

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Parts 850 and 851

[Docket No. EH-RM-03-WSH]

RIN 1901-AA99

Chronic Beryllium Disease Prevention Programs; Worker Safety and Health

AGENCY: Department of Energy.

ACTION: Proposed rulemaking and opportunity for public comment.

SUMMARY: Pursuant to section 3173 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (NDAA), DOE is proposing regulations for worker safety and health at Department of Energy (DOE) workplaces. These proposed regulations are intended to maintain the high level of protection currently afforded workers throughout the DOE complex.

DATES: The comment period for this proposed rule will end on February 6, 2004. The public hearings for this rulemaking will be held on: January 21, 2004 in Arlington, VA (Washington, DC) from 9 a.m. to 12 p.m. and from 1:30 p.m. to 5 p.m.; and February 4, 2004 in Golden CO (Denver) from 9 a.m. to 1 p.m., and from 4 p.m. to 8 p.m. Requests to speak at any of the hearings should be phoned in to Jacqueline D. Rogers, 301-903-5684, by January 20, 2004, for the Arlington, VA (Washington, DC) hearing; and February 2, 2004, for the Golden, CO (Denver) hearing. Each presentation is limited to 10 minutes.

ADDRESSES: Written comments (three copies) on the proposed rule should be addressed to: Jacqueline D. Rogers, U.S. Department of Energy, Docket Number EH-RM-03-WSH; EH-52/270 Corporate Square Building; 1000 Independence Avenue SW, Washington, DC 20585-0270. Alternatively, comments can be filed electronically by e-mail to: rule851.comments@hq.doe.gov noting "Worker Safety and Health Rule Comments" in the subject line. Where possible, commenters should identify the specific section to which they are responding.

Copies of the public hearing transcripts, written comments received, and any other docket material may be reviewed on the Web site specially established for this proceeding. The Internet Web site is <http://www.eh.doe.gov/whs/rulemaking>.

The public hearings for this rulemaking will be held at the following addresses:

Arlington, VA (Washington, DC): Marriott Crystal City Hotel, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Golden, CO (Denver): DOE National Renewable Energy Laboratory, Visitor Center, Auditorium, 15013 Denver West Parkway, Golden, CO 80401 (I-70, Exit 263, right at top of exit ramp if coming from Denver, left at stop sign, building on right).

For more information concerning public participation in this rulemaking proceeding, see section IV of this notice of proposed rulemaking (Public Comment Procedures).

FOR FURTHER INFORMATION CONTACT:

Jacqueline D. Rogers, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585-0270, 301-903-5684, e-mail: jackie.rogers@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

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I. Introduction

DOE has broad authority to regulate worker safety and health with respect to its nuclear and nonnuclear functions pursuant to the Atomic Energy Act of 1954 (AEA), 42 U.S.C. 2011 *et seq.*, the Energy Reorganization Act of 1974

(ERA), 42 U.S.C. 5801-5911, and the Department of Energy Organization Act (DOEOA), 42 U.S.C. 7101-7352. Specifically, the AEA authorized and directed the Atomic Energy Commission (AEC) to protect health and promote safety during the performance of activities under the AEA. See Sec. 31a.(5) of AEA, 42 U.S.C. 2051(a)(5); Sec. 161b. of AEA, 42 U.S.C. 2201(b); Sec. 161i.(3) of AEA, 42 U.S.C. 2201(i)(3); and Sec. 161p. of AEA, 42 U.S.C. 2201(p). The ERA abolished the AEC and replaced it with the Nuclear Regulatory Commission (NRC), which became responsible for the licensing of commercial nuclear activities, and the Energy Research and Development Administration (ERDA), which became responsible for the other functions of the AEC under the AEA, as well as several nonnuclear functions. The ERA authorized ERDA to use the regulatory authority under the AEA to carry out its nuclear and nonnuclear function, including those functions that might become vested in ERDA in the future. See Sec. 105(a) of ERA, 42 U.S.C. 5815(a); and Sec. 107 of ERA, 42 U.S.C. 5817. The DOEOA transferred the functions and authorities of ERDA to DOE. See Sec. 301(a) of DOEOA, 42 U.S.C. 7151(a); Sec. 641 of DOEOA, 42 U.S.C. 7251; Sec. 644 of DOEOA, 42 U.S.C. 7254.

DOE (like its predecessors, the AEC and the ERDA) has implemented this authority in a comprehensive manner by incorporating appropriate provisions on worker safety and health into the contracts under which work is performed at DOE workplaces. During the past decade, DOE has taken steps to ensure that contractual provisions on worker safety and health are tailored to reflect particular workplace environments. In particular, the *Integration of Environment, Health and Safety into Work Planning and Execution* clause set forth in the DOE procurement regulations requires DOE contractors to establish an integrated safety management system. 48 CFR 952.223-71 and 970.5223-1. As part of this process, a contractor must define the work to be performed, analyze the potential hazards associated with the work, and identify a set of standards and controls that are sufficient to ensure safety and health if implemented properly. The identified standards and controls are incorporated as contractual