



DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

[Docket No. OSHA-H005C-2006-0870]

RIN 1218-AB76

Occupational Exposure to Beryllium; Further Delay of Effective Date

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

ACTION: Final rule; further delay of effective date.

SUMMARY: On January 9, 2017, the Occupational Safety and Health Administration (OSHA) published a rule entitled “Occupational Exposure to Beryllium” with an effective date of March 10, 2017 (“Beryllium Final Rule”). OSHA subsequently delayed the effective date of the Beryllium Final Rule to March 21, 2017 (February 1, 2017) and proposed to further delay the effective date to May 20, 2017 (March 2, 2017). This action finalizes that proposal. The additional time will allow OSHA the opportunity for further review of the new Beryllium Final Rule, including review of concerns that commenters raised, and is consistent with the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review.”

DATES: As of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], the effective date of the final rule amending 29 CFR parts 1910, 1915, and 1926 that published in the

Federal Register of January 9, 2017 at 82 FR 2470, delayed at 82 FR 8901 on February 1, 2017, is further delayed to May 20, 2017.

ADDRESSES: In accordance with 28 U.S.C. 2112(a), the Agency designates Ann Rosenthal, Associate Solicitor of Labor for Occupational Safety and Health, Office of the Solicitor of Labor, Room S-4004, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, to receive petitions for review of this action.

FOR FURTHER INFORMATION CONTACT: Frank Meilinger, Director, Office of Communications, Room N-3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693-1999; email meilinger.francis2@dol.gov.

SUPPLEMENTARY INFORMATION: OSHA promulgated the Beryllium Final Rule on January 9, 2017 with an effective date of March 10, 2017 (82 FR 2470). On February 1, 2017, OSHA delayed the effective date of the rule to March 21, 2017 (82 FR 8901). OSHA promulgated the extension consistent with the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review” (82 FR 8346; January 24, 2017) (“Memorandum”), which contemplated temporarily postponing for 60 days the effective dates of all regulations that had been published in the Federal Register but had not yet taken effect, absent certain inapplicable exceptions.

In addition, the Memorandum directed agencies to consider further delaying the effective date for regulations beyond that 60-day period. After further review, OSHA preliminarily determined that it was appropriate to further delay the effective date of the Beryllium Final Rule, for the purpose of further reviewing questions of fact, law, and policy raised therein. Therefore, consistent with the Memorandum, OSHA proposed to further delay the effective date of the

Beryllium Final Rule to May 20, 2017 (82 FR 12318; March 2, 2017). Finalization of the proposed delay of the effective date would not affect the compliance dates of the Beryllium Final Rule.

OSHA received twenty-five unique comments on its proposal to extend the effective date by 60 days to May 20, 2017. Several commenters supported the proposal. (E.g. Document ID 2048; 2049; 2050; 2051.) Many of these commenters indicated that they supported the delay considering the ongoing transition to a new administration. (See Document ID 2058; 2052.)

Some commenters supported the proposed extension and requested that OSHA further review the impact of the standards on entities which would be affected by changes from the proposed beryllium rule. (Document ID 2051; 2055; 2068.) Congressman Byrne, Chairman of the Subcommittee on Workforce Protections, among others, urged OSHA to delay the effective date beyond the proposed 60 days or even indefinitely and re-propose the Beryllium Final Rule (Document ID 2064; 2067), citing concerns with the rule's coverage of abrasive blasting operations under the construction and shipyard standards. OSHA also received approximately 2,500 comments with nearly identical messages, urging the Agency to adopt the proposal and delay the effective date, particularly for the construction and shipyards standards. (See, e.g., Document ID 2072.) Several commenters opposed the proposal and argued in favor of keeping the effective date of March 21, 2017, stating that the Beryllium Final Rule was long overdue, based on sound science, and that all interested parties had the opportunity to participate in the rulemaking. (See, e.g., Document ID 2053; 2054; 2059; 2061; 2062.)

After carefully reviewing these comments, OSHA believes commenters have raised substantive concerns, including about the Beryllium Final Rule's treatment of the construction and shipyard industries, as suggested by Congressman Byrne. Thus, OSHA has decided to adopt the proposal

and delay the effective date by an additional 60 days to May 20, 2017 to further evaluate the Beryllium Final Rule in light of those substantive concerns. The Agency has determined that 60 days will provide adequate time to review the rule and consider the issues raised without hindering protections of workers affected by the rule because the delay of the effective date does not alter the Beryllium Final Rule's compliance dates.

Signed at Washington, DC, on March 16, 2017.

Dorothy Dougherty,
Deputy Assistant Secretary of Labor for Occupational Safety and Health.

BILLING CODE 4510-26-P

[FR Doc. 2017-05569 Filed: 3/17/2017 8:45 am; Publication Date: 3/21/2017]