SAFETX UPDATE



OSHA ACTIVITIES AND UPDATES

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Federal Silica Standard

On March 25, 2016, the Occupational Safety and Health Administration (OSHA) published a *Federal Register* Notice of Final Rulemaking on a significant and controversial change to its respirable crystalline silica standard. Here's the background and current status.

The Regulatory Action

In September 2013, federal OSHA published a Notice of Proposed Rulemaking for occupational exposure to respirable crystalline silica. Over 2,700 comments were received, amounting to 34,000 pages of material. Two weeks of hearings were held in early 2014 with over 80 organizations and individuals testifying. OSHA sent the package generated by the public hearings and comments submitted for the record to the Office of Management and Budget (OMB) in late December 2015. Once OSHA receives clearance from OMB, a *Federal Register* Notice of Final Rulemaking will be prepared.

Once the *Federal Register* Notice of Final Rulemaking is published and becomes final, OSHA will notify all state occupational safety

and health programs (such as Cal/OSHA) of this change. Cal/OSHA will have six months to prepare a response to federal OSHA explaining what action it intends to take so that it may remain "at least as effective as" the federal program. OSHA has set future dates for implementation of these revisions to allow industry time to comply. For the construction industry, it has set June 23, 2017, as the date.

How Workers Are Exposed to Crystalline Silica

Respirable silica consists of very small particles at least 100 times smaller than ordinary sand. Exposures occur during common construction operations, such as using masonry saws, hand-operated grinders, jackhammers, rotary hammers or drills, tuckpointing, operating vehicle-mounted drilling rigs, milling, rock crushing, drywall finishing using silica-containing material, and use of heavy equipment during earthmoving.

Inhalation of very small (respirable) crystalline particles puts workers at risk for silicosis, lung cancer, chronic obstructive pulmonary disorder (COPD) and kidney disease. According to OSHA, about 1.85 million workers are currently exposed to respirable crystalline silica in construction worksites in the U.S. More than 640,000 are estimated by OSHA to be exposed to silica levels higher than the current standard.

How Employers Must Comply

- Protect workers from respirable crystalline silica exposures above the permissible exposure limit (PEL) of 50 micrograms of silica per cubic meter of air during an eight-hour day
- Measure the amount of silica that workers are exposed to if it may be at or above the action level (AL) of 25 micrograms of silica per cubic meter of air averaged during an eight-hour day
- Limit worker access to areas where workers could be exposed above the PEL
- **Use dust controls** to protect workers from silica exposures above the PEL
- Provide respirators to workers when dust controls cannot limit exposures above the PEL
- Offer medical exams including chest X-rays and lung function tests; offer medical exams every three years for workers



exposed above the PEL for 30 or more days per year

- Train workers on work operations resulting in silica exposure and ways to limit exposure
- Keep records of workers' exposure and medical exams

Proponents' Argument

The current standard is older than 40 years and based on research from the 1960s, and the current standard is ineffective in protecting employees. The proposed rule would save nearly 700 lives and prevent 1,600 new cases of silicosis each year. Of these, more than 560 lives would be saved, and about 1,080 cases of silicosis would be prevented among construction workers.

Opponents' Argument

A significant regulatory burden would be placed upon large segments of the economy, particularly for small businesses, including the costs of implementing an array of engineering and work practice controls. Commercial laboratories have not been able to measure workplace silica levels with accuracy or consistency, which would make compliance difficult. OSHA has grossly underestimated the costs of implementing the new standard. The agency has estimated the cost for the average workplace covered by the standard would be \$1,524. The annual cost to a firm with fewer than 20 employees would average about \$560.

At this time, there is considerable discussion among industry groups to oppose this revision by advocating that the U.S. Congress withhold funding for federal OSHA to implement these revisions.

Stay tuned — there will likely be additional developments on this issue.

Cal/OSHA Health Rulemaking Activities

Upcoming issues include the following:

- 1. *Medical services and first aid* Cal/OSHA is preparing documents to begin formal rulemaking in 2016.
- Permissible exposure limits (continuing efforts for wood dust, benzyl chloride, tetrabromoethane and trichloroethylene)
 Cal/OSHA is hiring a toxicologist and re-establishing the PEL advisory committee meetings in 2016.
- Occupational exposure to lead in construction – Cal/OSHA has proposed significant reductions in its lead in construction standard. In late 2015, it concluded information gathering started in 2010 to revise the occupational exposure to lead in construction standard. The Research and Standards Unit within Cal/OSHA will con-



solidate the record on this and submit it to the Cal/OSHA Standards Board. The Board, in turn, will hold a hearing to gather stakeholder input for the record.

Repeat Violations

Along with federal funding for Cal/OSHA comes federal oversight and monitoring. The federal monitoring of the Cal/OSHA program resulted in a finding that Cal/OSHA was not "at least as effective as" the federal program as it issues fewer violations classified as "repeat." Under a proposal by Department of Industrial Relations Director Christine Baker, the geographic restrictions (currently on a regional office basis) will be expanded to a statewide basis. The review period to determine if a repeat violation has occurred has been reduced from five years to three years. I drafted an industry letter opposing this revision, which was signed by a number of associations. Baker has the proposal under consideration.

If this proposed change is adopted, contractors with multiple job site locations will need to be careful. If one location is cited, all sites should be notified to ensure the same or similar hazardous condition does not exist in order to avoid a "repeat" violation.

Heat Illness Prevention (HIP) Inspection Data

Since 2005, Cal/OSHA has given enforcement and outreach on its heat illness regulation considerable priority. Expect this priority to continue in the 2016 heat season.

A few key indicators emphasize this priority. There were 3,503 inspections in 2015; 915 inspections had at least one violation of the heat standard. Of those 3,503, a total of 1,990 were in construction. The most frequently cited sections of the heat standard were a lack of or inadequate written HIP, employee training and provision of water. The total assessed penalties were \$1,170,312, with 52 confirmed heat illness cases in 2015.

As we approach the warm/hot weather, please ensure your heat illness prevention program is consistent with the changes effective May 1, 2015.

Cal/OSHA Enforcement Goals

Per its five-year plan, Cal/OSHA will be targeting the mobile workforce in construction, in particular when on construction job sites. Inspectors will focus on preventing the leading causes of injuries and illnesses from (1) falls, (2) electrocution, (3) struck-by and (4) crushed by/caught between. Regarding heat illness prevention, Cal/OSHA will conduct approximately 2,300 inspections coded for HIP each year.

Recent Updates to Cal/OSHA Pocket Guide

The Cal/OSHA Pocket Guide for the Construction Industry had changes made in several areas: structure erection and construction – Title 8, Section 1710; forklifts – Section 3650; hazard communication – Section 5194; heat illness prevention – Section 3395; and lockout/blockout procedures – Section 3314. In the area of personal protective equipment, changes were made to Sections 1514, 3380 and 3384.

All of the above areas and topics in safety are crucial to not only your workers' safety but to your financial health as a construction company as well. Stay tuned for the next "Safety Update" column for future updates.