



Kentucky Labor Cabinet  
Office of the Secretary

**ADMINISTRATIVE ORDER**

2018-001  
March 9, 2018

**RELATING TO THE FINAL RULE ON OCCUPATIONAL  
EXPOSURE TO BERYLLIUM**

**WHEREAS**, the Kentucky Labor Cabinet (the “Cabinet”) administers the Commonwealth’s Occupational Safety and Health (“OSH”) Program and enforces OSH standards pursuant to KRS Chapter 338 and Chapter 2 of Title 803 of the Kentucky Administrative Regulations; and

**WHEREAS**, the United States Occupational Safety and Health Administration (“OSHA”) granted final approval for the Commonwealth’s OSH Program in 1985, making Kentucky an OSHA-approved State Plan with exclusive jurisdiction to enforce OSH standards within its borders; and

**WHEREAS**, pursuant to 29 U.S.C. § 667, 29 C.F.R. § 1953.5, and 29 C.F.R. § 1902.3, Kentucky is required to adopt new permanent OSH standards, or more stringent amendments to an existing permanent standard, that are as effective as their federal counterparts, within six months of the date OSHA promulgates a federal OSH standard; and

**WHEREAS**, on January 9, 2017, OSHA published the Final Rule on Occupational Exposure to Beryllium (the “Final Beryllium Exposure Rule”) in the *Federal Register*; and

**WHEREAS**, the Final Beryllium Exposure Rule reduced the permissible exposure limit (“PEL”) for beryllium in general industry, the construction industry, and the shipyard industry to an 8-hour time-weighted average PEL of 0.2  $\mu\text{g}/\text{m}^3$ , established a short-term exposure limit (“STEL”) of 2.0  $\mu\text{g}/\text{m}^3$  over a 15-minute sampling period, and established an action level of 0.1  $\mu\text{g}/\text{m}^3$  along with other, ancillary provisions; and

**WHEREAS**, all obligations under the Final Beryllium Exposure Rule were scheduled to commence on March 12, 2018, except for requirements for change rooms and showers, which was scheduled to commence on March 11, 2019, and requirements for engineering controls, which was scheduled to commence on March 10, 2020; and



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**WHEREAS**, in accordance with its obligations under 29 U.S.C. § 667, 29 C.F.R. § 1953.5, and 29 C.F.R. § 1902.3, Kentucky adopted the Final Beryllium Exposure Rule, effective June 2, 2017, and codified it into 803 KAR 2:320, 803 KAR 2:403, 803 KAR 2:425, and 803 KAR 2:500; and

**WHEREAS**, on June 27, 2017, OSHA published a Notice of Proposed Rulemaking for Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyards Sectors (the "Proposed Construction and Shipyard Rule"), wherein OSHA proposed to revoke the ancillary provisions for the construction and shipyard industries that OSHA adopted on January 9, 2017, but to retain the new lower PEL of 0.2  $\mu\text{g}/\text{m}^3$  and the STEL of 2.0  $\mu\text{g}/\text{m}^3$  for each industry; and

**WHEREAS**, in publishing the Proposed Construction and Shipyard Rule, OSHA announced that it would not enforce the January 9, 2017 shipyard and construction standards without further notice while the new rulemaking was underway; and

**WHEREAS**, on March 2, 2018, OSHA issued a Memorandum for Regional Administrators titled "Delay of Enforcement of the Beryllium Standards under 29 CFR 1910.1024, 29 CFR 1915.1024, and 29 CFR 1926.1124" (the "Delay of Beryllium Enforcement Memorandum"); and

**WHEREAS**, OSHA, in the Delay of Beryllium Enforcement Memorandum, announced that it was delaying its enforcement of the beryllium standard for general industry until May 11, 2018, in order to conclude settlement negotiations with parties who have filed legal challenges to the beryllium standards applicable to general industry; and

**WHEREAS**, OSHA, in the Delay of Beryllium Enforcement Memorandum, further announced that it was delaying its enforcement of the PEL and STEL in the beryllium standards applicable to the construction and shipyard industries until May 11, 2018, in order to promote uniformity in enforcement and clarity for employers; and



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**WHEREAS**, OSHA, in the Delay of Beryllium Enforcement Memorandum, reiterated that would enforce no other parts of the beryllium standards applicable to the construction and shipyard industries, without further notice, and that it would enforce no provisions of the Final Beryllium Exposure Rule until May 11, 2018; and

**WHEREAS**, OSHA, in the Delay of Beryllium Enforcement Memorandum, further announced that it will inform an employer who fails to meet the new PEL or STEL and will offer assistance to assure understanding and compliance during the period in which enforcement is delayed; and

**WHEREAS**, on February 28, 2018, the Kentucky House of Representatives passed a Kentucky Senate-amended version of HB 314, causing it to be sent to Governor Matthew G. Bevin for signature; and

**WHEREAS**, HB 314 amends KRS 338.061 to authorize this Office to suspend, delay, or alter enforcement of a promulgated OSH regulation by administrative order if the federal government has suspended, delayed, or enjoined the corresponding federal regulation or suspended, delayed, enjoined, or altered the enforcement thereof; and

**WHEREAS**, HB 314 declared an emergency to exist because the Cabinet could not, under the then-existing state of law, amend or change an administrative regulation in a timely manner to correspond with actions taken by OSHA concerning OSH regulations and, therefore, HB 314 became effective upon its approval by Governor Bevin; and

**WHEREAS**, on March 8, 2018, Governor Matthew G. Bevin signed HB 314 into law:

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**NOW, THEREFORE, I, Derrick K. Ramsey, Secretary, Kentucky Labor Cabinet, under the authority vested in me by KRS Chapter 338.061, as amended by HB 314, do hereby Order and Direct the following:**

- I. Consistent with OSHA's Delay of Beryllium Enforcement Memorandum issued on March 2, 2018, the Kentucky Labor Cabinet and the Department of Workplace Standards shall not enforce the Final Beryllium Exposure Rule for general industry until May 11, 2018; and
- II. Consistent with OSHA's Delay of Beryllium Enforcement Memorandum issued on March 2, 2018, the Kentucky Labor Cabinet and the Department of Workplace Standards shall not enforce the PEL and STEL in the Final Beryllium Exposure Rule for the construction industry and the shipyard industry until May 11, 2018; and
- III. Except as provided in Paragraph II of this Order, and consistent with OSHA's Delay of Beryllium Enforcement Memorandum issued on March 2, 2018, and the Notice of Proposed Rulemaking for Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyards Sectors published in the June 27, 2017 *Federal Register*, the Kentucky Labor Cabinet and the Department of Workplace Standards shall not enforce any other provisions of the Final Beryllium Exposure Rule for the construction and shipyard industries until further notice; and
- IV. Nothing in this Order shall be construed as to alter the general industry compliance deadlines for change rooms and showers requirements, which obligations commence on March 11, 2019, or the general industry compliance deadlines for the engineering controls requirements, which obligations commence on March 10, 2020.



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This Order shall be effective March 9, 2018, supersedes all previous administrative orders to the extent there exists a conflict, and shall remain in effect until modified, superseded, or withdrawn by subsequent law, regulation, executive order, or administrative order.

  
DERRICK K. RAMSEY, Secretary  
Kentucky Labor Cabinet