Proposed Rules

Federal Register
Vol. 64, No. 106
Thursday, June 3, 1999

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 Part 850

[Docket No. EH–RM–98–BRYLM]

RIN 1901–AA75

Chronic Beryllium Disease Prevention Program

AGENCY: Office of Environment, Safety and Health, Department of Energy.

ACTION: Proposed Rule; Notice of limited reopening of the comment period; request for public comment.

SUMMARY: The Department of Energy (DOE) reopens the comment period for 30 days, in order to solicit public comments on options that DOE is considering for criteria to be used for the release or transfer of equipment and other items previously used in DOE beryllium operations, either to other DOE facilities or to the public.

DATES: Written comments on the issues presented in this notice must be received by the Department on or before July 6, 1999.

ADDRESSES: Written comments should be addressed to: Jacqueline D. Rogers, Office of Environment, Safety and Health (EH–51), Docket No. EH–RM–98–BRYLM, U.S. Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585. Public comments submitted in response to DOE's Notice of Proposed Rulemaking, some of which addressed the subject of this notice, may be read and copied in DOE's Freedom of Information Reading Room, 1E–190, 1000 Independence Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jacqueline D. Rogers, Office of Environment, Safety and Health (EH–51), Docket No. EH–98–BRYLM, U.S. Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585, 301–903–5684.

SUPPLEMENTARY INFORMATION: On December 3, 1998, DOE published a Notice of Proposed Rulemaking (NOPR) in the **Federal Register** proposing regulations for a chronic beryllium disease prevention program to reduce the number of DOE Federal and contractor workers exposed to beryllium, minimize the levels of and potential for exposure to beryllium, and establish medical surveillance requirements to ensure early detection and treatment of disease. 63 FR 66940. This rulemaking is conducted pursuant to DOE's authority under section 161 of the Atomic Energy Act of 1954 (AEA) to prescribe such regulations as it deems necessary to govern any activity authorized by the AEA, including standards for the protection of health and minimization of danger to life or property. 42 U.S.C. 2201(i)(3) and (p).

I. Background on Release Criteria

DOE included in the NOPR several issues for public comment, including a request for information concerning appropriate criteria for the release or transfer of equipment and other items used in DOE beryllium activities to other DOE facilities for either beryllium or non-beryllium uses, or to the public for non-beryllium uses. 63 FR 66948. Equipment that has been used for beryllium work often retains residual contamination that could present an occupational or public health hazard if the beryllium becomes airborne. Before such equipment is sold or otherwise transferred to the public, or released for other DOE uses, steps must be taken to ensure that there are no potential health hazards to the receiver of the equipment.

DOE solicited views and information concerning whether DOE should develop a consistent approach or uniform criteria for the release of beryllium-related items at DOE facilities. Currently, the criteria vary among those DOE facilities that have established release criteria for equipment and other items used in beryllium work. For example, the Pantex facility in Texas has a surface contamination release criterion of less than or equal to 0.1 μg/100 cm^2; the Mound facility in Ohio uses a criterion of less than or equal to 0.3 μg/100 cm^2; and the Lawrence Livermore National Laboratory uses a criterion of less than or equal to 1 μg/100 cm^2. The Rocky Flats Environmental Technology Site in Colorado uses two levels of allowable surface contamination for items to be released, depending upon the receiver of the equipment. For equipment to be released to the public or to other DOE facilities where the equipment will not be used for beryllium work, the Rocky Flats criterion is less than 0.2 μg/100cm^2. For equipment released to other DOE facilities where the equipment will be used for beryllium work, the criterion is the lesser of the allowable level of the receiving facility, or less than or equal to 2.5 μg/100cm^2. The Rocky Flats process also compares the current value of the equipment to the cost of decontamination and the cost of disposal.

II. Public Comments on the NOPR

The request for comment in the NOPR yielded additional information and views on the subject of appropriate release criteria. The release levels recommended by commenters ranged from zero (The Consortium for Risk Evaluation with Stakeholder Participation) to 1 μg/100 cm^2 (Fluor-Daniel Hanford, Inc.). The Atomic Weapons Establishment (AWE) in the United Kingdom stated that AWE uses a release criterion of 1 μg/ft^2 (or about 0.1 μg/100cm^2). Lockheed Martin Energy Research Corporation commented that DOE should establish release limits to ensure consistency throughout the DOE complex, but did not recommend a specific release criterion.

Two commenters recommended establishing a single regulatory release level. The Navy Environmental Health Center recommended that the level be the same as the housekeeping surface contamination level. Fluor-Daniel Hanford, Inc., recommended that the same release criterion or level apply both to released equipment and to areas of a facility that are released or transferred to non-beryllium work or uses.

The University of California (UC) recommended a graded approach based on the nature of the item being released or the recipient. UC suggested that for ''consumer goods,'' such as desks, machine tools, and cabinets, the surface contamination level should be less than 0.2 μg/100 cm^2, and the items should be released only to a scrap metal or waste disposal company (with a release tag

notification). For items that have internal contamination but are easily cleaned on the outside, UC recommended a release level of 0.2 μg/100 cm^2 for use within DOE, if the items are labeled to warn of the potential for internal contamination. For items released for DOE use that are not easily sampled or are porous, UC recommended using a stabilizing material (e.g., paint) as a sealant, and a warning label to indicate that the equipment was previously used in a beryllium area. UC further recommended that if a graded approach is not included in the rule, then each site should be permitted to specify release criteria in its program.

Brush Wellman, Inc., expressed concern about using only a single surface contamination level to determine the releasability of an item to the public, because the swipe sampling method alone may not adequately characterize the potential exposure risk. For example, a piece of equipment released on the basis of a surface contamination criterion may contain beryllium dust in cracks and crevices that could be released during future maintenance.

The Consortium for Risk Evaluation with Stakeholder Participation (CRESP) commented that allowing the release of equipment or buildings with detectable levels of beryllium would pose a health risk to the recipient.

III. Options Being Considered by DOE

DOE has tentatively concluded that the final rule should contain requirements for the release of beryllium-related items at DOE facilities. Having preliminarily evaluated the comments submitted in response to the NOPR request for information, DOE now is considering specific release criteria within the range of recommendations presented by the comments already received, and would like public comment on the options and issues presented in this notice section.

A. Surface Contamination Release Level

The quantitative limit of detection for beryllium (using the OSHA ICP method) is 0.043 μg. This detection limit makes it possible to determine surface contamination as low as 0.04 μg/100 cm^2. However, surface contamination is only a cleanliness measure, and is not a predictor of health risk from beryllium contamination. Thus, the selection of an appropriate surface contamination release level depends on an assessment of health risk, feasibility, cost, and cleaning technology.

Because of the scientific uncertainty about what is a ''safe'' level of exposure to beryllium, DOE believes that any surface contamination release level selected should be as low as practicable. Most of the surface contamination levels established by DOE facilities and those recommended by public commenters for release of items used in beryllium areas to the public are in the range of 0.1 μg/100 cm^2 to 0.3 μg/100 cm^2. The comment by the AWE that it reduced the housekeeping surface action level in its Cardiff, Wales facility to 1 μg/ ft^2 (about 0.1 μg/100 cm^2) in 1990 suggests that a public release level as low as 0.1 μg/100 cm^2 is achievable, and therefore, could be a reasonable criterion for release of an item to the public.

DOE is not inclined to agree with the comment that any detectable level of beryllium on the surface of an item should be presumed to present a health risk to the public and, therefore, that no item having a detectable level of beryllium should be released. There is no established correlation between surface beryllium levels and airborne concentrations of beryllium that would pose a health hazard. As OSHA pointed out in the OSHA Technical Manual Section II, Chapter 2 ''Sampling for Surface Contamination,'' ''[surface] sampling is not attempting to assess the health risk resulting from the contamination. Rather, it is to ensure that the cleaning and decontamination regimen is being effectively implemented. . . . Establishing an acceptable contamination limit will depend on the purpose of cleaning, and what is feasible for the procedures utilized.''

B. Conditions on Release of Items

The University of California (UC) recommended placing certain conditions on release based on the nature of the item or user. For example, ''consumer goods'' (e.g., desks, machine tools, cabinets) meeting a specified surface contamination level would, under UC's suggested approach, only be released to a scrap metal or waste disposal company. On the other hand, UC suggested allowing items to be released for use within a DOE facility if the item could be easily cleaned on the outside and it was labeled to warn of the potential for internal beryllium contamination.

DOE is considering establishing separate surface contamination levels for release to the public for non-beryllium use, and release to DOE facilities for beryllium or non-beryllium uses. DOE will consider this matter in the light of public comments, and invites suggestions for appropriate conditions on the release of items to the public, or to DOE facilities for non-beryllium uses.

C. Internal Beryllium Dust or Other Contamination

As noted, surface sampling is not an adequate means of characterizing potential exposure risk. For example, a lathe or other piece of equipment released because it is determined to be beryllium-free on the surface may contain internal beryllium dust that could become airborne, and therefore present a health hazard, during future maintenance. On the other hand, other types of equipment may contain internal beryllium that is combined with other substances (e.g., grease) to make it unlikely that the beryllium would ever become airborne. The presence of this type of entrained contamination, even at levels above the otherwise applicable release criteria, would not present a health hazard. DOE invites comment on how the final rule should address such entrained contamination.

DOE's tentative view is that the final rule should permit the release of items to the public for non-beryllium uses, or to DOE facilities for either beryllium or non-beryllium uses, taking all of these factors into consideration. For example, the final rule might specify that items may be released for non-beryllium use if they contain a beryllium contamination level less than or equal to 0.1 μg/100 cm^2 on surfaces accessible through operation or maintenance activities. Under this approach, the item would need to be disassembled as necessary and cleaned to meet the release surface contamination level. If cleaning is not practicable (e.g., too costly), the item would be disposed of as waste under this approach.

D. Release to Another Facility for Beryllium Work

The Rocky Flats Environmental Technology Site has established a surface contamination release level of 0.2 μg/100 cm^2 for release of an item to the public or to a DOE facility for non-beryllium work, and a release level of 2.5 μg/100cm^2 for an item to be transferred to another DOE facility for beryllium work. DOE believes it may be prudent to establish a higher surface contamination release level for items to be transferred to another DOE facility for beryllium work than is allowed for items released to the public or for use in DOE non-beryllium work. DOE also is inclined to adopt in the final rule the release level of 3μg/100 cm^2 as the surface contamination release level for equipment and other items that are

transferred to a DOE facility for beryllium work.[1]

DOE invites public comment on this approach and on other appropriate release criteria for beryllium-contaminated items transferred to a DOE facility for beryllium work.

IV. Public Comment.

DOE invites interested persons to submit written comments on the options presented in Section III above, and issues related to release criteria for items used in DOE beryllium activities.

Issued in Washington, DC on May 27, 1999.

David Michaels,

Assistant Secretary for Environment, Safety and Health, Department of Energy.

[FR Doc. 99–14077 Filed 6–2–99; 8:45 am]

BILLING CODE 6450–01–P

[1] 3 μg/100 cm² is essentially equivalent to the Rocky Flats criteria of 2.5 μg/100 cm², after allowing for the variability of surface sampling.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Accounting, Auditing, and Bookkeeping Services

AGENCY: Small Business Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: With the recent consolidations of the largest firms in the accounting, auditing, and bookkeeping services industry and their expansion into providing services of other industries, the Small Business Administration (SBA) has undertaken a review of its small business size standard for this industry. To supplement its review of this industry's size standard, SBA is requesting public comment as to what factors should be considered in establishing a definition of a small accounting, auditing, and bookkeeping services firm, what the public's views on several developments within the accounting industry are, whether the current size standard should be changed, and what the actual definition should be. Should SBA decide that a change is warranted, it would publish a proposed size standard in the **Federal Register** and seek public comment on a specific size standard before any change in the size standard is put into effect.

DATES: Submit comments on or before July 6, 1999.

ADDRESSES: Send comments to: Gary M. Jackson, Assistant Administrator for Size Standards, Small Business Administration, 409 Third St., SW, Mail Code: 6880, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Harvey Bronstein, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION: Size standards are numerical indicators to define what is a small business. They have been established to determine eligibility for firms for SBA and other Federal small business programs, such as loan guarantees, Government contracting assistance, minority enterprise development, and small disadvantaged business preferences. Currently, SBA defines a firm in the accounting industry (Standard Industrial Classification (SIC) 8721) as small if it has $6 million or less in average annual receipts, including any affiliates. By comparison, SBA uses $5 million as a size standard for most service industries. Other illustrative size standards in business and professional services include $18 million for computer services, $9 million for security guard services, and $2.5 million for architectural and engineering services. A list of the SBA size standards by industry category is available in 13 CFR 121.201, or on SBA's Internet web site (http://www.sba.gov/regulations/siccodes).

SBA bases its size standards on an analysis of an industry's economic structure and other information describing the relative standing of smaller businesses within an industry. SBA generally looks at factors such as average firm size, start-up costs, degree of competition, distribution of sales by firm size, and the objectives of SBA's programs. Other factors that may have an impact on the position of small businesses in an industry may also be considered, such as technological change, growth trends, and comparison with size standards in similar industries. By examining quantitative indicators for these factors from generally available sources of industry data, SBA is able to identify a small business segment within an industry and maintain a degree of comparability among size standards in different industries.

A review of data on the accounting industry and discussions with industry associations and accounting firms indicates a need for additional information on several issues before SBA can decide whether to propose a change to the current accounting size standard. Several issues are discussed below that have come to our attention that we believe merit a request for comments from the public. Other information the public believes is relevant to the question of an appropriate accounting size standard is also welcomed for our consideration.

One issue we specifically seek comments on concerns the available industry data on the accounting industry. According to data from the U.S. Bureau of the Census' 1992 Economic Census, of the 76,000 businesses in that industry, more than 99 percent are considered small businesses under the present size standard and they cumulatively obtained 60 percent of total industry revenues. Approximately 450 firms exceed the present size standard, and the top four firms with the largest operations in accounting obtain 19 percent of industry revenues. We are concerned that the recent changes in the industry are not fully reflected in the Census Bureau's data and other data sources. Thus, we are interested in the public's view on the changing nature of the industry since the early 1990s, and whether data from 1992 adequately characterizes the industry today. If not, the public should address what changes have occurred to alter the makeup of the industry, what data exists to verify and gauge the extent of these changes, and how these changes should affect the size standard.

Another issue concerns a prominent trend that is affecting the accounting industry—the expansion of services being offered by many of the larger firms. Some firms, especially the largest ones (often referred to as the ''Big 5''), which at one time primarily provided accounting services, have been diversifying into other areas of business and professional services such as management and economic consulting, information technology, computer systems integration, public relations, and legal services. Thus, while some of these firms originally offered only accounting services, they now offer a range of other business and professional services while still maintaining a considerable accounting and auditing capability. We are interested to know whether this trend is also occurring for small firms, and how it may affect the current size standard.

The SBA programs and other Federal programs which seem to be most affected by the accounting size standard are those that accord preference for Federal contracts, that is, the small business set-aside, 8(a), and small disadvantaged business programs. Federal contract award data supplied by the General Services Administration's Federal Procurement Data System indicate that small businesses have a substantial share of Federal accounting