

requirements through the *Laws, Regulations and DOE Directives* clause set forth in the DOE procurement regulations. 48 CFR 970.0470–2 and 970.5204–2. Following the enactment of the Price-Anderson Amendments Act of 1988, Pub. L. 100–408, granting the Department the authority to impose civil penalties for nuclear safety violations on contractors with Price-Anderson indemnification agreements, DOE supplemented its contractual based regulatory approach with a further more specific set of rules set forth in 10 CFR parts 820, 830, and 835 to ensure nuclear safety and protection from radiological hazards during the conduct of DOE activities.

In 2002, Congress directed DOE to promulgate regulations on worker safety and health governing contractors with Price-Anderson indemnification agreements rather than rely exclusively on a contractual approach to establish safe and healthy workplaces. Specifically, section 3173 of the NDAA amended the AEA to add section 234C (codified as 42 U.S.C. 2282c) that requires DOE to promulgate worker safety and health regulations that maintain “the level of protection currently provided to * * * workers.” Pub. L. 107–314 (December 2, 2002). These regulations are to include “flexibility * * * to tailor implementation * * * to reflect activities and hazards associated with a particular work environment.” Section 234C also makes a DOE contractor with such an indemnification agreement that violates these regulations subject to civil penalties similar to the authority Congress granted to DOE in 1988 with respect to civil penalties. Section 234C also directed DOE to insert in such contracts a clause providing for reducing contractor fees and other payments in the event of a violation by a contractor or contractor employee of any regulation promulgated under section 234C while specifying that both sanctions may not be used for the same violation. The Secretary of Energy has approved the issuance of this Notice to propose regulations to implement the statutory mandate of the NDAA.

II. Proposed Regulations

A. Summary

The proposed regulation would set forth the obligations of DOE contractors (which, consistent with section 234C, proposed § 851.3 would define as entities under contract with DOE, including affiliated entities, subcontractors and suppliers) to provide safe and healthy workplaces for workers (which, consistent with section 234C,

proposed § 851.3 would define as employees who perform work in a workplace covered by the proposed regulations). In particular, the proposed regulations would require a contractor responsible for a DOE workplace to ensure: (1) that the workplace is free from recognized hazards that are causing or are likely to cause death or serious bodily harm; and (2) that work is performed in accordance with the worker safety and health program for the workplace. Consistent with section 234C, the worker safety and health program must be approved by DOE and must achieve a level of protection at least substantially equivalent to the level of protection that existed in workplaces throughout the DOE complex in the year 2002 (*i.e.*, the year of enactment of section 3173 of the NDAA) that are comparable to the workplaces to which the program would apply. When the regulations become effective, no work could be performed at a workplace for which DOE had not approved a worker safety and health program. Consistent with section 234C, DOE approval would be based on a determination that the program would achieve the required level of protection.

A contractor would develop and maintain a single worker safety and health program for all the workplaces at a DOE site for which the contractor is responsible and would coordinate with any other DOE contractors responsible for other workplaces at the site to ensure an integrated and consistent approach to worker safety and health at the site. A contractor would discharge its duties concerning the worker safety and health program in a manner consistent with the integrated safety management process set forth in the clauses, *Integration of Environment, Health and Safety into Work Planning and Execution*. 48 CFR 952.223–71, 970.5223–1. First, the contractor would identify and analyze the workplace environment, the work activities performed there, and the potential hazards to workers. On the basis of this identification and analysis, the contractor would select and document a set of workplace safety and health standards that are necessary and sufficient to protect workers from the identified hazards in a manner that achieves a level of protection substantially equivalent to the level of protection that existed in comparable DOE workplaces in 2002.

A contractor should select the combination of appropriate standards that it believes is best designed to achieve the required level of protection in a manner consistent with the Departmental mission it is performing. DOE has included an appendix to the

proposed regulations that sets forth a description of worker safety standards and programs generally acceptable for inclusion in a worker safety and health program. This appendix is based on DOE Order 440.1A, which sets forth DOE expectations concerning worker protection and which has been incorporated into most DOE contracts through inclusion of the order's Contractor Requirements Document. This appendix is included only to provide generally acceptable worker safety and health standards and programs and is not intended to prescribe particular standards and programs. The contractor would implement the worker safety and health program for a particular workplace in a manner tailored to fit the particular work environment of that workplace. Radiological hazards would not be covered by the proposed rule to the extent they are regulated by the existing requirements on nuclear safety and radiological protection set forth in 10 CFR parts 820, 830, and 835.

DOE intends to work with its contractors to achieve compliance with the regulations and maintain the high level of protection currently afforded workers. Once the proposed regulations are finalized, if a contractor violated them, DOE could take appropriate enforcement action against the contractor, including, in the case of contractors with indemnification agreements, the imposition of civil penalties or the reduction of contract fees.

With respect to a covered workplace operated by DOE, the proposed regulations would make DOE responsible for ensuring work is performed consistent with the requirements of the proposed regulations, including the establishment, maintenance and implementation of a worker safety and health program.

B. Level of Protection

Section 234C mandates the promulgation by DOE of worker safety and health regulations that provide a level of protection substantially equivalent to that provided to DOE contractor workers when the NDAA was enacted. By focusing on level of protection, section 234C envisions regulations that emphasize results (that is, maintaining or improving the level of protection afforded DOE contractor workers), rather than prescribing detailed courses of action that may not be the most effective or sensible way of addressing a given hazard in a particular situation.