

Operator (Erika...: Welcome to the MSHA Stakeholder conference call. At this time, all participants will be in a listen only mode. We will conduct a question/answer session after the presentation. I'll now turn the meeting over to your host. Assistant Secretary Williamson, you may begin.

Assistant Secre...: Thank you and good afternoon everyone. This is Assistant Secretary Chris Williamson, and we've got a pretty busy agenda here, so we're going to just jump right into it. Just to sort of set the table a little bit, going to have some introductory remarks from me, then Deputy Assistant Secretary Silvey is going to do a walkthrough of our proposed silica rule that we just recently published in the Federal Register. Then, leadership from Mine Safety and Health Enforcement's going to do a review of fatalities and trends that we're seeing. Technical Support and Enforcement is going to do a discussion about heat awareness. And, something new that we're adding, is we're going to have our friends from the Solicitor's Office do a walkthrough or a read-out of some legal issues that they want to talk about or share with the mining community. And then, as we always do, we'll have a question/answer session.

And, I will just go ahead and jump in with some introductory remarks. I just made reference to it, but I want to start out with talking about silica. So, on June 30th, as I'm assuming most of the people on the call know, June 30th, MSHA announced a proposed silica rule and we published it on our website to give the entire mining community and all interested parties the opportunity to review the rule. That was in advance of it being in the Federal Register. And, for those of you that follow these things closely, sometimes it takes a little bit to actually get your document posted or formatted and everything to where it's actually published in the Federal Register, so we had a little bit of time in between there. And, we know that there's a lot of interest in this rule and a lot of people have been waiting on it. And, we put it on our website early to give everybody additional opportunity to take a look at it, review it, analyze it. It's like summer reading. That was a joke.

The proposed silica rule was formally published in the Federal Register on July 13th, and it includes a 45-day comment period. And, I want to note for everyone, to date, MSHA's given notice that we'll conduct three public hearings, the first of which will be here before we know it in Arlington, Virginia at our MSHA headquarters on August 3rd. The second will be at the National Mine Health and Safety Academy in Beaver, West Virginia, in the greater Beckley area on August 10th. And then, the last one will be in Denver, Colorado on August 21st.

So, the fact that MSHA released this proposed rule should not have come as a surprise to anyone that's been paying the attention to or followed my tenure as Assistant Secretary. I've been talking about the importance of this rule for over a year, and I've never shied away from sharing that it was the agency's top priority. This administration has made it abundantly clear and entirely consistent, with the clear guidance that the Mine Act provides all of us, that miners' health must be a priority. President Biden proudly asserts that his

administration's the most pro-worker in history, and our agency's work protecting miners' health and their safety, and supporting mining communities, is an important part of that promise.

I want to take a quick moment just to thank the numerous MSHA and DOL employees who've worked tirelessly to get us to this point. And, that's not just the ones that are currently working on the rule. There have been employees working at MSHA on silica and various forms of this rulemaking for quite some time. Proposed silica rule was first on an MSHA reg agenda in 1998, and at that point in time, there was a proposed completion date of December of 1998, so by the end of 1998. And, I think it's fair to say that a lot of people in the mining community have been waiting a long time on this proposed rule.

So, I would assume that a number of people on this call, I've traveled a lot, I've spoken at a lot of mining events, or have heard me speak in some form or fashion. And, if you haven't, hopefully I'll be able to get out there and you'll be able to hear me speak a little bit more at some point in time. But, one of the things that's pretty consistent about any remarks that I give, is they're always pretty grounded in the Mine Act, and I spend time talking about the Mine Act. And, if you haven't picked it up lately and taken a look at it and read it, I'd recommend you do that. There's a lot of good information in there, but the Mine Act's also very clear that miners' health and their safety must be the first priority and concern. It's literally the first thing that Congress put in the statute. It really sets the tone for everything else that follows, including the work that our agency's employees do every day.

Congress was also very clear about some other things in the Mine Act. Again, put it right up front for everybody to read it, to form their view as they read everything else that follows, in some pretty strong language, pretty clear and strong language. Mine Act talks about, "An urgent need to provide more effective means and measures for improving working conditions and preventing occupational diseases." Also says, "The existence of unsafe and unhelpful conditions and practice in the nation's mines cannot be tolerated." Right? Again, pretty strong language. Specific to what we're talking about here, it also says, in promulgating mandatory standards, dealing with toxic materials like silica, "Standards must adequately ensure, on the basis of the best available evidence, that no miner will suffer material impairment of health or functional capacity, even if such a miner has regular exposure to the hazards dealt with by such standard for the period of his working life."

So, that's just a little bit of color of what the Act says. So, coming from a mining community and seeing firsthand, including in my own family, the toll that debilitating occupational illnesses can take on a person, hearing stories from MSHA employees and miners in the importance of living up to these congressional expectations, is not lost on me. And, as we shared in the proposed rule, our current standards, as it relates to regulating silica in the nation's mines, does not live up to those expectations and does not adequately

protect miners' health. So, that's why we put out this proposed rule to begin the process of doing that.

Right now, in this country, there's a heightened awareness about the dangers that silica presents, not just to miners, but all workers. Some of you may be following the issue in California related to quartz's countertops and workers developing silicosis. There's been media coverage about the connection between silica exposure and the increase in black lung disease, including more advanced forms of disease such as massive fibrosis, progressive massive fibrosis in Appalachia. And, as someone who spent most of his adult life in Appalachia, every time I read a story about a miner who struggles to breathe and been robbed of the ability to retire in dignity, that hits close to home for me, and I know it does a lot of others.

But, I want to be very clear, this is not an issue or a problem that only exists in the coal mines of Appalachia. We know more about what's going on in Appalachia because of the existence of the Coal Workers Surveillance Program, the network of black lung clinics who provide vital services to sick coal miners, black lung associations who were created decades ago just to get black lung disease recognized as a legitimate occupational illness, and investigative journalism like the 2019 NPR/PBS FRONTLINE series that put a huge spotlight on that problem. But again, I want to be very clear, this is not an issue or a problem that only exists in coal mines in Appalachia, this is a nationwide issue and it impacts all miners, including the approximately 80% of metal/nonmetal miners who make up this country's mining workforce. And, all those miners deserve to be protected from the hazards associated with exposure to silica.

In my home State of West Virginia, we've known about the dangers of silica for quite some time. One of the worst industrial disasters in our nation's history happened during the 1930s during the construction of the Hawks Nest Tunnel. Estimates vary, but hundreds of workers, including many young men of color, died from exposure to silica and silicosis. Resulting from that and other cases of silicosis throughout the country, there was a congressional investigation, and a National Silicosis Conference committee of experts was chartered by the Department of Labor and issued a report with recommendations for practical control measures. There's a Department of Labor video from 1938 called Stop Silicosis. Pretty easy to find on Google if you just Google those terms. In that video, Secretary Frances Perkins herself clearly communicates that silicosis is preventable if controls are conscientiously adopted and applied.

85 years later, we're still having some of the same conversations about the hazards of silica dust and that most of these hazards can be eliminated through installation and proper maintenance of engineering controls. We all know what makes, in our case, miners, but what makes workers sick if they're exposed to silica. It's the level of exposure and it's exposure over time, some combination of one of those two things or both. And, that's what makes miners or workers sick, if they're repeatedly exposed to a toxin such as silica over time. Our proposed rule, and I won't get into the details, but our proposed rule is very

clear about all the health effects that miners face related to exposure to silica dust.

I think everyone knows at this point, it's well established, that silica is a known carcinogen. We talk about it most in terms of occupational illnesses such as silicosis or advanced forms of black lung disease, like progressive, massive fibrosis, but it also causes cancer and other respiratory and lung illnesses and kidney disease. We're very clear about that in our proposed rule. But, what makes miners sick, and workers, frankly, is the level of exposure and the exposure to silica itself. So, that's why we're proposing a unified rule, and that's why all miners, and all workers for that matter, deserve adequate protection from exposure to silica.

So, the last major point on this I want to make is that miners have historically been, and they continue to be, an important part of our nation's cultural and social fabric. They're willing to do jobs that many others wouldn't even consider and are immensely proud of that work that they do. They mine commodities that spur economic growth, and that build roads and bridges and other infrastructure, provide critical minerals for strategic assets and national defense, and they power our homes and our workplaces. In exchange for that, they deserve a safe and a healthy working environment. And, at a bare minimum, they deserve to have at least the same level of protection against toxic silica dust as other workers in this country.

So, as I mentioned earlier, Deputy Assistant Secretary Silvey's going to do a high-level walkthrough of the rule. Just to let everybody know, and I know there's a lot of interest, as I already mentioned, we're not at a point in this process where we can take questions or engage in a back and forth about the substance of the rule. But, what I would do, and as I mentioned earlier, I've been talking about this proposed rule and that it's coming for some time, and I always take the opportunity to do this and I'll do it again, I would encourage everyone to participate in this process. Read the proposed rule and share your comments with us, participate in the public hearings. If you can't go to Arlington, Virginia or Beckley, West Virginia or Denver, Colorado, there are virtual options for you to participate in the public hearing. We look forward to getting all that feedback and all those comments and reviewing it as we move forward on putting in place a final rule that will better protect miners' health from exposure to silica.

And, the last thing for silica, I'll just mention, we've already received some requests to extend the comment period, and we're currently reviewing those. So, just want to note that we have, and I think maybe even one of those might be a question or a comment that someone's already submitted. So, I just spent some time talking about how our agency's prioritizing miners' health, and I'll just say real quick on that front, for those of you that are following this too, this rule is a big part of that, but we launched a miners' health campaign called Miner Health Matters last year, we've been working on our Part 90 program, we launched a Silica Enforcement Initiative. There's been a number of things in

which we've been really closely looking at what we can do to protect miners' health across the board.

But, as much as we're focusing on protecting miners' health, this agency also must make it a priority, and all of us must make it a priority, to protect miners' safety as well. And, we've recently engaged in a number of conversations, and I sent an open letter to the mining community, and we launched an initial stand-down to save lives. And, so far this year, there's been 25 mining fatalities, and every mining fatality is one too many. And, we've spent a lot of time everyone talking about these issues and sharing information. And, I've asked everybody to work together, because I think that's the best way that we're going to be able to combat this troubling, unfortunate trend in increased mining fatalities we're seeing. And, this conversation and this call is one of the ways that we can do that.

And, what I've shared with people, is we have the global view where MSHA investigates and puts out a report of all these accidents, so we have some vantage point of all of them. So, I think we also have a responsibility in relation to that. If we're seeing trends, if we're identifying things, if there are best practices, all of those things that we can share and collaborate on with everyone in the mining community, that are things that we know could make a difference and better protect miners and reduce serious and fatal accidents, our agency's going to do that.

And, I don't want to get ahead of the presentation that Enforcement's going to do, but I mentioned 25 in total so far this year, and 19 in metal/nonmetal, and 17 of those are surface. So, 17 out of the 25 have been surface metal/nonmetal fatalities, and there's been six in coal. And, to date, machinery and powered haulage are the two leading classifications. And, I'll just kind of high-level mention that some of the things that we've already discussed, and I'll just note them, that we continue to see as some of the root causes of some of these serious and fatal accidents, have to do with inadequate training and examinations and PPE, for example, fall protection and maintenance sort of across the board, including on equipment, pieces of equipment.

There's a couple other things I want to just note real quick before I pass things along to Deputy Assistant Secretary Silvey to walk us through the proposed silica rule. But, we'll talk about a couple of things that we're doing in this space as it relates to enforcement. And, I've been very clear that this is also a big priority for the agency, in that we're going to use every resource and use every tool we can in conjunction with everyone else that's out there that's looking at this issue and trying to reduce serious and fatal accidents. And, we're going to continue to do that.

On the enforcement side, we're doing impact inspections. And, I would just highlight, we hope to issue our press release from the May impact inspection soon. One of the things that I continue to note, and that we continue to see from the results of these impact inspections, is that we continue to identify

hazards during these inspections that are the same root causes that we're finding in some of our fatality investigations and reports. So, doing these impact inspections is an important tool that the agency's going to continue to use to identify and eliminate hazards that we know that, if they're left in the workplace, increase the risk or lead to serious or fatal accidents. So, that's one thing.

I want to talk just for a minute about Pattern of Violations. As I've shared on previous stakeholder calls and been talking about, last year, the agency issued a Pattern of Violations notice to a mine for the first time in eight years. Some of you that may have been following, may have noticed that we recently ran a screening and a second mine has been placed on a Pattern of Violations. And, I just want to say that the agency's going to continue to do what it always has. And, there's a 2013 rule that's in place and it requires us to run a screening at least once a year, and the agency's going to continue to do that and do those screenings. And, if there are mine operators that meet the criteria and warrant this enforcement action, then the agency's not going to hesitate to use it. And, I hope the fact that we have already, demonstrates that.

I would just say on that front though, too, is that, and I've said this too, there's really no reason that any mine should ever get issued a Pattern of Violations notice. The screening criteria is out there, everyone knows what it is. They know that MSHA runs these screenings, like I said, at least once a year, and it's the responsibility of the mine operator to monitor compliance. And, we make it even easier. We have two tools on our website. We have a POV calculator and an S&S calculator. We encourage everyone to use those and actively monitor your compliance, especially if you're approaching breaching some of the criteria. The other thing I would just note on that, is that corrective action programs are incredibly important.

If you're using those tools or monitoring your compliance, and you notice that you're getting close to some of those metrics, or you're approaching them or you've already met a few of them, my advice and what I would encourage mine operators to do, is to work with our districts to put in place a corrective action program to address poor compliance and safety and health hazards that we know put miners at risk. And, if those programs are adopted and if progress has been demonstrated, if we go through a screening and a mine operator meets all the screening criteria, that can be a potential mitigating circumstance that the agency will take into account as it does its valuation of whether or not to issue a Pattern of Violations notice. So, CAPS are incredibly important and I would encourage anyone that's approaching that to work with the district office to get one in place.

Couple of other things, just real quick on this topic. The agency continues to put out safety and health alerts, as I mentioned earlier, lead discussions and share information about what we're seeing, so that we can all be on the same page and we all can focus on the leading causes that we know are resulting in serious and fatal accidents. And, I'll just reiterate again, because it's important, and I

think that's how we're all going to be the most effective in combating this troubling trend, is that we should all be working together on this. And, I know it troubles everyone, and I've had a number of conversations over the past month about it and will continue to have those conversations. And, I want to work with anyone that is interested in prioritizing miners' safety and health.

So, lastly, I'll just say just a couple of things. I mentioned it as I sort of did a walkthrough the agenda, but some of the things that we're doing that's on top of what we normally do in this conversation. I thought it was important, especially with this month and all the weather that we're seeing and with climate change and just all the heat that's out there, that there's a lot of focus on workers and, in our case, miners, working in these environments. And, we've put out a lot of content on our social media and did a blog post.

And, if anyone's interested in that information, or there's materials that we can get you, please let us know, because it's an issue that I think is incredibly important for us all to give a little extra attention to and focus on, and certainly something the agency's going to continue to want to work with others on as we move forward, and not just in July, in the middle of the summer. And, I would just encourage you to amplify and use that information that we put out there and that we've been sharing. And, we even have a shared poster that we put together with OSHA about heat awareness.

And, the last point is just, between that discussion and bringing in the Solicitor's Office to hit a few high points and some of the other things that we've done on this call, and how we've structured it and the topics we've chosen, we continue to get feedback about these calls. And, as much as these calls are for us to share information to you all and let you know the things we're thinking about and working on and areas of priority and emphasis, these calls are also for you all. So, we continue to get feedback and we're trying to be responsive to the feedback and trying new things, and hopefully that's appreciated and we'll continue to gather that feedback and look at ways to continue to improve upon this meeting.

So, I'm a bit long-winded and, probably already, I've taken up a bit of time. I'm going to pass things over to Deputy Assistant Secretary Silvey to do a high-level walkthrough of our proposed silica rule.

Deputy Assistan...:

Thank you, Chris. And, if anybody, on their phone, is unmuted, would you please mute your phone if anybody happens to be. And, this is going to be, as Chris said, a pretty high-level walkthrough. First of all, as you all might have guessed, I'm going to talk first on the exposure limits. The PEL, the permissible exposure limit, is 50 micrograms per cubic meter of air. The action level... These are all proposed things that I'm talking about, as you all know... 25 micrograms per cubic meter of air.

The next thing is the means of controlling exposure, and this means of controlling exposure is consistent with our existing standards, and also with the

hierarchy of controls, engineering controls and administrative controls. And then, respiratory protection last, temporary and for non-routine applications.

Next provisions cover exposure, monitoring. So, how does the operator monitor? We have quantitative exposure. First, we ask for operators to do baseline sampling, baseline sampling for any miner who may reasonably be exposed or may reasonably be exposed to silica. No further sampling if the baseline is below the action level and there are two confirmatory samples within a three-month period. So, within a three-month period, two samples confirm that the operator is below that 25 microgram.

Periodic sample quarterly. The proposal requires for quarterly periodic sampling if the sample result is above the action level but below the PEL, and the operator then must re-sample. I said quarterly, so that's every three months. But, just like baseline, you can continue the periodic sample if you have two samples that are below the action level. The proposal also requires corrective action sample. And, as you might guess, that is if the sample is above the PEL. If it's above the PEL, you must take corrective action, provide approved respirators and re-sample.

The next requirement is qualitative sampling. And, qualitative is, two aspects of that, semi-annual evaluation. And, we have some aspect of that in the existing metal/nonmetal standards. And, the operator must evaluate changes in processes, controls and conditions that may result in increased exposure. I said, "existing metal/nonmetal," in some aspect, in existing coal. And, post evaluation sample, if that evaluation shows that a miner is exposed above the action level, then the operator must sample to assess what that exposure is.

The operator must keep a record, sampling records, evaluation records and corrective action records. And, the proposed rule talks about the time period for keeping records and the records have to be provided to the authorized representative of the secretary and to the miner's representative.

And, the proposed rule provides for a medical surveillance program for metal/nonmetal miners. So, as most of you know or all of you probably, we have a medical surveillance program for coal under our coal standard. And, the medical surveillance program provides for mandatory exam, x-ray, occupational history, and symptom assessment as biometry.

And finally, the proposal requires respiratory protection, and it incorporates by reference the 2019 version of the ASTM consensus standard for respiratory protection. It requires mine operators to include minimally acceptable elements of ASTM for their written respiratory program. Minimally acceptable elements will include program administration, written standard operating procedure, medically valued quarter, a miner is medically fit to wear a respirator, respirator selection, training, fit testing, maintenance, storage and inspection of respirators.

So, sort of in a high-level way, that's the walkthrough of the proposed rule. It includes the preliminary regulatory impact analysis. So, as you comment on the proposed rule, we encourage you to review that and provide any comments that you might have on the cost and the benefits part of the proposal. And, we just ask that you be specific, including, and you heard me, I know you all have heard me say this a million times, including specific rationale for your respective positions. Thank you. That's all. That's all, yeah.

Assistant Secre...: Thank you, Deputy Assistant Secretary Silvey. I think, the only other thing I was going to add, that I probably should have said in the beginning too, was talk about, we also included a number of questions that we kind of put in there too, that we just asked people to take a look at, provide us comment, feedback about as part of the process. So, I guess, the next part of the program, we're going to turn it over to Mine Safety and Health Enforcement to do a review of fatalities and share some information and trends that we're seeing.

Brian Goepfert: All right.

Assistant Secre...: I think, Brian. I think, Brian.

Brian Goepfert: Yep. Can you hear me? Hello?

Assistant Secre...: We can now. Yeah.

Brian Goepfert: Okay.

Assistant Secre...: There's an echo, Brian.

Deputy Assistan...: Yeah.

Brian Goepfert: Okay, hang on. How about now?

Assistant Secre...: You're good now.

Brian Goepfert: Okay. Well, thank you Assistant Secretary Williamson, and thank you to everybody for participating today's call. I really want to thank the people that work at MSHA too. We couldn't do any of these rules or any inspection work or any of the work that the other programmers do without the good help of our employees. So, I want to thank all those that are listening today. We also want to thank the stakeholders who work with us hand-in-hand and really work hard to improve health and safety in the mining world. So, thank you to them.

Today, as was said, I want to talk about a few things, including the recent accidents and some alarming concerns. First, as already mentioned, we've had 25 fatalities this year, obviously 25 too many. By way of comparison, we had 16 mining fatalities at this time last year, and we ended 2022 with [inaudible]. So, we're not on a good track this year and we've taken a number of steps to curtail

that alarming trend. Also, as stated earlier, of the 25, 19 occurred at metal/nonmetal mines and six at coal mines. 21 of them were on the surface and the remaining four occurred underground. The most alarming point here is that 11 of these 25 were categorized as machinery, followed by five categorized as power haulage and three electrocutions.

I want to focus a little bit on the machinery accidents. Six of those 11 occurred during maintenance activities, including unexpected movement, release of stored energy. Three involved bulldozers, including rollovers and traveling over high walls. Two involve excavators, including unintended movement and not maintaining operational control. Additionally, five of the 11 victims had less than two years of experience. And, we also had a couple that had many years of experience, but five of them had two years or less of experience.

So, okay. Now, what do we do to prevent these? Well, a few good things to think about. When it comes to maintenance, usually follow the manufacturer's manuals and instructions, including the elimination of potential stored energy and steps to take to avoid unattended movement of the machinery while you're performing repairs or maintenance. Another good point, stay out of swing areas or pinch points or other hazardous areas when working on or around machinery. As always, are good bedrock principals. Performing adequate workplace examinations and pre-operational inspections of mobile equipment are both required, but they are absolutely needed to prevent accidents.

And, lastly, my biggest pet peeve, are seat belts. We're all old enough now that seat belts have been mandated for a long, long time now, and there's really no reason to not wear a seat belt anymore, or require employees to wear seat belts, it just has to happen. So, please put a focus on preventing machinery accidents. There's plenty of materials out there. When we see these accidents, and we post the fatality notices and the reports online, there's not a lot of mystery behind them. A lot of them are repeats and we just need to put an end to those.

I also want to briefly mention what we are seeing with our violation trends. Overall, the top five standards, as cited in fiscal year '23 to date, and this includes all of enforcement, metal/nonmetal and coal mines, accumulation of combustible materials, that would be coal. Housekeeping, slip, trip and falls, that's what housekeeping means. Lack of guarding on moving machine parts, damaged or exposed electrical conductors, and failure to submit quarterly reports. As mentioned earlier, we do have some tools on our website that people can monitor their accident and violation data for any particular mine. We have the S&S and POV tools, as Assistant Secretary Williamson mentioned earlier. It just makes good sense to use that data, that's free, publicly available, to identify trends at your mind and develop preventative strategies. There's also plenty of training materials on the website that can help develop preventative strategies.

Well, one last thing I wanted to mention today, was fall protection. Unfortunately, our inspectors keep finding miners working in harm's way at height without being properly tied off. So far this fiscal year, MSHA has issued 57 section 107(a) Imminent Danger orders for lack of fall protection. By way of comparison, we were at 49 at this same time last year, so we're ahead on the imminent danger count. But, all of last year, we had 59, we're already at 57 this year. Fall protection manufacturers have come a long way in design, ease of use, personal fit and comfort. They've even taken account body styles. Some of the manufacturers have even made fall protection designed for women. And, they're easier to use, they're easier to put on. The fall restraint systems, technology has come a long way with them. They're able to adapt to more working situations found at a mine site, so it's not that hard to use anymore. So, please look up, where do you have falling hazards where people can fall and get hurt and killed.

That's all I have today, but please keep an eye on the trends, especially at your mine, and help us to prevent these accidents. I appreciate everybody calling in today. Thank you.

Assistant Secre...: All right. Thanks Brian. And then, I think the next thing on our agenda is the heat stress presentation.

Jason Novakovic...: Thank you and good afternoon. My name's Jason Novakovich. Thank you Mr. Assistant Secretary Mike. I'm a general engineer in MSHA technical support, located in Pittsburgh, PA, and today I'll be talking about heat stress awareness as we approach the hottest time of the year.

Moving to slide two of the presentation for anyone that's had a chance to download the slides on msha.gov. What is heat stress? The definition is, "The total heat load on the body, which results from exposure to two factors, external sources and internal metabolic heat production." External sources include items like sunlight, radiant heat from ovens, kilns, fires, air movement, usually from those radiant heat sources, clothing, as well as personal protective equipment. Internal metabolic heat is just kind of a fancy way of saying the heat produced by the body in relationship to the work that the individual is doing. So, the more strenuous the activity, the more heat that your body will produce. These two factors result in an increase in storage in the body, which leads to heat strain. Heat strain is the body's response to the heat load to attempt to cool itself to maintain a stable body temperature. So, you have the heat stress from the external load and the heat strain relationship, which is your body's physiological response to that heat load.

Slide three contains the information on MSHA guidance. MSHA issued a timely health alert at beginning of the summer in May, and recently posted an urgent reminder on 7/20/23. This guidance can be found on MHAs homepage. There's a link from www.msha.gov, and it is a one-page PDF that gives great information on symptoms, treatment, prevention of heat stress, and also talks about the

heat index chart. For the purpose of this talk, I'm just going to focus on MSHA's guidance.

Slide four contains the information on symptoms and treatment of heat stress. The common symptoms include hot skin, it's usually dry, red or spotty, body temperature upwards of 105 degrees Fahrenheit. It's important to note that a body temperature of 105 degrees Fahrenheit can indicate heat stroke, which can be fatal. Usually, heat related illnesses, the symptoms start much earlier with a much lower body temperature. Any body temperature above the normal range, of the upper range of about 99 degrees can indicate signs of heat stress. Heat exhaustion starts around 100, 101 degrees, so please be aware of that.

Some other symptoms include confusion, power flushed face, and that's also indicative of heat stroke. And then, earlier symptoms usually develop, such as muscle cramps. And, treatments and things you want to do, you want to remove the miner from a hot area. If you notice any of these symptoms, move the miner from a hot area to a cooler area, apply cool wet cloths. If there's any tight-fitting clothing, remove the clothing and apply those cool wet cloths to the neck area or the armpits or groin area. You could give water if the miner is awake. Matter of fact, that's that's the number one, probably, goal. Most heat stress occurs from loss of water or dehydration, so if the mine's awake, please give him or her water. You want to seek medical help if there's no improvement.

Things you don't want to do is apply ice directly to the skin. You want to apply ice, but applying ice directly to the skin could lead to ice burn or frost bite, especially if that miner is not awake or conscious. You do not want to allow the miner to become so cold that shivering develops. So, you don't want to shock the body from one end to the other. And, you obviously don't want to leave the miner alone in case further symptoms develop or that miner faints. So, please stick with the miner if you see any of these symptoms.

Slide five has some prevention tips to avoid heat related illness. One of the tips is to provide cool drinking water in the vicinity of miners. You want to encourage those miners to drink a cup of water every 15 to 20 minutes. Avoid drinks with caffeine and large amounts of sugar. Caffeine's a diuretic, large amounts of sugar and energy drinks that have both, it's going to lead to further dehydration. You want to use sunblock. You also want to use proper protective clothing if you're around kilns or fires. And, you want to encourage workers to have a work/rest schedule. And, when they are resting, encourage them to rest in the shade. You could use administrative controls to rotate miners from hot jobs to cooler areas. You could also administratively schedule heavy tasks during cooler times of the day. So, if you have a heavy task, you could consider doing it first thing in the morning or late evening as opposed to lunchtime.

Slide six contains the heated index chart from the National Weather Service. This chart compares temperature versus relative humidity. It combines both into a single number known as the heat index value. This is the feels-like temperature. But typically, if you tune into your local news channel, you get two

numbers. One's the ambient temperature and one's the feels-like temperature. The feels-like temperature includes relative humidity and the ambient temperature into one number. The taking relative humidity into account is extremely important, because we lose the ability to cool ourselves through what's known as evaporative cooling when there's high humidity. So, when there's a lot of moisture content in the air, sweat isn't able to evaporate from our skin, hence we retain more heat in our bodies.

So, this chart has some risks based on those heat index values. In the yellow, there's caution, and that's a number anywhere from 80 to 90. Usually fatigue happens with prolonged exposure to that temperature/humidity or continued physical activity. Extreme caution's in the darker yellow area, and this is when sun or heat stroke, heat cramps or heat exhaustion is possible. The danger area is in orange, and that's anywhere from 105 to 130. This is where sun or heat stroke, heat cramps or heat exhaustion is likely. The extreme danger is anywhere over 130, and this is where heat stroke or sunstroke is highly likely with continued exposure to those conditions.

Moving to slide seven, I would encourage everyone on the call to download the OSHA NIOSH Heat Safety Tool app. It's a free app to download on any Apple or Droid device from the Apple or Play Store. And, it uses your current location, if you allow it, to provide real-time heat index values. So, once again, you're getting that feels-like temperature from that chart onto your phone. So, it's a nice easy way to have that chart in another area, feasible area. What's so great about it, it provides precautionary recommendations based on those heat index values. So, it has a lot of information on hydration schedules, work/rest schedules, emergency planning and response, which is critical if you notice someone develop symptoms. And, it also has a ton of great training for employees as well as employers.

Another great feature provides hourly forecasts of those heat index values, so it allows you to plan administratively for future risk. Once again, if we're able to accomplish that task first thing in the morning, we could see what our risk is doing it then as opposed to in a hotter period of the day. And, it also provides more information on signs, symptoms and first aid measures, which is good for everyone. You can just search for this in the Apple or Play Store or you could actually go to the link at the bottom of that slide seven and type in that URL address.

And, with that, I want to thank everyone for their time and attention. My contact info could be found on the last slide of the presentation, which is posted to MHAs website, for anyone that has further questions regarding heat stress. Thank you and have a great day.

Assistant Secre...:

Thank you, Jason. That was a very informative and, as you noted, timely presentation. I think there's a lot of good information on there, and I also appreciate you encouraging everyone to check out NIOSH and OSHA's heat stress app. I think that's good advice, so appreciate you sharing that

information, and hopefully we all got something from that that we can take and use to protect people from heat stress. Thank you.

And then, the next part of our program and then, I guess, the last part before we move into the question/answer session, is we're going to have a presentation or a discussion from the Solicitor's Office, and Dana, Dana Ferguson? Dana, are you on?

Dana Ferguson: Yes, I'm here.

Assistant Secre...: All right. Well, I'm going to turn things over to you, Dana.

Dana Ferguson: Thank you. Good afternoon everyone. Solicitor's Office certainly appreciates the Assistant Secretary's invitation to speak on one of these calls. We are often listening and engaged in that manner, but this is an appreciated invitation. And, I just wanted to share with all of you a few things related to the criminal prosecutions and sentencing that have taken place in the last quarter, and these involve both state and federal local prosecutions involving violations related to the Mine Act.

In May, a federal district court sentenced Curtis Floyd, who worked as the safety director for Signature and Energy near Roundup, Montana to a \$2,000 fine and two years of probation following his felony conviction for conspiring to violate the Mine Act, for failing to report an accident that led to the partial amputation of a miner's finger. That was a matter that was handled by DOJ out in Montana, and resulted in a significant penalty also for Signal Peak for their part in this as well.

In June, a district court sentenced Black Diamond Coal in Kentucky and Walter Perkins, one of Black Diamond's dust examiners, for cheating on mandatory dust sampling. Perkins ran a CPDM, continuous personal dust monitor, on the surface in a first aid trailer rather than giving it to the continuous miner operator as he was required to do. Then Black Diamond submitted the result of the fraudulent samples to MSHA as if the testing was properly done. Perkins then lied to MSHA special investigator, claiming he had given the dust monitor to the continuous miner operator, but that the device had faulted so he took it from the operator. However, a forensic analysis of the dust monitor confirmed it had not faulted and, in fact, hadn't even been moved in days. Black Diamond was sentenced to a \$200,000 penalty and two years probation. Perkins was sentenced to a 12-month court sentence, with six months in prison, six months to be served in home, this is a detention, then he has one year of supervised release. So, that likewise was handled... Jason Grover handled that with DOJ.

Last week, and most recently, a local DA in Rensselaer, Clear County in Troy, New York got an indictment against a mine owner, Anthony Valente, operator of the RJ Valente Gravel Quarry, for manslaughter in the second degree for recklessly causing the death of a miner when he continued to operate a crane

while disregarding and overriding a safety feature, that then faulted and resulted in the death of the miner. That case, it's an indictment and Mr. Valente has been arrested and arraigned, but there has not yet been a trial. But, all three of these cases demonstrate different possibilities for criminal culpability under the Mine Act.

I would remind all of you, because I think there is some confusion sometimes as to the solicitor or as to the role in these cases, the Solicitor's Office is authorized to do civil litigation, that's under Section 112 or 30 USC 822 of the Mine Act. We're authorized to do civil litigation. DOJ, or in this Valente case, a local prosecutor, they have the authority for criminal matters. So, either of those entities may consult with us, ask us to assist with understanding mining, subject matter experts as it were, seek information from MSHA's databases, which I know you all are familiar with online, for past history or violations, copies of accident reports or fatality reports involving the same mine, and information like that. But, we in the Solicitor's Office, do not have independent litigation authority or any decision making authority with regard to criminal matters.

So, you should just be aware that there are local prosecutors and DOJ, AUSAs, assistant US attorneys, out there who may see something on the news, who may get a call from a state police officer, who may hear about something through a contact at FBI or OIG, that then may result in some action on their part to engage with the agency for additional information.

Thank you, Assistant Secretary Williams, for allowing the Solicitor's Office to provide some additional information on this call, and have a good afternoon.

Assistant Secre...:

Thank you, Dana. And, I'll just say, "I," and I'll speak on behalf of the agency, we appreciate the important work that SOL and DOJ and state and local prosecutors do in this space. And, it's just another tool to achieve that overall objective, protecting miners' safety and health and letting people know that, if you do certain things and have certain conduct, there will be consequences for that, or can be consequences for that. And, you described it well and I appreciate that you clarified for everyone, what the roles are there.

And, I'll just say that our agency is going to continue to work with and support SOL, DOJ and all those others that I mentioned, that work in this space. And, I'll just particularly note, dust fraud undermines our sampling programs and our ability to protect miners' health. And, that's something that we're definitely going to continue to monitor and keep an eye out moving forward, especially, as we all talked about earlier, about silica and the efforts that we have there and in other places in the health space, including all the work we do on respirable coal mine dust and other health hazards that are out there too.

I think that's everything we have on the MSHA side, so we can move to the question/answer session of the program.

Deputy Assistan...: Yeah.

Operator (Erika...: Ladies and gentlemen, if you would like to ask a question, please press star, zero on your telephone keypad now. An operator will take your name and place you into the queue in the order received. Once again, if you would like to ask a question, please press star, zero now. One moment while we gather our questions. Our first question comes from Mike O'Neil, please state your question.

Mike O'Neil: Hi. First of all, thank you for the information and also, before I ask my question, I want to say I appreciate how the fatality review was done. I've been to some meetings where they individually go through each fatality and, quite honestly, I feel like they lose a little impact when that happens. People kind of glaze over. So, I really appreciate how it was done this time, I think it carries a lot more weight. So, thank you for that.

My question, and I was about five minutes late so I apologize if this was addressed, but in the documentation, are there any comparisons of the silica, and the heat rule for that matter, to what OSHA has recently instituted and implemented or is working on? Like many in the non-metal world, our mining operations are a support operation to our main business, and we're in the State to Plan state, so we have, potentially, three different rule sets to try to manage. And, I'm just wondering, I guess, why we reinvent the wheel sometimes?

Deputy Assistan...: You want me to do that [inaudible] for you?

Assistant Secre...: Go ahead.

Deputy Assistan...: Okay. Yeah. Thank you for the question. I'll do the easiest one first, I tend to do that. For heat, OSHA is in the beginning stages of a heat rule. We are watching OSHA, but we have not begun any type of rulemaking. We are doing outreach materials as we're done today, and OSHA's in the beginning of the rulemaking process on heat.

So, let me go to silica. For several of the main provisions in silica, we are indeed consistent with OSHA. In terms of the PEL, we are consistent with OSHA. The action level, we are consistent with OSHA. In some of these, and in fact, much of our risk assessment is based on OSHA's risk assessment. So, when you read a lot of the details of that, you will see some of the places where we are indeed the same as OSHA, and some places where we are different, based upon the conditions and the environments in the mining community. And, where we are so different, we explain that.

And, I would say, I would draw the mining community's attention to the preamble. For example, one of the areas where we are different, and we address that in the preamble, is with respect to a Table 1, we appreciate the fact that a particular item, metal/nonmetal industry, that you may have a property

that's subject to us, subject to OSHA, and as you said, in a State Plan state, you may be subject to Cal option. So, we understand and appreciate that, but I gave you two of the big things where we are indeed the same.

Mike O'Neil: Okay, thank you.

Operator (Erika...: Our next question comes from Jessica Cole, please state your question.

Jessica Cole: Good afternoon. Jessica Cole, Active Minerals International. Just a quick question around the silica proposed rule, is there going to be any guidance or clarification around if there needs to be a certain... I know you mentioned, there's the two samples, the baseline and then that second sample just to confirm no over exposure. Is there going to be any guidance around how many similar exposure groups or, from a statistical standpoint, even referencing some already resources that are out there? Is there going to be any, I guess, clarification around that or references to other types of risk assessment for sampling out there?

Deputy Assistan...: Right on. I didn't quite understand that, to be honest, but let me just say, when you say, "any data," I would say now, if there are questions that you have or things that you think you need further clarification on, at this point in the rulemaking process, as Assistant Secretary Williamson said, you should include any type of questions in your comments to us, and we can best respond to that as we move, either at the public hearing stage or as we move forward with the rulemaking process.

Jessica Cole: Okay, thank you.

Deputy Assistan...: You're welcome.

Operator (Erika...: Once again, if you would like to ask a question, please press star, zero on your phone now. Our next question comes from Howard Burkis. Please state your question.

Howard Burkis: Hi there. This is Howard Burkis from Public Health Watch, formerly of NPR. I appreciate you crediting the NPR/PBS FRONTLINE investigation as one incentive for doing this proposed rulemaking. Something that wasn't clear to me as I read through it, and I read through it in its entirety, is something as it pertains to coal mines. And that is, how will MSHA assure that mining companies are sampling as required? How will MSHA know that samples show excessive exposures to silica dust? And, what specific circumstances will constitute violations and trigger citations and fines? Thank you.

Assistant Secre...: Howard, I appreciate the question and I appreciate you noting that. And, I'll just share with you, as I was going through the confirmation process, I went back and rewatched that, and certainly there was a lot of information on there. And, as I noted in my introductory remarks, too, that's looking at it from coal in

Appalachia, and I would just underscore the point that I made earlier, is that exposure to silica impacts all workers, not just coal miners. And, that's coming from somebody who was born and raised in the heart of coal country. So, I would just kind of note that. So, some of the questions that you have are enforcement questions, and they're not questions that, at this point in time during this part of the process, that, as I also alluded to in the beginning, you can't really get in a back and forth about.

As I kind of heard one thing, though, and I can point you to it in the proposed rule. If I understood correctly, one of your questions, I think, is addressed with the record keeping requirements. I think you asked about, "Well, what's there in terms of the sampling and the records?" And, I think the rule spells out the obligations on the mine operator to keep records of, not only the sampling but the required corrective actions that must take place if the mine operator goes out of compliance with the proposed PEL. So, like Deputy Assistant Secretary Silvey did a minute ago, I'd kind of point you to the preamble. And, just to underscore the point we made earlier, too, is that whole point of, this process and having public hearings and doing notice and comment, is to give... The term is, "To be as broad as it can get." ... all interested parties an opportunity to participate in this process and to ask questions. And, you're a member of the press, so that includes you too. You're an interested party here and I would just encourage you to avail yourself of that process.

But, specific enforcement questions, I mean, we also mentioned too, this is a proposed rule, it's not a final rule. So, at this point in the process, we can't get into every detail about how things will be enforced. What I can say, though, and that's further down the line of this process, but once we get to a point, to a final rule, as MSHA has always done, there will probably be more materials out there and more guidance and more opportunities for us to explain and go through these issues than people will know what to read. And, there's going to be a lot of information and we'll do that. But, at this point in time, with a proposed rule, we, in the middle of a comment period, can't get into a back and forth about nuances of enforcement. Just can't do that at this point.

Operator (Erika...: Our next question comes from Scott Romo, please state your question.

Scott Romo: Thank you for holding this. It's been very helpful for us. I have a question on the new silica rule, and it's more just looking for some guidance for a metal/nonmetal situation. If it's the most innocuous conditions, where we historically have had no silica over 20 years of MSHA testing it, and then we've done our baseline tests and came up with, once again, not showing any levels that were anywhere near the new standards, along with documenting that test that we had to do for ourselves, and if there's no changes in the plant or in our source that we have that would lead us to believe that there would be additional silica or different levels. I guess, I got two questions, and the first would be, how often would a retest be required in that kind of a situation? And then, is there any annual documentation or other requirements that the inspectors will be looking for? Thank you.

Deputy Assistan...: Yeah, I'm going to try to answer that. That's in the rule, but I'm going to try to remember it at this point, and I'm doing the best I can. If I'm not mistaken, the qualitative sampling is semi-annual, so that's twice a year, you would have to... You said to me, though, that there were no changes, and you know that there are no changes, and I was taking you at your word. I have no reason to do otherwise. So, if you know that there are no changes in processes, production, or anything like that, you still got to do this semi-annual evaluation, twice a year, every six months. And if, as a result of that semi-annual evaluation... Well, you already said there was no change. So, only if there's some kind of change that gets you to something that shows you if a miner is above that action level... You led me to believe that there was no exposure. So, that's kind of how you got to do it, though. You got to do this semi-annual evaluation.

Scott Romo: If I understand you correctly, so if you're in a situation where you're dealing with minerals that aren't silica related, they're still going to require twice a year to test for that then, is that correct? Based on the standards, I mean?

Deputy Assistan...: No, I mean, I don't want to-

Scott Romo: And, that's for any mine at all that's in metal/nonmetal or-

Deputy Assistan...: No, no. If you know that no miner is exposed or reasonably exposed, if you know that, then you don't have to do any sampling, if you know that.

Scott Romo: Okay. [inaudible] Yeah, I guess, that's what I was asking, if it historically, over 20 years of testing in the plants and, once we do the initial test, there wouldn't be another requirement? We've already done our due diligence at that point?

Deputy Assistan...: That's right, that's right. You confessed to me enough. You sound pretty thorough. If you got 20 years, that's enough for me. I might be the only one in this room who says that to you, but anyway. Okay.

Scott Romo: Thank you very much.

Assistant Secre...: Yeah. And, this is Assistant Secretary Williamson. I guess, I should have said this from the front, but I think the rule does speak into all the different parts that you were asking about. And, I think we've all done a good job here of trying to share as much as we can and been honest and candid of things we can't share. But, the other thing I should have noted, obviously what's in the role is what governs, and we're doing this as, I won't say a courtesy, but it's part of our role in terms of education and outreach. And, we know there's a lot of interest out there and that's why we provided a overview. And, where we can point you to places in the rule or places in the preamble, we've done that here, but that's about as far as we can go in the process.

And, just from my understanding of your question, I think the rule kind of walks through there. You might have to rate it a little closely, but it talks about

baseline sampling and it also defines what, I believe, it's objective data, is the term, and it defines what that is. And, that's there and some combination of those things, and then what your regular sampling obligations are after that. So, I would just encourage you to look through it and I think the preamble's got a little bit more information on it. And, if you still have questions and things, like we said, certainly participate in either the hearing or the comment period.

Scott Romo: Okay. Yep. Thank you very much.

Operator (Erika...: Our next question comes from Garland Moffitt, please state your question.

Deputy Assistan...: Garland. Hello, Garland.

Garland Moffitt: Hi, ma'am. How are you?

Deputy Assistan...: Fine, thank you.

Garland Moffitt: Thank you for the meeting. A lot of great information. I was just curious, the information that you shared on the civil penalties to individuals violating, whether it be... Well, definitely knowingly violating regulations and so on, so forth, is that something we can utilize or find on the MSHA website, to utilize during our instruction so that we can nail home the point of making sure that the mine site that we're visiting knows how serious MSHA is about this and that they're not turning a blind eye?

Assistant Secre...: Yeah. So, this is Assistant Secretary Williamson. I think, if I understand correctly, and I don't know if Dana's still on the line, but if she wants to, it seems like you're asking about some information Dana shared. And, I guess, what I would say, one of the things that is out there that, generally, I know there's been some press releases that have gone out with information about it. And, that's probably a good place to start, is the press releases, and there's been some press stories written about it as well. Now, on top of that, if Dana's still on the line, I'm going to defer to the lawyers.

Dana Ferguson: I'm here.

Assistant Secre...: I'll defer to you, Dana, but I think that's at least one thing that's in the public domain that you could use to point to.

Dana Ferguson: The other thing I might suggest too, is in the Mine Act, that there are specific sections in the Mine Act that are criminal sections under 110, and those are 110, which is... I'm sorry, 30 USC 820. So, it's under Section 110 of the Mine Act, and those are 110 C, D, E, F, and H. Those are specific to the Mine Act, but I would caution that, like the case I shared for RJ Valente, for Mr. Valente, that is a state law of reckless manslaughter. DOJ also has at its disposal any criminal provisions that it think fits back in front of it and investigations that it might do.

So, I can't speak to or provide you with any kind of definitive bucket of what to look out for. I know that's not particularly helpful, but I do think, if you would Google into criminal cases, like the Assistant Secretary says, see what news releases pop up, that may help you get a flavor for what may be brought by the different agencies that do the criminal cases, that may not correspond to just the Mine Act provisions I have listed.

Garland Moffitt: Yeah, I was just wanting, basically, to regurgitate what you stated during our training in order to just nail home the fact that, "Hey, we need to be doing what we're supposed to be doing," is all. But, I appreciate y'all's time. Thank you so much.

Assistant Secre...: Thank you.

Operator (Erika...: At this time we have no further questions.

Assistant Secre...: All right. Well, we thank everyone for joining us today. A good discussion. We covered a lot of ground, both in the health and safety space and even invited our friends from the Solicitor's Office to participate. And, we appreciate everyone's interest and everyone's help, in terms of going back to what the Mine Act's pretty clear about, making miners' safety and health the first priority and concern. So, I hope everyone has a good rest of the day. Thank you.

Deputy Assistan...: Thank you everybody.

Operator (Erika...: This concludes today's meeting. Thank you for attending.