

United States Senate

WASHINGTON, DC 20510

November 21, 2013

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

**Re: Docket No. OSHA-2010-0034, Occupational Exposure to Respirable
Crystalline Silica**

Dear Assistant Secretary Michaels:

We are writing to respectfully request that the comment period for the Occupational Safety and Health Administration's (OSHA) proposed rule on Occupational Exposure to Respirable Crystalline Silica be extended and that a Small Business Advocacy Review Panel be convened.

Last month, you announced an extension of the comment period by 47 days, which we appreciate. However, we believe OSHA should provide stakeholders a full 90 day extension to give them adequate time to fully review this complex proposal and provide valuable feedback. We also request all other corresponding dates within the proposed rule be extended by the full 90 days. In addition, we respectfully request that OSHA convene a Small Business Advocacy Review (SBAR) Panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA). This is an important step to ensure that the concerns of small businesses are properly accounted for.

The goal of reducing the incidences of silica related health risks in workers is one we all share. In order to achieve that goal, OSHA should develop an effective, but sensible approach. This can only be done if stakeholders are permitted to submit factual and meaningful data and comments to the record. We are concerned the timeline that OSHA has laid out in the September 12, 2013, proposed rule does not permit stakeholders to properly address the 87 separate questions posed. Stakeholders, especially those in industries that were targeted with specific standards in the proposed rule (e.g., construction and hydraulic fracturing operations in the domestic oil and gas industry), will need sufficient time to collect accurate data and to analyze that data before submitting a written comment. In addition, the rulemaking docket already includes 1,700 supporting documents, which stakeholders should be given ample time to review.

While we understand that a SBAR Panel report was completed on the silica rulemaking one decade ago in 2003, there is a legitimate need to convene another panel. First, the economy has changed significantly in ten years. With the U.S. economy still recovering from a major

economic downturn, stakeholders have been forced to reexamine their operations and deal with increased regulatory burdens. A new SBAR Panel will provide an updated analysis of the impact the rule will have on small businesses. Second, the proposed rule contains new standards for hydraulic fracturing operations in the domestic oil and gas industry that were not considered by the decade old SBAR Panel report. The impacts and costs on employers in this growing industry should be analyzed and included in a new report. Excluding these stakeholders would conflict with the intent and the spirit of the law. Lastly, we know of only one other instance where a Federal agency relied on a SBAR Panel report as old as this, and it is a practice that should be highly discouraged. In that case, no new data was available to inform the Initial Regulatory Flexibility Analysis and the scope of the rule remained unchanged. Neither can be said of your proposed regulation. OSHA has never relied on a SBAR Panel this outdated. Reliance on a decade old report sets a poor precedent that an agency could use to circumvent the duties it owes small businesses to provide them a voice in the development of new regulations.

We are also very concerned about OSHA's attempt to have commenters disclose their financial backers. Disclosing the funding sources of commenters who submit scientific or technical research raises questions about whether OSHA will use that information to prejudice the substance of those comments and could result in dissuading stakeholders from even submitting comments. The disclosure request raises several other important issues including: what is OSHA's legal authority to request such information; whether a commenter's funding sources will be publicly disclosed; whether the Office of Management and Budget (OMB) approved of OSHA's request; and whether OSHA consulted with any stakeholders before including the request in the proposed rule. Because the proposed rule fails to shed light on any of the above concerns, we call on OSHA to rescind any request for information regarding commenters' funding sources.

In order to ensure a complete record with factual and accurate data, we urge OSHA to extend the comment period and all of the corresponding dates within the proposed rule by a full 90 days and to convene a SBAR Panel. We look forward to working with you on these important issues.

Sincerely,



Senator Lamar Alexander
Ranking Member
Senate Committee on Health, Education,
Labor and Pensions



Senator Jim Risch
Ranking Member
Senate Committee on Small Business and
Entrepreneurship



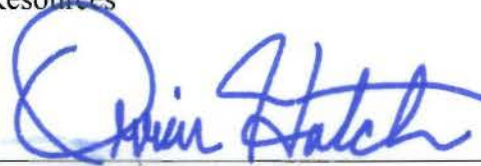
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Ranking Member
Committee on Armed Services



Senator Lisa Murkowski
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Committee on Energy and Natural
Resources



Senator David Vitter
Ranking Member
Committee on Environment and Public Works



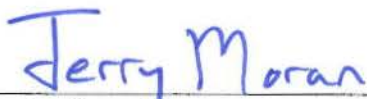
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Labor and Pensions



Senator Mark Kirk
Member
Senate Committee on Health, Education,
Labor and Pensions



Senator Pat Roberts
Member
Senate Committee on Health, Education,
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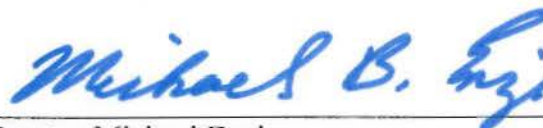
Senator Ron Johnson
Member
Senate Committee on Small Business and
Entrepreneurship



Senator Marco Rubio
Member
Senate Committee on Small Business and
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Senator Richard Burr
Member
Senate Committee on Health, Education,
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Senator Michael Enzi
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