

Beryllium Rule Takes Effect Despite Trump Administration Beryllium Proposal Under Review

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PRACTICES OSHA, Labor and Employment

More than 40 years after the original beryllium standard, OSHA, under the Obama Administration, issued a final rule on January 9, 2017, reducing the occupational exposure limits for beryllium. The rule contains standards for general industry, construction, and shipyards. The three new standards reduce the permissible exposure limit for beryllium to 0.2 micrograms per cubic meter of air averaged over an eight-hour shift, 10 times lower than the previous limit.¹ The rule also includes provisions to protect employees, such as requirements for exposure assessments, methods for controlling exposure, respiratory protection, medical surveillance, hazard communication, and recordkeeping. On March 1, 2017, the U.S. Department of Labor proposed a delay in the effective date of the rule. It was otherwise scheduled to become effective on March 10, 2017, but was subsequently delayed until at least May 20, 2017, due to President Trump's Regulatory Freeze Memorandum issued on January 20, 2017.² As OSHA declined to further delay the final rule, it is now in effect.

In late April 2017, OSHA, under the Trump Administration, submitted a new proposed rule to the White House Office of Management and Budget ("OMB") for review. Although the contents of the proposed rule are unknown, the new proposed rule likely intends to roll back many of the January 2017 rule's requirements. If approved by the OMB, OSHA will then have to publish the new proposed rule in the Federal Register. Because Congress did not address the January 2017 rule under the Congressional Review Act, OSHA will have to go through the entire rulemaking process to change the standard; until then, the January 2017 beryllium rule is in effect. However, employers have no immediate action as the rule has staggered compliance dates: March 12, 2018 for most of the rule's obligations; March 11, 2019 to provide the required change rooms and showers; and March 10, 2020 to implement engineering controls.³

Beryllium is a lightweight metal that can induce adverse health effects if workers breathe in its dust, mist, or fumes or if a worker's skin comes into contact with beryllium particulate, fumes, or solutions.⁴ According to OSHA, about 62,000 workers are exposed to beryllium in the workplace, including workers in general industry, construction, and shipyards. OSHA has long been of the opinion that the old beryllium standard inadequately protected workers.

¹ 82 Fed. Reg. 2,470 (Jan. 9, 2017). Were the Obama beryllium standard to be implemented, three standards would exist: the general industry standard, 29 C.F.R. § 1910.1024; the construction standard, 29 C.F.R. § 1926.1124; and the shipyard standard, 29 C.F.R. § 1915.1024.

² The Regulatory Freeze Memorandum stated that the "effective date of Obama [Administration] regulations that have been published but [have] not yet taken effect should be postponed for 60 days, to allow the new administration to review questions of fact, law and policy." See Cass R. Sunstein, [The Fine Print in Trump's Regulation Memo](#), BLOOMBERG (Jan. 25, 2017).

³ [OSHA Final Rule to Protect Workers from Beryllium Exposure.](#)

⁴ [OSHA Fact Sheet, Medical Surveillance for Beryllium-Exposed Workers](#) (Jan. 2017).