

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2561 Rayburn House Office Building
Washington, DC 20515-6515

July 20, 2023

The Honorable Julie A. Su
Acting Secretary
U.S. Department of Labor
200 Constitution Ave. NW
Washington, D.C. 20210

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

Dear Acting Secretaries Su and Williamson:

The House Committee on Small Business writes to inquire about the recent proposed rule change to the respirable silica dust protection standards in mining. This proposed rule would set the permissible respirable silica limit for miners at 50 $\mu\text{g}/\text{m}^3$, averaged over an 8-hour period.¹ It appears that this rule could have profound impacts on small mines and operators, and that the Department of Labor and the Mine Safety and Health Administration (MSHA) may not have properly considered small entities during this rulemaking process.

The increased standards described in this rule would force many small mines to implement new engineering and administrative controls to achieve the air quality benchmarks.² These controls include installing new air vents, using wetting agents, installing machine mounted dust collectors, and installing control booths to enclose operators.³ These additional requirements not only compromise the operations of existing small mines, but also increases material and compliance costs for entrepreneurs seeking to open a new mine.

It is important for agencies to examine small businesses interests—which make up 99.9 percent of all businesses in the United States—when passing any new rule. America’s small businesses deserve to have their voices heard and considered. We therefore request the following information as soon as possible but no later than August 3, 2023:

1. What impact would this rule have on entrepreneurs seeking to open a new mine?
2. In its Initial Regulatory Flexibility Analysis, MSHA proposed an alternative rule which would accomplish the department’s goals while reducing the cost of this rule on small

¹ Lowering Miners’ Exposure to Respirable Crystalline Silica and Improving Respiratory Protection, 88 Fed. Reg. 44852, 44853 (2023) (to be codified at 30 CFR 56-57, 60, 70-72, 75, 90).

² *Id.* at 44905

³ *Id.*

businesses by nearly 30 percent. Why did the MSHA not select this option as its primary proposal?

3. This rule justifies not permitting mines to rely on Powered Air Purifying Respirators (PAPRs) because “respiratory protection should only be relied upon as an exposure control measure in limited situations and on a temporary basis.”⁴ During the multi-year COVID-19 Pandemic, the CDC asserted that the respiratory protection provided by cloth and N-95 masks was an effective, reliable, and useful tool in mitigating the inhalation and spread of the SARS-CoV-2 virus.⁵ Why would respiratory protection used by untrained civilians be effective at preventing the inhalation of a virus, which measured just .3 microns, but superior respiratory protection, such as PAPRs, be ineffective at preventing the inhalation of silica dust particles, which are up to ten times larger?
4. What specific acts does MSHA expect small mines to undertake that will increase their compliance costs?
5. Table IV-3 within the proposed rule indicates that stone cutting operators were at nearly twice the risk of severe silica inhalation when compared to any other mining operator.⁶ Why then, does this rule not account for variations such as the location of the mine, or the material being mined, when creating the assessment and record keeping standards?

To schedule the delivery of your response or ask any related follow-up questions, please contact Committee on Small Business Majority Staff at (202) 225-5821. The Committee on Small Business has broad authority to investigate “problems of all types of small business” under House Rule X. Thank you in advance for your cooperation with this inquiry.

Sincerely,



Roger Williams
Chairman
Committee on Small Business



Pete Stauber
Member of Congress
Committee on Small Business

⁴ Lowering Miners’ Exposure to Respirable Crystalline Silica and Improving Respiratory Protection, 88 Fed. Reg. 44852 (2023) (to be codified at 30 CFR 56-57, 60, 70-72, 75, 90).

⁵ *Types of Masks and Respirators*, CTR. FOR DISEASE CONTROL & PREVENTION (May 11, 2023).

⁶ Elham Rahimi, E, et al. INVESTIGATION OF RESPIRABLE COAL MINE DUST (RCMD) AND RESPIRABLE CRYSTALLINE SILICA (RCS) IN THE U.S. UNDERGROUND AND SURFACE COAL MINES. *Sci. Rep.* (Jan. 31, 2023); Lowering Miners’ Exposure to Respirable Crystalline Silica and Improving Respiratory Protection, 88 Fed. Reg. 44852, 44866 (2023) (to be codified at 30 CFR 56-57, 60, 70-72, 75, 90).

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