Silica Final Rule Announced; Will Take Effect on June 23, 2016 with Staggered Compliance Dates Thereafter

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PRACTICES OSHA, Labor and Employment

On March 24, 2016, OSHA announced its final rule covering protections for workers exposed to respirable silica dust. The final rule will:

- Reduce the permissible exposure limit ("PEL") for crystalline silica to 50 micrograms per cubic meter of air, averaged over an eight-hour shift.
- Require 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.
- Stagger 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.[1]

The final rule, which will take effect on June 23, 2016 if challenges are unsuccessful, is written as two standards: one for the construction industry and another for general industry and maritime. The staggered compliance dates are as follows:

- Construction – June 23, 2017, one year after the effective date
- General Industry and Maritime – June 23, 2018, two years after the effective date
- Hydraulic Fracturing – June 23, 2018, two years after the effective date for all provisions except Engineering Controls, which have a compliance date of June 23, 2021

Industry groups have already begun to challenge the new final rule, which can be challenged for 60 days after its publication in the Federal Register.[2] An employer cited under the rule can also challenge the rule's validity through the Occupational Safety and Health Review Commission process.

Haynes Boone previously published three articles on this subject, including an article last quarter foretelling of the standard's release.[3]

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

[2] *See, e.g., Associated Masonry Contractors of Texas v. OSHA,* No. 16-60208 (5th Cir. filed Apr. 4, 2016).

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[3] See Haynes Boone Publication, February 1, 2016, New Silica Exposure Standard One Step Closer to Finalization.

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