Assistant Secretary Christopher Williamson
Mine Safety and Health Administration
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National Black Lung Association's Written Comments on Proposed Rule, Lowering Miners' Exposure to Respirable Silica and Improving Respiratory Protection (RIN 1219-AB36)

Dear Assistant Secretary Williamson,

We, the National Black Lung Association, are writing a comment on the proposed rule by MSHA, "Lowering Miners' Exposure to Respirable Silica and Improving Respiratory Protection" (RIN 1219-AB36). While we support the rule overall, we do have concerns about the way in which it is written which could make it more susceptible for companies to continue to place workers in dangerous conditions.

The National Black Lung Association is a member-based organization founded in 1968 to help miners with black lung disability claims. Our association is composed of those directly impacted by this epidemic, the miners, spouses, and widows of those who have/had black lung disease. Over the last 60 years, the NBLA has tirelessly advocated for improvements to the black lung benefits program and mine safety protections. All our members reside in the coal mining regions and know first-hand that black lung continues to ravage our communities. This deadly disease forever alters the lives of the people stricken by it. We struggle daily to climb stairs, walk to our mailboxes, or play with our grandchildren. Activities that many take for granted in everyday life, we now struggle to complete. The tragic reality is that miners are being diagnosed at younger ages than previously seen. A 2018 study found the prevalence of coal worker's pneumoconiosis (CWP) or black lung in long-tenured miners nationwide exceeded 10% but in central Appalachia it rises to 21%[1]. This epidemic is directly impacting Central Appalachia with 1 in 5 tenured miners having black lung disease and 1 in 20 diagnosed with the most severe and totally disabling form of black lung - Progressive Massive Fibrosis. It is for that reason that we are in support of the proposal to lower the silica Permissible Exposure Limit (PEL) from 100 to 50 micrograms per cubic meter. We know that the prevalence of this disease is directly correlated to the amount of silica and coal dust miners face while on the job. As of right now, miners are exposed to a higher silica PEL than any other occupation in the U.S. Lowering this limit is a start towards decreasing the alarming rates of black lung we see in our communities.

MSHA must ensure that coal companies are not able to skirt the rule though. The current rule proposes a heavy reliance on operator sampling but as many of us miners have previously expressed, there is always a pressure to do what it takes to have a sample be compliant. As stated at the Beckley hearing last month, operators would often move miners out of the face to ensure the samples are compliant. Companies have failed to protect miners and the final rule needs to provide no leniency that could allow operators to continually subject workers to

[1] Blackley, D.J., Haldin, C.N., & Laney, A.S. (2018). Continued Increase in Prevalence of Coal Workers' Pneumoconiosis in the United States, 1970-2017. *American journal of public health,* 108(9), 1220-1222.

disease-causing silica dust. To accurately monitor silica levels, MSHA inspectors should be present during the sampling process and sampling should cover multiple shifts each quarter. Until new sampling technology is developed that could be more tamper resistant, the rule should specify that all operators should be required to conduct sampling, at minimum, every quarter using the best available sampling system or technology.

The final rule needs to clearly state the objective of protecting miners during all phases of the mining process, including construction and rehabilitation. There should be a clear outline of what positions in the mine will be sampled included in the finished rule to prevent previous cases where operators were able to move the sampler out of the face. Additionally, a significant amount of silica exposure happens during slope mining or shaft cutting to access an underlying coal seam. This mining aspect produces some of the highest levels of respirable silica dust due to the constant cutting into rock to clear the way to access deeply embedded coal. Historically, routine sampling has not occurred during this process. It should be a mandate for mine operators to notify MSHA when these activities are occurring and subsequently, MSHA must require sampling of all aspects of mining in the final rule.

The final rule needs to clearly specify the enforcement procedures for companies that have non-compliant samples. The proposed rule has no specified criteria for when a citation would be issued, unlike the 2014 coal dust rule. Companies will not be compliant with this rule without a monetary incentive to protect working miners. Fines need to be initially significant and progressive in nature and imposed on any mine with a single dust sample with a silica concentration greater than 50 micrograms per cubic meter. The fine for each non-compliant sample after the initial needs to be higher and progressively increase per noncompliant sample for mines that fail to follow the silica permissible exposure limit stated in the rule. We cannot tolerate any additional cases of black lung. Whether it progresses slowly or rapidly, it is a death sentence for the miner. The final rule must be heavily enforced to be effective at preventing disease.

Lastly, we are concerned about the unclear definition that would require miners to work temporarily in conditions of dangerous silica dust levels with only a respirator as a form of protection. We know respirators to be difficult to wear while working in the mine and require a perfect seal on the face to prevent exposure to dust. Personal protective gear cannot be the sole form of protection for working miners exposed to high levels of dust. If a mining environment does not comply with the 50-microgram limit, that operation should be shut down until better engineering and design can be implemented to comply with that limit. Respirators have been used frequently in mining in years past but there are many settlements proving that their effectiveness is not always adequate at protecting a miner from high exposures of dust.

Under federal law, MSHA has the responsibility to protect miners from black lung disease. For too long this disease has ravaged our communities. We are worried about the younger miners, those who are still in the mines, and those who will be in the future. A recent investigation by Howard Berkes reported that there were 21,000 excessive silica dust exposures from 1986 to

2016[2]. These exposures led to our disease; it has led to many of us having to leave the workforce in our forties. Overexposure to silica dust will continue to be a persistent problem until it is adequately controlled and enforced. It is too late for many of us, it is time to protect the miners behind us.

Sincerely,

Leadership of the National Black Lung Association
Black Lung Association of Southwest Virginia Chapter 1
Black Lung Association of Southwest Virginia Chapter 2
Black Lung Association of Southeastern Kentucky
Fayette County Black Lung Association

[2] https://publichealthwatch.org/2023/08/31/the-federal-fix-for-silica-dust-understates-what-we-found-thousands-of-coal-miners-still-sick-and-dying/