

# OSHA

## UP TO DATE<sup>®</sup>



nsc.org

VOL. 48, NO. 2 | FEBRUARY 2019

## OSHA moves forward on beryllium rule changes; lawsuit against recordkeeping rule proceeds

OSHA has issued a proposed rule to amend certain parts of its beryllium standard for general industry in an effort designed “to clarify the standard, and to simplify or improve compliance.”

The proposed rule, published in the Dec. 11 *Federal Register*, would revise provisions on recordkeeping, personal protective clothing and equipment, written control exposure plans, disposal and recycling, medical surveillance, and hazard communication. It also would change or add six terms in the “definitions” paragraph of its regulations: beryllium sensitization, beryllium work area, chronic beryllium disease, CBD diagnostic center, confirmed positive and dermal contact with beryllium.

Another proposed change is removing Appendix A, which lists suggested controls, and replacing it with a new Appendix A, “Operations for Establishing Beryllium Work Areas.”

While this rule is pending, OSHA states that “compliance with the standard as modified” by the proposed rule “will be accepted as compliance.”

At press time, the deadline to comment on the proposed rule was Feb. 11.

The changes are part of a settlement agreement, signed April 24, with the



National Association of Manufacturers, AirBorn Inc., Materion Brush Inc. and Mead Metals Inc.

OSHA is enforcing the permissible exposure limit of 0.2 micrograms of beryllium per cubic meter of air and the short-term exposure limit of 2 micrograms per cubic meter of air for general industry, construction and shipyards.

Beryllium is a strong, lightweight metal used in electronics and the defense industry, among others. Overexposure can cause serious health risks, including incurable chronic beryllium disease and lung cancer.

OSHA estimates that 62,000 workers are exposed to beryllium every year. The agency has projected that the updated regulations will save 90 lives from beryllium-related disease and prevent

46 new cases of chronic beryllium disease each year.

### Court rules on recordkeeping rule lawsuit

In other OSHA news, the U.S. District Court for the District of Columbia has denied the Department of Labor’s request for the dismissal of a lawsuit stemming from OSHA’s suspension of its employer submission deadline for Forms 300 and 301 data – part of its Improve Tracking of Workplace Injuries and Illnesses final rule.

In his opinion published Dec. 12, Judge Timothy J. Kelly also chose not to grant a preliminary injunction against DOL and OSHA sought by Public Citizen Health Research Group, the American Public

– article continues on p. 4

# OSHA memo: Area offices must use four-part test when citing respiratory hazards without PELs

OSHA area offices must apply a four-part test before issuing General Duty Clause citations for respiratory hazards that do not have a permissible exposure limit, the agency states in a memorandum sent to regional administrators.

In the memo, issued Nov. 2, Kim Stille, acting director of OSHA's Directorate of Enforcement Programs, writes that area offices cannot base a General Duty Clause citation on only a "measured exposure" in excess of an occupational exposure limit or a documented exposure to a "recognized

carcinogen." Instead, they must use the following tests in those situations:

1. The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed.
2. The hazard was recognized.
3. The hazard was causing or was likely to cause death or physical harm.
4. A feasible and useful method to correct the hazard was available.

"Unless the case file evidence proves all four of the above elements, the area office

should issue a hazard alert letter," Stille states in the memo.

Stille also provides guidance for each piece of the four-part test, and includes a sample hazard alert letter. She notes that the General Duty Clause is "occasionally used to cite respiratory hazards from exposure to an air contaminant that is not covered by an OSHA permissible exposure limit."

The OSHA memo is available to read at [osha.gov/laws-regs/standardinterpretations/2018-11-02](https://www.osha.gov/laws-regs/standardinterpretations/2018-11-02).

## OSHA ALLIANCES

*The OSHA Alliance Program fosters collaborative relationships with groups committed to worker safety and health. Alliance partners help OSHA reach targeted audiences and give them better access to workplace safety and health tools and information. For more on OSHA alliances, go to [osha.gov/dcsp/alliances/index.html](https://www.osha.gov/dcsp/alliances/index.html).*

## Chicagoland Associated General Contractors

**Date of alliance:** Oct. 24, 2018

OSHA and Chicagoland Associated General Contractors hereby form an alliance to provide Chicagoland AGC members and others with information, guidance and access to training resources that will help them protect the health and safety of workers, particularly by reducing and preventing exposure to electrical, fall, struck-by, caught-in-between, silica and ergonomic hazards in construction. The alliance will also work to ensure the rights of workers and the responsibilities of employers under the Occupational Safety and Health Act are understood.

### **Raising awareness of OSHA's rule-making and enforcement initiatives:**

- To share publicly available information on OSHA's National/Regional/Local Emphasis Programs, regulatory agenda, and opportunities to participate in the rulemaking process.
- To share publicly available information on occupational safety and health laws



- and standards, including the rights and responsibilities of workers and employers.
- To encourage worker participation in workplace safety and health by increasing awareness of OSHA standard requirements, hazards and how to minimize hazards in the construction industry.

### **Training and education:**

- To develop effective training and education programs for contractors to reduce hazards in the construction industry, and to communicate such information to constituent employers and workers.
- To develop effective training and education programs for contractors to promote understanding of workers' rights, including the use of the OSHA complaint process, and the responsibilities of employers to communicate such information to workers and employers.

### **Outreach and communication:**

- To develop information on the recognition and prevention of workplace hazards and to develop ways of communicating such information to employers and workers in the industry.
- To share information among OSHA personnel and industry safety and health professionals regarding Chicagoland AGC best practices or effective training programs, workshops, seminars and lectures developed by participants.
- To promote awareness of OSHA's outreach campaigns, including the fall prevention safety stand-down, trench safety stand-down, heat, safe and sound, and other national and regional initiatives.
- To develop information on the recognition and prevention of commercial construction and maintenance hazards.

Excerpted from [osha.gov/dcsp/alliances/regional/reg5/chicagoland\\_agc\\_final.html](https://www.osha.gov/dcsp/alliances/regional/reg5/chicagoland_agc_final.html).

## In Other News...

### OSHA renews charter for maritime advisory committee

OSHA has renewed the two-year charter for its Maritime Advisory Committee on Occupational Safety and Health, according to a notice published in the Dec. 14 *Federal Register*.

The 15-member committee advises the secretary of labor on matters related to occupational safety and health programs, enforcement, new initiatives, and standards for the maritime industry, which includes shipyard employment, longshoring, marine terminal, commercial fishing and shipbreaking, among others.

Committee members are appointed by the secretary of labor and represent the perspectives of employers, employees, safety and health professional organizations, government organizations with interests or activities related to the maritime industry, academia, and the public, the notice states.

### Employers must post injury, illness summary by Feb. 1

Employers required to keep and maintain an OSHA 300 injury and illness log must post their 300A summary sheet from Feb. 1 to April 30.

Form 300A summarizes work-related injuries and illnesses recorded in 2018. OSHA states that the summary must be posted in common work areas where employee notices are customarily placed.

The agency notes that employers with 10 or fewer employees or who work in certain low-hazard industries are not required to post the summary.

To download the 300A summary sheet, go to [osha.gov/recordkeeping/RKforms.html](https://www.osha.gov/recordkeeping/RKforms.html). A list of industries not required to post the form is available at [osha.gov/recordkeeping/ppt1/RK1exempttable.html](https://www.osha.gov/recordkeeping/ppt1/RK1exempttable.html).

## 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.*

### Occupational exposure to beryllium standard – dissolvable laundry bags for personal protective clothing

**Standard:** 1910.1024(h)(2)(v), 1910.1024(m)(3), and 1910.1200

**Date of response:** Nov. 29, 2018

You had a question regarding the requirements contained in OSHA's new standard for Occupational Exposure to Beryllium, 29 CFR 1910.1024 (beryllium standard). Your letter requests information on the use of dissolvable laundry bags and whether they comply with the provisions for personal protective clothing and equipment (PPE), specified in paragraph 1910.1024(h)(2)(v). This letter constitutes OSHA's interpretation only of the requirements herein, and may not be applicable to any questions not delineated within your original correspondence. Your paraphrased question and our response are below.

**Background:** In your letter, you state that it is common practice for commercial laundries to use laundry bags that dissolve in the washing machine when exposed to agitating hot water for laundering work clothing and PPE contaminated with hazardous particulate. You also state that dissolvable bags are constructed to ensure that hazardous particulates remain contained in the bag, thereby reducing the open handling of contaminated work clothing and PPE by plant workers, transporters and laundry workers.

**Question:** *Does the use of dissolvable bags for removal of beryllium-contaminated work clothing and PPE from the workplace, for the purpose of laundering and cleaning, meet the requirement at 1910.1024(h)(2)(v) that contaminated work clothing and PPE must be stored and transported in sealed bags or other closed containers that are impermeable?*

**Response:** OSHA's beryllium standard, in paragraph 29 CFR 1910.1024(h)(2)(v), states that when PPE required by the standard is removed from the workplace for laundering, cleaning, maintenance or disposal, the employer must ensure that it is stored and transported in "sealed bags or other closed containers that are impermeable" and are properly labeled, in accordance with paragraph 1910.1024(m)(3) and the Hazard Communication Standard (29 CFR 1910.1200).

OSHA considers a bag to be impermeable if it meets two requirements:

1. The bag must be made of material that, when closed, does not allow particles or dust to escape.
2. The bag must be of sufficient quality so it cannot be punctured or torn in the specific situation of its use, storage, or transport.

If the dissolvable bag meets both of these requirements, then OSHA would consider the bag to be impermeable under 1910.1024(h)(2)(v) even though the bag is designed to dissolve in agitating hot water. Whether a dissolvable bag meets the two requirements above depends on the bag manufacturer's quality and integrity testing for its known or intended use, which also should include input from downstream employers concerning the bag's performance during normal conditions of use.

**Kimberly Stille, Acting Director**  
Directorate of Enforcement Programs

Excerpted from [osha.gov/laws-regs/standardinterpretations/2018-11-29](https://www.osha.gov/laws-regs/standardinterpretations/2018-11-29).

# OSHA UP TO DATE®

## In This Issue

- OSHA moves forward on beryllium rule changes; lawsuit against recordkeeping rule proceeds
- OSHA memo: Area offices must use four-part test when citing respiratory hazards without PELs
- OSHA Alliances: Chicagoland Associated General Contractors
- OSHA Standard Interpretations

VOL. 48, NO. 2 | FEBRUARY 2019

### Board of Directors

Mark Vergnano, Vice Chairman  
Andrew Johnson, Vice Chairman

### Delegates

James Kreinbrink, Chairman

### Interim President and CEO

Nicholas Smith

### Vice President, Communications and Advocacy

Kelly Nantel

### Publisher

Deborah Meyer, [deborah.meyer@nsc.org](mailto:deborah.meyer@nsc.org)

### Editor

Melissa J. Ruminski, [melissa.ruminski@nsc.org](mailto:melissa.ruminski@nsc.org)

### Managing Editor

Jennifer Yario, [jennifer.yario@nsc.org](mailto:jennifer.yario@nsc.org)

### Copy Editor

Paul Wleklinski, [paul.wleklinski@nsc.org](mailto:paul.wleklinski@nsc.org)

### Assistant Editor

Tracy Haas Depa, [tracy.haas-depa@nsc.org](mailto:tracy.haas-depa@nsc.org)

### Associate Editors

Barry Bottino, [barry.bottino@nsc.org](mailto:barry.bottino@nsc.org)  
Kevin Druley, [kevin.druley@nsc.org](mailto:kevin.druley@nsc.org)  
Alan Ferguson, [alan.ferguson@nsc.org](mailto:alan.ferguson@nsc.org)

### Senior Graphic Designer

Michael Sharkey

### Online Content Manager

Amy Bellinger

### Production Coordinator

Joy Tan-Pipilas

### Subscriptions/Circulation

[subscriptions@nsc.org](mailto:subscriptions@nsc.org)

OSHA Up To Date (ISSN 09941-0000) is published monthly by the National Safety Council, 1121 Spring Lake Drive, Itasca, IL 60143, and is printed in the United States. © 2019 by the National Safety Council.

Information contained in this publication is compiled from sources believed to be reliable. The National Safety Council makes no guarantee as to, and assumes no responsibility for, the correctness, sufficiency or completeness of such information. Additional measures may be required under particular circumstances. Information in this publication may not be reproduced without permission from the publisher.

For single and bulk subscription prices, as well as mailing inquiries and address changes, contact NSC Customer Service at (800) 621-7619.

— continued from p. 1

Health Association, and the Council of State and Territorial Epidemiologists.

As part of its electronic recordkeeping rule, the agency mandated that certain employers submit 2017 data from Forms 300, 300A and 301 by July 1. Under the Trump administration, the agency announced on its website in May that it would suspend the deadlines for the more detailed Forms 300 and 301. It instead would accept only Form 300A, which contains a summary of occupational injuries and illnesses.

The three groups filed their joint lawsuit July 25, contending OSHA did not follow notice-and-comment protocol as mandated in the Administrative Procedure Act.

The groups sought a preliminary injunction against the deadline suspension because they wanted to “use OSHA’s data to conduct research on occupational

health and safety, analyze the most serious workplace threats, and push for stronger regulatory protections,” Public Citizen attorney Sean Sherman said in a July 25 press release.

“OSHA did not publish a notice of the suspension of the July 1, 2018, deadline in the *Federal Register* and did not solicit public comment on it. Instead, OSHA announced the suspension of the deadline for the 2017 data on its website,” the lawsuit states.

OSHA submitted its motion for dismissal of the lawsuit Oct. 29.

The agency issued a proposed rule on July 30 that officially eliminates the Forms 300 and 301 data submission requirements. At press time, that altered regulation was under review by the White House Office of Budget and Management’s Office of Information and Regulatory Affairs, meaning it could become a final rule in the coming months.

## Get the safety message to the front line.



**Today's Supervisor** offers concise news and information for front-line managers. Each issue includes:

- The Five Minute Safety Meeting
- A summary of NIOSH fatality reports and tips on how to avoid similar incidents
- News Briefs and Safety Stats
- Articles on safety trends

For more information, contact NSC Customer Service at (800) 621-7619.