

June 24, 2015

To the Members of the Senate Appropriations Committee:

We represent a vast array of industries, employers, and parts of the economy that would be severely impacted by the Occupational Safety and Health Administration's (OSHA) proposed rulemaking to revise the standard on occupational exposure to respirable crystalline silica (RCS) issued in the Federal Register on September 12, 2013. This proposed regulation is deeply flawed and we believe OSHA has failed to answer many fundamental questions and conduct an adequate review of the data before rushing forward with this regulation.

Senator Hoeven is expected to offer an amendment to the Fiscal Year 2016 Labor, Health and Human Services, and Education Appropriations bill that would require OSHA to properly study and address several key questions before finalizing the silica rule. These are ALL issues that OSHA should have addressed in their rulemaking but ignored, and outreach they should have conducted but refused to. Senator Hoeven's amendment would be a constructive step towards ensuring the most modern and efficient approaches to protect employees from the dangers of RCS are implemented. For these reasons, we urge you to support Senator Hoeven's amendment:

- 1) **OSHA should conduct a new small business panel review under the Small Business Regulatory Enforcement Fairness Act (SBREFA)**—OSHA conducted a SBREFA review back in 2003—more than ten years before this regulation was actually proposed. Since then, much has changed in the economy and the workplace regarding exposure to respirable crystalline silica. The 2003 panel review did not include any consideration of the impact this regulation would have on the oil and natural gas industry, which is one of the industries that would be hardest hit by this proposal and is heavily populated by small businesses and contractors conducting field operations. The 2003 report recommended that OSHA “(1) carefully consider and solicit comment on the alternative of improved outreach and support for the existing standard; (2) examine what has and has not been accomplished by existing outreach and enforcement efforts; and (3) examine and fully discuss the need for a new standard and if such a standard can accomplish more than improved outreach and enforcement.” Unfortunately, OSHA has ignored these recommendations. OSHA needs to hear directly from small businesses, specifically those in the oil and natural gas industry who were not included in the 2003 process in the way that only a SBREFA small business review panel can provide.
- 2) A study by the National Academy of Sciences should be conducted to answer several key issues that OSHA has not addressed:
 - a. **The prevalence or lack of disease and mortality associated with the current OSHA exposure limits**—Despite the voluminous rulemaking record, OSHA has not yet established that the current exposure levels (100 $\mu\text{g}/\text{m}^3$ for general industry and maritime, and 250 $\mu\text{g}/\text{m}^3$ for construction) are insufficiently protective. OSHA provides no empirical evidence of silicosis or silicosis-related

mortality in those exposed to the current permissible exposure level (PEL) and OSHA provides no empirical data indicating that the current PEL is not protective. Indeed, there is reliable data and commentary that says the current exposure levels are more protective than necessary. Not only has OSHA failed to demonstrate the current PELs are not protective, but OSHA has not been able to show that the proposed PEL ($50 \mu\text{g}/\text{m}^3$ for all industries) is the level of exposure below which employees will be protected.

- b. The ability of laboratories to measure exposures accurately below the current OSHA exposure limits**—The proposed regulation would create several new requirements for employers such as exposure monitoring and protective measures based on the exposure levels to RCS in the workplaces. Unfortunately, independent studies, and even OSHA’s testing, has shown that the laboratories that would be conducting the exposure testing are only able to determine within a margin of error of $\pm 50\%$ what level of silica is present in the samples at the exposure levels that trigger the various requirements in the proposal. This means that employers would not be able to reliably determine whether they have met the requirements of the regulation.
- c. The value of personal protective equipment (PPE) in protecting employees**—OSHA ignores the widespread use of low cost but effective personal protective equipment such as respiratory protection of various types in evaluating the level of RCS to which employees are currently exposed. Not taking the use of PPE into account creates the impression that employees are being exposed to high levels of RCS without any protection.
- d. The steady decline in silicosis related mortality rates based on data maintained by the Centers for Disease Control**—Occupational disease mortality related to silica has declined dramatically in the United States over the last 45 years. The most recent and reliable U.S. government data, from the U.S. Centers for Disease Control and Prevention (CDC), documents that there were 123 deaths from silica-related disease in the U.S. in 2007, down from nearly 1200 cases in 1968—a 93% reduction in mortality. OSHA has dismissed this data and not bothered to examine the 123 cases from 2007 (or other years either) to determine the circumstances around them. For instance: At what level of RCS were these people exposed, and for how long were they exposed?; Whether or not these people had other health issues or smoked cigarettes; Which industries and workplaces produced these exposures? Without an in-depth understanding of the remaining cases of silicosis related mortality there is no way OSHA can claim that a new regulation of this magnitude is warranted.
- e. The costs of the different types of PPE as compared to the costs of engineering and work practice controls**—OSHA presumptively dismisses the use of PPE as a primary approach to protecting employees; instead, relying on the outdated “hierarchy of controls” that emphasizes much more costly, disruptive, and often less effective, engineering and work practice controls in mandating how employers will be required to protect employees under the new requirements.

OSHA’s proposed silica regulation would impose billions of dollars of cost on employers that would result in less economic growth and significantly impede the exploration and

development of new and badly needed sources of energy while possibly not addressing the most effective way to protect human health. It would also cause tremendous disruption in industries that are still struggling in the aftermath of the recession such as construction and foundries. Most importantly, OSHA has not supported the proposal with adequate data or answered several questions that are central to the rulemaking. We urge you to support Senator Hoeven's amendment that would suspend the rulemaking and force OSHA to address key issues that should have been part of their proposal package.

Sincerely,

American Exploration & Production Council
American Foundry Society
Associated Builders and Contractors
Associated General Contractors
Association of Energy Service Companies
Independent Petroleum Association of America
Mason Contractors Association of America
Mining Awareness Resource Group
National Association of Home Builders
National Roofing Contractors Association
Petroleum Equipment and Services Association
Portland Cement Association
Tile Roofing Institute
U.S. Chamber of Commerce
US Oil & Gas Association