

Cumulative Answers to Small Business Questions on HIOSH Amended Standards

2018

Q: What actions does HIOSH intend to take to inform the small business community on the effective date and applicability of these regulations once adopted?

ANSWER: HIOSH responded to requests for presentations on new standard amendments. Once the standards have been updated, HIOSH will continue to respond to requests for presentations on standard changes. HIOSH plans to hold outreach presentations on Oahu, Kauai, Maui and Hawaii once the standards are finalized to help inform the state of the new amendments.

The proposed changes have also been published on the HIOSH website and newsfeed with the legal notice occurring in the Star Advertiser in April 2018.

Q: Will HIOSH offer free air sampling readings, without penalties, to requesting small businesses?

ANSWER: Businesses within the State of Hawaii can contact the Consultation and Training Branch at (808) 586-9100 for free, on-site safety and health services. Using a free consultation service largely funded by the U.S. Occupational Safety and Health Administration (OSHA), employers can find out about potential hazards at their worksites, and improve their occupational safety and health management systems. This includes free air sampling.

Q: Could the Consultation and Training Branch spend a year responding to requests for readings in various specific work situations in order to determine silica PEL exposure in order to assist small businesses with compliance?

ANSWER: Consultation and Training already provides monitoring for consultation services upon request. Please contact them if you are interested in on-site, free consultation services (808-586-9100). The silica standard is not a new standard and employers under HIOSH jurisdiction are already required to comply with determining employee exposure to silica and providing employee protections if exposures are over the PEL. The new standard changes give employers more opportunities through the use of Table 1 for employee protection from potential silica exposure.

Q: Use of a respirator for 30 days or more a year requires medical surveillance. What is a day, 10 minutes or 8 hours?

ANSWER: HIOSH will not take the duration an employee wearing a respirator into account. If an employee wears a respirator during any portion of the day, for any duration of time, the day will be counted.

Q: Does the competent person have to be an employee or can it be an outside third party.

ANSWER: The proposed construction silica standard defines the competent person as an individual who is capable of identifying existing and foreseeable respirable crystalline silica hazards in the workplace and who has authorization to take prompt corrective measures to eliminate or minimize them. The competent person must have the knowledge and ability necessary to fulfill the responsibilities set forth in the applicable standard. The competent person is responsible for making frequent and regular inspections of the job sites, materials and equipment to implement the written exposure control plan. The employer must designate the competent person and employees must know the identity of the competent person. The competent person may be from an outside party, as long as the competent person has met all the requirements outlined in the standard.

Q: Does the competent person have to always stay on site or if they can float between sites?

ANSWER: “The employer shall designate a competent person to make frequent and regular inspections of job sites, materials, and equipment to implement the written exposure control plan.” Based on this language of “frequent and regular inspections of job sites, materials, and equipment,” although specifically for the written exposure control plan, indicates that the competent person is not required to continuously be on site for this new silica rule, but may need to be on site throughout the job for other subparts.

Q: What is HIOSH’s definition of \$25,000 of property damage?

ANSWER: The definition of property damage that HIOSH uses under the Recording and Reporting Occupational Injuries and Illnesses standard can be found in the HIOSH Field Operations Manual (FOM). Property damage is calculated by the total amount of replacement value, cost of repairs and loss of use until repaired or replaced which includes material and time costs.

Q: How does Volks Rule conflict with HIOSH’s 5-year, 4-hour 300 log rule?

ANSWER: The Volks decision does not apply to HIOSH jurisdiction employers because the decision was about Federal OSHA’s statute of limitations as defined in the Occupational Safety and Health Act of 1970, Sec. 9 Citations, paragraph (c). HIOSH adopted this act under the Hawaii Occupational Safety and Health Law, Chapter 396, Hawaii Revised Statutes (HRS), but did not include any language defining an expiration date for citation issuance.

Q: For the beryllium standard, is it 0.1% and below Objective Data and/or action level monitoring?

ANSWER: The standards do not apply to materials containing less than 0.1% beryllium by weight where employers have objective data demonstrating that employee exposures will remain below the action level (AL) of 0.1 micrograms/cubic meter of air calculated as an 8-hour TWA under any foreseeable conditions.

Q: Does the directive coming out for the new Silica standard classify the citation as an Administrative citation if no 8-hour TWA or serious, other, etc citation?

ANSWER: An updated silica directive is planned to be released around the same time as the adoption of the amended HIOSH standards. Until HIOSH adopts the updated directive, refer to the current silica directive.

Q: How does HIOSH define indoor and outdoor work in terms of the silica standard and sufficient air circulation?

ANSWER: Several Table 1 entries refer to tasks performed “outdoors” or “indoors or in an enclosed area.” Indoors or in an enclosed area mean areas where airborne dust can build up unless additional exhaust is used. For example, a work area with only a roof that does not affect the dispersal of dust would not be considered enclosed; however, an open-top structure with three walls and limited air movement or a roof that does limit dispersal would be considered enclosed.

Sufficient air circulation in enclosed or indoor environments is important to ensure the effectiveness of the control strategies and to prevent the accumulation of airborne dust. Employers following Table 1 are required to provide a means of exhaust as needed to minimize the accumulation of visible airborne dust for tasks performed indoors or in enclosed areas. The means of exhaust necessary could include the use of portable fans (box fans, floor fans, axial fans), portable ventilation systems, or other systems that increase air movement and assist in the removal and dispersion of airborne dust. To be effective, the ventilation must be set up so that movements of employees during work, or the opening of doors and windows, will not negatively affect the airflow.

Q: What about air circulation in enclosed cabs or booths?

ANSWER: Enclosed cabs or booths are specified for rock drilling, crushers, and heavy equipment. Employers must ensure that the enclosed cab or booth is:

- Maintained as free as practicable from settled dust;
- Has door seals and closing mechanisms that work properly;
- Has gaskets and seals that are in good condition and work properly;
- Is under positive pressure maintained through continuous delivery of filtered air;
- Has intake air that is filtered through a pre-filter that is 95% efficient in the 0.3-10.0 µm range (e.g., MERV-16 or better); and
- Has heating and cooling capabilities.

The controls for enclosed cabs lower the potential for dust to be re-suspended inside the cab or enter the enclosed cab or booth. They also ensure that the filtered air provided to the employee does not contain silica particles and that the working conditions in the cab are comfortable so that employees are less likely to open windows and be exposed.

The procedures for maintaining and cleaning the cab or booth, and for frequent and regular inspections of the cabs and booths, must be addressed through the employer's Written Exposure Control Plan and Competent Person requirements.

Q: What are the analytical methods used by HIOSH for silica sampling?

ANSWER: HIOSH uses the OSHA ID-142 analytical methods for monitoring. These can be found here: https://www.osha.gov/dts/sltc/methods/toc_s.html

Q: Would HIOSH help provide a pool of data for monitoring results for silica that is useable by employers?

ANSWER: The potential for a data pool of monitoring results was forwarded for discussion at the HIOSH Advisory Board in March 2018. Discussion has commenced on the promulgation of a data pool for business entities to use for objective data.

Q: What specifically needs to be included in the medical opinion under the silica standard? Can HIOSH change their standard for clear interpretation?

ANSWER: HIOSH will refer employers and employees to the Federal OSHA small business compliance guide. This guide has clear, concise information for the content required in the medical reports for both employees and employers and gives examples of medical reports with the required information to be in compliance with the standard.

For the Employee: The employer must ensure that the PLHCP explains the results of the medical examination to the employee and gives the employee a written medical report within 30 days of each medical examination performed. Only the employee receives the written medical report, and the employer does not receive a copy of this report. The report must contain:

- A description of the medical examination results, including any medical condition(s) that would place the employee at increased risk of material impairment of health from exposure to respirable crystalline silica (any health condition that might make the employee more sensitive to exposure);
- The report must also describe any medical conditions that require further evaluation or treatment;
- Any recommended limitations on the employee's use of respirators;
- Any recommended limitations on respirable crystalline silica exposure; and
- A statement that the employee should be examined by a specialist if the B reader classifies the chest x-ray provided under the silica standard as 1/0 or higher (x-ray evidence of silicosis in employees exposed to respirable crystalline silica), or if the PLHCP otherwise recommends referral to a specialist.

For the Employer: The employer must get a written medical opinion from the PLHCP within 30 days of the medical examination. The written opinion must contain only the following information:

- The date of the examination;
- A statement that the examination has met the requirements of the silica standard; and
- Any recommended limitations on the employee's use of respirators.

If the employee gives written authorization, the written medical opinion to the employer must also contain one or both of the following:

- Any recommended limitations on the employee's exposure to respirable crystalline silica;
- A statement that the employee should be examined by a specialist if the B reader classifies the chest x-ray provided under the silica standard as 1/0 or higher (x-ray evidence of silicosis in employees exposed to respirable crystalline silica), or if the PLHCP otherwise recommends referral to a specialist.

The purpose of the employee written authorization requirement is to enhance employee privacy and encourage employees to participate in medical surveillance by minimizing fears about retaliation or discrimination based on medical findings.

Employers ensure that each employee receives a copy of the written medical opinion within 30 days of each medical examination. The PLHCP can give a copy of the opinion directly to the employee, so long as the time deadline is met. As indicated above, employees can show this opinion to future employers as proof that medical surveillance requirements under the silica standard are current.

Q: Will HIOSH be changing or deleting 12-60-50 standards that states all toxic material exposure monitoring require?

ANSWER: At this time, HIOSH will not be amending this standard because HIOSH currently has no issues with past citations or compliance. If this or any current standard is affected by the implementations of these proposed changes, HIOSH will respond with changes.

Q: Does HIOSH have access to the equipment for monitoring?

ANSWER: Yes, HIOSH currently is equipped and capable of air monitoring in accordance with the amended silica standard requirements.

Q: It appears that a NIOSH-certified B Reader for the medical surveillance is not available in Hawaii. Has HIOSH determined how this requirement could be met by small businesses?

ANSWER: HIOSH has determined there are NIOSH-certified B Readers that can be used remotely by employers for compliance with the medical surveillance section of the standard. NIOSH-certified B Readers are required in other standards and HIOSH will follow OSHA interpretations that any board-certified radiologist may be assumed to be qualified to read chest roentgenograms.

Q: Can HIOSH/OSHA provide objective data definitions and guidance on how to establish objective data that is acceptable to HIOSH/OSHA?

ANSWER: When an employer relies on objective data to comply with the silica standard, the employer must make and keep an accurate record of the objective data. The record must include at least:

- The crystalline silica-containing material in question;

- The source of the objective data;
- The testing protocol and results of testing;
- A description of the process, task, or activity on which the objective data were based; and
- Any other data relevant to the process, task, activity, material or exposures on which the objective data are based.

The burden is ultimately on the employer to show that the objective data comply with the requirements of the standard. HIOSH's intent is to allow employers the greatest possible flexibility in selecting methods used to determine employee exposures, so long as the methods used are accurate in characterizing employee exposures.

Q: Has HIOSH received training to properly conduct the sampling for silica?

ANSWER: HIOSH personnel are trained using the same curriculum as the U.S. Department of Occupational Safety and Health Administration (OSHA) personnel in terms of updates required for the new silica standard. HIOSH uses the OSHA ID-142 analytical methods for monitoring found here: https://www.osha.gov/dts/sltc/methods/toc_s.html

Q: Is the HIOSH compliance directive issued and available to the public?

ANSWER: Yes, the current silica directive is available on the HIOSH website. An updated directive is set to be released around the time of the finalization of the adoption of the amended standards. Directives will be located on the HIOSH website, available to the public and include compliance and enforcement guidelines.

Q: How can small businesses be educated on the interpretation and application of the standard for their work processes?

ANSWER: HIOSH refers small businesses to the Small Entity Compliance Guides found on the OSHA.gov website:

- **General Industry & Maritime:** <https://www.osha.gov/Publications/OSHA3911.pdf>
- **Construction:** <https://www.osha.gov/Publications/OSHA3902.pdf>

Consultation and Training can also be contacted for questions relating to compliance with the new standards.

Q: In addition to the above question, will HIOSH provide /share objective data from other state plans or industries that will meet this requirement?

ANSWER: The burden is ultimately on the employer to show that the objective data comply with the requirements of the standard. HIOSH's intent is to allow employers the greatest possible flexibility in

selecting methods used to determine employee exposures, so long as the methods used are accurate in characterizing employee exposures.

Appendix A to 1910.1053 and 1926.1153, Methods of Sample Analysis specifies the procedures for analyzing air samples for respirable crystalline silica, as well as the quality control procedures that employers must ensure that laboratories use when performing an analysis.

- Evaluate all samples using the procedures specified in one of the following analytical methods: OSHA ID-142; NMAM 7500; NMAM 7602; NMAM 7603; MSHA P-2; or MSHA P-7.

Refer to the Small Entity Compliance Guides:

- General Industry & Maritime: <https://www.osha.gov/Publications/OSHA3911.pdf>
- Construction: <https://www.osha.gov/Publications/OSHA3902.pdf>

Q: Is OSHA or HIOSH worried about how many x-rays the employee might be exposed to with the new silica standard? Union members can work for multiple employers in the course of a year and each employer has to send the employee for an x-ray.

ANSWER: For the silica standard, x-rays must be performed on the initial examination and every three years thereafter. Employees who have had x-rays completed previously, can use the previous x-ray and do not have to have them repeated for the initial examination.