

OSHA Rulemaking

An Update on Changes to the Effective Date of the Beryllium Rule

By Brian S. Yellin, Esq., M.S., CSP, CIH

OSHA's Jan. 9, 2017, beryllium final rule covers a wide range of industrial processes that use metallic beryllium, beryllium-containing alloys and various beryllium compounds. However, the beryllium standard's scope excludes materials containing less than 0.1% beryllium by weight only where the employer demonstrates with objective data that employee exposure to beryllium will remain below the action level of $0.1 \mu\text{g}/\text{m}^3$ as an 8-hour time weighted average (TWA) under foreseeable conditions.

The beryllium final rule reduces OSHA's long-standing beryllium exposure limits under [29 CFR 1910.1000](#) (OSHA's general air contaminants standard) from 2.0 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to $0.2 \mu\text{g}/\text{m}^3$ as an 8-hour TWA and established an action level (AL) of $0.1 \mu\text{g}/\text{m}^3$ as an 8-hour TWA and a short-term exposure limit (STEL) of $2.0 \mu\text{g}/\text{m}^3$ as determined over a 15-minute sampling period.

The beryllium final rule was structured as an expanded health standard (codified as [29 CFR 1910.1024](#) for general industry, [29 CFR 1926.1124](#) for construction and [29 CFR 1915.1024](#) for shipyards) that includes comprehensive protective measures, including requirements for conducting an exposure assessment, personal protective equipment and clothing, establishment of a beryllium work area, housekeeping, medical

KEY POINTS

- The compliance dates for the beryllium standard in general industry are not affected by OSHA's deliberations over the revocation of the beryllium final rule's "ancillary" provisions" for the construction and shipyard sectors.
- According to OSHA, about 62,000 workers are exposed to beryllium in their workplaces, including approximately 11,500 construction and shipyard workers who may conduct abrasive blasting operations using slags that contain trace amounts of beryllium.
- The majority of workers affected by this rule are exposed in general industry operations such as beryllium metal and ceramic production, non-ferrous foundries, and fabrication of beryllium alloy products.
- OSHA has issued a partial enforcement stay of the beryllium standard pending completion of its June 27, 2017, notice of proposed rulemaking to occupational exposure to beryllium and beryllium compounds in construction and shipyard sectors.

surveillance and medical removal, hazard communication, and recordkeeping.

"Thus, the beryllium final rule contains the same structure and decision-making logic as other general industry expanded health standards including lead ([29 CFR 1910.1025](#)) and formaldehyde ([29 CFR 1910.1047](#)).

The final rule originally was to take effect on March 21, 2017, and established the following compliance dates for general industry:

- March 12, 2018: Each of the standard's obligations become enforceable, except for paragraphs (i) and (f).

- March 11, 2019: Requirement to provide changing rooms and showers under paragraph (i) becomes enforceable.

- March 10, 2020: Requirement to fully implement engineering controls under paragraph (f) becomes enforceable.

However, on March 2, 2017, OSHA issued a proposed rule to delay the beryllium standard's effective date until May 20, 2017, pursuant to the presidential directive [Regulatory Freeze Pending Review](#). The other effective dates listed have not been similarly extended.

The stated purpose of the beryllium standard's effective date change from March 21, 2017, to May 20, 2017, was to "allow OSHA officials the opportunity to further review and [consider] the new regulation" including "questions of fact, law and policy."

OSHA reports that it received 25 comments to its proposal to extend the beryllium standard's effective date to May 20, 2017, including congressional and industry concerns regarding the beryllium standard's application to abrasive blasting operations under the construction and shipyard standards. These concerns appear to be related to the presence of beryllium in mineral slag abrasives, including coal slag.

Based on these concerns, on June 6, 2017, OSHA issued another proposed rule, Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors, and announced that it was seeking to revoke the "ancillary provisions" for the construction and shipyard sectors while retaining the lower PEL and STEL. The ancillary provisions under revocation consideration include, medical surveillance, housekeeping and personal protective equipment.

Subsequently, on June 27, 2017, OSHA published its notice of proposed rule-making for occupational exposure to beryllium and beryllium compounds in construction and shipyard sectors wherein the agency announced its intention not to enforce the beryllium standards in construction and shipyards pending completion of its ongoing rule-making to modify these standards.

OSHA's announcement confirms the agency's revised position that exposure to beryllium in these sectors "is limited to a few operations [referring to abrasive blasting and welding] and [it] has information suggesting that requiring the ancillary provisions broadly may not improve worker protection and be redundant with overlapping protections in other standards."

The comment period concerning recession of construction and maritime sector coverage under the Beryllium rule closed on Aug. 28, 2017.

Conclusion

The June 27, 2017, proposed rule did not affect compliance dates for the general industry beryllium standard, 29 CFR 1910.1024, and the rule is now in effect for workplaces in that sector.

Pending the outcome of the June 27, 2017, proposed rule, OSHA will not enforce the beryllium standards for the construction and shipyard sectors. ■

[Brian S. Yellin, Esq., M.S., CSP, CIH](#), is Of Counsel with the [Law Office of Adele L. Abrams P.C.](#) Abrams is ASSE's federal representative. Yellin holds a J.D. from University of Baltimore School of Law.