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OSHA releases final rule updating beryllium exposure limits

OSHA has issued a long-awaited final rule lowering occupational exposure limits for beryllium, a regulation that advocates say blossomed from an innovative collaboration between labor and industry.

In 2012, the United Steelworkers and Mayfield Heights, OH-based Materion Brush – the only U.S. producer of pure beryllium metal – submitted to OSHA a joint recommendation for a model beryllium standard.

OSHA's published rule has some modifications – including the addition of protections for construction and shipyard workers.

"This is a very unique regulation, especially in the realm of worker safety and health, where the largest company in the industry affected by the rule comes to OSHA and acknowledges the current regulation has to be changed and presents a proposal along with a major union to OSHA," said Dr. Sammy Almashat, a researcher with the Health Research Group of Washington-based watchdog organization Public Citizen.

Photo: JacobH/iStockphoto

Beryllium, a lightweight metal stronger than steel and lighter than aluminum, is used in various industries, including electronics and energy. It can be highly toxic when released into the air where workers can inhale it. Exposure to beryllium is linked to lung cancer and an incurable condition called chronic beryllium disease.

At press time, OSHA had postponed the rule's effective date to March 21 after it originally was scheduled to go into effect March 10. The delay followed a presidential directive issued in a Jan. 20 memorandum that requested pending regulations' effective dates to be delayed for 60 days after the date of the memorandum. The postponement is intended to allow OSHA officials to further review new regulations, according to the notice published in the Feb. 1 *Federal Register*.

Under the rule, the 8-hour PEL decreases to 0.2 micrograms of beryllium per cubic meter of air from the previous limit of 2.0 micrograms. A short-term exposure limit of 2.0 micrograms over a sampling period of 15 minutes was set.

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Michaels leaves OSHA after 7 years

As expected, David Michaels has stepped down from his role as OSHA administrator to return to academic life.

Michaels departed on Jan. 10 as the longest-serving administrator in the agency's history. His tenure began in December 2009 after being appointed by then-President Barack Obama and confirmed unanimously by the Senate. Michaels has rejoined the Milken Institute School of Public Health's faculty at George Washington University.

In 2016, Michaels reflected on his seven-year tenure with *Safety+Health* magazine.

"The greatest satisfaction ... is focusing the agency on the most vulnerable workers and their worksites," he said. "Because we know that many of the workers being injured are afraid to raise their voice, and they're invisible in society in some ways – the workers who are sent by staffing agencies or who are picked up in lines outside of Home Depot or Lowe's. We added to our focus working with worker centers, working with staffing agencies, putting out material in many languages, so we can make sure that all workers in the United States have that same right."

At press time, OSHA had yet to specify who would lead the agency. President Donald Trump had selected Andrew Puzder – chief executive of CKE Restaurants Holdings, the parent company of Carl's Jr., Hardee's and other regional fast-food chains – as secretary of labor. Puzder's confirmation hearing before the Senate Health, Education, Labor and Pensions Committee was scheduled for Feb. 16 at press time.

Although numerous worker advocates oppose Puzder's nomination, the Competitive Enterprise Institute, a Washington-based public policy organization, has expressed its support.

"Over the years, he has warned about the harmful impact of overly burdensome workplace regulation, and his firsthand experience dealing with those burdens should prove invaluable in identifying and targeting regulations that do more harm than good," the institute stated in a Jan. 27 coalition letter to senators.

ASK THE EXPERT

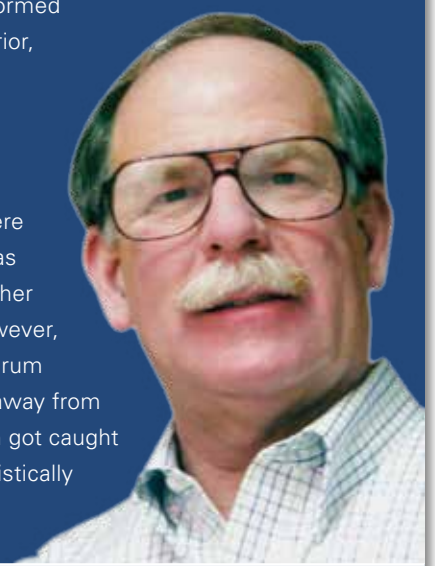
with Rick Kaletsky

Q: *I know interlocked barriers can be an effective and compliant means to protect against contact with dangerous moving parts. Please relate a general industry standard specifically requiring such interlocking.*

A: 1910.212(a)(4) is (on the face of it) as clear and particular as can be:

"Barrels, containers, and drums. Revolving drums, barrels, and containers shall be guarded by an enclosure which is interlocked with the drive mechanism, so that the barrel, drum, or container cannot revolve unless the guard enclosure is in place."

Now to the real world of OSHA and professional judgment. During my employment with OSHA, 212(a)(4) citations were not unusual. Employers commonly called the equipment a tumbler. Many of these tumblers/barrels/drums operated at relatively high RPMs. As another exacerbating factor, revolving protrusions often were present (mainly hardware near the outer edge of the face, or formed by fins/dividers in an uncovered interior, or associated with simple covers). Sometimes I found holes in which a person's finger could get caught. If RPMs were relatively low, and protrusions and finger-grab holes were not present, and the drum revolved as if chasing the hands of a clock (in either direction), OSHA might not cite. However, we were much less forgiving if the drum revolved (for instance) up and over, away from the front in a manner that if a person got caught from the front, he/she could not realistically ride out a revolution.



Former OSHA inspector turned consultant ***Rick Kaletsky*** *is a 46-year veteran of the safety industry. He is the author of "OSHA Inspections: Preparation and Response," published by the National Safety Council. Now in its 2nd edition, the book has been updated and expanded in 2016. Order a copy at* **www.nsc.org**, *and contact Kaletsky with safety questions at* **safehealth@nsc.org**.

In Other News…

Trump signs Executive Order to reduce regulations

President Donald Trump has signed an Executive Order requiring federal agencies to eliminate two regulations for each new one introduced.

Trump, who signed the order on Jan. 30, campaigned on promises to cut federal regulation in the interest of American business. Nine small business owners stood behind Trump as he signed the Executive Order, according to a report.

Trump said the order is geared toward "cutting regulations massively for small businesses," various news reports state.

On Feb. 8, watchdog groups Public Citizen and the Natural Resources Defense Council, together with the labor union Communications Workers of America, filed a lawsuit in an attempt to block the Executive Order.

DOL increases civil penalty amounts to adjust for inflation

The Department of Labor has published a final rule increasing civil penalty amounts for violations to adjust for inflation.

The increase will be 1.01636 percent for OSHA, the Mine Safety and Health Administration, and other DOL agencies, according to the rule, published in the Jan. 18 *Federal Register*.

Higher penalties will apply to violations that occurred after Nov. 2, 2015, for penalties assessed after Jan. 13.

The Federal Civil Penalties Inflation Adjustment Act requires DOL to adjust its civil penalty levels for inflation by Jan. 15 of each year, states the rule, which went into effect Jan. 13.

DOL must determine the annual adjustment according to the Consumer Price Index for All Urban Consumers, the rule states.

OSHA STANDARD INTERPRETATIONS

OSHA requirements are set by statute, standards and regulations. Interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. Enforcement guidance may be affected by changes to OSHA rules.

Evaluating the work-relationship of an injury or illness

Standard: 1904.5(b)(3)
Date of response: Sept. 12, 2016

You request an interpretation from OSHA regarding the work-relatedness of an eye injury experienced by your employee.

Scenario: Your employee works with glass and was wearing the appropriate personal protective equipment. He stated that while driving home from work, he began to feel something in his eye and it became irritated. That evening, he sought medical treatment for the eye irritation. The medical diagnosis stated that there was an abrasion to the employee's eye with no foreign body present. The employee was unsure if his eye was irritated at work or not.

Response: Section 1904.5(a) provides that an injury or illness must be considered work-related if an event or exposure in the work environment either caused or contributed to the injury or illness. Work-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in Section 1904.5(b)(2) specifically applies. A case is presumed work-related if, and only if, an event or exposure in the work environment is a discernible cause of the injury or illness or of a significant aggravation to a pre-existing condition. Because the employee's condition arose outside of the work environment and there was no discernable event or exposure that led to the condition, the presumption of work-relationship does not apply.

If it is not obvious whether the precipitating event occurred in the work environment or elsewhere, the employer is to evaluate the employee's work duties and environment and make a determination whether it is more likely than not that work events or exposures were a cause of the injury or illness or of a significant aggravation of a pre-existing condition (§29 CFR 1904.5(b)(3))

> *1904.5(b)(3) How do I handle a case if it is not obvious whether the precipitating event or exposure occurred in the work environment or occurred away from work? In these situations, you must evaluate the employee's work duties and environment to decide whether or not one or more events or exposures in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing condition.*

The employer has the ultimate responsibility for making good-faith recordkeeping determinations regarding an injury and/or illness. Employers must decide if and how a particular case should be recorded and their decision must not be an arbitrary one.

Sincerely,
Amanda Edens, Director
Directorate of Technical Support and Emergency Management

Excerpted from: ***www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=31067***

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The rule also has requirements for personal protective equipment, medical exams, training and other protections.

Employers will have one year to comply with most of the standard's provisions.

Changes

The agency's proposed rule, published in August 2015, covered workers in general industry. However, the final rule also protects about 11,500 construction and shipyard workers – roughly 19 percent of beryllium-exposed workers, according to Public Citizen.

"If they hadn't been covered, that would have been a huge gap in coverage, so we are completely thrilled that OSHA worked hard to ensure all workers exposed to beryllium across industries are protected under this new standard," said Emily Gardner, worker health and safety advocate for Public Citizen's Congress Watch division.

The biggest difference between the recommendation from Materion Brush and USW and the final rule from OSHA is the addition of construction and shipyards industries, said Michael Wright, USW's director of health, safety and environment. The union is pleased with their inclusion – the recommendation did not include provisions for those industries because doing so would have required expanding the group working on the recommendation, making the process "too unwieldy," he explained. Other differences between the recommendation and the final rule were small and technical, Wright added.

"The final rule is pretty close to what we recommended, and the most important things, like the permissible exposure level, [are] what we recommended," Wright said.

A Materion spokesperson declined comment, stating that the company first needs to complete a review of the 900-page document. In December, the company sent a letter to then-OSHA administrator David Michaels expressing concern that the draft final rule differed from the proposed standard, including changes it felt posed economic and technical challenges to companies.

Public Citizen's representatives hope that the PEL eventually will be lowered to 0.1 micrograms.

Wright said USW would like to see the limit "go as low as is feasible."