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Loren Sweatt  
Principal Deputy Assistant Secretary of Labor  
Occupational Safety and Health Administration  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, D.C. 20210

Re: Construction Industry Safety Coalition  
Comments to Request for Information; Occupational Exposure to Respirable  
Crystalline Silica- Specified Exposure Control Methods  
Docket No. OSHA2010-0034; RIN 1218AD18

Dear Ms. Sweatt

I write on behalf of the Construction Industry Safety Coalition ("CISC"). The CISC respectfully files the enclosed written comments to OSHA's Request for Information on Occupational Exposure to Respirable Crystalline Silica Specified Exposure Control Methods, 84 Fed. Reg. 41667 (August 15, 2019). The CISC appreciates OSHA's consideration of the information and data presented in these comments.

Sincerely,

LITTLER MENDELSON, P.C.

Bradford T. Hammock  
Melissa Harclerode

Enclosures

## Construction Industry Safety Coalition

### Response to OSHA's Respirable Crystalline Silica Request for Information

Docket No. OSHA20100034

#### 1. Introduction.

The Construction Industry Safety Coalition ("CISC") respectfully submits these comments in response to the Occupational Safety and Health Administration's ("OSHA") Request for Information ("RFI") on "Occupational Exposure to Respirable Crystalline Silica – Specified Exposure Control Methods," 84 Fed. Reg. 41667 (Aug. 15, 2019). The CISC appreciates OSHA's consideration of the information and data presented in these comments.

The CISC is comprised of 26 trade associations representing virtually every aspect of the construction industry. The CISC was formed several years ago to provide OSHA thoughtful, data-driven comments on regulatory initiatives. By pooling resources and members from the wide range of trades affected by OSHA regulatory actions, the participating construction industry trade associations believe that stronger and more detailed information can be submitted to OSHA during the rulemaking process. The CISC speaks for small, medium, and large contractors; general contractors; subcontractors; union contractors; etc.

The CISC was an active participant during OSHA's initial rulemaking on respirable crystalline silica. The CISC submitted extensive hearing written comments, participated in the public hearing, and submitted hearing comments and briefs.

Following publication of the final rule, the CISC worked closely with OSHA and organized labor in the development of numerous Frequently Asked Questions ("FAQs") designed to improve compliance with the rule in the construction industry and address some of the difficult interpretive issues that arose after the rule was finalized. The CISC appreciates the opportunity to work with OSHA to improve compliance with the respirable crystalline silica rule, which touches almost every trade in the construction industry.

The CISC applauds the Agency for issuing this RFI and has been pushing the Agency to do so for over two years. Expanding Table 1 and otherwise improving compliance with the rule is of paramount importance to CISC member associations and contractors across the country. Based upon the feedback the CISC has received from contractors, both large and small – compliance with the rule remains challenging. The CISC encourages OSHA to move quickly with rulemaking to permit contractors additional compliance options and tools.

#### 2. Executive Summary.

OSHA has issued this RFI primarily to gather additional information on engineering and work practice control methods that should be added to Table 1 and other equipment/tasks that might be included, as well. This effort is important to the construction industry and construction workers across the country. While mentioned, Table 1 as currently

constituted does not provide contractors a viable compliance option. The allowed controls included in the table are too limiting and the tasks included do not represent the wide range of activities that are commonplace on construction worksites. Expanding Table 1 will result in improved compliance throughout the construction industry.

The CISC recommends that OSHA quickly proceed to rulemaking to improve Table 1 and the overall functioning of the standard. Specifically, the CISC recommends that OSHA

- x Fourth, the CISC recommends that the Agency standardize a process, which establishes set criteria and relies on interim final rulemaking, to update and expand Table 1 in the future. This proposed process will allow for expeditious changes to the table so as to continue to push and recognize technological improvements.
- x And finally, the CISC discusses feedback received on the costs and impacts of the current rule and how the recommendations included in this response will result in significant cost savings without compromising employee health.

### 3. Background on RFI.

In this RFI OSHA is “requesting information on the effectiveness of engineering and work practice control methods not currently included for the tasks and equipment listed on Table 1 of the Respirable Crystalline Silica standard for construction.” 84 Fed. Reg. at 41667. In addition, the RFI seeks “information on tasks and equipment involving exposure to respirable crystalline silica that are not currently listed on Table 1, along with information on the effectiveness of engineering and work practice control methods in limiting worker exposure to respirable crystalline silica when performing those tasks.” Id

The RFI includes over 30 questions regarding types of control methods about which the Agency is specifically interested in receiving information, a variety of tasks that could potentially be added to Table 1, and other miscellaneous information, including information related to the costs and benefits of the respirable crystalline silica rule and Table 1.

From the outset of OSHA’s initial rulemaking on respirable crystalline silica, the CISC has been generally supportive of the Table 1 approach. Listing specified control measures for contractors to use to be in compliance with the monitoring requirements based on the permissible exposure limit (“PEL”) is in theory very useful to contractors and should result in improved compliance. As the CISC stated in its very first comments to OSHA on the respirable crystalline rule:

At the outset, the CISC wants to emphasize that it appreciates OSHA’s attempt in Table 1 to craft a performance based tool for use in the construction industry. The associations participating in the CISC have for some time urged OSHA to consider the unique aspects of construction work site silica exposures and, certainly, applauds OSHA for including Table 1 in the proposal.

Unfortunately, for several reasons the use of Table 1 is not as pervasive as it could or should be. First, several tasks on the table do not allow for multiple control options. For example, with respect to five of the first six tasks on the table, an integrated water delivery system is the only option provided. 29 C.F.R. § 1926.1153(c)(1)(i) When performing those tasks in conditions that do not permit the introduction of water to the work environment, use of the table is not possible. Similarly, for handheld and anchored drills and dowel drilling rigs for concrete, the use of wet methods is not permitted for those following Table 1.

29 C.F.R. § 1926.1153(d)(vii), (viii). The failure to include multiple control options for

repeatedly that its determination as to whether to proceed to revise and expand Table 1 should be based on good data. The CISC supports OSHA making a data-based decision in this regard. However, the CISC was extremely disappointed that OSHA did not grant an extension of time to submit these comments to the record, instead only providing stakeholders with 60 days to draft comments, develop and organize data, and submit it to the Agency.

finishing and hand wiping block walls to remove excess wet mortar, pouring concrete, and grouting floor and wall tiles).

The CISC appreciates this guidance from OSHA and many contractors have used it to help inform their own silica control efforts. However, there is still ambiguity with the FAQ. It states that performing this work will likely be outside the scope of the standard, but it does not state so definitively. These tasks also are not on Table 1. Thus, many contractors are required to devote resources assessing this type of work to determine exposures, approach to engineering controls, personal protective equipment (“PPE”), etc. In at least two areas – mortar mixing and drywall installation/finishing the CISC believes that data is sufficient for OSHA to exempt the tasks altogether. The CISC discusses this below.

a. Mortar Mixing

One of the most common tasks on construction sites is the mixing of mortar. Frequently this task is performed in silos of differing sizes and dimensions. These silos are at least partially enclosed and provided with various mechanisms to limit any dust generated by adding the mortar to the water in order to mix the product. When this task is performed in a silo under certain conditions, the data demonstrates that exposures are reliably under the action level. As a result, the CISC believes that this task should be excluded from the standard when performed in this manner.

certainty that if they are mixing mortar according to certain specifications, they ~~are not~~ covered by the standard.

b. Drywall Installation/Finishing

Another task that the CISC believes should be specifically excluded from the standard relates to drywall installation and finishing with drywall joint compound containing trace amounts of silica. This again, is a common task.



- Average exposure of 10  $\mu\text{g}/\text{m}^3$
- x Drywall finishing with pole sander
  - 4 samples
  - Average exposure of 22  $\mu\text{g}/\text{m}^3$
- x Drywall finishing with hand sander
  - 2 samples
  - Average exposure of 5  $\mu\text{g}/\text{m}^3$
- x Drywall finishing with combination of pole, vacuum throughout the test time
  - 13 samples
  - Average exposure of 19  $\mu\text{g}/\text{m}^3$
- x Applying joint compound
  - 3 samples
  - Average exposure of 12  $\mu\text{g}/\text{m}^3$

As with mixing mortar, the data shows that when performing work with drywall and drywall joint compound containing trace amounts of silica, exposures are consistently below the action level. The NIOSH recommends that OSHA exclude drywall installation and finishing from coverage of the standard, provided the following criteria are met: (1) the work is



performing a silica-generating activity during the course of a day will have a significant impact on exposure and the effectiveness of controls.

Allowing employers another option of limiting the performance of a task to an hour could dramatically expand the controls available. For example, OSHA may not have data indicating that use of a shroud and vacuum system for a particular task would result in exposures below the PEL when performed for four hours. However, that same data may demonstrate that performing the task for one hour would be well below the PEL and even the action level. Providing employers the option of using the shroud and vacuum system for



This is important research, which could potentially allow for the use of common shop vacuums as part of engineering control solutions. OSHA should explore this further with an eye toward revising Table 1 to permit the use of shop vacuums to be used as part of dust collection systems

- iv. Floor fans or pedestal fans positioned to disperse dust away from workers when using handheld power tools

One of the challenges to increasing compliance with the standard and Table 1 relates

- x Instructions on transporting the tool from worksite to worksite.

The combination of the complexity of the requirements directly included in Table 1, along with the additional requirements included in manufacturers' instructions, makes compliance difficult, particularly for very small contractors without house safety or industrial hygiene support.

Given this, the CISC recommends that OSHA carefully examine control measures to add to the table either directly or indirectly to make compliance simpler. Use of shop vacuums attached to tools is one method. Another is the use of floor or pedestal fans that disperse dust away from workers when using power tools. This would be a very simple control measure that would be readily available to contractors. It would also be inexpensive.

James Hardie has examined the effectiveness of the use of a floor fan or pedestal fan in reducing respirable crystalline silica exposures. This analysis involved sampling for respirable crystalline silica in the breathing zone of employees cutting fiber cement board containing crystalline silica, as well as sampling in the general area around the cutting station. The analysis also involved examining multiple styles of fans.

James Hardie concluded that the use of certain fans to disperse the respirable crystalline silica away from the cutting employees was very effective in providing protection to the cutting employees, with results consistently below the PEL. James Hardie also found that using certain fans the dust would quickly disperse after being blown out of the employee's breathing zone, so that employees outside of the immediate work area would not be significantly exposed.

The CISC urges OSHA to fully consider this evidence and information from James Hardie. The CISC would also welcome the opportunity to meet with OSHA to discuss the findings and any further research needed in this area. This type of control measure shown to be effective for even a few of the tasks on Table 1 – would provide a simple, low cost solution for contractors and would significantly improve compliance.

#### v. Air scrubbers

Finally, the CISC urges OSHA to evaluate air scrubbers for use in conjunction with other control measures to further reduce exposures for interior work, perhaps obviating the need for respiratory protection in some circumstances.

Air scrubbers are pieces of equipment that suck air through the machine, where it passes through a filter that collects dust. The scrubber then recirculates "filtered" air. Air scrubbers vary in size and are frequently used to reduce visible dust in interior work environments.







Due to the silica exposures and application of the standard to the work, tile roofing contractors must either use wet methods when cutting tile, along with respiratory protection in certain instances, or adopt an alternative exposure control method, presumably a shroud and vacuum system with respiratory protection.

Installing concrete and clay tiles involves occasional cutting for the hips and valleys on the roofs. This task cannot be performed on the ground, as the cuts must be precise for the roof tiles. Using wet methods introduces slip hazards into this work and the hoses also create tripping hazards. Similarly, vacuum systems introduce the same type of trip hazard for these workers on steep slope roofs.

Falls remain the leading cause of fatalities in the construction industry and fall protection in construction constitutes the most frequently cited standard. The construction industry focuses significant resources on fall prevention and protection. Unfortunately, the respirable crystalline silica standard directly increases fall hazards for roofers performing cutting on steep slope roofs.

Given this, the CISC urges the Agency to consider a specific exception to compliance with the PEL and the exposure monitoring provisions for tile cutting on steep slope roofs. Such an exception would be based on the greater hazard from falls created by the use of current silica control technology for tile cutting.

Under the exception, the CISC recommends that OSHA require the use of respiratory protection when cutting tile to ensure that employees are protected from exposure during this work task. Use of respiratory protection does not create the slip and trip hazards inherent in the use of silica control technology.

The CISC emphasizes that this exception would [(pr)-3 , -9.8 (t) bav6932B.( )-9.6p0lol (i)-0.8 (

Under this approach, when an employee is expected to perform a task that will take under 30 minutes in the course of a day and performs that task in isolation (i.e., not around other employees) the employee would be allowed to perform the task with respiratory protection only.

This furthers the Agency's position as set forth in FAQ 20 that very short duration tasks will typically not be an issue with respect to problematic exposures. FAQ 20 provides:

Does the standard cover employees who perform generating tasks for only 15 minutes or less a day?

The standard does not include a specific exemption for tasks with only short term exposures (e.g., tasks with exposures for 15 minutes a day or less). However, in many cases, employees who perform construction-3.6 (e)- ruc52586so1





common construction tasks. As noted above, however, Table 1 is too limiting at this time and contractors, thus, cannot always follow it. It needs to be expanded quickly to improve overall compliance with the standard.

Furthermore, technology continues to improve and manufacturers of equipment develop new control measures, vacuum systems, shrouds, and water delivery methods that protect employees. Without a quick and easy method to continue to update Table 1, OSHA may end up stifling the type of innovation that it seeks to create. The development of Table 1 demonstrated the creativity of the Agency. The CISC encourages the Agency to continue that creativity by developing a process to quickly and efficiently "update" Table 1.

To that end, the CISC strongly recommends that OSHA commit to updating Table 1 on an ongoing basis through the interim final rulemaking process. This would involve two steps:

- x First, the Agency would develop set criteria for data submission for new control technologies.



9. Conclusion.

The CISC appreciates OSHA publishing the RFI and seeking ways to improve compliance with the respirable crystalline silica standard. This is a vitally important initiative for the construction industry. The CISC asks the Agency to seriously ~~ideate~~ <sup>consider</sup> the recommendations included in this response, along with the data and information provided.

The CISC looks forward to continuing to work with the Agency in this important area.

American Road and Transportation Builders Association  
American Society of Concrete Contractors  
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  
Distribution Contractors Association