

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

**NORTH AMERICA’S BUILDING
TRADES UNIONS,**

Petitioner,

v.

**OCCUPATIONAL SAFETY &
HEALTH ADMINISTRATION,
UNITED STATES DEPARTMENT
OF LABOR, and THOMAS PEREZ,
SECRETARY, UNITED STATES
DEPARTMENT OF LABOR,**

Respondents.

Civil No. 16 - 1105

**AMERICAN FEDERATION OF
LABOR AND CONGRESS OF
INDUSTRIAL ORGANIZATIONS,
ET AL.,**

Petitioners,

v.

**OCCUPATIONAL SAFETY &
HEALTH ADMINISTRATION,
UNITED STATES DEPARTMENT
OF LABOR, and THOMAS PEREZ,
SECRETARY, UNITED STATES
DEPARTMENT OF LABOR,**

Respondents.

Civil No. 16 - 1113

UNOPPOSED MOTION FOR LEAVE TO INTERVENE AS RESPONDENTS

Pursuant to Rules 15(d) and 27 of the Federal Rules of Appellate Procedure and the Circuit Rules of this Court, 15(b) and 27, the American Foundry Society (“AFS”) and the National Association of Manufacturers (“NAM”), (collectively “Movant Intervenors”), respectfully move for leave to intervene as Respondents in case No. 16-1105 and case No. 16-1113.¹ Counsel for AFS and NAM has contacted counsel for the parties in these cases to ascertain their positions on this motion for leave to intervene. Respondents have stated that they do not oppose this motion. Petitioners have stated that they do not oppose this motion. In support of this motion, AFS and NAM state:

1. The petition for review in case No. 16-1105 was filed by North America’s Building Trades Unions (“Petitioner” or “NABTU”) on April 1, 2016.²

2. The petition for review in case No. 16-1113 was filed by the American Federation of Labor and Congress of Industrial Organizations, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO/CLC, and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (collectively, “Petitioners”) on April 1, 2016, in the U.S. Court of Appeals for the

¹ AFS and NAM specifically state that they do not wish to intervene in all cases before this court involving the subject agency final rule.

² Reference to “Petitioners” in this motion includes Petitioners in case No. 16-1113 and Petitioners in case No. 16-1105.

Third Circuit, and transferred to the U.S. Court of Appeals for the District of Columbia Circuit on April 13, 2016, upon order of the U.S. Judicial Panel on Multidistrict Litigation.

3. Both petitions challenge the final rule promulgated by the U.S. Occupational Safety and Health Administration (“OSHA”), set forth in the document entitled “29 CFR Parts 1910, 1915, and 1926, Occupational Exposure to Respirable Crystalline Silica,” Docket No. OSHA-2010-0034, RIN 1218-AB70, published by the Occupational Safety and Health Administration, United States Department of Labor. 81 Fed. Reg. 16285 (March 25, 2016).

4. AFS is a non-profit association serving members of the metalcasting supply chain in the United States, including metalcasters and producers of metal cast parts; metalcasting suppliers and casting buyers/original equipment manufacturers. The association is comprised of more than 7,500 individual members representing over 3,000 metalcasting firms, including foundries, suppliers and customers. AFS is headquartered in Schaumburg, IL, with forty-four chapters located throughout the country.

5. NAM is the largest manufacturing association in the United States. It is a national not-for-profit trade association representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs nearly 12 million men and women, contributes more than \$2.17 trillion to

the U.S. economy annually, has the largest economic impact of any major sector, and accounts for three-quarters of private-sector research and development. The NAM is the powerful voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

6. OSHA's final rule for Occupational Exposure to Respirable Crystalline Silica amends the Agency's existing regulations regarding employee exposure to respirable crystalline silica in construction, general industry, and maritime operations and affects roughly 2.3 million workers.

7. In the final rule, OSHA identifies various NAICS codes for smelting, forging and foundries that will be affected by the final standard. AFS has members in each of the industry subsectors identified by OSHA and all of them will be affected by the final standard.

8. In the final rule, OSHA identifies at least 24 manufacturing industry subsectors, identified by North American Industry Classification System (NAICS) codes that will be affected by the final standard. NAM has members in each of the 24 manufacturing industry subsectors, and all of them will be affected by the final standard.

9. Federal Rule of Appellate Procedure 15(d) provides that a motion for leave to intervene "must be filed within 30 days after the petition for review is filed

and must contain a concise statement of the interest of the moving party and the grounds for intervention.” This Rule “simply requires the intervenor to file a motion setting forth its interest and the grounds on which intervention is sought.” *Synovus Fin. Corp. v. Board of Governors*, 952 F.2d 426, 433 (D.C. Cir. 1991).

10. The requirements for intervention of right under Federal Rule of Civil Procedure 24(a)(2) are: (1) the motion is timely; (2) the applicant claims an interest relating to the subject of the action; (3) disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest; and (4) the applicant’s interest may not be adequately represented by the existing parties. *See, e.g., Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003).

11. The Movant Intervenors motion is timely as it has been filed and served, in compliance with Federal Rule of Appellate Procedure 15(d), within 30 days after the Petitioners filed their petitions for review. This motion will not result in any delay in these cases or prejudice to the parties.

12. The Movant Intervenors believe the Petitioners seek judicial review of OSHA’s final rule regarding the established permissible exposure limit for employee exposure to respirable silica and medical surveillance provisions relating to exposure to respirable crystalline silica, as well as other potential issues.

13. Movant Intervenors and their members have interests relating to these matters that will be impaired by the disposition of the case. For example, OSHA's permissible exposure limit and action level trigger various obligations with which NAM and AFS members have to comply, such as exposure monitoring, the implementation of engineering controls and respiratory protection, and medical surveillance. Any lowering of the PEL will significantly impact AFS and NAM members. The Movant Intervenors have a substantial interest in the subject of this action and that interest will be impaired should the Petitioners prevail.

14. NAM and AFS's interests are not adequately represented by the parties in these two cases. The interests of Petitioners are not in line with – and potentially directly opposed to – the Movant Intervenors. Additionally, while Respondent OSHA will attempt to justify its decisions with respect to the issues raised, NAM and AFS and their members represent specific affected industry sectors under this final rule and have an interest that the Agency may not directly address. Therefore, OSHA cannot adequately represent the Movant Intervenors' interests.

The Movant Intervenors respectfully request that the Court enter an Order granting leave to intervene in case No. 16-1105 and case No. 16-1113.

Dated: May 2, 2016.

Respectfully submitted,

JACKSON LEWIS P.C.

/s/ Bradford T. Hammock

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RULE 26.1 DISCLOSURE STATEMENT OF MOVANT INTERVENOR THE NATIONAL ASSOCIATION OF MANUFACTURERS

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, Movant Intervenor, the National Association of Manufacturers (“NAM”), makes the following declarations:

NAM is the largest manufacturing association in the United States. It is a national not-for-profit trade association representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs nearly 12 million men and women, contributes more than \$2.17 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for three-quarters of private-sector research and development. The NAM is the powerful voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States. NAM has no parent company, and no publicly held company has a 10% or greater ownership interest in NAM.

Dated: May 2, 2016.

Respectfully submitted,

JACKSON LEWIS P.C.

/s/ Bradford T. Hammock

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RULE 26.1 DISCLOSURE STATEMENT OF
MOVANT INTERVENOR THE AMERICAN FOUNDRY SOCIETY

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, Movant Intervenor, the American Foundry Society (“AFS”), makes the following declarations:

AFS states that, founded in 1896, it is the leading U.S. based metalcasting society, assisting member companies and individuals to effectively manage their production operations, profitably market their products and services, and equitably manage their employees. The association is comprised of more than 7,500 individual members representing over 3,000 metalcasting firms, including foundries, suppliers, and customers. AFS has no parent corporation, and no publicly held company has 10% or greater ownership in AFS.

Dated: May 2, 2016.

Respectfully submitted,

JACKSON LEWIS P.C.

/s/ Bradford T. Hammock

Bradford T. Hammock

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Attorneys for the American Foundry Society

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of May 2016, I submitted for filing, via CM/EFC, the forgoing Unopposed Motion for Leave to Intervene as Respondents, and that service was accomplished electronically through the CM/ECF system on all registered counsel.

/s/ Bradford T. Hammock

Bradford T. Hammock