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June 12, 2023

The Honorable Richard L. Revesz  
Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget  
725 17th Street, NW  
Washington, DC 20503

Dear Administrator Revesz:

I write to request an update on the status of the draft Mine Safety and Health Administration (MSHA) proposed rule on silica, which has been under review in your office since January and is urgently needed to protect miners from cancers, silicosis, and black lung disease.

Silica dust inhaled on the job is a grave threat to miners' health. When it is inhaled and becomes trapped in lung tissues, silica dust causes scarring and inflammation. It can then cause silicosis, a progressive and incurable disease characterized by a reduction in the lung's capacity to take in oxygen. Silica is also associated with lung cancer, Chronic Obstructive Pulmonary Disease (COPD), chronic kidney disease, and an array of autoimmune diseases.<sup>1</sup>

Silica is of particular concern with regard to black lung. The disabling and deadly lung diseases collectively known as "black lung" are well-documented in American history, literature, song, and art,<sup>2</sup> but black lung is still a very real threat to coal miners. Dust inhaled during coal mining work causes fibrosis, or scarring, of the lung tissue, leading to the appearance of masses, or "opacities," on a chest X-ray. This tissue damage reduces the lungs' ability to remove carbon dioxide and transmit oxygen to the rest of the body.<sup>3</sup> Miners suffering from black lung liken the

<sup>1</sup> Nat'l Inst. for Occ. Safety & Health, *Crystalline Silica*, CTRS. FOR DISEASE CONTROL & PREV., <https://www.cdc.gov/niosh/topics/silica/risks.html> (last viewed May 9, 2023).

<sup>2</sup> See, e.g., Hazel Dickens, *Black Lung*, on COME ALL YOU COAL MINERS (Rounder Records 1973).

<sup>3</sup> SCOTT D. SZYMENDERA & MOLLY F. SHERLOCK, CONG. RES. SERV., R45261, THE BLACK LUNG PROGRAM, THE BLACK LUNG DISABILITY TRUST FUND, AND THE EXCISE TAX ON COAL: BACKGROUND AND POLICY OPTIONS 1 (Jan. 18, 2019), <https://crsreports.congress.gov/product/pdf/R/R45261>.

feeling to inhaling with a plastic bag over your head or drowning underwater.<sup>4</sup> Dr. Edward Petsonk, a physician who treats patients with black lung, describes suffering from the disease as “a screw being slowly tightened across your throat. Day and night towards the end, the miner struggles to get enough oxygen. It is really almost a diabolical torture.”<sup>5</sup>

Too many miners in the United States have suffered this “diabolical torture.” Black lung has caused or contributed to hundreds of thousands of deaths in the 20<sup>th</sup> and 21<sup>st</sup> centuries. At least 365,000 miners died from black lung disease prior to the passage of the Coal Act.<sup>6</sup> From 1968 through 2007, black lung caused or contributed to roughly 75,000 deaths in the United States, according to federal government data.<sup>7</sup>

Rates of black lung disease decreased from the 1970s to the 1990s. Following the 1969 enactment of the Coal Act, which established enforceable limits on miners’ coal dust exposure for the first time, rates of black lung disease dropped from more than 30% in miners in the 1970s to only 5% by the late 1990s, while rates of its most severe form, progressive massive fibrosis (PMF), declined from 3.5% to 0.5% over the same time period.<sup>8</sup> By the late 1990s, the goal of eradicating black lung disease seemed within reach.

Now, however, black lung disease among working and former coal miners is returning with a vengeance. Researchers can see this resurgence in chest X-ray surveillance data, black lung benefits claim data, and mortality data.<sup>9</sup> X-ray surveillance data indicates that 10% of miners had imaging consistent with a black lung diagnosis by 2017, up from 5% two decades prior.<sup>10</sup> This resurgence is most severe in the central Appalachian states of Kentucky, West Virginia, and Virginia, where 20.6% of coal miners with tenures of 25 years or more now have black lung disease.<sup>11</sup>

PMF is also on the rise among miners in the United States. PMF prevalence now exceeds rates reported in the 1970s.<sup>12</sup> In 2014, 8.3% of black lung benefits claims were due to PMF, an

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<sup>4</sup> Cat Schuknecht, “*I Figured It Was Going to Be a Horrible Death, And It Probably Will Be*”, NPR (Jan. 23, 2019), <https://www.npr.org/2019/01/23/686000458/i-figured-it-was-going-to-be-a-horrible-death-and-it-probably-will-be>.

<sup>5</sup> *Id.*

<sup>6</sup> CHRISTOPHER W. SHAW, CTR. FOR STUDY OF RESP. LAW, UNDERMINING SAFETY: A REPORT ON COAL MINE SAFETY 7 (2008), <https://csrl.org/wp-content/uploads/2018/05/UnderminingSafety.pdf>.

<sup>7</sup> Chris Hamby, *Black Lung Surges Back in Coal Country*, CTR. FOR PUB. INTEGRITY (July 8, 2012), <https://publicintegrity.org/inequality-poverty-opportunity/workers-rights/black-lung-surges-back-in-coal-country/>.

<sup>8</sup> David J. Blackley *et al.*, *Continued Increase in Prevalence of Coal Workers’ Pneumoconiosis in the United States, 1970–2017*, 108 AM. J. PUB. HEALTH 1220 (2018) [hereinafter *Continued Increase*]; David J. Blackley *et al.*, *Resurgence of Progressive Massive Fibrosis in Coal Miners—Eastern Kentucky, 2016*, 65 MORB. & MORT. WKLY. REP. 1385 (2016).

<sup>9</sup> *Breathless and Betrayed: What Is MSHA Doing to Protect Miners from a Resurgence of Black Lung Disease?: Hearing Before the Subcomm. on Wrkf. Prots. of the H. Comm. on Educ. & Lab.*, 116th Cong. 13 (2019) [hereinafter *Breathless and Betrayed*] (statement of Dr. Robert Cohen).

<sup>10</sup> Blackley *et al.*, *Continued Increase*, *supra* note 8, at 1221.

<sup>11</sup> *Id.*

<sup>12</sup> Chris Hamby, *Black Lung Surges to Highs Not Seen Since the 70s, Research Shows*, CTR. FOR PUB. INTEGRITY (Sept. 15, 2014), <http://www.publicintegrity.org/2014/09/15/15538/black-lung-disease-surges-highs-not-seen-70s-research-shows>.

increase from less than 2% of claims between 1970 and 1996.<sup>13</sup> As with simple black lung, the PMF resurgence appears to be most severe in central Appalachia.<sup>14</sup>

One explanation for the resurgence of black lung since the late 1990s is that miners are now breathing a more potent mix of mine dust. As larger coal seams are mined out, coal companies have turned to mining thinner seams surrounded by more rock.<sup>15</sup> The rock which surrounds coal seams contains silica. When this rock is cut, the resulting silica dust is approximately 20 times more toxic than coal dust and causes faster lung disease progression.<sup>16</sup> A research study released in April 2022 analyzing pathology specimens now backs this theory<sup>17</sup> and, in the words of the lead author, is “the smoking gun” establishing the causal role of silica in the increase of black lung.<sup>18</sup> An even more recent study comparing contemporary coal miners and “historic” miners (born before 1930) finds that contemporary miners are “significantly more likely to have silica-type PMF than their historic counterparts (58.1% vs. 15.2%,  $P < 0.0001$ ),”<sup>19</sup> and they developed PMF after working significantly less time in the mines—seven years less, specifically—than their historic counterparts.<sup>20</sup>

It is likely that the current black lung resurgence is even more severe than the data show. New research published last month by researchers with the National Institute for Occupational Safety and Health (NIOSH) found that only 80% of miners entering the mining workforce from 2014-2022 received required initial radiographs and only about 12% received the three-year follow-up radiographs, and compliance with spirometry tests was even lower (with only 17% receiving initial screenings and fewer than 3% receiving follow-ups).<sup>21</sup> Many miners avoid medical screening, as a black lung diagnosis would mean having to leave their mining careers—oftentimes the only way miners know how to provide for their families.<sup>22</sup> A. Scott Laney, who is an epidemiologist with NIOSH, calls this resurgence of black lung “one of the largest industrial medicine disasters that the United States has ever seen.”<sup>23</sup>

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<sup>13</sup> *Breathless and Betrayed*, *supra* note 9, at 12.

<sup>14</sup> Hamby, *supra* note 7.

<sup>15</sup> *Id.*

<sup>16</sup> Howard Berkes *et al.*, *An Epidemic Is Killing Thousands of Coal Miners. Regulators Could Have Stopped It*, NPR (Dec. 18, 2018), <https://www.npr.org/2018/12/18/675253856/an-epidemic-is-killing-thousands-of-coal-miners-regulators-could-have-stopped-it>.

<sup>17</sup> Robert A. Cohen *et al.*, *Pathology and Mineralogy Demonstrate Respirable Crystalline Silica is a Major Cause of Severe Pneumoconiosis in US Coal Miners*, 19 ANNALS AMER. THORACIC SOC’Y 1469 (2022).

<sup>18</sup> Robert Benincasa, *Researchers Say They’ve Linked Silica Dust Directly to Severe Black Lung Disease*, NPR (Apr. 13, 2022), <https://www.npr.org/2022/04/13/1092690291/researchers-say-theyve-linked-silica-dust-directly-to-severe-black-lung-disease>.

<sup>19</sup> Lauren M. Zell-Baran, *Mining Tenure and Job Duties Differ Among Contemporary and Historic Underground Coal Miners With Progressive Massive Fibrosis*, J. OCC. & ENV’T MED. 315, 317 (2023).

<sup>20</sup> *Id.* at 318.

<sup>21</sup> Noemi B. Hall *et al.*, *Submission of Mandatory Respiratory Health Examinations Among US Coal miners Participating in the Coal Workers’ Health Surveillance Program*, OCC. & ENV’T MED. (forthcoming 2023), <http://dx.doi.org/10.1136/oemed-2022-108644>.

<sup>22</sup> Hamby, *supra* note 7.

<sup>23</sup> Howard Berkes, *NPR Continues to Find Hundreds of Cases of Advanced Black Lung*, NPR (July 1, 2017), <https://www.npr.org/sections/thetwo-way/2017/07/01/535082619/npr-continues-to-find-hundreds-of-cases-of-advanced-black-lung>.

There is no cure for black lung disease.<sup>24</sup> However, certain treatments can slow disease progression and relieve symptoms. Pulmonary rehabilitation is typically recommended to help improve quality of life.<sup>25</sup> Supplemental oxygen and medication can be prescribed to increase airflow to the lungs.<sup>26</sup> In rare cases, medical providers may attempt a lung transplant to extend a patient's life.<sup>27</sup> Absent a transplant, black lung leaves miners' lungs scarred, shriveled, and black. As the disease progresses, miners struggle to do routine daily tasks such as eating and breathing.<sup>28</sup> To slow the progression of the disease, miners must eventually cease working in mines. When the disease progresses to disabling levels, they cannot work at all.

Experts in the federal government and private industry have repeatedly stressed the hazard of respirable silica and counseled the Department of Labor (DOL) to adopt more stringent protections for silica exposure over the course of *nearly 50 years*:

- 1974: NIOSH first recommended to the Department of Labor (DOL) that it should slash the Permissible Exposure Limit (PEL) for silica from 100  $\mu\text{g}/\text{m}^3$  to 50  $\mu\text{g}/\text{m}^3$ .<sup>29</sup>
- 1987: The International Agency for Research on Cancer (IARC) concluded that crystalline silica is probably carcinogenic to humans.<sup>30</sup>
- 1991: The U.S. National Toxicology Program (NTP) concluded that silica is “reasonably anticipated to be a human carcinogen.”<sup>31</sup>
- 1995: NIOSH reiterated its 1974 recommendation.<sup>32</sup>
- 1996: IARC concluded more definitively that silica is carcinogenic.<sup>33</sup>
- 1996: A DOL advisory committee recommended that MSHA should adopt separate standards for coal dust in general and silica specifically, and it also urged a decrease in allowable exposure to respirable silica.<sup>34</sup>
- 1999: The NTP concluded that respirable silica is a known human carcinogen.<sup>35</sup>
- 2000: The American Conference of Governmental Industrial Hygienists (ACGIH) listed respirable silica as a suspected human carcinogen and lowered its threshold limit value (TLV) to 50  $\mu\text{g}/\text{m}^3$ .<sup>36</sup>

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<sup>24</sup> *Breathless and Betrayed*, *supra* note 9, at 91 (statement of Dr. John Howard).

<sup>25</sup> *Treating and Managing Coal Worker's Pneumoconiosis*, AM. LUNG ASS'N, <https://www.lung.org/lung-health-diseases/lung-disease-lookup/black-lung/treating-and-managing> (last visited Apr. 7, 2022).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Hamby, *supra* note 7.

<sup>29</sup> NAT'L INST. FOR OCC. SAFETY & HEALTH, HEW PUB. NO. (NIOSH) 75-120, CRITERIA FOR A RECOMMENDED STANDARD: OCCUPATIONAL EXPOSURE TO CRYSTALLINE SILICA 19 (1974)

<sup>30</sup> Occupational Exposure to Respirable Crystalline Silica, 81 Fed. Reg. 16286, 16294-16295 (Mar. 25, 2016) [hereinafter OSHA Final Rule].

<sup>31</sup> *Id.* at 16295.

<sup>32</sup> NAT'L INST. FOR OCC. SAFETY & HEALTH, DHSS (NIOSH) PUB. NO. 95-106, CRITERIA FOR A RECOMMENDED STANDARD: OCCUPATIONAL EXPOSURE TO RESPIRABLE SILICA (1995).

<sup>33</sup> OSHA Final Rule, *supra* note 30, at 16295.

<sup>34</sup> REPORT OF THE SECRETARY OF LABOR'S ADVISORY COMMITTEE ON THE ELIMINATION OF PNEUMOCONIOSIS AMONG COAL MINERS (Oct. 1996).

<sup>35</sup> OSHA Final Rule, *supra* note 30, at 16295.

<sup>36</sup> *Id.* at 16295.

- 2006: ACGIH lowered its TLV to 25  $\mu\text{g}/\text{m}^3$ .<sup>37</sup>
- 2011: NIOSH repeated its 1995 recommendations.<sup>38</sup>
- 2016: The Occupational Safety and Health Administration (OSHA) adopted a final rule lowering the PEL for respirable silica in non-mine workplaces from 100  $\mu\text{g}/\text{m}^3$  to 50  $\mu\text{g}/\text{m}^3$ .<sup>39</sup>
- 2020: DOL’s Inspector General reported that MSHA is not sufficiently protecting coal miners from exposure to respirable silica because its current standards are out of date, its sampling protocols are too infrequent to detect mines creating excessive silica risks for miners, and it lacks a standalone silica standard enabling it to cite silica exposures independent of coal mine dust.<sup>40</sup>

MSHA has delayed action on silica for too long as it is. Once the agency finally acknowledged that it needed to update its standard, what ensued was more than 20 years of starts, stops, delays, and broken promises. The following is a distillation from years of the semiannual regulatory agendas:<sup>41</sup>

AGENDA	PROMISED ACTION	DEADLINE
Spring 2000	Notice of Proposed Rulemaking (NPRM)	Feb. 2001
Fall 2000	NPRM	Feb. 2001
Spring 2001	NPRM	Aug. 2001
Fall 2001	<i>Nothing</i>	-
Spring 2002	<i>Nothing</i>	-
Fall 2002	<i>Nothing</i>	-
Spring 2003	<i>Nothing</i>	-
Fall 2003	Advance Notice of Proposed Rulemaking	May 2004
Spring 2004	Request for Information (RFI)	July 2004
Fall 2004	RFI	Dec. 2004
Spring 2005	RFI	TBD
Fall 2005	RFI	TBD
Spring 2006	RFI	TBD
Fall 2006	RFI	TBD
Spring 2007	RFI	TBD
Fall 2007	RFI	TBD
Spring 2008	RFI	TBD

<sup>37</sup> *Id.*

<sup>38</sup> OFF. OF INSP. GEN., U.S. DEP’T OF LAB., REP. NO. 05-21-001-06-001, MSHA NEEDS TO IMPROVE EFFORTS TO PROTECT COAL MINERS FROM RESPIRABLE SILICA 5 (Nov. 12, 2020) [hereinafter OIG REPORT].

<sup>39</sup> OSHA Final Rule, *supra* note 30.

<sup>40</sup> OIG REPORT, *supra* note 38.

<sup>41</sup> See generally *Historical Unified Agenda and Regulatory Plan*, REGINFO.GOV, <https://www.reginfo.gov/public/do/eAgendaHistory> (last viewed May 9, 2023).

Fall 2008	RFI	TBD
Spring 2009	NPRM	April 2011
Fall 2009	NPRM	April 2011
Spring 2010	NPRM	April 2011
Fall 2010	NPRM	July 2011
Spring 2011	NPRM	Aug. 2011
Fall 2011	NPRM	May 2012
Combined 2012	NPRM	Aug. 2013
Spring 2013	NPRM	Dec. 2013
Fall 2013	NPRM	June 2014
Spring 2014	NPRM	TBD
Fall 2014	NPRM	Oct. 2015
Spring 2015	NPRM	April 2016
Fall 2015	NPRM	April 2016
Spring 2016	NPRM	Sep. 2016
Fall 2016	NPRM	April 2017
Spring 2017	Next Action Undetermined	TBD
Fall 2017	Next Action Undetermined	TBD
Spring 2018	Next Action Undetermined	TBD
Fall 2018	Next Action Undetermined	TBD
Spring 2019	RFI	July 2019
Fall 2019	Analyze RFI comments	Nov. 2019
Spring 2020	NPRM	Aug. 2020
Fall 2020	NPRM	Nov. 2020
Spring 2021	NPRM	Jan. 2022
Fall 2021	NPRM	May 2022
Spring 2022	NPRM	Sep. 2022
Fall 2022	NPRM	April 2023

MSHA duly submitted the draft proposed rule to OIRA on January 18, 2023,<sup>42</sup> pursuant to Executive Order 12,866, which requires agencies to submit drafts of significant rules to OIRA before they can be published in the *Federal Register*.<sup>43</sup> Section 6(b)(2)(B) of that Order sets a timeframe for OIRA's review: OIRA must complete its review within 90 days, although it can extend its review once for an additional 30 calendar days.

The first 90 days ended on April 18, 2023, and the additional 30 calendar days ended on May 18. OIRA's database indicates that the draft silica rule continues to languish at OIRA despite the lapses of both of those deadlines.

<sup>42</sup> Pending EO 12866 Regulatory Review: RIN: 1218-AB36, REGINFO.GOV, <https://www.reginfo.gov/public/do/eoDetails?rriid=293066> (last viewed May 9, 2023).

<sup>43</sup> Executive Order 12866 of September 30, 1993, 58 Fed. Reg. 51,735 (Oct. 4, 1993).

The Honorable Richard L. Revesz

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Delays are deadly. While this precedes your tenure, OIRA infamously sat on OSHA's silica rule for two and a half years.<sup>44</sup> When the standard finally saw the light of day, OSHA estimated that it would "save more than 600 lives annually and prevent more than 900 new cases of silicosis," in addition to many cancers and other diseases averted.<sup>45</sup> Workers and families suffered needlessly during the two and a half years that OIRA dawdled and dithered over OSHA's silica rule. We cannot repeat this with MSHA's proposed rule to protect miners from deadly silica dust. America's miners, who power up this country, deserve action to protect their health.

OIRA has proven that it can complete these reviews in a much timelier manner. According to OIRA's own online database, the average OIRA regulatory review throughout the life of Executive Order 12,866 was 60 days across all agencies and 71 days for DOL reviews specifically. Since President Biden was sworn in up to June 1, the average across all reviews was 70 days and a mere 63 for DOL reviews.<sup>46</sup> In fact, when OIRA received a draft emergency OSHA standard to protect healthcare workers from COVID-19 exposures in 2021, it turned the standard around after only 43 days.<sup>47</sup>

I request that, within 7 days of receipt of this letter, you provide a date certain upon which OIRA's review will be completed. If you have any questions or wish to discuss this request further, please contact Bob Shull, Senior Labor Policy Counsel, at [Robert.Shull@mail.house.gov](mailto:Robert.Shull@mail.house.gov). Please direct all official correspondence to Dhrtvan Sherman, Staff Assistant, at [Dhrtvan.Sherman@mail.house.gov](mailto:Dhrtvan.Sherman@mail.house.gov). I look forward to your response.

Sincerely,



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**ROBERT C. "BOBBY" SCOTT**  
Ranking Member

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<sup>44</sup> Kalen Pruss, *It's Time for OIRA to Go*, in David Dayen et al., *The Future of the Regulatory State*, AMER. PROSPECT (Apr. 24, 2020), <https://prospect.org/day-one-agenda/future-of-the-regulatory-state/>; *Lobbyists Bidding to Block Government Regs Set Sights on Secretive White House Office*, PROPUBLICA (July 31, 2014), <https://www.propublica.org/article/lobbyists-bidding-block-government-regs-sights-set-secretive-white-house>.

<sup>45</sup> Occ. Safety & Health Admin., *US Labor Department Announces Final Rule to Improve U.S. Workers' Protection from the Dangers of 'Respirable' Silica Dust*, U.S. DEP'T OF LAB. (Mar. 24, 2016), <https://www.osha.gov/node/9134>.

<sup>46</sup> *Review Counts*, REGINFO.GOV, <https://www.reginfo.gov/public/do/eoCountsSearchInit?action=init> (last viewed June 12, 2023).