



OSHA REGIONAL NOTICE

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: 2016 – 11(CPL 03-00-007)

EFFECTIVE DATE: October 1, 2015

SUBJECT: Local Implementation of National Emphasis Program – **Crystalline Silica**

ABSTRACT

Purpose: This instruction describes policies and procedures for implementing a National Emphasis Program (NEP) to identify and reduce or eliminate the health hazards associated with occupational exposure to crystalline silica.

Scope: This instruction applies to all Region II Federal Enforcement Area Offices.

References: OSHA Instruction CPL 03-00-07, National Emphasis Program – Crystalline Silica, January 24, 2008.
OSHA Instruction CPL 04-00-001, (CPL 2-0.102A) Procedures for Approval of Local Emphasis Programs, November 11, 1999.

Cancellations: OSHA Instruction CPL 02-02-007 (CPL 2-2.7), Crystalline Silica, October 30, 1972.

Action Offices: Region II Regional and Area Offices

Originating Office: New York Regional Office

Contact: Office of the Regional Administrator (212) 337-2378
201 Varick St
New York, New York 10014

By and Under the Authority of



Robert D. Kulick
Regional Administrator

- I. **Purpose.** This instruction describes the Region II policies and procedures for implementing a National Emphasis Program (NEP) to identify and reduce or eliminate the health hazards associated with occupational exposures to crystalline silica.
- II. **Scope.** This instruction applies to all Region II Area Offices.
- III. **Expiration.** This notice expires on September 30, 2016. Any inspection begun prior to September 30, 2016 may continue until its conclusion.
- IV. **References.**
 - A. OSHA Instruction CPL 02-00-150, Field Operations Manual (FOM), April 22, 2011
 - B. OSHA Instruction TED 01-00-015: Occupational Safety and Health Administration Technical Manual; January 20, 1999.
 - C. OSHA Notice 13-01, (CPL 02) Site-Specific Targeting 2012 (SST-12), January 4, 2013.
 - D. OSHA Instruction, CPL 02-00-051, Enforcement Exemptions and Limitations under the Appropriations Act, May 28, 1998.
 - E. OSHA Instruction, CPL 02-00-025, Scheduling System for Programmed Inspections, January 4, 1995.
- V. **Cancellations.**
 - A. OSHA Instruction CPL 02-02-007 (CPL 2-2.7); Crystalline Silica, October 30, 1972.
 - B. OSHA Instruction CPL 02-02-007 (CPL 2-2.7 CH-1), Removal of Obsolete Sections, June 3, 1985.
- VI. **Background.** Reducing and ultimately eliminating the workplace incidence of silicosis has been a primary goal of the Agency since its inception. A NEP has been developed to direct OSHA's field staff inspection efforts to address elevated silica exposures in the workplace, including General Industry and Construction. The NEP directs each Regional or Area Office to develop a LEP for crystalline silica.

Various sources of information and data will be used to develop a list of those industries and establishments in Region II where elevated exposures to silica are anticipated. The

Proposed Rule for Occupational Exposure to Respirable Silica, published in the Federal Register on 9/12/2013, is one source that identified industries in both General Industry and Construction.

VII. Action. The Area Director shall ensure that the procedures outlined in this notice are followed during the effective period of this notice. This notice is not intended to conflict with inspection priorities as established in the Field Operations Manual or other appropriate directives. When an inspection is not conducted because the employer has refused entry, a warrant shall be sought in accordance with the current procedures for handling such refusals.

VIII. Procedures.

1. **Industry Selection:** Area Offices will identify the list of industry sectors in their area that are to be inspected using a variety of sources. One source is Appendix B of CPL 03-00-007, *National Emphasis Program for Crystalline Silica*.

A second source is Appendix A of the Reg II Local Emphasis Program, 2015-15, *Local Implementation of NEP-Crystalline Silica*. This list was developed from OSHA's Proposed Rule for Occupational Exposure to Respirable Silica, Table VIII-5, which was published in the Federal Register on 9/12/2013. The table identified, by NAICS code, the number of workers estimated to be at risk from silica exposure at or above 25, 50, and 100 micrograms per cubic meter (ug/m³). To develop the criteria for inclusion in Appendix A of this LEP, the New York Regional Office analyzed all listed NAICS codes (both construction and general industry) data using a threshold of 50 ug/m³. The estimated number of exposed employees in each NAICS code was compared (1) to the total number of employees exposed to silica, and (2) to the total number of establishments in that NAICS code. For those NAICS codes where both ratios were higher than average, the NAICS code was included in Appendix A.

2. In addition to those sources of industries listed above additional industries may be added by the Area Office. The rationale for selecting each industry shall be documented, and may include information such as, but not limited to:
 - a. History of overexposures, based on previous local inspection history within a RO or AO's jurisdiction of industries.
 - b. Limited or no local inspection history of an industry listed in Appendix B.
 - c. Industries that the AO may have established knowledge of a pattern of silicosis or overexposures to silica by reviewing objective illness or exposure data from any and all sources

including state worker's compensation records or public health data from sources such as the NIOSH.

- d. Industries that are known by the AO based on local knowledge (i.e. a documented history of referrals from local agencies or healthcare providers, previous inspection histories, etc.), to have demonstrated a pattern of silica overexposures or cases of silicosis.
3. Site Selection: After identifying the relevant industries, each Area Office will prepare a master list of establishments to be inspected using available sources including but not limited to those listed below:
- 1) the Dun & Bradstreet employer list (available from the National Office);
 - 2) commercial directories;
 - 3) telephone listings;
 - 4) local knowledge of establishments;
Dodge reports for construction sites.
4. When performing programmed inspections under this LEP, each Area Office shall develop an inspection master list of establishments. The National Office policy on List Generation and Randomization shall be followed in accordance with the National Office memorandum to Regional Administrators dated November 12, 2014, *Establishment-Targeting Lists for Emphasis Programs*.
5. For construction inspections, inspection scheduling and deletions shall be done in accordance with CPL02-00-155, *Inspection Scheduling for Construction*.
6. For general industry inspection scheduling shall be done in accordance with CPL 02-00-025 *Scheduling System for Programmed Inspections*. Deletions will be done in accordance with CPL 03-00-007, *National Emphasis Program for Crystalline Silica*, which states: the Area Office will delete any establishment that has had an inspection where employee exposure to silica have been evaluated within the previous three (3) years, provided either that no serious violations related to silica exposures were cited or that serious violations were cited but a follow-up inspection documented effective abatement of the cited conditions.
7. Establishments for inspection may fall within the scope of the current Appropriations Act. If so, inspection activities must be done and completed in accordance with the directive, CPL 02-00-051, *Enforcement Exemptions and Limitations under the Appropriations Act*.

8. Recent inspection reports and activity has identified the use of temporary workers in some of the targeted industries. Temporary workers are more vulnerable to workplace safety and health hazards as they are often not given adequate safety and health training, equipment, and explanation of their job tasks and duties. At the opening conference compliance officers shall obtain the necessary information regarding the presence and/or use of temporary workers. If temporary workers are present or utilized at the establishment the compliance officer shall obtain all the necessary documentation and information required to evaluate the safety and health program relating to temp workers and determine compliance with OSHA regulations in providing a safe and healthful workplace for these workers. The compliance officer shall refer to the current National Office guidance found on the Temporary Worker Page to conduct these inspections.
9. Inspection Procedures Outlined in CPL 03-00-007, *National Emphasis Program for Crystalline Silica*, XI.B. shall be followed. This section addresses employee exposure monitoring, engineering and work practice controls, respiratory protection, housekeeping and hygiene practices, employee exposure and medical records, and abrasive blasting.

IX. Outreach.

Region II will develop an outreach plan which will implement programs that will support the efforts of the Agency in meeting the Strategic Plan/Operating Plan goals. Such programs could include speeches, training sessions, or news releases to our constituents such as unions, professional organizations, and community groups. Inspections may be initiated independent of any outreach being conducted.

X. Recording in OIS

- A. For any programmed inspection under this LEP, under the Inspection Field, in the Inspection Types tab, the initiating type will be marked as “programmed planned” and in the Inspection Emphasis Programs Field under Local Emphasis Program select “RDSILICA” if appropriate, under National Emphasis Program select “SILICA” and under Strategic Initiative select “SILICA”
- B. For any unprogrammed inspection under or combined with this LEP (i.e. Accidents, Complaints, Referrals, Fatalities/Catastrophes), under the Inspection Field, in the Inspection Types tab, the initiating type will be marked with the appropriate unprogrammed activity and in the Inspection Emphasis Programs Field under Local Emphasis Program select “RDSILICA” if appropriate, under National Emphasis Program select “SILICA” and under Strategic Initiative select “SILICA”.
- C. For all programmed inspections such as other NEP/LEP’s

conducted in conjunction with an LEP inspection under this initiative, under the Inspection Field, in the Inspection Types tab, the initiating type will be marked “program planned” and in the Inspection Emphasis Programs Field select all NEP/LEP OIS codes applicable to the inspection.

XI. Evaluation.

- A. Abatement documentation/verification will be submitted to or otherwise collected by the Area Office for all violations. The abatement information must be included in the case file in a timely manner.

- B. Each Region II Office participating in the LEP will prepare a written evaluation of this LEP in the format specified by OSHA Instruction CPL 04-00-001. The evaluation must respond to the questions outlined in Appendix A of the Instruction. Evaluations will be submitted to FEO no later than September 15, 2016. The evaluation will include a recommendation for the continuation or elimination of this program. In addition, the evaluation will include the following evaluation factors:
 - 1. The goal of the program and the Area Office’s opinion of how effective the program was in meeting its goals.

 - 2. Data and information used to support the conclusions stated above such as enforcement statistics, serious hazards eliminated, any impact on covered, non-inspected employers, and the number of employees affected by enforcement activities covered by the LEP. Data to be evaluated may also include:
 - a. Number and percentage of serious, repeat, 5(a)(1) and willful violations cited
 - b. Number and type of violations issued directly related to hazards targeted by the LEP
 - c. Number of fatality inspections
 - d. Number of visits coded as “No Inspection”
 - e. Number and type of referrals made to other agencies
 - f. Number of outreach activities conducted
 - g. Number of employers contacted through outreach
 - h. Number of individuals affected through outreach

XII. Follow-up and Monitoring.

- 1. Where citations are issued for overexposure to crystalline silica, follow-up site visits must be conducted to determine whether the company is eliminating silica exposures or reducing exposures below the PEL. Where exposures can not feasibly be reduced below the PEL, engineering and

administrative controls must be used to reduce exposures to the extent feasible and employees protected with the use of PPE.

2. For those employers where follow-ups cannot be done, (i.e., construction sites or temporary abrasive blasting operations) the AO should request that the employer provide written updates documenting the progress of their abatement efforts per 1903.19.
3. Once the necessary abatement verification is received, a copy of the relevant information in the case file will be sent to the National Office – Directorate of Enforcement Programs (see Appendix I of the NEP). Information in the case file will be distributed to the Office of Statistics for use as the Goal Indicator for silica.

APPENDIX A

NAICS

INDUSTRY

Construction:

236200	Non –residential Building Construction
237100	Utility System Construction
237300	Highway, Street and Bridge Construction
237900	Other Heavy and Civil Engineering Construction
238100	Foundation, Structure, and Building Exterior Contractors
238900	Other Specialty Trade Contractors

General Industry:

324122	Asphalt shingle and roofing materials
327111	Vitreous china plumbing fixtures and bathroom accessories mfg.
327112	Vitreous china, fine earthenware, and other pottery manufacturing
327113	Porcelain electrical supply mfg
327121	Brick and structural Clay mfg.
327122	Ceramic wall and floor tile mfg.
327123	Other structural clay product mfg.
327124	Clay refractory mfg.
327212	Other pressed and blown glass and glassware mfg.
327213	Glass container mfg.
327320	Ready-mix concrete mfg.
327331	Concrete block and brick mfg.

323332	Concrete pipe mfg.
327390	Other concrete product mfg.
327991	Cut stone and stone product mfg.
327992	Ground and treated mineral and earth mfg.
327993	Mineral wool mfg.
327999	All other misc. nonmetallic mineral product mfg.
331511	Iron Foundries
331512	Steel investment foundries
331513	Steel foundries (except investment)
331524	Aluminum foundries (except die-casting)
331525	Copper foundries (except die- casting)
331528	Other non-ferrous foundries (except die-casting)
332812	Metal coating and allied services
336611	Ship building and repair
336612	Boat building
339911	Jewelry (except costume) mfg.
339913	Jewelers' materials and lapidary work mfg.
339914	costume jewelry and novelty mfg.