

The proposed regulations would incorporate the statutorily mandated level of protection as follows. First, proposed § 851.100 would establish the general rule that a DOE contractor responsible for a workplace must ensure: (1) The workplace is free from recognized hazards that are causing or are likely to cause death or serious bodily harm; and (2) work is performed in accordance with the worker safety and health program for the workplace. This general rule codifies DOE's current expectations concerning the level of protection DOE contractors must afford workers, as set forth in DOE Order 440.1A. Second, proposed § 851.101(c)(2) would require a worker safety and health program to include a set of workplace safety and health standards that would achieve a level of protection at least substantially equivalent to the level of protection that existed in the DOE complex in workplaces comparable to the workplaces to which the program would apply. Third, proposed § 851.102 would prohibit the performance of work at a workplace one year after publication of the final rule unless DOE had approved the worker safety and health program for the workplace on the basis of a determination that the worker safety and health program would achieve a level of protection at least substantially equivalent to the level of protection that existed in comparable workplaces in 2002.

### C. Flexibility

Section 234C mandates DOE to promulgate worker safety and health regulations that include sufficient "flexibility—(A) to tailor implementation of such regulations to reflect activities and hazards associated with the particular work environment; (B) to take into account special circumstances at a facility that is, or is expected to be, permanently closed and that is expected to be demolished, or title to which is expected to be transferred to another entity for reuse; and, (C) to achieve national security missions of the Department of Energy in an efficient and timely manner." This provision acknowledges the diversity and uniqueness of the DOE complex and the need to tailor worker safety and health programs to fit particular workplaces.

As a general matter, the proposed regulations would achieve the mandated flexibility by building on the practices and procedures already being undertaken by contractors as part of integrated safety management systems. Specifically, proposed § 851.101(c) would incorporate the essential features

of integrated safety management, including: (1) Defining the work; (2) analyzing the hazards; (3) identifying a set of standards necessary and sufficient to control the hazards; (4) implementing the set of standards properly in a manner tailored to reflect the workplace environment; and (5) providing for continuous feedback and improvement. Adherence to this approach should result in the selection of a set of standards tailored to fit the expected work and hazards and the implementation of those standards in a manner tailored to reflect actual workplace conditions.

The proposed regulations also would include specific provisions to address the statutory requirements on flexibility. Proposed § 851.101(a)(2) would require the tailoring of a worker safety and health program to reflect the activities and hazards in a particular workplace. Proposed § 851.101(c)(4) would require a worker safety and health program to provide for tailored implementation of selected standards. Proposed § 851.101(e) would require a worker safety and health program to contain special provisions for transitional workplaces (which would be defined in proposed § 851.3 as facilities that are, or are expected to be, permanently closed and that are expected to be demolished, or title to which are expected to be transferred to another entity for reuse) and national security workplaces (which would be defined as workplaces where DOE undertakes national security missions). Examples of transitional workplaces could include: those sites that are undergoing decontamination, deactivation, dismantlement, or decommissioning; environmental restoration sites; or inactive sites where no ongoing operations are being performed beyond surveillance and maintenance activities.

### D. Consistency With Integrated Safety Management

Proposed § 851.101(a) would require contractors to develop worker safety and health programs. These programs should be established in a manner that is consistent with the *Integration of Environment, Health and Safety into Work Planning and Execution* clause set forth in the DOE procurement regulations. 48 CFR 952.223–71, 970.5223–1. As discussed in the preceding sections, the proposed regulations build on existing contract practices and processes to achieve safe and healthy workplaces and incorporate the essential features of integrated safety management. DOE has drafted the proposed regulations to be complementary to integrated safety

management. Accordingly, DOE expects contractors to comply with the proposed regulations in a manner that takes advantage of work already done as part of integrated safety management and to minimize duplicative or otherwise unnecessary work.

As a general matter, DOE expects that, if contractors at a DOE site have fulfilled their contractual responsibilities for integrated safety management properly, little, if any, additional work would be necessary to establish the worker safety and health program required by the proposed regulations. Contractors should undertake new analysis and develop new documents only to the extent existing analysis and documents are not sufficient for purposes of the proposed regulations. In determining the allowability of costs incurred by contractors to develop approved worker safety and health programs, the Department will consider whether the amount and nature of a contractor's expenditures are necessary and reasonable in light of the fact that the contractor has an approved integrated safety management system in place.

### E. Worker Safety and Health Program

#### 1. Program

To ensure achievement of the required level of protection, proposed § 851.100(b) would require the contractor responsible for a workplace to perform work in accordance with an approved worker safety and health program for the workplace. Proposed § 851.101(b)(1) would require the worker safety and health program to provide for eliminating, limiting or mitigating identified workplace hazards in a manner that is necessary and sufficient to provide adequate protection of workers.

Proposed §§ 851.101(a) and (d)(1) would require a contractor to prepare and maintain a single worker safety and health program that would apply to all the workplaces at a DOE site for which the contractor was responsible. At a site where there were multiple contractors responsible for various workplaces at the site, proposed § 851.101(d)(2)(B) would require the contractors responsible for covered workplaces at the site to coordinate with each other to ensure that the worker safety and health programs at the site were integrated and consistent.

#### 2. Identification and Analysis of Work and Hazards

As part of the process of developing a worker safety and health program, proposed § 851.101(c)(1) would require a contractor to identify and analyze: (1)