

CLIENT ALERT

OSHA Publishes Long-Anticipated Revision to Silica Standards

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Last Friday, the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) published in the *Federal Register* new silica exposure limits designed to reduce worker exposure to silica dust across a wide range of industries. See 81 Fed. Reg. 16,286 (Mar. 25, 2016). The new standards revise the 1971 standards.

The long-anticipated rule, which comes three years after it was proposed, cuts in half the amount of silica dust exposure allowed for General Industry (from 100 $\mu\text{g}/\text{m}^3$ to 50 $\mu\text{g}/\text{m}^3$ expressed as an eight-hour time-weighted average) and cuts the amount allowed for Construction and Maritime to one-fifth of the existing standard (from 250 $\mu\text{g}/\text{m}^3$ to 50 $\mu\text{g}/\text{m}^3$).

OSHA states that the new personal exposure limit, or PEL, is "the lowest level feasible for all affected industries."

The standards take effect on June 23, 2016, although various related provisions are phased in over multiple years. For example, the rule requires employers to institute new work practices and engineering controls, to conduct medical surveillance and provide medical testing under certain circumstances, and requires use of respirators when other controls do not effectively limit worker exposure. The rule gives the construction industry one year from the effective date to come into compliance, general industry and maritime two years, and Hydraulic Fracturing two years for all provisions except for the engineering control provisions, which must be in place for that industry sector by June 23, 2021.

Among other things, the rule imposes requirements for exposure assessment, methods for controlling exposure, respiratory protection where engineering controls do not sufficiently reduce exposure, medical surveillance, hazard communication and training, and recordkeeping, tailored to each relevant sector (Construction, General Industry, and Maritime).

For the Construction Industry, provisions of the rule include:

- Establishing and implementing a written exposure control plan, including procedures to restrict access to areas where high exposure may occur.
- Designating a competent person to implement the written control plan.
- Restricting housekeeping practices that expose workers to silica where there are feasible alternative practices.
- Providing medical exams, including chest x-rays and lung function tests, every three years for workers who wear a respirator for 30 or more days a year under the rule.
- Training workers on operations that result in exposure about ways to limit such exposure.
- Maintaining records of exposure and medical exams.

For General Industry and Maritime, provisions of the rule include:

- Measuring the amount of silica workers are exposed to if they may be exposed to silica at or above an action level of 25 $\mu\text{g}/\text{m}^3$, averaged over eight hours.

- Protecting workers from exposure above the PEL (of 50 $\mu\text{g}/\text{m}^3$ averaged over eight hours).
- Limiting access to areas where exposure could go above the PEL.
- Using dust controls to protect workers above the PEL.
- Providing respirators to workers where engineering dust controls cannot limit exposures above the PEL.
- Restricting housekeeping practices that expose workers to silica if alternative practices are available.
- Establishing and implementing a written exposure control plan that identifies tasks that involve exposure and methods used to protect workers.
- Providing medical exams, including chest x-rays and lung function tests, every three years for workers exposed at or above the action level (25 $\mu\text{g}/\text{m}^3$) for 30 or more days a year.
- Training workers on operations that result in exposure about ways to limit exposure.
- Maintaining records of exposure and medical exams.

The rule also provides for medical surveillance to employees in General Industry and Maritime who will be exposed above the PEL for 30 or more days a year starting June 23, 2018, and to workers who will be exposed at or above the action level (25 $\mu\text{g}/\text{m}^3$) for 30 or more days per year beginning on June 23, 2020.

In pushing for the rule, OSHA estimated that approximately 2.3 million workers in the United States are exposed to respirable crystalline silica, including two million construction workers and 300,000 workers in general industry operations such as brick manufacturing, foundries, and hydraulic fracturing. OSHA believes that workers exposed to high levels of silica are at risk of developing lung cancer, silicosis, chronic obstructive pulmonary disease, and kidney disease. The rulemaking process has been contentious, and the public record developed voluminous. Many in industry estimate that the rule will cost far above the Administration's estimate, in the order of billions of dollars rather than hundreds of millions. Not surprisingly, multiple legal challenges to this rulemaking are expected.

For a copy of the final rule, [click here](#).

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