

OSHA's Final Rule on Crystalline Silica: What The Construction Industry Needs To Know

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Am I Covered by the New Rule?

All occupational exposures to respirable crystalline silica in construction work are covered, unless employee exposure will remain below 25 micrograms per cubic meter of air (25 $\mu\text{g}/\text{m}^3$) as an 8-hour time-weighted average (TWA) under any foreseeable conditions.

“based on *total* respirable crystalline silica exposures *from all sources*”



When Must I Comply with the New Rule?

- ◆ Must comply with all requirements, except requirements for methods of sample analysis, by June 23, 2017.
- ◆ Must comply with the requirements for methods of sample analysis by June 23, 2018.
- ◆ As of October 23, 2017, OSHA is conducting full enforcement!



What is Table 1?

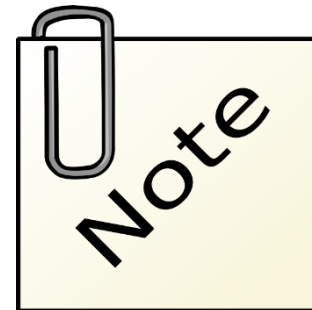
- ◆ Table 1 matches common construction tasks with approved dust control methods and respirators.
- ◆ The employer must fully and properly implement the engineering controls, work practices, and respiratory protection specified when ***engaged in a task identified in Table 1.***
- ◆ Employers who fully and properly implement controls for tasks on Table 1 **do not** have to:
 - Comply with the PEL.
 - Conduct exposure assessments for employees engaged in those tasks.

Equipment/task	Engineering and work practice control methods	Required respiratory protection and minimum assigned protection factor (APF)	
		≤ 4 hours/shift	>4 hours/shift
(ii) Handheld power saws (any blade diameter)	Use saw equipped with integrated water delivery system that continuously feeds water to the blade		
	Operate and maintain tool in accordance with manufacturer's instructions to minimize dust emissions:		
	-When used outdoors	None	APF 10
	-When used indoors or in an enclosed area	APF 10	APF 10

Notes to Table 1 ...

When implementing the control measures specified in Table 1, each employer shall:

- ◆ For tasks performed indoors or in enclosed areas, provide a means of exhaust as needed to minimize the accumulation of visible airborne dust.
- ◆ For tasks performed using wet methods, apply water at flow rates sufficient to minimize release of visible dust.



Additional Notes to Table 1 ...

When implementing the control measures specified in Table 1, each employer shall:

- ◆ For measures implemented that include an enclosed cab or booth, ensure that the enclosed cab or booth:
 - (A) Is maintained as free as practicable from settled dust;
 - (B) Has door seals and closing mechanisms that work properly;
 - (C) gaskets and seals that are in good condition and working properly;
 - (D) Is under positive pressure maintained through continuous delivery of fresh air;
 - (E) Has intake air that is filtered through a filter that is 95% efficient in the 0.3-10.0 μm range (e.g., MERV-16 or better); and
 - (F) Has heating and cooling capabilities.

What If I Don't Use Table 1?

- ◆ For tasks not listed in Table 1, or where the employer does not fully and properly implement the engineering controls, work practices, and respiratory protection described in Table 1, the employer must:
 - Ensure that exposures are below the **permissible exposure limit (PEL)**
 - Conduct an **exposure assessment**
 - Ensure **methods of compliance (e.g., controls and PPE)**
- ◆ Compliance officers directed to review air monitoring records and collect samples where Table 1 not fully and properly implemented.

What Is the New PEL?

PEL: The employer must ensure that no employee is exposed to an airborne concentration of respirable crystalline silica in excess of $50 \mu\text{g}/\text{m}^3$, calculated as an 8-hour TWA.



What Options Do I have for Exposure Monitoring?

Exposure assessment: The employer must assess the exposure of each employee who is or may reasonably be expected to be exposed to respirable crystalline silica at or above the action level ($25 \mu\text{g}/\text{m}^3$) in accordance with either the **performance option** or the **scheduled monitoring option**.



Are There Employee Notification Requirements?

Employee notification of assessment results:

- ◆ Within five working days after completing an exposure assessment, the employer shall individually notify each affected employee in writing of the results of that assessment or post the results in an appropriate location accessible to all affected employees.



Are There Employee Notification Requirements? (cont'd)

Employee notification of assessment results:

- ◆ Whenever an exposure assessment indicates that employee exposure is above the PEL, the employer shall describe in the written notification the corrective action being to be taken to reduce employee exposure to or below the PEL.
- ◆ If controls are not feasible or the employer needs more than 5 days to identify the right engineering controls, respiratory protection is the corrective action that should be described in the written notification and provided to employees.

Are There Any Housekeeping Requirements?

Housekeeping: The employer shall not allow dry sweeping or dry brushing where such activity **could contribute** to employee exposure to respirable crystalline silica unless wet sweeping, HEPA-filtered vacuuming or other methods that minimize the likelihood of exposure are not feasible.

- ◆ Employers are required to use wet sweeping and HEPA-filtered vacuums, whenever feasible.
- ◆ When both wet methods or HEPA-filtered vacuums would not be effective, would cause damage, or would create a hazard in the workplace, the employer is not required to use these methods.



Are There Any Housekeeping Requirements (cont'd)?

Housekeeping: The employer shall not allow compressed air to be used to clean clothing or surfaces where such activity **could contribute** to employee exposure to respirable crystalline silica unless:

- (i) The compressed air is used in conjunction with a ventilation system that effectively captures the dust cloud created by the compressed air; or
- (ii) No alternative method is feasible.



What Must Be in the Exposure Control Plan?

Written exposure control plan: The employer shall establish and implement a written exposure control plan that contains at least the following elements:

- » A description of all tasks in the workplace that involve exposure to respirable crystalline silica;
- » A description of the engineering controls, work practices, and respiratory protection used to limit employee exposure to respirable crystalline silica for each task;



What Must Be in the Exposure Control Plan?

Written exposure control plan: The employer shall establish and implement a written exposure control plan that contains at least the following elements:

- ◆ A description of the housekeeping measures used to limit employee exposure to respirable crystalline silica; and
- ◆ A description of the procedures used to restrict access to work areas, when necessary, to minimize the number of employees exposed to respirable crystalline silica and their level of exposure, including exposures generated by other employers or sole proprietors.



Written Exposure Control Plan



Written exposure control plan:

- ◆ The employer shall review and evaluate the effectiveness of the written exposure control plan at least annually and update it as necessary.
- ◆ The employer shall make the written exposure control plan readily available for examination and copying, upon request, to each employee, their designated representatives, the Assistant Secretary and the Director.
- ◆ Compliance officers are directed to review the written exposure control plan upon the initiation of the inspection!

When Is Medical Surveillance Required?

Medical surveillance:

- ◆ The employer shall make medical surveillance available at no cost to the employee, and at a reasonable time place, for each employee who will required to use a respirator for 30 or more days per year.
 - Employers are required to pay for time spent traveling and taking medical examinations and for the costs of travel if the employee must travel away from the worksite.
 - If the employee is required to wear a respirator at any time during a day, that counts as one day of respirator use.



What Must Be in the Written Report?

PLHCP's written medical report for the employee: The employee's written report should contain:

- ◆ A statement indicating the results of the medical examination, including any medical condition(s) that would place the employee at increased risk of material impairment to health from exposure to respirable crystalline silica and any medical conditions that require further evaluation or treatment;
- ◆ Any recommended limitations on the employee's use of respirators;
- ◆ Any recommended limitations on the employee's exposure to respirable crystalline silica; and
- ◆ A statement that the employee should be examined by a specialist if the chest X-ray provided in accordance with this section is classified as 1/0 or higher by the B Reader, or if referral to a specialist is otherwise deemed appropriate by the PLHCP.

What Information Must Be Provided to the Employer?

PLHCP's written medical opinion for the employer:

The employer shall obtain a written medical opinion from the PLHCP within 30 days of the medical examination.

The written opinion shall contain only the following:

- ◆ The date of the examination;
- ◆ A statement that the examination has met the requirements of this section; and
- ◆ Any recommended limitations on the employee's use of respirators.

What Hazards Must Be Communicated to the Employee?

Hazard communication: The employer shall include respirable crystalline silica in its Hazardous Communication Program and follow all requirements under 1910.1200:

- ◆ Employees must be trained in accordance with the provisions of the HCS.
- ◆ Employees must understand labels on containers of crystalline silica and have access to safety data sheets.
- ◆ Employees must be provided information on the following health hazards resulting from respirable crystalline silica exposure:
Cancer, lung effects, immune system effects, and kidney effects.



What Training Must the Employee Receive?

Employee information and training: The employer must ensure that each employee receives training on and demonstrate knowledge and understanding of the following:

- (A) The health hazards associated with exposure to respirable crystalline silica (Silicosis, cancer, lung effects, immune system effects, and kidney effects);
- (B) Specific tasks in the workplace that could result in exposure to respirable crystalline silica;
- (C) Specific measures the employer has implemented to protect employees from exposure to respirable crystalline silica *for each work task*, including engineering controls, work practices, and respirators to be used and how to use those measures;

What Training Must the Employee Receive? (cont'd)

Employee information and training: The employer must ensure that each employee receives training on and demonstrate knowledge and understanding of the following:

(D) The contents of the standard (description of the standard's requirements);

(E) The identity of the competent person; and

(F) The purpose and a description of the medical surveillance program (e.g., when medical surveillance is required, what tests are performed, symptoms associated with crystalline silica exposure-related diseases, the importance of keeping a copy of the written medical opinion to the employer as proof of medical examination).

When Is Training Required?

Employee information and training:

- ◆ Employees must be trained at the time they are assigned to a position involving exposure to respirable crystalline silica.
- ◆ Additional training must be provided as often as necessary to ensure that employees know and understand respirable crystalline silica hazards and the protections available:
 - Employee is assigned a new task.
 - Employer introduces new protections.
 - When an employee is working in a manner that suggests he or she has forgotten what was learned in training.

What Are the Recordkeeping Obligations?

Recordkeeping: The employer must maintain and preserve records of exposure monitoring data, objective data and medical records for 30 years. The records must be maintained and made available to employees and employee representatives in accordance with 29 CFR 1910.1020.



Questions?



THANK YOU

With 800 attorneys practicing in major locations throughout the U.S. and Puerto Rico, Jackson Lewis provides the resources to address every aspect of the employer/employee relationship.

