# 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 Part 850

**[EHSS–RM–11–CBDPP]**

**RIN 1992–AA39**

## Chronic Beryllium Disease Prevention Program

**AGENCY:** Office of Environment, Health, Safety and Security, U.S. Department of Energy.

**ACTION:** Supplemental notice of proposed rulemaking and request for comment.

**SUMMARY:** On June 7, 2016, the U.S. Department of Energy (DOE or the Department) published a Notice of Proposed Rulemaking (NOPR) in the **Federal Register** proposing to amend its current Chronic Beryllium Disease Prevention Program (CBDPP) regulations. In the NOPR, DOE proposed an action level of 0.05 micrograms of beryllium per cubic meter of air (μg/m$^3$), calculated as an 8-hour time-weighted average (TWA), but declined to propose a short-term exposure limit (STEL). In this supplemental notice of proposed rulemaking (SNOPR), DOE solicits comments on an alternative proposed action level of 0.1 μg/m$^3$, calculated as an 8-hour TWA exposure, and a STEL of 2.0 μg/m$^3$ measured over a period of fifteen minutes. DOE is also proposing to set its own TWA permissible exposure limit (PEL) for airborne beryllium, which is consistent with the TWA PEL currently set by the Occupational Safety and Health Administration (OSHA), rather than adopt OSHA's current or any future 8-hour TWA PEL. The proposed amendments are intended to improve and strengthen the current CBDPP regulations and are applicable to DOE contractors and Federal employees who are, were, or potentially were exposed to beryllium at DOE sites.

**DATES:** DOE will accept comments, data, and information regarding this SNOPR on or before September 22, 2023. Please refer to section V (Public Participation–Submission of Comments) of this SNOPR for additional information.

**ADDRESSES:** You may send comments, identified by EHSS–RM–11–CBDPP and/or Regulation Identification Number (RIN) 1992–AA39, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions in the portal for submitting comments.
- *Email: Rulemaking.850@hq.doe.gov.* Include docket number EHSS–RM–11–CBDPP and/or RIN 1992–AA39 in the subject line of the email. Please include the full body of your comments in the text of the message or as an attachment.
- *Mail:* Address written comments to James Dillard, U.S. Department of Energy, Office of Environment, Health, Safety and Security, Mailstop EHSS–11, Docket Number EHSS–RM–11–CBDPP, 1000 Independence Ave. SW, Washington, DC 20585 (due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt).

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation—Submission of Comments'' (section V) of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, go to *www.regulations.gov/docket/DOE-HQ-2016-0024.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Dillard, U.S. Department of Energy, Office of Environment, Health, Safety and Security, Mailstop EHSS–11, 1000 Independence Ave. SW, Washington, DC 20585. Telephone: (301) 903–1165. Email: *james.dillard@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**



## I. Authority

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 *et seq.;* and the Department of Energy Organization Act (DOEOA), 42 U.S.C. 7101 *et seq.* Specifically, the AEA authorized and directed the Atomic Energy Commission (AEC), a predecessor agency to DOE, to protect health and promote safety during the performance of activities under the AEA. *See* Sec. 31a.(5) of the AEA, 42 U.S.C. 2051(a)(5); Sec. 161 b. of the AEA, 42 U.S.C. 2201(b); Sec. 161 i.(3) of the AEA, 42 U.S.C. 2201(i)(3); and Sec. 161 p. of the AEA, 42 U.S.C. 2201(p). In addition, Congress amended the AEA in 2002 by adding section 234C, 42 U.S.C. 2282c, which, among other things, directed DOE to ''promulgate regulations for industrial and construction health and safety at Department of Energy facilities that are operated by contractors covered by agreements of indemnification under section 2210(d)'' of title 42 of the United States Code.

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 functions, including those functions that might become vested in ERDA in the future. *See* Sec. 105(a) of the ERA, 42 U.S.C. 5815(a); and Sec. 107 of the 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; and Sec. 644 of DOEOA, 42 U.S.C. 7254.

Additional authority for the rule, insofar as it applies to DOE Federal employees, is found in section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668) and Executive Order 12196, ''Occupational Safety and Health Programs for Federal Employees'' (5 U.S.C. 7902 note), which require Federal agencies to establish comprehensive occupational safety and health programs for their employees.

## II. Background and Summary of the Supplemental Notice of Proposed Rulemaking

On December 8, 1999, DOE published its final rule establishing the CBDPP (64 FR 68854), which became effective January 7, 2000. In the CBDPP, DOE adopted, among other things, OSHA's PEL in 29 CFR 1910.1000, which was 2.0 μg/m$^3$ measured as an 8-hour TWA, and any more stringent TWA PEL that may be promulgated by OSHA as a health standard in the future. The AEC first applied the 2.0 μg/m$^3$ TWA PEL in 1949 and it had been continuously applied by DOE and its predecessor agencies through the years. Additionally, DOE set an ''action level'' for worker exposure to airborne concentrations of beryllium at 0.2 μg/m$^3$, calculated as an 8-hour TWA exposure. The ''action level'' is the level of airborne concentrations of beryllium which, if met or exceeded, would require a DOE office or contractor to implement certain worker protection provisions. Since the rule's January 7, 2000, effective date, DOE facilities have been expected to maintain worker exposures to beryllium at levels at or below OSHA's PEL, as well as operate with an action level.

Other than OSHA's PEL, DOE employers are not subject to any other OSHA beryllium-specific requirements in 29 CFR 1910.1024. Section 4(b)(1) of the Occupational Safety and Health Act of 1970 [29 U.S.C. 653(b)(1)] (OSH Act) states that ''[n]othing in [the OSH Act] shall apply to working conditions of employees with respect to which other Federal agencies . . . exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.''

To avoid confusion among its contractors and their employees regarding with which standard to comply, the Department amended 10 CFR part 851, *Worker Safety and Health Program* (80 FR 69564, November 10, 2015). The amendment clarified that it is DOE's intent to only adopt OSHA's 8-hour PEL for beryllium, and that the ancillary provisions (*e.g.,* exposure assessment, personal protective clothing and equipment, medical surveillance, medical removal, training, and regulated areas or access control) of OSHA's standard do not apply to DOE and DOE contractor employees.

On June 7, 2016, DOE published a NOPR for public comment in the **Federal Register** (81 FR 36704) proposing to amend its CBDPP regulations. The public comment period ended on September 6, 2016. The proposed amendments included in the NOPR were intended to strengthen the current CBDPP and the worker protection programs established under 10 CFR part 851, *Worker Safety and Health Program.* In part, the proposed amendments in the NOPR would have reduced the action level for worker exposure to airborne concentrations of beryllium to 0.05 μg/m$^3$, calculated as an 8-hour TWA exposure. In the NOPR, DOE also proposed to adopt OSHA's current and any future PELs for worker exposure to beryllium and beryllium compounds. DOE did not propose adopting a STEL because DOE's proposed action level of 0.05 μg/m$^3$ would be exceeded in less than the 15-minute sampling period for the STEL where exposure levels were at OSHA's PEL of 2.0 μg/m$^3$.

After publication of DOE's NOPR, OSHA promulgated new regulations in 29 CFR parts 1910, 1915 and 1926 for the protection of workers from the effects of exposure to beryllium and beryllium compounds in the workplace (82 FR 2470, January 9, 2017). OSHA's regulations contained new PELs for occupational exposure to beryllium and beryllium compounds, consisting of: (1) an 8-hour TWA PEL of 0.2 μg/m$^3$; and (2) a STEL of 2.0 μg/m$^3$ as measured over a 15-minute sampling period. In its final rule, OSHA stated that it was establishing an 8-hour TWA PEL of 0.2 μg/m$^3$ because it found that occupational exposure to beryllium at the previous PEL of 2.0 μg/m$^3$ posed a significant risk of material impairment to the health of exposed workers, and the lower TWA PEL of 0.2 μg/m$^3$ would substantially reduce that risk. OSHA promulgated a STEL of 2.0 μg/m$^3$, as measured over a 15-minute sampling period, to help reduce the risk of beryllium sensitization (BeS) and chronic beryllium disease (CBD) in beryllium-exposed workers. OSHA also adopted an action level for airborne beryllium of 0.1 μg/m$^3$, calculated as an 8-hour TWA.

DOE is now issuing this SNOPR to consider having the Department set its own 8-hour TWA PEL of 0.2 μg/m$^3$ for airborne beryllium, which is consistent with the current TWA PEL set by OSHA, rather than, as proposed in the NOPR, adopting OSHA's current or future TWA PELs. The Department is also proposing to require an airborne action level of 0.1 μg/m$^3$, calculated as an 8-hour TWA exposure, as measured in the worker's breathing zone by personal monitoring, as an alternative to the previously proposed airborne action level of 0.05 μg/m$^3$. Finally, the Department is proposing to require a STEL of 2.0 μg/m$^3$, as measured over a period of fifteen minutes. The TWA PEL, STEL, and action level proposed by the Department in this SNOPR would be consistent with OSHA's current TWA PEL, STEL, and action level.

## III. Discussion of Specific Proposed Sections

This section describes the Department's proposals for which the Department is soliciting public comment.

### *A. Proposed § 850.22—Permissible Exposure Limits*

#### 1. TWA PEL

The newly proposed § 850.22(a) would continue to establish the TWA PEL for the CBDPP. The PEL supplements the action level by establishing an absolute 8-hour TWA level above which, no worker may be exposed. Engineering or work practice controls are required to bring exposures to at or below the PEL.

In the NOPR, DOE proposed that § 850.22(a) would continue to adopt OSHA's 8-hour TWA PEL established in 29 CFR 1910.1000 for airborne exposure to beryllium, as measured in the worker's breathing zone by personal monitoring but allowed for the adoption of a stricter standard should OSHA establish one through its rulemaking process. DOE also proposed in the NOPR [§ 850.22(b)] that DOE would inform employers of any change in the TWA PEL through a notice in the **Federal Register**.

In this SNOPR, proposed § 850.22(a) would require employers to ensure that no worker is exposed to an airborne concentration of beryllium in excess of 0.2 μg/m³, calculated as an 8-hour TWA exposure, as measured in the worker's breathing zone by personal monitoring. This TWA PEL is consistent with the TWA PEL adopted by OSHA in 29 CFR parts 1910, 1915, and 1926. The Department is proposing to adopt its own TWA PEL, rather than adopt OSHA's current or future TWA PEL, because the Department believes by exercising its authority to issue regulations for industrial and construction health and safety at DOE facilities, including setting a TWA PEL, it can better provide clarity and consistency to employers at DOE sites regarding the TWA PEL with which they must comply.

2. STEL

In the NOPR, DOE did not propose adopting a STEL. In the preamble to the NOPR, DOE stated that it considered adopting OSHA's proposed STEL of 2.0 μg/m³ but did not do so because DOE's proposed action level of 0.05 μg/m³ would be exceeded in less than the 15-minute sampling period (see discussion regarding § 850.23 in the NOPR (81 FR 36704, 36722)). In conjunction with its proposal in this SNOPR to adopt an action level of 0.1 μg/m³ (discussed below), the Department is proposing to adopt a STEL that is consistent with the STEL set by OSHA in 29 CFR parts 1910, 1915, and 1926. In OSHA's January 9, 2017, final rule (82 FR 2470), OSHA found that there are still significant risks of BeS and CBD remaining at the 8-hour TWA PEL. DOE notes that the goal of a STEL is to provide additional protection to workers from the risk of harm that can occur as a result of brief, high-level exposures to beryllium, which have been associated with development of BeS and CBD. Many of the beryllium activities at DOE sites are performed for short durations of time.

DOE believes a STEL would protect workers from the risk of harm that can occur because of brief, high-level exposures to beryllium. Proposed § 850.22(b) would establish a STEL for the CBDPP by requiring employers to ensure that no worker is exposed to an airborne concentration of beryllium in excess of 2.0 μg/m³ as determined over a sampling period of 15 minutes and measured in the worker's breathing zone by personal monitoring.

*B. Proposed § 850.23—Action Level*

Currently, 10 CFR 850.23(a) requires a responsible employer to include in its CBDPP an action level that is no greater than 0.2 μg/m³, calculated as an 8-hour TWA exposure, as measured in the worker's breathing zone by personal monitoring. In the NOPR, DOE proposed in § 850.23(a) that employers would be required to include in their CBDPPs an action level that was no greater than 0.05 μg/m³, calculated as an 8-hour TWA exposure, as measured in the worker's breathing zone by personal monitoring. The 0.05 μg/m³ action level was chosen based on the Department's review of epidemiological studies and the American Conference of Governmental Industrial Hygienists (ACGIH®) threshold limit value (TLV®). The Department believed that adopting a lower action level for airborne beryllium would result in reduced worker exposures and fewer workers developing BeS and CBD.

In the NOPR, DOE expressed the belief that it did not anticipate that the proposed 0.05 μg/m³ action level would require the use of new or different types of equipment. However, the Department became aware that there are concerns as to the feasibility of complying with a 0.05 μg/m³ action level, and whether current analytical methods can detect airborne concentrations of beryllium at that level. Therefore, DOE is proposing an alternative action level of 0.1 μg/m³, as an 8-hour TWA exposure, as measured in the worker's breathing zone by personal monitoring. This action level would be consistent with the action level for beryllium adopted by OSHA in its regulations for beryllium and beryllium compounds. In OSHA's January 9, 2017, final rule (82 FR 2470), OSHA indicated that workers in facilities that meet the action level of 0.1 μg/m³ will face lower risks of BeS and CBD than workers in facilities that cannot meet the action level. The Department believes the of 0.1 μg/m³ action level will be more protective than the current action level of 0.2 μg/m³ and is feasible.

Proposed § 850.23(a) would require employers to include in their CBDPPs an action level that is no greater than 0.1 μg/m³, calculated as an 8-hour TWA exposure, as measured in the worker's breathing zone by personal monitoring. The action level triggers the requirements to use a number of controls and protective measures designed to protect employees from exposures to beryllium.

*C. Proposed Conforming Amendments to §§ 850.11 and 850.25*

If the proposed amendment to add the STEL is made, DOE proposes to make minor conforming amendments to §§ 850.11 and 850.25 to reflect that there would be two applicable exposure limits.

## IV. Regulatory Review

*A. Review Under Executive Order 12866, 13563, and 14094*

Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by Executive Order 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011) and amended by Executive Order 14094, ''Modernizing Regulatory Review,'' 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (OIRA) has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this regulatory action is consistent with these principles. Section 6(a) of Executive Order 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this proposed regulatory action does not constitute a ''significant regulatory action'' within the scope of Executive Order 12866.

*B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation for which a general notice of proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE made its procedures and policies available on the Office of the General Counsel's website (*www.energy.gov/gc/office-general-counsel*).

DOE reviewed this SNOPR under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is set forth.

This SNOPR would update DOE's regulations on CBDPP and would only apply to activities conducted by DOE and DOE's contractors. DOE expects that any potential economic impact of the proposed rule on small businesses would be minimal because work performed at DOE sites is under contracts with DOE or the prime contractor at the site. DOE contractors are reimbursed through their contracts for the costs of complying with worker safety and health program requirements. Therefore, they would not be adversely impacted by the requirements in this proposed rule. For these reasons, DOE certifies that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared.

*C. Review Under the Paperwork Reduction Act of 1995*

This SNOPR does not impose any new information or recordkeeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and the procedures implementing that Act, 5 CFR 1320.1 *et seq.*

*D. Review Under the National Environmental Policy Act of 1969*

DOE analyzed this SNOPR in accordance with the National Environmental Policy Act of 1969 (NEPA) and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion (CX) for rulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended (10 CFR part 1021, subpart D, appendix A5). DOE determined that this SNOPR is covered under that CX because the proposed rule is an amendment to an existing regulation that does not change the environmental effect of the amended regulation. Therefore, DOE determined that this SNOPR is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA and does not require an Environmental Assessment or an Environmental Impact Statement.

*E. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; (6) specifies whether administrative proceedings are to be required before parties may file suit in court and, if so, describes those proceedings and requires the exhaustion of administrative remedies; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met, or it is unreasonable to meet one or more of them. DOE completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

*F. Review Under Executive Order 13132*

Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this SNOPR and tentatively determined that the proposed rule would not preempt State law and would not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

*G. Review Under Executive Order 13175*

Under Executive Order 13175 (65 FR 67249, November 6, 2000) on ''Consultation and Coordination with Indian Tribal Governments,'' DOE may not issue a discretionary rule that has ''Tribal'' implications and imposes substantial direct compliance costs on Indian Tribal governments. DOE determined the proposed rule in this SNOPR would not have such effects and Executive Order 13175 does not apply to this proposed rule.

*H. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of a Federal regulatory action on State, local, and Tribal governments, and the private sector. (Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531)). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the

aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant Federal intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. (62 FR 12820) (This policy is also available at: *www.energy.gov/gc/guidance-opinions*). DOE examined the proposed rule according to UMRA and its statement of policy and determined the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

*I. Review Under Executive Order 12630*

DOE determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

*J. Review Under Executive Order 13211*

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1)(i) is a significant regulatory action under Executive Order 12866, or any successor order; and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (2) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This SNOPR would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

*K. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. This SNOPR would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE concluded it is not necessary to prepare a Family Policymaking Assessment.

*L. Review Under the Treasury and General Government Appropriations Act, 2001*

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002).

DOE reviewed this SNOPR under the OMB and DOE guidelines and concluded that it is consistent with applicable policies in those guidelines.

## V. Public Participation—Submission of Comments

DOE will accept comments, data, and information regarding this SNOPR no later than the date provided in the **DATES** section at the beginning of this document. Interested individuals are invited to participate in this proceeding by submitting data, views, or arguments with respect to the specific sections addressed in this proposed rule using the methods described in the **ADDRESSES** section at the beginning of this document.

1. *Submitting comments via www.regulations.gov.* The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable by DOE's Office of Worker Safety and Health Policy staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment. However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through *www.regulations.gov* will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

2. *Submitting comments via email or mail.* Comments and documents submitted via email or mail will also be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

3. *Confidential Business Information.* Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data he or she believes to be confidential and exempt by law from public disclosure should submit two well-marked copies: One copy of the document marked ''CONFIDENTIAL'' including all the information believed to be confidential, and one copy of the document marked ''NON–CONFIDENTIAL'' with the information believed to be confidential deleted. Submit these documents via email to *Rulemaking.850@hq.doe.gov.* DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

4. *Campaign form letters.* Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

## VI. Approval by the Office of the Secretary of Energy

The Secretary of Energy approved publication of this supplemental notice of proposed rulemaking.

## List of Subjects in 10 CFR Part 850

Beryllium, Diseases, Hazardous substances, Lung diseases, Occupational safety and health, Reporting and recordkeeping requirements.

## Signing Authority

This document of the Department of Energy was signed on August 16, 2023, by Jennifer Granholm, Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on August 17, 2023.

**Treena V. Garrett,**

*Federal Register Liaison Officer, U.S. Department of Energy.*

For the reasons set forth in the preamble, the Department of Energy proposes to amend 10 CFR part 850 as set forth below.

## PART 850—CHRONIC BERYLLIUM DISEASE PREVENTION PROGRAM

■ 1. The authority citation for part 850 continues to read as follows:

**Authority:** 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 29 U.S.C. 668; 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.,* E.O. 12196, 3 CFR 1981 comp., at 145 as amended.

### § 850.11 [Amended]

■ 2. Amend § 850.11 by:

■ a. Removing the word ''level'' and adding in its place, the word, ''limits'' in paragraph (b)(1); and

■ b. Removing the word ''limit'' and adding in its place, the word, ''limits'' in paragraph (b)(3)(iv).

■ 3. Revise § 850.22 to read as follows:

### § 850.22 Permissible exposure limits.

(a) *Time-weighted average (TWA) permissible exposure limit (PEL).* Employers must ensure that no worker is exposed to an airborne concentration of beryllium in excess of 0.2 μg/m$^3$, calculated as an 8-hour TWA exposure, as measured in the worker's breathing zone by personal monitoring.

(b) Short-term exposure limit (STEL). Employers must ensure that no worker is exposed to an airborne concentration of beryllium in excess of 2.0 μg/m3 as determined over a sampling period of 15 minutes and measured in the worker's breathing zone by personal monitoring.

■ 4. Amend § 850.23 by revising paragraph (a) to read as follows:

### § 850.23 Action level.

(a) Employers must include in their CBDPPs an action level that is no greater than 0.1 μg/m$^3$, calculated as an 8-hour TWA exposure, as measured in the worker's breathing zone by personal monitoring.

* * * * *

■ 5. Amend § 850.25 by revising paragraph (a) to read as follows:

### § 850.25 Exposure reduction and minimization.

(a) Employers must ensure that no worker is exposed above the exposure limits prescribed in § 850.22.

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[FR Doc. 2023–18082 Filed 8–22–23; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF JUSTICE

## Bureau of Alcohol, Tobacco, Firearms, and Explosives

## 27 CFR Part 555

**[Docket No. 2013R–15P; AG Order No. 5732–2023]**

**RIN 1140–AA51**

## Annual Reporting of Explosive Materials Storage Facilities to the Local Fire Authority

**AGENCY:** Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Justice is proposing to amend Bureau of Alcohol, Tobacco, Firearms, and Explosives (''ATF'') regulations to require that any person who stores explosive materials notify on an annual basis the authority having jurisdiction for fire safety in the locality in which the explosive materials are being stored of the type of explosives, magazine capacity, and location of each site where such materials are stored. In addition, the proposed rule requires any person who stores explosive materials to notify the authority having jurisdiction for fire safety in the locality in which the explosive materials were stored whenever storage is discontinued. These changes are intended to increase public safety.

**DATES:** Written comments must be postmarked and electronic comments must be submitted on or before November 21, 2023. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

**ADDRESSES:** You may submit comments, identified by docket number (ATF 2013R–15P), by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Shermaine Kenner, Mailstop 6N–602, Office of Regulatory Affairs, Enforcement Programs and Services,