

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**TITLE 8. CALIFORNIA CODE OF REGULATIONS****Construction and General Industry Safety Orders
New Sections 1532.3, 5204, and existing Section 5155
(Published on July 1, 2016)****Respirable Crystalline Silica (HORCHER)**

NOTICE IS HEREBY GIVEN that the Occupational Safety and Health Standards Board (Board) proposes to adopt, amend or repeal the foregoing provisions of Title 8 of the California Code of Regulations in the manner described in the Informative Digest, below.

PUBLIC HEARING

The Board will hold a public hearing starting at 10:00 a.m. on **August 18, 2016**, in the **Council Chambers** of the **Walnut Creek City Hall, 1666 N. Main Street, Walnut Creek**. At this public hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest.

WRITTEN COMMENT PERIOD

Any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. The written comment period commences on **July 1, 2016**, and closes at 5:00 p.m. on **August 18, 2016**. Comments received after that deadline will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments are to be submitted as follows:

By mail to Sarah Money, Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; or

By fax at (916) 274-5743; or

By e-mail sent to oshsb@dir.ca.gov.

AUTHORITY AND REFERENCE

Labor Code Section 142.3 establishes the Board as the only agency in the State authorized to adopt occupational safety and health standards. In addition, Labor Code Section 142.3 requires the adoption of occupational safety and health standards that are at least as effective as federal occupational safety and health standards.

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT **OVERVIEW**

The Occupational Safety and Health Standards Board (Board) intends to adopt the proposed rulemaking action pursuant to Labor Code Section 142.3, which mandates the Board to adopt regulations at least as effective as federal regulations addressing occupational safety and health issues.

The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) promulgated regulations addressing respirable crystalline silica on March 25, 2016, as 29 Code of Federal Regulations, Part 1910, Section 1910.1053, and Part 1926, Section 1926.1153. The Board is relying on the explanation of the provisions of the federal regulations in Federal Register, Volume 81, No. 58, pages 16285-16890, March 25, 2016. The Board proposes to adopt regulations which are the same as the federal regulations except for editorial and format differences.

The recently published federal final rule is written as two standards, one for construction, and one for general industry and maritime. The regulation lowers the permissible exposure limit (PEL) for crystalline silica to 50 micrograms per cubic meter of air, averaged over an eight-hour shift. It also requires employers to use engineering controls and work practices to limit worker exposure, provide respiratory protection when controls do not limit exposures to the PEL, limit access to high exposure areas, train workers, and provide medical exams to highly exposed workers.

Each standard contains two appendices, A and B. Mandatory Appendix A provides methods of sample analysis to employers in accordance with the new standard. Non-mandatory Appendix B provides medical surveillance guidelines to employers.

The construction standard includes a table, which specifies respiratory protection for certain tasks without the need for the employer to monitor exposures.

Both standards stagger compliance dates to allow employers sufficient time to meet the new requirements.

California's Construction Safety Orders, Section 1530.1 "Control of Employee Exposures from Dust-Generating Operations Conducted on Concrete or Masonry Materials," addresses dust exposure resulting from the use of powered tools or equipment on concrete or masonry materials. The state and federal standard differ in scope and application, PEL, and several other major elements. Additionally, the state standard lacks requirements for medical surveillance and a written exposure control plan.

California's General Industry Safety Orders do not specifically address employee exposure to respirable crystalline silica. Section 5155 "Airborne Contaminants" and Section 3203 "Injury and Illness Prevention Program" require employers to protect employees from crystalline silica exposure in general terms, but are more performance based than the prescriptive federal regulation.

The federal final rule for construction will be adopted into new Section 1532.3. The final rule for general industry and maritime will be adopted into new Section 5204 and existing Section 5155.

The proposed regulations are substantially the same as those promulgated by Federal OSHA; therefore, Labor Code Section 142.3(a)(3) exempts the Board from the provisions of Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5, Part 1, Division 3 of Title 2 of the Government Code when adopting standards substantially the same as a federal standard. However, the Board is still providing a comment period and will convene a public hearing. The primary purposes of the written and oral comments at the public hearing are to:

1. Identify any clear and compelling reasons for California to deviate from the federal standard; and,
2. Identify any issues unique to California related to this proposal which should be addressed in this rulemaking and/or a subsequent rulemaking; and,
3. Solicit comments on the proposed effective dates.

The responses to comments will be available in a rulemaking file on this matter and will be limited to the above areas.

This proposed rulemaking action is not inconsistent or incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system's component regulations is provided by such things as: (1) the requirement of the federal government and the Labor Code to the effect that the State regulations be at least as effective as their federal counterparts, and (2) the requirement that all state occupational safety and health rulemaking be channeled through a single entity (the Standards Board).

DOCUMENTS RELIED UPON

1. 81 Federal Register 16285-16890 (March 25, 2016).

This document is available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

COST ESTIMATES OF PROPOSED ACTION

According to Table VII-16: Annualized Compliance Costs for Employers in General Industry, Maritime, and Construction Affected by OSHA's Silica Standard (2012 Dollars), found in the March 25, 2016, Federal Register¹, the cost impacts are expected to be as follows:

Industry	Total Cost – All Employers (2012 Dollars)	California Cost – 13.2% GDP (2012 Dollars)
General Industry	\$358,657,378	\$47,342,774
Maritime	\$12,153,151	\$1,604,216

¹ <https://www.gpo.gov/fdsys/pkg/FR-2016-03-25/pdf/2016-04800.pdf> . Page 16,528.

Construction	\$658,971,248	\$86,984,205
Total	\$1,029,781,777	\$135,931,195

California maritime costs are summed with the general industry costs for a total of about \$49 million. The cost impact for construction activities is about \$87 million. (California’s share of the nation’s 2012 GDP is 13.2%, according to www.bea.gov.)

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. There are no costs to any local government or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630.

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed amendment may affect small businesses. The table below reflects information from pages 16,467-16,468 of the March 25, 2016, Federal Register. Using 2012 costs and GDP data for California, small businesses in California’s General Industry sector may experience a cost impact of approximately \$25 million. Small businesses in Construction may experience a cost impact of about \$55 million.

Industry	Small Firms USA (SBA-Defined)	CA Small Firms (13.2% GDP)	Very Small Entities (<20 Employees)	CA Very Small Firms (13.2% GDP)
General Industry & Maritime	\$186,093,853	\$24,564,389	\$67,691,610	\$8,935,293
Construction	\$414,874,862	\$54,763,482	\$263,014,788	\$34,717,952
Total	\$600,968,715	\$79,327,871	\$330,706,398	\$43,653,245

CONTACT PERSONS

Inquiries regarding this proposed regulatory action may be directed to Marley Hart (Executive Officer) and the back-up contact person is Michael Manieri (Principal Safety Engineer) at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; (916) 274-5721.

AVAILABILITY OF TEXT OF THE PROPOSED REGULATIONS AND RULEMAKING FILE

The Board will have the entire rulemaking file, and all information that provides the basis for the proposed regulation available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, supporting documents, or other information upon which the rulemaking is based. Copies may be obtained by contacting Ms. Hart or Mr. Manieri at the address or telephone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations without further notice even though modifications may be made to the original proposal in response to public comments or at the Board's discretion.

**AVAILABILITY OF THE MEMORANDUM TO THE
STANDARDS BOARD MEMBERS**

Upon its completion, copies of the Memorandum may be obtained by contacting Ms. Hart or Mr. Manieri at the address or telephone number listed above or via the internet.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Board will have rulemaking documents available for inspection throughout the rulemaking process on its website. Copies of the text of the regulation in an underline/strikeout format and the Notice of Proposed Action can be accessed through the Standards Board's website at <http://www.dir.ca.gov/oshsb>.