



DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1915 and 1926

RIN 1218-AD29

Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors; Correction

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

ACTION: Final rule; correction and correcting amendment.

SUMMARY: OSHA is making minor changes to the final rule published on August 31, 2020, titled Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors, to correct inadvertent errors in the published rule.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Summary and Explanation

On August 31, 2020, OSHA published a final rule revising the standards for occupational exposure to beryllium and beryllium compounds in the construction and shipyard sectors (85 FR 53910). The document inadvertently failed to revise paragraph (k)(7)(ii) of both standards in the Code of Federal Regulations (CFR), as the final rule

purported to do. The document also failed to include the correct language for these revised provisions in two tables in the Economic Feasibility Analysis and Regulatory Flexibility Certification section of the preamble. OSHA is publishing this document to correct these errors.

II. Exemption from Notice-and-Comment Procedures.

OSHA has determined that these corrections are not subject to the procedures for public notice and comment specified in Section 4 of the Administrative Procedures Act (5 U.S.C. 553) or Section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)). This rulemaking only corrects minor errors and does not affect or change any existing rights or obligations. No stakeholder is likely to object to these corrections. Therefore, the agency finds good cause that public notice and comment are unnecessary within the meaning of 5 U.S.C. 553(b)(3)(B), 29 U.S.C. 655(b), and 29 CFR 1911.5.

Preamble Corrections

In FR Doc. 2020-18017 appearing on page 53910 in the *Federal Register* of August 31, 2020 (85 FR 53910), make the following corrections in the Economic Feasibility Analysis and Regulatory Flexibility Certification section of the preamble.

1. On page 53991, in the third column, in Table VI.1, the sixth paragraph is corrected to read as follows:

“Added a new requirement in paragraph (k)(7)(ii) that the employer must ensure that, as part of the evaluation, the employee is offered any tests deemed appropriate by the examining physician at the CBD diagnostic center, such as pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. If any of the tests deemed appropriate by the examining physician are not available at the CBD diagnostic center, they may be performed at another location that is mutually agreed upon by the employer and the employee.”

2. On page 53994, in the third column, in Table VI.2, the first paragraph is corrected to read as follows:

“Added a new requirement in paragraph (k)(7)(ii) that the employer must ensure that, as part of the evaluation, the employee is offered any tests deemed appropriate by the examining physician at the CBD diagnostic center, such as pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. If any of the tests deemed appropriate by the examining physician are not available at the CBD diagnostic center, they may be performed at another location that is mutually agreed upon by the employer and the employee.”

List of Subjects

29 CFR Part 1915

Beryllium, Health, Occupational Safety and Health, Shipyards.

29 CFR Part 1926

Beryllium, Construction, Health, Occupational Safety and Health.

Authority and Signature:

Amanda L. Edens, Deputy Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, directed the preparation of this notice pursuant to 29 U.S.C. 653, 655, and 657, Secretary of Labor’s Order 8-2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR part 1911.

Signed at Washington, DC, on February 4, 2021.

Amanda L. Edens

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

For reasons stated in the preamble, the Occupational Safety and Health Administration corrects 29 CFR parts 1915 and 1926 with the following correcting

amendments:

PART 1915 – OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

1. The authority citation for part 1915 continues to read as follows:

Authority: 33 U.S.C. 941; 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.

2. In § 1915.1024, revise paragraph (k)(7)(ii) to read as follows:

§ 1915.1024 Beryllium.

* * * * *

(k) * * *

(7) * * *

(ii) The employer must ensure that, as part of the evaluation, the employee is offered any tests deemed appropriate by the examining physician at the CBD diagnostic center, such as pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. If any of the tests deemed appropriate by the examining physician are not available at the CBD diagnostic center, they may be performed at another location that is mutually agreed upon by the employer and the employee.

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PART 1926 – SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

Subpart Z—Toxic and Hazardous Substances

3. The authority citation for 29 CFR part 1926, subpart Z, continues to read as follows:

Authority: 40 U.S.C. 3704; 29 U.S.C. 653, 655, 657; and 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) as applicable; and 29 CFR part 1911.

4. In § 1926.1124, revise paragraph (k)(7)(ii) to read as follows:

§ 1926.1124 Beryllium.

* * * * *

(k) * * *

(7) * * *

(ii) The employer must ensure that, as part of the evaluation, the employee is offered any tests deemed appropriate by the examining physician at the CBD diagnostic center, such as pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. If any of the tests deemed appropriate by the examining physician are not available at the CBD diagnostic center, they may be performed at another location that is mutually agreed upon by the employer and the employee.

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