

January 19, 2010

Occupational Safety and Health Administration
OSHA Docket Office
Room N-2625
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210
(www.regulations.gov)

**Re: Response to Advance Notice of Proposed Rulemaking
Involving Combustible Dust --
Docket Number OSHA-2009-0023; RIN 1218-AC41**

Dear Sir or Madam:

These comments are submitted on behalf of a coalition of three agriculturally-based trade associations, with some 400 member companies. The three associations are the National Oilseed Processors Association ("NOPA"), Corn Refiners Association ("CRA"), and Renewable Fuels Association ("RFA").

NOPA is a national trade association that represents 16 companies engaged in the production of vegetable meals and oils from oilseeds, including soybeans. NOPA's member companies process more than 1.7 billion bushels of oilseeds annually at 66 plants located throughout the country, including 61 plants that process soybeans.

CRA is the national trade association representing the corn refining (wet milling) industry of the United States. CRA and its predecessor associations have served this important segment of American agribusiness since 1913. Corn refiners manufacture starches, sweeteners, corn oil, bioproducts (including ethanol), and animal feed ingredients.

RFA is the leading trade association for America's ethanol industry. Its mission is to advance the development, production, and use of ethanol fuel by strengthening America's

ethanol industry and raising awareness about the benefits of renewable fuels. Founded in 1981, RFA represents the majority of the United States ethanol industry and serves as the premier meeting ground for industry leaders and supporters. RFA's 300-plus members are working to help America become cleaner, safer, more energy independent and economically secure.

Taken together, our associations represent an important segment of the U.S. agricultural processing industry. Our members are critical in producing the domestic food and feed supply, promoting U.S. agricultural exports, and promoting energy independence for the United States.

All of our members are significant users and processors of grain, feed and oilseed products. As such, virtually all of their facilities are subject, in whole or in part, to OSHA's grain handling standard, 29 C.F.R. 1910.272, as well as FDA's good manufacturing practices regarding sanitation, which motivates fugitive dust reduction at our processing plants. The views expressed in these comments are a function of that experience.

Our members agree with OSHA's statement in the Advance Notice of Proposed Rulemaking (ANPRM) that the grain handling standard has proven to be an outstanding example of successful government regulation. Virtually all of our member companies have housekeeping plans that control dust accumulation and preventive maintenance programs that either specifically follow or are based on the grain handling standard. Fires and explosions, along with the severity of these events and related injuries and deaths, have been dramatically reduced as a result of the standard's requirements, as well as increased industry attention generally to housekeeping, preventive maintenance, and other relevant elements of the standard throughout our facilities.

The industry has a demonstrated a successful commitment to safety that is reflected in its excellent safety record for the past 25 years. Moreover, each of our associations has an

experienced and active Safety Committee that aggressively promotes safety within the industry. Hundreds of millions of dollars have been spent to assure this success, and any changes to the current regulatory regime risk undermining it, by forcing companies to amend their successful housekeeping and safety agendas.

As a result, we generally endorse the comments submitted to this docket by the National Grain and Feed Association (NGFA), and specifically NGFA's conclusions that OSHA should not propose any significant changes to the grain handling standard, and that the agency should exempt industries within the scope of 29 C.F.R. 1910.272 from any general industry combustible dust standard that might be adopted. Such an exemption would allow our members to continue to focus on housekeeping and safety without disruption, as they have for many years with documented success.

At the same time, we invite discussion with OSHA about the potential of extending the applicability of 29 C.F.R. 1910.272 to the portions of our facilities where it does not currently apply. OSHA concluded as follows in its 2005 Safety and Health Information Bulletin entitled "Combustible Dust in Industry: Preventing and Mitigating the Effects of Fire and Explosions" (SHIB 07-31-2005):

In 1987, OSHA promulgated the Grain Handling Facilities standard (29 CFR 1910.272), which remains in effect. This standard, other OSHA standards such as Emergency Action Plans (29 CFR 1910.38), and updated industry consensus standards all played an important role in reducing the occurrence of explosions in this industry, as well as mitigating their effects. The lessons learned in the grain industry can be applied to other industries producing, generating, or using combustible dust.

This conclusion was accurate in 2005, and it is accurate today. The lessons from the grain industry should be learned and applied in other industries, rather than asking the grain industry, with its successful record, to apply more and potentially inconsistent regulatory requirements.

In the ANPRM, OSHA analyzes the CSB combustible dust study, and notes that there were five major findings: 1) many industry and safety professionals are not aware of combustible dust hazards; 2) The National Fire Protection Association ("NFPA") voluntary consensus standards are not being followed in many facilities; 3) State and local fire codes have not been effective in reducing dust explosion risks in the general industry population; 4) OSHA has focused on enforcement rather than prevention with relation to combustible dust; and 5) the grain handling standard is the only comprehensive OSHA standard specifically addressing combustible dust hazards, and that standard does incorporate much of what is contained in the NFPA standards. Except for number 5, these conclusions have no application in the grain industry generally, including the facilities we represent. Because of the grain handling standard and efforts of our associations, industry safety professionals in facilities that use grain are aware of combustible dust hazards, and relevant and appropriate NFPA recommendations have been adopted by the industry.

The relatively few OSHA citations our industry has experienced for dust control or housekeeping violations relative to the more than 20-year-old grain handling standard reflects our industry's commitment to complying with the standard. This positive record reflecting our commitment has continued, even following the National Emphasis Program implemented by OSHA in 2007. While there have been some violations, they have been very few in number, and the effectiveness of the industry in reducing dust explosion risks is apparent.

Consequently, we see no basis for reaching a conclusion that additional regulation may be appropriate in the grain handling and related industries, or that a new grain handling standard, or a new general industry standard that overlaps and in some respects perhaps substitutes for the grain handling standard, would be useful or effective. In fact, the evidence, as cited by OSHA, is

precisely to the contrary. Moreover, to have two different standards address the same hazard in separate portions of the same facility would be duplicative and confusing and could have a negative result.

Finally, we endorse the conclusion reached by OSHA in its ANPRM that the NFPA consensus standards do not make effective or appropriate regulatory standards, whether adopted by reference or incorporated in an OSHA regulation directly. The basis for NFPA consensus standards is different than the basis that OSHA must use under its authorizing legislation. NFPA standards are design-based, while OSHA's occupational safety standards are performance-based. Furthermore, NFPA does not include any economic analysis in its standard setting process, and its standards are intended as "best practices" on an industry-wide basis. As we have noted, OSHA's grain handling standard has already introduced best practices into the grain handling industry, including the processing plants we represent. Most facilities that handle grain already utilize appropriate NFPA recommendations, and mandating their use in whole or in part would not add safety to the industry. We do know that the costs would be enormous, inhibiting our nation's ability to generate the best and most affordable food and feed supply in the world, to expand food/feed exports, and to reach toward energy independence.

We stand ready to work with OSHA to continue to promote safety in our facilities and look forward to discussions about the potential expansion of the grain handling standard to portions of our facilities in which they do not currently apply. However, we urge OSHA not to propose any major changes to the grain handling standard, and to exempt all grain-related

enterprises from any general industry combustible dust standard that may ultimately be proposed and adopted.

Respectfully Submitted,

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