Regulation Review

Final OSHA Silica Standards

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The Occupational Safety and Health Administration (OSHA) recently released the final version of its rule regarding "Occupational Exposure to Respirable Crystalline Silica." The rule, which has been under development in one form or another for nearly 20 years, institutes a cadre of equipment and workplace practice requirements. For the final version, OSHA provides slightly different standards for "General Industry and Maritime" and "Construction." The rule is 606 pages, making it one of the longest measures in recent years.

BREAKDOWN

Proposed Rule:

- Annualized Costs: $657.89 Million
- Annualized Benefits: $3.47 Billion

Final Rule:

- Annualized Costs: $1.06 Billion
- Annualized Benefits: $4.81 Billion

Difference: $398 Million in increased costs; $1.3 Billion in increased benefits

ANALYSIS

The silica rule is one of the most consequential and controversial rules in recent history. As mentioned above, it has been under development for decades. It is the second most expensive rule of 2016 on an annualized basis. Additionally, taking the net present value (NPV) of costs over 10 years makes it the most expensive Department of Labor (DOL) rule since at least 2006. In fact, at roughly $9 billion in NPV costs, it outpaces the next five DOL rules combined.

An extensive and diverse array of industries will bear these costs. According to OSHA's analysis, 121 industries (as organized by the North American Industry Classification System (NAICS)) face some cost burden. These industries range from "Spring Manufacturing" to "Boatbuilding" to "Offices of Dentists." The following are the industries with the greatest share of the cost:

Industry	Annualized Costs
Foundation, Structure, and Building Exterior Contractors	$139.2 Million
Other Specialty Trade Contractors	$101.8 Million
Support Activities for Oil and Gas Operations	$97.9 Million

Utility System Construction	$83.4 Million
Building Equipment Contractors	$60.1 Million

These costs weigh most heavily on small businesses. OSHA is unable to certify that the rule "will not have a significant economic impact on a substantial number of small entities," and thus provides a Final Regulatory Flexibility Analysis. In other words, the rule is likely to adversely impact small businesses. It certainly meets the "substantial number" threshold. In fact, per OSHA's own profiles of the affected industries, roughly 99 percent of the more than 650,000 affected entities are considered "small business or gov. entities," and roughly 89 percent are "very small entities" (those with less than 20 employees). The question now is: how significantly does the rule impact these entities?

OSHA establishes its "significant impact" thresholds at "annualized costs equal to one percent of annual revenues," or "annualized costs equal to five percent of annual profits." In terms of small entities, there is one industry that exceeds the former and 15 industries that exceed the latter. The most impacted industries include:

Industry	**Costs to Profits**
Pottery, Ceramics, and Plumbing Fixture Manufacturing	38.57%
Clay Building Material and Refractories Manufacturing	33.59%
Cut Stone and Stone Product Manufacturing	24.70%
Miscellaneous Nonmetallic Mineral Product Manufacturing	20.90%
Other Concrete Product Manufacturing	18.59%

When examining "very small entities," two industries exceed the revenue threshold and 25 exceed the profit threshold. The individual industry impacts are even more pronounced. The most impacted industries in that category include:

Industry	**Costs to Profits**
Pottery, Ceramics, and Plumbing Fixture Manufacturing	90.64%
Clay Building Material and Refractories Manufacturing	58.51%
Miscellaneous Nonmetallic Mineral Product Manufacturing	51.05%
Cut Stone and Stone Product Manufacturing	30.81%
Support Activities for Oil and Gas Operations	29.46%

There is not a definitive threshold for "substantial number," but in this case roughly 1 in 8 industries will see costs that significantly cut into their profits. If you only include "very small" entities, it is roughly 1 in 5 industries. For some, this could mean costs in excess of 90 percent of their average profits. Where does this lead? According to the agency itself: "In OSHA's view, however, affected industries would generally be able to pass on most or all of the costs of the rule in the form of higher prices rather than bear the costs of the rule in reduced profits." In other words, get ready for more expensive pottery, among a plethora of other pricier goods.

The silica rule is one of the most hotly contested and litigated rules already. This trend will likely continue in the future. It is, according to the agency's own estimates, the most burdensome rule from the Department of Labor during the Obama Administration. Even in light of its various apparent discussions, negotiations, and accommodations to small businesses, it will still adversely affect small producers – and subsequently consumers through higher prices.