Justification from Industry Coalition for Proposed Changes

Proposed exception to (c): The requirements of subsection (c) do not apply to:

(1) Stucco, plastering material, or similar products.

(2) Wall cladding, siding, or similar products.

(3) Downward drilling.

(4) Jack-hammering or chipping when that work is incidental to the scope of work or planned operations of a plumbing or landscaping activity.

(5) Work with powder-actuated tools.

(6) Work incidental to the installation of concrete and masonry materials such as the drilling of holes for plumbing fixtures.

(7) Tile backer board when cut with powered shears or a dust reduction blade having a dust containment device.

(8) Drywall or wallboard materials.

(9) Mixing of mortar, concrete, or similar products.

(10) Emergency operations.

General Comment:

The proposed exceptions are derived either from excerpts in the Federal Register publication document regarding Silica, or from excerpts in the promulgation of the California construction regulation 1530.1, effective in 2008.

The federal register at page 422 has the following verbiage that applies to most of these exceptions:

> *Rather than require construction employers to develop objective data to support an exception from the construction standard for employees who are exposed to minimal levels of respirable crystalline silica, or who are occasionally exposed to respirable crystalline silica for brief periods, OSHA is structuring the scope paragraph (i.e., paragraph (a)) for the construction standard so that the standard applies to all occupational exposures to respirable crystalline silica, except where employee exposure will remain below 25 mg/m3 as an 8- hour TWA under any foreseeable conditions. This approach relieves construction employers of the burden of developing objective data for such situations* (emphasis added).

Exceptions (3), (4), and (6):

Page 422 states the following in support of these exceptions:

For example, the Construction Industry Safety Coalition (CISC) and the National Association of Home Builders indicated that they believed that mixing mortar, pouring concrete footers, slab foundation, and foundation walls, and the removal of concrete formwork would be covered by the standard (Document ID 2319, pp. 19–21; 2296, pp. 8–9). OSHA finds that these tasks, when performed in isolation from activities that do generate significant exposures to respirable crystalline silica (e.g., tasks listed on Table 1, abrasive blasting), do not create respirable crystalline silica exposures that exceed 25 mg/m3 as an 8-hour TWA. OSHA's analysis of the rulemaking record also indicates that a substantial number of employees in the construction sector perform tasks involving occasional, brief exposures to respirable crystalline silica that are incidental to their primary work. These employees include carpenters, plumbers, and electricians who occasionally drill holes in concrete or masonry or perform other tasks that involve exposure to respirable crystalline silica (emphasis added).

Exception (5) Powder-actuated tools:

Page 434 of the register, the use of powder-actuated tools is not included in Table 1, and considers this a minor task.

Other commenters requested that OSHA include additional activities on Table 1. The Sheet Metal Air Conditioning Contractors National Association (SMACNA) commented that using powder-actuated tools should be added (Document ID 2226, p. 2), and the Interlocking Concrete Pavement Institute (ICPI) suggested that OSHA include compacting pavers, sweeping sand into paver joints, and compacting the aggregate base (Document ID 2246, pp. 2, 11). NAHB noted that Table 1 failed to cover hand-mixing concrete (Document ID 2334, p. 4). OSHA did not receive data showing that employees engaged in many of these additional minor tasks (pulling concrete forms, mixing concrete for post holes, etc.) experience significant routine exposure to respirable crystalline silica above the action level that would require their employers to comply with provisions of this rule. Because OSHA does not currently have data indicating that additional controls for these tasks would be needed on a regular basis or would be effective, it has determined not to include them on Table 1.

Exception (8):

The Federal document references drywall finishing on pages 174, 177, 210, and 469. The simplest version is on page 174:

Drywall finishing *work was not included on Table 1 because silica-free drywall compounds are commercially available and can be used to eliminate exposure to silica when finishing drywall.*

In the Cal/OSHA Advisory Committee meeting on Silica held March 27, 2007; reference is made in the minutes on the bottom of page 3, that that drywall and wallboard are cut and snapped, not sawn.

Exception (9):

The Federal document references mixing of mortar and concrete in two places:

In other cases, such as for concrete mixing, there are no sampling data in the record to indicate that the task is likely to result in 8-hourTWA exposures above the action level (page 177).

For example, the Construction Industry Safety Coalition (CISC) and the National Association of Home Builders indicated that they believed that mixing mortar, pouring concrete footers, slab foundation, and foundation walls, and the removal of concrete formwork would be covered by the standard (Document ID 2319, pp. 19–21; 2296, pp. 8–9). OSHA finds that these tasks, when performed in isolation from activities that do generate significant exposures to respirable crystalline silica (e.g., tasks listed on Table 1, abrasive blasting), do not create respirable crystalline silica exposures that exceed 25 mg/m3 as an 8-hour TWA (page 422).

Exceptions (1), (2), (7), or (10):

These exceptions were not specifically addressed in the federal register, but were adopted during the advisory meetings resulting in Section 1530.1 “Control of Employee Exposures from Dust-Generating Operations Conducted on Concrete or Masonry Materials.” Justification for their inclusion is in harmony with the federal register and general safety practice.