



July 20, 2011

VIA HAND-DELIVERY and E-MAIL: olms-public@dol.gov

Andrew R. Davis, Chief
Division of Interpretations and Standards
Office of Labor-Management Standards
U.S. Department of Labor
200 Constitution Ave., NW, Room N-5609
Washington, DC 20210

Re: Requests for Insertion of Documents into Dockets RIN 1215-AB79 and RIN 1245-AA03 (*Labor-Management Reporting and Disclosure Act; Interpretation of the "Advice" Exemption*) and for an Extension of the Comment Period

Dear Mr. Davis:

I am writing on behalf of the Portland Cement Association (PCA). PCA represents 25 cement companies, operating 97 manufacturing plants in 36 states, with distribution centers in all 50 states. PCA members account for 97.1 percent of domestic cement making capacity. PCA's members employ more than 13,000 persons in the manufacturer of cement. Consequently, the actions proposed in this rulemaking are of keen interest.

As you are aware, in the June 21, 2011 *Federal Register*, 76 Fed. Reg. 36178, the Office of Labor-Management Standards (OLMS) published a notice of proposed rulemaking (NPRM) announcing the Department of Labor's intention to revise the current interpretation of the "advice" exemption provided under section 203 of the Labor-Management Reporting and Disclosure Act of 1959.

On pages 36184-186 of the *Federal Register* notice, OLMS cited to 14 specific documents, consisting of Congressional and other government reports and also so-called academic articles, which the NPRM claims provide support for the rulemaking and the specific actions being proposed. Although OLMS is relying on these documents, as of the date of this letter, none of those specific documents has yet to be inserted into the rulemaking docket so that they would be accessible to the public.

Because of the obvious relevance and importance that the NPRM has placed on those reports and articles, the Portland Cement Association (PCA) requests that the reports and articles

listed on the attached pages of the NPRM be timely inserted into the docket. PCA delayed sending this letter to you as it was our reasonable expectation that OLMS would take the initiative to insert these documents into the docket.

Unless OLMS makes these documents available to the public by inserting them into the docket, the public will not have access to most, if not all, of these documents and, therefore, will not be afforded the opportunity to comment upon them; especially within the time OLMS has allotted for the public to comment on the NPRM. Many of these documents are either out-of-print or otherwise publicly unavailable due to the age of the document, or can only be obtained for a fee because of copyright. PCA believes it is highly unreasonable for OLMS to expect – indeed require – the public to have to spend the time not only to look for documents the government cites in a proposed rule and asserts it is relying to support a rulemaking, but also to pay for those documents in order to obtain them. Having a copyright does not prevent OLMS from inserting a copy of copyrighted documents into the docket in the absolute sense. It just means that OLMS would need to obtain the copyright holder's permission beforehand.

Because these documents are not readily available and accessible to the public, and also because of the number of documents involved and their unspecified length, PCA also requests that OLMS extend the comment period 45 days, once the requested documents have been inserted into the docket, in order to give the public a meaningful opportunity to access and review the documents prior to preparing comments responding to the NPRM.

PCA believes both of our requests are extremely reasonable and should be granted, especially in light of President Obama's Executive Order (EO) 13563. As you should be aware, EO 13563 directs that the public is entitled to receive "a meaningful opportunity to comment through the Internet on any proposed regulation," which includes providing the public "timely online access to the rulemaking docket on regulations.gov, including relevant scientific and technical findings, in an open format that can be easily searched and downloaded." Clearly, the reports and articles referenced in the NPRM fall within the EO's contemplation of "technical findings." The fact that these documents were not inserted into the docket and made publicly accessible has served to deprive PCA and others in the public of our "meaningful opportunity to comment."

Attached to this letter are pages 36184-186 of the NPRM's *Federal Register* notice, which are the pages on which each of these specific documents is cited. The specific references to these documents are highlighted in yellow. PCA requests that each of the highlighted 14 documents in their entirety be inserted into the docket.

If you need further information about this request, please contact me at (rhirsch@cement.org), or (202) 408-9494.

Respectfully submitted,
Robert A. Hirsch

A handwritten signature in black ink, appearing to read 'R. Hirsch', with a large, stylized initial 'R'.

Director, Regulatory Affairs

Attachment (1)

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