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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

[Docket No. OSHA-H005C-2006-0870-0353]

RIN 1218-AB76

Occupational Exposure to Beryllium

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; notice of informal public hearing.

SUMMARY: OSHA is scheduling an informal public hearing on its proposed rule “Occupational Exposure to Beryllium and Beryllium Compounds.” The proposed rule was published in the Federal Register on August 7, 2015 and the 90-day public comment period ended on November 5, 2015. This document describes the procedures that will govern this hearing.

DATES: Informal public hearing. The hearing will begin on February 29, 2016 at 2 pm. If necessary, the hearing will continue from 9:30 am to 5:00 pm, local time, on subsequent days, in Washington, DC.

ADDRESSES: Informal public hearing. The Washington, DC hearing will be held in Room N4437 A, B, C, D at the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice of Intention to appear at the hearing: Interested persons who intend to present testimony or question witnesses at the hearing must submit (transmit, send, postmark, deliver) a notice of intention to appear, by January 29, 2016.

Hearing testimony and documentary evidence. Interested persons who request more than 10 minutes to present testimony or intend to submit documentary evidence at the hearing must submit (transmit, send, postmark, deliver) the full text of their testimony and all documentary evidence by January 29, 2016.

Methods of submission. All submissions must include the Agency name and the docket number for this rulemaking (OSHA-H005C-2006-0870-0353). Notices of intention to appear, hearing testimony, and documentary evidence may be submitted by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions online for electronically submitting materials, including attachments;

Fax: If your written submission does not exceed 10 pages, including attachments, you may fax it to the OSHA Docket Office at (202) 693-1648; or

Regular mail, express delivery, hand delivery, and messenger or courier service: Submit your materials to the OSHA Docket Office, Docket No. OSHA-H005C-2006-0870-0353, U.S. Department of Labor, Room N-2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone (202) 693-2350 (TTY number: (877) 889-5627). Deliveries (express mail, hand delivery, and messenger or courier service) are accepted during the OSHA Docket Office's normal hours of operation, 8:15 a.m. to 4:45 p.m., E.T.

Instructions: All submission must include the Agency name and docket number for this rulemaking (OSHA-H005C-2006-0870-0353). All submissions, including any personal information, are placed in the public docket without change and may be available online at <http://www.regulations.gov>. Therefore, OSHA cautions you about submitting certain personal information such as social security numbers and birth dates. Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of your submissions. For information about security-related procedures for submitting materials by express delivery, hand delivery, messenger, or courier service, please contact the OSHA Docket Office. For additional information on submitting notices of intention to appear, hearing testimony, or documentary evidence, see the SUPPLEMENTARY INFORMATION section of this notice.

Docket: To read or download comments, notices of intention to appear, and other material in the docket, go to Docket No. OSHA-H005C-2006-0870-0353 at <http://www.regulations.gov>. All documents in the docket are listed in the <http://www.regulations.gov> index; however, some copyrighted material is not publicly available to read or download through the website. All submissions and other material in the docket are available for public inspection and copying in the OSHA Docket Office. For information on reading or downloading materials in the docket and obtaining materials not available through the website, please contact the OSHA Docket Office.

Electronic copies of this Federal Register notice are available at <http://www.regulations.gov>. This notice, as well as new releases and other relevant information, also is available at OSHA's web site at <http://www.osha.gov>.

FOR FURTHER INFORMATION CONTACT: Press inquiries: Kimberly Darby, Office of Communications, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210; telephone 202-693-1892.

Technical information: Maureen Ruskin, OSHA, Office of Chemical Hazards-Metals, Room N-3718, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington DC 20210; telephone (202) 693-1955.

Hearing inquiries: Gretta Jameson, OSHA, Office of Communications, Room N-3647; 200 Constitution Avenue, NW, Washington, DC 20210; telephone 202-693-2176, email Jameson.Gretta@dol.gov.

SUPPLEMENTARY INFORMATION: On August 7, 2015, OSHA published a proposed rule to amend its existing exposure limits for occupational exposure in general industry to beryllium and beryllium compounds (80 FR 47565). The proposed rule would promulgate a substance-specific standard for general industry, regulating occupational exposure to beryllium and beryllium compounds. OSHA accepted comments concerning the proposed rule during the comment period, which ended on November 5, 2015. Commenters shared information and suggestions on a variety of topics, and the Non-Ferrous Founders' Society also requested that OSHA schedule an informal public hearing on the proposed rule.

Informal public hearing—purpose, rules and procedures. OSHA invites interested persons to participate in this rulemaking by providing oral testimony and documentary evidence at the informal public hearing. OSHA also welcomes presentation of data and documentary evidence that will provide the Agency with the best available evidence to use in developing the final rule.

Pursuant to 29 CFR 1911.15(a) and 5 U.S.C. 553(c), members of the public have an opportunity at the informal public hearing to provide oral testimony and evidence on issues raised by the proposal. An administrative law judge (ALJ) will preside over the hearing and will resolve any procedural matters relating to the hearing.

OSHA's regulation governing public hearings (29 CFR 1911.15) establishes the purpose and procedures of informal public hearings. Although the presiding officer of the hearing is an ALJ and questioning of witnesses is allowed on crucial issues, the proceeding is largely informal and essentially legislative in purpose. Therefore, the hearing provides interested persons with an opportunity to make oral presentations in the absence of rigid procedures that could impede or protract the rulemaking process. The hearing is not an adjudicative proceeding subject to the Federal rules of evidence. Instead, it is an informal administrative proceeding convened for the purpose of gathering and clarifying information. Accordingly, questions of relevance, procedure, and participation generally will be resolved in favor of developing a clear, accurate, and complete record.

Conduct of the hearing will conform to 29 CFR 1911.15. In addition, pursuant to 29 CFR 1911.4, the Assistant Secretary may, on reasonable notice, issue additional or alternative procedures to expedite the proceedings, to provide greater procedural protections to interested persons, or to further any other good cause consistent with applicable law. Although the ALJ presiding over the hearing makes no decision or recommendation on the merits of the proposal, the ALJ has the responsibility and authority necessary to ensure that the hearing progresses at a reasonable pace and in an orderly manner. To ensure a full and fair hearing, the ALJ has the power to regulate the course of the proceedings; dispose of procedural requests, objections, and comparable matters; confine presentations to matters pertinent to the issues the proposed rule

raises; use appropriate means to regulate the conduct of persons present at the hearing; question witnesses and permit others to do so; limit the time for such questioning; and leave the record open for a reasonable time after the hearing for the submission of additional data, evidence, comments, and arguments from those who participated in the hearing (29 CFR 1911.16).

If you submit scientific or technical studies or other results of scientific research, OSHA requests (but is not requiring) that you also provide the following information where it is available: (1) Identification of the funding source(s) and sponsoring organization(s) of the research; (2) the extent to which the research findings were reviewed by a potentially affected party prior to publication or submission to the docket, and identification of any such parties; and (3) the nature of any financial relationships (e.g., consulting agreements, expert witness support, or research funding) between investigators who conducted the research and any organization(s) or entities having an interest in the rulemaking. If you are submitting comments or testimony on the Agency's scientific or technical analyses, OSHA requests that you disclose: (1) The nature of any financial relationships you may have with any organization(s) or entities having an interest in the rulemaking; and (2) the extent to which your comments or testimony were reviewed by an interested party before you submitted them. Disclosure of such information is intended to promote transparency and scientific integrity of data and technical information submitted to the record. This request is consistent with Executive Order 13563, issued on January 18, 2011, which instructs agencies to ensure the objectivity of any scientific and technological information used to support their regulatory actions. OSHA emphasizes that all material submitted to the rulemaking record will be considered by the Agency to develop the final rule and supporting analyses. At the close of the hearing, the ALJ will establish a 45-day post-hearing comment period for interested persons who filed a timely notice of intention to appear at the hearing.

During the first 30 days of the post-hearing period, those persons may submit final briefs, arguments, summations, and additional data and information to OSHA. During the remaining 15 days, they may only submit final briefs, arguments, and summations.

Notice of intention to appear at the hearing. Interested persons who intend to participate in and provide oral testimony or documentary evidence at the hearing must file a written notice of intention to appear prior to the hearing. To testify or question witnesses at the hearing, interested persons must submit (transmit, send, postmark, deliver) their notice by January 29, 2016. The notice must provide the following information:

- Name, address, e-mail address, and telephone number of each individual who will give oral testimony;
- Name of the establishment or organization each individual represents, if any;
- Occupational title and position of each individual testifying;
- Approximate amount of time required for each individual's testimony;
- A brief statement of the position each individual will take with respect to the issues raised by the proposed rule; and
- A brief summary of documentary evidence each individual intends to present.

Participants who need projectors and other special equipment for their testimony must contact Gretta Jameson at OSHA's Office of Communications, telephone (202) 693-2176, no later than one week before the hearing begins.

OSHA emphasizes that the hearing is open to the public; however, only individuals who file a notice of intention to appear may question witnesses and participate fully at the hearing. If time permits, and at the discretion of the ALJ, an individual who did not file a notice of intention to appear may be allowed to testify at the hearing, but for no more than 10 minutes.

Hearing testimony and documentary evidence. Individuals who request more than 10 minutes to present their oral testimony at the hearing or who will submit documentary evidence at the hearing must submit (transmit, send, postmark, deliver) the full text of their testimony and all documentary evidence no later than January 29, 2016.

The Agency will review each submission and determine if the information it contains warrants the amount of time the individual requested for the presentation. If OSHA believes the requested time is excessive, the Agency will allocate an appropriate amount of time for the presentation.

The Agency also may limit to 10 minutes the presentation of any participant who fails to comply substantially with these procedural requirements, and may request that the participant return for questioning at a later time. Before the hearing, OSHA will notify participants of the time the Agency will allow for their presentation and, if less than requested, the reasons for its decision.

In addition, before the hearing, OSHA will provide the hearing procedures and hearing schedule to each participant who filed a notice of intention to appear.

Certification of the hearing record and Agency final determination. Following the close of the hearing and the post-hearing comment periods, the ALJ will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health. The record will consist of all of the written comments, oral testimony, and documentary evidence received during the proceeding. The ALJ, however, will not make or recommend any decisions as to the content of the final

standard. Following certification of the record, OSHA will review all the evidence received into the record and will issue the final rule based on the record as a whole.

Authority and Signature

This document was prepared under the direction of David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)), Secretary of Labor's Order 1-2012 (77 FR 3912), and 29 CFR part 1911.

Signed at Washington, DC, on December 23, 2015.

David Michaels,
Assistant Secretary of Labor for Occupational Safety and Health

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