VIA COURIER

May 16, 2018

Loren Sweatt
Deputy Assistant Secretary of Labor for Occupational Safety and Health
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room S-2315
Washington, D.C. 20210

Dear Deputy Assistant Secretary Sweatt:

On behalf of the American Foundry Society (“AFS”) and the National Association of Manufacturers (“NAM”), we write to respectfully request that the Occupational Safety and Health Administration (“OSHA” or “Agency”) delay enforcement of the crystalline silica rule for General Industry for six months, until December 23, 2018. While our members are working in good faith to attempt to comply with the rule by the current compliance deadline, they are experiencing significant challenges in doing so. A short delay in enforcement will also allow the Agency to develop and distribute compliance assistance material to help employers in attaining full compliance. The AFS and NAM also filed a Petition for Limited Re-opening of the Rulemaking Record and Administrative Stay, which is still pending before the Agency.

As you know, in March 2016, OSHA promulgated the final rule regulating occupational exposure to respirable crystalline silica. The rule establishes a new permissible exposure limit (“PEL”) for silica of 50 µg/m³, a significant reduction from the prior PEL of 100 µg/m³. The rule also imposes ancillary requirements such as exposure assessment, respiratory protection, medical surveillance, and housekeeping. OSHA’s conservative estimate of the cost of the rule was over $1 billion annually. Other parties estimated the true costs of the rule at several times higher than this and our members are experiencing costs for compliance significantly above that estimated by OSHA.

The compliance deadline for virtually all of general industry is June 23, 2018. As a result of the nature of the rule and, in particular, the difficulty of reaching the new PEL on a consistent basis, our members are experiencing significant challenges in complying with its requirements. This is particularly the case with the implementation of engineering controls. Employers are required to exhaust all feasible engineering controls to reduce exposures below the PEL before implementation of work practice controls or respiratory protection. For numerous operations in several industries, this process is taking significantly longer than the time permitted by the Agency in the rule. Engineering controls frequently need to be specially-designed and constructed. Often, re-permitting needs to occur to allow the installation of further control measures. After implementation of an engineering control, employers need to perform extensive monitoring to determine the extent to which implementation has reduced exposures to below the PEL. If exposures are not consistently and reliably below the PEL, the facility needs to start the process
over to design, install, and monitor for the “next” engineering control. This process is incredibly time consuming and despite the best efforts of employers, many have simply been unable to meet the PEL through engineering controls in the two-year time frame provided by OSHA.

The challenges to compliance have been made more difficult because of significant delays that member companies have experienced with the processing and analyzing of silica samples by accredited laboratories. Members have informed us that some samples are taking several weeks to be processed. These delays significantly impact the extent to which our members can assess the effectiveness of engineering controls and make further investments in same.

A six month delay would also provide an opportunity to finalize additional compliance assistance material. To date, there has been little General Industry-specific compliance assistance material that has been developed and distributed. OSHA has also not yet finalized its compliance directive providing guidance to compliance officers on how to enforce the standard in General Industry. OSHA’s compliance directives provide useful information to employers to assist in meeting the expectations of compliance officers in the field.

We also appreciate our ongoing discussions with your staff and the Office of the Solicitor to develop Frequently Asked Questions and feasibility guidance. This requested delay would allow this collaborative process to continue and provide important guidance to employers further in advance of full enforcement of the rule.

Rest assured that our members are actively working toward compliance. This delay, however, will permit employers to continue their efforts vigorously, with additional information from OSHA, while recognizing the significant difficulties of reaching the new PEL.

Thank you for your attention to this matter and we look forward to your response.

Sincerely,

Doug Kurkul, CEO
American Foundry Society

Jay Timmons, President and CEO
National Association of Manufacturers

cc: The Honorable R. Alexander Acosta, U.S. Secretary of Labor