

CONSTRUCTION INDUSTRY SAFETY COALITION

September 27, 2013

AMERICAN ROAD AND
TRANSPORTATION BUILDERS
ASSOCIATION

AMERICAN SUBCONTRACTORS
ASSOCIATION

ASSOCIATED BUILDERS AND
CONTRACTORS

ASSOCIATED GENERAL
CONTRACTORS

ASSOCIATION OF THE WALL
AND CEILING INDUSTRY

CONCRETE SAWING &
DRILLING ASSOCIATION

CONSTRUCTION &
DEMOLITION RECYCLING
ASSOCIATION

INTERLOCKING CONCRETE
PAVEMENT INSTITUTE

INTERNATIONAL COUNCIL OF
EMPLOYERS OF BRICKLAYERS
AND ALLIED CRAFTWORKERS

MARBLE INSTITUTE OF
AMERICA

MASON CONTRACTORS
ASSOCIATION OF AMERICA

MECHANICAL CONTRACTORS
ASSOCIATION OF AMERICA

NATIONAL ASSOCIATION OF
HOME BUILDERS

NATIONAL ELECTRICAL
CONTRACTORS ASSOCIATION

NATIONAL ROOFING
CONTRACTORS ASSOCIATION

NATURAL STONE COUNCIL

THE ASSOCIATION OF UNION
CONSTRUCTORS

TILE ROOFING INSTITUTE

The Honorable David Michaels
Assistant Secretary of Labor
Occupational Safety and Health Administration
U.S. Department of Labor
Room S-2002
200 Constitution Ave., NW
Washington, DC 20210

Re: Extension of Silica Rulemaking Deadlines (Docket No. OSHA-2010-0034)

Dear Dr. Michaels:

I am writing on behalf of several construction industry trade associations, and their members, to request a 90-day extension of time to March 11, 2014, to file written pre-hearing comments on OSHA's recently released crystalline silica proposed rule. We are also requesting that the other deadlines established in the Notice of Proposed Rulemaking, including the deadline for interested parties to file a Notice of Intention to Appear at the public hearing and the public hearing be extended by 90 days, to February 10, 2014 and June 1, 2014, respectively. While we appreciate OSHA's interests in moving expeditiously with the rulemaking process, we respectfully assert that the current 90-day pre-hearing comment period and the other established deadlines are insufficient to allow stakeholders to thoroughly review the rulemaking record, analyze data outside of the record, and prepare thoughtful, data-driven comments that can assist the Agency in its decision-making process.

90-Day Extension of the Pre-Hearing Comment Period

Eighteen trade associations representing members from virtually all facets of the construction industry have formed a coalition – the Construction Industry Safety Coalition – to participate in OSHA's silica rulemaking process. Given the wide reach of the Coalition's members, we are uniquely positioned to provide OSHA with the type of comments and feedback on the proposed rule that the Agency is seeking through the rulemaking process. The current members of the Coalition are:

- American Road and Transportation Builders Association
- American Subcontractors Association
- Associated Builders and Contractors
- Associated General Contractors
- Association of the Wall and Ceiling Industry
- Concrete Sawing and Drilling Association
- Construction and Demolition Recycling Association
- Interlocking Concrete Pavement Institute
- International Council of Employers of Bricklayers and Allied Craftworkers
- Marble Institute of America
- Mason Contractors Association of America
- Mechanical Contractors Association of America
- National Association of Home Builders
- National Electrical Contractors Association
- National Roofing Contractors Association
- Natural Stone Council
- The Association of Union Constructors
- Tile Roofing Institute

As stated above, the Coalition is seeking an additional 90 days to submit pre-hearing comments on the proposed rule. This extension is warranted, and indeed necessary, for several reasons.

First, the proposed rule itself and the underlying economic and technological feasibility analyses are so voluminous that simply reviewing this material alone will take the vast majority of the initial 90-day comment period. The rule itself spans over 230 pages in the *Federal Register* and that does not include the supporting materials – developed by OSHA and its contractors – related to risk and feasibility. After completing review of the proposed rule and supporting analyses, stakeholders have to determine their positions, draft comments supporting same, and support their views with data and analyses. Performing all of these tasks within 90 days is virtually impossible. We note that the Office of Information and Regulatory Affairs (OIRA) needed more than two years to conduct its review.

Second, the documents currently in the docket supporting the proposed rule number over 1,700. This is an extraordinarily large record, which stakeholders need to review, analyze, and incorporate into their analyses and comments. Some of these documents are hundreds of pages long and many are not available electronically. Even identifying those documents that are relevant to the construction industry will take significant time; this does not include a review of the substance contained within them.

A thorough review of the proposed rule, supporting analyses, and documentation in the rulemaking record is exactly what OSHA is seeking in this proposed rule. There is little value to the Agency in setting a comment period that is so short so as to limit meaningful comments. The Coalition takes OSHA at its word that it is interested in hearing from stakeholders regarding

the approach to the rule and its underlying provisions and analyses. In order to effectively provide that to OSHA, all stakeholders need additional time.

A perfect example of this relates to OSHA's Table 1 in the proposed construction standard. In certain ways, Table 1 is a unique approach to addressing silica exposures in the construction industry. OSHA has included several different tasks in Table 1, along with certain ancillary requirements, control methods, and respiratory protection. Table 1 could have significant impacts on the construction industry and it is important for the Coalition to thoroughly review what is currently included in the table, identify data related to the tasks and control measures required, and provide feedback to OSHA on these findings. More importantly, the Coalition needs to identify if there are other tasks that should be included in a Table 1 and provide detailed information to the Agency on those, as well. The construction industry has repeatedly stressed to OSHA – most recently in meetings with the Agency and representatives of OIRA – the unique nature of the construction industry as it relates to this proposed rule. Developing a robust record for the Agency's consideration and use in this regard takes significant time – more than the current 90 days set by the Agency.

Third, 90 days does not provide stakeholders sufficient time to generate data that may be useful to the Agency in analyzing the need for and the effects of the proposed rule. As you know, comments to OSHA in the course of a rulemaking are only as effective as the data and information underlying them. To that end, the Coalition is committed to providing as much specific data and information as possible to assist the Agency in its deliberative process. More time is needed, however, to gather – and in some instances generate – this data and information. A comment period of 90 days is inadequate for this purpose.

We understand that the pre-hearing comment period is simply the first part of the rulemaking process and there may be opportunities to supplement initial comments with additional information after the public hearings. We respectfully assert, however, that setting a pre-hearing comment period that allows stakeholders to provide data-driven comments to the Agency *before the hearing*, is essential to the process, so that OSHA and other stakeholders can review and respond to the data during the hearing itself.

90-Day Extension of Other Deadlines

For many of the same reasons, the Coalition is also requesting that all deadlines in the rulemaking process be pushed back by 90 days.

Currently, the hearing in this matter is set for March 4, 2014. Extending the pre-hearing comment period by 90 days, which is necessary in our view for the reasons above, would interfere with this hearing date. As discussed above, another important part of the rulemaking process is allowing stakeholders to review all parties' comments before the start of the hearing in order to build a robust record for the Agency's use during the hearing. OSHA recognizes the importance of this in the current proposal by leaving almost three months in between the close of the pre-hearing comment period and the start of the hearing. The Coalition's proposal is essentially to keep the same period of time currently set from the close of the comment period to the start of the hearing, but push the timing for everything back 90 days. Included in this

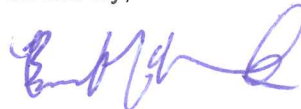
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would be the other deadlines for commenting set in the proposal (e.g., filing Notices of Intention to Appear at the hearing and submitting hearing testimony). This is the best way to ensure a robust and substantive record for this important rule.

We understand the Agency's desire to try to proceed expeditiously with the proposed rule. Further, we know that the Agency has been working on this rule for almost two decades. As a result, the Coalition is not asking for a significant extension of time. On the contrary, we are asking for this short extension so that we can provide the type of data-driven, thorough comments that will be of value to the Agency. We are committed to doing so and hope that the Agency provides this additional time to allow this to happen.

We appreciate in advance your consideration of this request.

Sincerely,



Bradford T. Hammock

cc: Rep. John Kline, Chairman, House Committee on Education and the Workforce
Rep. George Miller, Ranking Member, House Committee on Education and the Workforce
Rep. Tim Walberg, Chairman, Subcommittee on Workforce Protections, House Committee on Education and the Workforce
Rep. Joe Courtney, Ranking Member, Subcommittee on Workforce Protections, House Committee on Education and the Workforce
Sen. Tom Harkin, Chairman, Senate Committee on Health, Education, Labor and Pensions
Sen. Lamar Alexander, Ranking Member, Senate Committee on Health, Education, Labor and Pensions
Sen. Bob Casey, Chairman, Subcommittee on Employment and Workplace Safety, Senate Committee on Health, Education, Labor and Pensions
Sen. Johnny Isakson, Ranking Member, Subcommittee on Employment and Workplace Safety, Senate Committee on Health, Education, Labor and Pensions
Dr. Howard Shelanski, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget
Dr. Winslow Sargeant, Chief Counsel for Advocacy, U.S. Small Business Administration
OSHA Docket Office [Docket No. OSHA-2010-0034]