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DEPARTMENT OF LABOR  
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)

ACCSH MEETING  
Monday, September 9, 2019  
10:25 a.m.

Department of Labor  
200 Constitution Avenue, NW  
Room N-03437 A & B  
Washington, D.C. 20210

REPORTED BY: Nathanael Riveness, Notary Public  
JOB No.: 3503196

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## A P P E A R A N C E S

KEVIN R. CANNON, ACCSH CHAIR, EMPLOYER REPRESENTATIVE

SCOTT KETCHAM, DFO

JOEY GILLILAND, ACCSH COUNSEL

CHRISTINA TRAHAN CAIN, EMPLOYEE REPRESENTATIVE

RANDALL A. KROCKA, EMPLOYEE REPRESENTATIVE

GREG SIZEMORE, EMPLOYER REPRESENTATIVE

PALMER L. HICKMAN, EMPLOYEE REPRESENTATIVE

RICHARD TESSIER, EMPLOYEE REPRESENTATIVE

CHRISTOPHER A. FOUGHT, EMPLOYEE REPRESENTATIVE

G. SCOTT EARNEST, NIOSH, FEDERAL REPRESENTATIVE

LOREN SWEATT, PRINCIPAL DEPUTY ASSISTANT SECRETARY

MAUREEN RUSKIN, DEPUTY DIRECTOR DIRECTORATE OF S&amp;G

CHARLES N. STRIBLING

CHRISTOPHER SCOTT MABRY

FRAVEL E. COMBS, EMPLOYEE REPRESENTATIVE

WESLEY L. WHEELER, EMPLOYEE REPRESENTATIVE

R. RON SOKOL, PUBLIC REPRESENTATIVE

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1 Opening Remarks

2 CHAIR CANNON: Hi. I call the meeting to  
3 order. Welcome to today's meeting. Today we have a  
4 pretty short agenda. We're going to be focusing on  
5 one issue, but before we get into the agenda items,  
6 I'd like to do a roll call for those of us who are  
7 here at the DOL. So I'll start. Kevin Cannon, ACCSH  
8 Chair, Employer Representative.

9 MR. KETCHAM: Scott Ketcham, Designated  
10 Federal Official.

11 MR. SIZEMORE: Greg Sizemore, Employer  
12 Representative.

13 MR. KROCKA: Randy Krocka, Employee  
14 Representative.

15 MS. CAIN: Chris Cain, Employee  
16 Representative.

17 MR. GILLILAND: Joey Gilliland, ACCSH  
18 Counsel.

19 CHAIR CANNON: And for our members that are  
20 participating via WebEx or teleconference, if we could  
21 -- I'll start. Chuck, can you introduce yourself?  
22 Excuse me. Identify, you know, the category which you

1 represent?

2 MR. BONNEAU: He may not have had access yet.

3 CHAIR CANNON: How about Scott Mabry?

4 Christopher Fought?

5 MR. FOUGHT: Yeah, this is Chris Fought,  
6 Public Representative.

7 CHAIR CANNON: All right. Fravel Combs?  
8 Scott Earnest?

9 MR. EARNEST: Scott Earnest with NIOSH,  
10 Federal Rep.

11 CHAIR CANNON: Palmar Hickman?

12 MR. HICKMAN: Palmer Hickman here, Employee  
13 Representative.

14 CHAIR CANNON: Ron Sokol? Wes Wheeler? And  
15 Richard Tessier?

16 MR. TESSIER: Richard Tessier, Employee  
17 Representative.

18 CHAIR CANNON: All right. Joey, I have a  
19 question. Do we have to go back through since we  
20 didn't get an affirmative from --

21 MR. GILLILAND: We have a quorum.

22 CHAIR CANNON: We do, yes. All right. Well,

1 we have enough for a quorum. I'd also like to  
2 announce that we will have two members that are not  
3 joining us for today's meeting: Cindy DePrater, who's  
4 an Employer Representative, and Mark Mullins, who's an  
5 Employee Rep; however, he has given his proxy vote to  
6 Chris Trahan Cain. All right. So we've gone through  
7 that. We'll get started and our first item of  
8 business will be an OSHA Update by Ms. Loren Sweatt,  
9 Principal Deputy Assistant Secretary.

10 OSHA Update

11 MS. SWEATT: Is this mic working? Good  
12 morning, everybody. I appreciate your patience as we  
13 work through the IT challenges that are this building  
14 and apparently this room. So I want to start by  
15 noting that the draft proposal we're here to discuss  
16 today is at OMB and this meeting can impact the  
17 document.

18 To date a lot of work has been done to  
19 address litigation challenging OSHA's January 2017  
20 beryllium regulation. You should consider the actions  
21 taken today as another step forward towards resolution  
22 of these challenges. Take the opportunity provided by

1 this advisory committee process to private  
2 construction criticism, constructive criticism to OSHA  
3 and their subject matter experts.

4 For the construction industry, OSHA has  
5 evidence that the only operations within the scope of  
6 the beryllium construction standards are abrasive  
7 blasting operations with certain abrasive blasting  
8 media. To date, OSHA has not received any additional  
9 data demonstrating there are beryllium exposures  
10 outside of this operation and construction activities.

11 Considering the comments received in the  
12 record on both OSHA's proposal to rescind the  
13 ancillary provisions for the beryllium construction  
14 standard and the Agency's rulemaking activities for  
15 the general industry standard, OSHA is now proposing  
16 to update certain ancillary provisions of the  
17 beryllium construction standard rather than revoking  
18 them entirely.

19 This update is geared to better tailor the  
20 requirements to the construction industry, considering  
21 the limited exposure to beryllium, and to align with  
22 changes to general industry standard where

1 appropriate. This will provide stakeholders another  
2 opportunity to comment on the beryllium rule.

3 Please be mindful that there are a lot of  
4 moving parts. OSHA is coordinating the timing of this  
5 proposal with the publication of the rule that  
6 declines to revoke the ancillary provisions, as well  
7 as the general industry proposal published in December  
8 2018. This proposal was sent to OMB on August 27.

9 I want to stress to you three things this  
10 morning. As agency head, I am asking ACCSH to make a  
11 recommendation today. This is a notice of proposed  
12 rulemaking, not a final rule. By virtue of the  
13 advisory committee structure, you're being given two  
14 opportunities to comment on this rule today and during  
15 the comment period.

16 While the regulatory texts may not be  
17 available today, OSHA's designated federal officer,  
18 Scott Ketcham, and subject matter expert, Maureen  
19 Ruskin, will walk you through the finer points of what  
20 we are able to disclose so that you can understand  
21 where we are in the process and that you can help us  
22 by providing the most informed feedback possible.



1           Again, I thank you for offering to serve on  
2 this committee and for your input today, and I look  
3 forwards to hearing a conclusion at the end of this  
4 meeting. Unfortunately this one went a little further  
5 than I thought was, so I'm running off to my next one.  
6 Good luck. Thank you.

7           CHAIR CANNON: All right. So next on the  
8 agenda, as Loren mentioned, the update on the  
9 beryllium standard for construction. That will be  
10 conducted or presented by Maureen Ruskin, who's the  
11 Deputy Director of the Directorate of Standards and  
12 Guidance.

13           One thing I think we're going to announce as  
14 far as the public comments are concerned -- correct,  
15 Scott -- after Maureen delivers her presentation  
16 before the ACCSH members kind of debate and discuss  
17 the proposal, we're going to allow for public comment.  
18 And I think we have four who are signed up at this -  
19 no, we have three -- I'm sorry -- that are signed up  
20 at this time to deliver public comments. We have  
21 Peggy Mroz on behalf of the National Jewish Health,  
22 Shanna or Shanna Devine on behalf of Public Citizen,

1 and Jeff Tanenbaum on behalf of the Abrasive Blasting  
2 Manufacturers Alliance and Harsco Cooperation. So  
3 after Maureen gives her presentation, we'll allow for  
4 the public comment and then, and then ACCSH will  
5 debate and discuss the proposal. Chris?

6 MS. CAIN: Chris Cain. I noticed there was a  
7 message popped up here from Chuck Stribling, asked if  
8 he was heard when he introduced himself.

9 CHAIR CANNON: Okay. No, he was not.

10 MS. CAIN: Okay. So, Chuck, we can't hear  
11 you.

12 CHAIR CANNON: No. Is there a way to confirm  
13 with the operator that all the ACCSH folks have been  
14 given access? And there were quite a few that, you  
15 know, Fravel, Ron Sokol, Scott Mabry, and Wes were  
16 also --

17 UNIDENTIFIED MALE SPEAKER: We have four more  
18 members.

19 CHAIR CANNON: Yeah, that we did not hear  
20 from. All right. While they work through that,  
21 Maureen, if you will?

22 ACCSH's Consideration of and Recommendation of, the

1 Update on OSHA's Beryllium Standard for Construction  
2 (This includes Public Comments.)

3 MS. RUSKIN: Thank you very much. Good  
4 morning, everyone. And I want to thank ACCSH for  
5 convening this meeting here today to discuss this very  
6 important standard and for giving me an opportunity to  
7 present. I am just one person who has been working on  
8 beryllium. We do have a team of experts, both who are  
9 in the room here with me today, Tiffany Defoe,  
10 Director of the Office of Metals, as well as Bill  
11 Perry, the Director of Standards and Guidance. And I  
12 have Brian Broecker from our solicitor's office  
13 sitting next to me.

14 I'm going to spend some time reviewing where  
15 we are now and the path that we took to get here,  
16 detailing, and then detailing the changes we are  
17 seeking to propose for construction from the 2017  
18 final rule. Now we were going to see whether I can  
19 actually change my slide. Oh, very good.

20 So back in January 2017, OSHA published a  
21 final rule on the occupational exposure for beryllium  
22 and beryllium content compounds in the federal

1 register. We proposed three separate standards, one  
2 for general industry, construction, and shipyards, and  
3 in this proposal we lowered the permissible exposure  
4 limit from 2 micrograms to .2 micrograms and  
5 established a new short term limit of 2 micrograms per  
6 cubic meter. The standard also contained ancillary  
7 provisions similar to those found in other OSHA  
8 comprehensive health standards.

9 Back in May 8th, on May 8th, 2014, OSHA  
10 presented several options to ACCSH. Counting back, I  
11 was surprised to hear that that was five-and-a-half  
12 years ago that we did that. There at that meeting  
13 some of you may recall we presented three options to  
14 ACCSH. We, we were considering a PEL only option, a,  
15 a PEL and medical surveillance option, as well as  
16 Option 3, which was to include construction in the  
17 scope of general industry and have a full standard  
18 with complete ancillary provisions.

19 Some of the ACCSH members brought up the fact  
20 that they were concerned that OSHA did not provide  
21 regulatory text and some other information such as the  
22 impacts on construction and employers. I'm here to,

1 today to go through and detail the changes that we are  
2 going to make from the 2017 rule. The conclusion from  
3 the ACCSH meeting back in 2014 on a 10 to 4 vote was  
4 to proceed with Option 3, which was a full beryllium  
5 standard with ancillary provisions.

6 In the 2015 proposal, while construction was  
7 not included in the main standard, it was discussed as  
8 alternatives and outlined very similar options that we  
9 had outlined to ACCSH.

10 So just to recap, just some high level  
11 messages for the construction industry. While we  
12 brought construction into the, under the scope of the  
13 beryllium rule, we did have some exemptions for this  
14 rule. One was that we exempted articles as defined  
15 under the HazCom standard, and two, as you see up on  
16 this slide, we also exempted materials that contain  
17 less than .1% beryllium by weight and the employer had  
18 objective data demonstrating that employee exposures  
19 would remain below the action level.

20 OSHA had evidence that the primary operation  
21 that would produce exposures of concern in the  
22 construction industry was abrasive blasting with

1 media, you know, certain media that contained trace  
2 amounts of beryllium in the media. And this is mainly  
3 due to the fact that even though these were very small  
4 amounts, the exposures were extremely high under these  
5 operations, and not only would there be exposures  
6 above the new PEL, we had evidence of exposures over  
7 the old PEL of 2 micrograms.

8           Subsequent to the 2017 final rule, OSHA  
9 proposed in June 27 to revoke the ancillary provisions  
10 for both construction and the shipyards industries and  
11 to retain the new lower PEL of 2 micrograms and the  
12 STEL, the new lower PEL of 2 micrograms and the STEL  
13 of 2 micrograms. OSHA sought additional information  
14 on whether existing OSHA standards provided similar or  
15 equivalent protections for workers exposed in these  
16 industries. We provided a 60 day comment period and  
17 we received over 70 unique comments in response to  
18 this proposal. During this time OSHA enforced the  
19 PELs while the rulemaking was underway.

20           Concurrently during this time, as Loren  
21 indicated, OSHA was in negotiation with others for  
22 general industry. Several of these litigants while

1 were stakeholders of more traditional beryllium  
2 industries, also included industries that handle  
3 materials of only trace amounts of beryllium. We  
4 decided through these negotiations that we would  
5 clarify portions of the standards and we did this  
6 under two rulemakings.

7           The first rulemaking was a direct final rule.  
8 This was in the spring of 2018 and here OSHA indicated  
9 its intent that it never intended for provisions aimed  
10 at protecting workers from the effects of dermal  
11 contact to apply in the case of materials containing  
12 only trace amounts of beryllium absent of significant  
13 airborne exposures.

14           And so this came in a few forms in this  
15 direct final rule. There were clarifications of  
16 provisions related to dermal contact and beryllium  
17 contamination, and additionally there were  
18 clarifications of OSHA's intent with respect to  
19 provisions for disposal and recycling.

20           The DFR came in effect on July 16, 2018 since  
21 OSHA did not receive any substantive adverse comments.  
22 While not all of these changes in the DFR apply to

1 construction, several of them overlapped with  
2 provisions in the 2017 final rule. And I will talk  
3 later on on how we incorporated some of these.

4           The other rulemaking activity that, that OSHA  
5 proceeded with for general industry is that in  
6 December 2018, OSHA published a substantive NPRM to  
7 modify several of the general industry beryllium  
8 provisions. These included definitions, methods of  
9 compliance, personal protective clothing, equipment  
10 and equipment, hygiene areas and practices,  
11 housekeeping, medical surveillance, communication of  
12 hazards, and recordkeeping. The proposed  
13 modifications provided clarifications and were meant  
14 to simplify or improve compliance. And OSHA is  
15 currently completing this rulemaking.

16           While many of these changes were specific for  
17 general industry, such as the approach for beryllium  
18 work areas, several of them did overlap with the 2017  
19 final rule for beryllium in construction and  
20 shipyards. In particular would be the medical  
21 definitions and medical surveillance changes, as well  
22 as the change in recordkeeping.



1           So where are we now in the construction  
2 rulemaking process? OSHA has thoroughly reviewed the  
3 comments that we received in the record and then,  
4 however, while OSHA standards contain some  
5 requirements that overlap with the requirements of the  
6 beryllium standards for construction, most of the  
7 ancillary provisions, there's only partial overlap and  
8 in some cases there's no overlap at all. For example,  
9 in construction we have the requirement for the  
10 competent person to ensure that it manages the area  
11 where there are high exposures in beryllium to keep  
12 other employees outside of this area. There are no  
13 other provisions in OSHA standards that would provide  
14 this type of protections.

15           Additionally, medical surveillance is  
16 specific to beryllium. There are no other standards  
17 even though some abrasive blasters may be in a medical  
18 surveillance program. There are no provisions that  
19 would be specific to beryllium.

20           Therefore, at this point OSHA is moving on  
21 with construction and shipyards. It is doing this  
22 under two actions, one a final rule declining to

1     revoke the ancillary provisions, and addressing  
2     compliance dates. And here as I mentioned before,  
3     while there is no complete overlap and in many cases  
4     no overlap at all, OSHA has a statutory reasonability  
5     to protect works who face significant risk of material  
6     impairment of health from beryllium exposure, and  
7     therefore the Agency cannot issue a final rule  
8     revoking all the ancillary provisions in the standard.

9             We are also now intending to propose updates  
10     to the 2017 rule that are tailored to the construction  
11     industry. So at this point I'm going to go over these  
12     changes, many of which, I'm going to start with a high  
13     level and then start drilling down to the specific  
14     changes that we are making.

15             So overall when we were considering making  
16     these changes to the standard one, we wanted to take  
17     into account the unique issues of airborne exposures  
18     in the beryllium, to beryllium in the construction  
19     industry. Two, we wanted to clarify OSHA's original  
20     intent in how to handle the provisions when you're  
21     handling materials containing less than .1% beryllium  
22     by weight. And finally, align the medical definitions

1 and the corresponding provisions that, that we propose  
2 to change in the general industry.

3 So this is just a high level overview on  
4 where we are making the changes and what drove our  
5 decisions on these changes. If you notice, I did not  
6 list every single provision here, and in that case you  
7 can make the assumption that those provisions are not  
8 changing.

9 So broadly speaking, OSHA is proposing to  
10 make the following revisions. We are planning to make  
11 updates to the definitions. These are primarily  
12 updates in provisions that relate to medical  
13 surveillance and medical testing. These are the same,  
14 exactly the same as we proposed in the 2018 NPRM for  
15 general industry; however, we wanted to provide the  
16 stakeholders in this industry a chance to comment on  
17 them as well.

18 One additional change that we are making here  
19 is that we are removing the definition of emergency  
20 and all the subsequent references in the standard.  
21 This is from OSHA's understanding on how materials are  
22 used in abrasive blasting and that in the case of

1 emergency where you would increase beryllium exposure,  
2 that this would be under normal operations in use.

3 Continuing on with our proposed changes, we  
4 are proposing to simplify the written exposure control  
5 plan. Here we would only require one list of  
6 operations or job titles expected to be involved in  
7 exposure to beryllium. We are removing the  
8 requirements to list procedures related to dermal  
9 contact, and this would include procedures for cross  
10 contamination, migration of beryllium, and handling of  
11 PPE.

12 And we have added one additional provision  
13 here, and this is to ensure the integrity of each  
14 containment used to minimize exposures to employees  
15 outside the containment. This is not a requirement to  
16 use a containment. This is only requirement that if  
17 you use a containment, containment system, that you  
18 ensure that it is intact.

19 Secondly under method of compliance, we are  
20 removing the list of specific controls for exposures  
21 above the action level. This was a provision that is  
22 specific to general industry. However, we are

1 maintaining the requirement to apply the hierarchy of  
2 controls for exposures above the PELs.

3 We are removing the specific requirements for  
4 hygiene and hygiene practices; however, these  
5 provisions are already accounted for under existing  
6 requirements in the sanitation standard and would  
7 still apply.

8 Finally, we are making changes that are  
9 related to dermal contact and this is seen in several  
10 forms throughout the standard. First, we are removing  
11 the dermal trigger for PPE; however, there will still  
12 be a trigger for exposures above the PEL. We are  
13 removing the PPE handling requirements except those  
14 intended to maintain PPE effectiveness or minimize  
15 airborne exposure.

16 We are removing the requirements for warning  
17 labels for disposal and recycling of materials, and we  
18 are tying housekeeping requirements to the presence of  
19 operations causing or likely to cause airborne  
20 exposures above the TWA or STEL. We are revising the  
21 requirements for the referral to the CBD Diagnostic  
22 Center to align with general industry proposal. And

1 finally, also to align with both the general industry  
2 proposal. And our more general standards improvement  
3 process, and we are removing the requirements to  
4 report Social Security numbers.

5 So our next steps, as both Loren and I have  
6 indicated, OSHA has sent the proposal to OMB. That  
7 was done on August 27th. When we publish this  
8 proposal, we will provide time for stakeholders to  
9 comment. We will also hold a public hearing. The  
10 date will be announced in the proposed notice. And  
11 OSHA welcomes all commenters to comment on the  
12 proposed changes and we look forward to everyone's  
13 participation.

14 As we indicated, we look forward to ACCSH's  
15 comments. We will put the meeting minutes into the  
16 docket, as well as any other comments from ACCSH. So  
17 it will be fully considered while going through the  
18 rulemaking process. And of course any individuals  
19 both on ACCSH or any other interested party, we  
20 welcome comments as well.

21 So finally here today as Loren indicate,  
22 indicated, we are now seeking a recommendation from

1 ACCSH about publishing the planned notice of proposal  
2 rulemaking and this is to revise the beryllium  
3 standard for construction to ensure that the ancillary  
4 provisions are tailored to construction industry and  
5 align with the general industry standards where  
6 appropriate. Thank you.

7 CHAIR CANNON: Thank you, Maureen. As I  
8 mentioned, we're going to do the public comments  
9 before we ask any questions of you. So with that, I'd  
10 like to start with Shanna Devine, Public Citizens.

11 MR. BONNEAU: She's on the phone.

12 CHAIR CANNON: Are you on the phone?

13 MS. DEVINE: I am here. Are we ready for  
14 questions?

15 CHAIR CANNON: Yes. We're going to do it  
16 targeted, right with --

17 MR. BONNEAU: Yeah, we're talking to the  
18 first person that signed on, is a Ms. --

19 CHAIR CANNON: Shanna Devine.

20 MR. BONNEAU: Shanna Devine.

21 OPERATOR: Shanna Devine, if you would press  
22 star one. Once again, Shanna Devine, please press

1 star one to ask your question. Shanna Devine, your  
2 line is now open.

3 MS. DEVINE: Okay. Thank you. Can I begin?

4 CHAIR CANNON: Yes, thank you, Shanna.

5 MS. DEVINE: Okay. Thank you. Thank you so  
6 much for holding this meeting and for the opportunity  
7 to comment. Public Citizen is a consumer advocacy  
8 organization with more than 500,000 members and  
9 supporters. We do oppose the proposal to rescind for  
10 construction and shipyard workers the ancillary  
11 provisions from OSHA's final 2017 beryllium rule.

12 I'm very pleased to hear that OSHA is  
13 reconsidering the ancillary provisions which are  
14 absolutely necessary to protect workers and to prevent  
15 diseases. In its 2017 final rule, OSHA's primary  
16 argument for eliminating these provisions is that some  
17 workers in these industries who are exposed to  
18 beryllium are already protected through other  
19 regulations. This argument falls short for several  
20 reasons, which I'll briefly summarize.

21 First, it's untrue that all of the ancillary  
22 provisions overlap with existing OSHA regulations as



1 acknowledged in the earlier presentation. For  
2 instance, should OSHA rescind the ancillary  
3 provisions, employers would not be required by any  
4 regulation to do the following: Adhere to a  
5 prescribed schedule for the measurement of airborne  
6 beryllium; notify employees and maintain written  
7 records for the level of such measurements; establish  
8 regulated work areas for tasks that release toxic  
9 levels of beryllium; maintain a written plan to  
10 control beryllium exposures; institute engineering and  
11 work practice controls, medical surveillance, and  
12 medical removal when airborne beryllium levels exceed  
13 the action level; maintaining clean work areas free  
14 from beryllium; and communicate with and train  
15 employees on the hazardous beryllium and mitigation  
16 strategies.

17 Second, any overlap in regulations should not  
18 impose new costs or other burdens on employers because  
19 they'll already be in compliance.

20 Third, the cited existing regulations, some  
21 which are decade old, were not drafted specifically to  
22 protect workers from the unique hazards of beryllium;

1       whereas, the ancillary provisions were drafted over  
2       nearly 15 years of exhaustive input from both  
3       occupational health and safety experts, as well as  
4       industry who relied on the latest science regarding  
5       particular hazards of beryllium exposure. This is  
6       critical because airborne beryllium causes harm  
7       through a mechanism that's atypical of occupational  
8       chemical exposures. It exerts its life long and fatal  
9       harm through the immunological sensitization process  
10      that triggers at extremely low concentrations in short  
11      term exposures.

12               Forth, relying solely on engineering controls  
13      to protect workers from beryllium exposure will not  
14      provide adequate protection for workers. OSHA's  
15      inability to adequately enforce its regulations  
16      through workplace inspections is well known. Many  
17      employers will undoubtedly fail to comply with OSHA's  
18      exposure limits and workers will likely be unaware of  
19      such noncompliance.

20               Yet workers will know whether their employers  
21      follow the ancillary provisions such as regular  
22      airborne monitoring and periodic medical surveillance,

1 and therefore, they can act to pressure their  
2 employers to either file, pressure their employers to  
3 comply with the standard or file with subsequent  
4 complaints to ensure compliance.

5 Fifth, the fact that some general industry  
6 workers may also be protected from some beryllium  
7 exposures did not prevent OSHA from retaining the  
8 ancillary provisions for general industry employers.  
9 It recognized the important specific protections  
10 against the unique hazards of beryllium and should  
11 apply that same logic for construction and shipyard  
12 workers.

13 We're very glad to hear and may consider  
14 doing so through the latest proposal. And for these  
15 reasons, Public Citizen opposes the original proposal  
16 to rescind for construction and shipyard workers the  
17 ancillary provisions from OSHA's final 2017 beryllium  
18 rule. Thank you very much.

19 CHAIR CANNON: Thank you, Shanna. That was a  
20 lot said in a short period of time. If, and I'm just  
21 going to ask this question. Do you have a written  
22 statement that you'd be interested in submitting to

1 the, the record for the meeting?

2 OPERATOR: Shanna, will you press star one  
3 again?

4 CHAIR CANNON: Yeah, Shanna, again, you, you  
5 provided us with a very lengthy statement and I don't  
6 think everyone was able to catch it. So if you could  
7 submit a written --

8 MS. DEVINE: Yes. Yes, I'd be happy to do  
9 so. Sorry. I read fast due to the short time, but  
10 I'd be happy provide a short statement as well.

11 CHAIR CANNON: Okay. Thank you. Appreciate  
12 it. All right. We'll move on to our next public  
13 speaker, Jeff Tanenbaum, with the Abrasive Blasting  
14 Manufacturers Alliance.

15 MR. BONNEAU: Operator?

16 OPERATOR: I am here. Jeff, please press  
17 star one. Jeff, your line is now open.

18 MR. TANENBAUM: Good morning, Mr. Chairman  
19 and members of the committee. Can you hear me now?

20 CHAIR CANNON: Yes, we can hear you.

21 MR. TANENBAUM: Very good. Thank you. I'm  
22 Jeff Tanenbaum with Nixon Peabody representing the

1 Abrasive Blasting Manufacturers Alliance, ABMA, and  
2 Harsco Corporation, a member of the ABMA, and also  
3 individual. The ABMA members including Harsco  
4 manufacture various types of abrasive blasting media  
5 used in construction and we have a particularly strong  
6 interest in OSHA's regulation of beryllium in  
7 construction, especially because OSHA has now focused  
8 its attention on abrasive blasting as producing  
9 beryllium exposures of concern in the industry.

10 Let me start preliminarily by noting that  
11 we're concerned that OSHA provided a limited number of  
12 days prior to this meeting, and only on September 4th,  
13 the day after Labor Day, and the days these written  
14 comments were due, that OSHA published any description  
15 of, of what it's now proposing to do. And OSHA still  
16 hasn't provided ACCSH with an actual list of its  
17 proposed standard.

18 OSHA didn't need to proceed in this, in this  
19 way, and unfortunately we believe that OSHA has  
20 precluded stakeholders from being able to provide  
21 thorough information to ACCSH so that ACCSH can  
22 thoroughly fulfill its statutory duty of advice and

1 counsel to, to OSHA. And we urge ACCSH to now take  
2 the time to thoroughly review these issues.

3 Second preliminary comment, it's important to  
4 recognize that although the previous comments from the  
5 Agency suggests it's some abrasive blasting media that  
6 may be at issue here. As a practical matter, all  
7 abrasive blasting operations involve exposure to a  
8 range of hazardous substances, not just from abrasive  
9 blasting media, but also the surfaces, coatings, and  
10 substrates that are subject to abusive blasting. And  
11 for that reason, abrasive blasting is already highly  
12 regulated, including, but not limited, to requirements  
13 for extension respiratory protection and other PPE.

14 The ABMA and its members fully support this  
15 preexisting regulatory framework. And we're concerned  
16 in the way in which OSHA describes the issue because  
17 it's caused confusion in the industry. To be clear,  
18 the proposed rule applies to abrasive blasting using  
19 any type of media. Beryllium is a widely present,  
20 naturally-occurring mineral and will be found in trace  
21 amounts in virtually all abrasive blasting media, as  
22 well as the coatings, surfaces, and substrates to be

1     blasted.

2             So it, it can't be completely avoided. Now  
3     only trace amounts of naturally-occurring beryllium  
4     are found in abrasive blasting media with the OSHA  
5     definition of trace amounts here as being below 0.1%  
6     by weight, and actually the abrasive blasting media  
7     contains amounts far lower than that. So as an  
8     example, coal slag, it's typically .0002% or lower.  
9     And by contrast, that's approximately three times  
10    lower than you'll find beryllium by weight in typical  
11    soil.

12            And of great importance, it's many thousands  
13    of times lower than the amount of beryllium found in  
14    some of the alloyed products in general used in  
15    general industry. And unfortunately, what we have  
16    discovered over the last five plus years of the  
17    rulemaking process, that OSHA has been erroneously  
18    conflating exposure to naturally-occurring beryllium  
19    in trace amounts and exposure to much higher levels of  
20    beryllium alloys in this effort to extend the general  
21    industry regulations to construction and shipyards,  
22    excuse me, shipyards as well.

1           The simple point is the type of beryllium  
2 matters and the amount of beryllium matters. And we  
3 urge ACCSH to, to very carefully study that issue and  
4 advise OSHA on it. It's an important distinction for  
5 the construction industry.

6           Further, OSHA's detailed preexisting  
7 regulations governing abrasive blasting have proven  
8 very effective in preventing exposure to beryllium in  
9 abrasive blasting operations. And indeed, all these  
10 years of rulemaking activity have encouraged, have  
11 uncovered no documented evidence of adverse health  
12 effects from beryllium exposure from abrasive  
13 blasting.

14           And despite that absence, or maybe as a  
15 result of it, OSHA has spent years now going back and  
16 forth and some of that was described in the earlier  
17 presentation by the Agency, but let me summarize that  
18 for you. There's been this whipsawing back and forth  
19 over the years. OSHA initially and directly  
20 determined it shouldn't regulate trace amounts of  
21 beryllium and that the construction and shipyard  
22 sectors shouldn't be included in the new proposed



1 beryllium regulations, but asked for input on whatever  
2 it should be so.

3           Despite receiving no credible evidence to  
4 support it, OSHA then suddenly reversed itself and  
5 published the rule mentioned earlier, extending the  
6 new beryllium rule to construction and shipyards, but  
7 did so without publishing those significant late  
8 amendments and providing an opportunity for  
9 stakeholders to fully comment.

10           And then OSHA reversed itself again and  
11 published the new proposed beryllium rule eliminating  
12 all requirements for construction and shipyards,  
13 except for the (inaudible). In other words,  
14 eliminating those ancillary provisions discussed  
15 earlier.

16           To briefly summarize, there is no legal,  
17 scientific, or medical basis for OSHA to be imposing  
18 new beryllium regulations in construction. Abrasive  
19 blasting is already highly regulated under more than  
20 20 preexisting standards which have been effective,  
21 and further regulation is going to impose unnecessary  
22 burdens, not just on employers, but employees and

1 incur substantial expenses that are just not  
2 justified.

3 CHAIR CANNON: Mr. Tanenbaum? Jeff?

4 MR. TANNENBAUM: Yes.

5 CHAIR CANNON: If you could just wrap it up  
6 in next exactly 30 seconds or so. We have other  
7 public speakers behind you.

8 MR. TANENBAUM: I will do my very best with  
9 the limited time. So as ACCSH members know, the  
10 Secretary's required to propose a standard that's  
11 reasonably necessary and appropriate to remedy a  
12 significant risk of material health impairment before  
13 issuing that standard, and, and provide a threshold  
14 finding that there are significant risks present and  
15 can be eliminated or lessened by a change in practice.  
16 The rulemaking record is devoid of that evidence.

17 OSHA had noted that the information is  
18 limited. OSHA has found the hazards inherent in  
19 abrasive blasting are already effectively controlled  
20 through numerous other standards. And employees are  
21 already required by preexisting standards to use the  
22 same effective respiratory protection.

1           We are asking in summary that ACCSH please  
2           take the time now to review these issues, not just  
3           look at the revised or proposed revised ancillary  
4           provisions, but now take the time to look at the  
5           standards as a whole. Thank you.

6           CHAIR CANNON: Thank you. All right. Our  
7           next public speaker is Peggy Mroz with the National  
8           Jewish Health.

9           OPERATOR: Peggy, please press star one so I  
10          can open up your line, please.

11          MR. MROZ: Hello. This is Peggy Mroz. Am I  
12          -- can you hear me?

13          CHAIR CANNON: Yes, we can hear you. Can you  
14          hold for a second, please? We want to upload your  
15          PowerPoint presentation.

16          MS. MROZ: Oh, that would be great.

17          CHAIR CANNON: Peggy, we have your  
18          presentation uploaded, and if you could, as you --  
19          right now we have the opening slide. As you want us  
20          to advance a slide, just please indicate, so.

21          MS. MROZ: Great. Thank you so much. Good  
22          morning, everyone, and thank you for the --

1 CHAIR CANNON: Before you get started so  
2 that, you know, I'm not having to interpret you, I  
3 just wanted to make you aware that you asked for 15  
4 minutes.

5 MS. MROZ: Okay. I should be able to finish  
6 before then. So good morning, everyone, and thank you  
7 very much for the opportunity to offer comments on the  
8 beryllium exposures in the construction industry. I  
9 represent National Jewish Health and we are the  
10 division of environmental and occupational health  
11 sciences. And we represent occupational worker safety  
12 and health. We see patients clinically and we have  
13 been involved in beryllium health and safety for over  
14 30 years. Next slide, please. Is there a way to get  
15 to the next slide? Okay. Thank you.

16 We support the lower exposure limits and the  
17 retention of the ancillary provisions. We really  
18 think that it's important to retain those ancillary  
19 provisions in order to protect workers from the health  
20 effects of beryllium exposure. The lower PEL of .2  
21 micrograms per cubic meter and a STEL of 2.0  
22 micrograms per cubic meter will protect workers.

1 However, they can't protect workers unless the  
2 ancillary provisions are retained.

3           Exposure monitoring and medical surveillance  
4 for beryllium sensitization and chronic beryllium  
5 disease are key in preventing beryllium sensitization  
6 and chronic beryllium disease. If we don't monitor  
7 exposures and if we don't look for health effects with  
8 medical surveillance, those lowered exposure limits  
9 aren't going to help. Many of the engineering and  
10 personal protective equipment provisions are already  
11 in place in the construction industry as we heard in  
12 the previous talk. Many of those are ready there. So  
13 there's not going to be a lot of changes that are  
14 needed there.

15           But the exclusion of the ancillary provisions  
16 will lead to unrecognized cases of chronic beryllium  
17 disease even in light of this reduced standard. And  
18 we heard earlier that there hasn't been any recognized  
19 health effects related to abrasive blasting. However,  
20 no one has yet looked with medical surveillance and  
21 the beryllium lymphocyte proliferation test which  
22 looks for beryllium sensitization. So lowering the

1 standard without providing guidance for beryllium-  
2 specific monitoring and medical surveillance will not  
3 protect workers. Next slide, please.

4 So National Jewish Health encourages the  
5 retention of these ancillary provisions. The  
6 ancillary provisions are the core of a comprehensive  
7 beryllium rule. We need exposure monitoring. We need  
8 to look and see if these abrasive blasting or other  
9 exposure-generating events are causing exposure that  
10 is of concern. We need regulated areas as they're  
11 needed to be provided, a written exposure control  
12 plan, protective equipment and work clothing, hygiene  
13 areas and practices, housekeeping, medical  
14 surveillance, medical remover (sic), and worker  
15 training that does mention beryllium exposures.

16 Information gathered through the  
17 implementation of these provisions provide health and  
18 safety personnel with the data that they need to  
19 ensure that workers are or are not being adequately  
20 protected from over exposure to beryllium. Next  
21 slide.

22 And one thing that hasn't been mentioned yet

1 and I wanted to bring into this is that trade workers  
2 and construction workers in beryllium areas and in D&D  
3 (ph) should be included under the rule. Any workers  
4 that are involved in alteration, charges, demolition,  
5 or construction in a beryllium area, past or present,  
6 even though beryllium is no longer being worked in  
7 that area, they are at risk of exposure due to dust  
8 disturbing activities and that has been shown in a  
9 number of studies that are looking at workers who have  
10 worked in construction or in demolition and  
11 decontamination work, especially, mostly in Department  
12 of Energy Facilities.

13 But if we look into the general beryllium  
14 industry, we can see that happening too. Many  
15 construction industries use beryllium-containing non-  
16 sparking tools. Grinding and cleaning of these tools  
17 can lead to significant exposures and that has been  
18 shown in studies that have looked specifically at tool  
19 grinders and people who are working in, in, in tool  
20 cribs who are exposed to the cleaning and grinding of  
21 those tools.

22 Construction workers who provide contract

1 services to beryllium industries may not be covered by  
2 the general industry standards. In 2000, Ohio  
3 construction workers filed a class action suit against  
4 then Brush Wellman for medical testing of up to 7,000  
5 union workers who were exposed to beryllium while  
6 doing contract work. And there's a reference there if  
7 you wanted to go take a look at that.

8           And we have diagnosed chronic beryllium  
9 disease in contract construction workers in the  
10 primary beryllium industry and manufacturing  
11 industries who have only worked for short periods of  
12 time, from weeks to months. So as contact  
13 construction workers, they are not employees of that  
14 general industry and thus are not covered by their  
15 medical surveillance provisions.

16           And just of note, we've also seen beryllium  
17 sensitization in OSHA inspectors who have entered  
18 beryllium-using facilities for brief periods. I know  
19 this isn't related to construction, but again,  
20 contract workers or ancillary workers who are coming  
21 in to a general beryllium industry aren't covered by  
22 the general industry, medical surveillance, and



1 exposure standards. Next one, please.

2 And then getting back to exposures from  
3 abrasive blasting, blasting, the Center to Protect  
4 Worker's Rights, Center for Construction Research and  
5 Training, published research regarding the exposures  
6 during abrasive blasting, and there's a reference for  
7 you, they measure airborne beryllium concentration of  
8 up to 9.5 micrograms per cubic meter during abrasive  
9 blasting with coal slag. So even though there are  
10 very low levels of exposure in that coal slag, once  
11 the abrasive blasting procedure is going on, it's  
12 generating higher exposures.

13 They reported average exposures that were  
14 almost 50 times the new PEL of .2 micrograms per cubic  
15 meter. With any abrasive blasting using a beryllium-  
16 containing material, beryllium exposure monitoring is  
17 absolutely necessary. So even if we have these lower  
18 standards, we need to monitor to make sure that the  
19 industry is keeping those exposures below that. And  
20 any workers exposed at or about the action level for  
21 at least 30 days should be eligible for medical  
22 surveillance with the BeLPT. Next slide, please.

1           So as I've been trying to emphasize, exposure  
2 monitoring and medical surveillance are necessary.  
3 Compliance with this new exposure level will still  
4 require beryllium specific exposure measurements when  
5 a construction, abrasive blasting, and welding are  
6 taking place. Medical surveillance will ensure that  
7 workers who develop beryllium sensitization and  
8 chronic beryllium disease are caught early, preventing  
9 more severe disease. Beryllium medical surveillance  
10 using the BeLPT should be mandatory if workers are  
11 exposed. Comprehensive medical surveillance protects  
12 not only the individual worker, but the entire  
13 workforce.

14           Identification of a single beryllium  
15 sensitized worker can indicate an unrecognized source  
16 of exposure. And research by Mike Van Dyke and our  
17 group here at National Jewish showed that the most  
18 susceptible individuals are still at risk even with  
19 the current PEL of .2 micrograms per cubic meter. We  
20 know that there is a genetic risk that is associated  
21 with susceptibility to beryllium sensitization and  
22 chronic beryllium disease. And our data have shown

1 that even with exposures less than .02, those who are  
2 most susceptible genetically can still go on to  
3 develop sensitization and disease.

4 And exposure monitoring and medical  
5 surveillance allows management to proactively provide  
6 protection for workers who may perform the same or  
7 similar tasks or work in the same building or area.  
8 So again, medical surveillance allows us to protect  
9 not only the individual, but the entire work force.  
10 Next slide, please.

11 And as was mentioned earlier, many of the  
12 ancillary provisions are already in place. Compliance  
13 with the existing standards and construction already  
14 provide many of the protections required in the  
15 beryllium rule for general industry, engineering  
16 controls, personal protective equipment. Beryllium  
17 ancillary provisions will require minimal additional  
18 financial or administrative burden. Beryllium  
19 exposure monitoring and documentation is key to  
20 maintaining the lowered exposure limits.

21 Some of the medical surveillance provisions  
22 for general industry could also be excluded, such as

1 the medical exam and the breathing, breathing test  
2 which would also be part of the comprehensive  
3 Respirator Fit program, which is mandatory for the  
4 construction industry, and establish construction  
5 safety education and training needs to include a  
6 specific section of the risk of beryllium exposure and  
7 the associated health effects.

8           The unique exposure response and the genetic  
9 risk factors of beryllium disease should be included  
10 in the work education and safety training. And the  
11 next slide, please.

12           Just in summary, the new exposure limits will  
13 protect workers, but ancillary provisions are the core  
14 of a comprehensive beryllium rule. Trade workers,  
15 construction workers, and contract workers in  
16 beryllium areas and/or D&D should be included under  
17 the rule. Abrasive blasting with coal slag can  
18 produce high beryllium exposures that need to be  
19 monitored and documented in order to protect workers.

20           Exposure monitoring and medical surveillance  
21 for beryllium disease should be included. This  
22 ensures that exposed individuals have access to

1 medical surveillance and it will identify individuals  
2 with beryllium sensitization if they exist, providing  
3 continuous feedback to ensure safe exposure levels.  
4 And as I said before, many of the ancillary provisions  
5 are already in place in the construction industry and  
6 they will be effective in preventing exposure to  
7 beryllium. Thank you.

8 CHAIR CANNON: Thank you, Peggy. Appreciate  
9 your presentation. Excuse me. At this point I think  
10 we're going to open it up for the ACCSH members to ask  
11 questions of Maureen. And then -- yes. But before we  
12 do that, there were a few that I did not hear from  
13 when we did the initial roll call. Chuck Stribling?

14 MR. STRIBLING: Good morning, Mr. Chairman.

15 CHAIR CANNON: Morning, Chuck. All right.  
16 Scott Mabry?

17 MR. MABRY: Yeah, Scott Mabry's here. Good  
18 to hear from you.

19 CHAIR CANNON: Thank you, Scott. Favel  
20 Combs?

21 MR. COMBS: Good morning. Favel Combs is  
22 here.

1 CHAIR CANNON: Morning, Fravel. Ron Sokol?

2 MR. SOKOL: Ron Sokol's here, Mr. Chairman.

3 CHAIR CANNON: And Wes Wheeler?

4 MR. WHEELER: Wes Wheeler's here, Mr.

5 Chairman.

6 CHAIR CANNON: All right. We're all here.

7 Now as I mentioned, you know, going back to Maureen's  
8 presentation on what OSHA's proposing, I'd like to  
9 open it up to, I guess I could start here in the room  
10 to see if anyone had any questions of Maureen.

11 MR. SIZEMORE: Mr. Chair, Greg Sizemore,  
12 Employee Representative. Maureen, thank you for your  
13 time this morning. Based on the PowerPoints, it's my  
14 understanding that OSHA's putting certain ancillary  
15 provisions back in the standards and modifying them to  
16 suit the construction environment. Can you explain  
17 for me why OSHA decided to reverse its course? I may  
18 have missed that reasoning from their June 27th  
19 decision.

20 MS. RUSKIN: So on June 27, 2017, we proposed  
21 to rescind the ancillary provisions. We were seeking  
22 information on the protections of the ancillary

1 provisions versus OSHA's current standards. As I  
2 said, we received over 20 unique comments addressing  
3 these issues, and through the review of these  
4 comments, OSHA's decision was that there was not  
5 complete overlap, that there was only partial overlap,  
6 and in some cases no overlap at all.

7 And therefore, OSHA is moving forward with  
8 this proposal to tailer the construction provisions  
9 for the construction industry and to seek comments on  
10 that. So.

11 MR. SIZEMORE: Mr. Chair, one more question.  
12 Is there any evidence -- I've heard a lot of  
13 conversation with respects to chronic beryllium  
14 disease in the general construction industry specific  
15 to abrasive blasting. Is there any evidence of any  
16 other tasks where that occurs in the construction  
17 industry to your knowledge?

18 MS. RUSKIN: Are you talking about exposure  
19 to beryllium?

20 MR. SIZEMORE: Yes.

21 MS. RUSKIN: The evidence that we have  
22 through the information that is in our docket, that

1 the primary place of exposure is abrasive blasting and  
2 we have evidence or exposure data from CPWR, from the  
3 Navy, as well as our own exposure database that the  
4 exposures that are seen in construction is through the  
5 abrasive blasting operation.

6 MR. SIZEMORE: (Inaudible - off mic) guidance  
7 to the contractor community or the employer community  
8 as to what things they need to monitor, or are they  
9 just going to have to monitor entire projects?

10 MS. RUSKIN: So usually when we publish a  
11 rule, we do provide significant guidance and we will  
12 continue to do that with this rule as well.

13 MR. SIZEMORE: Thank you.

14 MR. KROCKA: Randy Krocka, Employee  
15 Representative. Maureen, thank you for that  
16 presentation. On page 7 under the dermal contact area  
17 you mentioned the removal of all warning label  
18 requirements. Can you tell me why that, why that's in  
19 there?

20 MS. RUSKIN: That was the requirements for  
21 labeling materials for disposal or recycling. And we  
22 were modeling those requirements similar to what we



1 had in the DFR where we were exempting the labeling of  
2 those materials that only contained trace amounts of  
3 beryllium. The thought behind that is that the  
4 downstream users would not have significant exposures  
5 as they would in the abrasive blasting operation.

6 MR. KROCKA: Okay. Thank you.

7 MR. SOKOL: Ron Sokol, Public Representative.  
8 I have a question for you. I'm concerned about OSHA's  
9 limitation of really the standard just abrasive  
10 blasting when the last presentation that we heard  
11 talked about construction workers that enter into  
12 facilities that were involved in the utilization of  
13 beryllium within the manufacturing process, and these  
14 construction workers would be going into these  
15 facilities doing, doing construction work, renovation,  
16 remodeling, painting, all the things that OSHA defines  
17 as, as construction work by the standard. Who would  
18 this standard look to protect those particular  
19 individuals?

20 MS. RUSKIN: So this standard would also  
21 protect those individuals. We, you know, if there are  
22 exposures above the action level, regardless of the

1 amount of, you know, if it's just trace amounts or if  
2 they're greater than trace amounts, the standard would  
3 still protect those individuals.

4 MR. SOKOL: Thank you.

5 MS. CAIN: Christine, Employee Rep. Loren  
6 said that the proposed rule was at OMB right now. She  
7 didn't say that the direct, or that the final rule was  
8 there. Is that the case?

9 MS. RUSKIN: Well, both, both rules are  
10 currently at OMB. They were sent at the same time.

11 MS. CAIN: And you're not -- thank you. And  
12 you're not requesting input from ACCSH on the final  
13 rule, are you?

14 MS. RUSKIN: No, our directive under OSHA is  
15 that we're requesting input on the proposed rule.

16 MS. CAIN: What about maritime?

17 MS. RUSKIN: The reason I'm only talking  
18 about construction today is that I'm before ACCSH. If  
19 you notice that the, the title of the proposal that  
20 went to OMB includes both construction and maritime.

21 MS. CAIN: No other questions. Thank you.

22 CHAIR CANNON: I have a question along the

1 lines of Chris's questions about the submission to  
2 OMB, the final rule. I get the proposed rule, you  
3 know. That's going to, something that you're  
4 considering. Now this final rule, can you explain to  
5 me, you know -- Loren mentioned the timing of  
6 effective dates for, I'm assuming the 2017 rule. So  
7 help me and others understand what exactly that means  
8 as far as a final rule.

9 MS. RUSKIN: In that final rule we are  
10 finalizing effective dates. So to give the  
11 construction industry appropriate time to both comment  
12 on this rule and then implement any changes.

13 CHAIR CANNON: Okay. So now what will  
14 contractors be required to do?

15 MS. RUSKIN: I'm not sure quite sure I, I  
16 understand.

17 CHAIR CANNON: Okay. We have, you know, you  
18 have the, the lower PEL and the STEL.

19 MS. RUSKIN: And would be required to follow  
20 the same standards as the abrasive blasting. They  
21 would have to, under this rule.

22 CHAIR CANNON: And also along the lines of

1 Ron's question about, you know, other workers that,  
2 you know -- I'm assuming he was mentioning the  
3 beryllium manufacturers and producers as contracts go  
4 in, but we also heard from some of our public  
5 commenters about the grinding of non-sparking tools  
6 and welding, and so --

7 MS. RUSKIN: So we would really request  
8 through this rulemaking that people submit us  
9 information on that. To date we don't have any  
10 exposure information on these types of activities. So  
11 we would during this rulemaking putting out the call  
12 for data. Please submit data to us.

13 CHAIR CANNON: And I think even Mr. Tanenbaum  
14 mentioned like naturally occurring in soil. So those  
15 are the types --

16 MS. RUSKIN: Again, we do not have any  
17 exposure information that shows that there are  
18 exposures above the action level there. So, again, we  
19 would request information on this. Our, our exposure  
20 data shows that that's well below the action level.

21 CHAIR CANNON: And then depending upon the  
22 data that's submitted, then the scope of the rule I'm

1 assuming could be expanded beyond just abrasive  
2 blasting?

3 MS. RUSKIN: When we finalize the rule, we  
4 finalize the rule on the entire record.

5 CHAIR CANNON: Thank you. We've heard from  
6 Ron on the phone. Anyone else on the line as far as  
7 the ACCSH members are concerned who have questions or  
8 comments for Maureen?

9 MR. COMBS: Yeah, yes. This is Favel Combs,  
10 Employee Representative. The question I have is  
11 related to employer assistance in complying with the  
12 regulation, assuming it goes into effect and is  
13 passed. Is there any thought or information that OSHA  
14 has developed similar to the exposures of silica in  
15 the construction industry where you provide table one  
16 to show very specific ways for the employer to comply  
17 with the regulation? Thank you.

18 MS. RUSKIN: Thank you. At this point we do  
19 not have any plans to develop a table one similar to  
20 that of silica. Under silica there were many  
21 different operations versus here we anticipate that  
22 there's just this one operation. However, as I

1 indicated before, OSHA always provides guidance. We  
2 already have a website that has frequently asked  
3 questions and we would update that to include any  
4 unique issues for construction.

5 CHAIR CANNON: Anyone else on the line that  
6 has a question or comment for Maureen?

7 MR. WHEELER: Kevin, this is Wes Wheeler,  
8 Employer Representative. One quick question was, I  
9 think one of the presentations talked about the  
10 exposures that occur as far as dust where a  
11 construction worker may come into an areas after the  
12 fact. Now it'd be my understanding that the general  
13 industry rule was far as monitoring that area and  
14 determining the dust or determining the PELs in the  
15 short term exposure limits in those area should be  
16 documented according to the general industry rule.  
17 Now would that not offer protection to everybody that  
18 would be coming into that area post work or post  
19 production in those situations? And has that been  
20 considered?

21 A second comment that I would question was  
22 one of the presentations also discussed genetic

1 exposures from individuals that may be susceptible  
2 related to that. And has OSHA considered that as one  
3 of the factors in the people that come down with this  
4 particular disease?

5 MS. RUSKIN: In, for the 2017 final rule,  
6 I'll answer the second question first. OSHA did a  
7 risk assessment and did a final determination on  
8 material impairment of health. And OSHA is  
9 maintaining those determinations throughout all of  
10 these rulemaking activities. So therefore, we took  
11 into account all the available information that was  
12 out there.

13 Secondly, we would hope that contractors  
14 coming into a facility, that the host company would  
15 share that information with the contractor so that the  
16 contractor could be appropriately protected.

17 MS. WHEELER: Thank you.

18 CHAIR CANNON: Anyone else on the line?  
19 Okay. No one else on the line. Anyone else here?  
20 Greg?

21 MR. SIZEMORE: I just have one other  
22 clarification that I need to fully understand. Under

1 OSHA's current requirements or, they're basically  
2 required to consult with ACCSH in the formulation of  
3 any construction standard; is that correct?

4 MR. GILLILAND: That is correct.

5 MR. SIZEMORE: So my question becomes if it's  
6 already at OMB, is this outside of protocol or a  
7 standard? Joe, I guess I'm looking for clarification  
8 there if it's already there.

9 MR. GILLILAND: This is Joe Gilliland again.  
10 So the regulation, which is at 29 CFR 1911.10,  
11 requires that the Secretary confer with ACCSH before  
12 publishing the rule and the rule is not, the proposal  
13 has not yet been published. And as Loren said at the  
14 beginning of the meeting, OSHA still has the capacity  
15 to edit the rule while it's at, at OMB. So.

16 MR. SIZEMORE: Thank you.

17 CHAIR CANNON: All right. It seems like  
18 we've, you know, made our comments and asked the  
19 questions of Maureen that we had. So now it comes to,  
20 you know, the point that Loren made and, you know, the  
21 purpose of Maureen being here is the recommendation  
22 from ACCSH, you know, allowing OSHA to move forward



1 with revising the beryllium standard. So I guess it's  
2 time for a vote.

3 MS. CAIN: I make a motion. This is Chris  
4 Cain, Employee Rep. I make a motion that ACCSH  
5 recommend OSHA revise the beryllium standards for  
6 construction to ensure that the ancillary provisions  
7 are tailored to the construction industry and align  
8 with the general industry standards where appropriate.

9 MR. KROCKA: This is Randy Krocka. I second.

10 CHAIR CANNON: Any further discussion?

11 MR. SIZEMORE: Will we be able to offer  
12 comment (inaudible - off mic) comments, all comments  
13 now? In other words, confirm (inaudible - off mic )  
14 offer comments with those, with that (inaudible - off  
15 mic)?

16 MR. GILLILAND: You could have committee  
17 members discuss if you want to make a motion, their  
18 thoughts and then, or you could delay the motion.

19 MR. SIZEMORE: Yeah, that's what --

20 MR. GILLILAND: Offered.

21 CHAIR CANNON: So we now have a motion on the  
22 table. So I'd like to open up for any discussion.

1           MR. SIZEMORE: I guess I'll start. This is  
2 Greg Sizemore, Employee Representative. And I want to  
3 be very, very clear on what I'm saying here, that  
4 keeping our workers safe by meeting and exceeding  
5 compliance targets should be this committee's and our  
6 industry's priority. But given that OSHA has failed  
7 to identify any cases in the general construction  
8 industry where chronic beryllium disease or any other  
9 construction task that would lead to chronic beryllium  
10 disease outside of abrasive blasting, and the fact  
11 that beryllium rule is already at OMB, I'm struggling.  
12 That's just my comment.

13           CHAIR CANNON: Anymore discussion?

14           MS. CAIN: This is Chris Cain, Employee -- I  
15 think --

16           MR. SOKOL: This is Ron Sokol, Employer  
17 Representative. One of the things that, that I have a  
18 concern is that as Fravel had said, Combs, about  
19 referring to like a table one type document, we know  
20 that from the silica standard construction contractors  
21 have, have utilized that table one in a, in a means to  
22 be able to not have to get into the, the provisions of

1 monitoring and, and having industrial hygiene  
2 services.

3           So I, I'd like to see OSHA be able to provide  
4 some, some type a similar table where contractors  
5 would know that they're doing certain activities like  
6 table one would have in controlling beryllium or  
7 beryllium exposure, that they wouldn't have to get  
8 into a full blown monitoring system each one and every  
9 operation that is abrasive blasting, or in vicinity  
10 where abrasive blasting has, abrasive blasting occurs.

11           CHAIR CANNON: Thanks, Ron. Chris?

12           MS. CAIN: Chris Cain, Employee Rep. I think  
13 that there was some good information provided by the  
14 speaker from National Jewish that did, in fact,  
15 demonstrate that construction workers do get sick from  
16 beryllium, as well as in the record of the rulemaking  
17 that occurred prior to the January 2017 final rule.  
18 So I respectfully disagree that OSHA lacks evidence  
19 that this is a problem in construction.

20           CHAIR CANNON: Any other discussion by those  
21 who have dialed in? Hearing none --

22           MR. SOKOL: Mr. Chairman, this is Ron Sokol,

1 Public Representative, and in the, the last comment  
2 I'd like to make is regarding the provisions on  
3 education and training, when those provisions would  
4 come into effect and how OSHA plans to, to write those  
5 in the final rule that would require construction  
6 workers to address these particular issues, and what  
7 would happen with the training provisions if the  
8 exposures were documented after the fact if the worker  
9 leaves the site.

10 So, so would that be something from a  
11 training and education that would have to be done just  
12 in, in the possibility that beryllium exposure exists  
13 in order to ensure workers are, are trained and  
14 advanced, particularly if, if the exposure is not  
15 documented or a sensitive individual as we've heard  
16 can happen, and even a very limited exposure? So I  
17 would be interested to know how the, the training and  
18 education provisions that OSHA places in many of their  
19 standards would be written into this rule.

20 MS. RUSKIN: Well, I did want to mention that  
21 we are not changing the majority of the training  
22 provisions. So it is what is in the current 2017

1 January rule. However, we, the very limited changes,  
2 and that has really to do with both dermal contact and  
3 emergency exposures. However, as I indicated before  
4 in the final rule, we are updating the compliance  
5 timing to ensure that construction employers have  
6 adequate time to implement the updated standard.

7 MR. SOKOL: Thank you, Ms. Maureen.

8 MR. FOUGHT: Mr. Chairman, this is Chris  
9 Fought, Public Representative. I do have one  
10 question. And it's more of a process-related  
11 question. As you guys know, I'm still relatively new  
12 to ACCSH. But will there be a workgroup assigned to  
13 this particular topic once it advances to the next  
14 stage?

15 CHAIR CANNON: No.

16 MR. FOUGHT: Okay. Thank you.

17 CHAIR CANNON: All right. Well, I have one  
18 question and it was submitted to OMB, and I know you  
19 don't have a crystal ball, but anticipating when  
20 something might be released to the public for review  
21 and comment, and what kind of timeframe are we looking  
22 at for the comment period?

1 MS. RUSKIN: Well, first part, it's difficult  
2 to predict when this'll be released from OMB and when  
3 it will be published in the federal register. OMB  
4 does have 90 days to complete their review; however,  
5 we have requested that they expedite this review if  
6 they can.

7 For the second one, we will be providing a  
8 sufficient time for comments. We will also be  
9 convening a public hearing. So that people could then  
10 come and also provide comments, and there will be a  
11 comment period after the public hearing as well. So  
12 over the next several months there will be ample time  
13 for people to comment on this rule.

14 CHAIR CANNON: Thank you. Thank you,  
15 Maureen. All right. What we're going to do is have  
16 Chris restate the motion that she made previously.

17 MS. CAIN: Chris Cain, Employee Rep. ACCSH  
18 recommends that OSHA revise the beryllium standard for  
19 construction to ensure that the ancillary provisions  
20 are tailored to the construction industry and aligned  
21 with the general industry standard where appropriate.

22 CHAIR CANNON: Second again?

1 MR. KROCKA: Randy Krocka, second.

2 CHAIR CANNON: All right. We have a motion  
3 on the table and we'll move to vote. All in favor say  
4 aye?

5 (Ayes.)

6 CHAIR CANNON: All right. Let's stop for a  
7 second on the phone. We have Chris and Randy.

8 MS. CAIN: And Mark.

9 CHAIR CANNON: And Mark.

10 MR. COMBS: Employer representative vote aye.

11 CHAIR CANNON: All right. Chuck?

12 MR. STRIBLING: Chuck Stribling, State Safety  
13 (inaudible) Representative, I vote in favor.

14 CHAIR CANNON: Scott?

15 MR. MABRY: Scott Mabry, State  
16 Representative. I vote in favor.

17 CHAIR CANNON: All right. Second Scott.  
18 Scott Earnest?

19 MR. EARNEST: Scott Earnest, Federal Rep.  
20 I'm in favor.

21 CHAIR CANNON: Christopher Fought?

22 MR. FOUGHT: I'm going to abstain on this

1 vote.

2 CHAIR CANNON: Palmer Hickman?

3 MR. HICKMAN: Palmer Hickman, Employee  
4 Representative, vote aye.

5 CHAIR CANNON: Ron Sokol?

6 MR. SOKOL? Ron Sokol, Public Representative,  
7 vote aye.

8 CHAIR CANNON: Wes Sheeler?

9 MR. WHEELER: Wes Wheeler, Employee  
10 Representative, vote aye.

11 CHAIR CANNON: And Richard Tessier?

12 MR. TESSIER: Richard Tessier, Employee  
13 Representative. I vote aye.

14 CHAIR CANNON: All right. And any  
15 abstentions?

16 MR. SIZEMORE: Greg Sizemore, Employee Rep.

17 CHAIR CANNON: All right. Motion carries.  
18 And one other thing I'd like to, you know, just put  
19 out there to those who are on the phone and as well as  
20 in here, in the building with us right now, you know,  
21 we had some, you know, debate and discussions on, you  
22 know, the proposal, but, and we had a recommendation



1 that we just voted on. But if there are any other  
2 recommendations that you hear or on the phone would  
3 like to put forward for vote, speak up now. Chris?

4 MS. CAIN: Chris Cain, Employee Rep. I think  
5 that just, this isn't a motion right now, but would it  
6 be helpful if we'd made a motion that the rulemaking  
7 commence soon?

8 MS. RUSKIN: Any recommendations from ACCSH?

9 MR. KETCHAM: The government welcomes  
10 recommendations, yes. This is Scott Ketcham.

11 MS. CAIN: Okay. Somebody has to help me  
12 frame a motion, then. So ACCSH recommends that OSHA  
13 issues the final rule and the proposed rule as soon as  
14 possible.

15 MR. KROCKA: And I would second that. Randy  
16 Krocka.

17 CHAIR CANNON: Any discussion on the motion  
18 that was just made? On the phone?

19 MS. STRIBLING: This is Chuck Stribling,  
20 State Safety and Health, Agency Representative. So if  
21 I heard that motion correctly, that was ACCSH  
22 recommending OSHA publish the final rule and the

1 proposed rule as soon as possible?

2 CHAIR CANNON: That's correct.

3 MR. STRIBLING: Okay. When we state proposed  
4 rule, are we talking about the, what we've heard in  
5 today's presentation?

6 CHAIR CANNON: Yes. And the final rule is  
7 the rule to, to not rescind all the ancillary  
8 provisions.

9 MR. STRIBLING: Okay. Well, okay. So  
10 today, today's discussion wasn't about a proposed rule  
11 technically; it was about a notice of the proposed  
12 rulemaking; am I correct?

13 CHAIR CANNON: You are -- yes. But they're  
14 essentially one in the same. Because what they're  
15 talking about as far as being the proposed rule is  
16 what's going to be included or a part of the Notice of  
17 Proposed Rulemaking.

18 MR. STRIBLING: Okay. Thank you.

19 CHAIR CANNON: You're welcome. All right.  
20 We had a motion and a second to recommend that OSHA  
21 finalize or publish both the final ruling and proposed  
22 rule as soon as possible. So we'll vote. All

1 interview favor say aye.

2 (Ayes.)

3 CHAIR CANNON: All opposed? Any abstentions?

4 All right. The motion carries with a unanimous vote.

5 And for the record, you know, for those who are

6 participating in today's meeting, all voted in favor

7 except for the two who abstained.

8 MR. GILLILAND: For the primary?

9 CHAIR CANNON: For the primary motion, yes.

10 All right. Any, I guess we've gone through the public

11 comments, discussed and debated the issue. Thank you,

12 Maureen, for joining us today. Okay. And with that,

13 I'll turn it over to Joey before --

14 MR. GILLILAND: This is Joey Gilliland, ACCSH

15 counsel. I'm just going to note the exhibits in the

16 record. So the presentation presented by Maureen, the

17 updated on OSHA's Beryllium Standards for Construction

18 presentation, is going to be Exhibit 1 and the

19 presentation from National Jewish Health titled OSHA

20 Occupational Exposure to Beryllium and Beryllium

21 Compounds in the Construction Industry is going to be

22 Exhibit 2.

1 Adjournment:

2 CHAIR CANNON: Thank you, Joey. Motion to  
3 adjourn?

4 MR. SIZEMORE: Greg Sizemore, Employee Rep.

5 CHAIR CANNON: Motion to adjourn.

6 MR. KROCKA: I second.

7 CHAIR CANNON: All right. The meeting's  
8 adjourned.

9 (WHEREUPON, THE ACCSH MEETING OF 9/9/10 ADJOURNED.)

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## CERTIFICATE OF NOTARY PUBLIC

I, Nate Riveness, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Nate Riveness

Notary Public in and for the

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I, Penny Knight, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Penny Knight

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