



(“DoL”) (collectively “Respondents”),<sup>1</sup> jointly move this Court to further extend the dates for the filing of Petitioners’ briefs set forth in the Clerk’s Order (May 3, 2017) by 30 days, and for the filing of Respondents’ brief by 37 days. The Clerk’s Order granted an initial joint motion to extend the briefing schedule filed by Petitioners and Respondents on May 2, 2017, that requested an additional 45 days. OSHA filed a certified list of the record on June 20, 2017.

The parties seek an extension of the briefing schedule so that they may continue on-going discussions regarding a potential resolution of concerns that have been identified with the rule under review, and to provide time for the newly confirmed Secretary of Labor to consider the matter before him. In addition, OSHA has submitted to the Office of the Federal Register (“OFR”), and is expected to issue within the next week, a proposed rule relating to the final standard under review in this case. In further support of this motion, the parties state as follows:

1. Petitioners are challenging DoL’s and OSHA’s final rule “Occupational Exposure to Beryllium” (82 Fed. Reg. 2470; Jan. 9, 2017). The effective date of the standard was May 20, 2017 (*see* 82 Fed. Reg. 14439; Mar. 21, 2017) and there are compliance dates for various regulatory obligations of March 12, 2018, March 11, 2019, and March 10, 2020.

2. On May 2, 2017, Petitioners submitted to OSHA a “Petition for Administrative Stay and for Re-Opening of the Rulemaking Record” (“Petition”). The Petition requested that the Agency: (i) stay the final rule’s effective date

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<sup>1</sup> Intervenor United Steelworkers (“USW”) has represented to counsel for Petitioners that it has no objection to the 30-day extension.

pursuant to 5 U.S.C. § 705 and 29 U.S.C. § 655(b) of the Occupational Safety and Health Act (“OSH Act”); and (ii) re-open the rulemaking record to allow further comment on various aspects of the standard. OSHA has yet to formally respond to the Petition, and the rule is now in effect.

3. Certain Petitioners and OSHA staff are currently discussing a potential resolution of concerns that have been expressed about specific provisions of the final rule. This includes clarifications of various provisions and related Agency interpretations, as well as technical amendments, and OSHA’s consideration of whether it will need to weigh more substantive changes to the standard as presently written. To the extent that the parties have additional time to resolve these issues before the briefing schedule imposes deadlines on the parties, the universe of issues potentially subject to litigation will be reduced, as will the number of issues that must be briefed and considered by the Court. In addition, OSHA recently submitted to the OFR a proposed rule relating to the standard under review here. That proposed rule may address some of the issues that Petitioners otherwise intend to raise in this litigation.

4. The current date of July 10, 2017 for submission of the Petitioners’ briefs also does not allow OSHA, and in particular the current administration’s new appointees, adequate time to consider the complex issues affecting the final rule. The Secretary of Labor, Alexander Acosta, was only confirmed by the U.S. Senate on April 27, 2017, and the Assistant Secretary of Labor for OSHA has yet to be nominated. The requested 30-day extension in the briefing schedule will allow new

leadership additional time to attempt to review the matter without expending resources unnecessarily. Specifically, the parties propose that that Petitioners' briefs be due on August 9, 2017. The parties further propose that Respondents' brief be due 37 days later, on September 15, 2017, due to Respondents' counsel's previously-scheduled travel from August 25, 2017 to August 31, 2017.

5. The parties believe that an extension of the briefing schedule dates will conserve resources of the parties and the Court, and allow the parties to avoid litigation and focus on an administrative resolution to outstanding matters.

Dated: June 23, 2017

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 23, 2017, the foregoing document was filed with the Clerk of the Court via CM/ECF. I also certify that the foregoing document is being served this day on counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF and through regular U.S. mail to the following counsel who do not appear in the CM/ECF system (Samuel Romaninsky, Harsco Corp, 350 Poplar Church Road, Camp Hill, PA 17011).

*/s/ Timothy C. Sansone*

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