

**Congress of the United States**  
**Washington, DC 20515**

December 19, 2013

The Honorable David Michaels, Ph.D.  
Assistant Secretary of Labor for Occupational Safety and Health  
United States Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Re: Occupational Exposure to Respirable Crystalline Silica (Docket No. OSHA-2010-0034)

Dear Assistant Secretary Michaels:

We write to express our deep concern that the Occupational Safety and Health Administration (OSHA) has not adequately satisfied its statutory and administrative obligations to perform outreach to and consider the perspectives of affected small entity stakeholders in the development of the proposed rule to amend its existing standards for occupational exposure to respirable crystalline silica.<sup>1</sup> We request that OSHA convene a new Small Business Advocacy Review (SBAR) panel under the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 601-12, or in the alternative hold a separate public hearing for small businesses pursuant to section 6(b)(3) of the Occupational Safety and Health (OSH) Act, 29 U.S.C. § 655(b)(3).

Section 609(a) of the RFA requires OSHA to undertake affirmative outreach to ensure that small entities are aware of and have the opportunity to participate in the rulemaking process. Under Section 609(b) of the RFA, OSHA is required to convene a SBAR panel for any rule that it determines will have a “significant economic impact on a substantial number of small entities.” This ensures that OSHA will carefully solicit and consider advice and recommendations from the regulated small business community that will aid the agency in developing the proposed rule and its analysis of small business impacts. In addition, OSHA must comply with Executive Orders 12,866 and 13,563. Executive Order 12,866 requires OSHA to “design its regulations in the most cost-effective manner to achieve the regulatory objective” and “base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.”<sup>2</sup> Executive Order 13,563 emphasizes that regulations be adopted through an open exchange of information with the public, and afford a “meaningful opportunity to comment” on proposed rules.<sup>3</sup> It further provides that in regulating, agencies “must measure, and seek to improve, the actual results of regulatory requirements” and in doing so, “use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.”<sup>4</sup> Reliance on a SBAR panel that solicited input from small businesses a

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<sup>1</sup> Occupational Exposure to Respirable Crystalline Silica, 78 Fed. Reg. 56,274 (Sept. 12, 2013).

<sup>2</sup> 58 Fed. Reg. 51,735, 51,736 (Oct. 4, 1993).

<sup>3</sup> 76 Fed. Reg. 14, 3,821 (Jan. 21, 2011).

<sup>4</sup> *Id.*

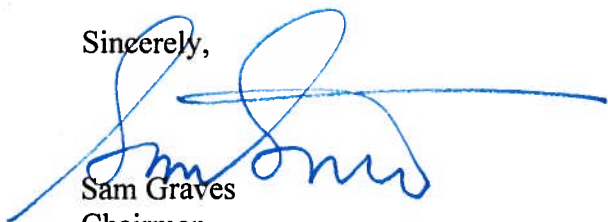
decade ago is not adequate outreach to the affected small business community. Furthermore, the use of stale data raises serious concerns that OSHA has not used the best available techniques to quantify the costs and benefits of the proposed rule.

To fulfill its obligations under the RFA and these Executive Orders, OSHA must provide small businesses the opportunity to provide updated advice and recommendations on the potential impacts of the proposed rule based on current data and industry practices. These obligations cannot be and were not met when OSHA issued its proposed rule based on a ten-year-old SBAR panel.

We request that OSHA convene a new SBAR panel to address these insufficiencies and consider any necessary modifications to the proposed rule and the analysis of the impacts on small businesses for occupational exposure to respirable crystalline silica. If OSHA does not convene a SBAR panel on the proposed rule, we request that OSHA hold a separate public hearing as authorized by the OSH Act to specifically consider the concerns and recommendations originally raised by small businesses in the 2003 SBAR panel to provide updated recommendations and analysis on the proposed rule's effects on small businesses. Should OSHA hold a separate public hearing, we request that any deadlines for notices of intention to appear or for submissions of the full text of testimony or documentary evidence in advance of the hearing be waived or be set to accommodate interested small businesses. Absent such formal procedures, OSHA risks potential litigation that could further delay protections afforded by any updates to the respirable crystalline silica rule thereby undermining the goals of the rulemaking.

If you or your staff have any questions concerning this request, please contact Viktoria Ziebarth with the House Committee on Small Business, at (202) 225-5821, or Christina Aizcorbe with the Senate Committee on Small Business and Entrepreneurship, at (202) 224-7884.

Sincerely,



Sam Graves  
Chairman  
House Committee on Small Business



Jim Risch  
Ranking Member  
Senate Committee on Small Business and  
Entrepreneurship

cc: Winslow Sargeant, Chief Counsel for Advocacy, United States Small Business Administration  
Howard A. Shelanski, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget