

Workplace Safety Update: What's the Latest on OSHA's Silica Rule & Other OSHA Issues

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Silica Standard

- ◆ Rule upheld by the D.C. Circuit
- ◆ Ongoing discussions between AFS and OSHA on FAQs:
 - Industrial Sweepers
 - Medical Surveillance
 - Housekeeping
- ◆ Development of feasibility checklist to assist foundries in finalizing compliance steps
- ◆ Compliance currently set for June 23, 2018 – AFS and NAM seeking 180-day delay in enforcement

Silica Standard

Problem Foundry Areas

- ◆ As expected, we are seeing difficulty in foundries being able to achieve the reduced PEL on a consistent basis
- ◆ Problem areas include:
 - Shakeout
 - Blasting
 - Grinding
 - Housekeeping
 - Other?

Electronic Recordkeeping Final Rule

- ◆ As of today, electronic submission:
 - Employers with 250 or more employees (includes part-time, seasonal, and/or temporary workers) in each establishment to electronically submit their 300, 300A, and 301 forms to OSHA annually
 - Employers with 20 or more but less than 250 employees in certain identified industries to electronically submit their 300A form annually
 - Employers who receive notification from OSHA to electronically submit their 300, 300A, and 301 forms to OSHA
- ◆ OSHA has not posted the data from employer submissions on its website and has denied a FOIA request for the data

Electronic Recordkeeping Final Rule (cont'd)

- ◆ Employers required to develop employee injury and illness reporting requirements – employers must inform employees of the following:
 - Procedures for reporting work-related injuries and illnesses promptly and accurately
 - Employees must not be deterred or discouraged from reporting injuries and illnesses
 - Reasonable reporting procedures are required
- ◆ Employees have the right to report work-related injuries and illnesses
- ◆ Employers are prohibited from discharging or in any manner discriminating against employees for reporting work-related injuries and illnesses

Electronic Recordkeeping Final Rule (cont'd)

- ◆ Rule challenged in two federal district courts
- ◆ Petition for Administrative Stay and Reopening of the Rulemaking Record submitted to the Agency
- ◆ New NPRM in development to, in part, reverse decision to make employers submit 300 Logs and 301 Reports
- ◆ 300A submissions expected to continue
- ◆ Initial round of submissions fell below expected numbers and OSHA has suggested citations could issue
- ◆ OSHA recently announced that employers in state-plan states that have not implemented the rule will need to submit the 300A data
- ◆ Unclear how NPRM will impact retaliation provisions

Beryllium Standard

- ◆ Published in the final days of the Obama Administration
- ◆ Final rule applies to general industry; construction; and maritime
- ◆ Significantly reduces permissible exposure limit to $.2 \mu\text{g}/\text{m}^3$ and establishes a short term exposure limit of $2 \mu\text{g}/\text{m}^3$
- ◆ Also includes numerous, burdensome ancillary provisions
- ◆ Rule has been challenged in the United States Court of Appeals for the Eighth Circuit; briefing has been stayed to allow for settlement discussions
- ◆ OSHA issued a direct final rule making miscellaneous changes to the standard on a technical level; OSHA will be issuing another NPRM to extend compliance

Anything else?

OSHA Penalties Are Up!

- ◆ “Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015” = increased OSHA penalties
- ◆ One-time “Catch Up Adjustment”
- ◆ Yearly increases based on the Consumer Price Index



Top 10 Most Cited Standards

FY 12	FY 13	FY 14
1. <i>Fall Protection</i>	1. <i>Fall Protection</i>	1. <i>Fall Protection</i>
2. <i>Hazard Communication</i>	2. <i>Hazard Communication</i>	2. <i>Hazard Communication</i>
3. <i>Scaffolding</i>	3. <i>Scaffolding</i>	3. <i>Scaffolding</i>
4. <i>Respiratory Protection</i>	4. <i>Respiratory Protection</i>	4. <i>Respiratory Protection</i>
5. <i>Ladders</i>	5. <i>Electrical, Wiring Methods</i>	5. <i>Powered Industrial Trucks</i>
6. <i>Machine Guarding</i>	6. <i>Powered Industrial Trucks</i>	6. <i>Lockout/Tagout</i>
7. <i>Powered Industrial Trucks</i>	7. <i>Lockout/Tagout</i>	7. <i>Ladders</i>
8. <i>Electrical, Wiring Methods</i>	8. <i>Ladders</i>	8. <i>Electrical, Wiring Methods</i>
9. <i>Lockout/Tagout</i>	9. <i>Machine Guarding</i>	9. <i>Machine Guarding</i>
10. <i>Electrical, General Requirements</i>	10. <i>Electrical, General Requirements</i>	10. <i>Electrical, General Requirements</i>

Data Source: OIS Standards Cited

Key Legal Cases

- ◆ **Triumph Construction Corp. v. Secretary of Labor**

Second Circuit affirmed that the period of time to establish a repeat that is set forth in the FOM is not binding on OSHA. OSHA is not restricted to looking back to only a certain period of time in classifying violations as repeat.

- ◆ **Secretary of Labor v. A.H. Sturgill Roofing, Inc.**

Occupational Safety and Health Review Commission looking at the issue of heat stress and the Secretary's burden of proof under the General Duty Clause.

Questions?



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