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Human Resources Policy

August 18, 2014

OSHA Docket Office,
Docket No. OSHA-2010-0034
U.S. Department of Labor, Room N-2625,
200 Constitution Avenue NW
Washington, DC 20210

By Electronic Submission: www.regulations.gov

Re: Docket No. OSHA-2010-0034, Occupational Exposure to Crystalline Silica, Final Brief

For the Docket:

On behalf of the National Association of Manufacturers (NAM), thank you for the opportunity to file final comments concerning the Occupational Safety and Health Administration's (OSHA) proposed rule on the Occupational Exposure to Crystalline Silica, Docket No OSHA-2010-0034.

The NAM is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs nearly 12 million men and women, contributes more than \$1.8 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for two-thirds of private-sector research and development. The NAM is the powerful voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The NAM and its members are committed to making every workplace as safe as possible and support OSHA's efforts to reduce ill effects on employees from exposure to hazardous substances in the workplace, such as respirable crystalline silica (RCS). In adopting the Occupational Safety and Health Act of 1970, Congress recognized the need to take a balanced approach to the regulation of workplace exposures to hazardous chemicals. This means, in significant part, that OSHA is required to limit the scope of its standards to those activities where employees are truly at risk and to adopt only those requirements that are necessary to materially and directly reduce the risk in the most cost-effective manner. This proposed rule does not achieve either of these objectives. As such, the NAM's position on the proposed rule remains the same as it was when the rule was announced and urges it be withdrawn.

The proposed reduction of the permissible exposure limit (PEL) from 100 ug/m³ to 50 ug/m³, with an action level of 25 ug/m³ is unnecessary, will be unachievable for many employers, and will be very costly for almost all affected. If adopted as proposed, this standard will lead to businesses having to decide whether to close their doors or move their operations elsewhere. Employers have worked for decades to achieve compliance with the current PEL and, through these efforts, have adopted the best possible and most cost-effective ways to keep all their employees safe.

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OSHA has acknowledged that there is no exposure-response data at exposures below the current PEL that show any risk of harm. It is universally recognized that the current methods for sampling, measuring, and analyzing respirable crystalline silica are not exact, but are subject to variation or error. In the economic analysis, OSHA states that the method has a precision error of +/- 23 percent at a working range of 50 to 160 micrograms, and a sampling and analytical error (SAE) of +/- 19 percent. OSHA adds to the confusion by failing to explain the relationship between an "overall analytical error" of +/- 26 percent and the combination of a precision error of +/- 23 percent and a sampling and analytical error of +/- 19 percent. A proposed PEL at 50 ug/m³ and an action level at 25 ug/m³, will not be feasible for some manufacturers to achieve, and in addition, based on current methods of testing, OSHA has not yet proven that any laboratory will have the ability to take accurate and reliable measurements at the proposed level. Thus, for an employer to consistently achieve an exposure level of 50 micrograms, it would have to achieve an actual exposure level of no greater than 43 micrograms; yet OSHA has acknowledged that 50 micrograms is the lowest feasible PEL. (Preamble at 78 Fed Reg. 56283). If laboratories cannot accurately test at this level how can employers ever know if they are in compliance with the rule?

Next, the proposed standard requires employers to implement engineering and work practice controls. OSHA proposes that in instances where engineering and work practices will not achieve compliance with the PEL, employers are required to use these engineering controls nonetheless. As a result, manufacturers could spend unduly burdensome portions of their revenue implementing measures that are well-established, but considered insufficient by OSHA. The NAM proposes OSHA restrict the rulemaking to the most cost-effective methods of achieving compliance, and withdraw any requirement that an employer engage in activities that are known to be ineffective. The advances in respiratory protection have been such in the last 50 years that OSHA should re-examine its adherence to the hierarchy of controls, and recognize that respirators can be more effective and cost-efficient than many largely ineffective and expensive engineering controls.

The proposed standard also prohibits the use of job rotation in order to reduce employee exposure to RCS. The conventional industrial hygiene approach is that, where risk is a function of the cumulative quantity and duration of exposure, the employer should be empowered to take action to reduce an employee's exposure to that hazard by any reasonable means. Manufacturers believe job rotation is an effective way to mitigate all potential health risks associated with silica. The NAM therefore recommends OSHA permit job rotation as a common sense method of reducing the duration of an employee's exposure to RCS along with practical engineering and respiratory controls as reasonable methods of reducing or eliminating employee exposure.

With respect to costs, OSHA has issued a preliminary economic assessment in support of this proposed rule. In that assessment, OSHA has grossly underestimated the costs for equipment, training, monitoring, and the amount of staff necessary to implement the requirements of the proposed rule. OSHA has further made assumptions that are without foundation, such as its assumption that training or medical monitoring are performed by an organization's own staff or that a fixed cost for these activities can be applied to small and large organizations alike. This assumption simply has no merit. As an example, one manufacturer stated that the company will spend nearly \$45,000 a quarter to comply with the proposed sampling requirements. Another member stated that the cost for air sampling testing would go from \$13,000 per test to nearly \$40,000 each time a test is conducted.

Further, OSHA suggests the cost of training would be \$2.00 per employee. The NAM and its members, however, find this wholly underestimated. In fact, one NAM member explained that an hour of their employee's time is valued at \$30, which includes hourly pay and benefits. If you add into that the cost of lost production because an employee is training, the total cost per employee is closer to several hundred dollars. Due to this difference, OSHA has clearly not

undertaken a fair or realistic assessment of any of the costs to comply with the proposal. As such, the costs to comply will have a destructive effect upon manufacturing jobs as well as the viability and competitiveness of manufacturers.

During testimony and in written comments, the NAM encouraged the agency to be mindful of the unintended consequences of getting such a policy wrong. If the standard OSHA is seeking misses the mark and due to unrealistic regulation and unsustainable costs these industries shutter, it will be nearly impossible to get them back.

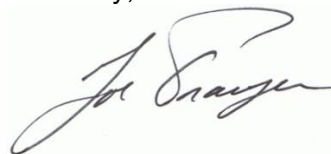
Additionally, OSHA requires the implementation of equipment, like ventilation and wet assisted tools, in order to manage employees' exposure to RCS. OSHA, however, has neglected the conflicts this will create with the ongoing efforts to manage other hazards, or comply with other regulations. For example, air permitting will need to be changed in order to account for increases in ventilation. Ventilation systems will need to be substantially reconfigured to rebalance air distribution patterns. Water used in wet assisted equipment will need to be managed properly and could create unnecessary hazards. Employees will need to be provided with overtime pursuant to the Fair Labor Standards Act in order to meet a number of requirements like exposure assessments that continue for greater than an employee's scheduled shift.

The NAM addressed each of these issues in more detail through written comments, and testimony at the public hearing. Notwithstanding OSHA and other stakeholder presentations at the public hearing supporting the rule change, and the documents and comments submitted to the docket over the past few months, the NAM remains convinced the proposed rule to lower the current PEL, and imposing new mandates on employers is neither necessary nor will it achieve the underlying goal of making employees more safe.

There is a concern with how the administrative process was handled in this rulemaking that should be noted. First, the administrative law judge limited stakeholder questioning of the OSHA panel to a mere five minutes. This is in stark contrast to the process during the ergonomics rule where the administrative law judge (ALJ) allowed for the OSHA panel to be available for cross-examination for 17.5 hours over two days. Clearly, a rule of the magnitude and impact currently under consideration by the agency warrants an appropriate opportunity for the affected community to seek clarification and ask questions about the proposed regulation. The NAM believes OSHA did not provide adequate time in this stage of the process.

The NAM appreciates the opportunity to provide further comments on the proposed rule and urges OSHA to withdraw the rule. Should you have any questions please feel free to contact me at JTrauger@nam.org or at (202) 637-3127.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Trauger", written in a cursive style.

Joe Trauger
Vice President
Human Resources Policy