



May 1, 2018

OSHA and Materion Sign Settlement Agreement to Change the Final Beryllium Standard

On April 24, 2018, the Occupational Safety and Health Administration (OSHA) and Materion along with other petitioners signed an important agreement where OSHA will initiate rulemaking to make changes to the OSHA [Beryllium Standard for General Industry](#) (29 CFR 1910.1024) issued January 9, 2017. The proposed changes improve the effectiveness and workability of the standard and address the legal challenge filed by several petitioners including Materion. By signing this agreement, Materion and the other petitioners agree to file a motion with the Court of Appeals to hold the legal challenge in abeyance pending completion of new rulemakings by OSHA addressing select sections of the beryllium standard. These actions include:

1. OSHA will prepare and publish in the Federal Register a notice of proposed rulemaking (NPRM) that proposes to delay the Beryllium Standard's initial compliance date from March 12, 2018 to December 12, 2018 for paragraphs (e) Beryllium Work Areas, (f) Methods of Compliance (except for the engineering controls provision with a compliance date of March 10, 2020), (h) Personal Protective Clothing and Equipment, (i) Hygiene Areas and Practices (except for the change rooms and showers provisions with a compliance date of March 11, 2019), (j) Housekeeping, (m) Communication of Hazards, and (n) Recordkeeping.

Paragraphs of the Standard going into effect on May 11, 2018 include (a) Scope and Application, (b) Definitions, (c) Permissible Exposure Limits, (d) Exposure Assessment, (g) Respiratory Protection, (k) Medical Surveillance, and (l) Medical Removal.

2. OSHA will provide compliance assistance to employers for paragraphs (k) and (l) of the Beryllium Standard and will consider employers to be in compliance if they make a good faith effort to comply with these paragraphs using the definitions in Appendix B of the settlement agreement.
3. OSHA will prepare and publish in the Federal Register both a Direct Final Rule (DFR) and a NPRM providing specific changes to ancillary provisions as detailed in the settlement agreement with Materion and other stakeholders.
4. OSHA will include a statement that until the DFR and NPRM changes are final OSHA will consider compliance with the proposed changes to be a *de minimis* violation of the January 9, 2017 Beryllium Standard resulting in no citation, no abatement and no penalty while the rulemakings are pending.
5. OSHA will modify and reissue its Guidance Documents which provide clarification to the Beryllium Standard with language detailed in the settlement agreement.

Based on negotiations with Materion and other petitioners, OSHA's NPRMs will propose a number of changes to language of the final Beryllium Standard to address the impractical and infeasible sections of the standard's ancillary provisions. These ancillary provisions rendered portions of the final standard unworkable without presenting any significant additional protection to workers. The following are a few of the more significant changes that will likely impact your operations:

1. **The designation of a Beryllium Work Area will no longer include areas where airborne exposure is at any level or where there is the potential for dermal contact with beryllium.** The definition of Beryllium Work Area will be modified to apply to either specifically identified processes that are likely to involve relevant exposures to beryllium or where employees are, or can reasonably be expected to be, exposed to airborne beryllium at or above the Action Level.
2. **A definition of dermal contact will be included in the standard that explains that handling clean beryllium and beryllium-containing materials is not considered dermal contact.** The definition will specify that dermal contact with beryllium means skin exposure to soluble beryllium compounds; solutions containing beryllium; or visible dust, fumes, or mists containing beryllium in concentrations greater than or equal to 0.1 percent by weight.
3. **Changes to paragraph (j)(3) related to disposal, recycling, and reuse of beryllium and beryllium-containing materials will exclude requirements to use specified labels or clean materials transferred within a facility.** This paragraph has also been modified to allow facilities to decide whether to clean beryllium-contaminated materials destined for disposal or recycling outside the facility or place the material in an enclosure (i.e. bag or container) that will prevent the release of beryllium-containing particulate or solution under normal conditions of use and storage.

The execution of this agreement and the subsequent rulemaking by OSHA can assure that the final Beryllium Standard will both protect workers and maintain the economic viability of the beryllium-processing industry. As we have advised in the past, you should have already completed evaluating your workplace exposures to airborne beryllium as described in paragraph (d) to determine compliance with the permissible exposure limits in paragraph (c) and if required, put in place a respiratory protection program as described in paragraph (g). You should complete your evaluation to determine if you are required to comply with paragraphs (k) Medical Surveillance and (l) Medical Removal as they go into effect on May 11, 2018.

WHAT YOU SHOULD DO

We strongly recommend you review and use the [redline version](#), which contains the proposed changes to the OSHA Beryllium Standard, available on the Materion website until such time as the DFR and NPRM changes become final. As a result of the rulemaking process, the final content of OSHA's regulatory changes could end up being different than this redline version. We believe, however, following this redline version will place you in the best possible position to be in compliance with the final changes to the OSHA Standard.

To make this even easier, Materion Brush Inc. is preparing a practical, web-based tool to help you achieve compliance with all the changes being proposed by OSHA. This online tool, named the *Guide for Compliance*, is being finalized to reflect the changes being proposed by OSHA. We will provide you with the website location and instructions on the use of the *Guide for Compliance* in the very near future.

We welcome and encourage you to contact us with your questions or comments. We will continue to update you as new information becomes available. If you have any questions, please call our Information Hotline at 1-800-862-4118. Also, if you have an OSHA inspection related to beryllium in the coming months, we are pleased to help you think through any issues which may arise.

Sincerely,

Clive Grannum
President
Materion Performance Alloys and Composites