Update on OSHA's Beryllium Standard for Construction

ACCSH Meeting

September 9, 2019

US Department of Labor

Directorate of Standards and Guidance

Washington, DC

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Beryllium Final Rule 2017

- OSHA published a final rule *Occupational Exposure to Beryllium and Beryllium Compounds* in the Federal Register (January 9, 2017)
- OSHA issued three separate standards for general industry, construction, and shipyards.
- OSHA adopted a new permissible exposure limit (PEL) of 0.2 µg/m^3 and established a new short-term exposure limit (STEL) of 2.0 µg/m^3
- Standards contain ancillary provisions similar to those found in OSHA's other comprehensive health standards.
- OSHA presented to ACCSH on May 8, 2014 on potential regulatory options

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Scope and Application for the Construction Standard Final Rule

- Standard does not apply if:
  - materials contain less than 0.1% beryllium by weight and
  - the employer has objective data demonstrating that employee exposure to beryllium will remain below the action level under any foreseeable conditions.

- OSHA has evidence that only one operation produces beryllium exposures of concern in the construction industry.
  - ➢ Abrasive blasting with blasting media such as coal slags containing trace (< 0.1% by weight) amounts of beryllium.

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Background - Construction

- OSHA subsequently proposed (June 2017) to revoke the ancillary provisions for both the construction and shipyard standards and to retain the new lower PEL of 0.2 µg/m^3 and STEL of 2.0 µg/m^3 for those sectors.
- OSHA sought information on whether existing OSHA standards provided similar requirements that protect workers exposed in these industries.
- OSHA provided a sixty-day comment period and received over 70 unique comments in response to the current proposal.
- Enforcement in effect for PELs only while rulemaking was underway.

Background - General Industry DFR Changes

- In 2018, OSHA issued a direct final rule (DFR) adopting a number of clarifying amendments to address the application of the beryllium standard for general industry to materials containing trace amounts of beryllium. The DFR changes included:
  - Clarification of provisions related to dermal contact and beryllium contamination.
  - Clarification of OSHA's intent with respect to provisions for disposal and recycling
- The DFR became effective on July 6, 2018.

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Background - General Industry 2018 NPRM

- OSHA published a substantive NPRM to modify several of the general industry beryllium standard's definitions, along with the provisions for methods of compliance, personal protective clothing and equipment, hygiene areas and practices, housekeeping, **medical surveillance**, communication of hazards, and recordkeeping.
- The proposed modifications would provide clarification and simplify or improve compliance.
- OSHA is currently working to complete the beryllium final rule for general industry.

Current Status of Beryllium in Construction

- Evidence in the record indicates that while other OSHA standards contain some requirements that overlap with the requirements of the beryllium standards for construction, for most ancillary provisions there is only partial overlap, and in some cases, there is no overlap at all.
- OSHA believes that a beryllium standard for construction consisting only of the TWA PEL and STEL would reduce protections afforded by the comprehensive standard.
- OSHA acknowledges that different approaches may be warranted for some provisions for construction than for general industry due to the nature of the materials used and work processes.

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Beryllium Construction rulemaking - Status

- On August 27, OSHA sent two rules to OMB for review:
  - A final rule (declining to revoke ancillary provisions and addressing compliance dates), and
  - A proposal which propose updates to the 2017 final rule that are tailored to the construction industry

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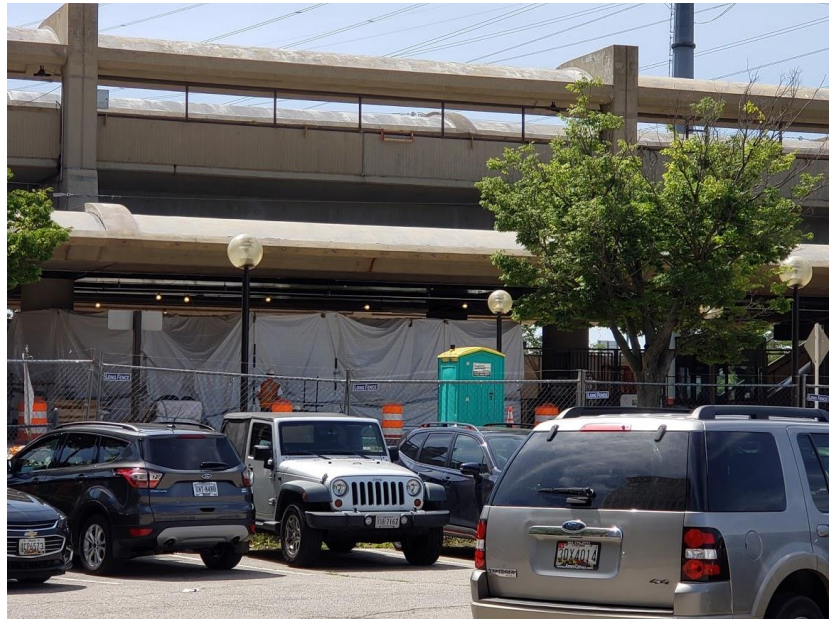
New Beryllium Construction Proposal

OSHA is considering changes to the beryllium standard for construction that would:

- Take into account the unique issues of airborne exposure to beryllium in this industry.
- Clarify OSHA's original intent with respect to provisions for disposal and recycling and with respect to provisions that the agency intended to apply only where skin can be exposed to materials containing at least 0.1% beryllium by weight.
- Align the medical definitions and provisions with the general industry 2018 NPRM.



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Overview of Proposed Revisions

Provision	Subject Matter	Rationale
(b)	Definitions	Align medical definitions to general industry proposal
(f)	Methods of Compliance	Tailor to construction sector
(h)	Personal Protective Clothing and Equipment	Align with general industry DFR
(i)	Hygiene Areas and Practices	Tailor to construction sector
(j)	Housekeeping	Align with general industry DFR/tailor to construction sector
(k)	Medical Surveillance	Align with general industry proposal/tailor to construction sector
(m)	Communication of Hazards	Tailor to construction sector
(n)	Record Keeping	Removal of social security number requirement

Overview of Proposed Revisions

Broadly speaking, OSHA plans to propose the following revisions:

- **Update medical definitions**
  - Add a definition of *beryllium sensitization*
  - Remove the definition of *emergency* and subsequent references in the standard
  - Clarify the definition of *CBD diagnostic center*
    - Must have a pulmonologist or pulmonary specialist “on staff” rather than “on site”
    - Must have the “capacity to perform” the listed tests
  - Clarify the definition of *chronic beryllium disease (CBD)* to distinguish from other lung diseases
  - Clarify the definition of *confirmed positive* to indicate that test results must occur within a 30-day follow-up test period

Overview of Proposed Revisions

- **Simplify and revise the requirements for a written exposure control plan**
  - Require one list of operations or job titles reasonably expected to involve exposure to beryllium
  - Remove requirement to list procedures related to dermal contact (cross-contamination, migration of beryllium, handling of PPE)
  - Add a requirement to list procedures used to ensure the integrity of each containment used to minimize exposures to employees outside the containment
- **Revise paragraph (f)(2) – Engineering and work practice controls**
  - Remove list of specific controls for exposures above the Action Limit while maintaining the requirement to apply the hierarchy of controls for exposures above the PELs
- **Remove hygiene requirements**
  - These proposed revisions account for the existing hygiene requirements in the Sanitation standard for construction (29 CFR 1926.51) and the particular exposures in the construction industry (< 0.1% beryllium by weight)

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Overview of Proposed Revisions

- **Revise provisions related to dermal contact**
  - These proposed revisions effectuate OSHA's intent that provisions related to dermal contact should not apply to contact with beryllium in trace amounts in the absence of significant airborne exposure
  - Proposed revisions include:
    - Removal of dermal contact as a trigger for PPE
    - Removal of PPE handling requirements except those intended to maintain PPE effectiveness or minimize airborne exposure
    - Removal of warning label requirements
    - Tying housekeeping requirements to the presence of operations causing or likely to cause airborne exposure above the TWA PEL or STEL.
- **Revise the requirements for referral to a CBD diagnostic center to align with the GI proposal**
- **Removal of the requirement to record Social Security Numbers**

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Next Steps

- Once OSHA publishes the NRPM
  - OSHA will provide time for stakeholders to comment on the new proposal
  - OSHA will hold a public hearing – date will be announced in the notice
- OSHA welcomes all comments on the proposed changes

  And looks forward to your participation.

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ACCSH Recommendation

OSHA now seeks a recommendation from ACCSH about publishing the planned Notice of Proposed Rulemaking to:

revise the beryllium standard for construction to ensure that the ancillary provisions are tailored to the construction industry and align with the general industry standard, where appropriate.

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