

Metzger Law Group

Practice Concentrated in Toxic
Tort & Environmental Litigation

555 E Ocean Blvd., Ste. 800
Long Beach, CA 90802
phone: 562.437.4499
fax: 562.436.1561

www.toxictorts.com

Raphael Metzger
Scott Brust
Vanessa Jarvis
Nectaria Belantis
Of Counsel - Brian P. Barrow

September 18, 2026

Debra Lee, Chief, RS@dir.ca.gov
Danielle Lucido, Chief Counsel, dlucido@dir.ca.gov
Eric Berg, Deputy Chief of Health, eberg@dir.ca.gov
Betsey Noth, Senior Industrial Hygienist, bnoth@berkeley.edu
Michael Wilson, Senior Safety Engineer, mwilson@dir.ca.gov
Kevin Graulich, Principal Safety Engineer, kgraulich@dir.ca.gov
Division of Occupational Safety and Health
1515 Clay Street, Suite 1901
Oakland, California 94612

Re: Draft Standard for Comment - § 5204.1 Prohibition of Fabrication and
Manufacture of Artificial Stone with more than 1.0% Crystalline Silica

Dear Gentilepersons:

My law firm represents approximately 250 stone countertop fabricators who have been diagnosed with silicosis and other silica-related chronic diseases. My law firm also represents the several thousand countertop fabricators in California who have not yet been diagnosed with silicosis or other silica-related diseases in a class action lawsuit that seeks to require the major manufacturers and distributors of artificial stone to fund a medical monitoring program to provide lifetime testing of all workers in California who have been exposed to artificial stone for the development of silicosis, other lung diseases, lung cancer, autoimmune diseases, and chronic kidney disease.

This letter constitutes my comments to the proposed regulation made on behalf of all of my firm's severely injured clients and all workers in California who have been exposed to artificial stone dust and are at significant risk of developing silicosis and other silica-related diseases in the future.

Preliminarily, I wish to commend Cal-OSHA for its proposed regulation to strictly prohibit the fabrication and installation of artificial stone in California, as such is critical to decreasing the morbidity and mortality of the current engineered stone silicosis epidemic in California. Overall, the draft regulation is well-designed and crafted and, with certain modifications, should save the lives of many workers in California and stem the tide of this terrible occupational disease epidemic. I will now address specific provisions of the proposed regulation.

Subsection (a) Scope

Draft Text:

(a) Scope. This section applies to the manufacture or fabrication of countertops, backsplashes, walls, flooring, waterfall countertop edges, and similar products made from slabs or panels containing crystalline silica in any place of employment.

Proposed alternate text:

(a) Scope. This section applies to the manufacture, fabrication and installation of countertops, backsplashes, walls, flooring, waterfall countertop edges, and similar products made from slabs or panels containing crystalline silica in any place of ~~employment~~ work.

Reasons for alternate text:

1. The regulation should expressly include installation, lest businesses and persons engaged in the prohibited activities misinterpret the prohibition as not to apply to the installation of artificial stone countertops, which work is especially hazardous because it is done in customers' homes and businesses that lack local exhaust ventilation, where wet processing methods cannot be used lest they flood customers' kitchens and bathrooms causing mold and other damage, and where workers would not utilize supplied air respirators or powered air-purifying respirators to protect them from artificial stone dust lest they scare their customers. Installers who cut, edge, laminate, and polish countertops in customers' homes and businesses are dangerously exposed to artificial stone dust. Borghi F, Graziosi F, Contessi S, Christiani DC, Decataldo F, Glass D, Violante FS, "Evaluation of occupational exposure to airborne quartz in the cutting and grinding of ceramic tiles," *Ann Work Expo Health*. 2026; 70(1):wxaf044. doi: 10.1093/annweh/wxaf044. Since exposure to artificial stone dust in homes and businesses where artificial stone countertops are installed cannot be controlled, it is critical to protecting the health of installers that installation be expressly included in the regulation.

2. The regulation should use the word "work" rather than "employment," because most workers engaged in the fabrication and installation of artificial stone countertops are not hired as "employees," but work as "independent contractors," even though characterizing such workers as independent contractors rather than employees often constitutes misclassification of employment status for the purposes of avoiding payment for workers' compensation insurance, social security withholding, and taxes owed to the California Franchise Tax Board and to Internal Revenue Service. Using the word "employment" rather than "work" will create a loophole for compliance with the regulation because the Federal Occupational Safety and Health Administration has expressed its

opinion that “OSHA has no authority to issue citations to a self-employed construction worker (with no employees), where a general contractor has hired that individual to work at the site.” See, OSHA Standard No. 1975.3(d), OSHA’s Interpretative Opinion by Russell B. Swanson, Director, Directorate of Construction dated May 23, 2001 re: CPL 2-0.124 (“Multi-Employer Citation Policy”); self-employed contractors. Thus, it is critical to make it clear that the regulation applies to protect workers engaged not only in the fabrication of artificial stone countertops at fabrication shops but in the installation of artificial stone countertops wherever such work is done and whether the installer is classified as an employee or as an “independent” contractor.

Subsection (b) Effective Date

Draft Text:

(b) Effective [OAL INSERT EFFECTIVE DATE OF EMERGENCY REGULATION PLUS 60 DAYS], the manufacture or fabrication of artificial stone containing more than 1.0% crystalline silica by weight is strictly prohibited in any place of employment.

Proposed alternate text:

(b) Effective [OAL INSERT EFFECTIVE DATE OF EMERGENCY REGULATION PLUS 60 DAYS], the manufacture, fabrication **and installation** of artificial stone containing more than 1.0% crystalline silica by weight is strictly prohibited in any place of ~~employment~~ work.

Reasons for alternate text:

See the reasons for including installation and places of work, above.

Subsection (c) Definitions

(c)(3) Definition of “Fabrication”

Draft Text:

“Fabrication means to process, modify, alter, shape, or otherwise transform a manufactured artificial stone slab containing crystalline silica into a final or near-final product for its intended use by cutting, grinding, drilling, routing, polishing, finishing, joining, or otherwise processing a manufactured slab.”

Proposed alternate text:

“Fabrication means to process, modify, alter, shape, or otherwise transform a manufactured artificial stone slab containing crystalline silica into a final or near-final product for its intended use by cutting, grinding, drilling, routing, polishing, finishing, joining, **laminating**, or otherwise processing a manufactured slab.”

Reasons for alternate text:

Lamination is a process that cannot be performed using wet methods. Exposure monitoring of workers engaged in laminating artificial stone slabs have frequently reported exposures that exceed the Permissible Exposure Limit, because such work is typically and necessarily done “dry.” To prevent dangerous exposure to fabrication workers from artificial stone dust who laminate artificial stone products, lamination should be expressly included in the definition of “fabrication” to clarify that lamination of artificial stone products is indeed prohibited by the regulation.

(c)(4) Definition of “Installation”

Draft Text:

None

Proposed Text:

“Installation” means any work done in the process of installing artificial stone countertops in or at customers’ homes or businesses, and includes cutting, grinding, drilling, routing, polishing, finishing, joining, laminating, and any other activity in the process of installing artificial stone countertops that produces artificial stone dust.

Reasons for alternate text:

Installation should be a defined term and expressly include lamination, so that it is clear that installation of artificial stone countertops at customers’ homes and businesses is an activity that is prohibited by the regulation.

c(5) Definition of “Employer”

Draft Text:

None.

Proposed Text:

“Employer” means the employer of every worker who manufactures, fabricates, or installs artificial stone, all persons who hire or pay workers to do such work or who control, manage, supervise or direct such work where no one acknowledges being the employer of any such worker, and shared fabrication shops that rent space to workers who fabricate artificial stone countertops.

Reasons for alternate text:

Most workers who fabricate and install artificial stone countertops do such work upon being hired by others who claim that they are hirers of independent contractors rather than employers. Since all workers who manufacture, fabricate and install artificial stone need to be protected from exposure to artificial stone dust in workplaces where such activities occur, persons who hire or pay workers to do such work or who control, manage, supervise or direct such work where no one acknowledges being the employer of any such worker must all be responsible for assuring that the duties imposed by this regulation are accomplished so that all workers who are exposed to artificial stone dust are protected from the toxic effects of artificial stone. The proposed text will assure that hirers of persons as independent contractors and persons who rent space to fabricators in shared fabrication shops will also have the obligations imposed by this regulation on employers.

Subsection (h) Limited Exception to section 5204.1

Draft Text:

Employers may continue to manufacture or fabricate artificial stone containing greater than 1.0% crystalline silica by weight that the employer purchased, contracted for, or had in its possession prior to [OAL INSERT EFFECTIVE DATE OF EMERGENCY REGULATION]. However, no manufacture or fabrication of any kind may occur after [OAL INSERT EFFECTIVE DATE OF EMERGENCY REGULATION PLUS 180 days]. This exception applies only to employers that fully comply with section 5204.

Proposed Text:

None.

Reasons for alternate text:

Cal-OSHA's mission is "to protect and improve the health and safety of workers in California and ensure safe and healthful working conditions." This "limited exception to section 5204.1" contravenes Cal-OSHA's mission, because it would perpetuate extremely harmful exposures to artificial stone dust that the Cal-OSH Standards Board has determined constitutes a public health emergency and must be prohibited. In *Bankhead v. ArvinMeritor, Inc.* (2012) 205 Cal.App.4th 68, the Court of Appeal upheld a punitive damages verdict against the successor to a company that manufactured brakeshoes for installation on commercial trucks that were fitted with asbestos-containing linings upon concluding that the company's conduct consciously disregard worker health and safety because long after it knew of the lethal hazards of asbestos it continued to market its asbestos-containing brakes until its inventory of them was exhausted. The "limited exception" to the prohibition of the manufacture and fabrication of artificial stone would allow companies to continue to use lethal artificial stone products that they have purchased and have in inventory is not merely contrary to Cal-OSHA's mission but would constitute the very despicable conduct that our appellate courts have condemned and, if Cal-OSHA were not a public entity, could subject it to punitive damage liability. The "limited exception" of this section must be eliminated to protect workers from the extreme toxic and lethal hazards of artificial stone dust that must be prohibited.

§ 1532.3(a)(2)

Draft Text:

Section 5204.1 also applies to the onsite fabrication of artificial stone with more than 1.0% crystalline silica.

Exception to subsection (a)(2): Section 5204.1 does not apply to onsite installation, maintenance, or repair of artificial stone products.

Proposed Text:

Section 5204.1 also applies to the onsite fabrication of artificial stone with more than 1.0% crystalline silica.

Reasons for alternate text:

The exception to prohibition that would allow installation of artificial stone at homes or businesses would harm workers, because homes and businesses lack local exhaust ventilation and wet processing methods and air-supplied respirators or PAPRs cannot be used in such workplaces.

§ 1532.3(b)

Draft Text:

“Installation” means fitting, positioning, leveling, securing, and final on-site modification or assembly of artificial stone slabs that were previously fabricated. This is limited to minor on-site adjustments to improve fit.”

Proposed Text:

None, as the definition of installation that is proposed in subsection (c)(4) accurately defines installation activities and appropriately prohibits all such activities in all workplaces in California.

Reasons for alternate text:

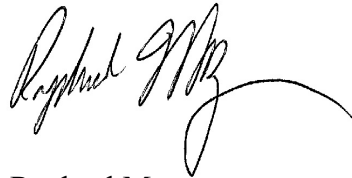
Installation of artificial stone countertops in customers’ homes and businesses is extremely dangerous because workers who install artificial stone countertops are exposed to artificial stone dust because installation involves the same processes as fabrication in totally uncontrolled environments. Borghi F, Graziosi F, Contessi S, Christiani DC, Decataldo F, Glass D, Violante FS, “Evaluation of occupational exposure to airborne quartz in the cutting and grinding of ceramic tiles,” *Ann Work Expo Health*. 2026; 70(1):wxaf044. doi: 10.1093/annweh/wxaf044. Homes and businesses lack local exhaust ventilation and wet processing methods cannot be used lest they flood customers’ kitchens and bathrooms causing mold and other damage. Additionally, workers would not utilize supplied air respirators or powered air-purifying respirators to protect them from artificial stone dust in homes and businesses lest they scare customers. Installers who cut, edge, laminate, and polish countertops in customers’ homes and businesses are dangerously exposed to artificial stone dust and must be protected. This definition of installation would jeopardize the health and safety of the thousands of workers who install artificial stone countertops in homes and business unprotected.

CONCLUSION

On behalf of the approximately 250 artificial stone countertop fabricators and installers who are my firm’s clients, as well as the several thousand workers in California who have been exposed to artificial stone dust who are at significantly increased risk of silicosis and other silica-related diseases whom my firm represents in the medical monitoring class action we have filed on their behalf, I request that Cal-OSHA seriously consider and address my comments so all workers in California who are exposed to artificial stone dust, including installers, may be fully protected from the lethal hazards of artificial stone dust.

Please feel free to contact me if Cal-OSHA management or staff have any questions regarding these comments.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Raphael Metzger', with a long, sweeping horizontal flourish extending to the right.

Raphael Metzger

RM:ip