

Silica: Rule Enforced for Construction but 30-Day 'Good Faith' Grace Period; Oral Arguments Heard on Challenge

November 20, 2017

PRACTICES OSHA, Labor and Employment

Silica Construction Rule In Effect with 30-Day Good Faith Grace Period

OSHA began enforcing the Respirable Crystalline Silica construction standard, 29 CFR § 1926, on September 23, 2017.¹ Shortly before the enforcement date, Thomas Galassi, Acting Deputy Assistant Secretary of Labor for Occupational Safety and Health, issued a memo announcing, “[d]uring the first 30 days of enforcement, OSHA will carefully evaluate good faith efforts taken by employers in their attempts to meet the new construction silica standard.”² During this time, OSHA will set out to assist employers with complying with the new standard per the memo. Galassi cautions, however, that if an employer is “not making any efforts to comply, [that employer] may also be considered for citation.”

Oral Arguments Heard on Silica Rule Challenge

In 2016, industry groups challenged the new silica final rule.³ In *North America’s Building Trade Unions v. OSHA*, No. 16-1105 (D.C. Cir. filed Apr. 1, 2016), oral arguments were heard on September 26, 2017, specifically on the industry petitioners’ arguments regarding whether (1) the rule is justified by significant risk from silica, (2) whether the rule is technologically feasible, and (3) whether the rule is economically feasible. The D.C. Circuit’s scheduling order for the hearing gave the parties a total of 90 minutes for arguments. A decision is forthcoming.

Haynes Boone has previously published articles on this subject, including an article last year announcing the final rule’s release.⁴

¹ The silica rule does the following:

- Reduces the permissible exposure limit (“PEL”) for crystalline silica to 50 micrograms per cubic meter of air, averaged over an eight-hour shift.
- Requires employers to use engineering controls (such as water or ventilation) and work practices to limit worker exposure; provide respiratory protection when controls are not able to limit exposures to the permissible level; limit access to high exposure areas; train workers; and provide medical exams to highly exposed workers.
- Staggers compliance dates to ensure employers have sufficient time to meet the requirements, *e.g.*, extra time for the hydraulic fracturing (fracking) industry to install new engineering controls and for all general industry employers to offer medical surveillance to employees exposed between the PEL and 50 micrograms per cubic meter and the action level of 25 micrograms per cubic meter.

[OSHA National News Release \(U.S. Dep’t of Labor, Office of Public Affairs\), March 24, 2016.](#)

² [OSHA Standard Interpretation, Launch of Enforcement of the Respirable Crystalline Silica in Construction Standard, 29 CFR § 1926.1153, Sept. 20, 2017.](#)

³ See, e.g., *Associated Masonry Contractors of Texas v. OSHA*, No. 16-60208 (5th Cir. filed Apr. 4, 2016); *North America's Building Trade Unions v. OSHA*, No. 16-1105 (D.C. Cir. filed Apr. 1, 2016).

⁴ [See Haynes Boone Publication, May 5, 2016, Silica Final Rule Announced; Will Take Effect on June 23, 2016 with Staggered Compliance Dates Thereafter.](#)