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## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Labor and Industry/Safety and Health Codes Board
<b>Virginia Administrative Code (VAC) citation(s)</b>	16VAC25-90-1910.1053, Occupational Exposure to Respirable Crystalline Silica, §1910.1053; 16VAC25-90-1910.1000, Air Contaminants, §1910.1000 16VAC25-120-1915.1053, Occupational Exposure to Respirable Crystalline Silica, §1915.1053; 16VAC25-120-1915.1000, Air Contaminants, §1915.1000; 16VAC25-175-1926.1153, Occupational Exposure to Respirable Crystalline Silica, §1926.1153; 16VAC25-175-1926.55, Gases, Vapors, Fumes, Dusts, and Mists, §1926.55
<b>Regulation title(s)</b>	Occupational Exposure to Respirable Crystalline Silica
<b>Action title</b>	Correcting Amendment to Occupational Exposure to Respirable Crystalline Silica
<b>Final agency action date</b>	February 16, 2017
<b>Date this document prepared</b>	February 21, 2017

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA) or an agency's basic statute, the agency is not required, however, is encouraged to provide information to the public on the Regulatory Town Hall using this form. Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

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When federal OSHA published its Final Rule for the Occupational Exposure to Respirable Crystalline Silica on March 25, 2016 (81 FR 69272), this standard also affected other provisions related to the Respirable Crystalline Silica standard, such as §§ 1910.1000, Air Contaminants in the General Industry, 1915.1000, Air Contaminants, in the Shipyards Industry, and 1926.55, Gases, Vapors, Fumes, Dusts, and Mists, in the Construction Industry. The final rule contained typographical errors in the formulas for the permissible exposure limits (PELs) in the pre-2016 final rule, for example: in General Industry, §1910.1000, Air Contaminants, Table Z-3, Mineral Dusts, in Shipyards- §1915, Air Contaminants, Table Z- Shipyards, Mineral Dusts table; and in Construction- Appendix A of §1926.55, Gases, Vapors, Fumes, Dusts, and Mists, Mineral Dusts table, the division symbol was omitted from the formulas, and the entries for “Silica: Crystalline Quartz” in the headings of the above-mentioned tables were revised.

The final rule retained the pre-2016 PELs for respirable crystalline silica in §1910.1000, Table Z-3; §1915.1000, Table Z, and in §1926.55, Appendix A, and added footnotes to clarify that these PELs apply to any sectors or operations where the new PEL of 50 µg/m<sup>3</sup> is not in effect. The pre-2016 PELs apply to operations that are not covered by the new standards, such as the processing of sorptive clays. The pre-2016 PELs are also applicable during the time between publication of the silica rule and the dates established for compliance with the rule, as well as in the event of regulatory delay, a stay, or partial or full invalidation by the Court.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

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On February 16, 2017, the Safety and Health Codes Board adopted federal OSHA’s Correcting Amendment to the Final Rule for the Occupational Exposure to Respirable Crystalline Silica, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of May 15, 2017.

### Family impact

*Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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This regulatory action does not appear to have any impact on the institution of the family and family stability.

To access the Correcting Amendment to the Final Rule for the Occupational Exposure to Respirable Crystalline Silica, Parts 1910, 1915, 1926, please click on the link below:

[https://www.osha.gov/FedReg\\_osha\\_pdf/FED20160901.pdf](https://www.osha.gov/FedReg_osha_pdf/FED20160901.pdf)

**Occupational Exposure to Respirable Crystalline Silica, Parts 1910, 1915 and 1926;  
Correcting Amendment**

As Adopted by the  
Safety and Health Codes Board

Date: February 16, 2017



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: May 15, 2017

16VAC25-90-1910.1053, Occupational Exposure to Respirable Crystalline Silica, 1910.1053;  
16VAC25-90-1910.1000, Air Contaminants, 1910.1000;  
16VAC25-120-1915.1053, Occupational Exposure to Respirable Crystalline Silica, 1915.1053;  
16VAC25-120-1915.1000, Air Contaminants, 1915.1000;  
16VAC25-175-1926.1153, Occupational Exposure to Respirable Crystalline Silica, 1926.1153; and  
16VAC25-175-1926.55, Gases, Vapors, Fumes, Dusts, and Mists, 1926.55

When the regulations, as set forth in federal OSHA’s Correcting Amendment to the Final Rule for the Occupational Exposure to Respirable Silica, are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms

VOSH Equivalent

29 CFR

VOSH Standard

Assistant Secretary

Commissioner of Labor and Industry

Agency

Department

September 1, 2016

May 15, 2017



**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

**29 CFR Part 1910, 1915, and 1926**

[Docket No. OSHA-2010-0034]

RIN 1218-AB70

**Occupational Exposure to Respirable Crystalline Silica; Correction**

**AGENCY:** Occupational Safety and Health Administration, Department of Labor.

**ACTION:** Final rule; correcting amendment.

■ 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 <sup>a</sup>	mg/m <sup>3</sup>
Silica:		
Crystalline		
Quartz (Respirable) <sup>†</sup> .....	250 <sup>b</sup>	10 mg/m <sup>3</sup> <sup>c</sup>
	% SiO <sub>2</sub> + 5	% SiO <sub>2</sub> + 2
Cristobalite: Use 1/2 the value calculated from the count or mass formulae for quartz. <sup>†</sup>		
Tridymite: Use 1/2 the value calculated from the formulae for quartz. <sup>†</sup>		

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

<sup>b</sup> 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.

<sup>c</sup> 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<sup>3</sup> in the table for coal dust is 4.5 mg/m<sup>3K</sup>.

<sup>F</sup>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**

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

**MINERAL DUSTS**

Substance	mppcf <sup>g</sup>
<b>SILICA:</b>	
Crystalline	250 <sup>(h)</sup>
Quartz. Threshold Limit calculated from the formula <sup>(p)</sup>	% SiO <sub>2</sub> + 5

measured as the metal, the CAS number for the metal is given—not CAS numbers for the individual compounds.

<sup>F</sup>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.

<sup>5</sup> 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.

<sup>\*</sup> 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.

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

<sup>b</sup> 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.

<sup>d</sup> The CAS number is for information only. Enforcement is based on the substance name. For an entry covering more than one metal compound,

**PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION**

**Subpart D—Occupational Health and Environmental Controls**

- 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.**

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

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THRESHOLD LIMIT VALUES OF AIRBORNE CONTAMINANTS FOR CONSTRUCTION

Substance	CAS No. <sup>d</sup>	ppm <sup>a</sup>	mg/m <sup>3</sup> <sup>b</sup>	Skin designation
Silica, crystalline, respirable dust:				
Cristobalite; see 1926.1153	14464-46-1			
Quartz; see 1926.1153 <sup>e</sup>	14808-60-7			
Tripoli (as quartz); see 1926.1153 <sup>e</sup>	1317-95-9			
Tndymite; see 1926.1153	15468-32-3			

MINERAL DUSTS

SILICA:	
Crystalline	250 <sup>(k)</sup>
Quartz. Threshold Limit calculated from the formula <sup>(p)</sup>	% SiO <sub>2</sub> + 5

<sup>a</sup> 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.

<sup>b</sup> The PELs are 8-hour TWAs unless otherwise noted; a (C) designation denotes a ceiling limit.

<sup>c</sup> Parts of vapor or gas per million parts of contaminated air by volume at 25 °C and 760 torr.

<sup>d</sup> 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.

<sup>e</sup> 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.

<sup>f</sup> 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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