

OSHA's Crystalline Silica Rule: Stakeholder Participation and Changes to the Standards

OSHA's final rule is the result of extensive review of the scientific evidence on adverse health effects associated with exposure to respirable crystalline silica — analysis of the feasibility of limiting exposures and providing other protective measures and, importantly, substantial input by stakeholders.

Stakeholder involvement in the rulemaking

OSHA's rulemaking process involves significant engagement with stakeholders. Information and comment provided by the public contribute to development of rules that protect workers, are based on the best available evidence, and are feasible for employers.

OSHA obtained input from the public on the silica rule through a variety of methods, including:

Engagement with small businesses.

OSHA obtained input from small business representatives throughout the rulemaking process. OSHA's engagement with small businesses started early with review under the *Small Business Regulatory Enforcement Fairness Act* (SBREFA). The SBREFA panel, including representatives from OSHA, the Small Business Administration's Office of Advocacy, and the Office of Management and Budget, conferred with small entity representatives from general industry, maritime and construction. The panel's final report includes comments and recommendations to OSHA for the proposed rule, which resulted in many changes to the proposal. Many small businesses submitted comments and participated in the 14 days of public hearings on the proposed rule.

Consultation with advisory committees.

Throughout the rulemaking process, OSHA engaged with the agency's Advisory Committee on Construction Safety and Health, and the Maritime Advisory Committee on Occupational Safety and Health. These diverse committees include representatives of employers, workers, and other stakeholders.

Public comments and public hearings. OSHA published its Notice of Proposed Rulemaking for respirable crystalline silica in the *Federal Register* on September 12, 2013. Interested parties had nearly five months, until February 11, 2014, to submit comments on the proposed rule.

OSHA held 14 days of informal public hearings on the proposed rule in Washington, D.C., from March 18 through April 4, 2014. More than 200 stakeholders testified, including representatives from more than 70 organizations, such as public health groups, trade associations, labor unions, businesses and workers. OSHA allowed hearing participants until June 3, 2014, to submit additional information and data to the record, and until August 18, 2014, to submit final briefs and arguments.

OSHA received more than 2,000 comments during the pre- and post-hearing public participation period. Hearing transcripts contain more than 4,400 pages of testimony on the proposed rule.

Changes to the proposed standards

The final standards include several major changes from the proposed standards as a result of OSHA's analysis of written comments and testimony on the proposed rule. These changes include:

Scope. The scope of the standards has been revised to exclude tasks that involve low exposures; the standards do not apply where worker exposures to respirable crystalline silica will remain below 25 $\mu\text{g}/\text{m}^3$ as an 8-hour time-weighted average under any foreseeable conditions (employers in general industry and maritime must have evidence to support this exception).

The standard for general industry and maritime does not apply to exposures that result from the processing of sorptive clays (i.e., specific types of clay found in a few geologic deposits in the country that are used in a range of consumer products and industrial applications, such as pet litter and sealants for landfills).

The standard for general industry and maritime also allows employers to comply with the specified exposure control methods in the standard for construction instead of complying with the PEL in certain circumstances.

Specified exposure control methods. The proposed construction standard included [Table 1*](#), which lists exposure control methods for common construction tasks. The proposed standard would have required employers following Table 1 to comply with the permissible exposure limit (PEL). Under the final standard, employers who fully and properly implement the exposure control methods for tasks listed on Table 1 of the standard are not subject to the PEL, and are not required to assess worker exposures to silica or to comply with other provisions of the standard on use of engineering and work practice controls.

The entries on Table 1 have also been revised extensively to include additional tasks and divide entries for greater specificity; [Table 1](#) now includes 18 entries, as opposed to 13 in the proposed standard. Most notes in the proposed entries were also removed, making Table 1 easier to follow.

Protective clothing. The proposed standards would have required use of protective clothing in some situations. The final standards do not include that requirement.

Housekeeping. The proposed standards would have prohibited use of compressed air, dry sweeping and dry brushing to clean clothing or surfaces contaminated with crystalline silica where such activities could contribute to employee exposure to respirable crystalline silica that exceeds the PEL. The final standards allow for use of compressed air, dry sweeping, and dry brushing where other cleaning methods are not feasible.

Written exposure control plan. The proposed standards did not include a requirement for employers to develop a written exposure control plan. The final standards require employers to develop a written exposure control plan, and the standard for construction requires a competent person to implement the plan.

Regulated areas. OSHA proposed alternatives for employers to limit access to areas where exposure exceeds the PEL.

- The final standard for general industry and maritime requires regulated areas where exposures exceed the PEL. The posting of warning signs at the entrances to regulated areas is also required.
- The final construction standard requires procedures to restrict access to work areas in the written exposure control plan.

Medical surveillance. The proposed rule would have required employers to make medical surveillance available to employees exposed to respirable crystalline silica above the PEL for 30 or more days per year. The final standard for general industry and maritime requires medical surveillance to be made available to employees exposed at or above the action level for 30 or more days per year, and the construction standard requires medical surveillance to be made available to employees required by the standard to use a respirator for 30 or more days per year.

Employers are required to obtain a written medical opinion for the medical examinations provided for under the standards. Unlike the proposal, in the final standards the information in the written medical opinion provided to the employer is limited to the date of the examination; a statement that the examination met the requirements of the standard; and any recommended limitations on the employee's use of respirators. If the employee provides written authorization, the opinion provided to the employer will include any recommended limitations on the employee's exposure, and/or any referral to a specialist.

Dates. The final standards have been revised to allow employers more time to comply with the requirements. Extensions include:

*See regulatory text for construction standard, with Table 1 at www.osha.gov/silica/SilicaConstructionRegText.pdf.

- Compliance with most provisions is required one year after the effective date for construction and two years after the effective date for general industry and maritime employers, instead of 180 days after the effective date for most provisions and one year after the effective date for engineering controls as proposed;
- Hydraulic fracturing operations in the oil and gas industry must comply with most provisions two years after the effective date, but are provided additional time (five years after the effective date) to implement engineering controls to limit exposures to the new PEL; and
- A staggered implementation schedule is set up for medical surveillance requirements in the standard for general industry and maritime.

Additional information

Additional information on OSHA's silica rule can be found at www.osha.gov/silica.

OSHA can provide extensive help through a variety of programs, including technical assistance about effective safety and health programs, workplace consultations, and training and education.

OSHA's On-site Consultation Program offers free and confidential occupational safety and health services to small and medium-sized businesses in all states and several territories across the country, with priority given to high-hazard worksites. On-site consultation services are separate from enforcement and do not result in penalties or citations. Consultants from state agencies or universities work with employers to identify workplace hazards, provide advice on compliance with OSHA standards, and assist in establishing and improving safety and health management systems. To locate the OSHA On-site Consultation Program nearest you, call 1-800-321-OSHA (6742) or visit www.osha.gov/dcsp/smallbusiness.

For more information on this and other health-related issues impacting workers, to report an emergency, fatality, inpatient hospitalization, or to file a confidential complaint, contact your nearest OSHA office, visit www.osha.gov, or call OSHA at 1-800-321-OSHA (6742), TTY 1-877-889-5627.

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For assistance, contact us. We can help. It's confidential.



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