



CONCRETE CAPITOL CONNECTION

UPDATES ON LEGISLATION, REGULATION, AND CASE LAW - July 2016

Dear Member:

Petitions Filed in OSHA Silica Rule: On June 1, several new court challenges to the Occupational Safety and Health Administration's (OSHA) silica rule were filed in the U.S. Court of Appeals for the District of Columbia Circuit. The "statements of issues" questioned OSHA's determination on protection requirements for employers as well as the financial protections for workers with health issues related to silica exposure. The employer stakeholders challenging the rule were the National Stone, Sand and Gravel Association, National Association of Home Builders and National Association of Manufacturers. Challenges being filed by labor groups included the AFL-CIO and North America's Building Trades Unions (NABTU). The final silica rule halves the current permissible exposure limit (PEL) and requires employers to implement greater measures to limit exposure to silica. OSHA released the final rule on March 25 and the compliance date for the construction industry is June 23, 2017. [Click here](#) to view the rule.

Notice: NRMCA DC Days July 14th

NRMCA's Third Quarterly DC Days will be July 14th. NRMCA will continue our efforts to STOP the Timber Innovation Act from advancing in the House and Senate.

This is our last chance to lobby Congress prior to a seven week summer recess. For questions or to RSVP, please contact Jill Landry at jlandry@nrmca.org.

DOT Delays New Sleep Apnea Rules Until July 8: On June 22, the Department of Transportation's (DOT) Federal Motor Carrier Safety Administration (FMCSA) and Federal Railroad Administration (FRA) extended the comment deadline on the advance notice of proposed rulemaking (ANPRM) for sleep apnea until July 8. The rule aims to increase safety for commercial truck drivers who have obstructive sleep apnea. The FMCSA and FRA conducted three public listening sessions in May where NRMCA's Kevin Walgenbach testified on sleep apnea's effect on mixer truck drivers. NRMCA currently opposes any new mandate for obstructive sleep apnea screenings because current regulations are adequate to address drivers with obstructive sleep apnea. To view the ANPRM [click here](#).

House Votes on Obama's \$10.25 Fee Per Barrel Oil: On June 10, the House of Representatives voted on, [H Con Res 112](#), a resolution disapproving the Obama Administration's \$10.25 fee per barrel on oil. The measure passed by a vote of 237-163. The Transportation Construction Coalition (TCC), of which NRMCA is a member of sent a letter to the House highlighting the need to find a source of revenue to generate funding for federal surface transportation investments. In the letter, the TCC also stated how the resolution failed to mention the funding shortfalls that the Highway Trust Fund has faced for the past eight years which continues to disrupt projects for state departments of transportation. To view the letter [click here](#).

Texas Judge Grants Nationwide Injunction for DOL Persuader Rule: On June 27, Judge Sam Cummings of the US District Court for the Northern District of Texas issued a nationwide injunction for the Department of Labor's (DOL) persuader rule. The persuader rule requires employers to disclose when they seek legal advice before an employee union election or campaign. Prior to the finalization of the rule, an employer was only required to disclose this information when a legal advisor had direct communication with employees regarding their union elections or campaigns. The injunction prohibits the DOL from implementing the rule until the legal challenge from business groups is settled. Groups filing the request for injunction argue that the rule prevents employers from seeking legal advice or counsel. Since the inception of the persuader rule in mid-2011, NRMCA has ardently opposed the rule both individually and as a member of the Coalition for a Democratic Workplace (CDW). For more information on the persuader rule please [click here](#). To view the court's injunction please [click here](#).

NLRB Election Rule is Upheld by Fifth Circuit: On June 11, the Fifth Circuit upheld the National Labor Relation Board's (NLRB) election rule in an appeal filed by the Associated Builders and Contractors (ABC) of Texas. The election rule, commonly referred to as the 'ambush' rule, fast tracks union elections once an employer has been notified of an election. The appeal challenged the legality of the rule which went into effect on April 14, 2015. This decision is notable since the Fifth Circuit is considered to be generally conservative in its rulings. It is not likely that further challenges will succeed since the appeal failed in this court. To view the decision [click here](#).

THUD Bill Dropped From Appropriations Package: On June 24, the House voted 239-171 on a FY2017 spending package that included funding for the Department of Veterans Affairs, military construction and supplementary funding for fighting the Zika virus. The Transportation, Housing and Urban Development (THUD) appropriations portion which passed as a package in the Senate was dropped from the final measure. House Chairman Hal Rogers (R-KY) did not want to send the THUD bill to President Obama without the House first having a chance to debate and amend its own bill.

Sincerely,

NRMCA Government Affairs

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