

## OSHA's Long-Awaited Silica Rule Faces Uncertain Future

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Practices

Workplace Safety and Health

More than 20 contentious years in the making, a comprehensive [new silica rule](#), released in March by the Occupational Safety and Health Administration, faces an uncertain future. The rule has met with fierce opposition from business groups and their allies in Congress, who contend the rule is unnecessary, infeasible, and costly.

The intent of the regulation is to curb the incidence of silicosis, a disabling and sometimes fatal lung disease in workers exposed for long periods to elevated levels of respirable crystalline silica. Some research has implicated silica in other diseases as well, including lung cancer, chronic obstructive pulmonary disease, and kidney disease. OSHA projects that, when fully implemented, the rule will save more than 600 lives and prevent more than 900 new cases of silicosis annually.

About 2.3 million workers in general industry, maritime, and construction may be affected. Besides shipyards, general industry sectors affected include asphalt roofing materials, concrete products, cut stone, dental labs, foundries, jewelry, porcelain enameling, pottery, railroads, ready-mix concrete, structural clay products, and support activities for oil and gas operations. The sorptive clays sector is exempt from the rule.

The rule becomes effective on June 23, 2016, although a phase-in schedule gives construction until June 23, 2017, and general industry and maritime until June 23, 2018, to comply with most of its provisions. Fracking operations also must comply by the 2018 date, but have until June 23, 2021, to provide mandatory engineering controls for overexposures. OSHA's silica rulemaking officially began in 1996 with a pledge by the Labor Department to eliminate silicosis.

The rule is written as two standards, one for construction and one for general industry and maritime. One provision cuts the worker permissible exposure limit (PEL) in all three industries to 50 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) of air averaged over an eight-hour shift, which is about half the current level in general industry and maritime and one-fifth what the PEL now is in construction. OSHA describes the new limit as "the lowest level feasible for all affected industries." In addition, employers in general industry and maritime must measure silica levels if workers may be exposed at or above an "action level" of  $25 \mu\text{g}/\text{m}^3$ .

Among other provisions, 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 of the three sectors. Construction industry employers, many of whom are small, are given two alternatives to control worker exposure: they may choose among a list of control methods spelled out in the regulation or measure workers' exposure and develop dust controls based on exposure results.

In announcing the rule on March 25, OSHA chief Dr. David Michaels said, "Today, we are taking action to bring worker protections into the 21st century in ways that are feasible and economical for employers to implement." The agency also said the \$1 billion annual cost of compliance it projects will be more than offset by the estimated \$7.7 billion in annual net benefits. But employers assert the rule is not feasible and contend the new requirements will cost far more than the annual cost OSHA has projected. Industry also believes the rule is unnecessary because risk could be minimized simply by improving enforcement of workplaces with exposures above the old PELs.

Business groups have filed challenges to the rule in multiple courts of appeals.

OSHA's initiative is expected to influence the Mine Safety and Health Administration, which is considering its own silica rule. If MSHA lowers its PEL to the OSHA limit, the change will be felt by metal/non-metal mine operators and by coal producers where coal dust PELs are dependent on silica analysis. Adopting the OSHA rule's ancillary provisions could vastly expand medical examinations, respirator use, restricted work areas, training, and recordkeeping. However, even though silica is on MSHA's regulatory schedule, the agency may not have enough time to release its rule before the current Administration exits in January 2017. Our attorneys are studying the rule and developing strategies to assist businesses in responding to it.

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