

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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<b>BRICK INDUSTRY ASSOCIATION,</b>	)	
	)	
	)	
<i>Petitioner,</i>	)	
	)	
<b>v.</b>	)	<b>No. 16-1146</b>
	)	<b>(consolidated with</b>
<b>SECRETARY, DEPARTMENT OF LABOR,</b>	)	<b>No. 16-1105, et al.)</b>
<b>AND OCCUPATIONAL SAFETY AND</b>	)	
<b>HEALTH ADMINISTRATION,</b>	)	
	)	
<i>Respondents.</i>	)	
	)	

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**NONBINDING STATEMENT OF ISSUES OF PETITIONER  
BRICK INDUSTRY ASSOCIATION**

Petitioner Brick Industry Association (“BIA”) submits this preliminary and nonbinding statement of issues to be raised in the above-captioned case involving review of the final rule of Respondent Occupational Safety and Health Administration (“OSHA”) under the Occupational Safety and Health Act (“OSH Act”), 29 U.S.C. § 655(f), entitled “Occupational Exposure to Respirable Crystalline Silica,” published at 81 Fed. Reg. 16,286 (Mar. 25, 2016) (the “Rule”):

1. Whether OSHA's decision not to exclude the brick industry from regulation under the Rule was supported by substantial evidence in the record considered as a whole or otherwise not in accord with the law.
2. Whether OSHA's decision to ignore biases and statistical flaws in its risk assessment was supported by substantial evidence in the record considered as a whole or otherwise not in accord with the law.
3. Whether OSHA's failure to account in its risk assessment for changed outcomes using the ISO/CEN definition of respirable dust is supported by substantial evidence in the record considered as a whole or otherwise not in accord with the law.
4. Whether OSHA's decision to peg its economic and technical feasibility assessments to an assumed exposure level of 50 ug/m<sup>3</sup> is supported by substantial evidence in the record considered as a whole or otherwise not in accord with the law.
5. Whether OSHA's rejection of evidence establishing inaccurate and imprecise test results was supported by substantial evidence in the record considered as a whole or otherwise not in accord with the law.

6. Whether OSHA's rejection of evidence establishing an insufficient number of accredited commercial laboratories available to perform testing was supported by substantial evidence in the record considered as a whole or otherwise not in accord with the law.

BIA retains the right to raise other issues.

Dated: June 15, 2016

Respectfully submitted,

/s/ William L. Wehrum

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of June 2016, the foregoing Nonbinding Statement of Issues of Petitioner Brick Industry Association was served electronically through the Court's CM/ECF system on all registered counsel.

/s/ William L. Wehrum

William L. Wehrum