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September 11, 2023

Mine Safety and Health Administration
Office of Standards, Regulations, and Variances
201 12th Street South, Suite 4E401
Arlington, Virginia 22202-5450

Docket Number Docket No. MSHA-2023-0001
Submitted via Regulations.gov

Subject: Lowering Miners' Exposure to Respirable Crystalline Silica and
Improving Respiratory Protection

Dear Sir or Madam:

North America's Building Trades Unions (NABTU) is pleased to submit comments on the Mine Safety and Health Administration's (MSHA's) proposed rule on Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection. NABTU is submitting these comments on behalf of its fourteen affiliated national and international unions who together represent more than three million men and women employed in the construction industry.

NABTU applauds MSHA's proposal to reduce silica exposure for miners—a standard that is desperately needed in metal and nonmetal mines and coal mines. A permissible exposure limit of 50 micrograms per cubic meter is technologically and economically feasible. The implementation of engineering controls first followed by administrative controls is a sound and proven approach to reducing exposures. These and ancillary controls will go far to reduce miner exposure. NABTU supports the comments and positions submitted by worker representatives at the United Mine Workers of America, the United Steel Workers, and the AFL-CIO. As NABTU is a construction union organization that does not represent miners, the scope of these comments is limited to construction activities on MSHA-covered sites.

We understand that when construction employers are hired to do construction work by a mine operator, those employers are required to adhere to MSHA rules on MSHA-covered sites. As such a construction employee may be employed on a mine site for relatively short periods of time. One of the challenges of controlling health hazards in the construction

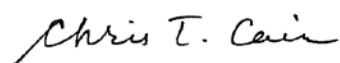
industry is linked to the often short duration of jobs/tasks that cause excessive exposure. In an ideal situation, there would be a way to immediately characterize exposure and design engineering controls to sufficiently reduce that exposure to levels where respirators or other controls were not necessary. Because that ideal situation does not exist due to the transitory nature of construction, and because there exists an incredible quantity of quality exposure data, the construction industry is fortunate to have a protective Occupational Safety and Health Administration (OSHA) standard in place. This OSHA construction standard's Table 1 is unique in that it allows construction employers to forgo air sampling if they follow the task/controls/duration combination in the table. A primary benefit for workers under this regulation is that it requires employers to apply the controls first, without having to take an air sample to make decisions regarding the types of controls needed in a particular case. Because our industry is made up of almost entirely small employers with limited resources to assess occupational health risks, this approach has been one that drives down exposure as the default approach, promotes compliance, and improves working conditions for construction workers.

NABTU and our affiliates worked for over two decades to support the Occupational Safety and Health Administration (OSHA) in the development and finalization of standards that protect construction and general industry workers on OSHA-covered workplaces. In the OSHA rulemaking docket, three comments broadly contain the scope of NABTU's positions during that rulemaking: OSHA-2010-0034-2371 (Comments on OSHA's proposed rule), OSHA-2010-0034-4073 (post-hearing comments), and OSHA-2010-0034-4223 (post-hearing brief). All cited comments are available through [regulations.gov](https://www.regulations.gov). As demonstrated by these comments, NABTU supports the inclusion of task/tool/time combinations in OSHA's Table 1 where possible. Additionally, OSHA requested additional information on the potential expansion of this table in 2019, and NABTU submitted additional evidence to the agency supporting this (OSHA-2010-0034-4330).

NABTU strongly supports MSHA's proposal to improve working conditions on MSHA-covered sites, as it is imperative health of miners and long overdue. Because we believe the OSHA construction silica standard is protective and working in our industry, we respectfully request MSHA to consider allowing construction employers to follow the OSHA construction regulation while performing construction work on MSHA-covered sites. In our view, this approach would be protective to construction workers, and most construction employers are already in compliance with this standard.

Thank you for the opportunity to submit these comments and please do not hesitate to reach out to me with any questions or clarification.

Sincerely,

A handwritten signature in cursive script that reads "Chris T. Cain".

Chris Trahan Cain
Director of Safety and Health