

U.S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
INFORMAL PUBLIC HEARING

Amending Respiratory :
Protection Provisions in :
Standards on 16 Chemicals :
:

Tuesday,
August 25, 2026

Videoconference

The above-entitled matter came on for
hearing, pursuant to notice, at 9:30 a.m. EDT

BEFORE: THE HONORABLE STEPHEN R. HENLEY,
Chief Administrative Law Judge

DEPARTMENT OF LABOR PANEL MEMBERS:

ROBERT BLICKSILVER, Economist
PATTI DOWNS, Industrial Hygienist
LISA LONG, Deputy Director, Directorate of
Standards and Guidance
RACHEL MICHEL, Industrial Hygienist
TOM MOCKLER, Economist
STEPHEN SCHAYER, Acting Deputy Director,
Directorate of Standards and Guidance

DEPARTMENT OF LABOR OFFICE OF THE SOLICITOR:

LEIGH ANNE SCHRIEVER, ESQ.
SHEILA NAUGHTON, ESQ.

ALSO PRESENT:

ALEX DUNCAN, Department of Labor
RICHARD EWELL, Department of Labor
KATIE HARRISON, Eastern Research Group
KECIL JOHN, Eastern Research Group
JULIA KEANE, Eastern Research Group
JESSICA STONE, Department of Labor
RYAN TREMAIN, Department of Labor

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P-R-O-C-E-E-D-I-N-G-S

9:34 a.m.

JUDGE HENLEY: Thank you, Kecil. Good morning, we are on the record, the hearing will come to order. This is an informal public hearing on OSHA's proposed rules to amend respiratory protection provisions and standards on 16 chemicals. The proposed changes impact OSHA's general industry, construction, shipyards, marine terminals, longshoring, and agriculture standards.

The Notices of Proposed Rulemaking were published in the Federal Register on July 1st, 2025 in Volume 90 of the Federal Register, beginning at page 28263. I'm Judge Stephen Henley, Chief Administrative Law Judge for the United States Department of Labor, and I will be presiding over today's hearing. The purpose of this hearing is to receive oral testimony as well as other information pertinent to the proposed rules from interested parties.

After the hearing and the post-hearing

1 comment periods have closed, OSHA will review
2 the entire record in determining the content of
3 the final rules. My role as Presiding Judge
4 will be limited to conducting the hearing to
5 assure that a complete and accurate record is
6 made and that all interested parties receive a
7 fair hearing and have an opportunity to submit
8 their information. The hearing schedule and
9 OSHA's procedures governing the hearing are
10 available on the deregulatory rulemaking page of
11 OSHA's website.

12 These documents were sent to people and
13 organizations who filed a timely Notice of
14 Intention to Appear at this hearing. A few
15 words about the nature of the hearing. Despite
16 its informal nature, this hearing is governed by
17 rules, both OSHA's rules governing hearings at
18 29 CFR Part 1911 and the hearing procedures
19 issued specific to this rulemaking.

20 These rules are meant to assure that
21 everyone has a fair opportunity to speak and
22 express an opinion about the proposed rules. To

1 that end, they also allow me to hold witnesses
2 to their allotted times, limit undue repetition
3 or excessive argument, and generally keep the
4 hearing on schedule. Any written comments you
5 have submitted to the docket are already part of
6 the record of this rulemaking.

7 In the rare case where witnesses wish
8 to provide any other documents that have not
9 already been entered in the docket, you should
10 provide them by email to oshaevents_dsg@dol.gov
11 before the witness begins their testimony so
12 that they can be designated as exhibits in the
13 record. Because all pre-submitted documents are
14 already part of the record, your oral testimony
15 should concentrate on presenting the highlights
16 of your written comments or clarifying or
17 expanding on your written submissions.

18 Because this hearing involves multiple
19 related proposed rules, it is very important
20 that hearing participants make clear which
21 chemicals or proposed rules they are providing
22 their comments on for each argument or point

1 that they make. This will ensure that the
2 record is clear and accurate. If you do not
3 specify which chemical or standard you are
4 speaking about, I may interrupt you to ask for
5 clarification. Hearing participants may also
6 submit additional evidence or statements for a
7 period following the end of the hearing, and
8 will have an additional period of time after
9 that to submit any briefs based on the record as
10 a whole.

11 I will set the deadlines for these two
12 periods at the end of the hearing. At that
13 point, the record for this hearing will close.
14 Today, after each speaker or panel of speakers
15 completes their oral testimony, OSHA and the
16 Solicitor's Office representatives will have an
17 opportunity to ask questions of the speaker or
18 panel.

19 When they have finished asking
20 questions, there will be an opportunity, as time
21 permits for persons who filed a timely Notice of
22 Intention to Appear for this hearing to question

1 the witness or panel. Participants may only
2 direct questions to witnesses with whom they
3 have no organizational affiliation. This is
4 intended to prevent the use of the question
5 period to extend testimony. This is the process
6 I intend to follow.

7 After OSHA and the Solicitor's Office
8 has finished asking questions of a witness or
9 panel, I will ask participants who wish to ask
10 questions of the witness or panel to identify
11 themselves by pressing the raise hand button in
12 Zoom or by pressing star nine on their phones
13 for those who have called in. Based on the
14 hearing schedule and the number of participants
15 who wish to ask questions, I will determine the
16 order in which participants will question the
17 particular witness or panel and any time
18 restrictions on that questioning.

19 Each person asking questions should
20 specify whether the question relates to a
21 specific rulemaking or to all of the rulemakings
22 that are part of this hearing. If there are

1 more questions than we have time for during the
2 scheduled period for questioning, it may be
3 possible to ask additional questions after the
4 conclusion of the final witness's testimony
5 today. Further, if witnesses are unable to
6 answer a question during today's hearing or
7 would like to expand on the answers provided,
8 they are welcome to use the post-hearing comment
9 period to submit such information.

10 I would also like to remind you that
11 this proceeding is being recorded and
12 transcribed by a court reporter. To ensure that
13 the reporter is able to provide an accurate
14 record of all the testimony, questions, and
15 responses, please try to remember to provide
16 verbal responses to all questions. The court
17 reporter may have a hard time seeing if you only
18 nod or shake your head in response to a
19 question.

20 In addition, please remember to
21 identify yourself before beginning your
22 testimony and before asking or answering a

1 question. And do not worry, I know many
2 participants are not accustomed to doing these
3 things, and I will remind you as we go along.
4 The transcript of the entire hearing will be
5 uploaded to each of the hearing dockets on
6 regulations.gov approximately two weeks
7 following the hearing. At this point, I'll ask
8 the OSHA panel to introduce themselves, please?

9 MS. LONG: Good morning, I'm Lisa Long
10 from OSHA's Directorate of Standards and
11 Guidance. Thank you for being here today, and
12 we look forward to your testimony. I'd like to
13 take a moment to let the rest of the OSHA panel
14 introduce themselves as well.

15 MS. DOWNS: Good morning, my name is
16 Patti Downs, and I'm with the Directorate of
17 Standards and Guidance with OSHA.

18 MS. MICHEL: Good morning, I'm Rachel
19 Michel with OSHA's Directorate of Standards and
20 Guidance.

21 MR. MOCKLER: I'm Tom Mockler, I'm with
22 OSHA's Office of Regulatory Analysis.

1 MS. LONG: Thank you, again. Those are
2 our OSHA panelists for today, Judge Henley.

3 JUDGE HENLEY: Thank you. Finally, I
4 believe Ms. Schriever from the Solicitor's
5 Office may have a few exhibits to enter into the
6 record before we get to our first witness.

7 MS. SCHRIEVER: Thank you, Your Honor.
8 My name is Leigh Anne Schriever, and I am one
9 of the attorneys representing the Solicitor's
10 Office for this hearing. My colleague, Sheila
11 Naughton, will represent the Solicitor's Office
12 in the afternoon. The role of the Solicitor's
13 Office in this hearing is to facilitate a
14 complete, accurate, and clear record upon which
15 OSHA can base its final rule.

16 We will do that through asking
17 questions, eliciting information on various
18 issues, and helping to resolve any procedural
19 matters that might arise. I would like to
20 designate as Exhibit 1 the master indexes of the
21 complete records of each rulemaking involved in
22 this hearing as of today's date for the hearing

1 record, which have been combined into a single
2 document. This is not a copy of all of the
3 documents that have been submitted to the
4 dockets.

5 Rather, it is a list of all of the
6 documents that are part of the public dockets of
7 these rulemakings. All of the documents listed
8 here are available for inspection and, as
9 permissible, copying at the OSHA docket office.

10 In addition, all of the documents are listed in
11 the docket indexes for these rulemakings at
12 www.regulations.gov, the federal e-rulemaking
13 portal.

14 (Whereupon, the above-referenced
15 document was marked as Exhibit 1 for
16 identification.)

17 JUDGE HENLEY: Thank you, Ms.
18 Schriever. The master indexes will be
19 designated as Exhibit 1.

20 (Whereupon, the above-referenced
21 document was received into evidence as Exhibit
22 1.)

1 MS. SCHRIEVER: I also have a few other
2 exhibit related requests. First, I would like
3 to reserve Exhibit Number 2 for a complete list
4 of hearing exhibits, which we will prepare after
5 the close of the hearing. Second, I would like
6 to designate copies of two other exhibits for
7 the record. The hearing procedures are
8 designated as Exhibit Number 3, and a copy of
9 the hearing schedule is designated as Exhibit
10 Number 4.

11 (Whereupon, the above-referenced
12 documents were marked as Exhibit Nos. 2, 3, and
13 4 for identification.)

14 JUDGE HENLEY: I will reserve Exhibit
15 Number 2 for the complete list of hearing
16 exhibits as requested. The hearing procedures
17 will be designated as Exhibit Number 3 and the
18 schedule will be designated as Exhibit Number 4
19 for the hearing record.

20 (Whereupon, the above-referenced
21 documents were received into evidence as Exhibit
22 Nos. 2, 3, and 4.)

1 MS. SCHRIEVER: Thank you, Your Honor.

2 JUDGE HENLEY: Now, unless there are
3 any further announcements or other housekeeping
4 matters, I believe that we can proceed with the
5 public testimony. I believe the expected
6 speaking order will be displayed on the screen.

7 Our contractor will introduce each speaker in
8 turn and promote them to be panelists. When you
9 are called to testify, please state your name
10 and affiliation for the record and speak slowly
11 and clearly so our court reporter can record
12 these proceedings accurately. And again, please
13 identify the chemical or proposed rule that will
14 be the subject of your testimony. Will our ERG
15 representative please introduce our first
16 speaker and promote them to a panelist?

17 MS. JOHN: Yes, Dr. A'Ishah Johnson
18 who's just been promoted to panelist. Dr.
19 Johnson, you should be able to unmute yourself
20 and turn on your camera.

21 DR. JOHNSON: Hello, can everyone hear
22 me okay?

1 JUDGE HENLEY: We can, Doctor, thank
2 you very much. You can begin your testimony.

3 DR. JOHNSON: Great, thank you. My
4 name is A'Ishah Johnson, and I am providing
5 comments on vinyl chloride. I am the workers'
6 health and safety advocate with Public Citizen.
7 Public Citizen is a nonprofit consumer advocacy
8 organization with over one million members and
9 supporters.

10 OSHA proposes to eliminate a
11 longstanding respiratory protection training
12 requirement for vinyl chloride workers on the
13 grounds that it is redundant. Public Citizen
14 strongly opposes this proposal because OSHA has
15 failed to demonstrate that the requirement is
16 redundant or that removing the training will
17 leave workers equally protected. In February
18 2023, five tank cars of vinyl chloride derailed
19 East Palestine, Ohio. Three days later,
20 responders vented and burned the chemical rather
21 than allowing it to cool.

22 The National Transportation Safety

1 Board later concluded that action was not
2 necessary to prevent an explosion. Now, that
3 incident is not the subject of today's proposal,
4 but it does raise the same fundamental question
5 about the same chemical. What happens when the
6 people responsible for managing vinyl chloride
7 lack complete substance-specific knowledge of
8 its hazards and controls? When the consequences
9 of misunderstanding a hazard can be
10 catastrophic, the answer should not be less
11 training, yet that is precisely what OSHA is
12 proposing.

13 Paragraph J1, Roman Numeral III
14 requires training on the purpose, proper use,
15 and limitations of respiratory protection for
16 every employee engaged in vinyl chloride or
17 polyvinyl chloride operations. OSHA proposes to
18 eliminate that requirement on the grounds that
19 it is -- that it duplicates the Respiratory
20 Protection Standard. The requirement is not
21 duplicative. Section 1910.134(k) requires
22 training only for employees who are required to

1 wear a respirator.

2 Paragraph J1 trains every employee in
3 that operation regardless of what they wear.
4 For workers outside Section 1910.134(k), this
5 proposal eliminates training. OSHA's own
6 Advisory Committee on Construction Safety and
7 Health deadlocked on consolidating chemical-
8 specific respirator training into the general
9 standard because members questioned whether
10 generalized training requirements adequately
11 convey the specific hazards associated with
12 individual substances.

13 If OSHA's own advisors are sounding the
14 alarm on these rollbacks, the agency has not
15 demonstrated that they are safe or redundant.
16 The problem is most apparent during emergencies.

17 Under the vinyl chloride standards emergency
18 procedures, workers who are not equipped with
19 respiratory protection must evacuate and remain
20 outside the affected area until conditions are
21 safe. Deciding whether to evacuate depends on
22 understanding what a respirator does and does

1 not protect against, precisely what this
2 training teaches, and precisely what OSHA
3 proposes to stop requiring for anyone not
4 already wearing one. Workers also cannot rely
5 on their senses to recognize danger.

6 Federal guidance places vinyl
7 chloride's odor threshold at approximately 3,000
8 parts per million, roughly 3,000 times the OSHA
9 permissible exposure limit. A worker may be
10 dangerously overexposed long before any odor is
11 detected. Training serves as a substitute for a
12 warning sign the chemical does not provide.
13 OSHA adopted the vinyl chloride standard in 1974
14 after determining that workers faced a grave
15 danger from exposure, a threshold even higher
16 than the significant risk standard OSHA is not
17 attempting to establish here.

18 Evidence has only reinforced that
19 concern. A mortality study of polyvinyl
20 chloride polymerization workers found liver
21 cancer mortality nearly three times higher than
22 expected and found angiosarcoma of the liver,

1 the disease most strongly associated with vinyl
2 chloride exposure, at more than 30 times the
3 rate observed among unexposed workers in the
4 highest exposure groups. The hazards associated
5 with vinyl chloride are substantial. The
6 savings OSHA expects from removing this
7 requirement are not. OSHA estimates annual
8 savings from eliminating this requirement at
9 just \$18,292 for approximately 4,400 workers, or
10 about \$4 per worker annually.

11 At the same time, OSHA explicitly asks
12 whether any safety benefit can be anticipated
13 from the proposal and identifies none. In other
14 words, OSHA proposes to remove a worker
15 protection requirement adopted in response to
16 well-documented cancer risks in exchange for \$4
17 per year without identifying any corresponding
18 health or safety benefit. Public Citizen urges
19 OSHA to withdraw this proposal.

20 If the agency believes some overlap
21 exists, there is a straightforward solution.
22 Specify that training provided under Section

1 1910.134(k) satisfy J1 Roman Numeral III for
2 workers already covered by that standard, while
3 preserving the requirement for all other
4 employees. That approach avoids any loss of
5 training while ensuring that all workers remain
6 protected. Thank you.

7 JUDGE HENLEY: Thank you, Dr. Johnson.
8 Do our OSHA panelists have questions of Dr.
9 Johnson?

10 MS. LONG: Yes, thank you, Judge
11 Henley. This is Lisa Long with OSHA, our first
12 questions from OSHA are going to come from Patti
13 Downs and Rachel Michel.

14 MS. DOWNS: Right, thank you so much,
15 Dr. Johnson. You actually answered most of my
16 questions in your testimony, so I just have one
17 quick one remaining. So, you noted a difference
18 in the coverage language for the training
19 provision, specifically that the vinyl chloride
20 standard requires trainings for employees who
21 have the potential to be exposed.

22 Whereas, the Respiratory Protection

1 Standard only applies when respirators are used.

2 Can you identify any specific workers or
3 scenarios where someone would fall within the
4 vinyl chloride standards coverage for training
5 and not the Respiratory Protection Standard
6 under Subparagraph K?

7 DR. JOHNSON: Yes, I will actually be
8 happy to follow back up with you on that.

9 MS. DOWNS: Okay, that would be great.
10 And if you could include any specific job
11 titles or roles that might fall into this
12 category, and any like data you have on how many
13 workers this would apply to, that would be very
14 helpful.

15 DR. JOHNSON: Yes, absolutely.

16 MS. DOWNS: and that's all for me, Your
17 Honor, thank you.

18 JUDGE HENLEY: Thank you, Ms. Downs.

19 MS. MICHEL: Hi, Rachel Michel with
20 OSHA, thank you for your testimony this morning.

21 I do not have any questions.

22 MS. LONG: Thank you, Patti, and

1 Rachel. And now, I will pass the mic to Tom
2 Mockler, an economist for OSHA, who will have
3 some questions for OSHA.

4 MR. MOCKLER: Yes, I actually have no
5 additional questions, I think Patti handled what
6 I might have asked. So, yeah, thanks for your
7 testimony.

8 DR. JOHNSON: You're welcome.

9 MS. LONG: Thank you for your
10 testimony, Dr. Johnson. Judge Henley, that
11 concludes OSHA's questions for this speaker.

12 JUDGE HENLEY: Thank you, Ms. Long. Do
13 the Solicitors -- does the Solicitor's Office
14 have questions for Dr. Johnson?

15 MS. SCHRIEVER: Just one. Good
16 morning, Dr. Johnson, I just want to clarify the
17 solution you suggested, am I correct that you
18 were suggesting that OSHA include a cross
19 reference to 1910.134(k) in the vinyl chloride
20 standard where it currently has the training
21 provision that we've proposed to remove?

22 DR. JOHNSON: Yes, but I can provide

1 more clarification on that as well in a follow
2 up.

3 MS. SCHRIEVER: That would be great.
4 Thank you so much for your testimony. I have no
5 further questions.

6 JUDGE HENLEY: Thank you, Ms.
7 Schreiber. Kecil, do we have any members of the
8 public who have questions for Dr. Johnson?

9 MS. JOHN: No public questions, Your
10 Honor.

11 JUDGE HENLEY: Dr. Johnson, again,
12 thank you very much for your testimony this
13 morning, you are excused. Will ERG please
14 promote our next panel?

15 MS. JOHN: Yes, all right, Travis
16 Parsons, Nate Schreiber, and Brian Papariello,
17 you all should have been promoted to panelist.
18 Sometimes it takes a couple seconds for people
19 to be moved to the panelist. All right, you all
20 should be able to turn on your camera and
21 microphone.

22 MR. PARSONS: All right, this is Travis

1 Parsons, can you hear me?

2 JUDGE HENLEY: Yes, sir.

3 MR. PARSONS: All right. And just for
4 the record, we won't go 30 minutes, but we are
5 intended 10 minutes each person, we have three
6 people. I've seen a couple of different
7 agendas, so we won't go 30 minutes, but we might
8 go a little over our 10.

9 JUDGE HENLEY: Thanks for the heads up,
10 Mr. Parsons.

11 MR. PARSONS: Thank you. All right,
12 I'll jump right in here. Okay, good morning,
13 Judge Henley, OSHA officials, and members of the
14 public, thank you for the opportunity to testify
15 today about OSHA's proposed proposal to amend
16 the respiratory protection provisions and
17 standards on 16 different chemicals. My name is
18 Travis Parsons, and I serve as the Director of
19 Occupational Safety and Health for the Laborers
20 Health and Safety Fund of North America.

21 Joining me today are my colleagues,
22 industrial hygienist Nathan Schreiber, and

1 safety and health specialist Ryan Papariello.
2 Together, we represent the Laborers Health and
3 Safety Fund of North America dedicated to
4 advancing the safety and health and well being
5 of the members of the Laborers International
6 Union of North America, its signatory
7 contractors, and its affiliated organizations.

8 LIUNA represents over 540,000 highly
9 skilled, hardworking members across North
10 America. Our members build and maintain the
11 vital infrastructure that powers our economy and
12 sustains our communities from roads, bridges,
13 and skyscrapers to renewable oil and gas and
14 nuclear facilities. Beyond construction, our
15 membership also includes approximately 70,000
16 public employees and healthcare workers that
17 deliver essential public services and city work
18 across the country.

19 Also, 47,000 postal workers represented
20 by the National Postal Mail Handlers Union are
21 in our union. Our members perform work in
22 potentially hazardous environments because of

1 toxic chemicals listed like the 16 chemicals
2 every day, almost every hour of every day they
3 could be exposed to a toxic substance or
4 chemical, many of the ones listed. Many of
5 these hazardous atmospheres are created because
6 of these 16 chemicals under review in this
7 hearing.

8 It is our core responsibility to ensure
9 that our members possess the necessary
10 protective safety measures to return home
11 unharmed at the end of every shift. Our workers
12 often rely on respirators as the last means of
13 defense to protect them from every one of the
14 listed chemicals in this hearing. We are here
15 today in opposition to OSHA's proposal to amend
16 the respiratory protection provisions across
17 standards for these hazardous chemical
18 substances.

19 Replacing explicit substance-specific
20 protection language with a generalized reference
21 to the baseline Respiratory Protection Standard
22 29 CFR 1910.134 is a potentially dangerous

1 regulatory step backwards. The proposed
2 rollback lacks justification, ignores well-
3 established safety protocols embedded in each
4 individual standard, and compromises worker
5 health and safety.

6 While removing substance-specific
7 requirements may superficially appear to
8 streamline administrative burdens and lower
9 operational costs for industry, worker health
10 cannot be sacrificed for a marginal convenience.

11 OSHA's General Respiratory Protection Standard
12 29 CFR 1910.134 triggers a required protection
13 based on, primarily on an airborne concentration
14 reaching or exceeding standard permissible
15 exposure limits, PELs. However, as OSHA itself
16 has acknowledged for decades, many, if not most,
17 legacy chemical PELs are drastically out of date
18 and fail to protect workers from severe chronic
19 health consequences. Under the current exposure
20 limits, workers continue to suffer disabling
21 diseases, aggressive cancers, and terminal
22 diagnosis.

1 Therefore, providing respirators only
2 when exposure approaches these outdated
3 thresholds is an insufficient line of defense.
4 The agency's time and resources should be spent
5 modernizing protective exposure limits, not
6 compromising 30-year-old substance-specific
7 provisions that already provide critical
8 safeguards to replace them with ambiguity.
9 Relying on generic standards forces employers to
10 make complex and subjective hazard
11 determinations, especially for small employers,
12 particularly those operating in high-risk
13 sectors like construction, rely heavily on
14 clear, explicit rules with individual substance
15 standards.

16 Scrapping these explicit rules in favor
17 of a broad reference to 1910.134 creates
18 regulatory confusion and leaves workers
19 vulnerable to underprotected exposures. While
20 this rule affects 16 different chemicals, my
21 colleagues and I are going to highlight seven
22 toxic substances that our members face on a

1 daily basis, and I'm going to list those seven
2 next.

3 Formaldehyde, a known human carcinogen
4 and severe respiratory sensitizer. Inorganic
5 arsenic, a potent cause of lung and skin cancers
6 with extreme systematic -- systemic toxicity.

7 Lead, a neurotoxin causing irreversible
8 cardiovascular, renal, and neurological damage
9 even at low exposure levels, also a probable
10 human carcinogen. Methylene chloride, a
11 volatile toxicant causing rapid central nervous
12 system depression and elevated cancer risk, also
13 a probable human carcinogen. Asbestos, a deadly
14 carcinogen where no exposure level can be
15 considered safe from mesotheliomas and
16 asbestosis. Benzene, a carcinogen directly
17 attacking bone marrow and blood-forming organs.

18 And lastly, cadmium, a toxin that destroys
19 kidney function and causes lung cancer.

20 Each of these hazards presents unique
21 exposure dynamics, breakthrough characteristics,
22 and health risks that a generic respiratory

1 standard fails to address adequately on its own.

2 In conclusion, stripping away substance-
3 specific respiratory protections under the guise
4 of regulatory efficiency does not advance worker
5 protection, it actually weakens it. We urge
6 OSHA to withdraw this proposal, maintain
7 explicit protections within substance-specific
8 standards, and redirect agency resources towards
9 strengthening outdated PELs to better protect
10 the lives and livelihoods of American workers.
11 Now, I will turn things over to my colleagues
12 who are going to discuss each of the previously
13 described toxic chemicals, starting with Nathan
14 Schreiber.

15 MR. SCHREIBER: Good morning, everyone,
16 Nate Schreiber with the Laborers Health and
17 Safety Fund of North America. As a certified
18 industrial hygienist, I cannot recommend
19 proceeding with the proposed removal of specific
20 respiratory protection standards for these seven
21 highly hazardous chemicals. Construction
22 laborers are routinely exposed to all of these

1 substances addressed by this testimony through
2 renovation, demolition, abatement, welding, and
3 rehabilitation work on the nation's aging
4 infrastructure.

5 First, I'll address the scope of the
6 changes OSHA has proposed. OSHA frames these
7 changes as reducing duplicative or outdated
8 requirements, but that understates its effect.
9 None of the proposals lower the permissible
10 exposure limit for a substance. Instead, they
11 remove respirator selection tables and
12 requirements tailored for specific chemical
13 hazard profiles.

14 This change would defer you to the
15 general provisions of the Respiratory Protection
16 Standard, which has no chemical specific
17 information. OSHA also states it would like to
18 expand the range of respirator types permitted
19 at a given exposure level without giving any
20 examples of said respirators. This leaves it up
21 to many employers who do not have safety
22 professionals on staff to determine the best

1 course of action.

2 This allows the possibility to use a
3 less protective respirator than the substance-
4 specific standard currently requires without
5 proper guidance. I think it's important to
6 understand that for many employers, OSHA is
7 viewed as their company's safety professional.
8 What's written in these regulations carry a lot
9 of weight, so eliminating explicit procedural
10 instructions for chemical specific respirator
11 protections is ultimately going to harm workers.

12 I want to emphasize for the members of
13 LIUNA, these are not obscure chemicals only
14 encountered in specialized settings. Laborers
15 encounter all of these chemicals in the ordinary
16 course of their workday. You have asbestos and
17 insulation, flooring and fireproofing, buildings
18 constructed before 1980s, lead in paint, solder,
19 and plumbing that you get exposed to during
20 demolition and renovation of older structures,
21 cadmium, and welding, cutting, and grinding or
22 coated plate seal is present. And inorganic

1 arsenic in the demolition of structures built
2 with arsenic treated lumber and a certain glass
3 and metal work.

4 Benzene exposure occurs in fuels,
5 solvents and adhesives used on site and
6 formaldehyde is encountered in insulation,
7 composite wood products, and adhesives that are
8 disturbed during renovation and demolition work.

9 Because this work is often short duration,
10 task-based, and performed by workers moving
11 between job sites, and employers, laborers
12 depend heavily on the respirator selection
13 requirements built into each substance-specific
14 standard to ensure they're adequately protected
15 without having to individually assess an
16 unfamiliar hazard on every new job.

17 Each of these seven substances has its
18 own OSHA standard separate from the general
19 Respiratory Protection Standard for a reason.
20 At the time each standard was introduced, OSHA
21 determined that the general respirator
22 provisions did not adequately address the

1 specific hazard that each substance presented.
2 Eliminating these specific respirator
3 requirements reverses that determination
4 without, to my knowledge, presenting new
5 evidence that the hazard profile of these
6 substances has changed.

7 If anything, the epidemiological and
8 toxicological evidence for these substances as
9 human carcinogens with no established safe
10 threshold has only become more firmly
11 established over the past few decades. OSHA's
12 framing of this rollback as a safety improvement
13 is also counterintuitive. The agency states
14 that employers already in compliance with this
15 existing standard would also be in compliance
16 with the revised standard. In other words, no
17 employer is required to change anything.

18 That fact means the proposed rule
19 delivers no safety benefit to workers whose
20 employers are already meeting the current
21 standard. Its only benefit appears to be
22 permitting employers to select a less protective

1 respirator than the current law allows. For
2 example, in the lead standard, an employer would
3 be allowed to provide a half mask with safety
4 goggles instead of a full face respirator, since
5 the requirement for a full face would be
6 removed. This change would be made without the
7 submission of any data to support it.

8 If OSHA possesses data showing that
9 newly released respirators would perform
10 equivalently to respirators currently required,
11 that data should be added to the rulemaking
12 record for public comment. Finally, each of
13 these proposals cites executive orders as its
14 basis. The Occupational Safety and Health Act
15 requires that standards be grounded in evidence
16 of what protects worker health. A stated goal
17 of reducing compliance costs is not evidence of
18 worker safety improvement and it's certainly not
19 evidence that safety will be unaffected.

20 In closing, formaldehyde, benzene,
21 inorganic arsenic, lead, asbestos, and cadmium
22 are regulated as substance-specific hazards

1 because they're serious. They cause often
2 serious irreversible harm. Health effects such
3 as cancer, neurological damage, and chronic
4 respiratory disease cannot be undone.
5 Regulations in the general Respiratory
6 Protection Standard were found -- were already
7 found to be insufficient to address the hazards
8 these chemicals prevent.

9 Our members encounter all of these
10 substances routinely in the course of their
11 routine work and weakening the respirator
12 selection requirements tailored to each of these
13 substances has the potential to indirectly
14 increase worker exposures. So, I urge OSHA to
15 withdraw these seven proposals. Thank you to
16 the agency for the opportunity for my comment.
17 Now I would like to hand it over to my
18 colleague, Ryan Papariello.

19 MR. PAPARIELLO: Okay, good morning.
20 My name is Ryan Papariello, and I'm the safety
21 and health specialist for the Laborers Health
22 and Safety Fund of North America. Not to be

1 redundant from my colleagues, but I would like
2 to focus on three substances that are
3 particularly relevant to our members that I've
4 seen in the field, lead, asbestos, and cadmium.

5 These are not hazards encountered only in
6 specialized industrial facilities.

7 Laborers face these substances during
8 everyday construction work, particularly, like
9 Nate said, in demolition, renovation, and
10 abatement. Lead remains a significant concern
11 for our members because it's found throughout
12 older buildings, infrastructure, and in paints
13 and coatings. Lead can damage the nervous
14 system, cardiovascular system as well, kidneys,
15 and other organs, and can cause serious
16 reproductive and developmental effects.

17 Construction conditions can also change
18 all the time. Dust and fumes can be generated
19 unexpectedly, and workers may not always know
20 what hazards they will encounter. Clear
21 substance-specific respiratory requirements
22 provide certainty. When workers are performing

1 lead-related work, they should receive
2 protection appropriate to that hazard.

3 The same principle applies to asbestos.

4 LIUNA members are frequently involved in
5 demolition and renovation work where asbestos-
6 containing materials may be present. Asbestos
7 fibers cannot be seen with the naked eye, yet
8 exposures can cause diseases that not only --
9 not appear for decades. When dealing with known
10 carcinogens with potentially fatal consequences,
11 regulations should eliminate uncertainty, not
12 create more of it.

13 Lastly, cadmium is another hazard
14 construction workers can encounter during
15 welding, cutting, metal machining, scraping
16 industrial coatings, workers also handling
17 disposal of coal ash, hazardous or even everyday
18 waste are also vulnerable. Disturbing these
19 materials can generate hazards, fumes, and
20 particulates. Cadmium can cause serious kidney
21 and respiratory damage and associated with lung
22 cancer, like Travis said.

1 So, again, these exposures can change
2 rapidly, which is precisely why workers need
3 clear respiratory protection requirements. So,
4 in closing, for our LIUNA members, respiratory
5 protection is not an administrative exercise, it
6 could be the last line of defense between a
7 worker and a hazardous exposure. Our members
8 build, repair, demolish, and maintain this
9 country's infrastructure. They should not have
10 to wonder whether the respirator provided is
11 simply the minimum protection an employer can
12 legally provide rather than the protection
13 appropriate for the hazard.

14 OSHA's mission is to ensure safe and
15 healthful working conditions by setting and
16 enforcing standards. That mission demands that
17 worker protection move forward, not backwards.
18 We urge OSHA to withdraw this proposal and
19 retain the existing substance-specific
20 respirator protection requirements. So, thank
21 you for the opportunity to testify, and we look
22 forward to your questions.

1 JUDGE HENLEY: Thank you. Does OSHA
2 have questions for this panel?

3 MS. LONG: Thank you. This is Lisa
4 Long from OSHA, again. Once again, I'm going to
5 turn it over to Patti Downs and Rachel Michel
6 for OSHA's questions.

7 MS. DOWNS: This is Patti Downs.
8 Gentlemen, thank you for speaking with us this
9 morning. I just have a couple questions for
10 you. Mine pertain mostly around the use of HEPA
11 filters.

12 So, OSHA has received comments that the
13 N95 versus like the N100 difference makes a
14 particular difference for certain chemicals such
15 as cadmium and lead, which you spoke about
16 today. Do you believe that maintaining a
17 requirement for HEPA equivalent filters is more
18 important for some chemicals than others? If
19 so, why and would you be able to share any data
20 or studies that support your views?

21 MR. SCHREIBER: You want me to grab
22 that, Travis?

1 MR. PARSONS: Yes, go ahead, Nate.

2 MR. SCHREIBER: So, I mean, we do
3 believe that, you know, the filter type
4 drastically affects the exposure to the worker.

5 You know, if you look at what HEPA filters and,
6 you know, what N100s, P100s, N95s, what they
7 mean, it's basically referring to a micron count
8 that it allows to pass through the filter
9 itself. Right? So, an N95 allows a larger
10 particulate to pass through than an N100 does,
11 for example.

12 So, you're still getting exposure, you
13 know, with some of those lower level masks. So,
14 we do feel that, you know, it is important to
15 select the right filter type, especially when
16 you're dealing with these asbestos fibers and
17 some of these metal particulates that are
18 extremely small.

19 Again, the point we want to emphasis is
20 there's still an exposure there when you have a
21 respirator on, right, it's not a, you know, it
22 doesn't stop everything, otherwise, you wouldn't

1 be able to breathe through it. Right? So, if,
2 you know, if we -- if you want to see data
3 around that, we can definitely address some
4 studies that point to that importance in our
5 post-hearing comments.

6 MR. PARSONS: Well, also, just a point
7 of clarification, too, most of the time HEPA
8 filters are for rooms, for general filtration.
9 And then, the other ones, the P100s and N100s
10 are for personal wear and personal filtration.
11 So, yes, they're two different -- they may
12 filter the same, but they're two different
13 applications.

14 MS. DOWNS: Great, thank you. So, just
15 -- Patti Downs, again, just to be clear, you
16 feel that they're equally important for all
17 chemicals, right?

18 MR. PARSONS: Yes.

19 MS. DOWNS: Not just some versus
20 others? Okay.

21 MR. PARSONS: Yes, they're chosen for a
22 reason each time.

1 MS. DOWNS: Okay.

2 MR. SCHREIBER: I mean, I think it
3 depends on the particle size of the contaminant
4 we're talking about as well, right? Like
5 there's pretty concrete evidence that, you know,
6 guides you towards the selection of a filter
7 based on the particle size of the chemical. So,
8 that really drives -- that determines what type
9 of filter you should use.

10 MR. PARSONS: Right. And just to
11 repeat, usually HEPA is for the room and the
12 respirator is for the person.

13 MS. DOWNS: Great, thank you. This is
14 Patti Downs, again, and that's a perfect segue
15 into my next question. For OSHA standards that
16 do not specify a particulate, like a particulate
17 filter efficiency, for example, like 13
18 carcinogens, respirable silica, hex chrome, or
19 any of the z-table contaminants, how are
20 employers currently determining whether to
21 select a filter with the 95, 99, or the 99.97
22 percent efficiency?

1 If you could just kind of elaborate on
2 what factors would drive that decision, and
3 then, any evidence or data to support the view
4 that employers frequently choose insufficient
5 filters would be helpful?

6 MR. PARSONS: They have to follow the
7 individual standards, and that's specifically
8 why you can't just lean on 1910.134 across the
9 board.

10 MS. DOWNS: Alright, this is Patti
11 Downs, again. I should clarify, first, for
12 chemicals that don't have specific standards
13 guiding that, right, like the Z-table chemicals?

14 MR. PARSONS: Oh, they've got to go by
15 the protection factors, by the chart, yes. And
16 according to the exposure, they might have to do
17 an exposure assessment. They might have to, you
18 know, address the hazard and then, according to,
19 you know, the assigned protection factors,
20 choose the right respirator.

21 MR. SCHREIBER: This is Nate Schreiber
22 with the Laborers. You could also use the

1 manufacturer's, you know, chart -- filter
2 selection guide. That's quite often the gold
3 standard when you're looking at a filter type,
4 cartridge type, you look at what the
5 manufacturer recommends. And again, if OSHA is
6 not describing this control, it's left up to the
7 company if they have a safety professional,
8 which a lot of times small employers do not have
9 safety professionals. So, you can imagine the
10 confusion if it's not outlined in a respirator
11 selection guide.

12 MS. DOWNS: Okay. Patti Downs, again.

13 So, do you have any data or other evidence
14 about compliance for those chemicals that don't
15 have the specific standard versus the chemicals
16 specific standards? And like that employers are
17 selecting the correct or incorrect filters?

18 MR. PARSONS: Not off the top of our
19 head here, but we can definitely look into it,
20 especially the ones we talked about today and
21 then, provide anything in post-hearing comments.

22 MS. DOWNS: That would be great, thank

1 you. Those were all of my questions, I will
2 turn it over to Rachel now. Thank you again,
3 gentlemen.

4 MS. MICHEL: Hey, Rachel Michel with
5 OSHA. Thank you this morning for your testimony.

6 So, we touched on this a little bit, but just
7 for some of these chemicals that we're talking
8 about, OSHA's proposed to allow for different
9 respirators or respirator components for
10 different reasons, such as reliance on APFs,
11 allowing for a half mask and eye protection,
12 allowing for filtering face piece respirators
13 and different particulate filters.

14 And just we're interested in -- are
15 there any intrinsic properties or unique
16 characteristics of any of these chemicals that
17 we spoke on today that necessitate greater
18 specificity in the respirator selection
19 requirements? And I know you gave a couple of
20 examples, but just, you know, if you have any
21 more specific examples for each of the chemicals
22 you believe this to be true for, that would be

1 helpful?

2 MR. PARSONS: Yeah, just like the last
3 -- we'll take a look at what we talked about it
4 and provide in post-hearing comments.

5 MS. MICHEL: Okay, thank you. And just
6 for the record, that question applies to all the
7 chemicals that you've spoke on today except for
8 formaldehyde. And Rachel Michel, again, just
9 one other question. So, and we kind of touched
10 on this a little bit, too, but a large number of
11 chemicals regulated by OSHA do not have their
12 own substance-specific standards and are,
13 instead, included in the OSHA z-tables.

14 Are you able to share any studies or
15 any other information you might have showing how
16 employers choose respirators for chemicals
17 listed in the OSHA z-tables when there isn't a
18 specific substance standard stating specifically
19 what respirators to use?

20 MR. PARSONS: We don't have that
21 readily available right now. So again, we'll
22 look into it and provide it in post-hearing

1 comments.

2 MS. MICHEL: Okay, thank you. That's
3 all the questions that I have.

4 MS. LONG: Thank you, Patti, and
5 Rachel. And now I'm going to turn it over to
6 Tom Mockler, who may have some more questions
7 for the OSHA panel.

8 MR. MOCKLER: Hi, yes, Tom Mockler,
9 OSHA's Office of Regulatory Analysis. I was
10 kind of intrigued by your suggestion that
11 smaller employers may actually incur more costs
12 trying to essentially catch up with the
13 provisions that would be eliminated by this
14 provision. We, in our initial analysis, had
15 assumed that this would reduce the burden for
16 all employers, but you're suggesting this may
17 actually have the reverse effect. I was
18 wondering if you could elaborate on that,
19 potentially get into more detail and post-
20 hearing comments?

21 MR. PARSONS: Yeah, absolutely. So
22 yeah, so whenever you rely on a 1910 standard,

1 which isn't construction specific right now, we
2 have diverse membership, but I'm talking about
3 our small employers in construction, when you've
4 got to cross-reference different OSHA standards,
5 it gets confusing and you may or may not have
6 that safety professional, you may have to hire
7 somebody.

8 And even if you do have a safety
9 professional or somebody in the office that's
10 got safety responsibilities, they've got to do
11 the research, go over to 1910, figure out how to
12 read the z-tables or the -- and how to interpret
13 APFs, do all that, whether qualified or not, and
14 then, reference back. Whereas, if it's
15 explicitly in a standard, it's just prescriptive
16 and they can do that easily real quickly.

17 MR. MOCKLER: Okay, yes, I mean if you
18 wanted to think about it and --

19 MR. PARSONS: Yeah, absolutely.

20 MR. MOCKLER: -- estimate, you know,
21 how many people or how much time this might add,
22 that would be helpful for us. And also, if you

1 had a quick take on just sort of the potential
2 health effects of, you know, these various
3 chemicals, that would also be useful.

4 MR. PARSONS: Yes.

5 MR. MOCKLER: Okay, all right, thank
6 you.

7 MR. PARSONS: Thank you.

8 MS. LONG: This is Lisa Long again. Do
9 any of the other OSHA panelists have any more
10 questions?

11 (No audible response)

12 MS. LONG: No, I think then we're
13 finished for the OSHA panel. Thank you to
14 everybody for testifying, and I'll turn it back
15 to you, Judge Henley.

16 JUDGE HENLEY: Thank you, Ms. Long.
17 Does the Solicitor's Office have questions for
18 this panel?

19 MS. SCHRIEVER: Yes, thank you, Your
20 Honor. This is Leigh Ann Schriever with the
21 Solicitor's Office. So, first, I have a follow
22 up question for, I believe it was Mr. Papariello

1 who spoke on this, but of course any of you can
2 answer. And this question applies to all of
3 OSHA's proposals other than vinyl chloride.

4 I believe you were talking about how
5 employers rely on manufacturer instructions when
6 they are choosing respirators for chemicals that
7 don't have their own standards. And I just
8 wanted to clarify, were you talking about
9 instructions from the manufacturer of the
10 material containing the chemical or the
11 manufacturer of the respirator?

12 MR. SCHREIBER: I believe that was me
13 who referenced that, and it would be the
14 respirator manufacturer. Like 3M, for example,
15 has a filter selection software. So, you enter
16 in the chemical via the CAS number, and it tells
17 you what type of filter you -- they recommend to
18 be used for that particular exposure.

19 MS. SCHRIEVER: Thank you. This is
20 Leigh Anne Schriever at the Solicitor's Office,
21 again. One other point I wanted to follow up on
22 from your testimony is that I heard, I think

1 multiple of you speak on the way in which you
2 are concerned that if OSHA allows more
3 flexibility in respirator selection and reduces
4 the specificity in the standard, that this will
5 result in employees getting less protective
6 respirators.

7 And we've heard from a number of other
8 commenters the idea that increased flexibility
9 can benefit workers because so much of
10 respirator protection depends on comfort and on
11 fit. And sometimes there may be particular
12 characteristics of the work being done, like
13 being in a tight space, that may result in
14 certain respirators being preferable to others.

15 And so, I was wondering if you agree with the
16 argument that additional flexibility in
17 respirator selection can sometimes benefit
18 worker protection by allowing them to choose a
19 more optimized respirator for their particular
20 situation?

21 MR. PARSONS: So, I'll try to answer
22 that. So, unfortunately, the risk assessment

1 process can get expensive and can be difficult,
2 especially for small employers. So, through --
3 because of that, and, you know, it becomes about
4 financial economics and money.

5 So, a lot of times the employer will
6 choose the cheapest route, regardless of all
7 those things you just discussed. That is not
8 what makes the choices, usually, the dollars
9 make the choices. And unfortunately, when it's
10 not explicit, what respirator is required or
11 there's options, they're going to choose the
12 cheapest route.

13 MR. SCHREIBER: Could I also add to
14 that? This is Nate Schreiber with the Laborers.

15 Just want to, again, point to the fact that a
16 lot of companies do not have safety
17 professionals on site. So, they might not
18 necessarily know what to look for in terms of
19 more flexibility.

20 And, you know, I would welcome OSHA to
21 provide examples of this new technology that's
22 being referenced. We would love to be able to

1 make comment on what is recommended in terms of
2 flexibility from a respiratory protection
3 standpoint. You know, given some examples
4 again, we'd love to make that comment and assess
5 that.

6 MS. SCHRIEVER: Thank you. This is
7 Leigh Anne Schriever at the Solicitor's Office.

8 And just to clarify, that question applied to
9 all of OSHA's proposals other than, I believe,
10 acrylonitrile, vinyl chloride, and formaldehyde.

11 So, just to follow up and make sure I'm
12 understanding correctly, it sounds like both Mr.
13 Parsons and Mr. Schreiber, you're saying that,
14 yes, in an ideal world, there may be worker
15 benefits, but you believe, on the ground, the
16 selection is not going to -- is -- there are on
17 the ground factors that will impact selection
18 more so than the optimization?

19 MR. PARSONS: Yes.

20 MR. SCHREIBER: I want to say, I don't
21 think we agree that, the way it's being proposed
22 is going to benefit employers. Like just saying

1 having more flexibility and not listing examples
2 of what that flexibility looks like, I don't
3 think that's going to be beneficial to
4 employers.

5 MS. SCHRIEVER: Okay, thank you so
6 much, all of you for your testimony. I have no
7 further questions.

8 JUDGE HENLEY: Thank you, Ms.
9 Schriever. Kecil, do we have questions for the
10 public for this panel?

11 MS. JOHN: Yes, Chris Cain has raised
12 their hand. Chris, you should be able to unmute
13 yourself and ask a question.

14 MS. CAIN: Hi, can you hear me?

15 MS. JOHN: Yes.

16 MS. CAIN: Okay, cool. My question --
17 I'm Chris Cain, I'm with North America's
18 Building Trades Unions. The question I have is,
19 in -- among the employers who employ LIUNA
20 members who have 20 or fewer employees, do you
21 know how many of those employers employ
22 industrial hygienists or safety professionals?

1 MR. PARSONS: Very, very few, if any.
2 Yes, so that's a lot of our employers and
3 actually, our fund exists to help out our small
4 employers that don't have those safety
5 professionals. So yes, very few, maybe one here
6 and there, but not very often.

7 And often, they are not a safety
8 professional, they did not go to -- do not have
9 any schooling, and they just kind of signed it
10 because they're a good worker, along with many
11 other hats that they have to wear to get the job
12 done.

13 MR. SCHREIBER: I'll also add, Nate
14 Schreiber with the Laborers, the companies that
15 do have safety professionals are often very
16 large employers.

17 MS. CAIN: Thank you, Nate. The -- do
18 you have information on the range of consultancy
19 costs for certified industrial hygienists or
20 safety professionals, different ranges of
21 different safety professional consultants of
22 hourly costs?

1 MR. PARSONS: That's an excellent
2 question, Chris. Well, I don't have that off
3 the top of my head, but I'm sure we can find
4 that and then, provide that in post-hearing, and
5 that's really good to add to the record.

6 MS. CAIN: Okay, thank you.

7 JUDGE HENLEY: Thank you, Ms. Cain.
8 Does OSHA have any follow-up questions based on
9 the public or Solicitor's questions?

10 MS. DOWNS: Yes, Your Honor, this is
11 Patti Downs, I do have one more, thank you for
12 circling back to me. Mr. Parsons, I believe it
13 was you who mentioned that it's difficult for
14 small employers to have to cross reference the
15 Respiratory Protection Standard to figure out
16 what they're supposed to do. So, keeping
17 everything in the specific standard was
18 preferable, which made me think.

19 I would imagine employers can be
20 exposed to multiple chemicals where some are
21 fully reliant on the Respiratory Protection
22 Standard for specified what they need to do, and

1 some have requirements outlined in the specific
2 standards. Can you just speak a little bit
3 about how employers figure out what to do in
4 those situations?

5 And if that -- if having the specific
6 requirements separate like that is still
7 preferable or if it just adds another layer of
8 complexity or just -- talk about those
9 situations?

10 MR. PARSONS: Yes, so, obviously, it's
11 preferred to be in the individual standards,
12 explicit and prescriptive, and that's the
13 easiest way to go. When it's not, they have to
14 rely on the manufacturers, other sources, you
15 know, so, it gets difficult really quickly. And
16 that's why we -- especially for the specific
17 standards that have these requirements in there,
18 we'd like that to stay.

19 MS. DOWNS: Thank you. That's all for
20 me.

21 JUDGE HENLEY: Thank you, Ms. Downs.
22 Kecil, do we have any other public questions?

1 MS. JOHN: No other public questions,
2 Your Honor.

3 JUDGE HENLEY: So, Mr. Parsons, Mr.
4 Schreiber, Mr. Papariello, thank you very much
5 for your time and testimony this morning, you
6 are excused, thank you, sirs.

7 MR. PARSONS: Thank you.

8 JUDGE HENLEY: Kecil, can you promote
9 our next panelist, please?

10 MS. JOHN: Yes, Kathleen Fagan, you
11 should have -- yep, just accepted. All right,
12 you should be able to turn on your camera and
13 unmute yourself.

14 JUDGE HENLEY: Good morning, Dr. Fagan,
15 can you hear me? This is Judge Henley.

16 DR. FAGAN: Good morning, I can hear
17 you. Can you hear me?

18 JUDGE HENLEY: We can. I'll ask, since
19 it's not obvious from the display, after you
20 identify yourself, can you specify which
21 chemical or proposed rule that will be the
22 subject of your testimony? I'll turn it over to

1 you, Dr. Fagan, thank you.

2 DR. FAGAN: Thank you very much. So,
3 my name is Kathleen Fagan, I'm a board certified
4 physician in occupational and environmental
5 medicine, and I'm speaking on behalf of AOEC.

6 So, please note that we will be
7 submitting more detailed written comments post-
8 hearing with our references. And in those post
9 written comments, we will specify which of the
10 16 we are referring to regarding each point we
11 are making. AOEC does not support OSHA's
12 proposed changes to the respiratory protection
13 provisions of the 16 health standards. Although
14 we recognize the need to update older standards,
15 we believe that significant changes should be
16 made in consultation with NIOSH, the National
17 Institute of Occupational Safety and Health,
18 which is recognized both nationally and
19 internationally as the authority on respiratory
20 protection.

21 Further, we believe that the proposed
22 changes will result in more ambiguity and

1 confusion for both employers and employees,
2 leading to a decrease in the safety of exposed
3 workers. First, OSHA proposes removing more
4 specific language on respiratory use from many
5 of these standards, and instead, cross-
6 referencing with Part A of the Respiratory
7 Protection Standard.

8 Part A states, a respirator shall be
9 provided to each employee when such equipment is
10 necessary to protect the health of such
11 employee. The employer shall provide the
12 respirators which are applicable and suitable
13 for the purpose intended. That's it.

14 OSHA states that this change will allow
15 employers more flexibility but provide
16 equivalent protection. It does not. By
17 deleting the specific situations requiring
18 respirator use, employers are left to figure it
19 out on their own. Employers may or may not have
20 the expertise to know the best respiratory
21 protection for the very toxic chemicals to which
22 their workers are exposed.

1 Many of the 16 are carcinogens.
2 Methylene chloride is fatal when exposures are
3 high. Cadmium causes acute pulmonary toxicity,
4 chronic kidney disease, and cancer. Lead causes
5 acute and chronic neurologic disease, kidney
6 disease, and hypertension. And I could go on.

7 Employers who make wrong choices
8 through lack of knowledge or to save money put
9 their workers at risk. OSHA also proposes to
10 take away workers right to request more
11 protective respirators in some standards. We
12 oppose this restriction on workers right to a
13 safe and healthy workplace.

14 Further, we have great concern that
15 this will limit a health care provider's ability
16 to recommend appropriate respiratory protection
17 for their patients. We also oppose deleting
18 Part G4 of the methylene chloride standard that
19 requires medical evaluations for workers wearing
20 respirators in emergency situations.

21 Employers may conclude that medical
22 evaluations are not necessary. High methylene

1 chloride exposures can be fatal, particularly
2 for workers with underlying heart disease.
3 Medical evaluations are critical in preventing
4 harm to workers. In the case of formaldehyde,
5 we believe an unintended consequence of
6 increasing employer flexibility is that workers
7 who would benefit from a medical surveillance
8 exam would not receive such an exam.

9 The formaldehyde standard only requires
10 medical exams for workers wearing respirators.
11 Formaldehyde is an irritant, sensitizer, and
12 carcinogen, it can aggravate underlying
13 pulmonary diseases such as asthma and COPD and
14 cause or aggravate dermatitis and rhinitis.
15 Medical exams can identify and prevent serious
16 formaldehyde related diseases. Eliminating
17 medical exams decreases safety for formaldehyde
18 exposed workers.

19 We are also concerned that allowing
20 half face respirators in place of full face
21 respirators for some standards may increase
22 worker exposures. We feel that full face

1 respirators can provide a better assigned
2 protection factor. Dermal absorption can occur
3 with some exposures such as methylene chloride,
4 ethylene oxide, and even inorganic lead.

5 We recommend that OSHA consult NIOSH on
6 these issues before decreasing worker
7 protections that can increase worker exposures.

8 Finally, OSHA proposes to eliminate specific
9 worker training requirements in several of these
10 standards and replace these with a reference to
11 the training requirements in the Respiratory
12 Protection Standard. We believe this will cause
13 confusion and may lead to less worker training.

14 We recommend an alternative approach.

15 Leave intact the training language in
16 the chemical standards and add a cross-reference
17 to the training requirements in the Respiratory
18 Protection Standard. In summary, we believe
19 that OSHA's proposed revisions to these 16
20 hazardous chemicals will decrease worker safety.

21 We strongly recommend that OSHA withdraw this
22 proposal and consult with NIOSH, preferably at

1 the same time as it consults with NIOSH on the
2 proposed revisions of the Respiratory Protection
3 Standard itself.

4 NIOSH sets the standards, evaluates and
5 approves respirators, and conducts research to
6 improve respiratory protection for workers.

7 Without close consultation with NIOSH regarding
8 changes to OSHA standards involving respiratory
9 protection, U.S. workers are placed at risk of
10 unnecessary and potentially harmful exposures.

11 Thank you for your attention and I'm
12 happy to answer any questions you may have.

13 JUDGE HENLEY: Thank you. Does OSHA
14 have questions?

15 MS. LONG: Thank you. This is Lisa
16 Long. We have a few questions. I'll turn it
17 over to Patti Downs and Rachel Michel for some
18 OSHA questions.

19 MS. DOWNS: Patti Downs. Thank you,
20 Dr. Fagan. I have just one question myself, and
21 then I'll turn it over to Rachel. You had
22 expressed some concern about OSHA removing some

1 of the existing language in the respirator-
2 specific standards and inserting a cross-
3 reference to 134(a)(2). And this applies to all
4 of the chemicals we're discussing today except
5 for vinyl chloride and 13 carcinogens.

6 So I'm interested in hearing your
7 opinion on whether other requirements in the
8 substance-specific standards and the respiratory
9 protection standard would provide sufficient
10 information about when respirators must be used,
11 for example, the requirement to provide a
12 respirator when exposures exceed the PEL or
13 other action levels. And if those are not
14 sufficient, why do you feel that way?

15 DR. FAGAN: I'm not sure I understand
16 your whole question. Are you saying that -- are
17 you saying that there's things in the
18 respiratory protection standard that could be --

19 MS. DOWNS: And the chemical-specific
20 standards themselves. I'm sorry. This is Patti
21 Downs again.

22 DR. FAGAN: Yeah.

1 MS. DOWNS: So, each of the chemical-
2 specific standards lists requirements for when
3 respirators must be used. So, I guess, our
4 question is just why you feel -- if you feel
5 those are sufficient or insufficient to help
6 employers determine when a respirator is needed
7 and why you feel that way. Is that clear?

8 DR. FAGAN: So you're asking for is the
9 present language sufficient in these standards?
10 Is that what you're asking, kind of?

11 MS. DOWNS: Yeah, the other language.
12 So we proposed to strike out some language and
13 just put in a cross-reference to 134(a)(2), and
14 you expressed concern about removing that.

15 DR. FAGAN: Right. Right.

16 MS. DOWNS: And so, if OSHA were to do
17 that, are the other provisions in the standard
18 sufficient? Why or why not?

19 DR. FAGAN: Are the other provisions in
20 the specific chemical standards sufficient? Is
21 that what you're asking?

22 MS. DOWNS: Correct. Yes.

1 DR. FAGAN: Yeah. Well, I think we
2 could answer that in the post-hearing comments
3 by looking at each of them and thinking about
4 whether any of those need updating. And that's,
5 again, why I recommend consulting with NIOSH on
6 each of these.

7 MS. DOWNS: Yes, if you could submit
8 those with your post-hearing briefs, that would
9 be great. And that's all for me.

10 DR. FAGAN: Yes. We will.

11 MS. DOWNS: Okay. And I will turn it
12 over to Rachel.

13 MS. MICHEL: Hi. Good morning. Thank
14 you for your testimony. This is Rachel Michel
15 with OSHA. I just have one question. So, you
16 touched on the use of half-mask respirators
17 combined with separate eye protection in place
18 of a full face-piece respirator and that they
19 may not provide the same level of protection.

20 So, my question is, is it your position
21 that there's no combination of respirator and
22 eye protection that would provide equivalent

1 protection, or is it that some combinations
2 would not provide equivalent protection? And
3 this applies to methylene chloride, ethylene
4 oxide, 1,3-butadiene, cadmium, and lead.

5 DR. FAGAN: Right. I certainly believe
6 that if eye protection isn't properly sealed
7 there's likely to be exposure to the eyes and
8 eye irritation, which is why you made those
9 recommendations -- worried about eye and skin
10 irritation. Depends on the type of eye
11 protection and the type of respirators, I think,
12 whether there's more skin exposure, for
13 instance.

14 What I pointed to was some concern
15 about, actually, skin absorption of some of
16 these chemicals and, you know, although,
17 certainly, skin absorption will be less
18 efficient than inhalation in most cases, if not
19 all, there may be some, and that could be
20 important in some cases. So I'm also concerned
21 about the actual absorption and whether that's
22 significant in certain combinations of half-face

1 and eye protection. And, again, I'll just say,
2 you know, NIOSH should look at all of this.

3 MS. MICHEL: Thank you. And just --
4 I'll follow up on that a little bit. We're also
5 just interested in if you could provide any
6 examples, maybe, or activities where the
7 separate eye protection, like, maybe would, or
8 even would not be, appropriate and include it in
9 your rationale.

10 So, just for example, 1,3-butadiene and
11 cadmium and lead currently allow for half-masks
12 when there's no concern for eye irritation. So,
13 say, a short duration or infrequent task with
14 the potential for eye irritation to occur.
15 Would separate eye protection be appropriate in
16 lieu of changing to a full-face respirator,
17 like, say, in that case?

18 DR. FAGAN: Mm-hmm. Yeah. We'll be
19 happy to look at that in post-hearing comments.

20 MS. MICHEL: All right. Thank you.
21 That's all I have.

22 MS. LONG: This is Lisa Long. Thank

1 you for those questions, and I'm now going to
2 turn it to Tom Mockler, who has some questions
3 for OSHA.

4 MR. MOCKLER: Hi. Tom Mockler, OSHA's
5 Office of Regulatory Analysis. I had a couple
6 questions. One is, do you know, have any
7 information on how often employers request
8 PAPRs?

9 DR. FAGAN: How often employers or
10 employees?

11 MR. MOCKLER: I'm sorry. Employees.

12 DR. FAGAN: Yeah. I do not. We can
13 see if we can find any of that information in
14 our post-hearing comments.

15 MR. MOCKLER: Okay. Thanks. Secondly,
16 you sort of raised this issue of sort of these
17 ripple effects of deleting some of the specific
18 details on some of these substances. And it
19 seems like this might create problems sort of up
20 the line in that the clinics may not know when
21 to recommend a respirator. I was wondering if
22 you could elaborate on that in your post-hearing

1 comments and just what sort of costs that might
2 entail for people interacting with OSHA.

3 DR. FAGAN: Sure. We can try to do
4 that. But, you know, I can think of situations
5 where a healthcare provider may recommend that a
6 worker, say, exposed to -- you know, working in
7 some of these conditions, with some of these
8 chemicals, but also working in heat -- may
9 recommend a PAPR when all they're using is a
10 FFR. And what I'm worried about, will employers
11 discount that recommendation because you're not
12 -- because you're considering not allowing
13 employees to ask for an upgrade?

14 But how many times, I'm not sure we
15 have that data, but I can try to look it up.

16 MR. MOCKLER: Yeah, I know. I guess,
17 related to all of this, if you have any numbers
18 to bring to bear on the potential health
19 effects, that would also be useful.

20 DR. FAGAN: Numbers on potential health
21 effects, sure. Sure.

22 MR. MOCKLER: Okay. All right. Thank

1 you.

2 DR. FAGAN: Mm-hmm.

3 MS. LONG: Thank you. I think those
4 are all of the questions that we have for OSHA.
5 Thank you, Dr. Fagan.

6 JUDGE HENLEY: Does the Solicitor's
7 Office have questions for Dr. Fagan?

8 MS. SCHRIEVER: Yes. Thank you, Judge
9 Henley. This is Leigh Anne Schriever,
10 Solicitor's Office. So, I had a clarifying
11 question first.

12 In your testimony on the proposal to
13 remove some language about medical evaluations,
14 you referred a number of times to formaldehyde,
15 but OSHA has only proposed that change for
16 methylene chloride. Did you mean methylene
17 chloride when you were making those arguments?

18 DR. FAGAN: No. What I'm worried about
19 is that in the methylene chloride standard, the
20 medical exam only occurs for workers wearing
21 respirators. And if employers choose not to
22 provide respirators under the proposed changes

1 that OSHA is making, then those workers won't be
2 getting medical exams.

3 MS. SCHRIEVER: Okay. So it was
4 specific to methylene chloride, not
5 formaldehyde?

6 DR. FAGAN: Both. Well, they're two
7 different situations. So, methylene chloride
8 has to do with emergency use of respirators.
9 But under the formaldehyde standard, there's a
10 questionnaire for all workers, but only a
11 medical exam for workers required to wear
12 respirators. And if less workers are required
13 to wear respirators -- does that make sense --
14 under the new --

15 MS. SCHRIEVER: It does. Yes. Thank
16 you --

17 (Simultaneous speaking.)

18 DR. FAGAN: Yeah. Okay.

19 MS. SCHRIEVER: And then my other
20 question -- this is Leigh Anne Schriever from
21 the Solicitor's Office again. This is just a
22 request for your post-hearing comments, to sort

1 of follow up on my colleague Rachel's question.

2 If you could, in your post-hearing
3 comments, just break down by every chemical
4 where OSHA has suggested changing to allow half-
5 mask and eye protection, based on the intrinsic
6 factors of each chemical, your concerns or lack
7 of concerns, to sort of delineate that
8 separately.

9 DR. FAGAN: Yes. We will be sure to do
10 that. Thanks.

11 MS. SCHRIEVER: Great. Thank you.
12 This is Leigh Anne Schriever. Thank you so much
13 for your testimony. No further questions.

14 JUDGE HENLEY: Thank you, Ms.
15 Schriever.

16 Kecil, do we have questions from the
17 public for this panelist?

18 MS. JOHN: No public questions, Your
19 Honor.

20 JUDGE HENLEY: Any follow-up from OSHA
21 before we excuse Dr. Fagan?

22 MS. LONG: No follow-up from OSHA.

1 JUDGE HENLEY: Dr. Fagan, again, thank
2 you for your time and testimony this morning.
3 You are excused.

4 DR. FAGAN: Thank you.

5 JUDGE HENLEY: Will -- Kecil, can you
6 promote our next panelist, please?

7 MS. JOHN: Yes. So I do not see Zeke
8 McKinney in our attendee list. However, if you
9 are here and if you could raise your hand, I
10 will know that I should promote you.

11 Your Honor, I do not see Zeke McKinney
12 present.

13 JUDGE HENLEY: Any connection with a
14 phone?

15 MS. JOHN: There are no phone -- no one
16 has joined by phone.

17 JUDGE HENLEY: Okay. So I'll tell you
18 what we'll do. We'll conclude the witness
19 testimony for this morning. We'll reconvene at
20 1:00 p.m. Eastern Time. We'll see if we can get
21 Dr. McKinney. Otherwise, we'll begin with our
22 first panelist.

1 (Whereupon, the above-entitled matter
2 went off the record at 10:50 a.m. and resumed at
3 1:01 p.m.)

4 JUDGE HENLEY: The hearing is called to
5 order. Will our ERG representative please
6 promote our next panelist?

7 MS. JOHN: Yes. Your Honor. Mary
8 Miller, yes, has just been accepted as a
9 panelist and should be joining us -- yes. Oh,
10 good. You figured out your microphone and video
11 button.

12 MS. MILLER: Hello. Thank you for
13 having me. This is more like a breakfast break
14 for me. It's only 10:00 Seattle time.

15 Good morning here. My name is Mary E.
16 Miller. I'm a retired occupational health nurse
17 practitioner with 25 years' experience at the
18 Washington State Department of Labor and
19 industries. Prior to that, I worked at the
20 Occupational Medicine Clinic at the University
21 of Washington, and I even worked for a period of
22 time at OSHA in D.C. under David Michaels'

1 leadership.

2 I'm speaking here today on behalf of
3 the American Public Health Association, a
4 diverse community of public health professionals
5 that champion the health of all people and
6 communities. My testimony today reiterates the
7 written comments we submitted to the record in
8 November 2025. I'm responding to the overall
9 proposal to the changes in respiratory
10 protection to the 16 chemical-specific
11 requirements.

12 We oppose these changes proposed by
13 OSHA. If adopted, these changes will weaken
14 protections for workers who are exposed to air
15 contaminants that cause cancer, diseases of the
16 pulmonary, hematopoietic, kidney, and autoimmune
17 systems, as well as eye and skin damage and
18 other health effects.

19 The respiratory protection provisions
20 of the 16 standards were written carefully and
21 crafted to ensure clarity to employers. We
22 disagree with OSHA's assertion that these

1 provisions, quote, unnecessarily duplicate,
2 unquote, those in 1910.134.

3 The Agency indicates that eliminating
4 them will reduce regulatory burden on employers.

5 We disagree. If adopted, eliminating these
6 provisions will generate confusion and create
7 uncertainty for employers. The changes will
8 increase their workload as a result while
9 decreasing protection for workers.

10 Responsible employers want clear
11 instruction from OSHA on what they must do to
12 comply with its health and safety standards and
13 protect their workforce.

14 Our petition on this matter is
15 consistent with that of the Occupational Safety
16 and Health State Plan Association. In their
17 comments on the proposed rule, they described
18 these as, quote, a move in the wrong direction,
19 unquote, explaining that, quote, prescriptive
20 respiratory protection requirements provide
21 better guidance to employers, unquote.

22 We add that specificity in OSHA

1 standards is important to workers who want to
2 easily understand what preventive measures their
3 employers are obligated to have in place. In
4 addition, employers want and need certainty of
5 what is expected of them to protect their
6 workers.

7 Among the changes being proposed is
8 eliminating the provisions in 14 of the
9 standards which list for employers and workers
10 the circumstances when respiratory protection
11 must be used.

12 Here are two examples. The standards
13 for lead, inorganic arsenic, and nine others
14 that respirators must be used when, quote,
15 engineering and work practice controls are not
16 sufficient to reduce employee exposures to at or
17 below the permissible exposure limit, unquote.

18 The benzene, ethylene oxide,
19 formaldehyde, and methylene chloride standards
20 indicate that respirators must be used during
21 vessel cleaning if the employer establishes that
22 engineering and work practice controls are not

1 feasible.

2 Instead, employees will be expected to
3 rely on the provisions of 1910.134, Sub A Part 1
4 -- merely states when effective engineering
5 controls are not feasible or while they are
6 being instituted, appropriate respirators shall
7 be used.

8 If adopted, this change would fail to
9 provide adequate information to employers and
10 workers. We disagree with OSHA's assertion that
11 this text in 1910.134 will offer, quote,
12 equivalent worker protection, unquote, to what
13 is provided currently in these 16 health
14 standards.

15 More flexibility is not necessarily
16 equal -- does not actually provide equal
17 protection. The proposed rule refers to
18 Executive Order 14192, adopted in January of
19 2025, as the driver for these changes, these
20 proposed changes.

21 This directive indicates that federal
22 regulations, quote, are often difficult for the

1 average person or business to understand,
2 increasing compliance cost and the risk of cost
3 of noncompliance, unquote. However, eliminating
4 provisions about when to use respiratory
5 protection will perpetuate the issues the
6 administration claims it wants to address.

7 We also oppose the proposed changes to
8 the asbestos, coke oven emissions, and methylene
9 chloride standards, which would eliminate the
10 current prohibition on the use of filtering face
11 mask respirators.

12 OSHA provides no evidence-based
13 justification to make this change, simply
14 speculating that the prohibition, quote, may be
15 based on outdated technology and certification
16 data, with no new data provided.

17 This explanation is concerning. It
18 suggests that NIOSH, which is recognized both
19 nationally and internationally as the authority
20 on respiratory protection, was not involved in
21 this rulemaking proposal. We note that NIOSH,
22 which has experts from the National Personal

1 Protective Technology Laboratory, is not listed
2 on the agenda for this hearing.

3 We urge OSHA to maintain the current
4 full-face-piece atmosphere-supplying respirators
5 as currently stipulated in the 1,3-Butadiene,
6 cadmium, lead, and methylene chloride standards.

7 This requirement was included in these
8 standards to protect workers' eyes and skin from
9 chemical irritation caused by exposure to it.

10 We disagree that half-face-mask
11 atmosphere-supplying respirators when worn with
12 the other protective equipment provide
13 equivalent protection. For example, eye
14 protection does not necessarily seal well to a
15 worker's face and therefore provides low
16 protection from chemical vapors. Furthermore,
17 there are no consensus standards such as
18 ANSI/ISEA for eyewear performance against
19 irritant vapors.

20 We urge OSHA to maintain the
21 requirements in the asbestos, cadmium, cotton
22 dust, inorganic arsenic, and lead standards,

1 which allow employees to specifically request
2 powered air-purifying respirators rather than
3 proposing to give employers the option to
4 provide, instead, a negative-pressure
5 respirator. Many workers find PAPRs more
6 comfortable to wear for extended periods of
7 time.

8 As OSHA acknowledges, increased worker
9 comfort increases workers' inclination for
10 voluntary use of a respirator. In addition,
11 PAPRs provide air movement inside the
12 respirator, which is a benefit in excess heat
13 environments, which are now more prevalent with
14 climate change.

15 Contrary to OSHA's assertion, the
16 changes proposed in these 16 rulemakings will
17 not maintain the protections currently provided
18 to workers. We are deeply concerned that the
19 proposal will increase work-related morbidity
20 and mortality from exposure to these 16
21 chemicals.

22 The administration's pursuit of

1 deregulation must not be at the expense of U.S.
2 workers' health and livelihood. OSHA's role is
3 to protect workers and help employers to do
4 this. We agree that workers and employers would
5 be better served by focusing on updating PELs in
6 areas where exposure standards are still needed,
7 such as heat exposures and infectious disease
8 exposures.

9 I appreciate the time to be able to
10 respond to this hearing, and that concludes my
11 remarks.

12 JUDGE HENLEY: Thank you, Ms. Miller.

13 Does OSHA have questions for this
14 panelist?

15 MR. SCHAYER: Yes, Your Honor. This is
16 Stephen Schayer from OSHA.

17 Thank you, Ms. Miller, for your
18 testimony. Our first questions come from Patti
19 Downs and Rachel Michel from the Directorate of
20 Standards and Guidance.

21 MS. DOWNS: Hi. This is Patti Downs.
22 Thank you for being here, Ms. Miller. And as a

1 fellow West Coaster, good morning, right?

2 MS. MILLER: Thank you.

3 MS. DOWNS: So this question applies to
4 all of the proposals except for vinyl chloride
5 and 13 carcinogens. So, in your testimony, you
6 mentioned how OSHA has proposed to remove some
7 of the existing language for respirator use and
8 insert a cross reference to 1910.134(a)(2) and
9 how that change would reduce clarity for when
10 respirators are needed.

11 This concern was also brought up in the
12 written comments submitted by the APHA where
13 APHA stated that removing the existing language
14 regarding when respirators must be used would
15 result in, quote, employers having complete
16 discretion over whether to provide respiratory
17 protection according to their own degree of
18 knowledge or desire.

19 However, the substance-specific
20 standards and the respiratory protection
21 standard include other requirements about when
22 to provide respiratory protection, such as the

1 requirement to provide respirators when
2 exposures exceed the PEL or applicable STELs.

3 Do you believe that these requirements
4 would provide sufficient information about when
5 respirators must be used, and if not, could you
6 explain why?

7 MS. MILLER: Well, I may need to have
8 you send me your question in writing because it
9 was quite detailed. Basically, as I understand
10 it -- and correct me if I'm wrong -- the way the
11 changes line up is that there would be a lot of
12 cross-referencing that employers need to do to
13 go back and forth to figure out what exactly
14 they're supposed to do.

15 And that is -- ultimately creates so
16 much more confusion and uncertainty, not just
17 for employers but for workers and their
18 advocates to provide a safe environment. So it
19 may be useful for me to get your question and
20 then respond in post-testimony comments if
21 that's okay.

22 MS. DOWNS: Yeah, that would be great.

1 Thank you.

2 MS. MILLER: You have my email, I
3 assume, somewhere? Yeah, I'm sure it's
4 accessible.

5 MS. DOWNS: Patti Downs again. So a
6 large number of the chemicals regulated by OSHA
7 do not have their own substance-specific
8 standards and are instead included under OSHA's
9 Z-tables. Are you able to share any studies or
10 other information showing how employers choose
11 respirators for chemicals listed in those Z-
12 tables when there is no specific standard
13 stating which respirator to use?

14 MS. MILLER: No, I don't have that
15 information right now, but I can work with
16 others if you also include that in your question
17 for us.

18 MS. DOWNS: Yeah. Patti Downs again.
19 That would be great. If you could also just
20 maybe include any information you have on
21 whether you believe employers would be able to
22 do the same things for the chemicals that we

1 have included in the proposal. So, again, that
2 would apply to all of the chemicals except for
3 vinyl chloride.

4 MS. MILLER: What was that last
5 question?

6 MS. DOWNS: Just whether or not you
7 believe employers would be able to do the same
8 thing for the proposed chemicals, determine
9 respirator usage the same way that they do under
10 the Z-tables, for the proposed chemical changes.

11 MS. MILLER: Well, I guess my initial
12 comment on that, if it's already specified, that
13 relieves that burden for them. So it makes
14 sense to maintain specificity, if I understand
15 your question correctly, rather than have them
16 hunt and peck for what they need to do, if we
17 already have standards specific to chemicals
18 that they deal with.

19 I don't know if that's -- gets at the
20 gist of your question enough, but yeah. I mean
21 -- yeah.

22 MS. DOWNS: With that, I'll hand it

1 over to Rachel. Thank you.

2 MS. MICHEL: Hi. Rachel Michel. I
3 just have a question here. In your comments for
4 the asbestos proposal, you rely on written
5 comments submitted by Dr. Mark Nicas to support
6 your position. There was reference to a 1971
7 study from the McGill University and a 1978
8 study from the U.K. Institute of Occupational
9 Medicine.

10 And then there was also mention of his
11 2024 paper he authored titled A Critique of
12 OSHA's Half-Mask Respirator Assigned Protection
13 Factor. Just asking if you would be able to
14 provide those, submit those studies.

15 MS. MILLER: Oh.

16 MS. MICHEL: And -- yes. It was
17 referenced in the asbestos one, but if you could
18 submit to any of the dockets that you feel
19 relevant.

20 MS. MILLER: Oh. Okay. Sorry. It's
21 been such a little while. My memory is -- I
22 somehow believed we had submitted, but thank you

1 for pointing that out, that there are some
2 studies we could add to that. Thank you.

3 MS. MICHEL: Perfect. Thank you.
4 That's all the questions I have.

5 MR. SCHAYER: This is Stephen Schayer
6 again. I'm now turning to Dr. Bob Blicksilver.

7 DR. BLICKSILVER: Hi. Bob Blicksilver,
8 OSHA Standards and Guidance. In your written
9 comments, you argued in response to a number of
10 the proposals that employers are going to find
11 it costly and confusing to comply with the
12 proposed requirements that rely on the general
13 respiratory protection standard.

14 However, OSHA already requires
15 employers to comply with these provisions for
16 any chemical that does not have a substance-
17 specific OSHA standard. So our question is, are
18 you aware of any survey data or studies on
19 employer compliance and costs associated with
20 these same provisions in the general respiratory
21 protection standard when there is no chemical-
22 specific standard?

1 MS. MILLER: No, I'm not familiar with
2 studies that are available with that data. I
3 can check with colleagues to see, if -- again,
4 if you can -- I'm not necessarily able to write
5 as fast as you're speaking to write down, but I
6 don't have data at hand at the moment.

7 DR. BLICKSILVER: If you could consult
8 with your colleague -- Bob Blicksilver --
9 consulting with your colleagues would be
10 wonderful. If you have any observations from
11 your experience in employer compliance with the
12 general respiratory protection standard versus
13 the substance-specific standards, any
14 discrepancies, gaps that you identify in
15 compliance and any unforeseen costs, any
16 observations along those lines would be very
17 helpful to us. And this question applies to all
18 of the proposals, I believe.

19 MS. MILLER: Okay.

20 DR. BLICKSILVER: Okay. Thank you.
21 That's all I have.

22 MR. SCHAYER: Stephen Schayer again.

1 Thank you, Ms. Miller.

2 And, Your Honor, that concludes the
3 questions from the OSHA panel.

4 JUDGE HENLEY: Thank you.

5 And do we have questions from the
6 Solicitor's Office for Ms. Miller?

7 MS. NAUGHTON: Yes. Thank you, Judge
8 Henley. This is Sheila Naughton from the Office
9 of the Solicitor.

10 Thank you, Ms. Miller, so much for your
11 testimony. I first want to say I appreciate
12 you're getting a lot of questions right now.
13 The transcript will be available about two weeks
14 after this hearing, so you'll be able to refer
15 back to see what questions specifically were
16 asked and the different data that's been
17 requested, and you can use that to refer back
18 to.

19 I do have one specific request. In
20 your testimony, you expressed concerns about the
21 use of half-mask respirators combined with
22 separate eye protection in place of full-face

1 respiratory protection. I'm curious if you
2 think that there is any combination in which
3 that would be equivalent in protection, or is
4 your position that there are no combinations of
5 respiratory on half-face respiratory masks and
6 eye protection that would provide equivalent
7 protection?

8 And that question would apply to
9 methylene chloride, ethylene oxide, butadiene,
10 cadmium, and lead. If you have any additional
11 details you'd like to share now, that would be
12 very helpful, or in post-hearing comment.

13 MS. MILLER: Well, right now, as far as
14 I understand, there isn't any approved eyewear
15 for vapors for eye exposure. And as you know,
16 wearing a half-face mask cartridge respirator
17 exposes quite a lot of skin. So it's really
18 still the irritant issue that you're going to --
19 we would face with those vapor exposures.

20 So it's both eye and skin. It's hard
21 to imagine that dealing with a couple pieces of
22 protective equipment instead of one is going to

1 be somehow better, especially when we don't have
2 some kind of ANSI standard for vapor eyewear
3 protection. And I guess I do worry about the
4 skin irritation and half-face mask cartridge
5 respirators that are still exposed.

6 MS. NAUGHTON: Thank you, Ms. Miller.
7 This is Sheila Naughton from the Office of the
8 Solicitor. I don't have any further questions.

9 If you have any additional comments to provide
10 in post-hearing briefing or comments, that will
11 be very helpful. But thank you.

12 MS. MILLER: Okay. Thank you.

13 JUDGE HENLEY: Kecil, were there any
14 questions from the public for this panelist?

15 MS. JOHN: Yes. There are two people
16 with their hands raised.

17 Ayusha Shrestha, you should be able to
18 unmute and ask your question.

19 MS. SHRESTHA: Hello. Thank you. This
20 is Ayusha Shrestha from the AFL-CIO. I wanted
21 to ask -- you mentioned a bit about employer
22 confusion, would this standard were to pass. I

1 wanted to ask, from your experience, in what way
2 would these changes, if adopted, affect
3 individuals who are new to the workforce or the
4 worksite or have limited English language
5 skills?

6 MS. MILLER: Well, as I've worked with
7 many employers in providing education and health
8 and safety training and guidance on a number of
9 health and safety as well as young worker
10 guidance -- and it just -- there's so much
11 information that comes at new workers, whether
12 they're new to that workplace or new to the
13 workforce, and they're generally young adults,
14 18 or older. Yeah, those younger than that
15 should not be in these environments.

16 And so it just creates a lot of
17 confusion from workers and anyone they might
18 seek assistance from to be able to understand if
19 there's something they're supposed to go
20 reference back and forth and back and forth from
21 one standard to another, rather than getting
22 very specific information from their employer,

1 rather than leaving things up to the discretion
2 of an employer when they themselves don't have
3 enough information to question authority or
4 question the information.

5 They just lack experience and
6 information. And people with limited language
7 skills clearly would have some issues with
8 either both reading or understanding some of the
9 language of the technicalities.

10 MS. SHRESTHA: Thank you.

11 MS. JOHN: Thank you. Apologies. Next
12 we have Dan Glucksman.

13 Dan, you should be able to unmute and
14 ask your question.

15 MR. GLUCKSMAN: Okay. Great. Hi.
16 This is Dan Glucksman with ISEA, and my question
17 is about assigned protection factors and whether
18 you think that employers would be able to look
19 at, you know, say the future standard and see an
20 assigned protection factor and speak with their
21 distributor to talk about getting a respirator
22 that meets the assigned protection factor that's

1 listed in the OSHA regs, say the future OSHA
2 regs if this goes forward.

3 MS. MILLER: Well, again, this implies
4 that -- there's a huge difference between small
5 employers being able to manage the technical
6 issues, as was pointed out by the laborers,
7 versus somebody who's got a large employer that
8 has more expertise to be able to pursue that.

9 I still think not having specifics
10 where they are available and, if possible, to
11 provide specifics to employers just creates much
12 more work for them in terms of sorting out and
13 tracking down the information they need to
14 protect their workforce and to be in compliance.

15 So I may misunderstand your question,
16 and I apologize. But I think the distinction
17 will be -- and again, we can't have regulations
18 for small versus medium and large employers.
19 We're trying to create a level playing field
20 here so that it's easily understood.

21 And I'm curious -- personally, my own
22 question is whether there have been concerns

1 about these issues amongst these 16 standards in
2 terms of prompting this as opposed to looking at
3 the actual updating of the PELs or addressing
4 areas for which we have no standards.

5 MR. GLUCKSMAN: Yeah.

6 MS. MILLER: I'm just saying.

7 MR. GLUCKSMAN: Sure. That's fine.

8 But, I mean, to get a full-face-piece
9 respirator, or even a, you know, quote/unquote,
10 gas mask style, presumably, one would -- you
11 just couldn't walk into a corner store, right?
12 You have to get it from a specialized
13 distributor. So I'm wondering if you think that
14 with the APF table and a specified APF for a
15 chemical would be specific enough.

16 MS. MILLER: Well --

17 MR. GLUCKSMAN: I mean, it's pretty
18 specific.

19 MS. MILLER: I think it's possible, for
20 sure. I mean, I think that that information is
21 available, and it's out there. Whether it's
22 accessible in the circumstances that many of our

1 employers deal with, or workers in particular --
2 again, I would refer to, say, the laborers in
3 AFL in terms of worker-specific situations where
4 that question might be more appropriate.

5 MR. GLUCKSMAN: Yeah. And for the
6 record, you can't see it, but I'm wearing some
7 Z87-compliant goggles that fit very tightly to
8 the face. But I will take a look at our
9 standard and see about the vapor-protective
10 qualities --

11 (Simultaneous speaking.)

12 MS. MILLER: Well, that would be great.
13 It's too bad we can't all see that. That would
14 -- I'd be very interested. But then I still
15 have the issue or concern about exposed skin
16 that remains around a seal -- you know, if there
17 is a possible seal on vapor goggles, if you're
18 calling them that, and a half-face-mask
19 respirator. I'd still be concerned about the
20 exposed areas --

21 MR. GLUCKSMAN: Yeah.

22 (Simultaneous speaking.)

1 MS. MILLER: So maybe --

2 JUDGE HENLEY: Okay. Thank -- yeah,
3 thank you, Mr. Glucksman. And thank you --

4 MR. GLUCKSMAN: I did have one more --
5 (Simultaneous speaking.)

6 JUDGE HENLEY: I think --

7 MS. MILLER: It's a nice conversation.

8 JUDGE HENLEY: Well, let's not --
9 (Simultaneous speaking.)

10 JUDGE HENLEY: Mr. Glucksman, can you
11 repeat your affiliated organization?

12 MR. GLUCKSMAN: Yeah. My affiliated
13 organization is International Safety Equipment
14 Association.

15 JUDGE HENLEY: And you can certainly
16 ask additional questions of Ms. Miller --

17 MR. GLUCKSMAN: Yeah.

18 JUDGE HENLEY: -- in post-comment, but
19 we need to move on. We have additional
20 witnesses to hear from this afternoon. Thank
21 you very much for your question, sir.

22 Kecil, do we have additional questions

1 from the public, or is that it?

2 MS. JOHN: No other questions, Your
3 Honor.

4 JUDGE HENLEY: Were there any follow-up
5 questions from OSHA or the Solicitor based on
6 the public's questions?

7 MR. SCHAYER: None from OSHA, Your
8 Honor.

9 MS. NAUGHTON: None from the
10 Solicitors, Your Honor. Thank you.

11 JUDGE HENLEY: Again, Ms. Miller, thank
12 you very much for your testimony this afternoon.

13 I think you'll be able to give some follow-up
14 responses on the post-hearing comment period.

15 MS. MILLER: Okay. Thank you so much.

16 JUDGE HENLEY: Thank you.

17 MS. MILLER: Have a good day.

18 JUDGE HENLEY: Can we promote our next
19 panelist, please?

20 MS. JOHN: Yes. Ellie Barbarash, you
21 should have just gotten a pop-up to be promoted
22 to panelist. All right. You should be able to --

1 MS. BARBARASH: Good afternoon, Judge
2 Henley and OSHA representatives, and thank you
3 so much for the opportunity to address you. My
4 name is Ellie -- and you can all hear me, yes?

5 JUDGE HENLEY: We can.

6 MS. BARBARASH: Thank you. My name is
7 Ellie Barbarash, and I'll be commenting today on
8 recent OSHA lead and asbestos proposals. I'm a
9 certified professional environmental auditor
10 with a specialty in occupational safety. I
11 serve as a senior health and safety advocate for
12 AFSCME, the American Federation of State Council
13 and Municipal Employees.

14 AFSCME represents 1.4 million union
15 members who staff and maintain municipal
16 infrastructure, gen stations, transportation
17 hubs, waste management, water supply, airports,
18 bridges, and tunnels.

19 Our members encounter respirable
20 asbestos and lead hazards as we perform routine
21 structural maintenance, renovation, repair,
22 excavation, and demolition as we repair vehicles

1 and airplanes and as we respond in cleanup after
2 environmental and climate disasters.

3 The OSH Act of 1970 was promulgated --
4 and I'm going to quote -- to assure safe and
5 healthful working conditions for working men and
6 women by authorizing enforcement of the
7 standards developed under the Act, by assisting
8 and encouraging the states in their efforts to
9 assure safe and healthful working conditions, by
10 providing for research information, education,
11 and training in the field of occ safety and
12 health, and for other purposes. End quote.

13 Because of the OSH Act, most AFSCME
14 employers, both public and private, are
15 obligated to follow OSHA's general industry and
16 construction standards or state plan
17 equivalents. Our members' safety is dependent
18 on clear, explicit instructions from OSHA so
19 that employers protect workers from carcinogens
20 and neurotoxins like asbestos and lead.

21 Up until now, OSHA has provided clear,
22 explicit safety guidance within each standard to

1 minimize occupational harm from many toxic
2 substances. Efforts to lower worker injury,
3 illness, and fatality rates are dependent upon
4 OSHA establishing and enforcing well-defined
5 standards for work practice controls that are
6 hazard-specific, including substance-specific
7 respiratory protection requirements for workers
8 exposed to substances that could kill them.

9 On July 18th, 2017, OSHA published a
10 letter of interpretation to clarify requirements
11 in the respiratory protection standard and
12 asbestos standards under general industry and
13 construction.

14 OSHA had been asked, quote, when an
15 employee requests a PAPR instead of a negative-
16 pressure respirator for asbestos abatement work,
17 can their employer provide a loose-fitting PAPR
18 -- for example, a PAPR with a hood -- instead of
19 a tight-fitting PAPR to that worker? End quote.

20 I want to quote again from that 2017
21 letter of interpretation because of how directly
22 it relates to many of the topics of this public

1 hearing. OSHA wrote, open quote, employers must
2 provide an employee with tight-fitting, powered,
3 air-purifying respirator, PAPR, instead of a
4 negative-pressure respirator selected according
5 to paragraph (h)(3)(i)(A), of this standard when
6 the employee chooses to use a PAPR and it
7 provides adequate protection to the employee.

8 And then they quote the 1926 referral,
9 which is 1101(h)(3)(ii).

10 They go on to say, OSHA's respiratory
11 requirements within the asbestos standard 29 CFR
12 1926.1101(h) are more protective than the
13 requirements in OSHA's respiratory protection
14 standard. Employers are required to comply with
15 the asbestos standard whenever employees are
16 engaged in asbestos removal.

17 They go on to say, since employees
18 encounter significant health risk from asbestos
19 exposure even when employees limit exposure to
20 the permissible exposure limits, the asbestos
21 standard requires a higher level of protection
22 from respirators.

1 Specifically -- I'm still reading from
2 the letter -- regarding hooded versus tight-
3 fitting respirators, OSHA reviewed the evidence
4 during its rulemaking, which says recent
5 published field studies as well as environmental
6 chamber studies conducted by the Los Alamos
7 National Lab indicated that tight-fitting,
8 powered air-purifying respirators offer more
9 protection than loose-fitting PAPRs, Federal
10 Register, Volume 51, Number 119, pages 22696,
11 June 20th, 1986.

12 The Agency proposed to retain a number
13 of special respirator selection provisions in
14 the existing substance-specific standards. In
15 this regard, OSHA noted that the respirator
16 selection requirements proposed for retention
17 were developed in rulemaking to provide
18 protection against hazardous characteristics or
19 conditions that is unique to the regulated
20 substance.

21 Additionally, the Agency stated that
22 retaining these requirements would not increase

1 the existing employer burden because they
2 already must comply with these requirements.
3 Consequently, retaining these provisions would
4 maintain the level of respiratory protection
5 currently afforded to employees.

6 These provisions were put into the
7 substance-specific standards regulating employee
8 exposure to vinyl chloride, inorganic arsenic,
9 asbestos, benzene, coke oven emissions, cotton
10 dust, ethylene oxide, and formaldehyde. This is
11 all printed in -- that's the end quote printed
12 in the Federal Register, Volume 71, Number 164,
13 page 50,178, August 24th, 2006. End quote.

14 For emphasis, I wish to repeat OSHA's
15 own words from 2017. Since employees encounter
16 significant health risk from asbestos exposure,
17 even when employers limit exposures to the
18 permissible exposure limit, the asbestos
19 standard requires a higher level of protection
20 from respirators.

21 According to the NIOSH hierarchy of
22 controls, use of personal protective equipment

1 such as respiratory protection, while vital, is
2 the least effective strategy available to
3 protect workers from hazardous exposures.

4 Effective, hazard-specific respiratory
5 protection must be provided when engineering and
6 administrative controls are incapable of
7 bringing airborne exposures down to an
8 acceptable level, and they should be provided
9 when jobs are done that release toxic
10 contaminants, whether or not levels have been
11 measured yet.

12 OSHA's current proposals to deregulate
13 the asbestos, lead, and other chemical standards
14 threaten to remove substance-specific respirator
15 work practices and safety guidance from
16 standards intended to protect employees from
17 specific hazardous exposures.

18 Friable asbestos releases mineral
19 fibers that are aerodynamically elegant. They
20 are so lightweight and tiny that they remain
21 aloft for hours. Moving on the slightest of air
22 currents, asbestos fibers are easily inhaled

1 into the deepest parts of the lung, where they
2 cause the most damage.

3 Inhaling asbestos fibers causes
4 asbestosis, scarring of the lungs, lung and
5 organ cancers, mesothelioma -- a cancer of the
6 pleural lining that is only caused by asbestos
7 exposure -- COPD, and more. Risks are
8 cumulative, increasing with each inhaled fiber,
9 but damage only manifests after a latency period
10 of years, sometimes even decades.

11 Asbestos exposure damages the ability
12 to breathe. There is no safe level of exposure
13 for living beings with lungs. OSHA's proposals
14 remove directions for employers that indicate
15 exactly when their employees should be provided
16 with respiratory protection while working around
17 asbestos.

18 The asbestos standards as written
19 include mandates for respiratory protection to
20 be used in situations known to release fibers,
21 even before IH measurements have been taken to
22 see if the PEL is exceeded. Specific mandates

1 for worker protection should be maintained for
2 specific tasks inside the asbestos standard
3 itself.

4 Provision of respiratory protection
5 should not just depend on employers interpreting
6 1910.134 when employers, especially smaller or
7 less-resourced public employers, lack the
8 industrial hygiene expertise needed to determine
9 exactly how to protect their workers with
10 appropriate respiratory protection.

11 When employers and workers want to
12 understand OSHA requirements for safe asbestos
13 work practices, that information should be
14 located in the asbestos standards. The result
15 of employers reading the generic vagueness of
16 134 will be weakened workplace controls to
17 minimize asbestos exposure.

18 Specifically, this is what will be
19 weakened: substance-specific provisions that
20 mandate exactly when and where workers must use
21 respirators around asbestos, substance-specific
22 requirements for HEPA-level P100 filtration in

1 respiratory protection, worker safety training
2 requirements -- and that'll be weakened by
3 removing substance-specific information about
4 respiratory protection used and safe work
5 practices to minimize exposure.

6 As OSHA has stated in 2017, the
7 asbestos standard requires a higher level of
8 protection from respirators. Respirator
9 protection training that does not include
10 asbestos substance-specific information will not
11 be effective.

12 Ineffective training can easily result
13 in ineffective respirator choices, ineffective
14 donning and doffing practice, and ineffective
15 decontamination procedures. Aside from risking
16 workers' health, this can lead to its workers
17 bringing asbestos fibers home on hair, skin,
18 clothing, shoes, or in their vehicle, putting
19 their loved ones at risk of asbestos disease.

20 In direct contradiction to the July
21 18th, 2017, letter of interpretation, OSHA has
22 proposed considering stripping away workers'

1 right to receive a tight-fitting PAPR upon
2 request, even though PAPRs are more protective,
3 cooler to breathe in -- cooler to work in,
4 easier to breathe in, and cause less pulmonary
5 and cardiovascular strain.

6 For workers who would be able to
7 receive a PAPR for asbestos work, OSHA is
8 considering allowing employers to merely provide
9 a loose-fitting PAPR instead of a tight-fitting
10 one, violating the July 18th, 2017, letter of
11 interpretation entirely, with no scientific
12 basis to back it up.

13 OSHA's 2025 asbestos proposal will not
14 protect workers from asbestos exposure. Rather,
15 it will grant employers ultimate discretion
16 about whether to assign respiratory protection
17 to workers who are clearly exposed to asbestos,
18 but they will base their decision on generic,
19 non-substance-specific 1910.134 guidelines.

20 OSHA is simultaneously attempting to
21 significantly weaken and deregulate the
22 respiratory protection standard that they would

1 be leaning on. Removing substance-specific
2 respiratory protection information, access to
3 information about HEPA-level filtration, and
4 guidance about when to use respirators when
5 working around unmeasured and uncontrolled
6 releases of asbestos will remove workers' right
7 to be adequately protected from asbestos
8 exposure.

9 AFSCME emphatically opposes these
10 proposals and urges OSHA to maintain the
11 substance-specific protective language in the
12 general industry and construction standards.
13 The result of OSHA's asbestos proposals, if put
14 into practice, would be greater levels of
15 asbestos-related illness and death.

16 I'm now going to switch focus and look
17 at proposals to deregulate standards that
18 protect workers from lead. Exposures to lead
19 cause neurological, developmental,
20 cardiovascular, renal, reproductive, and
21 hematological disease, with children
22 particularly vulnerable. Individual health

1 issues increase adverse health effects of lead
2 exposure.

3 Lead hazards are easily transmitted
4 through air and contact. Workers can inhale or
5 ingest lead-containing dust, liquids, or fumes,
6 and lead-contaminated substances can irritate
7 eyes, skin, and mucus membranes -- contact with
8 them.

9 Exposures to lead are also cumulative,
10 and high lead exposures can lead to memory
11 problems in workers, irritability and
12 aggression, neuropathy, constipation, nausea,
13 weight loss, headaches, high blood pressure,
14 kidney damage, and chronic anemia.

15 Uncontrolled exposure to lead for
16 people who want to be parents can cause
17 fertility and reproductive damage, miscarriage,
18 birth defects, low birth weight, and slowed
19 infant growth. Workers who bring lead
20 contamination home by incomplete decontamination
21 risk permanently damaging their children through
22 that exposure, and their children will have

1 resulting learning disabilities, behavioral
2 problems, and permanently significantly reduced
3 IQ.

4 The consequences of lead exposure for
5 workers and family members is substantial. Safe
6 work practices, worker training and education,
7 and substance-specific PPE and respiratory
8 protection are vital to prevent occupational
9 exposure to lead.

10 AFSCME members routinely are exposed to
11 lead while painting, sanding, sandblasting,
12 welding and soldering, excavating, repairing,
13 and renovating, and during automotive and
14 aeronautic repair work. OSHA's deregulatory
15 proposals will degrade workplace lead protection
16 and result in increasing exposure.

17 We unequivocally oppose OSHA's lead
18 deregulation proposals. OSHA suggests removing
19 the lead standard explicit substance-specific
20 information that covers work practices, safety
21 training, the need for HEPA-level filtration and
22 mandatory respirator use, access to PAPRs, and

1 other substance-specific protection guidance.

2 Instead, OSHA directs employers to the
3 generic respiratory protection standard, as I
4 mentioned in asbestos. OSHA's 2025 proposals
5 include removing hazard-specific respirator use
6 from the lead standards. But these requirements
7 are -- that tell employers to provide
8 respirators when exposure levels have not even
9 been measured yet or when engineering and work
10 practice controls to minimize lead have not yet
11 been installed or if they're not even feasible.

12 Most employers do not have an
13 industrial hygienist on staff to measure levels
14 of lead exposure during typical work practices
15 to determine protection factors needed to
16 protect their workers. The gap in this standard
17 will result in employers not having guidance
18 about when it's mandatory for them to provide
19 respirators to protect staff from lead.

20 The result will be workers denied
21 access to appropriate respiratory protections.
22 Existing language in 1910.1025 and 1926.62(f)(1)

1 should not be removed.

2 OSHA also proposes to allow workers to
3 use half-face respirators instead of full-face
4 respirators in situations where lead exposure
5 can cause skin or eye irritation, granting
6 employers the leeway to assign face shields or
7 goggles instead of superior eye and face
8 protection provided by a full-face-piece
9 respirator.

10 Tight-fitting goggles are
11 uncomfortable, and they do nothing to protect
12 surrounding facial skin from lead contamination.

13 Lead contamination on the face can end up
14 absorbed through the skin, or with sweat and
15 exertion it can easily end up in workers' eyes
16 or mouth, adding to exposure levels that are
17 cumulative.

18 Face shields do not fit every
19 respirator type and can distort and damage fit
20 or even obstruct breathing. Full-face
21 respirators are the minimum necessary for worker
22 protection in situations where lead can cause

1 eye or skin irritation.

2 OSHA also proposes removing language
3 guaranteeing workers' right to receive a PAPR
4 instead of a negative-pressure respirator. But
5 as mentioned earlier, tight-fitting PAPRs are
6 cooler and easier to breathe through, and they
7 allow workers with medical issues or religious
8 requirements to stay on the job and continue to
9 work. But PAPRs are more expensive.

10 OSHA must maintain workers' rights to
11 get a PAPR upon request, and employers must be
12 required to provide them to workers upon request
13 for all lead work.

14 OSHA proposes to remove from the lead
15 standard explicit requirements for HEPA-level
16 filtration, P100, in respirators used to protect
17 from lead. But only HEPA-level filtration will
18 prevent workers from inhaling lead. It does
19 this by filtering out 99.97 percent of particles
20 0.3 microns or larger. Only HEPA-type filters
21 are suitable and NIOSH-certified to protect
22 workers from these fine respirable particulates.

1 Instead, as in the asbestos proposals,
2 OSHA's lead proposals refer employers to
3 1910.134. Employers are directed to use their
4 own discretion to decide what kind of
5 respiratory protection, if any, they should
6 provide.

7 The result of this weakened specificity
8 and lack of clarity mandating HEPA filters or
9 the equivalent will result in employers denying
10 workers the right to be protected from lead.

11 Considering that FFRs are not
12 prohibited in the lead standard, the possibility
13 that employers will get respiratory protection
14 wrong by just assigning workers to use the
15 cheaper, commonly available N-95 instead of run-
16 rated P100 is significant.

17 The lead standard must keep clear
18 requirements for HEPA-level filtration in all
19 respirators used for lead work. The general
20 industry respiratory protection states, when
21 effective engineering controls are not feasible
22 or being instituted, appropriate respirators

1 shall be used.

2 But it doesn't specify what kind of
3 respirator or filter is appropriate or needed
4 right there to protect workers. It doesn't
5 provide employers with the information easily
6 available to protect workers from what is most
7 hazardous. OSHA's proposal will maximize
8 employer flexibility while stripping workers the
9 right to be effectively protected from
10 respirable chemicals.

11 In conclusion, OSHA's proposals to
12 deregulate asbestos and lead protection
13 standards would massively increase worker
14 exposures to asbestos and lead, resulting in
15 increased rates of occupational illness and
16 death and endangering their family members
17 downstream.

18 The proposals violate OSHA's past
19 practice, violate decades of established
20 science, violate letters of intention, and they
21 violate the clear intentions of the OSH Act.
22 Thank you.

1 JUDGE HENLEY: Thank you, Ms.
2 Barbarash.

3 Does OSHA have questions for this
4 panelist?

5 MR. SCHAYER: Yes, Your Honor. This is
6 Stephen Schayer from OSHA.

7 Thank you, Ms. Barbarash, for your
8 testimony today. I'd like to turn to Patti
9 Downs and Rachel Michel from the Directorate of
10 Standards and Guidance for the first set of
11 questions.

12 MS. DOWNS: Good afternoon. This is
13 Patti Downs speaking. Ms. Barbarash, for the
14 asbestos proposal, are there any specific
15 provisions that it would be important for OSHA
16 to retain rather than switching to selection
17 based on APF factors? And if so, can you please
18 explain your reasoning?

19 MS. BARBARASH: I believe I outlined
20 them in my comments. I don't have it in front
21 of me, so I'm going to answer it in the moment,
22 and then I'll follow up in any commentary when I

1 see the questions.

2 I just want to preface this -- is that
3 I was an asbestos-certified worker for 15 years,
4 and I'm answering this both as a safety
5 professional and as somebody who's done a lot of
6 that work.

7 The regulations say that -- I believe
8 it was the very first thing I said in my
9 comments -- employers are not obligated to
10 provide them when we don't know the level, when
11 we don't know the PEL, when -- while we're
12 installing engineering controls and setting that
13 up, and also in emergencies and that type of
14 thing.

15 And they're describing situations of
16 uncontrolled releases where, because it is
17 understood scientifically, these typically
18 release so much airborne exposures, I wouldn't
19 have an abatement if I didn't have a release. I
20 wouldn't be cleaning it up if I didn't need it.

21 But it's saying that, well, you haven't
22 measured it. You don't have a PEL yet. And you

1 could just go in there, and you don't
2 necessarily have to use a respirator. The
3 employer gets to determine whether they can use
4 a respirator for that or not.

5 And my stance, I think, and my
6 colleagues' stance, is that the specificity of
7 these situations -- by definition, they're
8 situations known to release the most fibers.
9 They're situations where, by definition, fibers
10 are not under control by either -- by
11 containment, by wet methods, by negative air
12 pressure -- you know, by NAM machines -- that
13 they need -- that people need respirators.

14 I was an AHERA inspector for years. By
15 this definition, I would have been denied
16 respiratory protection while I took asbestos
17 samples because, hey, we don't know what it is.

18 You know, use discretion, or at least stick a
19 dust mask on your face.

20 My employer needed to know and I needed
21 to know as a worker I have the right for this.
22 I have the right to be in a respiratory

1 protection program. I have the right for a HEPA
2 filter and not an organic vapor filter and not
3 just a dust filter. And I have the right to
4 have it fitted on my face, and I have the right
5 to do a seal check, and I've been trained about
6 that. I've been trained how asbestos damages
7 me. I've been trained when to put it on and
8 take it off.

9 That needs to be specified, or else
10 workers are going to lose access to that.

11 MS. DOWNS: Okay. Thank you. I
12 appreciate your answer to that. For -- this
13 next question is for asbestos and lead. What
14 training on respirators is being conducted under
15 the asbestos and lead specific standards that
16 would not be captured under the training
17 contained in the respiratory protection
18 standard?

19 MS. BARBARASH: Again, I think I'd like
20 to think about that and answer more in written
21 comments, but what comes to mind is if there is
22 no specific information -- sorry, if there's no

1 specific requirement for, you know, let's say a
2 PAPR or let's say a tight fitting respirator,
3 then how am I going to be trained on how to
4 decontaminate myself specifically from lead or
5 asbestos? How -- like the -- when we -- for
6 chemical exposures, the way that you
7 decontaminate can vary for chemicals. You know,
8 if it is something that is liquid based versus
9 if it's a vapor versus if it's a particulate,
10 those are really, really specific. Dealing with
11 asbestos being so aeronautically fine might be
12 different than dealing with something else that
13 is not that level of micron tiny in your
14 decontamination procedures. I believe that that
15 would be one difference, but I would need to
16 really consider all of them to give you a better
17 answer on that in the after comment period.

18 My concern is that somebody might just
19 be given an FFR, you know, and told go -- you
20 know, go for it. And how you deal with an FFR
21 and how you deal with a PAPR and how you deal
22 with a tight-fitting full face respirator and

1 how you decontaminate and remove them are very
2 different things.

3 MS. DOWNS: Thank you. So as a follow-
4 up to that then, do you think that employers
5 would switch the types of training and how
6 they're currently providing it just because the
7 training provision was in a different location
8 now, right? And not in the substance specific
9 standard?

10 MS. BARBARASH: They're going to lose
11 the specificity of what they need to train
12 about. It. My vantage point, I work. I've
13 always been a worker advocate, as I've explained
14 it other times to this venue. My vantage point
15 is to advocate for and to push employers for
16 better protection. The entirety of my career,
17 even when I've worked for management, has been
18 strengthening training. The norm that I've
19 experienced is incomplete and ineffective
20 training. The definition of 40 years of my work
21 has been pushing that training to be more
22 effective. With that bias of my personal lived

1 experience, yes, I believe that there will be
2 the minimum that will be done if it is not laid
3 out specifically.

4 MS. DOWNS: Okay. And then one last
5 follow on question to that about training. So
6 would you be less concerned about this issue
7 then if OSHA included a cross-reference to the
8 respiratory protection standard, the 134K, in
9 the substance specific standard instead? Would
10 that alleviate some of the concerns?

11 MS. BARBARASH: No.

12 MS. DOWNS: Okay.

13 MS. BARBARASH: No. I honestly believe
14 that to support employers in their efforts to
15 protect workers, to support employers in their
16 efforts to have compliance and to protect their
17 workforce, that they need to have the simplest
18 method and the most direct and prescriptive
19 method possible that says, teach about this,
20 this, this, this, and this. You know, I believe
21 in the asbestos standards, the appendixes have
22 great detail about what needs to be in that

1 training.

2 I was an asbestos trainer for years.
3 There, you know, depending on your city, you're
4 cross-referencing it already with a HIRA or with
5 a city reference or with a state reference. I
6 honestly believe that we need everything to be
7 as explicit as possible, one-stop shopping, and
8 that's not 1910.134, because you would need, you
9 know, 15 CFRs just to contain what's in the
10 other places. It's not robust enough. It's too
11 vague. It's too -- it's not -- people will -- I
12 honestly believe this will kill people. It's my
13 honest, but it's my professional opinion that
14 this is -- that these will kill people.

15 MS. DOWNS: Okay. One last question
16 from me, and this is regarding the use of eye
17 protection and half mask respirators for lead.
18 Is it your position that there are no
19 combinations of respirator and eye protection
20 that would provide equivalent protection, or is
21 it just that some combinations would not provide
22 adequate protection for exposures against lead?

1 So, for example, lead currently allows
2 half masks when there's no concern for eye
3 irritation. So if, like, a short duration or
4 infrequent task with the potential for eye
5 irritation were occurring, would separate eye
6 protection be appropriate at that point in lieu
7 of changing into a full face piece respirator?

8 MS. BARBARASH: I do not believe so.
9 As someone who has attended to many workers not
10 having access to an eye wash and having
11 subsequent permanent eye injury afterwards, no,
12 I would not believe so.

13 MS. DOWNS: Okay. Thank you so much.
14 And I will turn it over to Rachel.

15 MS. MICHEL: Hi, Rachel Michel.

16 MS. BARBARASH: Hi.

17 MS. MICHEL: Thank you for your
18 testimony today. So OSHA's interested in
19 learning more about how employers decide what
20 filter efficiency to use. And in your written
21 comments for lead and asbestos AFSCME expressed
22 concern that removing the explicit HEPA and HEPA

1 equivalent filtration requirements could create
2 uncertainty and result in employers selecting
3 filters that provide inadequate protection.

4 So, just wondering if you could speak
5 as to how many employee -- how employers are
6 currently determining whether to select a 95
7 percent, 99 or 99.7 percent filter efficiency
8 for exposures to particular hazards where OSHA
9 hasn't specified a level of filtration, and
10 maybe what factors drive that decision?

11 MS. BARBARASH: I don't know that I
12 could speak for how employers make choices. I'm
13 -- like, maybe you could ask the question
14 another way. I'm not sure I could answer for
15 employers.

16 MS. MICHEL: Yeah, so just trying to
17 get at -- yeah -- or maybe you could like, speak
18 on for your personal experience how it's
19 determined for standards that are not specific
20 requiring HEPA or HEPA equivalent. How would
21 you determine if a 95, 99, or 99.97 percent
22 efficiency would be appropriate for that hazard?

1 MS. BARBARASH: The only way I can
2 answer that is from personal experience, and
3 that is talking to workers and asking them about
4 their respiratory protection, finding out what
5 they work with, and then finding out what
6 they're using. And so often, they're not under
7 a respiratory protection program, and they're
8 just handed a standard N95, which they haven't
9 even necessarily had training on, because it's
10 available, and it's easy, and it's familiar,
11 especially post COVID. Again I own my
12 experience lens of being -- of having a career
13 of supporting workers getting better safety and
14 health. By definition, the workers are not
15 getting adequate safety and health protection.

16 So the answer -- and I was a -- I'll
17 just tell a personal -- this is true. I was a
18 woman in the trades very, very early when women
19 minorities were just breaking into the trades,
20 and it was well before 1998. And I did blue
21 collar work, I did steam excavation and
22 demolition, I did painting, I did night shift in

1 a variety of municipal settings, because those
2 are the employers that would hire us. My
3 respiratory protection was so bad. I would get
4 -- you know, my first job, there were three of
5 us assigned one negative pressure respirator,
6 which we were using lead paint in battleship
7 gray, and it -- we had a HEPA filter on it for
8 organic vapors, and we were told to pass it from
9 face-to-face whenever the paintbrush or the
10 roller was in our hand.

11 I would be assigned a dust mask to
12 remove asbestos files to panels. I would be
13 assigned, you know -- like nobody knew the
14 difference between an organic vapor or a
15 chlorine vapor or a dust mask or, you know, and
16 if it was a gas mask and it wasn't available,
17 you put it on your face, and it certainly didn't
18 matter what color it -- what size it was. And,
19 hopefully, you were able to clean it before you
20 put it on your face. Like, that is what life
21 was before these respirators were in place.

22 Yeah, I hope that answers your question

1 to some capacity. That is my personal
2 experience, and my experience is advocating for
3 workers to get appropriate protection for the
4 hazards they're exposed to. And my experience
5 is that employers don't do that, you know,
6 unless they're -- unless they specifically are
7 forced to.

8 MS. MICHEL: Thank you. And just as,
9 you know, you're preparing your post-hearing
10 information, if there's any other additional
11 information that you can think of that you come
12 across to demonstrate that employers do or would
13 choose filters that do not provide adequate
14 protection with the minimum filter efficiency
15 when it's not specified, that would be helpful
16 too.

17 MS. BARBARASH: I look forward to
18 seeing the written record of the questions so I
19 could respond better. Thanks.

20 MS. MICHEL: Thank you.

21 MR. SCHAYER: This is Stephen Schayer.
22 Your Honor, if we may, we have one final

1 question from Dr. Bob Blicksilver.

2 MR. BLICKSILVER: Hi. Bob Blicksilver,
3 OSHA Standards and Guidance. I'm going to read
4 these questions -- economic questions into the
5 record and give you an opportunity to respond in
6 post-hearing comments. You've already spoken to
7 the costs of any gaps or confusion in training
8 coverage if training requirements are eliminated
9 from the substance specific standards, but if
10 you could consider any evidence or studies or
11 your personal observations with regard to what
12 these costs might -- how you would characterize
13 them or, or estimate them in terms of illness or
14 injury that might result from the confusion or
15 gaps in in the training coverage, that would be
16 helpful to us.

17 And then my last question, do you have
18 any information on what the current exposure
19 profile for asbestos respirator use practices
20 look like among AFSCME members?

21 MS. BARBARASH: Could you tell me what
22 you mean by the current exposure profile?

1 MR. BLICKSILVER: In terms of the --
2 typically what respirator types are assigned to
3 workers according to tasks.

4 MS. BARBARASH: Oh, that's interesting.
5 Okay.

6 MR. BLICKSILVER: Okay. And yeah --
7 and if you have any quantitative information,
8 percentage of this number of workers in this
9 industry, and in these tasks, that sort of
10 information would be really helpful to us.

11 MS. BARBARASH: I'll see what I can.

12 MR. BLICKSILVER: Right. Thank you
13 very much.

14 MR. SCHAYER: This is Stephen Shayer,
15 Your Honor. That concludes the OSHA panel
16 questions. Thank you again, Ms. Barbarash.

17 JUDGE HENLEY: Thank you. Do we have questions
18 in the solicitor's office for Ms. Barbarash?

19 MS. NAUGHTON: Thank you, Judge Henley.
20 This is Sheila Naughton for the Office of
21 Solicitor. I just have one quick question,
22 which I think might be best to ask in answer and

1 post-hearing comment, but thank you so much for
2 your testimony already. I think to the extent
3 you can either in your post-hearing comment or
4 briefing, it would be really helpful to hear,
5 based on your expertise, any additional detail
6 about the features of asbestos exposure or lead
7 exposure. You provided some details in your
8 testimony already, but to the extent you can
9 make tie that to how the certain provisions are
10 important to retain it'd be really helpful to
11 understand that to the extent you can.

12 MS. BARBARASH: Can you say the type of
13 thing you're looking for that's not already
14 there, just so I have an idea about what you're
15 asking or what you're kind of searching for?

16 MS. NAUGHTON: Yes, so I think my under
17 -- my question is really about whether or not
18 there's aspects about the fiber characteristics
19 of asbestos or the type of work practices or
20 decontamination needs that make these specific
21 protections particularly necessary for asbestos
22 or for lead.

1 MS. BARBARASH: Okay.

2 MS. NAUGHTON: That'd be great. Thank
3 you so much.

4 JUDGE HENLEY: Thank you, Counsel.

5 Kecil, are there any questions from the
6 public for this panelist?

7 MS. JOHN: Yes, we have Rebecca
8 Reindel. Rebecca, you should be able to unmute
9 and ask your question.

10 MS. REINDEL: Wonderful. Thank you.
11 Good afternoon. Rebecca Reindel, I'm with the
12 AFL-CIO, and I have -- so thank you for your
13 testimony, Ms. Barbarash. I have I guess it's a
14 two-part question. I'll just say them both.

15 MS. BARBARASH: Okay.

16 MS. REINDEL: It builds off of
17 something that I believe OSHA asked earlier, but
18 how do employers know how to provide certain
19 types of respirators for chemicals that don't
20 have their own standards? And then, you know,
21 my follow-up to that is really, do you think
22 that that's. Do you consider that feasible? Do

1 you consider that sufficient? Thank you.

2 MS. BARBARASH: My experience is they
3 don't. My experience -- and by they don't, I
4 mean, employers do not know what to provide
5 their workers, that unless they actually have
6 safety people on staff who are trained in safety
7 and not just assigned there, they do not have
8 the internal management knowledge to assess what
9 kind of respirator to use, when to use that
10 respirator. They struggle to even maintain a
11 competent respiratory protection program for
12 when OSHA does proscribe it.

13 My years in healthcare and COVID
14 assessed to that, but they don't know, and that
15 results in the amount -- recently a colleague
16 was teaching a class on HAZWOPER and the -- had
17 some AFSCME members internally from some
18 Midwestern states, and we were -- they were
19 being trained in this HAZWOPER class, which they
20 were on a NIOSH grant for, not through their
21 employer about respiratory protection and scuba
22 gear and the like, and they typically drove

1 trucks and handled hazardous materials and
2 cleaned up chemical spills, and they were asked
3 what respirators they used, and they all just
4 pulled out an FFR.

5 They just pulled out an N95 and said,
6 we use these. So they're using an un-fit-
7 tested, store-bought disposable respirator to
8 deal with organic vapor and chemical and
9 hazardous substance spills, because until that
10 moment, they've never had training. And these
11 are people who've been, you know, working for a
12 public employer for 10 or 12 years. I mean,
13 that, unfortunately, is how things fly.

14 Yeah, did I miss any of your question,
15 Ms. Reindel?

16 MS. REINDEL: No. Thank you. That
17 was helpful. I appreciate it.

18 MS. BARBARASH: Thank you.

19 JUDGE HENLEY: Are there follow-up
20 questions from OSHA based on the public's
21 questions?

22 MR. SCHAYER: No, Your Honor.

1 MS. NAUGHTON: Judge Henley, this is
2 Sheila Naughton from Office of Solicitor. I do
3 have a quick follow-up question, if you don't
4 mind.

5 JUDGE HENLEY: Yeah, certainly. Go
6 ahead.

7 MS. NAUGHTON: All right. Thank you.
8 So you're suggesting there's a need for
9 additional guidance materials. I'm curious if
10 you have an opinion about whether these need to
11 be in the regulatory text or do employers, in
12 your experience, regularly consult the
13 regulatory text, or would it be helpful to have
14 it in compliance assistance documents outside of
15 that? It'd be helpful to have your insights.

16 MS. BARBARASH: I believe it would be
17 useful in the regulatory text. Employers will
18 go on the OSHA webpage, but they'll also click
19 where it says standards. People are afraid of
20 having -- you know, I know there's a big move
21 for compliance assistance and not as much for
22 enforcement, but employers are afraid of

1 enforcement, and when they want to comply, they
2 will try to see what the law says.

3 And, if anything, if they do seek
4 professional advice, either internally or
5 externally, they're going to the regs. You
6 know, my colleagues and I might look at
7 compliance assistance information. We might
8 look at the field office -- you know, the FOM,
9 et cetera, but our employers are going on the
10 OSHA webpage and they're going to the regs.
11 It's like, keep it simple. What's it say?
12 Okay. We'll do it, hopefully. You know.

13 MS. NAUGHTON: Well, thank you so much.
14 And thank you for your testimony today.

15 MS. BARBARASH: Thank you.

16 JUDGE HENLEY: Thank you, Ms.
17 Barbarash, for your testimony this afternoon.
18 You are excused. Thank you, ma'am.

19 MS. BARBARASH: Jesus.

20 JUDGE HENLEY: Yeah, I don't think you
21 were muted. There you go.

22 Well, Kecil, can you promote our next

1 panel, please?

2 MS. JOHN: Yes. George Hall, you
3 should have just been promoted. Kent Holsing,
4 Juan Zuniga, and Steve Sallman. And I do not
5 see Kayla Flowers or Thomas Duffy in the
6 attendee list. If either of you are present,
7 please raise your hand and I will call you.

8 JUDGE HENLEY: Good afternoon, panel.
9 Is there a lead for your panel?

10 MR. HALL: Yes. Hi. Can everybody
11 hear me?

12 JUDGE HENLEY: Yes, sir. Mr. Hall,
13 right?

14 MR. HALL: Yes. Yes. My name's George
15 Hall. Yes. SAo thank you, Your Honor, and OSHA
16 for the opportunity to testify today. Due to
17 scheduling conflicts, Tom Duffy and Kayla
18 Flowers will not be able to attend today. We
19 apologize.

20 So my name is George Hall. I'm a proud
21 member of the United Steelworkers Union, local
22 3657, and a health and safety specialist at the

1 Health and Safety Environment Department. The
2 United Steelworkers is the largest industrial
3 union in North America. The USW represents
4 workers in steel, aluminum, paper, oil, rubber,
5 plastics, glass, cement, mining, energy,
6 chemicals, refining, utilities, healthcare,
7 atomic, education, manufacturing service,
8 sawmills, textiles, shipbuilding, and many other
9 industries. We strongly urge OSHA to maintain,
10 strengthen, and fully enforce workplace
11 protections for workers exposed to hazardous
12 chemicals and respiratory hazards.

13 The United Steelworkers oppose OSHA's
14 proposed deregulatory actions affecting 29CFR
15 1910.134, the respiratory protection standard,
16 as well as changes that would weaken or remove
17 important protections contained in substance-
18 specific standards. These protections exist for
19 a reason. Our members work every day in some of
20 the most hazardous industrial environments in
21 North America. They can be exposed to benzene,
22 asbestos, lead, cadmium, formaldehyde, ethylene

1 chloride, vinyl chloride, and organic arsenic
2 ethylene oxide, and many other hazardous
3 substances.

4 These are substances that workers
5 encounter in real workplaces. Exposures can
6 lead to cancer, respiratory disease,
7 neurological damage, organ damage, reproductive
8 harm, and death, and many of these hazards
9 cannot be seen, smelled, or easily recognized by
10 workers. By the time workers realize there's a
11 problem, they may have already been exposed.
12 That is why we are concerned about weakening
13 protections under OSHA's substance-specific
14 standards.

15 OSHA's proposing to revise respiratory
16 protection requirements in 16 substance-specific
17 standards. We believe these standards provide
18 important protections that should not simply be
19 reduced or replaced with a more generalized
20 approach. The concern becomes even greater
21 during non-routine work.

22 Think about maintenance, shutdowns,

1 emergency response, spills, equipment openings,
2 confined spaces, process offsets, or chemical
3 release. These are the moments when conditions
4 can quickly change. A worker may be opening
5 equipment that has contained a hazardous
6 chemical, a maintenance employee may be breaking
7 into a process line. An emergency responder may
8 be going into an area where concentration of a
9 chemical is unknown.

10 Those workers need clear, specific
11 protections. They need to know what hazards may
12 -- that may encounter, what respiratory
13 protections is required, and what procedures may
14 -- must follow before they begin the work. We
15 also have to remember the respiratory
16 protections is not the first line of defense.
17 The best protection is to eliminate or control
18 the hazard at the source whenever possible.
19 When -- but when engineering and administrative
20 controls cannot be adequate, to protect workers'
21 respiratory protections, become critical. The
22 protection needs to work when the worker needs

1 it most.

2 We cannot have a system where a worker
3 is expected to make complicated decision about
4 respiratory protection while standing in the
5 middle of a chemical release, a maintenance
6 shutdown or an emergency. The roles need to be
7 clear and pers- perspective to ensure that
8 employees -- employers are selecting appropriate
9 protections and making them available for
10 workers for the hazards present.

11 United Steelworkers believe OSHA's
12 responsibility is to protect workers, not to
13 make it easier for employers to comply by
14 reducing protections. Our members have seen
15 what happens with systems fail. We have
16 investigated serious injuries, chemical
17 exposures, fires, explosions, and fatalities.
18 We know what incidents often occur when hazards
19 are underestimated, procedures are unclear, or
20 workers do not have the proper protections. We
21 also know that workers live with the
22 consequences long after the incident is over.

1 Production schedules can be changed, a piece of
2 equipment can be repaired, a process can be
3 restarted, but a worker who develops cancer
4 suffers permanent lung damage or loses their
5 life cannot simply be replaced. But a worker
6 who develops cancer suffers permanent lung
7 damage.

8 What does the United Steelworkers urge
9 OSHAs to maintain the strengthen these
10 protections? Do not weaken the respiratory
11 protection standard. Do not remove important
12 requirements from substance-specific standards.

13 Instead, OSHA should focus on consistent and
14 robust enforcement of the standards that are
15 currently in place, that employers have strong
16 requirements to identify hazards, eliminate and
17 control exposures, provide appropriate
18 respiratory protection, and train workers and
19 protect workers during both routine and non-
20 routine.

21 At the end of the day, this is about
22 something very simple. Every worker deserves to

1 go home from work at the same condition they
2 came to work. Our members should not have to
3 gamble with their health the workplace when it
4 comes to exposures from normal working
5 conditions, workplace change, non-routine tasks,
6 and upset conditions such as leaks, spills,
7 emergencies, and other adverse events. OSHA
8 standards have saved lives. We should raise the
9 bar not lowering it.

10 And from that, I would like to pass it
11 over to Kent Holsing.

12 MR. HOLSING: Good afternoon to
13 everyone, and thank you, Your Honor, OSHA for
14 allowing me some time to share my thoughts on
15 behalf of workers at this hearing. My name is
16 Kent Holsing. I am the president of United
17 Steelworkers Local 12075 here in Midland,
18 Michigan, and I'm also the chairperson of the
19 Dow DuPont North American Labor Council.

20 As local union president, I represent
21 approximately 700 workers that work at a variety
22 of chemical companies, such as Dow, DuPont,

1 Corteva, Roquette, Triseo, and Cunity. As
2 chairperson of the Dow DuPont North American
3 Labor Council, I also work with another 18
4 bargain for manufacturing locations,
5 representing another 3,500 employees, workers,
6 employed by the same companies across the U.S.
7 I also have I worked at Dow now for 40 years.

8 Our members frequently work with a
9 number of these chemicals that fall within the
10 regulatory standard which we're discussing here
11 today. Each and every day, they don the
12 personal protective equipment, in this case
13 respirators, that employers are required to
14 provide us with so we can safely interact with
15 these chemicals.

16 This is not always routine work, but
17 also non-routine, such as releases, emergency
18 responses, or process upsets, for example.
19 There is a reason this standard was created and
20 exists today. It is because workers had been
21 exposed to these chemicals, and as a result,
22 they developed cancer, respiratory illnesses,

1 and other ailments up to and including death.

2 This regulation exists to protect the
3 workers. Organizations such as labor unions, we
4 fought hard to convince OSHA to establish such
5 regulations. Now there are groups that are
6 attempting to convince OSHA to roll back and
7 minimize the standard. Why? Because we believe
8 that they want to advocate it would be more
9 efficient and cost-productive for the employers.

10 I've discussed this proposed
11 deregulation of the standard with a number of
12 our members and our units that we represent.
13 Each and every worker that interacts with these
14 chemicals believes that it would be a huge
15 setback to their personal safety, both short-
16 term and long-term. If employers are not held
17 to the standard we have today, we firmly believe
18 that employers, if not held to the regulations
19 we have today, will ultimately default to the
20 most cost-efficient practice at the expense of
21 workers' safety.

22 With the opportunity I have today, I am

1 urging OSHA to maintain and enforce the
2 standards that we have. Please do not roll back
3 these standards under the guise of efficiency,
4 redundancy, harmonization, and the other
5 buzzwords that employers and the respective
6 associations like to use. It's about cost
7 cutting at the risk of worker safety. These
8 standards are not burdens, they are the defense
9 for workers. The lives of workers and the
10 families cannot be calculated as an expense.
11 And on behalf of the members and workers I
12 represent and work with, please do not diminish
13 the standards that have protected us.

14 I respectfully urge OSHA to maintain
15 these enforceable protections for workers
16 exposed to these chemicals and the respiratory
17 hazards they present. Thank you very much for
18 your time and consideration, and now I'd like to
19 turn it over to Juan.

20 MR. ZUNIGA: Can you hear me?

21 MR. HOLSING: Yes, sir.

22 MR. ZUNIGA: Oh, thank you. Good

1 afternoon, Your Honor, Judge Henley, and members
2 of the OSHA panel. Thank you for the
3 opportunity to testify today. I am Juan Antonio
4 Zuniga, proud member of the United Steelworkers'
5 Union Local 3657. I am also a technician in the
6 Health Safety and Environment Department here at
7 the headquarters.

8 We strongly urge OSHA to withdraw its
9 proposed deregulation of the Coke Oven Emission
10 Standard 29CFR 1910.1029. As it relates to
11 respiratory protection, our members work on coke
12 oven batteries every day. They work top side on
13 the pusher side, coke side, battery ends, warps,
14 spraying stations, and maintenance operations
15 where they can encounter some of the most
16 hazardous respiratory exposures.

17 OSHA itself recognizes that seriousness
18 of these exposures, OSHA's Coke Oven Emission
19 Substance Information Sheet states that exposure
20 to coke oven emissions causes lung cancer and
21 kidney cancer in humans. Future coke oven
22 particulates is not the same thing as protecting

1 a coke oven worker from all respiratory hazards
2 of the coke making environment.

3 OSHA has previously recognized that
4 coke oven emissions are a complex mixture of
5 particulates, vapors and gases, and that organic
6 vapors containing carcinogens are produced
7 during the coking process. That is extremely
8 important when discussing the use of disposable
9 filter and face piece respirators.

10 OSHA's respiratory protection standard
11 requires employers to evaluate respiratory
12 hazards in the workplace and select an
13 appropriate respirator based upon the hazards to
14 which the worker is actually exposed. A
15 particular filter cannot simply be treated as
16 protection against gases and vapors. OSHA's
17 existing carbon emission standard currently
18 requires employers to provide an appropriate
19 respirator and a specific -- specifically
20 require the employer's respiratory protection
21 program to comply with the broader requirements
22 of 29 CFR 1910.134.

1 Our concern is simple. Worker
2 protection cannot be determined by which
3 respirator costs less. If OSHA's economic
4 analysis assumes that employers will save money
5 by replacing reusable elastomeric respirators
6 with disposable N95 filter and face piece
7 respirators, then the United Steel Workers
8 believes OSHA must answer several fundamental
9 questions.

10 Number one, what contaminants did OSHA
11 assume these workers were exposed to? Two, what
12 exposure concentrations did OSHA assume? Three,
13 what assigned protection factor was required for
14 the OSHA's analysis account for gases and vapors
15 associated with a coke making operation? Or did
16 it consider only coke in particulate? Number
17 five, and most importantly, did OSHA calculate
18 these cost savings only after determining that
19 an N95 provides equivalent rotation for the
20 actual exposure conditions encountered by coke
21 oven workers?

22 If OSHA cannot demonstrate equivalent

1 protection, then those projected savings are not
2 true savings. They are savings achieved by
3 reducing worker protection. OSHA previously
4 determined that non-powered air purifying
5 respirators with non-elastomeric face pieces
6 were more prone to leakage at the ceiling edges
7 and did not provide as high a protection factor
8 as comparable elastomeric face pieces. Those
9 findings should not simply disappear because
10 disposable respirators may be cheaper. Our
11 members have spent their careers working around
12 coke ovens. They understand the smoke, fumes,
13 gases, heat leaks, processes upset, maintenance
14 conditions, and changing exposures that occur
15 every day on a coke battery.

16 OSHA standards must be based on
17 protecting those workers on the real world
18 conditions, not simply on the lowest cost
19 respirator that can filter a particulate.
20 Before OSHA claims \$1 of economic savings from
21 this proposal, it should demonstrate that the
22 replacement respirator provides equivalent

1 protection against the actual respiratory
2 hazards workers are exposed to. Hazards must be
3 determined -- hazards must determine the
4 respirator, not the price of the respirator.

5 The United Steelworkers strongly urges
6 OSHA to withdraw the proposed lead regulation of
7 the coke oven emission standard and maintain
8 strong respiratory protections for coke oven
9 workers. Thank you very much, and I let Steve
10 close. Thank you.

11 MR. SALLMAN: Thank you. Can you hear
12 me? Hello?

13 JUDGE HENLEY: Yes. Yes, sir.

14 MR. SALLMAN: Thank you. Hello, I'm
15 Steve Sallman. I'm the Director of Health
16 Safety Environment for United Steelworkers. I
17 also want to thank you, Your Honor, OSHA and the
18 Office of the Solicitor for the opportunity to
19 testify today.

20 USW opposes these actions in their
21 entirety. There is no room for error when all
22 levels of the hierarchy of controls have been

1 exhausted and workers are exposed to dangerous
2 and deadly toxic substances with only the last
3 line of defense to protect them, a respirator.
4 OSHA has determined that each of these 16 toxic
5 substances is a grave danger to workers and yet
6 is proposing to remove worker protections
7 previously determined to be both feasible and
8 necessary.

9 That being said, some of the specific
10 deregulation actions must be highlighted. For
11 example, the proposed deregulations regarding
12 lead exposure could be interpreted to reduce
13 longstanding protections and shift away from the
14 hierarchy of controls. It would eliminate the
15 explicit requirements for respirator use when
16 engineering controls are being installed or are
17 insufficient to reduce exposures below the
18 permissible exposure limit while simultaneously
19 removing the prescriptive requirements to
20 provide high efficiency particulate air filters
21 for workers exposed to lead.

22 In lieu of the protections provided in

1 1910.1025, employers would instead be directed
2 to direct -- to select a respirator based on the
3 assigned protection factor. Providing employers
4 this flexibility at the cost of worker health
5 would be a deadly mistake and workers will
6 suffer if the rule moves forward.

7 On a recent site visit to a USW
8 represented workplace, the Steelworkers' Health
9 Safety Environment Department supported the
10 local union to work with company safety
11 professionals to abate high blood levels showing
12 up in the facility. The company is aware of the
13 levels above the action level and permissible
14 exposure limit, and all employees in the
15 facility are required to wear respirators.

16 During the USW's walk-around of the
17 facility, it was identified that employees were
18 being provided tight-fitting respirators with
19 organic vapor cartridges only to protect against
20 lead exposures. No particulate protection was
21 provided to our members. This was identified
22 and addressed during the site visit and all the

1 dangerously incorrect cartridges were removed
2 from service by the end of the visit.

3 This is one example that demonstrates
4 the absolute need for the specific requirements
5 offered by the current standard 1910.1025 and
6 why OSHA must not move forward with the
7 deregulation action. Another deregulation
8 action is the considered proposal to remove the
9 1910.1044 standard in its entirety. OSHA's
10 jurisdiction is simply that small amounts of
11 1,2-dibromo-3-chloropropane, or DBCP, is
12 currently used in industry and therefore the
13 number of exposed workers is likely small. This
14 highlights the dangerous trend across the
15 proposed deregulation actions that if a hazard
16 only affects a small number of workers, the
17 protections can be removed. OSHA has already
18 identified that DBCP standard is feasible. It
19 is necessary to attaining the highest degree of
20 protections for employees and has based these
21 decisions on scientific data in the field.

22 Nothing in the science has changed.

1 Nothing about the benefits of the current
2 standard have changed. The only thing that has
3 changed is OSHA's priority to appease industry,
4 appease the current administration, and this
5 sacrifices workers to do so. Section 6(b)(5) of
6 the OSH Act states that the secretary shall set
7 the standard that most adequately assures that
8 no employee will suffer material impairment of
9 health or functional capacity, not set a
10 standard that will only affect a few workers,
11 not set a standard that will allow industry to
12 prosper, not set a standard that will meet the
13 expectations of an executive order.

14 On behalf of the United Steelworkers
15 and the members we represent, we urge OSHA to
16 reject these changes and maintain strong
17 protections for workers exposed to respiratory
18 hazards and hazardous chemicals. We demand that
19 OSHA withdraw all 16 deregulatory actions and
20 maintain current levels of worker protection.
21 Thank you for the opportunity to provide these
22 comments and this concludes the union's remarks.

1 JUDGE HENLEY: Thank you. Does OSHA
2 have questions for this panel?

3 MR. SCHAYER: Yes, Your Honor. This is
4 Stephen Schayer from OSHA. Thank you to the
5 panel today for your testimony. Our first
6 questions will come from Patti Downs and Rachel
7 Michel.

8 MS. DOWNS: Thank you, gentlemen. This
9 is Patti Downs. A large number of the chemicals
10 regulated by OSHA do not have their own
11 substance-specific standards and are instead
12 included under OSHA's z-tables. Can any of you
13 speak to your experience with how employers are
14 providing respiratory protection for these other
15 types of chemicals that don't have substance-
16 specific standards?

17 MR. SALLMAN: Sure. I would highlight
18 in my comments about what happened when one of
19 the staff from our department went to a facility
20 that was having troubles with lead.

21 JUDGE HENLEY: Can you identify yourself,
22 please?

1 MR. SALLMAN: I apologize, Judge.
2 Sorry, I'm Steve Sallman with the steel workers.
3 Thank you, Judge. I'll go back to my comments
4 where we had one of the staff go to the
5 workplace that members were exposed to lead and
6 come to find out that they were not -- they were
7 exposed and above action levels, the employer
8 knew it, did not provide the proper particulate
9 protection, instead just hung respirators on
10 people for organic vapors. And these are the
11 things that we see.

12 We also see where too often it's the
13 N95 that has been handed out and no one has done
14 the actual risk assessment. And I would point
15 out that some of these are simple failures to
16 comply with the 134 standard, and that's the
17 benefit of having a substance-specific standard.

18 It points employers what to do, not only
19 employers, but workers and their representatives
20 on what can be done.

21 Too often we see them falling short on
22 when they consult a safety data sheet that may

1 just be put together to protect the manufacturer
2 of that. Sometimes employers will check with a
3 PPE vendor who may not even know the levels of
4 exposure in the workplace. And if we're
5 fortunate, they might have some technical staff
6 that's available, like an industrial hygienist
7 or some type of a consultant.

8 But one of the things that we see that
9 really lacks when it comes to selecting the
10 right PPE is the training is not adequate. And
11 we see this a lot where employers don't have the
12 resources in the health, safety and environment
13 department. They have tagged the safety manager
14 to basically be the work comp person, the
15 environmental person, be the health and safety
16 manager, and oh, by the way, do some security.

17 And therein lies part of some of the
18 problems. And then that person is responsible
19 to go out and do some training. And when that
20 person's wearing multiple hats, the training
21 suffers. And if there's one thing I learned on
22 a fatality is signature doesn't mean compliance,

1 it means attendance. And too often, we see
2 employers providing training just to gather up a
3 bunch of signatures. And what we see in that
4 training is not selecting the right respiratory
5 protection, not having the knowledge to do so.
6 And they'll have some kind of canned computer-
7 based training where people are just click,
8 click, click.

9 Even if you don't get it right, it'll
10 keep bringing you back to the question, and then
11 it's just a matter of the process of
12 elimination. Somebody passes the training, and
13 it's typically green people or new people
14 training new people. And we've even ran into
15 language barriers too in our workforce where the
16 languages don't cross across English and, and
17 the workers aren't properly trained.

18 MR. HOLSING: If I -- this is Kent
19 Holsing with the Steelworkers. If I may add to
20 what Steve had just said, what we're talking
21 about are those workplaces that we represent.
22 Can you imagine workplaces that are not

1 represented by a union? These employees, these
2 workers are totally left on their own, and they
3 just don't know. They have no one advocating
4 for their health and safety.

5 So can you imagine it's probably much
6 worse than what we're explaining and that -- and
7 we're explaining at a bargain for site. So I
8 just wanted to add to what Steve had said.

9 MS. DOWNS: Thank you. Patti Downs
10 again. So then do you tend to see better
11 compliance and with the chemical specific
12 standards or with the respiratory protection
13 standard when it comes to respirator use, or are
14 they somewhat equal?

15 MR. SALLMAN: Yes, we have seen better
16 compliance with the substance. Sorry, Steve
17 Sallman. Thank you, Your Honor, for reminding
18 me. I knew you was going to say something, so
19 not used to doing that on every single question.

20 I apologize. Steve Sallman. Yes, the
21 substance specific standard sets people up for
22 success versus a generalized standard. It

1 points people in the right direction. It gives
2 specifics to the employers as well as workers
3 and their representatives on how to comply. And
4 what we've seen where there's been failures when
5 it's come to the 134 standard we're pretty
6 fortunate in our department that a lot of OSHA
7 citations will channel through our department
8 either with the local union chairing them or the
9 OSHA area office will share those citations with
10 us.

11 And we've seen citations more around
12 general respiratory protection than we've seen
13 with the substance-specific citations. One
14 where employers have not had a respiratory
15 protection program or didn't cover all of the
16 elements. We've seen problems with voluntary
17 use where it's just been handed out like candy
18 and people have not been given the proper
19 training, the Appendix C and so on. We've seen
20 problems with the actual selection that's been
21 used and the assigned protection factors as well
22 as the maximum use concentrations.

1 And some of that is just failure to
2 identify the very hazards that workers are
3 exposed to, the controls that's supposed to be
4 in place to deal with those. We've seen a lot
5 around the medical evaluation where people
6 aren't getting the annual done and someone's not
7 made the annual medical evaluation.

8 We've always gotten phone calls about
9 our members, you know, trying to understand what
10 can we wear with facial hair and so on. That
11 usually becomes an issue where there's been some
12 drift or normalization of deviation. Certainly,
13 we've seen areas where storage of respirators
14 have not been maintained. We've seen those
15 citations. But I would also add too that, you
16 know, unfortunately in the 22 years that I've
17 been in this department I've been involved in
18 and know of three different fatalities that
19 we've had with respirators where workers hooked
20 up to what they thought was breathable air and
21 it ended up being nitrogen. And we've had three
22 fatalities where supplied air respirators were

1 hooked up to the wrong line. And we've put out
2 alerts on our website under USW Hazard Alerts,
3 so you're welcome to find those.

4 And then, just in the end, someone at
5 an employer has to be responsible for being the
6 administrator of that program. And when we see
7 constant turnover with health and safety staff
8 from the employer no one really owns the
9 respiratory protection standard because it's
10 just -- it's by definition the site safety
11 manager has this and the site safety manager
12 doesn't even know that that's been assigned to
13 them when they start over. So the high turnover
14 and multiple hats that employers are now asking
15 of their safety managers to wear is a problem.

16 MS. DOWNS: Okay. Thank you. Patti
17 Downs again. Switching gears a little here, I
18 just have a couple questions on training. In
19 the written comments the USW submitted on
20 cadmium, they noted the difference in the
21 coverage language for the training provisions.

22 Specifically, the cadmium standard

1 requires respirator training for all workers
2 with potential exposure, and then annually
3 thereafter, while the respiratory protection
4 standard only requires training when respirator
5 use is actually mandated. It would be helpful
6 for OSHA to understand this population of
7 workers. Could you identify any specific
8 workers or scenarios where someone would meet
9 the cadmium standards potential exposure
10 threshold but would not be required to wear a
11 respirator under the respiratory protection
12 standard, meaning that they'd lose respirator
13 training if OSHA just relied on 1910.134 alone?

14 And feel free to answer this in your post-
15 hearing brief but if you could talk about it
16 now, too, that'd be great.

17 MR. SALLMAN: Sure. I think we can
18 better answer that in some post-hearing briefs.

19 We've got some that are not able to join our
20 panel today, as you might have heard at our
21 beginning, and I'd like to consult with them and
22 -- but, you know, I would just, you know, kind

1 of generally paint it with this, that you know,
2 we see a lot where employers are looking at the
3 specific hazard, which then puts things better
4 kind of under a microscope versus just kind of,
5 you know, just looking kind of broadly.

6 And when we see those kinds of things
7 where we find success is the employers will have
8 better respiratory protection programs,
9 selections on to use, the training is better
10 because they know they have to do it under the
11 specifics of an OSHA standard versus a general
12 horizontal standard.

13 And the other thing that I would add
14 they do a lot more air monitoring to make sure
15 that those levels are maintained and it's
16 calibrated with the respiratory protection that
17 workers are wearing. And, I would add, in
18 places where it's just generalized respiratory
19 protection, but even in some of our places where
20 we do have cadmium and others the whole
21 respiratory protection becomes a bit of a focus
22 and we lose focus on the ventilation systems.

1 And I'll give you an example. We'll
2 get lots of times where workers will complain
3 about the ventilation system is not drawing or
4 having them vacuum the way it should, and they
5 know that the particulates are in the air,
6 they're dirty, the housekeeping is worse because
7 the ventilation is not working properly. You'll
8 even see where our members have even -- you
9 know, even though it's not the way that it
10 should be done, but when employers won't shut
11 down and fix things you'll even see what we call
12 beauty marks on the side of the duct work where
13 people have even hit it with a hammer trying to
14 dislodge any kind of blockage or buildup in the
15 system of the duct work and people will try to
16 get, you know, on their own to get the
17 ventilation systems to improve. But, you know,
18 those are some of the things that we've seen,
19 but we'll be happy to put it in our post-hearing
20 comments.

21 MS. DOWNS: I think that's great.
22 Thank you so much, Mr. Sallman. And then just

1 similarly for lead, there was that same kind of
2 difference in the wording for training. So if
3 you could provide information on workers or
4 scenarios where the same situation would apply
5 in your post-hearing brief. And that's all for
6 me, so I will turn it over to Rachel.

7 MR. SALLMAN: And just to answer your
8 question on lead too, I would say it was pretty
9 similar to what I had already answered, so yes,
10 thank you.

11 MS. DOWNS: Thank you.

12 MS. MICHEL: Thank you, Rachel Michel.

13 Thank you for your time today, gentlemen. So I
14 have a question. It's about written comments
15 that were provided for ethylene oxide, in which
16 USW stated there are specific canister
17 protections for ETO, and USW stated that those
18 are essential to protect workers. OSHA's
19 received other comments indicating that ethylene
20 oxide canisters are no longer being
21 manufactured, however. So just wanting to
22 follow up. Are you aware of any canisters for

1 ETO that are still being produced? And if yes
2 are you able to share, like, the type or, and
3 manufacture of those canisters?

4 MR. SALLMAN: Instead of me just
5 shooting from the hip, we would rather just do
6 some research for you and make sure that we
7 accurately answer your question. Sorry, this is
8 Steve Sallman. And make sure that we answer
9 your question to the best of our ability.

10 MS. MICHEL: Thank you. That would be
11 appreciated. Rachel Michel again. I have
12 another question on half-mask respirators
13 combined with eye protection. And so USW
14 expressed concern in the written comments about
15 half mask respirators combined with eye
16 protection not being -- not providing the same
17 level of protection as a full face respirator.
18 And I think there was particular comments about,
19 like, respirator compatibility with the eye
20 protection.

21 And so for all the chemicals that OSHA
22 has proposed changes to allow for half mask with

1 eye protection, and those are methylene
2 chloride, ethylene oxide, 1,3-butadiene,
3 cadmium, and lead. My question is, is it your
4 position that there are no combinations of
5 respirator and eye protection that would provide
6 equivalent protection, or is that there's some
7 combinations that would not provide equivalent
8 protections?

9 MR. SALLMAN: Steve Sallman. We have
10 not seen where eye protection through safety
11 glasses and monogoggles, those things where they
12 seal like what a full face respirator would be.

13 We would rather see our members in a full face
14 respirator, plus there's a better assigned
15 protection factor, better fit factor, and so on.

16 We've also seen where there's been
17 drift and normalization of deviation if
18 employers are not enforcing PPE and they're just
19 looking the other way, and as long as nobody's
20 been injured then they're not enforcing the PPE
21 standards or policies that they have. And too
22 often we don't see -- you know, there's fit

1 requirements when it comes to respiratory
2 protection. Seldom do you ever see anyone being
3 fitted for safety glasses or some type of
4 goggles and so on.

5 And so there's leakage that very much
6 concern us, and no one's face is created equal.

7 You need to have the proper fitting, personal
8 protective equipment. And, and I've been in,
9 you know, different places where I've even seen
10 some people, not to show my age, but they look
11 like Elton John in Crocodile Rock movie where,
12 you know, these glasses are, like, just really
13 big, and you know that they're not offering any
14 protection just by looking at them.

15 MS. MICHEL: Thank you. And just to
16 kind of follow-up too, the OSHA standards, 1,3-
17 Butadiene and cadmium and lead, they do
18 currently allow for half-mask respirators when
19 eye, specifically though -- when eye irritation
20 is not a concern. Just looking for your
21 thoughts. If eye irritation is possible only
22 during a short duration or infrequent task,

1 under what circumstances if any, would it be
2 appropriate to use separate eye protection? I
3 know you kind of touched on that before, but
4 just like throwing that example out there.

5 MR. SALLMAN: Sure. This is Steve
6 Sallman. I feel like I just answered that
7 before. What I would also offer is most all of
8 our workplaces that we go into, they already
9 have a full eye protection policy from gate to
10 gate. So lots of times we don't even find where
11 it's, you know, like a risk assessment, here's
12 where you got to wear personal protective
13 equipment. Most employers do not want to try to
14 manage where safety glasses are used in this
15 department, that department, or that job, or
16 this task. It becomes very burdensome for the
17 employers that we work with, and they just make
18 a blanket policy that says, you know, here's
19 where it's going to be. Or where we don't have
20 a gate to gate eye protection policy they've
21 typically had first aids or some type of
22 reports, near misses and so on where we turn

1 things in.

2 So irritation, for example, would be
3 reported and that would be considered as a near
4 miss. And employers then have been
5 transitioning to measure more off of leading
6 indicators rather than lagging indicators,
7 meaning somebody had to get something in their
8 eye or have an eye injury. And so employers are
9 -- have become more progressive to make sure
10 that the proper eye protection is in place
11 instead of just waiting for an injury or an
12 irritation to occur. A lot of them are just
13 simply to make it easier to manage. It's just
14 gate to gate.

15 MS. MICHEL: Thank you.

16 MR. SALLMAN: You're welcome.

17 MS. MICHEL: That's all the questions I
18 have.

19 MR. SCHAYER: Thank you. This is
20 Stephen Schayer. I'd now like to turn to Dr.
21 Bob Blicksilver.

22 MR. BLICKSILVER: Bob Blicksilver, OSHA

1 Standards and Guidance. Do your members have
2 any survey data or would there be time during
3 the post-hearing comment period to survey your
4 locals on the number of employees or percentage
5 who have requested powered air purifying
6 respirators for protection against the hazards
7 of asbestos, cadmium, cotton dust, inorganic
8 arsenic, and lead?

9 So if you could -- you can respond now,
10 but if there's time to collect information from
11 your locals or you know, throughout your union
12 about the frequency, the opportunities for
13 employees to request PAPRs how often that's done
14 and circumstances and so on, that would be very
15 helpful to us. Thank you.

16 MR. SALLMAN: Sure. Steve Sallman.
17 I'm not aware of any surveys or studies that's
18 been done in our union to answer that question.

19 Most of that would be information that would be
20 handled somewhere at a local level, if that.
21 And I'm pretty sure that in my interactions with
22 local unions, they don't keep a you know, a

1 survey or any kind of a spreadsheet that would
2 have anything like that. They would have to,
3 you know, request it from an employer and pretty
4 much an employer would have that information.
5 We would not. So I'm not sure I'm going to be
6 able to answer that.

7 MR. BLICKSILVER: Sure. Bob
8 Blicksilver again. Well, if you have any
9 conversations with some of your local presidents
10 and they have any anecdotes or, you know, any
11 impressions that they have to share with you we
12 could certainly use that information as well.

13 MR. SALLMAN: Okay.

14 MR. BLICKSILVER: Thank you for your
15 time. Good. Thank you.

16 MR. SCHAYER: Stephen Schayer again,
17 Your Honor, that concludes the questions from
18 the OSHA panel. Thank you again to the panels.

19 JUDGE HENLEY: Thank you. Do we have
20 questions from the Office of the Solicitor?

21 MS. NAUGHTON: Yes, this is Sheila
22 Naughton from the Office of the Solicitor.

1 Thank you, Judge Henley. And thank you to the
2 panel so much for spending your time with us
3 today. I just had a quick question that we'd
4 love to welcome any additional detail you have
5 likely in post-hearing comments given the time
6 constraints. But I know you mentioned that this
7 role of safety manager that's being played in a
8 lot of companies, it's often challenging due to,
9 like, expertise and high turnover. I'm curious
10 what types of materials are these safety
11 managers relying on for respirator selection and
12 training when there isn't a substance-specific
13 standard? So are they using primarily the
14 regulation itself, compliance documents what
15 type of process they're going through?

16 MR. SALLMAN: Steve Sallman. I really
17 can't speak for the employer. My perception of
18 that is that a lot of employers, they try to
19 read the standard, so that's where it's helpful
20 when you have a substance-specific standard that
21 helps guide them in the right direction. At
22 other times, it appears to us that employers

1 have tried to look for other outside resources,
2 things of that nature and then it kind of is hit
3 and miss after that.

4 MS. NAUGHTON: This is Sheila Naughton
5 with the Office of the Solicitor. Is it in your
6 impression that that safety manager position is
7 typically a management employee? They're a
8 supervisor rather than --

9 MR. SALLMAN: Steve Sallman. It varies
10 based on the size of the employer. We have
11 places of employment where there's multiple
12 people that are paid for as management
13 representatives who some have very good
14 technical skills, and then depending upon, you
15 know, the resources of the company, it goes
16 downward from there. And others, what you'll
17 see is the HR manager is not only the HR
18 manager, but also the safety manager and, you
19 know, they don't have the technical skills.

20 In some of our small workplaces, we
21 have tried to, you know, push the 21(d), the
22 consultation side of things but then that gets

1 difficult because some employers don't want the
2 government involved in their business and that
3 gets difficult. But we're also fortunate too
4 that our department also has resources and we're
5 able to work with some of those employers and
6 make sure that they get pointed in the right
7 direction or get them the resources that they
8 need.

9 MS. NAUGHTON: Great. Sheila Naughton
10 with the Office of the Solicitor. I think
11 that's all for me. Thank you again for your
12 time today and for your helpful testimony.

13 MR. SALLMAN: Thank you.

14 JUDGE HENLEY: Kecil are there any questions
15 from the public for this panel?

16 MS. JOHN: No public questions, Your
17 Honor.

18 JUDGE HENLEY: Any follow-up questions
19 from OSHA based on the solicitor's questions?

20 MS. NAUGHTON: This is Stephen Schayer.
21 No, Your Honor.

22 JUDGE HENLEY: Gentlemen thank you very

1 much for your testimony this afternoon.
2 Appreciate your attendance and time. At this
3 point, you're excused. Thank you all.

4 MR. SALLMAN: Thank you.

5 MR. HOLSING: Thank you.

6 JUDGE HENLEY: So before we proceed
7 with the next panel, let me poll my solicitor
8 and OSHA representatives. Could you use a short
9 break? Apparently you want to drive on, so --

10 MS. NAUGHTON: Yes. It looks like,
11 yes, the consensus is a short break would be
12 wonderful, Your Honor.

13 JUDGE HENLEY: Oh, you do want a break?
14 Okay.

15 MS. NAUGHTON: Yes.

16 JUDGE HENLEY: All right. So why don't
17 we take ten minutes. We're off the record.

18 (Whereupon, the above-entitled matter
19 went off the record at 2:52 p.m. and resumed at
20 3:04 p.m.)

21 JUDGE HENLEY: So we are on the record.
22 The hearing is called back to order. Kecil,

1 can you promote our next panel, please?

2 MS. JOHN: Yes, Rebecca Reindel and
3 Ayusha Shrestha, you have been promoted. I do
4 not see Chenay Arberry in the attendees list.
5 If you are here, please raise your hand and I'll
6 promote you. And Rebecca Reindel and Ayusha
7 Shrestha, you did send us a slide you wanted to
8 include. So that is the next slide, and just
9 say next slide when you want that to be shown.

10 MS. SHRESTHA: Thank you.

11 MS. REINDEL: Wonderful. I think we
12 will do that after I'm finished speaking.

13 JUDGE HENLEY: Ms. Reindel, yeah, you
14 can start. If you could identify the specific
15 chemical or proposed rule if your testimony will
16 address only one or some of them, but otherwise
17 you can proceed with your testimony.

18 MS. REINDEL: Okay, wonderful. Thank
19 you. Good afternoon, everyone. I'm Rebecca
20 Reindel. I'm the AFL-CIO Safety and Health
21 Director. Thank you for this opportunity to
22 testify today. The AFL-CIO is a federation of

1 65 national unions representing 15 million
2 workers across many different industries. We
3 submitted written comments to these records
4 opposing all 16 of these proposed rules. I'm
5 going to speak today on a few points before my
6 colleague Ayusha provides additional testimony.

7 Chenay Arberry will not be joining us today.

8 We are both speaking to the proposed
9 changes to the broad set of the 16 individual
10 substances and will highlight key issues and
11 themes across these changes and provide a few
12 examples from certain chemicals. We will follow
13 up in more detail in post-hearing, of course.

14 For each proposal, OSHA posits that
15 certain respirator requirements in these
16 substance- specific standards issued prior to
17 1998 are all in or assumed by duplicative
18 requirements in the 1998 Respiratory Protection
19 Standard. And since the Respiratory Protection
20 Standard applies to all hazards where
21 respirators are required, there is no need to
22 include such requirements in the chemical

1 standards themselves.

2 I have a few points in response to this
3 before passing this on to Ayusha. My first
4 point is that this is a dangerous exercise.
5 When respirators don't work or respiratory
6 protection programs aren't comprehensive and
7 implemented effectively, it can lead to several
8 outcomes. One is that it can remove a layer of
9 added protection and sometimes the only
10 protection between the worker and the hazard,
11 putting them at direct risk to the hazardous
12 exposure.

13 Two, it can put workers at personal
14 medical risk to wear the wrong respirator under
15 the wrong conditions. Three, it can give
16 workers a false sense of protection. And four,
17 it can lead to distrust and doubt about the
18 utility and importance of respirators and worker
19 and employer adoption of them. So it's
20 imperative that OSHA does not proceed with
21 actions that change nothing for the agency
22 except to promote language consolidation under

1 so-called deregulation, but instead that have
2 dramatic effects on people's lives.

3 My second point is that this is an
4 overly simplistic exercise where OSHA has not
5 met its evidentiary burden to even propose these
6 rules. OSHA also ignored data that the
7 respiratory protection program is cited very
8 often for employers violating its own
9 requirements and that we should be focusing on
10 more, not fewer, ways to help and remind
11 employers what is necessary to protect workers.

12 My third point is that this is
13 arbitrary and an unnecessary exercise,
14 especially under current resource constraints.
15 OSHA has already considered in great detail the
16 potential duplication or redundancies between
17 the 1998 respiratory protection standard and 16
18 individual standards that cover 28 substances.

19 OSHA performed this extensive analysis
20 in 1998 when it revised the respiratory
21 protection standard and affirmatively concluded
22 that its revisions in 1998 were, quote,

1 sufficiently comprehensive to allow deletion of
2 these provisions that it did at the time put in
3 the substance-specific standards that duplicated
4 provisions in the revised final rule. The
5 agency concluded that their deletion at the time
6 of the provisions from the substance-specific
7 standards would enhance compliance, especially
8 for small businesses, and therefore improve the
9 protection afforded to employees who use
10 respirators. That standard has been in place
11 ever since.

12 OSHA also specifically rejected the
13 idea that language they chose to keep in the
14 substance- specific standards was duplicative in
15 providing protection to workers. Further, that
16 the provisions were retained only when they
17 addressed conditions, for example, medical
18 evaluation, canister cartridges, and other areas
19 that were unique and/or integral to the
20 substance-specific standard. So OSHA's decision
21 to propose these changes now is arbitrary.

22 In chemical standards after 1998,

1 hexavalent chromium, beryllium, and silica, OSHA
2 still chose to retain some of the same
3 provisions OSHA is proposing to remove for these
4 older standards. These are standards that OSHA
5 chose to write this way in 2006, 2016, and 2017,
6 long after 1998. To be clear, it would be
7 foolish for OSHA to add those to this current
8 effort as they were all either held up after
9 going to court, or in one of these cases, a
10 strict substance-specific standard was actually
11 required by the courts.

12 OSHA even performed an APF exercise,
13 assigned protection factors -- sorry, APF
14 exercise in 2003 when it proposed to update its
15 respiratory protection standard to add
16 definitions and specific requirements for
17 assigned APFs and maximum use concentrations.
18 In this undertaking, OSHA chose, again, to
19 retain a number of respirator selection
20 provisions in its substance-specific standards
21 because they provide protection against a
22 hazardous characteristic or condition that is

1 unique to the regulated substance.

2 OSHA also stated that retaining these
3 requirements in their present form would not
4 increase existing employer burden because they
5 already must comply with these requirements. My
6 point here is that OSHA has had multiple major
7 opportunities to revisit this idea that 1910.134
8 is sufficient and that there are duplications in
9 respiratory protection requirements and actively
10 rejected this multiple times because those
11 options were not as protective for workers and
12 they benefited employers in complying with
13 OSHA's protections.

14 My last point is that these proposals
15 do weaken protection for workers on paper and in
16 practice to move forward with an exercise that
17 removes language from the substance-specific
18 standards. It removes transparency for workers
19 and worker organizations who are not as familiar
20 with OSHA requirements. It is administratively
21 more challenging for employers, especially small
22 businesses who are not as familiar with OSHA

1 requirements. Broad language does not mean the
2 same to business owners as it does to OSHA
3 staff.

4 And even where language may be similar
5 or encapsulating, people understand information
6 better when it's delivered in multiple ways.
7 Even the appearance of eliminating requirements
8 sends the message to employers that they no
9 longer have to comply with certain chemical
10 provisions overall, and we believe it will
11 further reduce compliance with 1910.134.

12 The current substance-specific
13 standards improve comprehension and compliance
14 for employers and comprehension for workers and
15 their representatives when working with
16 individual chemicals. My colleague Ayusha will
17 elaborate more on this last point to finish our
18 testimony and then I'd be happy to lead the
19 responses to our questions. Thank you for your
20 time today, and we can also go to the next
21 slide. Thank you.

22 MS. SHRESTHA: Thank you. My name is

1 Ayusha Shrestha and I'm the Safety and Health
2 Policy Analyst at the AFL-CIO. On the screen
3 behind me are five buckets of the breakdown of
4 requirements that we put together to help us
5 better understand OSHA's proposed changes for 28
6 chemicals, including 15 individual chemicals and
7 13 carcinogens. We believe that if OSHA wanted
8 to better help the public understand the changes
9 that it was making, the agency could have
10 provided something similar. I will briefly walk
11 through each of these categories now and we can
12 provide more detail in our post-hearing
13 comments.

14 Before I continue, I want to briefly
15 say that all of these chemicals that OSHA
16 proposed changes to are highly dangerous. Many
17 are class 1 carcinogens and present hazards that
18 are threatening to life from both acute and
19 long-term exposures. Workers are at the mercy
20 of employers and of OSHA based on clear
21 requirements for obtaining protections against
22 these exposures when they go to work each day.

1 The first is broadening employer
2 discretion. As you can see, most of the
3 proposals for chemical standards would remove
4 sections that outline specific situations where
5 OSHA expects employers to require specific types
6 of respirators for their employees. Currently,
7 each chemical standard flags different work
8 situations distinct to the unique hazardous
9 nature of each chemical, such as the benzene
10 standard, which states respirators are required
11 during maintenance and repair activities for
12 which engineering and work practice controls are
13 infeasible because exposures are intermittent
14 and limited in duration, providing vessel
15 cleaning as an important example of this
16 carcinogen.

17 Instead, the language would be replaced
18 across most standards with the following broad
19 phrase, respirators must be used when the
20 employer determines that it is necessary to
21 protect the health of an employee as required
22 under 29 CFR 1910.134, section A subsection 2.

1 However, when we look at that provision of
2 1910.134, it only states the following, a
3 respirator shall be provided to each employee
4 when such equipment is necessary to protect the
5 health of such employee. The employer shall
6 provide the respirators which are applicable and
7 suitable for the purpose intended.

8 This is the information that employers
9 are supposed to base respirator use on and comes
10 before even the option of selecting a
11 respirator. There is no information in the
12 respiratory protection standard that describes
13 when respirators are considered necessary. In
14 other words, 134 would not be triggered at all
15 if under a substance-specific standard,
16 employers using very broad discretion do not
17 provide the respirators for certain tasks and
18 situations. There would be nothing requiring
19 employers to provide respirators outside of
20 their discretion, so respirators would be
21 denied, putting workers at significant risk of
22 harm.

1 Even in the best of circumstances with
2 the best intention from employers, most
3 employers do not have the training or expertise
4 to determine when respirators are required and
5 the extra assist is helpful.

6 Second, training requirements are
7 removed. For many of their substances as shown
8 on the screen, OSHA proposes to remove the
9 following text that would require training on
10 the purpose, proper selection, fitting, proper
11 use, and limitation of respirators and
12 protective clothing, but not other training
13 requirements from either the training or hazard
14 communication sections of each chemical
15 standard. OSHA's justification is that the
16 information is in 1910.134.

17 Just because the respirator training is
18 mentioned in 1910.134 does not mean that some
19 required elements for training should be in 134
20 and others should be in individual substance
21 standards. This creates more confusion. OSHA
22 currently has a separate proposal to revise

1 1910.134, which we also oppose, but in it OSHA
2 does not attempt to expand training
3 requirements. Employers are likely to look for
4 training requirements in a substance-specific
5 standard when they know they are working with
6 that specific substance and often are not going
7 to crosswalk it with 1910.134 like the policy
8 expert does.

9 Also, each substance can have specific
10 risks and examples that prompt employers
11 appropriately, as I explained above. For these
12 reasons, training requirements should not be
13 removed.

14 Third and fourth, permitting the
15 selection of respirators with lower levels of
16 protection and removing HEPA/filter
17 requirements. OSHA proposes to remove specific
18 respirator and filter selection requirements
19 listed in each chemical standard to allow
20 assigned protection factors, or APFs, to be the
21 only basis of respirator selection. An APF
22 assumes a perfect fit and correct use, which

1 should not reflect the real-world conditions,
2 and an APF is only one of several variables that
3 determine the most protective form of respirator
4 for individual job tasks, which substance-
5 specific standards already take into account.

6 Different respirators may have the same
7 APF while serving different functions and
8 purposes due to factors such as various facial
9 or body covers beyond breathing zones, weight,
10 feasibility for individual breathing capacities,
11 function in certain atmospheric conditions, and
12 other feasibility issues in different working
13 environments and spaces.

14 APFs do not measure filter life or how
15 long a chemical cartridge or filter will last
16 before certain gases break through. There are
17 other special hazards to consider. For example,
18 some places lack enough oxygens or have
19 toxicants that bypass standard filters,
20 requiring air supplied systems instead of just a
21 high APF.

22 Employers often do not have the

1 expertise or resources to determine the particle
2 removal and facial or body seal needs against
3 chemical exposures to select respirators
4 themselves only based on APF tables in the
5 respiratory protection standard. For certain
6 respirators, even a footnote in Table 1 of
7 1910.134 states, the employers must have
8 evidence provided by the respirator manufacturer
9 that testing of these respirators demonstrate
10 performance at a level of protection of 1,000 or
11 greater to receive an APF of 1,000. This puts
12 additional, more technical work on employers.

13 Employers actually rely on OSHA to
14 provide clear instructions for the type of
15 respirators needed for each work situation, and
16 this proposal would only lead to more confusion
17 and elevate risks for workers.

18 Lastly, this removes medical evaluation
19 requirements. OSHA selected methylene fluoride
20 as the only one of these substances to remove
21 medical evaluation requirements, specifically
22 for workers wearing a supplied air respirator in

1 the negative pressure mode or a gas mask with an
2 organic vapor canister for emergency escape.

3 But when OSHA issued its final
4 respiratory protection standard in 1998, OSHA
5 stated that it believes that the medical
6 evaluation requirements under existing
7 substance-specific standards provide a high
8 degree of medical protection to employees who
9 are required to use respirators to control their
10 exposure to these airborne substances. OSHA now
11 provides no rationale to remove these, and that
12 would match this level of protection.

13 In 1998, OSHA even went so far as to
14 incorporate medical evaluation requirements for
15 134 into the 13 carcinogen standards, even
16 though it had not originally proposed to do so.

17 They did this because it was consistent with
18 the requirements, conforms to accepted industry
19 practice, and improves comprehension of and
20 compliance with the respiratory protection
21 requirements of the 13 carcinogen standards.

22 In conclusion, removing language that

1 is helpful to workers will lead to more
2 dangerous working conditions and put more
3 workers at significant risk of harm. We urge
4 OSHA to withdraw these proposals and focus on
5 its mandate to ensure workers are provided a
6 safe and healthful workplace. That closes our
7 testimony. Thank you.

8 JUDGE HENLEY: Thank you. Does OSHA
9 have questions for this panel?

10 MR. SCHAYER: Yes, Your Honor. This is
11 Stephen Schayer. Thank you to Ms. Reindel and
12 Ms. Shrestha for your testimony today. I'd like
13 to turn to Patti Downs and Rachel Michel to
14 start off the panel questions.

15 MS. DOWNS: Patti Downs. Thank you,
16 ladies. That was really informative. Just a
17 couple questions for you. We have received many
18 comments opposing the switch to an alignment
19 with APFs. Aside from concerns about filtering
20 face respirators, are there situations where a
21 respirator with an equivalent APF and the
22 correct chemical cartridge or particulate

1 cartridge would not be as protective as the
2 respirator required in the specific chemical
3 standard?

4 For example, under the 13 carcinogens
5 standard and the asbestos standard, they both
6 currently require a NIOSH certified air
7 purifying half mask respirator with particulate
8 filters. OSHA is proposing to allow any
9 respirator with an APF of 10 or higher, which
10 would allow for the use of like a supplied air
11 respirator or SCBA operated in pressure demand
12 mode. Can you speak to that a little? And this
13 would apply to asbestos, cotton dust, 13
14 carcinogens, butadiene, DBCP, and methylene
15 chloride.

16 JUDGE HENLEY: And before you --
17 whoever's going to respond, if you could
18 identify yourself please, for the record.

19 MS. REINDEL: Sure. This is Rebecca
20 Reindel. I was just writing down the chemicals
21 that you're referring to. I got 13 carcinogens,
22 asbestos, cotton dust, butadiene, methylene

1 chloride. I think I missed one.

2 MS. DOWNS: DBCP.

3 MS. REINDEL: Oh, yeah. So we'll go
4 back and look at this in further detail. I know
5 we're rushed, a little crunched on time this
6 afternoon. We'll follow up in our post hearing
7 comments. But I know your question is about the
8 technicality, but I also want to echo the
9 concerns that have already been brought up in
10 today's testimony about the practicality of
11 employers adopting those requirements if they're
12 not specifically laid out in the chemical
13 standard. But we'll look and talk with our
14 unions a little bit more about those specific
15 standards.

16 MS. DOWNS: Great, thank you. That was
17 it from me. Rachel?

18 MS. MICHEL: Hi, Rachel Michel. Just a
19 couple of questions here. In your written
20 comments, you mentioned that employers would not
21 cross reference chemical-specific standards with
22 the respiratory protection standard. If OSHA

1 were to shift and increase in reliance on the
2 respiratory protection standard, I would just
3 want to see if you were able to share any
4 evidence or additional information or data
5 showing whether employers are currently
6 following existing cross references to the
7 respiratory protection standard. And that
8 applies to all of the 16 chemicals.

9 MS. REINDEL: Sure. I mean, we know
10 just generally speaking that 134 alone is not --
11 I mean, OSHA still cites 134 a lot against
12 employers. I think OSHA should dig into its
13 enforcement data on these chemical-specific
14 standards. We plan to do that a little bit more
15 after these hearings. But I think the OSHA
16 enforcement database would be a good source for
17 the agency. We can also think a little bit more
18 about and look into that.

19 MS. MICHEL: Okay, thank you.

20 MS. REINDEL: Sure.

21 MS. MICHEL: And just one more. Under
22 the -- this is Rachel Michel again. So under

1 the existing standards for all of them except
2 for vinyl chloride and 13 carcinogens, employers
3 are required to provide workers with respiratory
4 protection whenever they exceed exposure limits,
5 regardless of the task or duration. And so,
6 OSHA is interested in hearing about any
7 situations where employers currently believe
8 they have to provide respirators when their
9 employees are below the exposure limit.

10 MS. REINDEL: Sure. I think, you know,
11 this, like you said, in the -- and I have
12 actually, I'm looking at my computer because I
13 have a little bit of a red line for each of
14 these chemicals. And this is, I know this is
15 hard for both you and for us to look at all of
16 the chemicals in one place, so we'll follow up
17 in more detail. But what I wanted to say is
18 that I work -- I mean, even with other agencies,
19 for example, like EPA, I've had to explain these
20 scenarios. You know, we have to -- we work with
21 all sorts of federal agencies.

22 So even for people who have technical

1 experience, technical agencies, industrial
2 hygienists, let alone employers who don't read
3 standards all the time or who are not always in
4 this space, it's always clear to have it in one
5 place. And there certainly are a lot of, you
6 know, the specificity in these chemical
7 standards actually lay out very specific
8 exposure requirements that are -- that with just
9 leaning totally into just the discretion and the
10 PEL or STEL actually, I think, confuses
11 employers because they think employers will
12 actually just not think that any kind of
13 respiratory protection is necessary if they
14 don't meet some, just one numerical figure. But
15 we'll follow up on that.

16 And below, you know, the -- I know
17 other commenters have mentioned this today, but
18 just to reiterate how high OSHA's PELs are, and
19 that they still put workers at, you know,
20 significant risk. There are certainly a lot of
21 scenarios where workers have to wear respirators
22 where they're setting up work before the

1 standard even -- before those PELs even take
2 effect.

3 MS. MICHEL: Okay, thank you. That's
4 all the questions I have.

5 MR. SCHAYER: Thank you. This is
6 Stephen Schayer. I'd like to turn to Dr. Bob
7 Blicksilver.

8 DR. BLICKSILVER: Hi, Bob Blicksilver,
9 OSHA Standards and Guidance. Ms. Reindel, this
10 is a question similar to the one we asked of the
11 United Steelworkers. Do your members have any
12 survey data? Would there be time for you to
13 survey your local members for any information,
14 any studies dealing with membership employees
15 requesting powder purifying respirators? So it
16 would be survey question asking to what extent
17 employees, frequency, number, percentages,
18 however you're able to collect information, how
19 often they request PAPRs. And this question
20 applies to asbestos, cadmium, cotton dust,
21 inorganic arsenic, and lead.

22 MS. REINDEL: So I'm writing down those

1 standards that you just mentioned. I will say
2 that our members are our unions, and they're the
3 ones with members. And so, if their members do
4 not have this or the unions don't have this from
5 their own members, it'll be very difficult for
6 us to find that out. But we can certainly look
7 into if there are other credible sources of
8 information that might be, you know, getting a
9 pulse on this or collecting that information.

10 DR. BLICKSILVER: Okay, thank you. Bob
11 Blicksilver, thank you very much.

12 MS. REINDEL: Thank you.

13 MR. SCHAYER: This is Stephen Schayer.
14 We have one final question from Patti Downs.

15 MS. DOWNS: Patti Downs again. I just
16 wanted to clarify something under the matrix
17 that you had shared. You have a column listed
18 as allowing less protective respiratory
19 protection, and I'm wondering what categories of
20 changes resulted in a checkbox for that column?

21 And I think it listed chemicals like ethylene
22 oxide, benzene, butadiene, methylene chloride,

1 lead, cadmium.

2 MS. REINDEL: This was related to the
3 APF, I believe. Ayusha, is that?

4 MS. SHRESTHA: Yes, those are chemicals
5 that outline red lines or proposes to remove
6 sections that have specific respirator
7 directions into allowing for broader definitions
8 of what respirators could be used, mostly going
9 off of APFs rather than specific respirators
10 that are directed.

11 MS. DOWNS: Great, thank you. That was
12 it.

13 MR. SCHAYER: Okay. This is Stephen
14 Schayer. Your Honor, that concludes the
15 questions from OSHA. Thank you again for your
16 testimony.

17 JUDGE HENLEY: Thank you. Are there
18 any questions from the Office of the Solicitor
19 for this panel?

20 MS. NAUGHTON: Hi. Thank you, Judge
21 Henley. Yes, this is Sheila Naughton with the
22 Office of the Solicitor. First, before I ask my

1 question, I'd like to move to designate the AFL-
2 CIO's matrix of proposed changes as Exhibit 5
3 for the record.

4 JUDGE HENLEY: So noted and approved.

5 (Whereupon, the above-referred to
6 document was marked as Exhibit No. 5 for
7 identification.)

8 MS. NAUGHTON: Thank you. And moving
9 on to my question, I did just have one question
10 based on your written testimony. In your
11 written comments, rather, regarding the
12 chemicals where OSHA had proposed to rely on
13 minimum APFs rather than limiting users to
14 prescriptive respirators in a list, you provided
15 some circumstances under which different
16 respirators might have a different utility,
17 including whether or not they have lighter or
18 heavier weight for certain workers to wear.
19 Some might be more feasible in different
20 situations or spaces and some only work for
21 certain body types.

22 Given those differences, I'm curious

1 what your thoughts are on whether or not there
2 are practical benefits for workers to select
3 from a broader range of respirators, as long as
4 each of those meets a required APF minimum. I'm
5 curious if you have thoughts on whether or not
6 there are circumstances in which that could
7 provide a practical benefit for worker safety.

8 MS. REINDEL: We actually believe that
9 the specificity -- because these are chemical-
10 specific, so it's actually better for worker
11 safety to focus on what's protective and then
12 use what's protective, of which there are
13 multiple options in the chemical-specific
14 standards, to then select the appropriate
15 respirator based on these other factors for
16 particular jobs or work settings. This is
17 Rebecca Reindel. Sorry, I forgot to --

18 MS. NAUGHTON: It's okay. Sheila
19 Naughton for the Office of the Solicitor. So if
20 I can just confirm, is your position that the
21 way -- I'm just curious to get your thoughts on
22 how we reconcile this idea of flexibility with

1 these prescriptive lists. You would recommend
2 starting with that prescriptive list of what is
3 safe or what is deemed safe and then allowing
4 flexibility from there for certain
5 circumstances?

6 MS. REINDEL: We would want to know --
7 yes, we would want to know which respirators are
8 effective at mitigating exposure to that
9 particular chemical and not adding further harm
10 to that chemical before then understanding, you
11 know, is it like a physical space issue? Is it
12 an issue that it's a medical, you know, for
13 personal medical reasons, they need to have a
14 different kind of respirator? But we certainly
15 want employers to have to use first what's
16 effective versus something that they've just
17 pulled off the shelf that a worker says, this is
18 comfortable, but it's actually not going to work
19 against that particular chemical.

20 So I would say broadly, generally, the
21 answer would be yes. For these chemicals that
22 OSHA is proposing changes to, we would want that

1 specificity retained.

2 MS. NAUGHTON: Great. Thank you so
3 much. No further questions from the Office of
4 the Solicitor. Thank you both for your time
5 today.

6 MS. REINDEL: Thank you.

7 JUDGE HENLEY: Thank you. Kecil, are
8 there any questions from the public for this
9 panel?

10 MS. JOHN: Yes, we have Travis Parsons.
11 Travis, you should be able to unmute yourself.

12 MR. PARSONS: Hello, can you hear me?

13 JUDGE HENLEY: Yes, Mr. Parsons. Can
14 you please identify any affiliated organization
15 before you ask your question?

16 MR. PARSONS: Yes, sir. Travis Parsons
17 with the Labor's Health and Safety Fund in
18 LIUNA. I just have a couple questions, and
19 thank you for your testimony. Somebody's
20 earlier testimony, they mentioned something
21 around that -- like employers don't always or
22 typically do not always follow 1910.134, the

1 respirator standard. In your experience, do
2 employers regularly comply with 134?

3 MS. REINDEL: Speaking to our --
4 something I mentioned earlier on compliance with
5 the standard, which I think is what you're
6 getting at, I agree that employers don't
7 typically just consult 134 alone. They're
8 working with asbestos, they look at the asbestos
9 standard, so it's usually the substance-specific
10 standard that they look at first. But that may
11 or may not trigger them to think about 134. I
12 think other testimonies have talked about how
13 that takes a lot of education and compliance
14 efforts to make that happen.

15 But despite how standards work from
16 OSHA's perspective, that's just how the reality
17 on the ground works. There's also -- maybe more
18 to your point, OSHA issues a lot of citations
19 against 1910.134, which I keep using 134 as my
20 abbreviated form of that. So even with OSHA's
21 limited resources, in fiscal '25, we looked up
22 the most recent enforcement data, and OSHA cited

1 1910.134 more than 2,000 times. So that means
2 enforcement that led to citations, there were
3 more than 2,000 of those in a year where
4 employers weren't complying with the respiratory
5 protection standard. And that comes from OSHA's
6 enforcement database.

7 MR. PARSONS: Thank you for the answer.

8 And just kind of a follow-up to that previous
9 question, are there any particular areas of that
10 standard 134 that are not complied with?

11 MS. REINDEL: The major areas that
12 typically are cited by OSHA for, you know, the
13 majority of citations have to do with training,
14 with medical evaluations, with fit testing. And
15 then they also cite for -- they also have cited,
16 you know, regularly for the selection of
17 respirators under 134. The maintenance and care
18 are also cited significantly.

19 I would say that slightly fewer
20 citations or higher compliance of the selection
21 and maintenance of care compared to the other
22 categories I mentioned is probably even due to

1 having a substance-specific standard that aids
2 employers in getting them there. So, you know,
3 these two standards really work together, the
4 substance-specific standard and 134.

5 MR. PARSONS: Yeah, thank you for that
6 clarification and comprehensive answer. That's
7 all, thanks.

8 MS. REINDEL: Thanks.

9 JUDGE HENLEY: Any additional questions
10 from the public, Kecil?

11 MS. JOHN: No other questions, Your
12 Honor.

13 JUDGE HENLEY: Does OSHA have any
14 follow-up questions based on the public or the
15 solicitor's questions?

16 MR. SCHAYER: This is Stephen Schayer.
17 No, Your Honor.

18 JUDGE HENLEY: I'd like to thank both
19 of you for your time, attention, and testimony
20 this afternoon. You are excused. Thank you
21 again.

22 MS. REINDEL: Thank you.

1 JUDGE HENLEY: And, Kecil, if we can
2 promote our last panel.

3 MS. JOHN: Yes, and I apologize in
4 advance. This might take a couple of seconds
5 because there are several people to promote. So
6 give me a little bit. Christina Cain, MK
7 Fletcher, Esmeralda Aguilar, you've been
8 promoted. Now I'm going to do Brian Cavey,
9 Travis Parsons, Tony Longbrake. I do not see
10 Gene Sicard. If you are here, please raise your
11 hand and I will promote you.

12 MS. CAIN: Gene wasn't able to join us
13 today. This is Chris Cain.

14 MS. JOHN: Got you. Thank you. Glenn
15 Minyard, you should be promoted shortly. And I
16 do not see Kalima Ramsey-Walker, Dale Clark, or
17 Blue Coble.

18 MS. CAIN: I believe all three of them
19 were unable to join us as well.

20 JUDGE HENLEY: Good afternoon, Ms.
21 Cain. Are you going to be the lead, the first
22 speaker for this panel?

1 MS. CAIN: Yes, Your Honor.

2 JUDGE HENLEY: Thank you. If you are -
3 - if your testimony -- subject of your testimony
4 is going to be on a specific proposed rule or
5 chemical, if you could identify it. Otherwise,
6 the floor is yours. You may proceed. Thank
7 you.

8 MS. CAIN: Thank you, Your Honor. And
9 thank you, OSHA, for holding this hearing. My
10 name is Chris Trahan Cain, and I am the safety
11 and health director for North America's Building
12 Trades Unions, or NABTU as we call it, which is
13 an umbrella organization, an alliance of 14
14 national and international unions who
15 collectively represent 3.2 million building and
16 construction trades workers.

17 There are several members representing
18 unions and NABTU as well as staff here on the
19 panel today. We don't have everybody speaking,
20 Your Honor. We do have a number of people here,
21 hopefully to answer questions from OSHA or the
22 solicitor's office. We will have MK Fletcher,

1 Brian Cavey, Glenn Minyard, and Travis provide
2 remarks, but otherwise, Blue Coble, Kalima --
3 Blue Coble, Kalima Ramsey-Walker weren't able to
4 join us due to illness, and Dale Clark was
5 unable to join us due to a scheduling conflict.

6 Gene Sicard also had a scheduling
7 conflict. And the remaining individuals on the
8 panel are Esmeralda Aguilera, NABTU Council, and
9 Tony Longbrake with the Operative Clusters and
10 Smith-Nations Union.

11 And with that, I'll just get started.
12 First of all, we would like to ask OSHA to
13 withdraw all of the proposed rules in this
14 chemical rulemaking. We think they are
15 unnecessary. And we think the proposed rules
16 are unnecessary because really the chemical
17 standards as a whole are already weak, right?
18 We can't have standards that are truly
19 protective at OSHA because of the science that
20 you have to take into consideration, the
21 technical feasibility, the economic feasibility,
22 as well as the level of risk that's acceptable

1 under the OSH Act is very high in our view.

2 So when you think about the Supreme
3 Court cases that limit this agency from setting
4 standards that are truly protective of workers,
5 the standards are already not particularly
6 onerous. We still have a lot of workers die at
7 the permissible exposure limit set by OSHA, and
8 in these expanded health standards, these
9 chemical standards, that's very much the case,
10 but it's even more the case under 1926.55.

11 I've heard the OSHA panel ask questions
12 about compliance with what we, in construction,
13 call 1926.55, which is the table of all the
14 PELs, right? And the PELs in construction are
15 from, I think, 1967 ACGIH TLVs. So it's just
16 like these are not protective values at all. So
17 the idea that we are reducing protections for
18 construction workers is particularly troubling
19 with this rulemaking, because we do view it as a
20 reduction in protection.

21 I'm a certified industrial hygienist,
22 and I really think I could figure it out if I

1 was the industrial hygienist working for a firm
2 in the construction industry. I think I could
3 figure out that I needed to do the air sampling
4 and understand all the tasks, say, of lead work
5 or asbestos work in my company, and then use the
6 results of that air sampling to compare against
7 the permissible exposure limit to then decide on
8 that assigned protection factor and go over to
9 1910.134 and select the proper respirator and do
10 all the things I needed to do to go back and
11 forth and bounce around the regulations.

12 But I don't think that's typical for
13 construction firms, and I wanted to share a
14 little bit of information about our industry
15 that demonstrates this. In our industry, 91
16 percent of employers have fewer than 20 workers.

17 If you think about -- there's 91 percent of
18 employers. So if you think about the
19 sophistication of a 19-person or 18-person or 3-
20 person construction firm, you know, they need
21 prescribed rules to follow.

22 They don't want to be in violation of

1 the rules, but the lack of sophistication in the
2 occupational safety and health support they get
3 makes it a lot easier for them to have a table 1
4 like we did in Silico. Remember that? It was
5 amazing, and it is amazing for a small employer
6 to figure out if they are in compliance with the
7 OSHA regulation. Obviously, it's not perfect.
8 Nothing's perfect, but a small employer can
9 understand how to implement table 1.

10 And they know they're in compliance.
11 They don't have to think about doing air
12 sampling. They just have to make sure the right
13 controls are in place, and that type of standard
14 works with the smallest employers. That 91
15 percent of employers are real employers, and
16 there's 660,000 of those small employers who
17 are, even if they want to do everything right,
18 it's going to be so much harder and more time-
19 consuming for them to try to understand how to
20 navigate between health standards, health-
21 related. These aren't even safety things, which
22 is a lot more obvious to the smaller employers

1 in our industry.

2 So, you know, if you think about like
3 what could be like the minimal cost, even if it
4 cost a small employer who had exposed employees
5 ten minutes to figure it out, which I think is a
6 ludicrous assumption, I think Bob could try to
7 give us some calculations on how many minutes
8 that would cost the construction industry and
9 how expensive it would be to try to comply with
10 the changes and the regulations that have been
11 proposed. And for that reason alone, it should
12 be obvious for the agency simply to withdraw the
13 proposals. But we're going to give you a lot
14 more reasons, don't worry.

15 So with that, I'm going to wrap up,
16 except only to implore the OSHA panel to take
17 advantage of this panel, because this panel is
18 filled with decades of experience in the
19 construction industry that neither I nor you
20 don't have, but they have, and will help you
21 build the best available record for your
22 rulemaking that, you know, we really want you to

1 do. Obviously, we want the outcome to be
2 protective, but we also want to facilitate you
3 doing the job you need to do to develop that
4 best available record. And with that, I'm going
5 to go ahead and turn it over to MK for a few
6 comments. MK, go ahead.

7 MS. FLETCHER: Hi, thank you so much.
8 So I'm MK Fletcher. I'm also with North
9 America's Building Trades Unions. And as Chris
10 said, you know, we strongly oppose altering
11 respiratory protection provisions to each one of
12 the chemical standards that OSHA's proposed to
13 change and that we're, you know, speaking on
14 today. So it's all 16 of them.

15 And we submitted comments and are
16 testifying on each and every one of them because
17 construction workers are exposed to such a wide
18 variety of chemicals through their use of
19 different plethora of building materials and
20 solvents to welding materials, et cetera. And
21 they often don't even know exactly what they're
22 being exposed to.

1 And then also, even though some of the
2 chemicals you wouldn't necessarily think of with
3 construction, construction workers are involved
4 in demolition, they're involved in maintenance
5 of all different types of facilities. And then
6 they also perform hazardous cleanup and disaster
7 cleanup and can be exposed to all different
8 types of things that you wouldn't necessarily
9 think of as a construction worker potentially
10 having exposure to. So that's why we were
11 engaging in all 16 of them.

12 And then I just kind of also wanted to
13 talk about another reason is because of the
14 burden of occupational disease that we see in
15 the construction industry. When examining
16 occupational exposures with some data from the
17 Occupational Information Network database, which
18 has statistics on workplace conditions and
19 hazards for almost a thousand different
20 occupations in the U.S. economy, the average
21 construction worker was exposed to contaminants
22 at least once a month.

1 And then when you compare what this
2 database says to other industries and workers in
3 other industries, they report exposures maybe
4 once a year. But construction workers, you
5 know, have reported that they're exposed to a
6 toxic substance at least every month.

7 Our panelists are going to share more
8 information on how these exposures occur in
9 their respective trades. And as Chris
10 mentioned, we really hope you ask them some
11 further questions to really understand these
12 exposure scenarios that require respiratory
13 protection and the importance of making that
14 easier for contractors to provide to workers.

15 A little bit more on just kind of the
16 burden of occupational disease in this industry,
17 16 percent of construction workers who are 51
18 years or older have reported a cancer diagnosis.

19 That's a good number of workers.

20 And then we have a Building Trades
21 Medical Screening Program as well. And through
22 that, there's longitudinal data of construction

1 workers. It's the largest kind of data set of
2 construction workers that follow them over their
3 working years and showed an increase of
4 mortality in all different types of cancers from
5 the trachea, and bronchus, and lung, and
6 kidneys, the lymphatic system, mesothelioma,
7 asbestosis related to asbestos exposures, and
8 then as well as really high rates of COPD as
9 well.

10 And then also one thing that can be
11 related to chemical exposures is cardiovascular
12 issues as well. And 59 percent of construction
13 workers 51 years of age or older have reported
14 high blood pressure, which is related to
15 cardiovascular health. So this is kind of why
16 we feel so strongly, is because the burden of
17 disease and the burden of really what this means
18 for workers' individual lives and their
19 livelihoods, their ability to work, their
20 ability to retire and play with their grandkids,
21 it really matters. And at these exposures,
22 PELs, as Chris said, they're still at risk, and

1 so we need to protect them even further.

2 However, we also know that protecting
3 workers from chemicals aren't always super
4 simple. And when a standard doesn't clearly
5 specify kind of what needs to be done to control
6 an exposure, contractors are trying to figure
7 out what to do, right? An employer who's even
8 trying to be compliant with OSHA requirements,
9 if there's not clear specific requirements, then
10 they have to perform a hazard assessment, right?

11 To determine what kind of level of exposure of
12 the chemical they have in the workplace.

13 And as Chris mentioned, as she is a
14 certified industrial hygienist, she would take
15 air sampling, right? So they would have to do
16 that exposure monitoring, taking air sampling
17 near that worker's breathing zone to estimate a
18 worker's potential exposure. This can be
19 particularly difficult in the construction
20 industry to do well and to have a true picture
21 of what that worker's exposure might be,
22 particularly if there's not a high level of

1 expertise there, because the work is not
2 consistently performed like in other sectors.

3 You know, you might have a really high
4 exposure for a very short period of time while
5 someone maybe welds or does a cutting activity
6 or et cetera, and then limited exposures
7 otherwise. Or a worker could be exposed to
8 something due to another trade that's working
9 near them. We often call those bystander
10 exposures. And they might not really understand
11 that they're being exposed to that thing because
12 they're not working and doing that direct task,
13 but it's in their vicinity.

14 Also, the environment in which the
15 exposures occur can rapidly change in
16 construction. For example, one day the work
17 could be being done in an area that has pretty
18 decent general ventilation, and the next day
19 that environment has completely changed because
20 you're constantly building and changing things
21 and the trades working around you is
22 consistently changing. And so then there could

1 be a lack of that general ventilation.

2 So all of those things have to be
3 considered. And then you get those air sampling
4 results and you have to figure out what is the
5 time weighted average in comparison to the
6 occupational exposure limits that are available
7 and are, you know, out there from OSHA's PELs,
8 which we all know are outdated to the other
9 exposure limits for those contractors who are
10 really trying to do the best things.

11 So after all of that, then an employer
12 would have to go to the guidance to try to
13 figure out what type of respiratory protection
14 they need to provide, right? OSHA has a lot of
15 guidance, big thick things that I can wrap my
16 head around if I spend a decent amount of time
17 with it. I do have some degrees in occupational
18 exposure science. It's just not something I do
19 every single day in a real hands-on way. So
20 that takes some time.

21 We've talked a little bit about how
22 manufacturers have some resources, but that's

1 often to, you know, just sometimes it's helpful
2 and sometimes it's also to just cover the
3 manufacturer, particularly of the chemical as
4 well. So I have to use all these different
5 resources to try to figure out which respiratory
6 protection to provide and make sure that they're
7 providing and selecting the right one for that
8 chemical and for the level of exposure that is
9 anticipated.

10 So this is all assuming that employers
11 have the resources and the knowledge and the
12 desire, right, to perform this assessment, to do
13 all that work, and then select the appropriate
14 thing. And, you know, as Chris shared earlier,
15 more than 90 percent of contractors are those
16 small contractors. So they don't have those
17 types of resources and expertise.

18 And we've also heard earlier today,
19 particularly from the United Steelworkers, kind
20 of describing the manufacturer safety and health
21 professionals and how they wear multiple hats in
22 a facility. That is particularly true in the

1 construction industry, and it's particularly
2 true in small contractors. They're not just
3 wearing some hats, they're wearing mostly all of
4 the hats, from being the general manager to the
5 project manager to the foreman to the financial
6 person to the quality control manager to the
7 safety and health professional. And then
8 they're also working the tools themselves.

9 So asking them to kind of do all this
10 additional work versus just like, this is what
11 you need to do in order to protect yourself and
12 protect your employees is not the right way to
13 go about ensuring that employers both comply and
14 workers are protected.

15 And, you know, what this ends up kind
16 of leading to is when you don't have those
17 resources available, is that contractors often
18 just purchase the respirator that's cheap, that
19 feels affordable, and honestly, the one that
20 they're familiar with, which might not be the
21 one that's remotely protective for the hazard at
22 all.

1 And that's really why we feel that
2 having specific information like it's currently
3 provided in the standards, they're not perfect,
4 but it's at least something that helps make it a
5 little bit clearer, a little bit simpler, and
6 more straightforward for the employer to make
7 sure that they're providing, you know, what is
8 best for the workers, and that they're compliant
9 with what OSHA's intended.

10 Also, I just kind of wanted to
11 underscore that, unfortunately, OSHA doesn't
12 have this type of comprehensive standard for far
13 too many chemicals, and that leaves employers
14 and workers kind of without this clear roadmap
15 on how to protect themselves from toxic
16 chemicals. And that's just part of the reason
17 why occupational diseases in the U.S. are
18 responsible for more than 50,000 deaths and
19 1,000 -- sorry, 190,000 illnesses each and every
20 single year, from cancers to lung disorders,
21 kidney disorders, et cetera.

22 These are chronic, serious, disabling

1 diseases and, you know, we really urge OSHA to
2 abandon kind of what they're doing and focus
3 things on things that will reduce occupational
4 disease. Thank you so much. I wanted to turn
5 it over to our next speaker, who is Brian Cavey
6 of the Insulators Union.

7 MR. CAVEY: Thanks, MK. Good
8 afternoon. Thank you for the opportunity. My
9 name is Brian Cavey, International Vice
10 President at the International Association of
11 Heat and Frost Insulators and Allied Workers. I
12 represent workers in the construction industry
13 who perform insulation, fire stopping, during
14 building and construction, renovation,
15 maintenance, demolition, repair work, all
16 throughout the United States.

17 When a lot of people think about
18 respiratory protection standards, you think
19 about regulations, you think about compliance
20 requirements, you think technical language, but
21 we think about people. We think about the
22 workers who walk into old schools, hospitals,

1 office buildings, government facilities, hotels,
2 and industrial plants every day to renovate, to
3 maintain, and to modernize.

4 Many of these buildings were
5 constructed decades ago with materials that back
6 then were considered safe and effective. Today,
7 we know that those same materials pose serious
8 health hazards to trade workers, to maintenance
9 workers, and to many others. These materials
10 include asbestos and other airborne contaminants
11 that cause irreversible disease. The workers I
12 represent are often the first to encounter
13 disturbed materials during building renovation.

14 They remove old mechanical systems. They
15 replace insulation, renovate ceilings, open
16 walls, and access spaces that have remained
17 untouched for decades.

18 The danger is not that these hazards
19 are always visible. Workers can't always see
20 microscopic asbestos fibers. Employers can't
21 always identify airborne contaminants just by
22 walking through a building. A hazard may be

1 hidden behind a wall or above a ceiling or
2 inside a mechanical room and remain undetected
3 until that work begins. Without clear
4 respiratory standards, employers and workers can
5 unknowingly put themselves in serious risk, and
6 that's why these standards are so important.

7 Respiratory protection standards do
8 much more than require the use of respirators.
9 They provide guidance, they establish
10 expectations, and they help employers understand
11 their responsibilities while giving workers the
12 knowledge and protection they need to perform
13 their jobs safely. These standards tell
14 employers how to evaluate exposures and
15 establish requirements for training, fit
16 testing, medical surveillance, and appropriate
17 respiratory protection.

18 They draw on decades of research,
19 medical knowledge, and real-world experience,
20 and transform it into practical guidance that
21 can be used on the job sites throughout the
22 country. Most employers want to protect their

1 employees and all workers want to return home
2 safely at the end of the day. The respiratory
3 protection standards help make that possible.

4 The question before us should not be
5 whether workers need less protection or less
6 guidance. The question should be how do we
7 continue to provide employers and employees with
8 the best possible information to protect them
9 from the hazards that may not become apparent
10 until years, even decades, after their exposure.

11 For asbestos abatement, OSHA does not
12 treat respiratory selection as a matter of
13 preference. It's determined by the class of
14 work that's performed. These classifications
15 matter because they reflect the likelihood of
16 airborne fibers that are released. The minimum
17 respiratory protection required for these
18 workers to keep safe. Class 1 asbestos work is
19 the highest hazard category. It includes the
20 removal of thermal insulation and surfacing
21 materials. These operations require full-face
22 powered air purifying respirator or supplied air

1 respirators because exposures can exceed what a
2 half-face respirator can safely handle.

3 Class 2 work involves removal of non-
4 thermal system insulation materials such as
5 floor tile and roofing. Workers must use at
6 least a half-face elastomeric respirator with
7 P100 filters, though many situations require
8 higher protection factors depending on the
9 exposure level.

10 Class 3 work covers repair and
11 maintenance where asbestos might be disturbed.
12 These tasks also require half-face respirator
13 with P100 filters at a minimum. And then class
14 4 work includes custodial activities in areas
15 with asbestos-containing materials. These
16 exposures exceed action levels and workers must
17 wear half-face with P100 filters.

18 Across all classes, OSHA is explicit.
19 Employers must not select the use of disposable
20 filtering face-piece respirators like N95s for
21 asbestos work. This prohibition applies
22 regardless of concentration, duration, or filter

1 rating. Instead, OSHA requires HEPA filters for
2 all air purifying respirators used against
3 asbestos. HEPA filters must remove 99.97
4 percent of particulates at 0.3 micrometers, the
5 most penetrating particle size.

6 Many people believe that an N95
7 respirator, which filters 95 percent of
8 particles, offers sufficient protection.
9 However, asbestos is unique because the fibers
10 are microscopic and resilient, capable of
11 causing illness at very low concentration.

12 OSHA's permissible exposure limit is
13 0.1 fiber per cubic centimeter, and exposures
14 below this level still pose long-term health
15 risks. A five percent gap in filtration
16 efficiency may sound small, but when dealing
17 with a carcinogen with no safe level of
18 exposure, that gap is unacceptable. This
19 difference is not speculative. It's a difference
20 between a respirator that removes nearly all of
21 the hazardous fibers and one that allows
22 thousands of microscopic particles to pass

1 through during a typical work day.

2 When the consequences of exposure may
3 not appear for decades, that difference is life-
4 changing. History has taught us that when
5 respiratory hazards are underestimated, workers
6 pay the price. For asbestos-related diseases,
7 the consequences often don't appear for 20, 30,
8 maybe even 40 years after exposure. By the time
9 systems develop, the damage is irreversible.
10 That's why prevention matters, that's why
11 guidance matters, and that's why these standards
12 matter.

13 And it's not a theoretical issue. For
14 me, it's personal. My grandfather entered the
15 insulation trade in February of 1941. Like
16 countless workers of his generation, he worked
17 with materials that were later found to be
18 extremely dangerous. He didn't have the benefit
19 of respiratory standards, of exposure
20 assessments, training requirements, or health
21 protections that the workers have today. He
22 spent his entire career in the trade and worked

1 until 17 days before he died of mesothelioma at
2 the age of 61.

3 Every family that has experienced an
4 occupational disease understands that the loss
5 extends beyond that worker. It affects
6 children, grandchildren, spouses, and entire
7 communities. I often think what might have been
8 different if the protections and knowledge that
9 we have today existed when my grandfather
10 started? If employers and workers had been
11 given the guidance that we now know is
12 necessary, maybe his exposure could have been
13 reduced. Perhaps his disease would have been
14 prevented. Maybe he'd had more time and maybe
15 he'd have seen my fifth birthday.

16 That's what these standards represent.
17 They're not just regulations written on paper.
18 They're lessons learned from generations of
19 workers who paid the price before we understood
20 the consequences of exposure. They provide
21 employers and employees the guidance needed to
22 recognize hazards, control exposures, prevent

1 disease, and save lives.

2 The workers who built this country
3 deserve the benefit of everything we learned
4 from them, and the future generations of workers
5 deserve the same protections. I respectfully
6 urge OSHA to maintain strong respiratory
7 protection standards and continue providing
8 employers and employees with the guidance
9 necessary to protect worker health for
10 generations to come. Thank you.

11 MS. CAIN: Thank you, Brian. On to
12 Glenn Minyard.

13 MR. MINYARD: Thank you for the
14 opportunity to testify today. My name is Glenn
15 Minyard. I'm the Safety Coordinator for the
16 International Union of Operating Engineers,
17 Local Union 150. I appear in opposition to the
18 removal of the clear substance-specific
19 respirator requirements contained in the
20 chemical-specific standards.

21 These chemicals cause worker illnesses
22 and deaths at levels that warranted standards of

1 their own. They do not only affect the workers,
2 but their families as well. Their families have
3 to take them to get their treatments and watch
4 them slowly deteriorate until the end of life,
5 and the hospitals and lawsuits continue to
6 affect those families for years afterward. The
7 chemical-specific standards require respirators
8 when these chemicals are present in
9 concentrations at or above the permissible
10 exposure limit. Those requirements are not
11 duplicative of the 1910.134 respiratory
12 protection standard.

13 The chemical-specific standards state
14 when respirators must be used, which is direct
15 and concise. As it's listed, the respirators
16 must be used when installing or implementing
17 feasible engineering controls that will keep the
18 air concentration below the permissible exposure
19 limits when operating. The respirators must be
20 used when performing maintenance or repair
21 activities for which engineering controls are
22 not feasible to keep the concentration or repair

1 activities from the engineering controls under
2 the permissible exposure limits.

3 The respirators must be used when
4 engineering controls are not yet sufficient to
5 reduce the employee exposure to below -- at or
6 below the permissible exposure limits, and of
7 course, they must be used during emergencies.
8 These specific situations are not listed in the
9 1910.134 respiratory protection standard, which
10 states only that a respirator shall be provided
11 to each employee when such equipment is
12 necessary to protect the health of such an
13 employee.

14 I remind the agency that the chemical-
15 specific standards apply when exposures are at
16 or above the permissible exposure limit, and
17 engineering controls are not sufficient to
18 protect the workers. Given the employer's
19 flexibility not to use respirators will increase
20 the illnesses, exactly as the Kingston coal ash
21 cleanup workers experienced.

22 A Tennessee Lookout article dated

1 January 5, 2026 reports that cleanup workers
2 were told they were not allowed to wear
3 respirators and that the coal ash was safe that
4 they were working with. Workers were told they
5 could eat a pound of coal ash a day and it
6 wouldn't even hurt you. In 2013, those workers
7 filed lawsuits over respiratory illnesses and
8 the cases settled in 2018. Settlements did not
9 restore the workers' health or return the lives
10 that were lost.

11 Ernest Hickman, one of the workers on
12 that, developed respiratory illness after the
13 cleanup and died on December 4, 2016. Requiring
14 respirators in these specific situations
15 prevents the illness and the litigations alike.

16 The respirator training requirements
17 for inorganic arsenic, cadmium, lead, and
18 asbestos are written for chemical-specific
19 respirator use. These chemicals have additional
20 properties that harm workers, which is why
21 special care and training are necessary. They
22 can be absorbed rapidly through the skin and can

1 irritate the eyes, and that is a further reason
2 for a full-face respirator and why it's
3 required.

4 Removing that requirement in favor of
5 the flexibility to use a half-face respirator
6 with goggles expose more of the worker's skin
7 and eyes. When a worker must combine multiple
8 pieces of personal protective equipment rather
9 than wear a single full-face respirator, the
10 face-to-face seal has more opportunity to fail.

11 The half-face respirator must seal from the
12 cheek up over the bridge of the nose down to the
13 other cheek to try to form that seal.

14 And if I put goggles on with that half-
15 face, it is going to try to seal in the same
16 area across the bridge and these two pieces of
17 equipment are going to interfere with each
18 other. The full-face respirator is going to
19 seal across the flat area of the forehead,
20 across the side of the face, under the chin, and
21 back up. This is going to not only provide a
22 better seal, it also provides a higher

1 protection factor for the worker.

2 The proposal to remove the NIOSH
3 certified air purifying half-mask respirator
4 with particulate filters and replace it with the
5 respirator having an assigned protection factor
6 of 10 will allow the use of filtering face
7 respirator for known cancer-causing chemicals.
8 Filtering face respirator used during COVID-19
9 pandemic should never be treated as comparable
10 to the NIOSH-certified air purifying half-mask
11 respirator with particulate filters used for
12 these chemicals.

13 The elastomeric half-face is more
14 durable and achieves a better face-to-face seal.

15 Anyone who has worn both will confirm. A dust
16 mask or filtering face respirator with rubber
17 band style straps is easily dislodged, and while
18 the worker performing a task is out there, it's
19 going to knock loose. Providing the flexibility
20 of filtering face respirators will only increase
21 illness in the workforce.

22 Changing the requirement from self-

1 contained breathing apparatus that has a full-
2 face piece to any respirator with an assigned
3 protection factor of 10,000 will likewise
4 increase illness among employees working with
5 cancer-causing chemicals. The self-contained
6 breathing apparatus or SCBA is a self-contained
7 unit that the worker wears on their back. It
8 gives the worker freedom of movement throughout
9 the regulated area without the need to
10 backtrack. The SCBA also carries an alarm that
11 tells the worker when the air supply is low and
12 it is time to exit the exclusion zone and
13 replace the bottle.

14 A supplied air respirator with escape,
15 or an SARE, delivers breathable air through a
16 hose. That head hose can be tangled or snagged.

17 As the worker moves through the regulated area,
18 they must drag the hose with them and remember
19 the exact path they took so they can gather the
20 hose as they exit the area.

21 A hazardous waste cleanup at Barrie
22 Park in Oak Park, Illinois used a supplied air

1 respirator system for workers in the exclusion
2 zone. A worker who entered the zone to perform
3 maintenance unknowingly pulled his hose beneath
4 an object and pinched the hose. This cut off
5 his air supply. The air remaining in the hose
6 lasted only moments and then the worker
7 experienced the sudden loss of air. When that
8 happens, the worker cannot call for help because
9 without the air flowing past your vocal cords,
10 no sound is going to come out.

11 Although the worker had an escape
12 bottle, he panicked, tore off his mask, ran
13 through the decontamination zone without
14 stopping until he reached the street. After the
15 event was reviewed, the health and safety plan
16 was revised to require the SCBAs so that the
17 incident would not repeat. Removing the clear
18 substance-specific requirement for the SCBA
19 would invite similar exposures rather than
20 prevent them.

21 The HEPA or high-efficiency particulate
22 air filter is a reference to the efficiency of

1 the filter media. Manufacturers of respiratory
2 equipment and filter media still use HEPA
3 terminology alongside the N, R, and P
4 designations at 95, 99, and 100. The HEPA
5 filter is defined in the respiratory protection
6 standard as having at least a 99.97 percent
7 efficient and is equivalent to the N100, R100,
8 and P100 particulate filters.

9 Removing the HEPA requirement and
10 instead directing employers to find the
11 appropriate filter would create confusion and
12 would lead to employers mistakenly selecting
13 particulate filters of lower efficiency.
14 Requiring a HEPA filtration at 99.97 percent
15 efficiency for these cancer-causing chemicals
16 leaves no room for confusion.

17 I equate removing the HEPA requirement
18 to removing the speed limit signs from our
19 roadways and expecting drivers to travel at an
20 appropriate speed. In truth, it's closer to
21 removing the speed limit signs from a school
22 zone where children are playing and trusting

1 that every driver will independently arrive at
2 the same appropriate speed as we're dealing with
3 cancer-causing chemicals. I'm not alone in this
4 position and the rulemaking record already
5 reflects it.

6 On May 19, 2026, OSHA's own Advisory
7 Committee on Construction Safety and Health
8 voted unanimously to oppose removing the HEPA
9 filter requirements for substances such as
10 asbestos, cadmium, lead, and inorganic arsenic.

11 The American Industrial Hygiene Association
12 reached the same conclusion in written comments,
13 stating that all NIOSH-certified particulate
14 filters provide equivalent protection against
15 submicron particles and fine asbestos fibers.

16 When the agency's own Construction
17 Advisory Committee and the nation's leading
18 Industrial Hygiene Association independently
19 arrive at the same answer, the record does not
20 support the change. Employer flexibility
21 already exists and it's exercised by following
22 the proactive safety measures set out in the

1 hierarchy of controls. Ordered from the most
2 effective option to the least effective, the
3 hierarchy is to first eliminate the hazard.
4 Second, substitute with a safer alternative.
5 Third, to engineer the hazard to make the work
6 safe. Fourth, apply administrative controls
7 such as training. And fifth and last, use
8 personal protective equipment.

9 Proactive measure is to engineer the
10 hazard away and only when it is not feasible
11 does the respiratory protection become the final
12 line of defense. Removing the straightforward
13 requirements from the chemical-specific
14 standards will only increase illness and death.

15 Keeping these requirements is not only
16 the safe choice, it is the profitable one. The
17 proposal is being offered to employers as cost
18 relief, it is not. The chemical-specific
19 requirements are among the least expensive
20 obligations that the employer carries and they
21 buy down the single most expensive category loss
22 in American industry, latent occupational

1 disease. Removing them does not remove the
2 hazard, the illness, or the liability. It only
3 removes the employer's certainty about how to
4 avoid all three.

5 Start with what one exposure case
6 actually cost the company. OSHA's own Safety
7 Pays Program built on National Council and
8 Compensation Insurance claim data establishes
9 that the indirect cost of occupational injury or
10 illness run 1.1 to 4.5 times the direct cost.
11 And it states plainly, while the insurance may
12 absorb the direct cost, the employer always pays
13 the indirect cost.

14 Those indirect costs are the ones that
15 never appear on a premium invoice, the
16 investigation, the replacement worker, the
17 retraining, the schedule slip, the liquidated
18 damage, or the attorney hours. OSHA further
19 estimates that employers nationally pay \$1
20 billion per week in direct workers' compensation
21 costs alone. At a three percent profit margin,
22 the default used in OSHA's own estimator, every

1 \$1 of unreimbursed loss requires approximately
2 \$33 of new sales to break even.

3 A P100 cartridge costs a few dollars.
4 A full-face respirator, a few hundred. No
5 contractor can sell their way out of a
6 respiratory claim at that exchange rate. Now
7 add the calculator -- the calendar. These are
8 cancer-causing chemicals with latency periods
9 measured in decades, which means the employer
10 who saves money on a respirator in 2026 is
11 buying a claim that matures in 2046 at 2046
12 medical costs under 2046 juries with 2046
13 defense counsels.

14 The RAND Institute for Civil Justice
15 documented what that arithmetic did to American
16 businesses the last time it was allowed to run.

17 Approximately 730,000 people filed asbestos
18 injury claims through 2002, and at least 8,400
19 defendants and their insurers paid roughly \$70
20 billion. Of every dollar spent, only about 42
21 cents reached an injured worker, 31 cents went
22 to defense transaction costs, and 27 cents to

1 claimants' fees and related costs.

2 More than 60 companies never recovered
3 and exited today only -- exist today only as
4 bankruptcy trusts, which still hold an estimated
5 \$30 to \$35 billion set aside for claims.

6 Reported mesothelioma settlements averaged in
7 the range of \$1 million to \$1.4 million per
8 claimant, with trial verdicts substantially
9 higher. Those defendants were not reckless
10 outliers. Most were ordinary manufacturers,
11 contractors, suppliers, and property owners who
12 followed their practice their era considered
13 acceptable.

14 The chemical-specific respirator
15 requirements exist precisely because that
16 practice was not acceptable, and they are the
17 cheapest liability insurance an employer will
18 ever be handed. The cost also arrives long
19 before any lawsuit does. Through the experience
20 modification rate, a workers' compensation claim
21 not simply reimburses itself, it enters a three-
22 year experience rating window and becomes a

1 multiplier applied against the employer's entire
2 payroll.

3 An experience modification of 1.0 is
4 average and every tenth of a point above is a
5 straight surcharge on every hour worked by every
6 employee in the company, not just the one who
7 was exposed. On a \$1 million premium, the
8 difference between a 0.8 and a 1.2 modification
9 is roughly \$400,000 a year. Worse for a
10 contractor, that number is public currency. And
11 in this industry, owners, general contractors,
12 and public agencies routinely set an experience
13 modification rate at below one, one or below,
14 and frequently at 0.8 as a condition of
15 prequalification.

16 A single respiratory illness claim can
17 therefore do something OSHA citations -- that no
18 OSHA citation can do, which is to disqualify a
19 company from bidding the work at all. Employers
20 do not lose that work because they were unsafe.

21 They lose it because their number says they
22 were. The chemical-specific requirements

1 protect that number. There is also a legal cost
2 of flexibility that the proposal does not
3 account for.

4 A bright line requirement is the
5 cheapest rule an employer can own. Use a HEPA
6 filter, use a full-face piece, and use a self-
7 contained breathing apparatus. Satisfied with a
8 purchase order, verified by a supervisor in ten
9 seconds, trained in one sentence, and defended
10 in a hearing by producing a receipt. Replacing
11 that with a duty to determine what is
12 appropriate converts the purchase order into a
13 professional judgment the employer must now
14 generate, document, defend, and preserve for the
15 life of the exposure.

16 That judgment will be second-guessed
17 three times. By the compliance officer who can
18 still cite the employer under the 1910.134 and
19 under the general duty clause, where the 2026
20 penalties reach \$16,000 -- \$16,550 per violation
21 for serious, \$165,514 per willful or repeated
22 violation, and another \$16,550 per day for

1 failure to abate. By state-planned
2 jurisdictions, which are free to retain the
3 stricter requirements and leave the multi-state
4 employer running two different programs for the
5 same task.

6 And finally, by the plaintiff's
7 industrial hygienist, 20 years later, holding up
8 the employer's own written determination as
9 proof the company weighed the worker's lungs
10 against the price of a filter and chose the
11 filter. Deleting the specific requirement does
12 not delete the employer's exposure. It deletes
13 the employer's safe harbor. Regulatory
14 certainty is worth real money, and this proposal
15 spends it.

16 The equipment economics point in the
17 same direction. An elastomeric half-face is a
18 durable good. NIOSH describes these face pieces
19 as reusable devices built of synthetic or
20 natural rubber, specifically so they can be
21 repeatedly cleaned, disinfected, stored, and
22 reused with exchangeable filters. A filtering

1 face piece is a consumable, discarded at the end
2 of the shift or sooner, purchased again every
3 shift for every worker forever, and subject to
4 the same supply shocks and spikes that the
5 entire country watched during the COVID-19
6 pandemic.

7 Over any project of consequence, a
8 reusable face piece with P100 filters is the
9 lower-cost asset and it is the asset that holds
10 its protection while the job runs long. It
11 should also be noted that OSHA has already
12 confirmed in its 2011 letter of interpretation
13 that a filtering face piece and elastomeric mask
14 sit in the same category with an identical
15 assigned protection factor of 10. That is
16 exactly the problem with selecting equipment by
17 assigned protection factor alone.

18 The number cannot distinguish a fit-
19 tested rubber face piece from a disposable mask
20 held on by two rubber bands. An employer who
21 buys to the floor of the APF pays for identical
22 protection on paper and receives measurably less

1 of it in the field. Every dislodged mask,
2 failed seal, and refit is unbillable downtime.

3 The same is true of production. The
4 Barrie Park event I described did not merely
5 endanger the worker, it stopped the job. An
6 airline failure in an exclusion zone means an
7 emergency evacuation, a decontamination breach,
8 an investigation, a health and safety plan
9 rewrite, a client notification, and in many
10 cases, a regulatory inspection. All of it
11 billed against schedule. Supplied air systems
12 require hose tending, hose management,
13 restricted travel paths, and a worker who must
14 retrace his own steps to leave the area.

15 Self-contained breathing apparatus
16 removes the entire failure mode and gives the
17 crew unrestricted movement with a low air alarm
18 that manages its own exit and timing. Employers
19 pay for that difference in productive hours,
20 whether or not anyone is hurt.

21 Liberty Mutual's long-running research
22 on workplace safety economics and the survey

1 work behind it, in which majority of executives
2 report a return of three dollars or more for
3 every dollar invested in safety, describes it
4 exactly this effect. Prevention is not a
5 deduction from output, it is a protection of
6 output.

7 Finally, there is an asset that no
8 employer can order from a catalog. A journeyman
9 with 15 years of hazardous waste and demolition
10 experience cannot be replaced inside a quarter,
11 and in the current labor market, cannot reliably
12 be replaced at all. Every worker removed from
13 the trade by an occupational lung disease takes
14 with him the training leadership he provided,
15 investment the employer made, the productivity
16 premium he earned, and the leadership provided.

17 The employer who retained the workforce
18 and the employees -- respiratory programs are
19 specific, mandatory, and consistently enforced,
20 removing the specificity does not make those
21 employers more competitive. It makes them
22 indistinguishable from the ones who cut corners

1 right up until the claims arrive.

2 Stated plainly, the current chemical-
3 specific requirements give the employer the
4 following at a cost measured in dollars per
5 workday. A defensible compliance position that
6 is proven with a purchase order rather than an
7 expert opinion. A lower experience modification
8 rate, which lowers premiums across the entire
9 payroll, not just one classification. Continued
10 eligibility to bid work that requires experience
11 modification at or below one. Protection
12 against latent disease claims that mature
13 decades later at future medical costs and future
14 verdict values.

15 One respirator specification, one
16 filter specification, and one training program
17 that work in every federal and state plan
18 jurisdiction. Fewer incident investigations,
19 stop work orders, and inspection-driven schedule
20 losses. And retention of trained certified
21 craft workers whose placement across the
22 employer cannot recover in a single project

1 cycle.

2 The flexibility being offered here is
3 not a savings for the employers or for the
4 American public. It's a deferred payment and
5 the interest compounds in medical bills, premium
6 surcharges, lost bids, defense transaction
7 costs, and the same bankruptcy trust that
8 already holds tens of billions of dollars
9 because an earlier generation of employers was
10 granted the very flexibility that we're trying
11 to prevent.

12 The chemical-specific standards were
13 written after workers were already sick and they
14 were written in direct mandatory language for a
15 reason. The nation has long held that a
16 worker's health is not a variable to be written
17 down. They tell the employer exactly what to
18 buy, exactly when to use it, and exactly how to
19 approve it. That certainty protects the
20 worker's lungs, the worker's family, and the
21 employer's balance sheet at the same time, which
22 makes it the rare regulation that costs almost

1 nothing and returns almost everything.

2 I respectfully urge OSHA to withdraw
3 these proposals and retain the existing
4 chemical-specific respiratory requirements in
5 full, and in doing so, to keep the American
6 workforce healthy and strong. Thank you.

7 MS. CAIN: Thank you, Glenn. This is
8 Chris Cain. Judge Henley, with that, that's the
9 conclusion of our prepared comments. And I just
10 was hoping we could get some questions that we
11 can help either in real time or in post-hearing,
12 but also reinforce that there's a lot more folks
13 on our panel. Some are here, some are not. The
14 exposures go across all of the proposed changes
15 in the chemical, all of the -- across all of the
16 proposed changes, and including a lot of metals
17 exposure, a lot of solvent exposure.

18 We know asbestos exposure is very at
19 the forefront of our minds, lead exposure. And,
20 you know, I think of lead because this would be
21 a great opportunity for OSHA to consider
22 reducing that blood lead that we were talking

1 about a few years ago, or at least costing it
2 out and comparing it to the costs of the
3 deregulatory scheme right now to help us think
4 it all through together, but that's just my
5 opinion. We know the pills are not strong
6 enough, but we know that's what we have. We
7 just think it's ridiculous to lose any
8 protections, which we see this deregulatory
9 action across the board doing. And that's it.
10 Thank you.

11 JUDGE HENLEY: Thank you all. Well,
12 let's see. Does OSHA have questions for any of
13 these panelists?

14 MR. SCHAYER: Yes, Your Honor. This is
15 Stephen Schayer. Thank you very much to the
16 panel for your testimony today. We appreciate
17 you being here. I'd like to turn to Patti Downs
18 and Rachel Michel to start off our questions.

19 MS. DOWNS: Thank you, Steve. Good
20 afternoon, everyone. Patti Downs. So a couple
21 of you had mentioned that employees are exposed
22 to a variety of chemicals during construction

1 work, and OSHA is interested in understanding
2 how employers provide respirators and
3 respiratory protection to workers when they're
4 exposed to multiple toxic substances. So either
5 now or in your post-hearing comments, if you
6 could answer the following questions, it would
7 be helpful.

8 First, how often do employees require
9 protection from multiple chemicals at the same
10 time? How frequently are employees exposed to
11 chemicals that are listed on the OSHA z-table,
12 as well as chemicals that have their own
13 substance-specific OSHA standards? And then,
14 are there common scenarios where employers
15 encounter both types of chemicals
16 simultaneously? And if so, how is respiratory
17 protection for those exposures managed in
18 practice? For example, lead and asbestos during
19 demolition or other chemicals that they might
20 encounter.

21 MS. CAIN: Thank you. I know we can
22 dig up some responses to those questions.

1 However, is there anyone on the panel who wants
2 to shoot from the hip on that? Okay. We'll
3 definitely respond in post-hearing comments.

4 MS. DOWNS: Patti Downs again. Great,
5 thank you. And for this question as well, if
6 you'd prefer to answer in your post-hearing
7 comments or answer now or do both, that would be
8 great. In the written comments that NABTU
9 submitted, they included information regarding
10 compliance rates for training. But most of that
11 information appeared to be based on data
12 collected to the 2006 update to the respiratory
13 protection standard.

14 Do you have any information indicating
15 that there are higher compliance rates for
16 training under the substance specific standards
17 when compared to 1910.134 since the most recent
18 update in 2006? And if so, are you able to
19 share any studies or other information
20 indicating that compliance with the substance-
21 specific standards is better? And this would
22 apply to asbestos, dibromochloropropane,

1 arsenic, cadmium, lead, vinyl chloride,
2 acrylonitrile, and coke ovens if you encountered
3 that at all.

4 MS. CAIN: We will take a look at our
5 records to see if we have anything. One thing
6 that just -- one way that I think is appropriate
7 to respond to this is that there's so little
8 bandwidth to research health and safety issues
9 that using that bandwidth to research around
10 standards that are already in place is not a
11 priority generally for researchers, unions, I
12 would suggest other groups as well, only because
13 the existing standards have stood up in court
14 and they have been shown to be feasible in all
15 ways, right?

16 And that they're being complied with
17 for the most part as best we can see. And when
18 we see non-compliance, we try to call it out.
19 So I'll just leave it at that. And then also
20 see if we can come up with some more information
21 for you.

22 MS. DOWNS: Patti Downs, thank you.

1 And then my last question is, in all of the
2 proposals, except for vinyl chloride and 13
3 carcinogens, OSHA has proposed to remove some of
4 the existing language for respirator use and
5 insert a cross-reference to 1910.134 82. In the
6 testimony today, you've indicated that this
7 would not offer enough protection for workers.

8 However, the substance-specific
9 standards and the respiratory protection
10 standard include other requirements about when
11 to provide respiratory protection, such as the
12 requirements to provide a respirator whenever
13 exposures exceed the PEL or any short-term
14 exposure limits. Do you believe that these
15 other requirements would provide sufficient
16 information about when respirators must be used
17 and why or why not? Yes.

18 MS. CAIN: I mean, my first -- Chris
19 Cain. My first reaction to that is, actually
20 makes me think about some of the things that
21 Glenn brought up in his prepared remarks where
22 the concept of having specific standards that

1 employers need to comply with so that they
2 understand they're in compliance when they do X,
3 Y, and Z, gives them the, quote-unquote, safe
4 harbor, term that Glenn used.

5 And the idea that there's some level of
6 compliance achieved when the specific parts of
7 the standard are followed, which you wouldn't
8 have, I believe, in the scenario that you
9 described, because to me that sounds more like
10 the requirements were implied versus explicitly
11 stated. Any other responses to that question?
12 Okay, that's it.

13 MS. MICHEL: Thank you. Rachel Michel
14 here. So this question isn't directed to anyone
15 specific, but does apply to methylene chloride,
16 ethylene oxide, 1,3-butadiene, cadmium, and
17 lead. So we've heard concerns today that half-
18 mask respirators with separate eye protection
19 may not be as -- provide the same protection,
20 equivalent protection as full-face piece
21 respirators.

22 So the question is, if you believe that

1 there are no half-mask and eye protection
2 combinations that could provide equivalent
3 protection, or only that there are some
4 combinations that would not. And so, for
5 example, butadiene, cadmium, and lead already
6 allow half-masks when eye irritation is not a
7 concern. So just looking if you can provide
8 maybe any examples of tasks where eye irritation
9 may occur only briefly or intermittently. And
10 in those situations, could separate eye
11 protection be used with the half-mask, or do you
12 believe that a full-face respirator would be
13 necessary?

14 MS. CAIN: Glenn, did you want to
15 respond to that one? Was I getting that signal?

16 MR. MINYARD: Glenn Minyard. Yeah, I
17 mean, if you're starting to get eye irritation
18 already, it should go to the full-face piece.
19 And if we're looking at a half-face with an
20 assigned protection factor of 10 and trying to
21 throw some goggles on there, like I was saying
22 before, it's going to interfere with that seal

1 as I'm putting all this extra gear on.

2 I got a couple sets of things to hold
3 everything on my head as opposed to going to the
4 full-face where it's all one unit, one strap on
5 there. It seals real good, protects the eyes,
6 does it all in one piece with an assigned
7 protection factor of 50 for a full-face. So if
8 you're getting the eye irritation, it should
9 already require the full-face and nobody should
10 be using a half-face when the eye irritation is
11 there. Thank you.

12 MS. CAIN: Thanks, Glenn.

13 MR. PARSONS: Also I can chime in, just
14 a couple of little additional things. You know,
15 when you were --

16 MS. CAIN: Who are you?

17 MR. PARSONS: Oh, sorry. Travis
18 Parsons with the Labor, Health, and Safety Fund,
19 Director of Occupational Safety and Health. So
20 one thing too, when you're out in the field and
21 if you're wearing eye protection of any kind,
22 some are better than others. They're not all

1 created equal. They fog up. So whereas a full-
2 face doesn't fog up as easily as your eyewear.
3 And then that can also jeopardize your seal, as
4 Glenn just talked about, and the integrity of
5 the respirator itself, because you're going to
6 be constantly adjusting your glassware to clear
7 the fog, whereas a full-face has way better
8 airflow and way better vision when you have the
9 full-face on.

10 And then I'll just reiterate what Glenn
11 said about the seal integrity. There's no way
12 you're getting the same seal out of a half-face
13 and eyewear as you are a full-face. That's why
14 it's a protection factor of 50 versus 10. Thank
15 you.

16 MS. MICHEL: Okay, thank you. I have
17 one more question. So for OSHA standards that
18 don't specify particular filter efficiencies,
19 OSHA's interested in learning how employers
20 currently determine whether to select the 95
21 percent, 99, or the 99.7 percent filter, and
22 what factors drive that decision. And I'll add

1 that that's for MDA, arsenic, cadmium, lead,
2 asbestos, and cotton dust.

3 MS. CAIN: So this is Chris Cain. To
4 paraphrase, what would cause an employer to
5 choose an N95 filter over a P100 filter? What
6 could possibly cause them to choose that?

7 MS. MICHEL: Yes, and what factors,
8 yes, would drive that decision.

9 MS. CAIN: Travis? Sorry.

10 MR. PARSONS: I would say -- Travis
11 Parsons, Labors -- cost. I don't know what the
12 difference in costs are, but one might cost less
13 than the other. Typically, people are going to
14 choose the least expensive.

15 MS. CAIN: And thanks, Travis. This is
16 Chris Cain. I think that's the only answer,
17 right? Is that if OSHA says you need to use one
18 of these three filter efficiencies, two of which
19 we absolutely do not believe are appropriate,
20 particularly for asbestos, I would think there
21 would be very few employers who would choose the
22 P100s over the N95s just because of cost. The

1 costs are significantly different.

2 MS. MICHEL: Okay, thank you. That's
3 all the questions I have.

4 MR. SCHAYER: Thank you. This is
5 Stephen Schayer. Again, we do have some
6 questions also from Dr. Bob Blicksilver.

7 DR. BLICKSILVER: Hi. Bob Blicksilver,
8 OSHA's Standards and Guidance. Just a few more
9 questions pertaining to the half mask eye
10 protection issue. You've probably covered it
11 fairly thoroughly in your written comments and
12 in your testimony this afternoon, but we wonder
13 if, in post-hearing comments, if you could
14 provide any evidence or survey data just to
15 share with us the range of available technology
16 that you're seeing in the combination of the
17 respiratory and eye protection systems available
18 on the market.

19 I've heard -- I'm hearing that they
20 usually provide insufficient seal or fit when
21 combined, but if you're aware of, again, the
22 range of technologies and how the industry is

1 addressing that, the manufacturers are
2 addressing that, or what sort of feedback you're
3 able to provide to them, that would be helpful
4 to us. And I'll just pause there. And I have
5 one follow-on question to that as well, but let
6 me --

7 MS. CAIN: I just -- you know, one of
8 the things that's kind of, I'm sensing through
9 the themes of the questions around the
10 combination of a half face plus eye protection,
11 it sounds as though, and I could be totally off
12 base on this, but it sounds as though we had
13 COVID and everybody wore an N95 and they got --
14 they could wear their glasses. It was no
15 problem.

16 So why on earth would you want to
17 provide a full-face piece respirator to
18 construction workers who are demolishing
19 structures, who are tearing off insulation, who
20 are working under heavy load, who are sweating,
21 who have exposures to a variety of real toxins
22 that are present in all sorts of combinations,

1 when in COVID people could wear their glasses in
2 their N95s no problem?

3 I think the, and forgive me if I'm
4 really off base with kind of the underlying
5 current here, but you can't really compare an
6 office worker able to wear an N95 and glasses
7 without any real barriers to a construction
8 worker who works in extreme heat, who works in
9 extremely different conditions under a lot of
10 chemical and dust exposures to someone who had
11 no problem wearing their, you know, my glasses
12 and a mask in an office.

13 I just get the sense that we did it in
14 COVID, so let's deregulate and take away the
15 option of a full-face respirator when there's
16 eye issues in heavy, heavy, hazardous, hazardous
17 work. So I just kind of want to throw that out
18 there and that's the sense of what we're
19 getting. And it's just uncertain how to respond
20 when the question seems that it's based in --
21 I'll stop there. Thank you.

22 DR. BLICKSILVER: Okay. Bob

1 Blicksilver again, thank you for your comments.

2 MS. DOWNS: Bob, can I interject a
3 minute? This is Patti Downs. Ms. Cain, can I
4 just clarify when you say N95, you're referring
5 to like a filtering face piece respirator and
6 not an N95 cartridge for like an elastomeric
7 half mask or an N95 cartridge that would be on
8 anything else, correct?

9 MS. CAIN: I mean, in my hypothetical
10 rant that I just made, yes, that's what was in
11 my mind, the N95 filtering face piece
12 respirator.

13 MS. DOWNS: Okay. And then was that
14 the same assumption when you answered Rachel's
15 question earlier about why somebody would choose
16 a N95? No, that was regards -- okay, thank you.

17 That was all. I apologize for interrupting.

18 MS. CAIN: Yeah, I think that one was
19 more about the cost of the actual filters
20 versus, you know, if it's a filtering face piece
21 or not.

22 DR. BLICKSILVER: Okay. Bob

1 Blicksilver again. Just one final question. I
2 don't want to belabor this, but if you're aware
3 of the usage of these combination systems, eye
4 protection, goggles, and half mask to address
5 hazards associated with OSHA z-tables, 1926.55
6 in construction standards, then please share
7 with us in post-hearing comments the scenarios
8 you're observing, you know, the workplace
9 conditions and so on, where those combinations
10 are worn, again for the z-table, gold substances
11 --

12 MS. CAIN: We'll respond if we can in
13 post-hearing, thank you. Chris Cain.

14 DR. BLICKSILVER: Okay. Bob
15 Blicksilver, thank you very much. That's all.

16 MR. SCHAYER: This is Stephen Schayer
17 again. Thank you again to the panel. Your
18 Honor, that concludes our questions from OSHA.

19 JUDGE HENLEY: All right, thank you.
20 Are there questions from the solicitor's office
21 for this panel?

22 MS. NAUGHTON: Yes, Your Honor. This

1 is Sheila Naughton for the solicitor. Thank
2 you. And thank you so much to the NABTU panel
3 for being here today and for sharing your time
4 and your insights into this role.

5 I did have a few questions just to
6 clarify the record and make sure we're fully
7 understanding the prepared remarks today. Mr.
8 Minyard, great to see you. I wanted to see,
9 during your testimony, you argued there were
10 several of OSHA's proposed changes where OSHA
11 had selected an APF that didn't capture the full
12 range of protection that is provided by the
13 current specified respirator.

14 I believe you covered this topic for
15 SCBA's elastometrics or elastomerics in FFRs,
16 but there may have been others. Either now or
17 in post-hearing comments, can you clarify which
18 of the chemical proposals you were addressing
19 with these arguments? In other words, can you
20 specify for that argument all the chemical
21 proposals you are intending to direct them to?
22 I just want to make sure we were able to have

1 them addressed in the proper rules and take them
2 into account in the right places.

3 MR. MINYARD: Glenn Minyard. I was
4 applying them to any time it was changing from a
5 specific respirator to an assigned protection
6 factor, any time that's done, because it's not
7 equivalent.

8 MS. NAUGHTON: Okay, thank you. Sheila
9 Naughton for the solicitor. It would be helpful
10 just which chemical -- if there are chemical-
11 specific properties or hazards that are leading
12 you to make that recommendation or highlighting
13 that that's a dangerous situation, it would be
14 helpful for you to explain that either here or
15 in post-hearing comments.

16 My other question I had for Mr.
17 Minyard, again I wanted to make sure I had the
18 right -- you had referenced a letter of
19 interpretation in your testimony and I want to
20 be sure we have the right one. It was a 2011
21 LOI, I believe, concerning a filtering
22 facepiece. Now or in post-hearing comments, it

1 would be great if you could identify the title
2 or date of that letter of interpretation, just
3 so we're able to accurately capture that.

4 MR. MINYARD: Glenn Minyard. So it was
5 a 2011 letter of interpretation, assigned
6 protection factors and filtering facepieces,
7 facepiece respirators, was the title from 2011.

8 MS. NAUGHTON: Sheila Naughton, Office
9 of the Solicitor, thank you. Do you happen to
10 have the requester's name with that, with the
11 title?

12 MR. MINYARD: I just -- Glenn Minyard.
13 I just wrote down the reference point. I
14 didn't write down all of the specifics.

15 MS. NAUGHTON: Sheila Naughton. We'll
16 be able to figure it out, no worries. I just
17 wanted to -- if you had it on hand, I was going
18 to write it down, but thank you so much. My
19 final note I just wanted to say is, I know we
20 have a lot of folks on the line today with a lot
21 of expertise and background. To the extent you
22 can offer additional specifics in post-hearing

1 comments, we'd really welcome it, particularly
2 any specific hazards related to the individual
3 chemicals and how they come up in your
4 workplaces. That would be very useful to us to
5 have that on the ground experience. And that's
6 all from me.

7 JUDGE HENLEY: Thank you, Counsel --
8 are there any questions from the public for this
9 panel?

10 MS. JOHN: Yes, we have Dan Glucksman.
11 Dan, you should be able to unmute and ask your
12 question.

13 JUDGE HENLEY: Yeah, Mr. Glucksman,
14 just remind us what organization you're
15 affiliated with.

16 MR. GLUCKSMAN: Sure. Dan Glucksman,
17 International Safety Equipment Association. And
18 actually, this is for Glenn Minyard. Glenn, you
19 had talked a lot about insurance. I'm
20 wondering, do insurers, in your experience, help
21 employers, employees, their representatives,
22 with selecting the most appropriate safety

1 equipment? Like, are they ever partners in
2 safety?

3 MR. MINYARD: Glenn Minyard. I'll kind
4 of give you a it depends answer. You know,
5 company size can come into play, the insurance
6 company that they hired, but yes, insurance
7 companies will help push to see that they try to
8 have the appropriate equipment out on the job
9 site, but it's not uniform across all companies.

10 There's a lot of situations. I mean, even this
11 year, I've had a couple where they had chemicals
12 in the ground. And the company, even though
13 they were sending it to special waste sites,
14 they did not do any of that until after we had
15 brought up the concerns. So I guess that answer
16 is depends.

17 MR. GLUCKSMAN: All right, thanks.

18 MS. CAIN: This is Chris Cain. I think
19 to clarify, Glenn, you said it depends on
20 employer size. Is there a size range of
21 employers that you see insurance companies
22 assisting more than others, given that the vast

1 majority of construction employers are 19 or
2 fewer employees?

3 MR. MINYARD: Glenn Minyard. Yeah,
4 exactly. That's what I'm kind of getting at.
5 You know, the large contractors have more money,
6 they have more resources and a lot more
7 employees. And the smaller employers, they may
8 not even have thought to go that route. So, you
9 know, that's why it's -- I guess my answer is
10 depends. It's looking at the company.

11 MS. CAIN: Thank you.

12 MR. GLUCKSMAN: All right. Thanks,
13 Chris.

14 JUDGE HENLEY: Thank you, Mr.
15 Glucksman. Does OSHA or the solicitor's office
16 have any follow-up questions based on questions
17 from the public?

18 MR. SCHAYER: This is Stephen Schayer.
19 We have no follow-up questions from OSHA, Your
20 Honor.

21 MS. NAUGHTON: Your Honor, this is
22 Sheila Naughton from the solicitor's office. No

1 further questions. Just thank you again for
2 your testimony to the panel.

3 JUDGE HENLEY: So I do want to thank
4 all of our panelists for their time, attention
5 and testimony this afternoon. At this point,
6 you're excused. Thank you all.

7 MS. CAIN: Thank you.

8 JUDGE HENLEY: So, Kecil, by my notes,
9 I believe that's the last panel, correct?

10 MS. JOHN: Correct.

11 JUDGE HENLEY: So we are now at the end
12 of all scheduled witnesses for today. Following
13 the hearing, there will be two separate periods
14 for submitting additional information. Hearing
15 participants may submit additional evidence or
16 data relevant to the proceeding within 30 days
17 of the end of the hearing. Participants then
18 have until 45 days after the end of the hearing
19 to file any briefs based on the record as a
20 whole.

21 The purpose of having these two periods
22 is to allow for the submission of new data and

1 evidence and to include additional responses to
2 questions posed at the hearing, and then have a
3 period that allows participants to respond to
4 that new evidence. Therefore, new data studies
5 or similar evidence may not be added during this
6 second period and commenters should reference
7 the docket ID number for any evidence they rely
8 on in their briefs.

9 Today is August 25, 2026. So the
10 deadline for submitting additional evidence or
11 data is September 24, 2026, and the deadline for
12 submitting briefs is October 9, 2026. At that
13 point, the record for this hearing will close.

14 The public hearing on OSHA's proposed
15 rules to amend respiratory protection provisions
16 and standards on 16 chemicals is concluded. Let
17 the record show that all persons and
18 organizations who filed a timely notice of
19 intention to appear have been extended the
20 opportunity to do so. Let the record also show
21 that following the presentation of oral comments
22 and testimony, an opportunity has been extended

1 for questioning of the witnesses by NOITA filers
2 and members of OSHA's and the solicitor's
3 office.

4 On behalf of the Department of Labor, I
5 want to publicly thank all those who gave of
6 their time and testimony today to contribute to
7 this hearing. To all participants, thank you
8 for your interest in this very important matter.

9 This hearing is hereby adjourned.

10 (Whereupon, the above-entitled matter
11 went off the record at 4:57 p.m.)
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22

1 C E R T I F I C A T E

2 This is to certify that the foregoing transcript
3 was duly recorded and accurately transcribed
4 under my direction; further, that said
5 transcript is a true and accurate record of the
6 proceedings; and that I am neither counsel for,
7 related to, nor employed by any of the parties
8 to this action in which this matter was taken;
9 and further that I am not a relative nor an
10 employee of any of the parties nor counsel
11 employed by the parties, and I am not
12 financially or otherwise interested in the
13 outcome of the action.

14
15
16
17
18 

19 _____
20 James Cordes
21
22

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