

Summary of Comments and Agency Decisions

Title: Silica, OAR 437-002, Subdivision Z/Silica

Administrative Order Number: 5-2016

Adopted Date: September 23, 2016

Effective Date: July 1, 2018

Background:

On March 25, 2016, federal OSHA adopted final rules for crystalline silica for general industry, construction, and maritime. Before these rules, the only specific rule for crystalline silica was an airborne permissible exposure limit (PEL) of 100 micrograms per cubic meter of air ($\mu\text{g}/\text{m}^3$). With the adoption of these rules, federal OSHA lowered the PEL from 100 $\mu\text{g}/\text{m}^3$ to 50 $\mu\text{g}/\text{m}^3$, and instituted an action level of 25 $\mu\text{g}/\text{m}^3$. These rules require an exposure assessment, with periodic monitoring under certain circumstances, requires engineering and work practice controls to reduce exposure levels, institutes a written exposure control plan, requires provisions for regulating employee access to certain areas, respiratory protection, medical surveillance, and employee training and information. The construction rule also lists specific tasks with engineering controls, work practice controls, and respiratory protection for specific tasks that do not require an exposure assessment, and requires that a competent person ensure that the written program and specific tasks are followed.

On July 15, 2016 Oregon OSHA proposed to combine the requirements of the general industry and construction rules into one set of rules applicable to both industries, as new Oregon-initiated rules OAR 437-002-1053 through 437-002-1065. These Oregon-initiated rules provide the same options for construction employers to use certain specified methods in lieu of an exposure assessment as the federal rules, and a note was added at Table 1 in 437-002-1057 Specified exposure control methods, to remind employers that the rest of the rules still apply.

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Written and oral comments were received during the public comment period for the proposed changes to the Oregon Rules for Silica. Two written comments and one individual gave oral testimony during four hearings held during August and September of 2016 (Portland, Bend, Eugene, and Medford, Oregon).

437-002-1053, Scope and Application.

Commenters: C-1, C-2.

C-1 reiterated their disagreement with federal OSHA regarding the change in the PEL, the feasibility of achieving compliance with the PEL and action level, the ability for testing labs to analyze samples for compliance with PEL and action level, and recommended that Oregon defer adoption until all legal challenges to the federal OSHA rules are resolved.

Oregon OSHA operates under section 18 of the federal Occupational Safety and Health Act, which requires state-operated OSHA plans to adopt comparable OSHA standards within 180 days of OSHA adoption. As a state plan state, we do not have the latitude to delay adoption based on litigation that may or may not be resolved within that 180 day window.

C-2 expressed concern regarding the readability of the standard, particularly in how an average worker could understand whether or not they are exposed to silica above the PEL.

While we can sympathize with the sentiment that there is no easy way for an employee to tell if they are overexposed, it is the responsibility of the employer to make that determination, as well as ensure appropriate control methods, work practices, and protective equipment are used as necessary. It is also the responsibility of the employer to provide training to employees to understand the hazards of silica and how to protect themselves from those hazards.

437-002-1065, Dates.

Commenters: C-3.

C-3 requested that Oregon OSHA delay the enforcement for the construction industry so that employers can better understand their obligations with the new rule, obtain new equipment to better control employee exposures, provide more time for analytical laboratories to be able to analyze air samples, and provide more time for medical personnel to become certified NIOSH B readers for chest x-rays.

Oregon OSHA amended the compliance dates to July 1, 2018 for both general industry and construction. The one effective date, paired with education and outreach, will help increase employer understanding and compliance with the new silica standard. The effective date for medical evaluations for employees exposed to airborne levels above the action level but below the PEL is July 1, 2020.

Commenters:

- C-1 Moran, Kevin (American Chemistry Council)**
- C-2 Frankhauser, Robert**
- C-3 Salsgiver, Mike (Associated General Contractors)**