

MARCH 29, 2024 | MSHA LEADERSHIP, RULEMAKING & STANDARDS

MSHA Respirable Crystalline Silica Rule Clears OMB Review – Final Rule Is Imminent

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We have an important update to share about the status of MSHA's Respirable Crystalline Silica rulemaking, officially proposed as [Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection](#). Yesterday, OMB updated the [entry on its website about the Respirable Crystalline Silica rulemaking](#) to reflect that OMB/OIRA has concluded its regulatory review under EO 12866. The rule arrived at OMB/OIRA on January 12, 2024, and in total, OMB hosted seventeen EO 12866 stakeholder meetings. OMB/OIRA is supposed to complete the review within 90 days of receipt, although this is not always adhered to. In this case, MSHA's final version of the rule was in the review process for 75 days.

As you can see below, OMB has updated its entry for this rulemaking to reflect: the "OIRA Conclusion of EO 12866 Review."



We can see here that OMB lists its Concluded Action as "Consistent with Change." This means

that there was some change to the formal submission MSHA sent to OMB, but we cannot discern from status the significance of any changes or whether the changes were made at the direction of OIRA or MSHA. We will have to wait until MSHA publishes the final rule to determine the extent of any difference from the proposal published in July 2023.

For a refresher, here are links to [our blog post recapping the proposed rule](#) and to [our webinar reviewing it from last summer](#).

Having now cleared the EO 12866 regulatory review, there is nothing left in the way of MSHA's Respirable Crystalline Silica rule being issued, and we expect that will happen imminently. MSHA has consistently stated that its target for publishing the final was April of 2024, and MSHA is now positioned to do so. This timing is consistent with our expectation that OSHA will push this rule out ahead of the Congressional Review Act window – 90 legislative days before a possible transition to a new Administration and new Congress. That is not a specific, known date at this point, but to ensure there is no risk of slipping into that zone, OSHA will surely get this rule issued ahead of the Summer. For a recent reference, [MSHA's Safety Program for Surface Mobile Equipment rule](#) concluded its OMB/OIRA review on December 12, 2023, and was published merely a week later

on December 20, 2023.

The closer to today that the final rule issues, the more likely the final rule will look exactly like the proposed rule, or nearly so. The more time that passes between now and issuance, the more likely there will be some changes to the rule from the proposed regulatory text. But we expect to see a pre-publication notice any day now.