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June 29, 2018

Loren Sweatt
Acting Assistant Secretary of Labor for Occupational Safety and Health
Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Ave. NW
Washington, D.C. 20210

Re: RIN: 1218-AB76; Limited Extension of Select Compliance Dates for Occupational Exposure to Beryllium in General Industry (Docket No. OSHA-H005C-2006-0870)

[comments filed electronically at regulations.gov]

Dear Ms. Sweatt:

Public Citizen, a consumer advocacy organization with more than 400,000 members and supporters nationwide, strongly urge you not to finalize the proposed nine-month compliance delay (from March 12, 2018, to December 12, 2018) for certain ancillary requirements of the general industry beryllium standard for the Occupational Safety and Health Administration's (OSHA's) final 2017 beryllium rule.¹ The following is OSHA's stated rationale for the proposed delay:

The proposed compliance date extension will give OSHA time to prepare and publish the planned NPRM to amend the standard before employers must comply with the affected provisions of the rule so that, until any such changes are finalized, employers may comply with the proposed provisions without risk of a citation.²

Public Citizen finds this justification to be entirely unacceptable.

The issue of regulating occupational exposure to beryllium has been ongoing for 16 years, and this nearly two-decade process has resulted in the unnecessary delay of worker protections and preventable illness and death caused by occupational beryllium exposure.

OSHA concluded that a permissible exposure limit (PEL) for beryllium of 0.2 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) is "technologically feasible for all affected industries and application

¹ 83 FR 25536. Docket No. OSHA-H005C-2006-0870; Proposed Rule: Limited Extension of Select Compliance Dates for Occupational Exposure to Beryllium in General Industry. June 1, 2018.

<https://www.gpo.gov/fdsys/pkg/FR-2018-06-01/pdf/2018-11643.pdf>. Accessed June 25, 2018.

² 83 FR 25536. Docket No. OSHA-H005C-2006-0870; Proposed Rule: Limited Extension of Select Compliance Dates for Occupational Exposure to Beryllium in General Industry. June 1, 2018.

<https://www.gpo.gov/fdsys/pkg/FR-2018-06-01/pdf/2018-11643.pdf>. Accessed June 25, 2018.

groups.”³ Although the reduction of the PEL from 2.0 $\mu\text{g}/\text{m}^3$ to 0.2 $\mu\text{g}/\text{m}^3$ should significantly curb morbidity and mortality for many workers, OSHA nevertheless concluded that the level of risk to workers at the new PEL for beryllium “is still significant.”⁴ OSHA has recognized that beryllium is a highly toxic carcinogen that causes lung cancer and an immunogen that causes sensitization and chronic beryllium disease and that there is no threshold exposure limit below which these toxic effects do not occur.⁵

The agency therefore adopted a short-term exposure limit (STEL) for beryllium of 2.0 $\mu\text{g}/\text{m}^3$ and a set of ancillary provisions aimed at reducing the remaining significant risk associated with a PEL for beryllium set at 0.2 $\mu\text{g}/\text{m}^3$. The ancillary provisions in the final rule included requirements for exposure monitoring, regulated areas, a written exposure control plan, protective work clothing and equipment, hygiene areas and practices, housekeeping, medical surveillance, medical removal, familiarization, and worker training.⁶ OSHA had concluded that the ancillary provisions in the final standard “provide significant benefits to worker health by providing additional layers and types of protection to employees exposed to beryllium and beryllium compounds.”⁷

OSHA is now proposing to delay until December 12, 2018, the compliance date for the following ancillary provisions of the final rule:⁸

- (1) The establishment and maintenance of a regulated beryllium work area wherever employees are, or can reasonably be expected to be, exposed to airborne beryllium, regardless of the level of exposure;
- (2) The establishment, implementation, and maintenance of a written exposure control plan;
- (3) The provision of personal protective clothing and equipment at no cost;
- (4) The provision of hygiene areas and practices, except for change rooms and showers;
- (5) Housekeeping provisions to ensure that all spills and emergency releases of beryllium are cleaned up promptly and in accordance with the written exposure control plan;
- (6) Communication by the employer to all employees of the hazards of beryllium and education and training for workers on protective measures; and
- (7) Recordkeeping requirements that mandate that employers maintain beryllium exposure data and medical records.

In recognizing that these provisions are necessary for worker safety, Public Citizen has previously expressed strong opposition to OSHA’s decision to rescind the ancillary provisions

³ 82 FR 2470. Docket No. OSHA–H005C–2006–0870; Final Rule: Occupational Exposure to Beryllium. January 9, 2017. <https://www.gpo.gov/fdsys/pkg/FR-2017-01-09/pdf/2016-30409.pdf>. Accessed June 25, 2018.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ 83 FR 25536. Docket No. OSHA–H005C–2006–0870; Proposed Rule: Limited Extension of Select Compliance Dates for Occupational Exposure to Beryllium in General Industry. June 1, 2018.

<https://www.gpo.gov/fdsys/pkg/FR-2018-06-01/pdf/2018-11643.pdf>. Accessed June 25, 2018.

for shipyard and construction workers.⁹ We also strongly disagreed with OSHA's reasoning that these cohorts of workers are protected adequately by other regulations that are not specific to beryllium.¹⁰

Expedient implementation of the ancillary provisions in general industry is absolutely necessary to enhance the benefits of the newly adopted PEL, ultimately providing another level of protection in occupational settings. Beryllium represents an atypical occupational exposure and thus requires specific measures to protect the workforce, and these ancillary provisions for which compliance would be delayed provide crucial protections. Delaying the implementation of these vital protections would allow employers to continue to expose workers for an extended period to levels of beryllium that even OSHA acknowledges are harmful to health. Such delays would unnecessarily ensure the occurrence of even more cases of beryllium sensitization, chronic beryllium disease, and lung cancer, and a number of other debilitating pulmonary diseases that ultimately result in diminished pulmonary function.

Each of the ancillary provisions would improve the safety of general industry workplaces that involve potential exposure to beryllium. They serve to limit the number of people exposed and protect those individual workers who are exposed. For instance, demarcating beryllium workspaces would allow for more regulated access to these spaces, limiting exposure to only those who have access.

In recognizing inherent engineering limitations, and the potential difficulties associated with updating technologies to reduce beryllium exposure to the PEL and STEL standards, the adoption of ancillary provisions would allow the protection of the workforce in a more effective manner.

Given the toxic nature of extremely low levels beryllium and the safety benefits for workers provided by these ancillary provisions, we urge that there be no further delay in the compliance date for all ancillary provisions.

Thank you for considering our comments on this important worker safety issue.

Sincerely,



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Director
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⁹ Public Citizen. Public citizen harshly criticizes proposal to roll back parts of the beryllium rule. June 23, 2017. <https://www.citizen.org/media/press-releases/public-citizen-harshly-criticizes-proposal-roll-back-parts-beryllium-rule>. Accessed June 25, 2018.

¹⁰ Public Citizen. Comments regarding Re: RIN: 1218-AB76; Occupational Exposure: Beryllium and Beryllium Compounds in Construction and Shipyard Sectors (Docket No. OSHA-H005C-2006-0870-2076). August 28, 2017. <https://www.citizen.org/sites/default/files/2384.pdf>. Accessed June 25, 2018.