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Docket Clerk
U.S. Department of Labor (DOL)
Occupational Safety and Health Administration (OSHA)
200 Constitution Avenue NW
Room N-2625
Washington, DC 20210

Via: <http://www.regulations.gov>

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

Dear Sir or Madam:

The National Council of La Raza (NCLR), the largest national Hispanic civil rights and advocacy organization in the United States, submits to the Occupational Safety and Health Administration (OSHA) at the U.S. Department of Labor (DOL) the following comments regarding the proposed rule titled “Occupational Exposure to Respirable Crystalline Silica” (Docket No. OSHA-2010-0034). NCLR strongly supports OSHA’s efforts to update its 40-year-old standards for silica exposure. Latinos employed in affected industries, especially construction, will benefit significantly from the improved standards. We are confident that the human health benefits that will result from the proposed exposure limit and requirements for monitoring and managing hazardous dust in a preventative and responsive manner are well-founded and far outweigh the associated costs of the proposed rule.

Reduced exposure to crystalline silica will improve worker health and benefit the economy

OSHA’s risk assessment reinforces decades of scientific evidence linking exposure to respirable crystalline silica to silicosis and other related illnesses and makes clear the urgent need for OSHA to update its standards on silica exposure to minimize workers’ exposure to silica dust. NCLR strongly supports OSHA’s effort to lower the permissible exposure limit to 50 ug/m³. This new standard, applied using the hierarchy of controls to protect silica-exposed workers, will result in significant improvements in worker health that far outweigh their associated costs.

NCLR finds the economic analysis presented in the proposed rule to be persuasive. Our assessment is based on our knowledge of the demographic composition of the workforce—especially in the construction industry—who would experience health benefits as a result of the revised silica standard. Latinos currently account for 15.7% of the American workforce and are poised to make up one in three workers by 2050. In short, the positive health effects for Latino

workers who would benefit from the proposed rule will extend to a greater share of the population as the Latino workforce grows.

Latino workers are overrepresented in several potentially affected industries

According to OSHA, 2.1 million workers in 550,000 establishments throughout the country could be at risk of exposure to respirable crystalline silica at work. In construction and other industries where Latinos are overrepresented compared to their share of overall employment, Latinos are at risk of developing negative health consequences as a result of their exposure to silica (see table below).

Latino Employment Share in Select Industries Potentially Affected by OSHA's Proposed Silica Rule

Industries	Latino share of employment
All industries <i>(including those not affected by proposed rule)</i>	15%
Construction	24%
Coating, engraving, heat treating and allied activities	23%
Miscellaneous nonmetallic mineral product manufacturing	22%
Structural metals, and boiler, tank, and shipping container manufacturing	20%
Metal forgings and stampings	20%
Furniture and related product manufacturing	19%
Cement, concrete, lime, and gypsum product manufacturing	18%
Miscellaneous manufacturing	16%

Source: U.S. Bureau of Labor Statistics, “Employed and experienced unemployed persons by detailed industry, sex, race, and Hispanic or Latino ethnicity, Annual Average 2012,” *Current Population Survey*, unpublished estimates. Available data from the Current Population Survey measures Latino employment rates in industries identified by their three- or four-digit NAICS code. The industries selected above contain the detailed industries identified by their six-digit NAICS code in Table VII-3 of the proposed rule (at page 5,6344).

Latino workers would benefit from a strong silica standard for construction

Construction is the sixth largest employer of Latinos, supporting 10.2% of the Latino labor force. OSHA estimates that 1.8 million construction workers are potentially at risk of exposure to respirable crystalline silica. Latinos represent 24.4% of the construction workforce; therefore, an

estimated 451,199 Latino construction employees are potentially exposed to respirable crystalline silica.

Within the construction industry itself, Latinos are overrepresented in low-wage occupations; for instance, Latinos are 41.2% of laborers (annual mean wage \$35,020) and 42% of painters and construction maintenance workers (annual mean wage \$37,630).¹ All construction workers, but especially those in the occupations listed, are more likely to work for multiple employers and multiple job sites. Their work arrangements are often seasonal and temporary, sometimes lasting only for one day.

Due to the variable and complex structure of construction work, NCLR supports OSHA's proposal to promulgate a separate silica standard for construction that offers flexible and specific options for mitigating silica exposure in that industry. While NCLR does not have the expertise to comment on the effectiveness of the options presented in Table 1 (Federal Register at page 56,496), we support OSHA's decision to provide clear direction to construction employers. Similar guidance directed to employees would help them understand their rights and responsibilities and determine what constitutes a violation of the standard.

Hierarchy of controls is logical and necessary

NCLR agrees with OSHA's assessment that it is inappropriate to rely on respirators alone to manage dust and mitigate potential health hazards from silica dust. NCLR Affiliates that serve Latino construction workers report frequent cases of workers whose employers fail to provide training on the proper use of respirators or worse, fail to provide employees with any Personal Protective Equipment. This is especially common among temporary workers and day laborers working in residential construction. Cost, time pressures, and lack of awareness of the risks of silica dust are among the factors that lead many unprotected workers to resort to surgical masks or cloth bandanas to defend themselves against dust exposure. Given this reality and other evidence from the field, NCLR supports prioritizing engineering and/or work practice controls, supplemented by a respiratory program when necessary, to minimize exposure.

Culturally and linguistically competent outreach is necessary to maximize effectiveness for Latino workers

NCLR recommends that OSHA incorporate a Latino construction worker outreach effort into its implementation strategy for the final silica standard. Given that 23% of construction workers are foreign-born, it is imperative that OSHA develop education and training materials in multiple languages and in formats that are accessible to limited-English proficient (LEP) workers.² OSHA has made progress in its outreach to LEP and immigrant workers through substantial translation of its training materials and hazard communication. However, this information does not always reach its intended audience. Therefore, Latino- and immigrant-serving community-based organizations that are trusted entities in local communities should be recruited as funded

¹ National Council of La Raza, *Latinos in Construction: Facts and Figures* (Washington, DC: NCLR, 2013), <http://www.nclr.org/images/uploads/pages/EmploymentReportAugust2013.pdf>.

² Center for Construction Research and Training, *The Construction Chart Book, 5th Edition* (Silver Spring, MD: CPWR, 2013), <http://www.cprw.com/publications/construction-chart-book>.

partners in this outreach effort. Special emphasis should be placed on reaching temporary and contingent workers, including day laborers. The contents of the education and training materials should describe the potential health threats of exposure to silica, the required steps employers must take to protect employees from exposure, and what to do if employers fail to comply with the standards.

In conclusion, NCLR strongly supports the proposed silica rule and urges OSHA to finalize its rulemaking in a timely fashion. Thank you again for the opportunity to comment on the proposed rule. Should you have any questions regarding these comments, please contact Catherine Singley Harvey at csingley@nclr.org or (202) 785-1670.

Sincerely,



Eric Rodriguez

Vice President, Office of Research, Advocacy, and Legislation
National Council of La Raza

cc:

Thomas Perez, Secretary of the U.S. Department of Labor
Cecilia Muñoz, Director of the White House Domestic Policy Council
Howard Shelanski, Director, Office of Information and Regulatory Affairs
David Michaels, Assistant Secretary of Labor, OSHA
Robert Casey, Senate HELP Committee, Subcommittee on Employment and Workplace Safety
Johnny Isakson, Senate HELP Committee, Subcommittee on Employment and Workplace Safety
John Kline, Education and Workforce Committee, U.S. House of Representatives
George Miller, Education and Labor Committee, U.S. House of Representatives