

What contractors need to know about OSHA's new silica rule

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After a few legal fits and starts, as well as extra time for review and input, the Occupational Safety and Health Administration's new silica standard for construction is scheduled to go into effect on Sept. 23.

What that means is contractors who engage in activities that create silica dust — that is, respirable crystalline silica — such as by cutting, grinding or blasting materials like concrete, stone and brick, must meet a stricter standard for how much of that dust workers inhale. The same goes for employers of tradespeople working around such activities.

The new standard also specifies what services employers must make available to workers who are exposed to high levels of silica dust and the training required of those who are at risk.

Inhaling silica dust can lead to silicosis, an incurable lung disease that can be fatal if severe enough. Those with too much silica exposure can also develop lung cancer, kidney disease and chronic obstructive pulmonary disease.

This isn't the first time OSHA has attempted to limit exposure to breathable silica. The standard slated to go into effect next month will take over for OSHA's first silica standard, which was issued in 1971 when the Department of Labor first established the agency. The DOL has been studying silica dust and its relationship to worker deaths since the 1930s.

The existing standard requires that silica dust particles, which are 100 times smaller than sand granules, be limited to 250 micrograms per cubic meter of air over an average of eight hours — the hours of a typical work shift. The new standard reduces that to 50 micrograms over the same time period.

OSHA introduced the new standard in 2013, but some OSHA officials have been advocating for a silica rule change for at least 20 years, according to Joseph Paranac Jr., a Newark, NJ-based attorney with the law firm LeClairRyan. "Sometimes it takes a lot of pressure to get them to issue a new standard," he said.

Those who do not comply with the new standard will be subject to a maximum fine of \$12,675 for a serious or other-than-serious violation; \$12,675 per day past the abatement date for a failure-to-abate violation; and \$126,749 for a repeated or willful violation.

What implementation entails

OSHA has been on the receiving end of pressure from construction industry groups that claim the standard's cost of implementation and technological limitations will put too big a burden on contractors. They also argue that some parts of the standard — like measuring the new exposure limit — are nearly impossible to implement.

In addition to the exposure limits, the new rules require contractors to:

1. Develop a written silica exposure control plan.
2. Designate someone to implement the plan.
3. Adjust housekeeping practices to maximize control of silica dust.
4. Provide medical exams every three years to employees who are exposed to silica to the point of having to wear a respirator for 30 days or more each year. The exams must include lung-function tests and chest X-rays.
5. Train workers on how to limit exposure to silica.
6. Keep records of workers' silica exposure and related medical treatment.

Implementing the new rules requires an initial assessment of how much silica dust a company's operations generate, Paranac said. If the reading falls below the level of 25 micrograms, then the company is not required to provide medical tests, develop a written plan or undertake any of the suggested engineering controls. The latter include wearing respirators and either wetting work down with tools like a wet saw or using a vacuum device to reduce the volume of dust.

General contractors take the lead

Industry-wide resistance to the new standard failed to gain enough traction to scuttle it. OSHA did, however, delay the rule's implementation by 90 days. That was intended to give the agency time to offer employers additional guidance on what it called the "unique nature" of the requirements in the construction standard.

Still, the new regulations have the potential to make life a little harder for general contractors, said Don Garvey, construction safety and health specialist at 3M, in Minneapolis. For one thing, OSHA is particularly concerned about subcontractors who might expose workers from other trades to the silica dust they generate, he said. This means electricians, for example, could be exposed to dust even though they don't create it themselves through their operations. General contractors could be left bearing the responsibility of making sure all subcontractors comply with the new standard.

"General contractors will have to be wary of it, [and] they'll need to work with subcontractors to make sure the job site stays safe," Garvey said.

For all the focus on the new rule's objectives, OSHA gives no step-by-step instructions to fulfilling its requirements. "They tell you what to do, not necessarily how to do it," Garvey said.

Getting help understanding the rules

Contractors that need assistance getting their programs up and running can look to trade associations like the [Associated General Contractors of America](#). "They have a lot of good information, and they have a lot of good stuff on their websites," Garvey said.

Workers' compensation insurance carriers are another good resource. "They have loss-control [employees] who are safety and health professionals and who can help contractors review the situation, assess worker exposure and do training," Garvey said. Such services are typically covered as a part of premium payments, he said.

OSHA itself is also a good resource for contractors, particularly small and medium-sized ones. Garvey suggests that company safety officials who are still confused about how to start a safety program aimed at reducing silica exposure download the free [Small Entity Compliance Guide from OSHA's website](#). Additionally, before the silica rule goes into effect, OSHA is expected to publish a compliance officer guidebook, which will also be downloadable and free. That document will explain what a compliance officer will look for and why they will issue a citation.

A company that makes a concerted effort to comply with the new rule's requirements shouldn't be too worried of running afoul of OSHA right off the bat, Paranac said. "[The violation] would probably have to be willful to get the maximum fine," he said. "Unless they can prove that, I don't think [they] would throw the book at the beginning."

That doesn't mean contractors can afford to avoid compliance altogether. "It doesn't take a rocket scientist to figure out that OSHA is going to be pretty gung-ho on this once it takes effect," Paranac said.