Comments of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial, and Service Workers International Union, AFL-CIO (USW)
On the
U.S. Department of Labor, Mine Safety and Health Administration (MSHA) Proposed Rule on Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection
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USW is the predominant labor union in North American metal and non-metal (MNM) mining, representing approximately 20,000 miners in the United States and an equivalent number in Canada. Our members work in underground and surface mines and quarries, using many different mining methods, mining almost every commodity. The exception is coal, and while our members in the United States are not subject to black lung or coal dust explosions (unless coal is used as fuel to generate electric power at the mine), they do face every other health and safety hazard in the mining environment.

GENERAL REMARKS AND RECOMMENDATIONS:

Respirable crystalline silica is a known and recognized hazard.

We commend MSHA for acting on this proposed rule to lower all miners' exposures to respirable crystalline silica. If mine operators do not eliminate or control silica-related hazards using the hierarchy of controls, it will continue to result in deaths and thousands of diseases among miners. We are supportive of the proposed rule for miners who are, or may reasonably be expected to be, exposed to respirable silica. We also believe the rule can even be improved and USW offers our recommendations. However, MSHA should not let perfection stand in the way of progress to issue a final rule, as all miners need this rule now, not later.

All miners clearly need MSHA's proposed rule, oversight, identification, correction, and elimination of silica-related hazards in an effort to reduce and/or eliminate occupational deaths and diseases. We also urge MSHA to protect miners from retaliation as USW had miners who chose not to testify at MSHA's public hearings on silica due to concerns of retaliation, discrimination, and interference by their employer.

Historically, the most serious health hazard in mining has been the threat of silicosis. This deadly disease has been known since the distant past and we've learned that crystalline silica can also cause or promote lung cancer. In addition, there has recently

been an alarming increase of coal workers pneumoconiosis (CWP or black lung) and its most devastating form, progressive massive fibrosis (PMF), and a growing body of evidence suggests that silica is a major contributor to that increase.

Reducing MSHA's current silica exposure limit and action level will save lives.

In 2016, the Occupational Safety and Health Administration (OSHA) updated its silica standard, effectively cutting the permissible exposure limit in half and adding additional provisions for workplace monitoring, medical surveillance, and means of control. Our union participated in OSHA's process, and our members in General Industry and Construction are grateful for OSHA's updated standards. There are many similarities between OSHA's silica standards, and MSHA's proposed rule. Regardless of where exposures occur, this process is about hazard identification and controls, most importantly by applying the hierarchy of controls to eliminate or reduce exposures. We are proud to see MSHA finally take action to address this longstanding hazard. Since 2019, USW and United Mine Workers of America (UMWA) have been calling on MSHA to put out a new silica standard, including the 50 µg/m³ (micrograms per cubic meter of air) exposure limit already adopted by OSHA, and adding appropriate provisions for workplace monitoring, means of control, and medical surveillance. OSHA's rule on silica is effective, and employers found that it was not hard to collect air samples and get them processed by a lab as they were prepared for the increased demand. To this day, our union does not hear about supply and demand problems, and we don't anticipate any with MSHA's proposed rule. Air sampling can be easily done, and other hazards must be addressed while doing so (such as diesel particulate).

OSHA is not the only organization to adopt a lower silica exposure limit. NIOSH's Recommended Exposure Limit is also 50 µg/m³ and the ACGIH Threshold Limit Value is 25 µg/m³. The International Agency for Research on Cancer classifies quartz and cristobalite as Group 1 carcinogens, for which there is sufficient evidence in humans, and which must be controlled to the lowest feasible level. Other jurisdictions have adopted even lower standards, for example British Columbia and Alberta, which have robust mining industries, successfully enforce a 25 µg/m³ limit.

We fully support MSHA reducing the exposure level of respirable silica from 100 to 50 µg/m³, and 25 µg/m³ as the action level. Lowering exposure levels is both necessary and feasible. We commend MSHA for calculating this threshold for a full shift exposure, calculated as an 8-hour time-weighted average, for all miners (as opposed to a given worker's shift, which can oftentimes exceed 8 hours). This practice is consistent with typical occupational chemical monitoring, and is supported by NIOSH. Additionally, this ensures that the exposure calculation accounts for the high body burden caused by working long shifts as the miner's body recovery time is reduced. MSHA's extensive feasibility analysis documents that the proposed standard of 50 µg/m³ is both technologically and economically feasible. Much of the underlying research and studies on which the feasibility analysis is based was done by NIOSH, who has extensive documentation on the feasibility of engineering and administrative controls for silica in

mines. NIOSH also has publicly available resources on reducing silica exposure in mines that provides the industry with abundantly useful information on practical and proven approaches to lowering silica concentrations. This includes approaches to hazard assessment; control systems such as dust collection systems, wet spray systems, and filtration and pressurization systems; and other controls for drilling and blasting, crushing, milling, and screening, conveying and transport, bagging, bulk loading, haul roads, stockpiles and exposed areas, and other secondary sources. Lowering exposures must be done by applying the hierarchy of controls to keep exposures to the lowest feasible level as the health hazards of silica are well known and documented. USW also adds, that a legal exposure limit to a carcinogen does not mean it's a safe exposure limit, and this is why exposures must be reduced to the lowest feasible level possible.

All miners continuing to be protected through the hierarchy of controls without enabling loopholes is of the utmost importance.

Engineering controls are feasible and far more effective than administrative controls or personal protective equipment as found in NIOSH's handbooks of recommended practices for dust control. USW strongly supports MSHA's prohibition on rotating miners to reduce exposures as an administrative control below the permissible exposure limit or action level. Simply put, worker rotation is not an acceptable control measure when reducing risk of exposure to a carcinogen.

There must be a combination of engineering and administrative controls to ensure that all miners can operate in safe environments. Engineering controls must be prioritized ahead of both administrative controls and personal protective equipment, and not seen as substitutes for one another. Respiratory protection must never be defined as engineering controls and considered as a primary means of protection. Respirators are one control to reduce exposures, but mine operators too often race to the bottom of the hierarchy of controls and reply upon respirators to reduce exposures when it is clearly the least effective control. Engineering controls must be capable of dealing with all belt speeds for collection and suppression. They must also be protected from freezing in cold weather as our members' experiences are that mine operators will isolate the foggers, and spray bars which cause their exposure levels to rise during these times.

Although training is an administrative control, it is still important that miners and their representatives be trained on all elements of the rule; this should also include training about miners' rights to make hazardous condition complaints, and their protections against retaliation, discrimination, interference when identifying hazardous conditions and refusing unsafe work. The training programs must also be designed and implemented with miners' and their representative's participation. The mine's training and procedures need to be developed and provided in a language understood by miners.

USW recognizes that respirators must be provided in limited and temporary circumstances as long as miners are provided both strong and comprehensive protections. USW is concerned that the proposed rule, as written, could result in mine operators relying on respiratory protection to reduce exposures more often than MSHA expects, which is expressly prohibited by the Mine Act. The proposal currently allows respirator use when conditions are above the permissible exposure limit and engineering controls are being developed or is necessary by the nature of work involved. This provision could result in mine operators justifying respirator use more than on a rare and temporary basis as many mining operations include constant building, removing, updating, and changing of the ventilation systems throughout a mine. MSHA should be clearer about what is, and what is not, considered limited circumstances. We believe that respirator use should be subject to a comprehensive respiratory protection program as outlined in the proposed rule, and the protections for miners who may be unable for medical reasons to wear a respirator that are transferred to a job where respirator use is not required, with full protection of their employment, earnings, and benefits. We further believe this is required by Section 101(a)(7) of the Mine Act. Our members also tell us that wearing a respirator can be cumbersome during various tasks, increases their heat stress, and makes it very hard to communicate with other miners over the ambient noise. These examples also cause miners to remove their respirator at times, which increases their exposures.

Improving sampling and corrective measures will ensure that all miners are safe from hazardous work environments.

All miners and all forms of crystalline silica need MSHA's lower permissible exposure limit and action level which is both necessary and feasible; silica exposure to be measured by both the new Rapid Quartz Monitor and traditional methods, and without regard to respirator use; silica exposure to be reduced to the permissible exposure level through feasible engineering controls, and not respirators; and MSHA to consider the combined effects of silica and other toxic substances to which miners are exposed.

Silica control is increasingly important in MNM mines because such mines will likely experience potentially higher dust exposures as new technologies come into use. Continuous miners have long been used in softer rock like trona and gypsum. They are now being adapted for use in hard rock, as are longwall systems.[i] Of course many hard rock ores contain high levels of silica.

The risk of silicosis in MNM mines is not confined to underground operations. Rock crushing in iron and other surface mines can release silica-laden dust. Silica is also a hazard in cement plants, a fact that is well-recognized by the industry.[ii] Under OSHA's silica standard, workers who cut and install precast concrete have considerably more protection than the workers who produce it in MSHA regulated cement plants.

Both the Rapid Quartz Monitor and traditional methods should be used to measure silica exposure

The ultimate goal for silica sampling should be a real-time direct-reading monitor. The NIOSH Rapid Quartz Monitor (RQM) offers significant advantages. Like the traditional MSHA compliance method, it uses a personal sampling pump and cassette, but the filter does not need to be sent off to a laboratory. Instead, it can be quickly analyzed in the field at the end of the shift using a Fourier-transform infrared (FTIR) analyzer and software developed by NIOSH. The results can be used to implement control measures at the beginning of the next shift, instead of days later. The MSHA silica standard should therefore require mine operators to use the RQM as an engineering tool to find and address operations and areas with high silica exposures, and specify a sufficient number of samples per shift to adequately characterize the mine environment and changing conditions. Since miners move around during the shift, some of those samples should be from area (fixed-site) monitors in places like belt transfer points, longwalls, or near continuous miners. The standard should also be sufficiently flexible to allow MSHA to require the use of the RQM for compliance when it is validated, and a portable real-time monitor if one is developed. MSHA should also consider requiring RQM for known work operations with silica exposures. NIOSH has been using portable Fourier transform infrared end-of-shift monitors and the Field Analysis of Silica Tool software to monitor and analyze on-site silica concentrations in mining for years, and is working toward the development of a formal NIOSH sampling method using this system. At a minimum, MSHA should include an approach that incorporates RQM for hazard assessment with a phased-in approach to moving toward requiring consistent RQM or continuous monitoring as technology improves. Inclusion of this technology in the standard would also facilitate the rapid development and use within the industry.

This proposed rule focuses on the monitoring and sampling of silica dust by mine management, but it should address the trust issues that our members have with mine operators and those strongly described by attendees at MSHA's public hearings on these proposed rules. Our members have been told to put the sampling devices in their lunch box or place their coat over it. They've also been told to run conveyor belts at slower speeds to lessen the dust; they've seen sampling done during non-typical work shifts when capacity is very low or when it is raining outside so there's a natural dust suppressant; or they've been assigned to low dust tasks for large portions of their shift. Dust sampling must include non-routine tasks and upset conditions. Quarterly sampling is not enough to get an accurate representation, especially when there are changes made to jobs, tasks, or how work is organized, this includes: downsizing, under-staffing, job combinations, and more that cause miners to do more with less. The rule should include miners and their representative's involvement in air monitoring, oversight, and planning of such.

MSHA should require mine operators to perform sampling more frequently. Baseline sampling or objective data should not exempt mine operators from further monitoring. Additionally, the periodic sampling in the proposed standard is not sufficient. The coal mining industry is already required to perform quarterly periodic sampling and the MNM

mines are only required to sample to determine the adequacy of control measures. In accord with current MSHA and OSHA policy, neither the compliance nor the engineering measurements should account for respirator use. It is important to know how much respirable silica is in the air, not some calculated exposure based on a presumed respirator protection factor.

MSHA should look to the strong sampling requirements in the respirable coal dust standard which ensures mine operators are appropriately characterizing dust exposures and other applicable provisions of that standard that can strengthen the silica final rule. As part of the coal dust standard, MSHA requires mine operators to pre-designate specific work positions to undergo sampling and submit the work positions to MSHA, whom after review can designate other work positions for sampling. MSHA also requires mine operators to post the sampling results on site, and provide the results to MSHA, miners, and their representatives. Unlike in this proposed rule, where the results are not required to be reported to MSHA outside of an inspection. The proposed rule should require mine operators to be consistently performing hazard assessments and evaluating the control measures in place to prevent exposures to silica. The semi-annual evaluation and related sampling are insufficient to address the real-world changing nature of the mining industry.

The proposed rule should strengthen requirements when mine operators find exposures over the permissible exposure limit. Making respiratory protection available is not sufficient before the next work shift when mine operators should be taking immediate corrective actions following the hierarchy of controls to lower the silica concentration. A change in conditions through monitoring can be an indication that high dust levels are unsafe and immediate corrective actions are needed by mine operators. This includes additional sampling, not just sampling until there is one result that is at or below the permissible exposure limit, and when there are citations issued – important corrective actions must be taken to ensure dust levels are reduced more permanently.

Recordkeeping

One of our members was first notified that he was exposed to high levels of silica while working underground cleaning belt spillage on a scoop. He had never heard of a level or exposure limit. The mine operator had also done a study that revealed in certain areas of his mine, silica levels are 150 µg/m³, which exceeds MSHA's current levels. This is one example of why MSHA should require all mine operators to keep records for longer than the proposed time periods. This is particularly important for MNM mines that are inspected less frequently than coal mines. Maintaining records helps to establish a pattern of exposure levels over time, as well as corrective actions taken and evaluations of the corrective actions. Retaining these records for only two-years is not sufficient to understand the pattern of exposures and the various controls used to eliminate/reduce exposures. Additionally, this information will be invaluable for miners who are determined to suffer from a silica-related health effect. We believe MSHA could follow OSHA's standard 1910.1020 Access to Employee Exposure and Medical Records.

MSHA must also require all mine operators to post the sampling results on site, and provide the results to MSHA, miners, and their representatives similar to the requirements under the respirable coal dust rule. As our member, Marshal Cummings, Chief Steward, Safety Committee Member, and Miner's Rep from Local 13214, testified in Denver, CO, mine operators do not always readily provide exposure monitoring data to miners or their representatives.

Proposed Medical Surveillance for Metal and Nonmetal Miners

In consultation with Steven Markowitz MD, DrPH, Director and Professor Barry Commoner Center for Health and the Environment, Queens College, City University of New York, the USW offers the following responses in italicized font to MSHA's questions:

32. MSHA is proposing to require medical surveillance for MNM miners. Medical surveillance is already required for coal miners under 30 CFR 72.100 and has played an important role in tracking the burden of pneumoconiosis in coal miners but is not currently required for MNM miners. MSHA's proposal would require MNM mine operators to provide each miner new to the mining industry with an initial medical examination and a follow-up examination no later than 3 years after the initial examination, at no cost to the miner. It would also require MNM mine operators to provide examinations for all miners at least every 5 years, which would be voluntary for miners. Is there an alternative strategy or schedule, such as voluntary initial or follow-up examinations, tying the medical surveillance requirement to miners reasonably expected to be exposed to any level of silica or to the action level that would be more appropriate for new MNM miners? Should the rule make each 5-year examination mandatory? Should the 5-year examination be mandatory for coal mine operators as well? Please provide data or cite references to support your position.

Currently active MNM miners should be offered voluntary medical evaluations within a reasonable time period after the rule becomes effective. There are a large number of such miners, and feasibility dictates that completing such evaluations for all who choose to have them will take some time. But, waiting five-years, to offer much less, to complete all such examinations is excessive. The rule should specify a time frame during which such initial exams should be offered to all current miners.

It appears that new miners would be offered examinations every three-years, but that current miners would be offered exams at five-year intervals. The logic of such a discrepancy is not apparent. Given the time course of silicosis and related nonmalignant respiratory diseases (NMRD) and the incidence of such diseases described in the rule's Preamble, reasonably early detection of such diseases requires that medical evaluations be offered every three-years, not every five-years. OSHA, for

example, requires offering of medical examinations to asbestos-exposed workers on an annual basis. Silicosis, especially sub-acute silicosis and silicosis that develops in younger workers, may significantly progress within a few years. All miners are entitled to learn about possible silicosis and NMRD on a three-year basis and thereby have the opportunity to reduce exposure before the disease(s) become too severe.

Mining employees with any potential exposure to silica should be able to have periodic medical evaluations. The Preamble enumerates the risk of silicosis and NMRD miners at the proposed action level (Table VI-6), thereby providing the rationale for offering exams at or below such exposure levels. Exposure levels at and below the action level and how they vary over time are not likely to be well-characterized, given the proposed monitoring scheme in the rule, thereby supporting the logic of offering exams to any worker in the MNM environment who has non-trivial exposure to silica.

Mining employers should be required to offer medical evaluations to employees, but such medical examinations should not be required of mining employees as a condition of employment. Knowledge of one's personal health status belongs first and foremost to each person and should be controlled by each person. This right is reflected, for example, in Health Insurance Portability and Accountability Act (HIPAA) and other confidentiality safeguards and applies as well to workers' health. There are exceptions, such as infectious diseases (e.g., COVID-19) where the worker themselves become the source of exposure and that knowledge is needed to control exposure to others. These exceptions are not relevant to exposure to silica in the mining environment.

Recognizing that medical evaluations should not be required; important efforts should be made to educate workers and encourage their participation in periodic medical evaluations so that they may monitor their own health.

33. MSHA's proposed medical surveillance requirements for MNM miners do not include some requirements that are in MSHA's existing medical surveillance requirements for coal mine operators in 30 CFR 72.100. For example, § 72.100 requires coal mine operators to use NIOSH-approved facilities for medical examinations. Should MNM operators be required to use NIOSH-approved facilities for medical examinations? Coal mine operators also are required to submit for approval to NIOSH a plan for providing miners with the examinations specified. This is because NIOSH administers medical surveillance for coal miners with requirements for coal operators, but not MNM operators, in NIOSH standards (42 CFR part 37). Should the plan requirements be extended to MNM operators? However, the proposed requirements also include some requirements for MNM operators that are not included for coal operators. For example, the

proposed provisions require operators of MNM mines to provide MNM miners with periodic medical examinations performed by physicians or other licensed health care professionals (PLHCP) or specialists including a history and physical examination focused on the respiratory system, a chest X-ray, and a spirometry test. The proposed rule also requires a written medical opinion be provided by the PLHCP or specialist to the mine operator regarding the miner's ability to wear a respirator. MSHA seeks comment on the differences between the medical surveillance requirements for MNM operators in this proposed rule and the existing medical surveillance requirements for coal mine operators in § 72.100. MSHA also seeks comment on how best to collect health surveillance data from PLHCPs and specialists to track MNM miners' health, for example how to know when pneumoconiosis cases occur. MSHA seeks comments on alternative approaches to scheduling periodic medical surveillance. MSHA proposes to require operators to keep medical surveillance information for the duration of a miner's employment plus 6 months. The Agency seeks comments on this proposed requirement and on any alternative recordkeeping schedules that would be appropriate. Please provide supporting information.

Whatever medical or health surveillance data are collected by mine operators, they should be required to keep such data for the duration of the mining employment plus 20 to 30 years. OSHA requires that employers keep employees' medical records for 30 years after they leave employment https://www.osha.gov/laws-regs/standardinterpretations/1999-04-15-1#:~:text=Exposure%20records%20must%20be%20maintained,of%20employment%20plus%2030%20years. Given the long latency of silicosis, NMRD and lung cancer, having access to prior medical records that date back many years may be helpful in the diagnosis and determination of causation for many employees. This is especially true in a fragmented health care system where frequent changes in health providers and administrative disorganization make obtaining prior medical records very challenging.

34. MSHA's proposed medical surveillance requirements for MNM miners would require operators of MNM mines to provide miners with periodic medical examinations performed by PLHCP or specialists, including a history and physical examination focused on the respiratory system, a chest X-ray, and a spirometry test. MSHA seeks comment on whether use of any new diagnostic technology (e.g., high-resolution computed tomography) for the purposes of medical surveillance should be used.

There is ample evidence that low dose chest CT scan (LDCT) would be the appropriate radiographic technology for the accurate and timely screening for silicosis.

Li et al compared low dose chest CT scan with chest x-ray (digital radiography) among ~900 coal mine workers for the detection of CWP in China. Low dose CT scan was far superior to digital radiography in detecting nodules consistent with CWP (Li et al. 2017: 10.3760/cma.j.issn.1001-9391.2017.09.009)

Du et al compared high versus low dose chest CT scan in the detection of lung nodules among coal miners in China and found no differences in image quality or detection of lung nodules consistent with CWP (Du et al. 2016: 10.3760/cma.j.issn.1001-9391.2016.09.009). This study demonstrated that the radiation doses associated with high or "normal" dose chest CT scans are not needed to detect CWP findings.

Steven Markowitz MD, DrPH, co-authored a study published in 2013 that showed that the low dose chest CT scan was three to five-times more sensitive than chest x-rays in detecting asbestos-related non-malignant chest fibrosis among nuclear weapons workers in the United States (Miller et al. Comparison of x-ray films and low-dose computed tomographic scans: demonstration of asbestos-related changes in 2760 nuclear weapons workers screened for lung cancer. J Occup Environ Med. 2013;55(7):741-5.)

More recently, Harris et al used low dose CT scans in Australian asbestos-exposed individuals and found significant interstitial lung changes in people with modest levels of asbestos exposure (Harris et al. Low dose CT detected interstitial lung abnormalities in a population with low asbestos exposure. AJIM 64: 567-575. February 2021)

The primary goal of medical surveillance of workers is early detection of disease or dysfunction to permit decision-making. LDCT is superior to the chest x-ray in the early detection of silicosis. As such, LDCT should be the test of choice for medical surveillance and early diagnosis.

A disadvantage of the LDCT is that the B reading system of pneumoconiosis classification cannot be used for reading the LDCT. An alternative reading system, the International Classification of HRCT for Occupational and Environmental Respiratory Diseases (ICOERD), can be used, and more physicians in the U.S. need to be trained in its use. Alternatively, radiology readings of interstitial abnormalities on LDCT can be used for reporting with the goal of developing a targeted standardization system for such readings. This issue has recently been addressed by a professional organization of radiologists in Australia [Royal Australian and New Zealand College of Radiologists. Imaging of Occupational Lung Disease, 2019, 12 pp.]

Importantly, early disease detection and subsequent notification of the individual worker that he or she may have occupational lung disease takes precedence over standardized disease reporting for public health purposes, however important the latter is. The LDCT is superior in accomplishing the former task. As such, the use of LDCT should be endorsed in the new MSHA rule.

Chest LDCT scans are also endorsed for the early detection of lung cancer (USPSTF, 2021).

LDCT scans have effectively detected early lung cancers in workers exposed to occupational carcinogens (Markowitz AJPH, 2018: 10.2105/AJPH.2018.304518; Welch JOEM 2019: 10.1136/oemed-2018-105431)

MSHA recognizes silica as a cause of lung cancer, including when there has been silica exposure in the absence of silicosis. Silica-exposed mining employees who are aged 50 or over and have silicosis or who have a 20 or more pack-year history of smoking cigarettes should be offered annual LDCT chest scan for the early detection of lung cancer.

This recommendation of LDCT for lung cancer detection is reflected in the Final Rule adopted by OSHA for beryllium-exposed workers. Per OSHA, Section 1910.1024(k)(3)(ii)(F): "A low dose computed tomography (LDCT) scan, when recommended by the PLHCP after considering the employee's history of exposure to beryllium along with other risk factors, such as smoking history, family medical history, sex, age, and presence of existing lung disease." https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1024

35. MSHA's proposed medical surveillance requirements would require that the MNM mine operator provide a mandatory follow-up examination to the miner no later than 3 years after the miner's initial medical examination. If a miner's 3-year follow-up examination shows evidence of a respirable crystalline silica-related disease or decreased lung function, the operator would be required to provide the miner with another mandatory follow-up examination with a specialist within 2 years. For examinations that show evidence of disease or decreased lung function, MSHA seeks comment on how, and to whom, test results should be communicated.

36. MSHA requests comments as to whether the proposed provisions should include a medical removal option for MNM miners who have developed evidence of silica-related disease that is equivalent to the transfer rights and exposure monitoring provided to coal miners in 30 CFR part 90 (part 90). Under part 90, any coal miner who has evidence of the development of pneumoconiosis based on a chest X-ray or other medical examinations has the option to work in an area

of the mine where the average concentration of respirable dust in the mine atmosphere during each shift to which that miner is exposed is continuously maintained at or below the applicable standard. Under part 90, coal miners are entitled to retention of pay rate, future actual wage increases, and future work assignment, shift and respirable dust protection. MSHA seeks comment on whether this medical removal option should be provided to MNM miners. What would be the economic impact of providing MNM miners a medical removal option? Please provide supporting information and data.

According to the same rationale for Part 90 in the coal dust standard (30 CFR part), workers in the MNM sector should be offered the same medical removal option. Unequal treatment of mining employees according to coal versus MNM sectors would be a gross injustice.

Extending medical surveillance to the MNM sector will finally bring MNM miners into alignment with their coal peers.

All miners must be protected with the same levels of protection and with strong provisions of a comprehensive medical surveillance program. Coal mining communities understand the importance of medical surveillance, and even in the smallest of communities they can still find NIOSH approved doctors. The medical surveillance program provided to coal mine workers has greatly benefited miners through early identification of health effects due to their occupational exposures. The proposed rule would ensure miners in the MNM mines are also provided this protection, and would prevent further exposure to silica that would worsen a miner's health issues. The proposed standard must also ensure that the miner's medical confidentiality is protected.

Our members and other miners in the MNM mines would benefit from a medical surveillance program similar to the Part 90 program for coal miners. These protections ensure that miners who have health effects due to silica exposure caused by their jobs can continue working in healthier parts of the mine without having their pay reduced, without fear of discrimination or termination. All miners should be treated equally when it comes to medical surveillance, coverage, and protection.

Conclusion

MSHA must act now to protect current and future miners. There cannot be any further delays in protecting miners from disease and death.

The Federal Mine Safety & Health Act of 1977 states, "FINDINGS AND PURPOSE SEC. 2. Congress declares that-- (a) the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource -- the miner…". USW requests MSHA to seriously consider incorporating our

recommendations into the final rule to improve the rule and protect all miners from the known and documented hazards of respirable crystalline silica. MSHA must also keep the application of the hierarchy of controls at the core of this rule to significantly reduce miners' exposures to silica dust, and prevent hundreds of deaths and thousands of diseases among miners.

USW thanks MSHA for acting and considering these comments on how best to design a new respirable crystalline silica standard, but MSHA must not let perfection stand in the way of progress in getting a standard delivered quickly to protect all miners as they need protections now.

Respectfully submitted,

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[i] Alexandra Lopez-Pacheco, "Hard Rock Revolution on the Horizon," CRM Magazine, May 03, 2017.
[ii] National Precast Concrete Association, "Silica: It's not Just Dust," https://precast.org/2012/11/silica-its-not-just-dust/