Regulation Review

Regulation Review: Crystalline Silica Exposure

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The Occupational Safety and Health Administration (OSHA) recently released a proposed rulemaking on occupational exposure to crystalline silica. The basic framework of the proposal started winding its way through the regulatory process more than a decade ago. It is also the first notable Department of Labor rulemaking under recently-confirmed Secretary Thomas Perez. The unofficial, pre-publication version is 757 pages.

The central part of the rulemaking is the establishment of new "permissible exposure limits" (PELs) over an 8-hour average. Currently, the standards vary by industry and different forms of silica. For instance, the current PEL for quartz in "general industry" is 100 micrograms per cubic meter of air. The proposed rule would set a blanket PEL across all industries and materials of 50 micrograms per cubic meter of air.

Breakdown:

Total Compliance Costs: $6.5 billion

Annual Paperwork Burden: 2,585,164 hours

Analysis:

One of the interesting aspects of the rule's long, drawn-out formation is the level of input from outside groups. According to the White House's own meeting log, there have been 11 meetings with OIRA on the subject since 2011. That represents more than half of the OSHA-related meetings under this administration. In one such meeting, the American Chemistry Council (ACC) estimated annualized costs of roughly $5.5 billion. Such an estimate would eclipse OSHA's high-end annualized *benefits* by almost $400 million.

OSHA concluded annualized costs are approximately $658 million (during a 10-year horizon). However, examining OSHA's breakdown of total costs by year reveals that the plurality of the compliance burden will come in year one, with more than $1 billion. This is hardly surprising, as a significant part of compliance involves installing new controls and establishing new workplace practices.

The key determination OSHA had to make under its statutory limits was the level of technological feasibility. The agency claims that these new standards are technologically feasible for a large majority of tasks and operations it affects. Additionally, they concluded that the rule's impact on employment would be "negligible." However, OSHA did find that "most or all costs arising from this proposed silica rule would be passed on in higher prices," and they could not conclusively determine whether there would be a significant economic impact on a substantial number of small entities.

The rule's development has likely taken so long because it covers a wide swath of activities across a diverse array of industries. According to OSHA, the new standards would affect more than half a million entities and

roughly 2.1 million workers across 129 different industries. The “Foundation, Structure, and Building Exterior Contractors” industry faces the heaviest burden with more than $215 million in annualized costs, roughly a third of the overall annualized costs of the rule. In fact, the proposed rule identified 130 separate affected industries.

Despite all the time and consideration already poured into this rulemaking, there are still lingering questions. OSHA is soliciting comment on 87 different issues regarding the rule. Interested parties will have the opportunity to comment on the proposal for 90 days after its official publication in the Federal Register. It is difficult to say how many more twists and turns this rulemaking will take, but it is yet another significant development in this administration’s regulatory record.