

provide a voluntary computerized database system to allow contractors to report worker safety and health noncompliances. DOE intends to enhance its Noncompliance Tracking System (NTS), currently used for reporting of noncompliances of the DOE nuclear safety requirements, to permit its use for reporting noncompliances with this rule. DOE will develop appropriate reporting thresholds unique to worker safety and health to assure that the system will focus on issues with the greatest potential consequences for worker safety and health.

J. Scope of the Rule

1. DOE Contractors and DOE-Operated Workplaces

Proposed § 851.1 would establish the scope of the proposed regulations as governing the conduct of activities by or on behalf of DOE. The regulations would thus apply to activities performed by DOE contractors and by DOE at covered workplaces at DOE sites, except for workplaces regulated by the naval nuclear propulsion program or by the Occupational Safety and Health Administration (OSHA). Proposed § 851.3 would define a “covered workplace” as a place where work is conducted by or on behalf of DOE where DOE has oversight responsibility for safety and health and would define “DOE site” as a DOE-owned or leased area or location where DOE activities and operations are performed at one or more facilities or locations. While the proposed regulations would obligate a contractor to ensure its employees performed work in accordance with the proposed regulations, the proposed regulations would not make individual employees subject to enforcement actions or the imposition of penalties.

DOE is proposing to limit the scope of the proposed regulations to DOE sites. However, DOE invites public comment concerning whether the proposed regulations also should cover activities performed away from a DOE site, such as transportation.

DOE is also proposing to apply the proposed regulations to covered workplaces operated by DOE. Proposed § 851.9 would require that for DOE-operated workplaces, DOE must ensure that work is performed consistent with the proposed regulations including the establishment, maintenance and implementation of a worker safety and health program. Proposed § 851.9 would apply to government-owned, government-operated facilities related to DOE’s mission, including certain laboratories or operations conducted by DOE, as well as general federal

government office workplaces in buildings in Washington DC, Germantown, Maryland, or DOE site offices in the field. Thus, this rule is intended to provide protection to workers who are contractor employees and to workers who are federal employees.

Section 234C mandates DOE to promulgate regulations to cover DOE facilities that are operated by contractors covered by agreements of indemnification under the Price-Anderson Act, 42 U.S.C. 2210(d). The proposed regulations go beyond that mandate to continue DOE’s current practice of exercising its statutory authority to direct its contractors to perform work in a manner that protects the safety and health of workers, without regard to whether the contractor is covered by an agreement of indemnification. As a practical matter, the Price-Anderson Act requires DOE to include an agreement of indemnification in every contract that has the potential to involve any activity with any risk of a nuclear incident. As a result, nearly all DOE contracts include an agreement of indemnification, with the exception of contracts relating to the petroleum strategic reserves sites, power administrations, and certain nonnuclear laboratories. While section 234C is not the source of DOE’s authority to promulgate the proposed regulations, it is the source of DOE’s authority to impose civil penalties. Thus, proposed § 851.4(c) would limit the imposition of civil penalties to contractors covered by an agreement of indemnification. Proposed § 851.4(b) would not limit contractual enforcement actions to contractors covered by an agreement of indemnification since section 234C is not the source of DOE’s authority to use contract mechanisms to achieve safe and healthy workplaces.

The proposed regulations also would continue DOE’s current practice of exercising its statutory authority to direct its contractors to perform work in a manner that protects the safety and health of workers, without regard to whether the workers are engaged in a nuclear or nonnuclear activity. Section 234C is not limited to nuclear activities in mandating the promulgation of worker protection regulations.

2. OSHA Exclusion

DOE currently exercises its statutory authority broadly throughout the DOE complex to provide safe and healthful workplaces. In a few cases, however, DOE has elected not to exercise its authority and to defer to regulation by OSHA under the Occupational Safety

and Health (OSH) Act (29 U.S.C. 651 *et seq.*). Proposed § 851.2(a)(1) would continue the status quo by not covering those facilities regulated by OSHA on December 2, 2002, the date the NDAA was enacted. The OSHA-regulated facilities are: Western Area Power Administration; Southwestern Power Administration; Southeastern Power Administration; Bonneville Power Administration; National Energy Technology Laboratory (NETL), Morgantown, WV; National Energy Technology Laboratory (NETL), Pittsburgh, PA; Strategic Petroleum Reserve (SPR); National Petroleum Technology Office; Albany Research Center; Naval Petroleum & Oil Shale Reserves in CO, UT, & WY; and Naval Petroleum Reserves in California. *See* 65 FR 41492 (July 5, 2000).

3. Naval Reactors

Section 234C explicitly excludes activities conducted under the authority of the Director, Naval Nuclear Propulsion, pursuant to Executive Order 12344, as set forth in Public Law 106–65. Accordingly, proposed § 851.2(a)(2) would exclude workplaces regulated by Naval Reactors.

4. Radiological Hazards

Proposed § 851.2(b) would exclude radiological hazards from the hazards covered by the proposed regulations to the extent they are already regulated by the DOE nuclear safety requirements in 10 CFR parts 820, 830, and 835. These existing rules already deal with radiological hazards in a comprehensive manner through methods such as the Quality Assurance Program Plan, the Safety Basis, the Documented Safety Analysis, and the Radiation Protection Program Plan. The proposed regulations are intended to complement the nuclear safety requirements. Personnel responsible for implementing worker protection and nuclear safety requirements would be expected to coordinate and cooperate in instances where the requirements overlapped. The two sets of requirements should be integrated and applied in a manner that guards against unintended results and provides reasonable assurance of adequate worker protection.

K. Information Requirements

Proposed § 851.5 would require a contractor (1) to maintain complete and accurate records as necessary to substantiate compliance with the proposed regulations; (2) to neither conceal nor destroy any relevant information concerning noncompliance or potential noncompliance with the proposed regulations; and (3) to