

**DEPARTMENT OF LABOR****Occupational Safety and Health Administration****29 CFR Part 1910**

[Docket ID—OSHA—H005C—2006—0870]

RIN 1218—AB76

**Limited Extension of Select Compliance Dates for Occupational Exposure to Beryllium in General Industry****AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.**ACTION:** Proposed rule.

**SUMMARY:** OSHA is proposing a nine-month extension of the compliance date for certain ancillary requirements of the general industry beryllium standard (from March 12, 2018 to December 12, 2018). This proposal would not extend the compliance date for the permissible exposure limits (PELs), exposure assessment, respiratory protection, medical surveillance, or medical removal protection provisions, or for any provisions for which the standard already establishes compliance dates in 2019 and 2020. OSHA has preliminarily determined that this proposal will maintain essential safety and health protections for workers while OSHA prepares an NPRM to clarify specific provisions of the beryllium standard that would both maintain the standard's worker safety and health protections and address employers' compliance burdens.

**DATES:** Submit comments to this proposed rule, hearing requests, and other information by July 2, 2018. All submissions must bear a postmark or provide other evidence of the submission date.

**ADDRESSES:** Submit comments, hearing requests, and other material, identified by Docket No. OSHA—H005C—2006—0870, using any of the following methods:

*Electronically:* Submit comments and attachments, as well as hearing requests and other information, electronically at <https://www.regulations.gov>, which is the Federal e-Rulemaking Portal. Follow the instructions online for submitting comments. Note that this docket may include several different **Federal Register** notices involving active rulemakings, so it is extremely important to select the correct notice or its ID number when submitting comments for this rulemaking. After accessing "all documents and comments" in the docket (OSHA—H005C—2006—0870), check the

"proposed rule" box in the column headed "Document Type," find the document posted on the date of publication of this document, and click the "Submit a Comment" link. Additional instructions for submitting comments are available from the <https://www.regulations.gov> homepage.

*Facsimile:* OSHA allows facsimile transmission of comments that are 10 pages or fewer in length (including attachments). Fax these documents to the OSHA Docket Office at (202) 693—1648. OSHA does not require hard copies of these documents. Instead of transmitting facsimile copies of attachments that supplement these documents (e.g., studies, journal articles), commenters must submit these attachments to the OSHA Docket Office, Docket No. OSHA—H005C—2006—0870, Room N—3653, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. These attachments must clearly identify the sender's name, the date, the subject, and the docket number (OSHA—H005C—2006—0870) so that the Docket Office can attach them to the appropriate document.

*Regular mail, express delivery, hand delivery, and messenger (courier) service:* Submit comments and any additional material to the OSHA Docket Office, Docket No. OSHA—H005C—2006—0870, Room N—3653, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693—2350 (TTY (877) 889—5627). Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, and messenger service. The Docket Office will accept deliveries (express delivery, hand delivery, messenger service) during the Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

*Instructions:* All submissions must include the Agency's name, the title of the rulemaking (Limited Extension of Select Compliance Dates for Occupational Exposure to Beryllium in General Industry), and the docket number (OSHA—H005C—2006—0870). OSHA will place comments and other material, including any personal information, in the public docket without revision, and the comments and other material will be available online at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about

themselves or others), such as Social Security Numbers, birth dates, and medical data.

In this preamble, OSHA cites to documents in Docket No. OSHA—H005C—2006—0870, the docket for this rulemaking. To simplify these document cites, OSHA uses "Document ID" followed by the last four digits of the full docket identification number. For example, if a document's full docket identification number is ID—OSHA—H005C—2006—0870—1234, the citation used in this preamble would be Document ID 1234. The docket is available at <https://www.regulations.gov>, the Federal eRulemaking Portal.

*Docket:* To read or download comments or other material in the docket, go to <https://www.regulations.gov> or to the OSHA Docket Office at the above address. The electronic docket for this proposed rule established at <https://www.regulations.gov> contains most of the documents in the docket. However, some information (e.g., copyrighted material) is not available publicly to read or download through this website. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

**FOR FURTHER INFORMATION CONTACT:**

*Press inquiries:* Mr. Frank Meilinger, OSHA Office of Communications; telephone: (202) 693—1999; email: [meilinger.francis2@dol.gov](mailto:meilinger.francis2@dol.gov).

*General information and technical inquiries:* William Perry or Maureen Ruskin, Directorate of Standards and Guidance; telephone (202) 693—1950; email: [perry.bill@dol.gov](mailto:perry.bill@dol.gov).

*Copies of this Federal Register document and news releases:* Electronic copies of these documents are available at OSHA's web page at <https://www.osha.gov>.

**SUPPLEMENTARY INFORMATION:****I. Explanation of Regulatory Action****A. Introduction**

OSHA is publishing this Notice of Proposed Rulemaking (NPRM) to propose a nine-month extension of the compliance date for certain requirements of the general industry beryllium standard (29 CFR 1910.1024), which was promulgated on January 9, 2017 (82 FR 2470). The standard provides that the compliance date for the affected requirements is March 12, 2018, but on March 2, 2018, OSHA issued a memorandum stating that no provisions of the standard would be enforced until May 11, 2018. Then, on

May 9, 2018, OSHA issued an enforcement memorandum stating that the ancillary requirements that are affected by the planned NPRM will not be enforced until June 25, 2018. Neither memorandum was published in the **Federal Register**.

This proposed action would revise the standard to extend the compliance date for the affected provisions until December 12, 2018. OSHA is proposing to extend the compliance date for select ancillary requirements of the general industry standard, but this proposal would not extend the compliance date for PELs, exposure assessment, respiratory protection, medical surveillance, or medical removal protection provisions, or for any provisions for which the standard already establishes compliance dates in 2019 and 2020. It also would not affect the applicability of the scope and application paragraph or the definitions, except to allow employers to comply with the definitions of “CBD diagnostic center,” “chronic beryllium disease,” and “confirmed positive” that will be proposed in the later substantive rulemaking NPRM (Document ID 2156).<sup>1</sup> As explained in more detail in the following sections, OSHA believes the proposed action is necessary to provide sufficient time for preparation and publication of a planned NPRM that will affect the provisions of the rule covered by this proposed extension.

As described in Section I.D, Explanation of Proposed Action and Request for Comment, OSHA is planning to propose revisions to the beryllium standard in accordance with a settlement agreement entered into with stakeholders on April 24, 2018 (Document ID 2156). The upcoming rulemaking will affect select ancillary provisions in the standard. OSHA is concerned that beginning enforcement of those provisions before publication of the substantive proposal may result in employer confusion or improper implementation of the relevant provisions of the rule.

### B. Summary of Economic Impact

This proposed rule is not economically significant. OSHA is revising 29 CFR 1910.1024(o)(2) to extend the deadline for compliance with certain provisions of the beryllium rule for nine months. This proposed rule is expected to be an Executive Order (E.O.) 13771 deregulatory action. Details on OSHA’s cost/cost savings estimates for this proposed rule can be found in the rule’s preliminary economic analysis in

the “Agency Determinations” section of this preamble. OSHA has estimated that, at a 3 percent discount rate over 10 years, there are net annual cost savings of \$0.76 million per year for this proposed rule; at a discount rate of 7 percent there are net annual cost savings of \$1.73 million per year. When the Department uses a perpetual time horizon, the annualized cost savings of the proposed rule is \$1.65 million with 7 percent discounting.

### C. Regulatory Background

OSHA published an NPRM for occupational exposure to beryllium in the **Federal Register** on August 7, 2015 (80 FR 47566). In the NPRM, the Agency made a preliminary determination that employees exposed to beryllium and beryllium compounds at the previous PEL faced a significant risk to their health and that promulgating the proposed standard would substantially reduce that risk. The NPRM invited interested stakeholders to submit comments on a variety of issues.

OSHA held a public hearing in Washington, DC, on March 21 and 22, 2016. The Agency heard testimony from several organizations, including public health groups, industry representatives, and labor unions. Following the hearing, participants had an opportunity to submit additional evidence and data, as well as final briefs, arguments, and summations (Document ID 1756, Tr. 326).

On January 9, 2017, after considering the entire record, OSHA issued a final rule with three separate standards for general industry, shipyards, and construction, in order to tailor requirements to the circumstances found in these sectors. See 82 FR 2470 (January 9, 2017). The final beryllium standards established new PELs of 0.2  $\mu\text{g}/\text{m}^3$  as an 8-hour time-weighted average (TWA) and 2.0  $\mu\text{g}/\text{m}^3$  as a short-term exposure limit (STEL) determined over a sampling period of 15 minutes. The standards also established other provisions to protect employees, such as requirements for exposure assessment, methods for controlling exposure, respiratory protection, personal protective clothing and equipment, housekeeping, medical surveillance, medical removal, hazard communication, and recordkeeping. The general industry standard established a compliance date (when obligations of the standard commence and become enforceable) of March 12, 2018, for all obligations except change rooms and showers required by paragraph (i) (compliance date of March 11, 2019) and engineering controls required by

paragraph (f) (compliance date of March 10, 2020). See 29 CFR 1910.1024(o)(2).

Following promulgation of the final standard, representatives of general industry employers, including Materion Corporation, along with representatives of the coal-fired power industry and the aluminum production industry, challenged the rule in federal court and approached OSHA with questions and concerns about some of the provisions in the final rule.

In response to the stakeholder feedback, and to resolve the pending litigation, OSHA is planning to propose revisions to certain provisions in the general industry standard and rely on its de minimis policy while the rulemaking is pending so that employers may comply with the proposed provisions without risk of a citation.<sup>2</sup> The revisions OSHA plans to propose are generally designed to clarify the standard in response to stakeholder questions or to simplify compliance, while in all cases maintaining a high degree of protection from the adverse health effects of beryllium exposure (Document ID 2156). For example, the proposed changes include modifying certain definitions to clarify the meaning of the terms, including a list of operations that trigger the requirement for beryllium work areas so that employers understand when they must set up a beryllium work area, and modifying the disposal and recycling provisions to clarify that items designated for disposal must be in containers that prevent the release of beryllium under ordinary conditions rather than sealed, impermeable containers. 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.

<sup>2</sup> The OSH Act allows the Secretary of Labor to prescribe procedures to issue notices instead of citations for “de minimis violations” that have no direct or immediate relationship to safety or health. 29 U.S.C. 658(a). The Secretary’s de minimis policy is set forth in its Field Operations Manual (FOM), available at [https://www.osha.gov/OshDoc/Directive\\_pdf/CPL\\_02-00-160.pdf](https://www.osha.gov/OshDoc/Directive_pdf/CPL_02-00-160.pdf). Under the de minimis policy, compliance “with a proposed OSHA standard or amendment or a consensus standard rather than with the standard in effect at the time of the inspection and the employer’s action clearly provides equal or greater employee protection” is a de minimis condition. De minimis conditions result in no citation or penalties. See 29 CFR 1903.15 (“Penalties shall not be proposed for de minimis violations which have no direct or immediate relationship to safety or health.”); <https://www.osha.gov/Publications/osh3000.pdf>.

<sup>1</sup> CBD is the acronym for chronic beryllium disease.

*D. Explanation of Proposed Action and Request for Comment*

OSHA is proposing to revise the “Dates” provision of the beryllium standard (at 29 CFR 1910.1024(o)(2)) to extend the deadline for compliance with most of the ancillary requirements of the standard from March 12, 2018, to December 12, 2018. As previously discussed, this proposed action would provide time for preparation and publication of a planned NPRM that will impact the provisions covered by this extension so that employers may comply with the proposed provisions without risk of a citation (Document ID 2156).

OSHA will be proposing modifications to ancillary provisions of the beryllium standard in response to stakeholder questions and concerns. These concerns were raised during lengthy settlement discussions among OSHA, the United Steelworkers of America (the union representing the largest proportion of beryllium-exposed workers), Materion Corporation (the leading producer of beryllium and beryllium products), some of Materion’s customers, and the National Association of Manufacturers (Document ID 2156). In addition to agreeing on the proposed revisions, the parties agreed that if OSHA was not able to finalize the substantive NPRM before December 12, 2018, compliance with the beryllium standard as modified by the proposal would be accepted as compliance with the standard under OSHA’s de minimis policy (Document ID 2156).

The revisions OSHA plans to propose are primarily clarifying or simplifying in nature (Document ID 2156). They are designed to enhance worker protections by ensuring that the rule is well-understood and compliance is simple and straightforward. All of the provisions covered by this extension will be affected by the planned rulemaking.

OSHA has preliminarily determined that it would be undesirable, for both the Agency and the regulated community, to begin enforcement of the ancillary provisions of the standard that will be affected by the upcoming rulemaking. Enforcing compliance with the relevant ancillary requirements, as currently written, before publishing the agreed-upon proposal, is likely to result in employers taking unnecessary measures to comply with provisions that OSHA intends to clarify. This proposed compliance date extension will give OSHA time to prepare and publish the planned substantive NPRM to amend the standard before employers must comply with the affected

provisions of the rule, at which point OSHA may rely on its de minimis policy and employers may comply with the proposed provisions without risk of a citation.

Therefore, OSHA is proposing this short extension of the compliance date for the following provisions: Beryllium work areas and regulated areas (paragraph (e)), written exposure control plans (paragraph (f)(1)), personal protective clothing and equipment (paragraph (h)), hygiene areas and practices (paragraph (i) except for change rooms and showers; see below), housekeeping (paragraph (j)), communication of hazards (paragraph (m)), and recordkeeping (paragraph (n)).

Not every provision in the standard will be covered by the proposed extension. First, the proposal will not affect the compliance date for the updated TWA PEL and STEL (paragraph (c)), exposure assessment (paragraph (d)), or respiratory protection (paragraph (g)). These paragraphs are not affected by the regulatory revisions OSHA plans to propose, and are essential to ensure employers are controlling worker exposures to beryllium while OSHA works on the rulemaking to amend other aspects of the standard. The compliance dates for paragraphs (c), (d), and (g) are unaffected by this proposal.

Second, the proposal will not affect the compliance date for medical surveillance (paragraph (k)) or medical removal protection (paragraph (l)). Although OSHA plans to propose clarifications to certain definitions pertaining to paragraph (k) (Medical Surveillance), OSHA has preliminarily determined that the proposed clarifications would not substantially affect the actions that employers must take to comply with the medical surveillance provisions of the beryllium standard (Document ID 2156).<sup>3</sup> OSHA has also preliminarily determined that access to medical surveillance should not be delayed because, as explained in the preamble to the 2017 beryllium rule, the early identification of beryllium-related health effects can contribute to effective management of early signs and symptoms (82 FR at 2546, 2720–2721; Document ID 1756, Tr. 111, 132). Therefore, the compliance date for medical surveillance (paragraph (k)) is

<sup>3</sup> OSHA plans to propose revisions to the definition of “CBD diagnostic center” to prevent confusion about staffing requirements for CBD diagnostic centers. OSHA plans to propose a change to the definition of “chronic beryllium disease” to narrow the scope and avoid confusion with other lung diseases. OSHA also plans to propose a change to the definition of “confirmed positive” to clarify that the results must be obtained within the 30 day follow-up test period required after a first abnormal or borderline BelPT test result (Document ID 2156).

unaffected by this proposal. Until the substantive rulemaking is proposed, however, employers may comply with the medical surveillance provisions as clarified by the definitions of “CBD diagnostic center,” “chronic beryllium disease,” and “confirmed positive” that OSHA has agreed to propose in the substantive rulemaking NPRM, which are available in the docket (Document ID 2156) and in OSHA’s interim enforcement guidance on the OSHA website (<https://www.osha.gov/laws-regs/standardinterpretations/2018-05-09>). OSHA has also determined, preliminarily, that this compliance date extension should have no effect on medical removal protection (paragraph (l)), because compliance with medical removal protection is not directly affected by the changes OSHA is planning to propose to the rule (Document ID 2156).

Third, the proposal will not affect paragraph (a), Scope and application. It will also not affect paragraph (b), Definitions, except as described above to allow employers to comply with the definitions of “CBD diagnostic center,” “chronic beryllium disease,” and “confirmed positive” that are included in the settlement agreement and will be proposed in the substantive rulemaking NPRM (Document ID 2156).

Finally, the compliance date for change rooms and showers required by paragraph (i) of the standard will remain March 11, 2019 (29 CFR 1910.1024(o)(2)(i)), and the compliance date to implement engineering controls required by paragraph (f) of the standard will remain March 10, 2020 (29 CFR 1910.1024(o)(2)(ii)). OSHA expects to publish the planned NPRM well in advance of these compliance dates.

Although OSHA is proposing to extend the compliance date for paragraph (m), Communication of Hazards—which includes specific labeling requirements—manufacturers, importers, and employers are still obligated to label hazardous chemicals containing beryllium, ensure that safety data sheets are readily available, and train workers on the hazards of beryllium in accordance with the Hazard Communication Standard (HCS), 29 CFR 1910.1200. OSHA encourages employers to review their hazard communication program, employee training, and other hazard communication practices (such as workplace labeling) to ensure continued compliance with the HCS. Also, while OSHA is proposing to extend the compliance date for the recordkeeping requirements of paragraph (n), OSHA expects employers to continue to comply with 29 CFR 1910.1020 (Access

to Employee Exposure and Medical Records).

OSHA seeks comment on this proposal to revise paragraph (o) of the general industry beryllium standard to extend the compliance date for select ancillary provisions. OSHA welcomes comment on both the duration and scope of the proposed compliance date extension. OSHA encourages commenters to include a rationale for any concerns raised with this proposal, as well as for alternatives that they propose. OSHA also requests comment on the “Agency Determinations” section that follows, including the preliminary economic analysis and other regulatory impacts of this rule on the regulated community. Please note that comments on the changes OSHA plans to propose to the ancillary requirements of the general industry standard should be reserved for submission during the public comment period for that NPRM.

## II. Agency Determinations

### A. Preliminary Economic Analysis and Regulatory Flexibility Certification

Executive Orders 12866 and 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1532(a)) require that OSHA estimate the benefits, costs, and net benefits of regulations, and analyze the impacts of certain rules that OSHA promulgates. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

This proposed rule is not an “economically significant regulatory action” under Executive Order 12866 or UMRA, or a “major rule” under the Congressional Review Act (5 U.S.C. 801 *et seq.*). Neither the benefits nor the costs of this proposal would exceed \$100 million in any given year. This proposed rule to extend the compliance date for certain ancillary provisions in the beryllium standard would result in cost savings. Cost savings arise in this context because a delay in incurred costs for employers would allow them to invest the funds (and earn an expected return at the going interest rate) that would otherwise have been spent to comply with the beryllium standard.

At a discount rate of 3 percent, this proposed compliance date extension would yield annualized cost savings of \$0.76 million per year for 10 years. At a discount rate of 7 percent, this proposal would yield an annualized cost savings of \$1.73 million per year for 10 years. When the Department uses a perpetual time horizon to allow for cost

comparisons under Executive Order 13771 (82 FR 9339, Jan. 30, 2017), the annualized cost savings of this proposed compliance date extension is \$1.65 million at a discount rate of 7 percent.

### 1. Changes to the Baseline: Updating to 2017 Dollars and Removing Familiarization Costs; Discussion of Overhead Costs

More than one year has elapsed since promulgation of the beryllium standard on January 9, 2017, so OSHA has updated the projected costs for general industry contained in the final economic analysis (FEA) that accompanied the rule from 2015 to 2017 dollars, using the latest Occupational Employment Statistics (OES) wage data (for 2016) and inflating them to 2017 dollars. Additionally, although familiarization costs were included in the cost estimates developed in the beryllium FEA, OSHA expects that those costs have already been incurred by affected employers, and is excluding them from its analysis of the cost savings associated with the proposed extension of compliance dates. Thus, baseline costs for this preliminary economic analysis (PEA) are the projected costs from the 2017 FEA, updated to 2017 dollars, less familiarization costs.

OSHA notes that it did not include an overhead labor cost in the 2017 FEA, and has not accounted for such costs in this PEA. There is not one broadly accepted overhead rate, and the use of overhead to estimate the marginal costs of labor raises a number of issues that should be addressed before applying overhead costs to analyze the cost implications of any specific regulation. There are several ways to look at the cost elements that fit the definition of overhead, and there is a range of overhead estimates currently used within the federal government—for example, the Environmental Protection Agency has used 17 percent,<sup>4</sup> and government contractors have been reported to use an average of 77 percent.<sup>5</sup> Some overhead costs, such as

<sup>4</sup> Grant Thornton, LLP, 2015 Government Contractor Survey (Document ID OSHA–H005C–2006–0870–2153). The application of this overhead rate was based on an approach used by the Environmental Protection Agency (EPA), as described in EPA’s “Wage Rates for Economic Analyses of the Toxics Release Inventory Program,” June 10, 2002. This analysis itself was based on a survey of several large chemical manufacturing plants: Heiden Associates, *Final Report: A Study of Industry Compliance Costs Under the Final Comprehensive Assessment Information Rule*, Prepared for the Chemical Manufacturers Association, December 14, 1989.

<sup>5</sup> For further examples of overhead cost estimates, please see the Employee Benefits Security Administration’s guidance at <https://www.dol.gov/>

advertising and marketing, may be more closely correlated with output than with labor. Other overhead costs vary with the number of new employees. For example, rent or payroll processing costs may change little with the addition of 1 employee in a 500-employee firm, but may change substantially with the addition of 100 employees. If an employer is able to rearrange current employees’ duties to implement a rule, then the marginal share of overhead costs, such as rent, insurance, and major office equipment (e.g., computers, printers, copiers), would be very difficult to measure with accuracy.

If OSHA had included an overhead rate when estimating the marginal cost of labor, without further analyzing an appropriate quantitative adjustment, and adopted for these purposes an overhead rate of 17 percent on base wages, the cost savings of this proposal would increase to approximately \$0.82 million per year, at a discount rate of 3 percent, or to approximately \$1.87 million per year, at a discount rate of 7 percent.<sup>6</sup> The addition of 17 percent overhead on base wages would therefore increase cost savings by approximately 8 percent above the primary estimate at either discount rate.

### 2. Changes to the Standard: Nine-Month Extension of the Compliance Date for Some Ancillary Provisions

The beryllium standard went into effect on May 20, 2017, with most compliance obligations beginning on March 12, 2018. OSHA is proposing to extend the compliance date for specific provisions until December 12, 2018. The compliance dates for the updated PELs, exposure assessment, respiratory protection, medical surveillance, and medical removal protection requirements, and for some other provisions for which the standard already establishes compliance dates in 2019 and 2020, would not change as a result of this proposal. The applicability of the scope and application paragraph and the definitions would also not change as a result of this proposal, except to allow employers to comply with the definitions of “CBD diagnostic center,” “chronic beryllium disease,” and “confirmed positive” that will be

[sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-august-2016.pdf](https://www.osha-slc.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-august-2016.pdf).

<sup>6</sup> OSHA used an overhead rate of 17 percent on base wages in a sensitivity analysis in the FEA (OSHA–2010–0034–4247, p. VII–65) in support of the March 25, 2016 final respirable crystalline silica standards (81 FR 16286) and in the PEA in support of the June 27, 2017 beryllium proposal for the construction and shipyard sectors (82 FR 29201).

proposed in the later substantive rulemaking NPRM (Document ID 2156). As discussed previously, the purpose of this proposal is to provide time for OSHA to issue a planned NPRM that would affect the parts of the standard that are covered by this proposed compliance date extension before that compliance date is reached, so that OSHA may rely on its *de minimis* policy and employers may comply with the proposed provisions without risk of a citation.

OSHA estimated cost savings of the proposed extension relative to baseline costs, where baseline costs reflect the costs of compliance *without* the proposed change to the compliance date provision. OSHA calculated the cost savings by lagging the first-year costs for the affected provisions by nine months and then calculating the present value of the delayed costs over the 10 years following the proposed compliance date. Annualizing the present value of cost savings over ten years, the result is an annualized cost savings of \$0.76 million per year at a discount rate of 3 percent, or \$1.73 million per year at a discount rate of 7 percent. When the Department uses a perpetual time horizon to allow for cost comparisons under Executive Order 13771, the annualized cost savings of this proposed compliance date extension is \$1.65 million at a discount rate of 7 percent.

The undiscounted cost savings by provision and year are presented below in Table 1. As shown in Table 1, and described elsewhere in this notice, the cost savings described in this PEA reflect savings only for provisions covered by the proposed compliance date extension. OSHA estimated no cost savings for the PELs, exposure assessment, respiratory protection, medical surveillance, or medical removal protection provisions (as they are not covered by the proposed extension), or for any provisions for

which the rule already establishes compliance dates in 2019 (change rooms/showers) or 2020 (engineering controls).<sup>7</sup> The cost savings by year and discount rate are shown below in Table 2.

### 3. Economic and Technological Feasibility

In the FEA for the beryllium standard, OSHA concluded that the rule was technologically feasible. OSHA has preliminarily determined that this proposal is also technologically feasible because it does not change any of the rule's substantive requirements, and, if adopted, would simply give employers more time to comply with some of the rule's ancillary requirements. Furthermore, OSHA previously concluded that the beryllium standard was economically feasible. As this proposal does not impose any new substantive requirements, and results in cost savings, OSHA has preliminarily concluded that the proposal is also economically feasible.

### 4. Effects on Benefits

The planned rulemaking to revise the general industry beryllium standard is intended to be responsive to questions and concerns expressed by stakeholders

<sup>7</sup> Note that the labor costs associated with time spent changing clothes are generally triggered by wearing personal protective equipment, as required by paragraph (h) of the beryllium standard. OSHA is proposing to extend the compliance date for paragraph (h). If the proposal is adopted, the rule would not require employers to incur the labor costs associated with changing time for personal protective equipment until December 12, 2018, so OSHA is generally accounting for those cost savings in this PEA. OSHA has not accounted for any cost savings related to the use of head covers, however. Head covers may be used to prevent contamination of employees' hair, potentially precluding the need for showers under paragraph (i)(3) of the standard. Because this proposal would not extend the compliance date for showers, OSHA has not accounted for head covers for purposes of estimating the cost savings associated with this proposal.

regarding ancillary provisions of the rule. Safety and health programs can be ineffective if employers and other stakeholders are unclear about OSHA requirements. Hence, by addressing stakeholder questions and concerns, the planned rulemaking will make it more likely that the regulated community will realize the full benefits of the rule, as estimated in the 2017 beryllium FEA. Although it is not possible to quantify the effect of stakeholder uncertainty on the projected benefits of the rule, OSHA preliminarily believes that the short term loss of benefits associated with this proposed extension of initial compliance dates will be more than offset in the long term by the benefits that will be realized as a result of the Agency's effort to provide additional clarity in the rule. OSHA has preliminarily determined that this proposal will maintain essential safety and health protections for workers.

### 5. Certification of No Significant Impact on a Substantial Number of Small Entities

This proposal will result in cost savings for affected employers, and those savings fall below levels that could be said to have a significant positive economic impact on a substantial number of small entities.<sup>8</sup> Therefore, OSHA certifies that this proposed standard would not have a significant impact on a substantial number of small entities.

#### BILLING CODE 4510-26-P

<sup>8</sup> OSHA investigated whether the projected cost savings would exceed 1 percent of revenues or 5 percent of profits for small entities and very small entities for every industry. To determine if this was the case, OSHA returned to its original regulatory flexibility analysis (in the 2017 FEA) for small entities and very small entities. OSHA found that the cost savings of this proposal are such a small percentage of revenues and profits for every affected industry that OSHA's criteria would not be exceeded for any industry.

Table 1: Undiscounted Compliance Costs by Year and Provision (2017 Dollars)

Year	Engineering Controls and Work Practices	Respirator Costs	Rule Familiarization	Exposure Assessment	Regulated Areas	Beryllium Work Areas	Medical Surveillance	Medical Removal Provision	Written Exposure Control Plan	Protective Work Clothing & Equipment	Hygiene Areas and Practices - Change Rooms	Hygiene Areas and Practices - Changing Labor Time	Hygiene Areas and Practices - Head Coverings	Housekeeping	Training	Total	Delayed Cost Total	Not Delayed Cost Total
	Not Delayed	Not Delayed	Not Delayed	Not Delayed	Delayed	Delayed	Not Delayed	Not Delayed	Delayed	Delayed	Not Delayed	Delayed	Not Delayed	Delayed				
1	\$48,363,092	\$372,038	\$0	\$18,903,655	\$686,423	\$1,148,798	\$16,810,498	\$3,288,986	\$2,772,426	\$1,893,890	\$761,953	\$207,268	\$12,211	\$37,615,726	\$9,536,539	\$142,373,503	\$53,861,070	\$88,512,433
2	\$7,899,637	\$252,372	\$0	\$6,540,784	\$642,631	\$0	\$2,289,059	\$256,541	\$1,890,613	\$1,893,890	\$677,245	\$207,268	\$12,211	\$19,744,717	\$7,586,746	\$49,893,714	\$31,965,865	\$17,927,849
3	\$8,021,023	\$264,285	\$0	\$6,540,784	\$642,631	\$0	\$7,108,201	\$256,541	\$1,890,613	\$1,893,890	\$677,245	\$207,268	\$12,211	\$19,744,717	\$7,586,746	\$54,846,155	\$31,965,865	\$22,880,290
4	\$7,899,637	\$306,608	\$0	\$6,540,784	\$642,631	\$0	\$3,239,801	\$256,541	\$1,890,613	\$1,893,890	\$677,245	\$207,268	\$12,211	\$19,744,717	\$7,586,746	\$50,898,692	\$31,965,865	\$18,932,827
5	\$8,021,023	\$264,285	\$0	\$6,540,784	\$642,631	\$0	\$6,401,799	\$256,541	\$1,890,613	\$1,893,890	\$677,245	\$207,268	\$12,211	\$19,744,717	\$7,586,746	\$54,139,754	\$31,965,865	\$22,173,889
6	\$7,899,637	\$252,372	\$0	\$6,540,784	\$642,631	\$0	\$3,764,658	\$256,541	\$1,890,613	\$1,893,890	\$677,245	\$207,268	\$12,211	\$19,744,717	\$7,586,746	\$51,369,312	\$31,965,865	\$19,403,447
7	\$8,021,023	\$318,521	\$0	\$6,540,784	\$642,631	\$0	\$6,011,831	\$256,541	\$1,890,613	\$1,893,890	\$677,245	\$207,268	\$12,211	\$19,744,717	\$7,586,746	\$53,804,021	\$31,965,865	\$21,838,156
8	\$7,899,637	\$252,372	\$0	\$6,540,784	\$642,631	\$0	\$4,054,404	\$256,541	\$1,890,613	\$1,893,890	\$677,245	\$207,268	\$12,211	\$19,744,717	\$7,586,746	\$51,659,059	\$31,965,865	\$19,693,194
9	\$8,021,023	\$264,285	\$0	\$6,540,784	\$642,631	\$0	\$5,796,549	\$256,541	\$1,890,613	\$1,893,890	\$677,245	\$207,268	\$12,211	\$19,744,717	\$7,586,746	\$53,534,504	\$31,965,865	\$21,568,639
10	\$7,899,637	\$306,608	\$0	\$6,540,784	\$642,631	\$0	\$4,214,358	\$256,541	\$1,890,613	\$1,893,890	\$677,245	\$207,268	\$12,211	\$19,744,717	\$7,586,746	\$51,873,249	\$31,965,865	\$19,907,384

TABLE 2—COST SAVINGS DUE TO COMPLIANCE DATE EXTENSION

Year	<i>t</i>	Undiscounted costs by year	Discounted costs—3%	Discounted costs—7%
<b>Baseline</b>				
1	1.00	\$53,861,070	\$52,292,301	\$50,337,449
2	2.00	31,965,865	30,130,893	27,920,224
3	3.00	31,965,865	29,253,295	26,093,668
4	4.00	31,965,865	28,401,257	24,386,605
5	5.00	31,965,865	27,574,036	22,791,220
6	6.00	31,965,865	26,770,909	21,300,205
7	7.00	31,965,865	25,991,173	19,906,734
8	8.00	31,965,865	25,234,149	18,604,424
9	9.00	31,965,865	24,499,174	17,387,312
10	10.00	31,965,865	23,785,605	16,249,825
Total			293,932,792	244,977,667
Annualized—10 Years			34,457,890	34,879,308
<b>Discounting Option 1</b>				
1	1.75	53,861,070	51,145,783	47,846,852
2	2.75	31,965,865	29,470,268	26,538,787
3	3.75	31,965,865	28,611,911	24,802,605
4	4.75	31,965,865	27,778,554	23,180,004
5	5.75	31,965,865	26,969,470	21,663,556
6	6.75	31,965,865	26,183,952	20,246,314
7	7.75	31,965,865	25,421,312	18,921,788
8	8.75	31,965,865	24,680,886	17,683,914
9	9.75	31,965,865	23,962,025	16,527,023
10	10.75	31,965,865	23,264,102	15,445,816
Total			287,488,264	232,856,658
Annualized—10 Years			33,702,395	33,153,550
Difference from Baseline			-755,495	-1,725,759

*B. Paperwork Reduction Act*

This NPRM does not propose changes to the information collections already approved by Office of Management and Budget (OMB). OMB approved the information collection requirements for the general industry beryllium standard under OMB Control Number 1218-0267, with an expiration date of April 30, 2020.

*C. Federalism*

OSHA reviewed this proposed rule in accordance with Executive Order 13132 on Federalism (64 FR 43255, (Aug. 10, 1999)), which requires that Federal agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions that would restrict state policy options, and take such actions only when clear constitutional authority exists and the problem is national in scope. Executive Order 13132 provides for preemption of state law only with the expressed consent of Congress. Federal agencies must limit any such preemption to the extent possible.

Under Section 18 of the Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 651 *et seq.*), Congress expressly provides that states and U.S. territories may adopt, with Federal approval, a plan for the development

and enforcement of occupational safety and health standards. OSHA refers to such states and territories as “State Plan States.” Occupational safety and health standards developed by State Plan States must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. 29 U.S.C. 667. Subject to these requirements, State Plan States are free to develop and enforce under state law their own requirements for safety and health standards.

OSHA previously concluded from its analysis that promulgation of the beryllium standard complies with Executive Order 13132 (82 FR at 2633). In states without an OSHA-approved State Plan, any standard developed from this proposed rule would limit state policy options in the same manner as every standard promulgated by OSHA. For State Plan States, Section 18 of the OSH Act, as noted in the previous paragraph, permits State Plan States to develop and enforce their own beryllium standards provided these requirements are at least as effective in providing safe and healthful employment and places of employment as the requirements specified in this proposal.

*D. State Plans*

When Federal OSHA promulgates a new standard or more stringent amendment to an existing standard, State Plans must amend their standards to reflect the new standard or amendment, or show OSHA why such action is unnecessary, *e.g.*, because an existing state standard covering this area is “at least as effective” as the new Federal standard or amendment (29 CFR 1953.5(a)). The state standard must be at least as effective as the final Federal rule. State Plans must adopt the Federal standard or complete their own standard within six months of the promulgation date of the final Federal rule. When OSHA promulgates a new standard or amendment that does not impose additional or more stringent requirements than an existing standard, State Plans do not have to amend their standards, although OSHA may encourage them to do so. The 21 states and 1 U.S. territory with OSHA-approved occupational safety and health plans covering private sector and state and local government are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming.

Connecticut, Illinois, Maine, New Jersey, New York, and the Virgin Islands have OSHA-approved State Plans that apply to state and local government employees only.

The proposed amendments to OSHA's beryllium standard would not impose any new requirements on employers. Accordingly, State Plans would not have to amend their standards to extend the compliance dates for their beryllium rules, but they may do so within the limits of any extension adopted by Federal OSHA.

#### E. Unfunded Mandates Reform Act

When OSHA issued the final rule establishing standards for occupational exposure to beryllium, it reviewed the rule according to the Unfunded Mandates Reform Act of 1995 (UMRA; 2 U.S.C. 1501 *et seq.*) and Executive Order 13132 (64 FR 43255 (Aug. 10, 1999)). OSHA concluded that the final rule did not meet the definition of a "Federal intergovernmental mandate" under the UMRA because OSHA standards do not apply to state or local governments except in states that voluntarily adopt State Plans. OSHA further noted that the rule did not impose costs of over \$100 million per year on the private sector. (82 FR at 2634.)

As discussed above in Section II. A (Preliminary Economic Analysis and Regulatory Flexibility Certification) of this preamble, this proposed extension does not impose any costs on private-sector employers beyond those costs already identified in the final rule for beryllium in general industry. Because OSHA reviewed the total costs of the final rule under UMRA, no further review of those costs is necessary. Therefore, for purposes of UMRA, OSHA certifies that this proposed rule does not mandate that state, local, or tribal governments adopt new, unfunded regulatory obligations of, or increase expenditures by the private sector by, more than \$100 million in any year.

#### F. Consultation and Coordination With Indian Tribal Governments

OSHA reviewed this proposed rule in accordance with Executive Order 13175 (65 FR 67249) and determined that it does not have "tribal implications" as defined in that order. As proposed, the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and

responsibilities between the Federal government and Indian tribes.

#### G. Legal Considerations

The purpose of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*) is "to assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources." 29 U.S.C. 651(b). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. 29 U.S.C. 654(b), 655(b). A safety or health standard is a standard "which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment or places of employment." 29 U.S.C. 652(8). A standard is reasonably necessary or appropriate within the meaning of Section 652(8) when a significant risk of material harm exists in the workplace and the standard would substantially reduce or eliminate that workplace risk. See *Industrial Union Department, AFL-CIO v. American Petroleum Institute*, 448 U.S. 607 (1980). In the beryllium rulemaking, OSHA made such a determination with respect to beryllium exposure in general industry (82 FR at 2479). This proposed rule does not impose any new requirements on employers. Therefore, this proposal does not require an additional significant risk finding. See *Edison Electric Institute v. OSHA*, 849 F.2d 611, 620 (D.C. Cir. 1988).

In addition to materially reducing a significant risk, a health standard must be technologically and economically feasible. *United Steelworkers of Am., AFL-CIO-CLC v. Marshall*, 647 F.2d 1189, 1251 (D.C. Cir. 1980) (OSHA must reduce risk "as far as it c[an] within the limits of [technological and economic] feasibility.") A standard is technologically feasible when the protective measures it requires already exist, when available technology can bring the protective measures into existence, or when that technology is reasonably likely to develop. See *American Textile Mfrs. Institute v. OSHA*, 452 U.S. 490, 513 (1981); *American Iron and Steel Institute v. OSHA*, 939 F.2d 975, 980 (D.C. Cir. 1991). And a rule is economically feasible if it does not "threaten massive dislocation to, or imperil the existence of, [an] industry." *United Steelworkers*, 647 F.2d at 1265 (internal citations and quotation marks omitted). In the 2017

FEA for the beryllium standard, OSHA found the standard to be technologically and economically feasible (82 FR at 2471). This proposed rule would be technologically and economically feasible as well because it would not require employers to implement any additional protective measures and would not impose any additional costs on employers.

#### List of Subjects in 29 CFR Part 1910

Beryllium, Occupational safety and health.

Signed at Washington, DC, on May 25, 2018.

**Loren Sweatt,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

#### Amendments to Standards

For the reasons stated in the preamble of this proposed rule, OSHA proposes to amend 29 CFR part 1910 as follows:

### PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

#### Subpart Z—Toxic and Hazardous Substances

■ 1. The authority citation for subpart Z of 29 CFR part 1910 is revised to read as follows:

**Authority:** 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), 5-2007 (72 FR 31160), 4-2010 (75 FR 55355), or 1-2012 (77 FR 3912); 29 CFR part 1911; and 5 U.S.C. 553, as applicable.

Section 1910.1030 also issued under Public Law 106-430, 114 Stat. 1901.

Section 1910.1201 also issued under 40 U.S.C. 5101 *et seq.*

■ 2. Amend § 1910.1024 by revising paragraph (o)(2) to read as follows:

#### § 1910.1024 Beryllium.

\* \* \* \* \*

(o) \* \* \*

(2) *Compliance dates.* (i) Obligations contained in paragraphs (c), (d), (g), (k), and (l) of this standard: March 12, 2018;

(ii) Change rooms and showers required by paragraph (i) of this standard: March 11, 2019;

(iii) Engineering controls required by paragraph (f) of this standard: March 10, 2020; and

(iv) All other obligations of this standard: December 12, 2018.

\* \* \* \* \*

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