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SPECIAL ADOPTIONS

**LABOR AND WORKFORCE DEVELOPMENT
PUBLIC SAFETY AND OCCUPATIONAL SAFETY AND HEALTH**

48 N.J.R. 2496(a)

Special Adopted Amendment: *N.J.A.C. 12:100-4.2*

Safety and Health Standards for Public Employees

Occupational Exposure to Respirable Crystalline Silica--Correcting Amendment

Adopted: October 20, 2016, by Aaron R. Fichtner, Ph.D., Acting Commissioner, Department of Labor and Workforce Development.

Filed: October 20, 2016, as R.2016 d.158.

Authority: *N.J.S.A. 34:1-20, 34:1A-3(c)*, and *34:6A-25* et seq.

Effective Date: November 21, 2016.

Expiration Date: May 25, 2017.

Take notice that the Department of Labor and Workforce Development is adopting a correcting amendment to an earlier adopted final rule issued by the Federal Occupational Safety and Health Administration (OSHA) with regard to occupational exposure to respirable crystalline silica. OSHA published the final rule on occupational exposure to respirable crystalline silica on March 25, 2016, which became effective on June 23, 2016. The attached document corrects typographical errors in the final rule by revising these sections.

Adoption of the correcting amendment discussed above is necessary in order to comply with *N.J.S.A. 34:6A-30*, which requires that the Commissioner of Labor and Workforce Development adopt all OSHA standards by reference upon adoption of those standards by the United States Secretary of Labor. The statutory requirement ensures that the State's Public Employees Occupational Safety and Health (PEOSH) program is at least as effective as OSHA, thereby making the State program eligible for Federal approval and funding under the 1970 Federal Occupational Safety and Health Act.

N.J.S.A. 34:6A-30 provides that the adoption of Federal standards are not subject to the formal rulemaking requirements of *N.J.S.A. 52:14B-4*, but shall be duly adopted upon publication in the New Jersey Register. As a result, the De-

partment has not held a public hearing, nor has it requested formal written comments on its adoption of the amended Federal standards.

Federal Standards Statement

The adopted correcting amendment does not contain any standards or requirements that exceed standards or requirements imposed by Federal law. The correcting amendment fulfills the State Legislature's mandate that the Department of Labor and Workforce Development adopt OSHA standards for its PEOSH program.

Full text of the adopted amendments follows:

Accordingly, for the reasons set forth in the preamble above, the Occupational Safety and Health Administration is amending 29 CFR parts 1910, 1915, and 1926 as follows:

[page=2497] **PART 1910--OCCUPATIONAL SAFETY AND HEALTH STANDARDS**

-- 1. The authority citation for part 1910 continues to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order Numbers 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), 5-2007 (72 FR 31159), 4-2010 (75 FR 55355), or 1-2012 (77 FR 3912), as applicable.

Sections 1910.6, 1910.7, 1910.8 and 1910.9 also issued under 29 CFR 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701, 29 U.S.C. 9a, 5 U.S.C. 553; Public Law 106-113 (113 Stat. 1501A-222); Pub. L. 11-8 and 111-317; and OMB Circular A-25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

-- 2. In § 1910.1000, in Table Z-3, revise the entries for "Silica: Crystalline Quartz (Respirable)", "Silica: Crystalline Cristobalite", and "Silica: Crystalline Tridymite" to read as follows:

§ 1910.1000 Air contaminants.

* * * * *

Table Z-3--Mineral Dusts

Substance	mppcf(aM)	mg/m(3M)
Silica:		
Crystalline		
Quartz.....	250	10 mg/m<3 e>
(Respirable)(fM)		
	% SiO[2] + 5	% SiO[2] + 2
Cristobalite: Use		
1/2 the value		
calculated from the		

count or mass
 formulae for
 quartz. <f>
 Tridymite: Use 1/2
 the value calculated
 from the formulae
 for quartz.<f>

* * * * *

* * * * *

<a> Millions of particles per cubic foot of air, based on impinger samples counted by light-field techniques.

 The percentage of crystalline silica in the formula is the amount determined from airborne samples, except in those instances in which other methods have been shown to be applicable.

* * * * *

<e> Both concentration and percent quartz for the application of this limit are to be determined from the fraction passing a size-selector with the following characteristics:

Aerodynamic diameter (unit density sphere)	Percent passing selector
2.....	90
2.5.....	75
3.5.....	50
5.0.....	25
10.....	0

The measurements under this note refer to the use of an AEC (now NRC) instrument. The respirable fraction of coal dust is determined with an MRE; the figure corresponding to that of 2.4 mg/m<3> in the table for coal dust is 4.5 mg/m<3K>.

<f> This standard applies to any operations or sectors for which the respirable crystalline silica standard, 1910.1053, is stayed or is otherwise not in effect.

PART 1915--OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

-- 3. The authority citation for part 1915 continues to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), 5-2007 (72 FR 31160), 4-2010 (75 FR 55355), or 1-2012 (77 FR 3912), as applicable; 29 CFR part 1911.

Sections 1915.120 and 1915.152 of 29 CFR also issued under 29 CFR part 1911.

-- 4. In § 1915.1000, amend Table Z by:

-- a. Revising the entries for "Silica, crystalline, respirable dust, cristobalite", "Silica, crystalline, respirable dust, quartz", "Silica, crystalline, respirable dust, tripoli (as quartz)", and "Silica, crystalline, respirable dust, tridymite"; and

-- b. Under the "MINERAL DUSTS" heading of the table, revising the entry for "Silica: Crystalline Quartz".

The revisions read as follows:

§ 1915.1000 Air contaminants.

* * * * *

Table Z--Shipyards

Substance	CAS	ppm(a*M)	mg/m(3	Skin
	No.(dM)		b*M)	designation
* * * * *				
Silica, crystalline, respirable dust				
Cristobalite; see 1915.1053.	14464-46-1			
Quartz; see 1915.1053<5>...	14808-60-7			
Tripoli (as quartz); see 1915.1053<5>.....	1317-95-9			
Tridymite; see 1915.1053...	15468-32-3			
* * * * *				

Mineral Dusts

Substance mppcf((j)M)

SILICA:

Crystalline..... 250<(k)>

Quartz. Threshold Limit calculated from the formula<(p)> % SiO[2] + 5

* * * * *

* * * * *

<5> See Mineral Dusts table for the exposure limit for any operations or sectors where the exposure limit in § 1915.1053 is stayed or is otherwise not in effect.

* The PELs are 8-hour TWAs unless otherwise noted; a (C) designation denotes a ceiling limit. They are to be determined from breathing-zone air samples.

<a> Parts of vapor or gas per million parts of contaminated air by volume at 25 <o>C and 760 torr.

 Milligrams of substance per cubic meter of air. When entry is in this column only, the value is exact; when listed with a ppm entry, it is approximate.

* * * * *

<d> The CAS number is for information only. Enforcement is based on the substance name. For an entry covering more than one metal compound, measured as the metal, the CAS number for the metal is given--not CAS numbers for the individual compounds.

* * * * *

<p> This standard applies to any operations or sectors for which the respirable crystalline silica standard, 1915.1053, is stayed or otherwise is not in effect.

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PART 1926--SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

Subpart D--Occupational Health and Environmental Controls

-- 5. The authority citation for part 1926, subpart D, continues to read as follows:

Authority: Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); and Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), 5-2007 (72 FR 31160), 4-2010 (75 FR 55355), or 1-2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

Sections 1926.58, 1926.59, 1926.60, and 1926.65 also issued under 5 U.S.C. 553 and 29 CFR part 1911.

Section 1926.61 also issued under 49 U.S.C. 1801-1819 and 6 U.S.C. 553.

Section 1926.62 also issued under section 1031 of the Housing and Community Development Act of 1992 (42 U.S.C. 4853).

Section 1926.65 also issued under section 126 of the Superfund Amendments and Reauthorization Act of 1986, as amended (reprinted at 29 U.S.C.A. 655 Note), and 5 U.S.C. 553.

-- 6. In § 1926.55, in appendix A, in the table titled "Threshold Limit Values of Airborne Contaminants for Construction":

-- a. Revise the entries for "Silica, crystalline, respirable dust, cristobalite", "Silica, crystalline, respirable dust, quartz", "Silica, crystalline, respirable dust, tripoli (as quartz)", and "Silica, crystalline, respirable dust, tridymite";

-- b. Under the "MINERAL DUSTS" heading of the table, revise the entry for "Silica: Crystalline Quartz"

The revisions read as follows:

§ 1926.55 Gases, vapors, fumes, dusts, and mists.

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Appendix A to § 1926.55--1970 American Conference of Governmental Industrial Hygienists' Threshold Limit Values of Airborne Contaminants

Threshold Limit Values of Airborne Contaminants for Construction

Substance	CAS	ppm<a*>	mg/m<3 b>	Skin designation
	No.<d>			

* * * * *

Silica, crystalline,
respirable dust

Cristobalite; see 1926.1153. 14464-46-1

Quartz; see 1926.1153<5>... 14808-60-7

Tripoli (as quartz); see
1926.1153<5>..... 1317-95-9

Tridymite; see 1926.1153... 15468-32-3

* * * * *

Mineral Dusts

SILICA:

Crystalline.....	250<(k)>
Quartz. Threshold Limit calculated from the formula<(p)>	% SiO[2] + 5

* * * * *

* * * * *

<5> See Mineral Dusts table for the exposure limit for any operations or sectors where the exposure limit in § 1926.1153 is stayed or is otherwise not in effect.

* The PELs are 8-hour TWAs unless otherwise noted; a (C) designation denotes a ceiling limit.

* * * * *

<a> Parts of vapor or gas per million parts of contaminated air by volume at 25 <o>C and 760 torr.

 Milligrams of substance per cubic meter of air. When entry is in this column only, the value is exact; when listed with a ppm entry, it is approximate.

* * * * *

<d> The CAS number is for information only. Enforcement is based on the substance name. For an entry covering more than one metal compound, measured as the metal, the CAS number for the metal is given--not CAS numbers for the individual compounds.

* * * * *

<p> This standard applies to any operations or sectors for which the respirable crystalline silica standard, 1926.1153, is stayed or otherwise is not in effect.

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