS strongly recommends that MSHA clarify the scope of typical mining activity and explicitly state that it covers all aspects of mining, including exploratory and construction mining.

Regarding the vulnerabilities in the dust sampling reporting system, Dr. Drew Harris, an ATS member and Director of the Black Lung Program at Stone Mountain Clinic in Jonesville, Virginia, who I believe is the next speaker, recently wrote an editorial in The New York Times regarding the MSHA silica rule.

The Stone Mountain Clinic serves miners with black lung and other occupational respiratory issues in Virginia, Tennessee, and West Virginia, and in that opinion piece, Dr. Harris noted that his patients have
“shared stories with me of supervisors who direct workers to place dust monitors in closed lunch pails or to wrap them in coffee filters that allow the air to enter in the dust samplers but keep dust out.”

Other ATS members who treat miners with occupational lung disease have shared similar stories of patients describing how mine operators intentionally take and report dust collection samples in a way that explicitly masks actual exposure levels, including placing monitors in front of air vents, collecting dust samples on non-typical days, like when dust-producing machinery is not in operation, and conducting dust monitoring sampling for outdoor mine operations on days with heavy rain.

Each of these actions is intended to evade accurate reporting of silica dust exposure experienced by miners. Let me be clear that ATS cannot independently verify that these claims of dust sampling manipulation, nor do we know how widespread these practices might be, but they do demonstrate how vulnerable the system of dust sampling and reporting is to manipulation.

As the Agency finalizes the rule, we urge MSHA to consider regulations to prevent such dust monitoring manipulation, including explicit guidelines.
on acceptable dust collection sampling techniques, dust sampling being conducted by independent entities, and random and unannounced dust sampling collection by the agencies.

The ATS will provide more explicit recommendations in written comments, but we urge MSHA to think carefully about how exposure to consistent, accurate, and verifiable dust collection sampling can be achieved.

Regarding dust collection sampling recording, as we understand the proposed rule, MSHA is requiring mine operators to take dust collection samples and retain records of the dust collection samples for a certain period of time and make these results of dust collection samples available at the periodic MSHA mining inspections.

ATS believes such a reporting system is too passive and fails to take advantage of aggregate sampling data for research and analysis. We urge MSHA to consider in the final rule to require timely reporting of dust sampling to a central source, presumably MSHA or possibly NIOSH, and also posting these dust sample reports publicly, including to unions and miner, mine employees.

There exist, we think, several benefits from
central reporting. Public health and occupational health experts can use centrally reported data to better understand exposure patterns, correlate exposure patterns with disease, and better understand how exposures might alter a disease process for occupational disease.

There’s also engineering control value to central reporting. Central reporting of silica dust exposures will allow miner operators, unions, and makers of dust engineering controls to evaluate dust emissions at a national level and at various mine operations. It could also determine the most effective engineering control systems for dust suppression, discover variations in use of similar systems, detect outliers, and help identify reasons for variation, and potentially discourage fraudulent reporting of dust samples.

Switching to exposure and measurement, as pointed out in the proposed rules, miners often work shifts longer than eight hours. The longer the shift worked means miners have longer exposure periods for exposure to silica dust and other exposures. It increases the cumulative burden of exposure and reduces the rest time miners have to recuperate and clear lungs in these exposures.
The ATS supports MSHA’s proposal to require full-shift monitoring to actively capture the total cumulative miner exposure to silica dust. In short, we think MSHA has it right in the proposed rule.

Medical monitoring. The ATS supports MSHA’s proposal to require baseline chest X-rays be provided at no cost to miners. Establishing a baseline in combination with periodic follow-up exams and chest X-rays may help detect occupational lung disease earlier and prevent more severe occupational lung disease.

We urge MSHA to allow miners to have a choice in the provider of the chest X-rays. We further urge MSHA to consider other imaging options in addition to X-rays, including low-dose CT scans.

Similar to dust collection, we urge MSHA to consider central reporting of abnormal chest image results and other pulmonary function test results. Central reporting of abnormal findings would support population-based studies of miner health and may earlier detect important health signals in miners at an earlier point.

We note mine operators are already required to report mine accidents and injuries to MSHA. Expanding the current reporting system to include abnormal medical findings in chest X-rays and
pulmonary function tests and other diagnostic tests would be a natural extension of the current reporting injury system.

Regarding the use of personal protective devices as a temporary measure to reduce silica exposure, ATS strongly supports MSHA’s finding that engineering controls are the best and preferred method of controlling miner exposure to silica dust.

The ATS has serious concerns for the temporary use of personal protective equipment and mask respirators. First, the ATS recognizes that personal protective equipment can be highly effective in reducing exposures when used correctly. Correct use requires proper selection of the device, proper mask fit, frequent maintenance and individual training, as well as the worker’s ability to use it correctly in all settings.

The ATS is concerned that many mine operators and miners may lack the resources needed to ensure proper use of personal protective equipment and therefore use the equipment inappropriately, thus creating a false sense of protection of exposure from silica dust.

Further, we note even appropriate use of personal protective equipment poses many challenges
for miners, who often work in extreme conditions, particularly making verbal communications very challenging while using respiratory protection. We urge MSHA to think carefully about relying on personal protective equipment as a temporary measure to control silica dust exposure. ATS will have more explicit comments in our written comments.

Regarding medical relocation, the ATS supports MSHA's proposal to allow medical relocation of miners who show signs of lung disease. As described in the proposed rule, miners should not be punished for requesting medical relocation and should retain current pay and prospects for future pay increases.

We note chest X-rays are available to miners at no cost under the Black Lung Program but that many miners do not take advantage of the Black Lung's free benefit. According to ATS members who treat miners with lung disease, many miners do not seek X-rays for fear it will show an abnormal finding and subject the miner to either dismissal or diminished job prospects from the mine operator.

As MSHA moves forward with the final rule, it needs to carefully consider how to ensure miners
are held harmless throughout the medical relocation process. And while we recognize this is not relevant directly to the proposed rule, ATS recognizes this rule, if implemented, will require significant additional resources at MSHA for monitoring and enforcement of the proposed silica rule, so we urge MSHA and the Administration and the appropriators in Congress to provide the agency the resources needed to ensure appropriate enforcement and protection of silica miners -- excuse me, of metal and non-metal miners from silica dust.

And lastly, there have been many people who’ve commented about the need for additional comment time on this proposed rule. While we recognize time is always helpful in adjusting to regulatory requirements, there has been an increase of silica-related disease in miners in the U.S. Silica-related mining disease is entirely preventable. The longer it takes to finalize this proposed rule, the longer miners will be exposed.

Thank you for the opportunity to comment, and having testified at many agency hearings, this is the first time we’ve had donuts. Thank you. I appreciate it.

(Laughter.)
MS. NOE: Thank you. Do we have any questions?

MS. SILVEY: I have. I do. Sometimes, when you get your -- thank you for your testimony. Sometimes, when you get your opportunity, you have to take it, so I want to make two clarifying points as a follow-up to your testimony, and the first one is the proposed rule does, in fact, cover, as you put it, exploratory or construction mining, and so I want everybody to understand that. The proposed rule covers all aspects of the mining process, and so, if that is referred to as exploratory or construction mining -- I didn’t know that, Tim. See, I'm learning something.

I'm just kidding. You know, some would refer to it as shaft or slope mining. Typically, in the metal/non-metal industry, we may more typically refer to it as removal of overburden, but all aspects of the mining process would be covered by this proposed rule, so I do want to clarify that.

The second point, in terms of recordkeeping -- I don't want to clarify all of the things you said in your comments relative to recordkeeping, but I do want to state that the proposed rule -- now, believe me, I'm accurate on
this -- does require posting of the sampling record. You commented that it should be posted for miners to see, and it does require posting of the sampling record and that it should be made available to the miner’s representative, so I just wanted to make that clarification point for the record.

MR. EWART: Thank you for those clarifications. I appreciate them.

MS. SILVEY: Thank you.

MR. EWART: And, again, thank you for the donuts.

MS. NOE: You’re welcome.

At this time, we will take a short break and go off the record, and we will resume at 10:30 with speaker Drew Harris.

MR. EWART: Resume at 10:40, right?

MS. NOE: 10:40, yes. And the bathroom is outside. The code number is available at the table, at the table there --

(Whereupon, a brief recess was taken.)

MS. NOE: Good morning again. So we will now reconvene the Mine Safety and Health Administration’s public hearing on the proposed rule entitled Lowering Miners’ Exposure to Respirable Crystalline Silica and Improving Respiratory
MR. HARRIS: Thanks. My name is Drew Harris, D-R-E-W, H-A-R-R-I-S. I'm a lung doctor. I'm the Medical Director of the Stone Mountain Black Lung Clinic's Program. This is the only first black lung clinic in the State of Virginia and also the largest black lung clinic in the country.

I care for patients in two clinics in Lee and Buchanan Counties in southwest Virginia. I see patients in clinic. I oversee a pulmonary rehab program, run a pulmonary function test laboratory, and also do Department of Labor for 13 B disability exams on a regular basis there.

Our clinic at Stone Mountain has been in existence for 32 years, and never in the clinic's preceding 32 years have we had more patients with progressive massive fibrosis than we do right now. We have 552 patients currently living with this progressive, debilitating, and often fatal disease, and hundreds more have already died from this disease. In the ongoing epidemic of black lung in Central Appalachia is a hundred percent preventable, and none of my patients deserve to be dying from a preventable work exposure.
I’m 42 years old, and I have patients who are my age who are dying from black lung, so, clearly, we need to do a better job at prevention. And I’ve heard from many people today that are calling for more time to prepare for implementation of this rule, and from my perspective, the longer we delay, the more patients will be inadequately protected, which will lead to more diagnoses of severe black lung and more premature and unnecessary deaths, and so I would urge MSHA to strongly consider moving forward in the proposed timeline and as quickly as possible.

I appreciate your comments earlier in response to Gary Ewart’s that this rule is intended to cover mining activities in construction like slope mining. I would say from the thousands of people for whom I represent in southwest Virginia that --

MALE VOICE: We can’t hear you.

MALE VOICE: We can’t hear.

MR. HARRIS: So I appreciate your comments earlier that this rule is intended to cover mine construction and activities like slope mining, but I think for the thousands of people that I represent in the coal fields in southwest Virginia, that in the final rule, we would much appreciate explicit description of the activities that this will cover,
including slope mining.

I have dozens of patients in their 40s who are suffering from severe disease largely due to slope mining and inadequate protections in this. So, with that in mind, I'm going to focus on two specific aspects of this rule. I'd also encourage you to read my opinion that was published in The New York Times yesterday.

And the first thing I'm going to talk about is respirators. In Section 60.13 of this rule, you state that when a miner’s silica exposure exceeds the permissible exposure limit that mine operators will provide respirators to miners that they should wear until their exposures are less than the permissible exposure limit.

And while that’s happening, mine operators are supposed to be taking corrective action to improve conditions. If corrective actions don't work, mine operators then have to implement additional corrective actions, and all the while, miners should be continuing to show up to work in toxic environments, depending on a respirator for protection.

So this rule states that these respirators are only intended to be temporary or interim, and I think that language is vague. How long are we
proposing that miners could potentially have to depend
on a respirator to avoid breathing toxic levels of
silica dust, and what happens if corrective actions
don't work and subsequent corrective actions don't
work and silica dust levels remain elevated?

Are there fines or citations for mine
operators if their corrective actions don't work? Are
we suggesting that a miner might rely on a respirator
for a month or a year, all the while working in unsafe
dust levels of silica?

Any miner will tell you that continuously
wearing a respirator in a hot, loud, confined space
while sweating through an eight-hour or longer shift
of intense manual labor is difficult at best.
Preventing explosions and walls from falling in
requires constant communication in a way that’s
difficult when everyone’s wearing a respirator like
this. Why are we proposing to allow miners to go into
toxic environments at all, relying on a tool that’s
impractical and wear it continuously for days or weeks
or months at a time? In my opinion, respirators
should not even be a temporary solution.

I'm a pulmonary and critical-care doctor. I
wear respirators like this often when I'm in the
hospital. I've spent the last three years taking care
of COVID patients depending on this exact respirator, and I've found it to be absolutely horrible to have to wear this in intense medical emergencies when I'm having to communicate with fellow physicians and nurses, oftentimes standing within inches of people to yell so they can hear me during a code or during a procedure and I'm trying to yell over equipment like medical alarms.

For those who haven’t had the chance to wear one of these, I'm just going to put it on so you can hear what it sounds like when I talk.

(Dr. Harris makes a muffled statement.)

MR. HARRIS: I’ve experienced a little bit about what my patients have experienced when they tell me it’s suffocating to try to wear one of these things during continuous hours of manual labor. I can run a seven-minute mile and I can bench-press 250 pounds, and when I'm doing CPR and chest compressions in the ICU wearing a mask like this, I'm struggling to breathe, and after a few minutes, I can’t wait to get out of the room and rip my mask off. I can’t imagine wearing a mask like this for eight hours straight of manual labor in a coal mine.

Anyone is welcome to try my mask on if they would like to if they’ve never worn one in this room.
I was just talking to miners yesterday who were talking about their experience in mines in Alabama, where they’re literally descending 2,000 feet in an elevator where it’s like an oven it’s so hot, and imagining wearing one of these respirators in that kind of condition is mind-boggling to me.

My suggestion to you is that we should not rely on respirators for coal miners to use in toxic environments even in temporary or interim conditions. If you choose to ignore my suggestions, I would hope that you would please provide a mechanism for escalated enforcement for citations and fines for operators who aren’t able to fix dust problems in their first or second or third attempt of corrective actions and to please be specific about at what point miners would not be advised to return to toxic dust environments depending on respirators if corrective actions are not effective.

For my second point, the current proposal states that you’re relying on mine operators to collect their own baseline samples and to conduct periodic sampling if exposures are above the action threshold. I do not believe that relying on the current system of depending on mine operator dust sampling and scheduled MSHA inspections is going to
end the current black lung epidemic, and here’s why.

I have countless patients at Stone Mountain who have shared stories with me of mine operators hiding evidence about dangerous conditions where they work. As Gary Ewart with the ATS just stated, many of my patients were told by their supervisors to do things that are appalling to them. Whether it’s covering their dust monitors in coffee filters or putting them in their lunchboxes or being told to hang them in clean-air parts of the mine, all of these things are unacceptable.

And my patients frequently describe incidents where new or improved ventilations, new curtains are being hung in places right before MSHA inspectors show up for quarterly visits. I hear about these dishonest practices all the time when I talk with my Stone Mountain patients, and I’m not asking them to tell me these things. They just tell me these things.

I believe that there’s a disconnect between the data that you’ve presented in this rule which shows that very few coal miners are exposed to dangerous silica dust levels and the epidemiology that’s been published by folks from NIOSH who are in this room today which show that PMF, Progressive
Massive Fibrosis, in Appalachia is at the highest levels in decades.

There’s a disconnect, and I think this disconnect can be explained in part because the current system relies on scheduled MSHA inspections and coal operators being in charge with most of the dust samplings.

I suggest that to improve this regulation, MSHA should be more explicit about how they will stop these dishonest and dangerous practices. MSHA should consider periodic phone calls to active miners to help uncover these types of practices. I would encourage you to consider unannounced MSHA inspections to coal mines and more dust monitoring directly by MSHA, not leaving baseline and periodic sampling in the hands of mine operators. Thanks for your time.

MS. SILVEY: Thank you, Drew, and thank you for your clinic and what the clinic does to improve miners’ health. I’d like to make a couple of points, and I would say to you those mines you talk about in Alabama, I know what mines you talk about, those deep mines. I’m from, I happen to be from Alabama, but also I’ve been in those mines in Alabama.

Now I’m sure everybody in this room knows this -- I’m not telling you something you don't
know -- that this rule is for coal miners and non-coal
miners. This rule is for coal miners and for metal
and non-metal mines, the first point.

Second point is that we agree with you that
dust pumps should not be placed in places that are
not -- and you were speaking -- I know you were
speaking about dust pumps in coal mines -- should not
be placed in places where that are not allowed under
the existing coal rule.

And to that end, if we find that that
happens, I'm sure you have also read -- and I don't
remember the name of the mine -- but one coal -- maybe
more than one -- even this year, was prosecuted for
agreeing that -- the manager was prosecuted for
agreeing to dust fraud. So, in appropriate cases, we
take action.

The last point I want to make is that you
suggested that we go into the mines unannounced, but
just as a point of clarification -- and I know anybody
in this room knows this who represent mine
operators -- all of our inspections are unannounced.
They have to be unannounced. So we do that when we do
any of our inspections, so I just want to make, for
the record, make sure that everybody understands that.

But, again, thank you for the efforts of the
clinics. And when I say you for your clinic, I would say that to if any other clinics are represented virtually today or if they aren’t, we would still give our appreciation to what your clinics do with respect to miners’ safety and health.

MR. HARRIS: I appreciate your comments. I would say in response to that, although there have been several instances of mines being prosecuted, that the amount of times where I have heard of dishonest and dangerous practices it’s rampant, and so I think it’s far underappreciated how often this is happening.

The second thing is that I appreciate that your inspections are unannounced, but it is curious to me how our patients describe to me how ventilation changes the day before the inspections happen. So, somewhere in the process, someone is aware that this is happening, and so I will just leave it at that.

MS. SILVEY: Yeah. I think we should just leave it right there for the purposes of this hearing. Thank you.

MS. NOE: Thank you.

Our next speaker is Jessica Arriens.

MS. ARRIENS: Hello. Thanks for the opportunity to be here. My name is Jessica Arriens, J-E-S-S-I-C-A, A-R-R-I-E-N-S, and I am the Senior
Program Manager for Climate and Energy Policy at the National Wildlife Federation. Our mission is focused on wildlife conservation, but I have the good fortune to work with many coal community coalitions that are deeply engaged in Black Lung issues, so I'm here as a good partner to some of them and also as someone with family roots in Appalachia and family who were miners with black lung.

I want to thank MSHA for this proposal. It’s absolutely crucial to protect the health and safety of miners, as many folks have already mentioned today. I support the proposal to lower the silica permissible exposure limit from 100 to 50 micrograms per cubic meter on the timeline that MSHA has already laid out without an extension.

There are a few ways we think the rule -- I think the rule -- could be stronger, and I want to point out four of those here. And we’ll be submitting more detailed technical comments, led by some of my coal community partners later this month.

First, oppose the proposal to allow coal companies to temporarily rely on respirators worn by miners at any point in the mining process. Previous speakers highlighted this in a lot more detail than I am going to, but we believe that if a mining
environment does not comply with a 50-microgram limit, that operation should be shut down until better engineering and design can be implemented in order to comply with the limit and to keep our miners safe.

Also, oppose the proposal’s overreliance on silica samples reported by coal companies. It’s widely accepted among the mining community that this data can really easily be manipulated, and we think that to accurately monitor silica levels in the mines, MSHA inspectors themselves have to conduct sampling at least quarterly. Inspections should last entire shifts over multiple days and occur without advance notice provided to the mine operators, which you just had a little bit of back and forth on that with the previous speaker.

Two more things in ways that the proposal could be stronger. One, additional clarity as to when monetary fines would be levied against noncompliant companies. So we think the final rule should impose fines against any mine with a silica concentration greater than 50 micrograms per cubic meter, and these fines need to be high enough to compel diligent companies to comply with the limit.

And then, finally, current rules only require silica sampling when coal production is at or
above 80 percent of a given mine’s average rate of production, but some aspects of the mining process subject miners to very high silica while producing no or very little coal, so we think the final rule should include provisions that require monitoring of silica during every aspect of the mining process regardless of coal production.

As I said before, we will be submitting more detailed comments by the deadline. Thank you again for your time.

MS. NOE: Thank you.

Okay. The next speaker is Hunter Prillaman.

MR. PRILLAMAN: Thank you. My name is Hunter Prillaman. That’s H-U-N-T-E-R, P-R-I-L-L-A-N. And I am here representing the National Lime Association, and I work with our health and safety committee. NLA members operate both surface and underground limestone quarries, and, thus, they’re potentially affected by the rule today.

I’m only going to make a few brief points. First off, our members are currently reviewing and absorbing the rule. It’ll be extremely difficult for our industry and especially our small business members to put together comprehensive comments within 45 days. We thus filed a request that MSHA extend the comment
period by 60 days, and, again, we iterate that an
extension will be needed if MSHA hopes to receive
truly helpful comments.

In addition to that request, I’d like to
make a plea, and the plea is that if you’re going to
extend the comment period, please don't wait until the
very end of the current comment period. Otherwise,
you’ll cause us to duplicate a lot of effort because
we go through a whole process of drafting comments,
circulating them to our members, getting comments on
the comments, and then finalizing the comments. And
so, if we’ve already done that by the time you extend,
we have to do it all over again. So I would ask, if
you do consider extending the comment period, do it in
the next week or two if possible.

While it’s true that the mining industry has
been anticipating a new silica PEL for some time, the
proposed rule includes significant provisions that
would affect all mines, even those that have low or no
silica exposures. These include the new medical
surveillance requirements and the adoption by
reference of the ASTM respiratory protection
requirements. These provisions will require extensive
review by all parts of the mining industry, including
those that do not have significant silica exposure
I would also mention that -- a lot of people talked about Table 1 -- because MSHA didn’t propose a Table 1, if you’re going to get a Table 1, the commenters will have to draft what they think should be in it, and that takes time. So that’s another reason why we think an extension would be warranted.

A few more specific points on medical surveillance. It’s not clear to me why in the proposed rule that medical surveillance is being proposed for all miners and not just those with silica exposure of levels of concern. MSHA should consider only requiring medical surveillance where exposure monitoring shows significant silica levels, basically the same way that you have called for exposure monitoring for miners who are likely to be or are exposed to silica. The medical monitoring could attract those same miners.

Second, we think MSHA should take a close look at the feasibility of providing a medical surveillance as proposed across the entire industry, including in some very remote mines, and giving only 120 days after the effective date of the rule.

We’re not certain that there will be sufficient availability of specialists, imaging
technology, and pulmonary function testing technology, especially at geographically remote locations. Many mines will probably need to contract with mobile imaging and PFT providers and will also need to be able to use telemedicine visits for the physician consultations. MSHA should make clear that telemedicine visits can be used as part of the medical surveillance process.

Additionally, MSHA will need to make clear what the implications of mandatory medical examinations are and, in particular, what happens if a miner declines to undergo an exam. I understand that the mandatory exams are only for those who are new to the mining industry, but we are concerned about what happens if they don’t want to undergo an exam like that.

With respect to exposure monitoring, again, we question whether there is sufficient laboratory and testing consultant availability to perform so much baseline testing shortly after the effective date of the final rule. We think that more time will probably be needed.

We also note that there may be some mines which will have stable findings of exposure between the action level and the PEL over time. MSHA should
consider not requiring such mines to perform testing every three months in perpetuity but to allow less frequent testing if repeated tests show such stable findings.

With regard to respiratory protection, we’ll just note that MSHA will need to clarify the provisions about what impact the inability of a miner to use a respirator will have on work assignments and employment. I’ll just mention that in many mines, there are already workers who periodically use respirators for limited work, like confined space entry or some other, maintenance, or type of work, and it is part of the normal job of these individuals to use respirators in that way.

It just needs to be clear. As I understand the rule, moving people who can’t wear respirators, I think, is restricted to the period of time when the PEL has been exceeded and people would have to work with respirators unless they can’t wear them. I just want to make sure, I think MSHA should make clear how, if at all, that applies to the other people who use respirators as part of their normal jobs.

So that’s really about all I had to say. NLA and its members will file more detailed comments on these points, as well as other concerns. Again, we
iterate that it would be extremely helpful to us to
have more time to develop those comments. Thanks for
your attention, and I’m happy to answer any questions.

MS. SILVEY: Thank you, Hunter. A few
questions on your comments given here today,
recognizing that you’re going to submit additional
comments.

MR. PRILLAMAN: Okay.

MS. SILVEY: You talked about the
feasibility of the medical surveillance provision and
particularly for some mines. If you could provide
more detailed information in support of feasibility of
medical surveillance, feasibility of doing it or the
lack of feasibility of being able to do it.

MR. PRILLAMAN: I think the challenge for
some mines, we have some mines that are in very remote
locations, and it’s a lengthy drive to get to some
place where there’s likely to be the kind of medical
facilities that perform this. So, in fact, there are
some of our members that do some medical testing, like
for new hires. What they do is they have a van that
comes with equipment inside, and my question is how
available are -- I don't know the answer to this yet.

MS. SILVEY: I understand. And that’s what
I’m asking you. And this goes to everybody else too.
And so, if you could provide data on the various requirements under medical surveillance, if you could provide data on feasibility of performing those various requirements that we have in the proposal, if you could get some data to us on that.

MR. PRILLAMAN: Absolutely. Okay.

MS. SILVEY: The second is you talk about with exposure monitoring or sampling and the laboratories and the availability of laboratories -- basically, the same kind of statement -- feasibility of having enough labs, enough analysis capability, and if you could provide data on that.

MR. PRILLAMAN: Okay.

MS. SILVEY: Or lack thereof. When I say the “feasibility,” if there are enough labs, if you think there are enough labs or not enough labs, enough analytical capability, and so I'm asking that of everybody. This is kind of a generic question.

And last, on respirator, respiratory protection, I guess I wanted a little clarification for my own about -- you talked about people -- and I think you gave an example, but I kind of missed it -- people who wear respirators as a part of their normal job. Could you give me an example or two of what -- a couple of examples of what those miners would be?
MR. PRILLAMAN: The main example that I would have would be somebody who’s doing maintenance work. In the lime industry, we have some enclosed spaces that periodically people have to enter to do work. It’s not a daily thing; it’s a periodic thing. Maybe, you know, it could happen only every few months. But, in those spaces, the atmosphere is compromised, and so the people who enter them wear respirators.

MS. SILVEY: Confined space, people who have to go there.

MR. PRILLAMAN: Correct. Right. And most of our members have the whole confined-space entry program that you have to follow and the proper respiratory protection and the person on the outside. It’s a whole thing. But the people who perform that, that’s part of their job to do that kind of work.

MS. SILVEY: Right. Okay.

MR. PRILLAMAN: That’s as opposed, that is not someone who wears a respirator all day every day.

MS. SILVEY: Right. No, right.

MR. PRILLAMAN: It is part of what they do as part of their normal work.

MS. SILVEY: I understand. And that’s what I was thinking, but I just wanted to make sure we, the
agency, we had the same understanding of that. Okay. Thank you.

MR. PRILLAMAN: Nobody else?

MS. SILVEY: Yes.

MS. NOE: Thank you.

Next speaker is Kate Boyle. Kate Boyle?

MS. SILVEY: Appalachian Voices.

MS. NOE: Yes, from Appalachian Voices.

MS. SILVEY: Is she online, virtual?

MS. NOE: If you are online, would you mind using the hand-raising icon so we can help you?

(No response.)

MS. NOE: Okay. One more time. Kate Boyle?

(No response.)

MS. NOE: She will not be present? Okay. Thank you. Okay. Then next speaker is John Ulizio.

MR. ULIZIO: Thank you. My name is John Ulizio, J-O-H-N, U-L-I-Z-I-O. I'm here on behalf of the National Stone, Sand & Gravel Association, and I thank MSHA for the opportunity to appear here today.

Our comments are going to be very brief, but let me just explain who NSSGA is. We have over 400 members, including, you know, people who are in this room here today. We represent over 100,000 employees. We’re a part of the mining industry, the 95 percent
plus or minus, that has nothing to do with Central Appalachian Coal.

We have a range of companies from multinationals, European-based companies with hundreds of operations in the United States, to family-owned businesses with one or two or three quarries. We have people who mine a range of materials. It could be limestone, which has virtually no silica. We have an industrial sand division. And that’s my background.

I was in an industrial sand company for my career. We mined and processed a material that was 99.9 percent crystalline silica in the form of quartz, and, by the way, we didn’t have silicosis cases, you know, at least in the current era, certainly not representing what happened in the 1950s and ’60s and ’70s, but we were able to do that successfully and prevent people from getting silicosis because we had programs similar to what you’re proposing in your standard and I think far more extensive and far more protective of workers.

So we have hard-rock mining. We do dredge mining, in other words, people who mine in water and simply take sand and gravel out of a water body and sell it wet. We have, you know, lots of experience and we have decades of sampling amongst our company.
members. We have decades of medical surveillance. So, you know, we’re committed to providing healthful workplaces for our workers, and we’re committed to working with MSHA to try to make this regulation work. And, you know, again, we think we have something really useful to share because of our vast experience in this area.

And I’m saying this all because, I mean, I’m here to say today that we’re asking again for an extension to comment, send in our comments. We want to submit comments that are useful to you, that are useful to the mining industry. We’re working diligently with our 400-plus members in the midst of summer to accumulate our comments.

We’ve identified issues that we have with the proposal as it now stands, but in response to Ms. Silvey’s repeated admonitions to the group, we don’t want to just tell you what we think is wrong; we want to tell you what we think it should be that will work both for the miners to improve miner health and safety and for the companies who are mine operators.

So that means we will again draft a Table 1. We will again provide information in support of the Table 1 as you’ve suggested we do. We take that to heart. We’re collecting other information from our
companies regarding, you know, how testing and
sampling is now and how medical surveillance is, you
know, to the extent we know how many cases we have or
don't have.

And, by the way, there’s no crisis that I’m
aware of in our industry in spite of what people are
commenting in other contexts here today in terms of,
you know, explosions of progressive massive fibrosis
or other things. But we’re collecting data, we’re
working with our members, and we’re working with
outside experts. We’ve communicated with medical
doctors and epidemiologists to provide, you know,
support for our comments. We just can’t do it all by
August 28.

And so, you know, I’m here today again to
reiterate the comments we made in our letter to you
asking for an extension. We’re asking for it in good
faith. You know, it’s certainly not a crisis that it
should preclude an extension at least to the
industries perhaps outside of Appalachian Coal.

And we anticipate presenting substantive
witnesses at the Denver hearing, three so far that
we’ve thought of, you know, and it will be virtual.
But we need more time really to do this process
justice, and we just want to reiterate the need for at
least a 60-day extension.

We look forward to working with you, you know, to come up with a good, workable, protective silica standard for the mining industry, all of the mining industry, including metal/non-metal. That’s it for me today.

MS. NOE: Thank you.

MS. SILVEY: Thank you, John. You mentioned some of the things I had asked everybody to submit in their comments, and I want to add one thing. You are indeed right. The National Stone, Sand & Gravel Association represent a lot of members in the aggregates industry.

MR. ULIZIO: Right.

MS. SILVEY: So, if you could also, in addition to some of the other things I've asked everybody to submit for us, if you could provide in the aggregate -- no pun intended -- some of your sampling data, some of the average sampling data you all are seeing and, as I said, if you could do that in the aggregate.

And what else? I was thinking about another point. If -- and, oh, the other point I wanted to make is that -- this was mentioned earlier, and maybe I should have said it at that time -- somebody
referenced what we did after the coal dust rule. But, as is MSHA’s normal practice with respect to its rulemakings, we intend to create some types of compliance outreach materials which will include questions and answers and maybe templates for certain aspects of the rulemaking.

And post, I'm talking about post-rulemaking now, after the final rule is issued, and we would indeed plan to work with the mining community, all members of the mining community, to make sure that the rule is implemented consistently and in a manner that adds to the protection for the safe and health of miners but in a way that’s implemented consistently.

So I just wanted to make that point that we wouldn’t do any differently than we do with all our rulemakings. We do intend to develop compliance outreach materials, and I probably should have made that point earlier in this hearing.

MR. ULIZIO: Thank you for that comment. I can tell you, I mean, I'm not here to tell you what our final comments are going to be, but I can tell you that we would have included and will include the importance of compliance assistance, particularly for small miners, who perhaps don't already have sampling programs and medical surveillance programs and this is
all new to them. We will definitely ask for and make
the point that compliance assistance is important
after this rule, whatever it ends up being is, made
final.

MS. SILVEY: That was my other point. Okay,
thank you.

MR. ULIZIO: And I just want to make a
point. You know, when we submitted in 2014 as the
National Industrial -- Sand Association, we provided
OSHA with our aggregated sampling data which we had
collected for a number of years.

We also provided OSHA with our aggregated
and blinded medical surveillance data because we
collected as a trade association medical surveillance
results from our member companies and were able to
demonstrate over a period of several decades the
results of the medical surveillance programs that
existed in the industrial sand industry.

And it was a very powerful and good story,
obviously, contrary to what, you know, may exist in
other industries. But we did a very good job managing
to the 100 microgram level with the programs we had in
place to prevent silicosis in our workers.

MS. SILVEY: So I would like -- I mean, you
make a third question for me. I would like to ask
you -- we asked for the aggregated sampling data, but if you could submit the aggregated medical surveillance data too, that would be helpful.

MR. ULIZIO: I’ll go back with your request.

Thank you very much.

MS. SILVEY: Okay. Thank you.

MS. NOE: Thank you.

Our next speaker is Marisol Natta (phonetic). Marisol Natta?

(No response.)

MS. NOE: Okay. Then we will go to the next speaker, Josh Roberts.

MR. ROBERTS: Good morning. Can everybody hear? Hello? My name is Josh Roberts. I am the administrator of health and safety with the United Mine Workers. J-O-S-H, R-O-B-E-R-T-S. My comments will be brief as well. I’ll also be at the Beckley hearing and will be submitting detailed written comments as well on the rule. We’re still having internal conversations about the rule, but we will have comments ready by the August 28 deadline.

I’m going to touch a little bit on, you know, who we represent a little bit, and I’m going to touch just generally on some of the points of the rule, some of the things we like, some of the things
we don’t like and hopefully have some follow-up conversations going forward.

So we represent mainly coal miners, but we do represent some metal/non-metal miners, so a lot of my comments will obviously be geared towards the coal industry, and I know that the rule covers both metal/non-metal and coal in that, so I’d like everybody to keep that in mind.

Before I went to work for the mine workers about seven years ago, I worked nine and a half years underground. I worked at five different mines. I’ve worked at both union and non-union mines on performing various tasks underground, from, you know, a belt man to a coal haul operators and a roof bolter and mine examiner, so I also will speak in my own experience as a miner on some of the things.

First off, I'm going to do something that nobody has done yet, and I want to thank the agency for moving forward with this proposed rule. It has been a long time coming. It is something we have asked for for years, so we’re very happy to see a silica rule going forward.

I don't want us to forget one of the main driving points, not the only driving point but the main driving point, of why we’re doing a silica rule,
and that is because we were having a steep increase in
miners that are getting sick from black lung and PMF
that is being exasperated by silica.

And I think that there’s been comments maybe
in the RFI and medical evidence to show that as well,
and I’m sure some will come out in the written
comments for this rule. We have, you know, there in
my own community in southern West Virginia, you have
miners in their mid-30s with progressive massive
fibrosis, and that is unbelievable, and we’re not
talking one-off people, one-case scenarios, there are
several.

And, you know, you’re seeing a lot of
increase in mining of rock. You know, the seams today
that they’re generally being mined are not, were not
really feasible to be mined years ago. So you’re
going to see an increase in rock that they would take
with a coal seam than before, so there’s an increase
in silica.

You know, we would like to have seen some
type of pinpointed controls in the proposed rule for,
you know, high-silica cutting situations in
underground coal mines, such as, you know, cutting
overcast, cutting belt channels, doing types of
outback construction work. These are types of work
that are generally not as monitored like you are on a production section. They don't have the ventilation controls that are set up for the production section, and these miners are cutting, you know, all rock, and we believe that a lot of the issues that we're seeing are coming from those situations.

We are supportive of the PEL. We're supportive of the action level. We don't have no issues there. We do have concerns, obviously, with the requirement of the respirator use. We've been vocal about that in the past. Our President Roberts has testified on that fact in front of Congress. We've had those in our written comments in the RFI, and we are still -- you know, that is still our stance that, you know, number one, the Mine Act prohibits that in black and white.

I don't see any way around that. As a matter of fact, it's 202H and 201B that covers that, and I'm sure the agency knows that, but the other reason besides the Mine Act is that's not a practical -- and, again, I know this covers metal/non-metal and coal -- but this is not -- using respirators, just as Drew mentioned, is not a practical means to comply with the dust rule, whether it be the coal dust rule or silica dust rule, for coal
miners because, you know, the jobs that they do,
whether you’re in a show car or a rip-fall or
whatever, you know, a lot of times these are hot jobs.
You know, sometimes these are low coal
seams, and communicating with one another, you know,
if you allow a miners to wear a respirator, and
whether it be for temporary use or not -- and, again,
I don't even know what “temporary” would mean -- but,
if the mine atmosphere, it’s dangerous and not
healthy. Those miners, you know, you have to be
trained properly to wear respirators. You have to be
fitted properly on respirators. The miners are going
to get hot. They’re going to take it off to talk.
You know, it’s just it’s not realistic to mining
conditions. It’s just not.
You know, as a roof bolter myself, I can
tell you that even safety glasses, for example -- and
I know we’re talking apples and oranges -- but, you
know, they get hot, they get fogged up, and you want
to take them off, it happens. And the same thing is
going to happen with respirators. We’re not against
the use of respirators. You know, respirators can be
great. But to have them as mandatory to comply with
the rule we do not agree with for those reasons.
I have concerns about the sampling, you

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know, to leave it up -- to leave the sampling, you
know, primarily in the operator’s hands, we do not
agree with. And, you know, historically, you know,
allowing coal operators to self-police themselves has
not worked out. And there are some operators that do
things right, and there are some operators that do
not, and the ones that do not are the ones that are
going miners sick. And you have to look at the most
protective way for those miners, you know, when you’re
making this proposed rule.

I think that, you know, the periodic
sampling that’s mentioned in the proposed rule is
three months, every three months. We do not think
that’s sufficient to sample once every three months to
see what’s going on. And then, wait again, you have
to send them off to a lab, wait for the results to
come back. In the meantime, a miner, you know, is
being exposed while they’re waiting for that.

The baseline sampling, to allow baseline
sampling and if you’re below the action limit and then
you don’t have to do any sampling, especially if
you’re allowing the operator to do baseline sampling,
seems, you know, ridiculous to us, that all an
operator has to do is be under the action level in
that baseline sampling and then they’re clear. You
know, going forward, I don't see that being protective.

We’re supportive of the medical screening part for metal/non-metal miners in general. We would even like to see some type of similar Part 90 program for metal/non-metal miners who would need it. And that’s, overall, you know, some of the high points that I wanted to touch on, but I’ll be glad to take any questions. I will be in Beckley to speak, and we will be, you know, having detailed written comments and will be happy to take any questions if you may have any.

MR. WATKINS: Yeah, I've got one. Josh, mine’s not a question, more a comment. I just want to make sure that everyone understands that when you talk about operators doing the sampling that this is not going to take away when MSHA does sampling. MSHA will continue to do their sampling, okay? So we’re not doing away with our sampling in telling the industry to do sampling.

MS. SILVEY: And mine deals with the sampling too on your comment, Josh, on baseline sampling. And you are right that baseline sampling would trigger, under the action level, you said operators doing baseline sampling and nothing else.
And I think, as Aromie said and then as I explained later, the operator has to take that baseline sample, but only if there are an additional two confirmatory samples under 25 under the action level does the operator get to stop sampling.

And those two confirmatory samples can be an operator sample, it can be an MSHA sample, or it can be other objective data. And as was pointed out, if there are any changes in production, processes, operations as is under the current rule that would lead an operator to reasonably believe that the exposure would change, that is, increase, then the operator is required to evaluate that, and if, as a result of that evaluation, the operator reasonably believes that it is above the PEL, the operator has to do post-evaluation sampling, and that’s where it gets back into this sampling paradigm in the proposal.

So I just want, you know, everybody to really look at that when you’re making your comments. Look at it, and if you have any questions about it, any comments on it, put the comments to us. But if there are any questions today -- and I think that’s why I’m trying to explain it and try to make sure everybody kind of understands how it’s set forth in the proposal. That’s all. And we look forward to
seeing you and your members in Beckley. Thank you.

MS. NOE: I don't have any questions. Thank you.

Our next speaker is M.K. Fletcher.

MS. FLETCHER: So hi. I am M.K. Fletcher, M-K, F-L-E-T-C-H-E-R, and I am the Safety and Health Specialist at the AFL-CIO, and we’re a federation of 60 national unions representing 12-and-a-half million working people throughout the United States, including those who work in coal and metal/non-metal mining and those who do construction work on mining sites.

They also work side by side with non-union workers, and we welcome this opportunity to support the Administration in protecting miners from carcinogenic silica dust. We really appreciate this opportunity and the work that MSHA is doing on this standard, and we strongly support their efforts to propose a silica standard.

We also urge you to issue a final standard expeditiously as this is long overdue. The agency has spent many years building a strong rulemaking record, asking for evidence and information from a wide variety of stakeholders, including mine operators, scientists, medical and public health professionals, mine workers, and their unions, and has already
received extensive scientific and medical evidence, well-established proven measures and practices for protecting workers from silica dust.

Now it’s time to finish the job. There should be no further delays from protecting mine workers from unnecessary disease and death. OSHA updated its protections against silica exposure in 2016, and because of this rule, in the last seven years alone, there have been significant reductions in silica dust exposures in both general industry and construction.

Now it’s time for mine workers to heighten these protections as well, and this proposal would prevent hundreds of deaths and thousands of diseases among miners. We submitted comments to the previous Request For Information in 2019, and we will be submitting larger, much more detailed written comments to the record by August 28, as this rulemaking has been going on for quite a while, so we’ve been prepared.

Overall, we believe MSHA has learned a lot from the OSHA silica rulemaking, and they did a good job of really aligning the requirements between these two agencies. But we also feel that MSHA could improve this rule by aligning it specifically with
other existing MSHA standards that are specific to the respiratory hazards, such as the respirable coal dust standard.

Today, I'm going to briefly cover some strong areas of the proposed rule that we support, as well as areas that need some improvement, we think, in order to ensure that workers are protected from silica exposures so that their risk of disease and death is reduced.

There are significant health effects due to occupational exposure to silica that are well-recognized and understood, and for decades, miners have been dying -- from black lung and progressive massive fibrosis and other chronic irreversible diseased caused by silica and coal dust exposures.

However, recently, we’ve seen a resurgence of silicosis and other silica-related diseases, showing how urgently miners need additional protections for silica. And recent data has shown an especially disturbing trend of severe pneumoconiosis presenting in young miners in just their 30s and 40s, partially due to increased powered machinery to produce dust and the choice of some mine operators not to institute the necessary control measures to reduce dust concentrations.
And we heard today from Dr. Harris and the mine workers how really dire this situation is. MSHA’s scientific review recognizes the severe lung health effects of silicosis and all the other health effects that are also silica-related, such as lung cancer and renal disease, for example. These findings build upon the clear findings that were found by OSHA in 2016 and that were held up by the U.S. Court of Appeals.

Now I want to talk a little bit about the exposure limits in the proposed rule, and we strongly support MSHA reducing the exposure limits in mining to be as productive as the exposure limits in other industries.

MSHA’s extensive feasibility analysis documents the proposed standard of 50 micrograms per cubic meter is both technologically and economically feasible. Much of the underlying research and studies on which the feasibility analysis is based was done by NIOSH, who has extensive documentation on the feasibility of engineering and administrative controls for silica in mines.

NIOSH also has publicly available resources on reducing silica exposure in mines that provides the industry with bountiful information on reducing silica.
exposure. This includes approaches to hazard assessment; different control systems, such as dust collection, wet-spray systems, filtration and pressurization systems; and then other controls for assisting in tasks, bagging, crushing, bulk-loading. Basically, every potential dust source, they have great resources for.

Also, the peer-reviewed risk assessments completed by MSHA show that workers still face a significant risk of harm from silica exposures at levels below the current MSHA allowances. The proposed PEL and proposed action level will significantly reduce the risk of death and disease, and there’s supportive evidence that these exposure limits are feasible in all of the mining sectors.

However, OSHA recognizes in their proposal that there remain significant risks to workers at this exposure level. We urge the agency to continue to evaluate evidence submitted during this rulemaking, in conjunction with NIOSH’s expertise on controls and feasibility, to determine if there’s recent evidence to support the feasibility of a lower PEL.

We also strongly support the requirement for miners’ exposure to silica being measured over a full working shift and calculated over an eight-hour time.
period. This practice is consistent with typical occupational medical monitoring.

Additionally, it ensures that the exposure calculation accounts for the high body burden caused by working long shifts as the miner’s body recovery time is reduced.

I want to shift a little bit to one of the most important provisions that we kind of think need some improvement because it’s really essential in order for the rule to protect miners, and this is exposure monitoring.

Silica exposures have to be appropriately characterized, and we don't believe that the proposed approach adequately meets this objective. The proposed rule requires mine operators to characterize the exposure through baseline monitoring, periodic sampling quarterly if conditions are not being met to be excluded from this, corrective action sampling and a control measure is implemented after monitoring shows that it’s above the PEL, and then, finally, the post-evaluation sampling, which occurs if the mine operator has determined in the six months and the annual review evaluation there may be way more risk of exposures.

We feel this scheme is woefully insufficient
to appropriately characterize silica exposures on a mine site and is not consistent with provisions in other mine dust rules that ensure mine operators are held accountable for performing representative monitoring and truly characterizing exposures.

Under the proposed rule, it would be remarkably easy for mine operators to perform unrepresentative baseline sampling to determine that there’s no need for additional sampling or control measures.

MSHA should look at the strong sampling requirements in the respirable coal dust standard, which ensures mine operators are appropriately characterizing dust exposures and other applicable provisions of that standard that can strengthen the final silica rule.

As part of this coal dust standard, MSHA requires mine operators to pre-designate specific work positions to undergo sampling and work with MSHA on this. Sampling is also required to be performed during normal or typical work shifts, and as we’ve heard today from others, without these requirements, dishonest mine operators have sampled when capacity is very low, when it’s raining outside, there’s a natural dust suppressant, or assigning workers for this task.
for significant portions of their shift just to name a few different ways.

Also in the coal dust rule, MSHA requires mine operators to provide their results directly to MSHA, and we think that is also very important. We also feel that MSHA should require mine operators to perform sampling work with them. Baseline sampling or objective data, even with some limited confirmation samples, is not sufficient and should not exempt mine operators from any further monitoring.

Additionally, the periodic sampling in the proposed silica rule is insufficient. In the coal mining industry, they are already required to perform quarterly periodic sampling, and the metal and non-metal industry is already required to sample to determine the adequacy of control measures.

This current monitoring hasn’t been enough to address the significant issues that we are seeing in miners having more silicosis and the increased problem that we have right now. In order to more appropriately characterize exposures, MSHA should consider some continuous and rapid quartz monitoring systems and try to incorporate that into the rule.

Also, a semi-annual evaluation and the related sampling there is insufficient to address the
real-world changing nature of the mining industry. Mine operators should be consistently performing hazard assessments and evaluating the control measures in place and not at just a time marker.

In addition, to strengthen provisions for mine operating samples, MSHA should also increase their capacity to perform independent sampling and hold mine operators accountable. MSHA having the responsibility to conduct respirable dust sampling ensures mine operators are compliant with this rule.

I want to shift gears a little bit and talk about one aspect of the rule we think is really strong. We strongly support MSHA establishing its workplace compliance requirements using the foundation of the hierarchy of controls because that has been well-recognized and well-established as the most effective way to reduce silica exposures.

And as a part of that, we strongly support the provisions that prohibit the use of miner rotation in order to keep miners’ silica exposures below the PEL. Worker rotation is not an acceptable control measure in reducing the risk of exposure to a carcinogen.

Related to this, I want to kind of move to respiratory protection. So, when respiratory

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protection is needed for extremely limited circumstances in mining environments, the AFL-CIO supports MSHA modernizing the respiratory protection requirements for silica as long as miners are provided both strong and comprehensive protections. However, we are concerned that the proposed rule as written could result in mine operators relying on respiratory protection to reduce exposures more often than the agency expects, which is expressly prohibited by the Mine Act. MSHA should be clear about what is and what is not considered temporary and non-routine circumstances.

I also wanted to talk about something that is also really critical to this rule affecting miners, and it’s that MSHA should strengthen the requirements when mine operators know that there are exposures over the PEL to where the corrective actions are in place.

It’s not sufficient to just make respirators available on the next work shift and take immediate corrective actions to lower the silica concentrations as, without oversight, mine operators would rely on respirators until an inspection.

And corrective actions in mines are of the utmost importance, and a change in condition throughout monitoring can be an indication that the
atmosphere is otherwise unsafe. The corrective action provisions should look to other mine dust standards that include further actions mine operators must implement after determining high dust concentrations.

Some of these things in some other standards include additional sampling, not just sampling until there is at least one result that is at or below the PEL, and when there are citations issued and particularly pattern violations, which shows there is a continued non-compliance with the standard, then there needs to be more significant corrective actions that are taken to ensure that the dust concentrations are reduced more permanently.

Now I want to kind of shift gears to talk about something that’s not preventative, but it’s also really important, which is medical surveillance. We strongly support miners working in the metal and non-metal industries being covered under a comprehensive medical surveillance program.

This will help us truly understand the problems in this industry. The medical surveillance program provided to coal miners has had a tremendous benefit of early identification of health effects due to miners’ occupational exposures and really understanding what is going on in this industry.
The proposed rule would ensure miners in the metal and non-metal sectors are provided with these protections as well and would prevent further exposure to silica that could exacerbate their health issues. However, we are concerned about the proposed standard’s ability to ensure miners’ medical confidentiality is protected. Miners in the metal and non-metal industry could also benefit from a program similar to the Part 90 program for coal miners, and we’ll expand on that in our written comments as well.

I want to just touch on one more little thing before wrapping up, and it’s really fun: recordkeeping. MSHA should require mine operators to keep records for longer than the proposed time periods. This is particularly important, we feel, for metal and non-metal mines that are inspected less frequently than coal mines.

But it’s also really important because maintaining records helps to establish a pattern of exposure levels over time, as well as the corrective actions taken and the evaluations made, and retaining these records for only two years isn’t sufficient to understand the pattern of exposures and control measures in place.

Additionally, this information will be
invaluable for miners who are determined to have silica-related illnesses. And, again, I wanted to thank you so much for letting us participate in the hearing today, and we’re looking forward to being engaged continuously throughout this process and submitting very timely written comments that are much more detailed. And thank you, and we look forward to continuing to support you in this work.

MS. SILVEY: Thank you for your comments. I hope I get this right. Rapid continuous quartz monitoring system? You know, we appreciate your reference to that, and if I'm not mistaken, we referenced that in the preamble.

And, right now, that technology, which we have long supported working with NIOSH, is not technologically feasible for compliance purposes. So I want everybody to understand that as with the -- and people have referenced that a couple times this morning -- the continuous personal dust monitor, which MSHA require -- and people have referenced this too -- in its coal dust rule, this technology for real-time silica monitoring is not available right now for compliance purposes. We will continue to support whatever kind of research is done on it, but that was in reference to in response to your comment.
The second point -- and, here, I want to ask you for additional information since you noted that you were going to be submitting additional comments -- with respect to your comments on medical surveillance and a Part 90-type program that we have in place for coal mines, we would like to ask you if you could submit what you envision that the impact of such a Part 90 program would be to the metal/non-metal mining community. We would be very appreciative.

And so, on that issue, since, for those of you all who are in this room, that’s part of the benefit of a public hearing, that you hear what one person says and that person hears what you say. So, on the question that I ask, I would also ask any of you if you would also submit information and comment before the record closes on the impact of a Part 90-type program for the metal and non-metal mining community.

And if I'm not mistaken -- and I might be, but I'm not going to look through this right now -- I think we might have included that as one of the questions in our 43 questions in any event, but what I'm doing is underscoring that for you all. Okay.

Thank you very much.

MS. FLETCHER: I appreciate that, and we
will definitely be submitting more information on both of those topics.

MS. SILVEY: Thank you.

MS. NOE: I just wanted to clarify that your recordkeeping comments, I think you meant evaluation and sampling and corrective action records are currently proposed for two years, but the medical surveillance-related documents are for duration of employees, the employment, plus six months, right?

MS. FLETCHER: Yeah.

MS. NOE: Okay. Thank you. That’s it.

Thank you very much.

MS. FLETCHER: Thanks.

MS. NOE: So now we have all the pre-signed speakers have spoken, so we are opening the floor to the audience. Thank you.

MR. SCHMUTZ: Thank you. My name is DJ Schmutz. I was one of the preassigned speakers, but my commute this morning was a little bit horrendous.

MS. SILVEY: Off the record.

(Discussion held off the record.)


MR. SCHMUTZ: DJ Schmutz, D-J, S-C-H-M-U-T-Z, just like boots, Schmutz, boots. Thank you for giving me the time to speak here. I’m the Director of

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Operations for a company called MSHA Safety Services Incorporated. We currently work with over 250 mining companies to provide training in compliance-related-type issues.

Our goal is to help elevate the industry like MSHA, right? Our goals are similar in that. I'm not paid to be here by any company that we represent, except for myself, you know, the company that I own. But I'm here to represent the companies that don't even know that they should be here. We’ve heard a lot of comments this morning from companies, from people, organizations, groups, but most of these people still are not representing the bulk of the mining community.

The bulk of the mining community are those ma-and-pa companies with less than a hundred employees, right? We looked at the data pulled up in this proposed silica rule, and of the 11,000 issued mines in 2019 in the United States, 10,000 of those, over 10,000 of those had less than a hundred employees and were in the sand and gravel aggregate-type industries, and they’ve had a little bit of representation here but not nearly the bulk like coal and those things.

My background is in industrial hygiene. I’m an industrial hygienist by choice and by schooling.

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It’s what I love. I like working with miners and companies, helping them understand their health and be better prepared for what’s to come.

What’s the purpose of the proposed silica standard, right? Stupid question. You guys answer it. I’m going to read it, though. With the passage of the Federal Mine Safety and Health Act of 1977, Congress declared that, “The first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource, the miner.”

In furtherance of that clear guiding principle, this proposed rule promotes MSHA’s mission and statutory mandate to prevent death, illness, and injury from mining and promote safe and healthful workplaces for U.S. miners.

I think that’s something we can all agree on, and I appreciate you guys putting that in there, right, because that is the purpose of this and that’s the reason why we’re here having this discussion.

As the mining industry, though, what do we see? We see inconsistent enforcement of current standards, including the current silica standard. This enforcement seems to vary dependent on the Administration in the White House. This makes a
standard change feel much more politically driven. The political tug-of-war between red and blue changes the focus away from the safety and health of our miners. The industry has seen irregular sampling over the years. I know of one facility of almost a thousand employees that wasn’t sampled for approximately five years during their posted sampling timeframes, 2005 to 2019. This important data was missed entirely. How many other facilities are not included in this reported data?

Governor Manchin made a comment a couple months ago about the silica standard not changing, and all of a sudden, the standard that hasn’t moved in years and according to voices inside MSHA working on it saying it won’t be ready for at least another year magically comes out in full half-completed glory.

The facility I mentioned above wasn’t sampled because simple questioning of the MSHA inspectors on general, normal industrial hygiene principles showed they did not know what they were doing. So they didn't sample because they knew they were going to be crucified if something happened.

At another facility that was recently hit with an impact inspection, there was an assistant district manager from one of the largest districts in
the country who smoked over two packs of cigarettes while inspecting a silica mine over the course of a day. I don't need to go into this, but we all know that silica exposure and smoking are terrible. If we’re truly about the health and safety of the workers, MSHA would be doing a better job at their job.

How many of you have actually read this proposed standard, all 465 pages? I’m assuming you guys have read it, right? Most of us probably in this room have read it as well. I honestly believe, if you would have read it, you would not have released it to the public. It was not ready to be released to the public. The completed data section is almost exclusively “other sources” and conclude with, “MSHA has reviewed and agree with OSHA’s conclusions.”

Even though the proposed standard relies so heavily on OSHA, they still don’t follow the OSHA standard, right? We’ve heard about those comments at Table 1, medical surveillance, PPE. One crucial and relevant difference of the current proposal only allows the mining industry 120 days to comply, when OSHA provided over two years for compliance.

This has caused many to wonder, is the purpose to eliminate small mining operators across the
United States? How can the industry be held accountable to a standard that MSHA doesn’t fully understand or at least coherently translate into a proposed rule?

And I think that’s why the purpose of these meetings, right? I wrote these notes. I was a little worked up at the time, as you can probably tell.

(Discussion held off the record.)

MR. SCHMUTZ: The document is full of incomplete thoughts, though, which leads us to lack of clarity, right, and, hopefully, you know, we get some of this with these public comments and the open questions. The standard can be a great win for the mining community, but it has to take more work, and you have to incorporate comments from the industry to assist with this being successful.

Going through, when I was reading through the proposed silica rule, I came across some things that were pretty glaring to me, and I'm looking at Table IV-3, right, metal/non-metal brush-bowl dust samples by occupation from 2005 to 2019, and my question is tell me your data set is skewed without telling me your data set is skewed. The whole basis of your data set is completely backwards.

What’s the number one group sampled more by
MSHA than any other group? Haul truck drivers. Yet, their exposure comes back at 2.2 percent, right? Average overexposure of 2.2 percent over that hundred micrograms. What’s the least-sampled group? Conveyor operators, 215 samples of conveyor operators. How many people here know of facilities that have a conveyor on their mine site? Only 215 samples of conveyor operators in that 15-year period, and they came back at an overexposure rate of 11.2 percent.

I'm not going to -- I’m going to ignore those snarky comments right there. This simple slide invalidates all of your other information about cost for operators. The cost for operators is going to be significantly higher than what you guys have proposed. And who are those operators we’re talking about? Who was this proposed standard written for, right?

Coal’s got a fairly robust standard, right? I'm not really talking to coal right now. It’s these operators I talked about, less than a hundred employees, over 10,000 mines, over 100,000 miners in the United States. And you can’t tell me these people don't care about their employees because they’re their family members. They’re their neighbors. They’re their friends. Because this is the infrastructure that built the United States, right?
Every little community you go to, there is a sand and gravel pit of some sort, because how else are they going to get their concrete, right? I live in a town of 1800 people, and guess what we have? We have a sand a gravel pit because we have to for infrastructure reasons.

Many of these mines can’t afford to have a safety guy on staff, let alone an industrial hygienist that actually knows what they’re doing, right, that can question MSHA when they come out and they’re seeing what went wrong. I don’t know if this is written on purpose to put the small mines out of business, but this will put small mines out of business as it’s currently written. There is no doubt in my mind.

And it’ll drive up costs across the whole economy because you’re going to lose your competition because these small mines are the ones that keep prices down for cement and aggregates, right? All you’re going to have is the big players driving prices up in all aspects of our economy.

How much is this going to cost mine operators to enact? I’m looking at Table X-2, Roman numeral X-2. I estimate that those hike in costs to be over triple the costs proposed in this standard.
because these small mine operators don't have
certified industrial hygienists on their staff like
other places do.

Who is this really going to affect? Small
sand-and-gravel aggregate-type operators. They don't
even know this conversation is happening right now
between us. But MSHA is going to walk in and write
them a $50,000 ticket for non-compliance to teach them
a lesson that they’re not even going to know and it’s
going to put them out of business.

To answer the medical surveillance-type
question, I live in southwest Wyoming, and we have
approximately 2500 miners in a hundred-mile square
radius. I called our local healthcare providers.
There is one that’s NIOSH approved, one, with one
employee, a nurse that does all of their exams. And
there’s two medical providers; one’s NIOSH approved,
and one’s not. And I said, how long would it take you
to medically surveillance 2500 miners? And they said,
probably a year and a half.

So what if we brought in a mobile van? The
beautiful thing about southwest Wyoming is Interstate
80 travels right through it. Do you guys know
anything about Interstate 80? The best thing that
ever happened to Wyoming, right? Drive out and you
never come back because you’re like that was the worst trip of my life. But, for a three-month period this past winter, the interstate was open for two-and-a-half weeks. You can’t bring a mobile van in. That’s not an option, medical surveillance.

And that’s just one example, right? These remote areas we’re talking about for medical surveillance, it would be almost impossible for medical surveillance without some lengthy timeframe.

Who is going to enforce the standard? Are MSHA inspectors going to get more training in industrial hygiene so we can ensure that they are following proper industrial hygiene practices? Will the agency hire more industrial hygienists to enforce the standard?

We don't want to tell you how to do your job, but we will if we need to. In my experience, many of the samples MSHA’s taken over the years, when questioned by someone who knows industrial hygiene, have not stood up. Is MSHA prepared to have sampling methods of inspectors held under a microscope?

So my closing thoughts. We’ve heard a lot of great thoughts from very highly qualified individuals. If anything has shown us, we have much more work to complete before this standard is ready.
I ask for a minimum of 60 days. I realistically think it's going to take a year to get a standard that's actually usable by the bulk of mining in the United States.

I also recommend a working group created of industry experts, along with MSHA experts, to put together this standard to represent those in mining, and, ultimately, like you guys, right, all of our goals is to improve our standards, support our companies, and improve the health and lives of all miners. Thank you.

MS. SILVEY: Thank you.

MR. SCHMUTZ: Any questions for me?

MS. SILVEY: Yes, I do.

MR. SCHMUTZ: Yeah, I bet you do.

MS. SILVEY: First of all, thank you for your comments, and I take it you’re from Wyoming.

MR. SCHMUTZ: Yes.

MS. SILVEY: Okay. I've been there. I appreciate your comment about the small -- well, before I say that, I want to say that our purpose for when we issued this proposed rule -- and I'm sure you will appreciate that and will agree with me -- was indeed not to eliminate small mines. That was not our purpose. Our purpose was, and I would honestly say to
you, our purpose was to improve the health of America’s miners.

Now, having said that, I appreciate your comment about the many small towns that have many small sand-and-gravel operations. I'm from one of those small towns you’ve never heard of, Coatopa (phonetic), Alabama. And then there’s another one on one side, Demopolis (phonetic), Alabama, and another one on another side, Livingston, Alabama. So I could go through Alabama. Some of them, I don't even know their name. So I appreciate that.

Having said that, one of the things I would like to ask you with respect to your comments on costs, the costs when it comes to the sampling data, I mean, during the sampling, the costs with respect to medical surveillance, I would like it if you would, before the record closes, provide us specific information with respect to costs.

Or, if you have some data that refutes what our cost estimates are, and it appears to me that you do, if you could provide that data to us? And going further, estimates on the capability, you mentioned something about medical surveillance providers in Wyoming. If you could provide us specific data on the capability of medical surveillance providers at least
within your purview?

And to be honest, anybody who is within the sound of my voice, if you can do that, we’d appreciate that too. Anything that can inform the record and inform the decisions we make as we move toward the final rule, we would appreciate that very much. And when you’re doing that, if you could, concrete examples of those types of things.

MR. SCHMUTZ: We will note that.

MS. SILVEY: Thank you. Thank you very much.

MR. SCHMUTZ: Thank you guys.

MS. NOE: Also, I just wanted to let DJ Schmutz know that there is also initial regulatory flexibility analysis section, so in that section, we look at the impact on small entities.

Now the floor is still open. Yes? Please.

MR. STEWART: Can I make a few statements?

MS. NOE: Yes. Please come to the table.

MR. STEWART: These are impromptu comments, so no computer or whatnot. My name is Matt Stewart, and I'm just here representing Matt Stewart today. I'm a Certified Industrial Hygienist. I'm a sitting member of NIOSH’s Mine Safety Health and Research Advisory Committee. I'm also an employee of a mine...
operator and a student literally. I remain in school to learn.

So just a few brief things to keep in mind, and I had talked with you. You had said somebody had been left out. This panel will be at the end of your hearing, so I wanted to come here to briefly make some comments.

So it’s a tight window to try to make effective engineering control changes in 120 days. The company I work for, we’re investing a lot right now to try and comply, and it’s a struggle. Whether it be getting competent engineers or an adequate partner, whatnot, equipment, 120 days is a very tight window, so please keep that in mind as you look toward rolling this rule out. I truly believe we need more time in the best of circumstances to put the proper engineering controls in place.

Somehow allowing the potential for the use of boosted powered-air-purifying respirators as a means for all-in control, I think that is something very much we’re looking at. Sometimes I think it’s confusing when a speaker presents a situation a tight-fitting respirator or something that can and has to be worn. There are comfortable respirators out there. There are loose-fitting powered-air-purifying

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respirators. I work with salt-of-the-earth miners who appreciate wearing these devices. They are very much on board.

I would say a big part about mandating a prohibition on job rotations, a TWA is a TWA, and if you require the operator to maintain exposure below a time-weighted average over the course of a day, if a worker’s overexposed or exposed to excess amounts of quartz for a certain portion of the day, they’re required by law to stop that the rest of the day, and you can enforce against that if they don’t and shut a mine down if they continue to do the work.

Recurring sampling every three months that is in excess of the action level, it’s tough. I’m an industrial hygienist. I still go out in the field and collect samples. It takes a long time to calibrate the pumps, get your good numbers, make sure you’ve got, you know, a plan to strictly sample in the worst-case scenarios, get the lab to report back to you not just the report but put it in a way that can be understandable to the mine workers. That is a very quick cycle of a mine to operate everything.

Medical surveillance is a challenge. We, as the company that I work for, we’ve done medical surveillance for decades because it’s the right thing
to do. It’s hard to find workers. Why would you want
to hurt those that you do find? You want to do
medical surveillance. We have struggled valiantly to
find occupational health physicians who are certified
in the discipline, who know how to look at workers and
make sure that they know whether or not the mining
activity is hurting them.

There’s going to be a severe dearth of
qualified occupational health physicians out there.
There already is. If we add 11,000-plus additional
mines to the fold, I really don't know how they’re
going to have enough certified occupational health
physicians out there to care for a mining workforce.

We are at an all-time low in the number of
NIOSH-certified providers right now. The certified
user I use right now, he is with the U.S. EPA National
Health Effects Laboratory at Duke. He reminded me
that we are at an all-time low. When we were out in
Spokane talking about this with people out there at
NIOSH, they agreed we have a problem. We do not have
enough people who can do a good read on a properly
executed chest X-ray, so we’re going to have
additional problems in that area.

Like Robin was saying, the filter efficiency
for the respirators that are used, NIOSH studies these
things very hard. They have declared that N-95 is adequate. So, whether it’s N-100, P-100, R-100, it’s easy to throw out a problem. But NIOSH studies aerosols and how they behave, and they find that the N-95 is an adequate respirator, so that filter efficiency should be lifted by MSHA.

And another comment, for reduction in pulmonary function, as characterizes by a proper pulmonary function test shouldn’t automatically be assigned to the impact of silica. There are many things that can be the cause a detriment and pulmonary function, and I work closely with pulmonologists from EPA’s National Health Effects Laboratory at Duke, and we’ve got smoking. We’ve got vaping. We’ve got ozone. We’ve got allergies. We’ve even got a lot of caustic vapors out there that aren’t really mitigated today. So I ask that the agency not assign deaths due to pulmonary function automatically to excess exposure to quartz when they decide additional medical care is needed.

And, lastly, the mine operators that I know, and I know many, they do not cheat. I’m sure there are examples of mine operators who do, so for the record, the mine operators I know, the mine I work for would find that offensive. We do not cheat. They do
not say it’s hard to find qualified workers. Why
would we want to hurt those that we can find? Again,
my name is Matt Stewart, and I appreciate your time
this afternoon, and I'm happy to take questions.

MS. SILVEY: Okay. Thank you for your
comments. I just want to ask you -- and you said
those were yours, Matt Stewart, personally. But I
would like to ask you if you could supplement them
with data or lack thereof -- well, I should say data
or lack of -- I had lack in the wrong place --

MR. STEWART: I know what you mean.

MS. SILVEY: -- lack of qualified healthcare
providers, which would include all aspects of the
medical, any healthcare provider needed in
implementation of any aspect of the medical
surveillance program.

MR. STEWART: Sure.

MS. SILVEY: And that would cover the NIOSH
certified fees, so if you could include data on that?
And I think that was really my only question, and,
obviously, whatever else you want to do.

MR. STEWART: Sure. I will do my best.

MS. SILVEY: Okay. Thank you.

MS. NOE: Thank you. Is there any other
speakers from the floor?
MS. NOE: Okay. I see none here, so I will open the floor to online participants. If you’d like to speak, please use the hand-raise icon at the bottom of your screen.

MS. NOE: I'm not seeing any at this point, so there is no speaker from online participants, right?

MS. NOE: Okay. Then it appears to be none in the floor here in person and also no one online, so I'm going to conclude the Mine Safety Health Administration’s public hearing on the proposed rule.

Okay. Okay. So then we can take a lunch break, and we will be here an hour later, at 1:30, to see if there’s any speaker who would like to speak. So we will come back to make sure that nobody wants to speak at that point, and we will formally close the hearing. So the meeting is adjourned for lunch. So we will see you back at 1:30.

(Whereupon, at 12:30 p.m., the meeting in the above-entitled matter recessed, to reconvene at 1:30 p.m. this same day, Thursday, August 3, 2023.)//
AFTERNOON SESSION

(1:30 p.m.)

MS. NOE: Good afternoon. It’s now 1:30.

So we will reconvene the Mine Safety and Health Administration’s public hearing on the proposed rule entitled Lowering Miners’ Exposure to Respirable Crystalline Silica and Improving Respiratory Protection. So our floor is still open, so is there anyone who would like to speak from the floor?

(No response.)

MS. NOE: What about the folks who are participating through online? If you are interested in speaking, please use hand icon on the bottom of your screen and please let us know.

(No response.)

MS. NOE: I do not see any hand raised online, so let me ask one more time, is there any other person who wants to speak from the floor?

(No response.)

MS. NOE: There seems to be none in this room. One more time, online participants, is there any of you that would like to speak at this point? Please use hand icons at the bottom of your screen and let us know.

(No response.)
MS. NOE: So I see none. Then I think I wanted to make one more statement. Earlier, I said that the verbatim transcript of this hearing will be available in 10 days, but I’d like to now revise that statement. So, thanks to our court reporter, the verbatim transcript will be available in five days. So look at our MSHA website at MSHA.gov and regulations.gov.

Again, one more chance, anyone interested in speaking?

(No response.)

MS. NOE: All right. Okay. Then I will now conclude MSHA’s public hearing on silica proposed rule called Lowering Miners’ Exposure to Respirable Crystalline Silica and Improving Respiratory Protection. Thank you very much for your participation.

(Whereupon, at 1:33 p.m., the meeting in the above-entitled matter adjourned.)
REPORTER'S CERTIFICATE

DOCKET NO.: N/A

CASE TITLE: Lowering Miners’ Exposure to Respirable Crystalline Silica and Improving Respiratory Protection

HEARING DATE: August 3, 2023

LOCATION: Arlington, Virginia

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the U.S. Department of Labor, Mine Safety and Health Administration.

Date: August 9, 2023

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