

October 7, 2013

The Honorable David Michaels, Ph.D., MPH  
Assistant Secretary  
Occupational Safety and Health Administration  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

Re: Docket ID OSHA-2010-0034, Occupational Exposure to Respirable Crystalline Silica

Dear Dr. Michaels,

The Mason Contractors Association of America (MCAA) respectfully requests a 90 day extension to the public comment period for the proposed silica rule (referenced above).

The MCAA is a small trade association representing both union and non-union masonry contractors throughout the US. A major focus for our trade association has been the promotion of safety on the job-site. As such, silica has been a major focus of our programs over the past decade. Our member companies have done extensive research on silica exposure throughout the years, much of the research done in cooperation with the OSHA Consultation program and / or other government agencies.

It is our goal that MCAA members and the entire construction industry adhere to a rule that is both technologically and economically feasible, while at the same time this rule should show that the protection level is appropriate for further reducing the number of employees at risk for this disease. As we have been monitoring the impact of the current PEL level (in particular for construction), we have been very pleased with the results. Having a 93% reduction in silica related diseases over the last 10 years is a wonderful measure of its success.

All that being said, it is understandable that OSHA would like to see that reduction increased. Our members share that desire. As I stated earlier, the MCAA is a relatively small trade association with limited resources. We feel it is incumbent upon us to thoroughly review and respond to the proposed reduction in the PEL (which is an 80% reduction for construction). Several masonry operations have been specifically singled out as areas of concern and we need the opportunity to fully vet the proposed rule and compare your results to ours. A complete vetting of the more than 1700 documents already in the docket will be a major undertaking for the limited resources of our association.

In addition to our request for an extension for comment, we have several other concerns we would hope to address. The first is to recommend that OSHA convene a new panel under the Small Business Regulatory Enforcement Fairness Act. It appears that a significant amount of economic data that was collected from the 2003 panel is now being used as a basis for the rule being proposed in 2013. There has been a dramatic recession since 2008 which has completely changed



the validity of numbers from 2003 particularly numbers estimating profitability of masonry companies. Our members have seen a dramatic reduction in profits with most work still today going for slightly above break-even. To utilize 2003 economic numbers in today's economy is misleading and inaccurate.

The MCAA would also request that OSHA extend the schedule for the hearings and modify the hearings on the proposed rule. We would request that the notice to appear and the hearings schedule itself be extended 90 days. In addition, given the nature of the construction business and the current rule which acknowledges the differences in a controlled general industry rule and construction rule, we would request that separate hearings be held for the construction industry versus that of general industry.

Lastly, we would request that OSHA extend the hearings outside of the DC area and hold Regional hearings. Throughout our process, we (and our state chapters) have worked with many state governmental agencies and we have people throughout the country who have tremendous knowledge on this issue. Forcing those folks to attend hearings in DC at the beginning of the construction season prevents those who may have scheduling issues or financial limitations (both of these would impact small business owners to a greater extent) from being heard. Many small business people who would like to be heard can't afford a trip to DC both in time and dollars. Contractors in states such as California have worked tirelessly with their state agencies to develop specific state regulations on silica and deserve to have an opportunity to testify on and share their experiences.

We appreciate your consideration of the above requests and look forward to hearing from you. If you have any questions or need anything else from me, please do not hesitate to contact me at 224-678-9709 or [jeffb@masoncontractors.org](mailto:jeffb@masoncontractors.org).

Sincerely,



Jeff Buczkiewicz

President

Mason Contractors Association of America

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  
Rep. Joe Courtney, Ranking Member, Subcommittee on Workforce Protections  
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  
Sen. Johnny Isakson, Ranking Member, Subcommittee on Employment and Workplace Safety  
Dr. Howard A. Shelanski, Administrator, Office of Information and Regulatory Affairs  
Dr. Winslow Sargeant, Chief Counsel for Advocacy, U.S. Small Business Administration