

maintain complete and accurate information in all material respects. Proposed § 851.5(d) would make clear that a contractor must safeguard classified, confidential, and controlled information, including Restricted Data or national security information, in accordance with the applicable provisions of federal statutes and the rules, regulations, and orders of any federal agency.

DOE considered but decided not to propose new reporting requirements in support of the proposed regulations. DOE will continue to use contractual provisions to require contractors to report worker safety and health information which may be used to assess the performance and effectiveness of worker safety and health programs. This information is generally maintained in large, specialized databases which necessitate management flexibility. The primary directive on environment, safety and health reporting that DOE includes in contracts is DOE Order 231.1A. This order requires contractors to record, maintain and post records related to occupational fatalities, injuries, and illnesses occurring among their employees (and subcontractors) arising out of work primarily performed at DOE-owned or -leased facilities. Other relevant reporting directives include occurrence reporting and processing of operations information; performance indicators and analysis of operations information; and accident investigations.

DOE recently has taken steps to eliminate unnecessary reporting requirements related to the subject matter of the proposed regulations. DOE remains committed to reducing the reporting burden where reporting requirements do not contribute to worker safety and health. Accordingly, DOE requests comments on how the reporting burden could be further minimized consistent with that objective. Comments should specify the reporting requirements that give rise to the burden and discuss the reasons for their elimination or suggest how they could be modified to minimize the burden without impairing worker safety and health.

#### *L. Compliance Order*

Proposed § 851.6 would make clear that the Secretary of Energy has the authority to issue a Compliance Order that identifies a situation that violates, potentially violates, or otherwise is inconsistent with a requirement of this part; mandates a remedy, work stoppage, or other action; and states the reasons for the remedy, work stoppage,

or other action. The compliance order would be a final order that is effective immediately. This mechanism is nearly identical to the provisions in 10 CFR 820.41 and is intended to operate in a similar manner.

#### *M. Interpretations by Office of General Counsel*

Proposed § 851.7 would make clear the Office of the General Counsel would have sole responsibility for formulating and issuing any interpretation concerning a requirement in the proposed regulations. Any other written or oral response to any written or oral question would not constitute an interpretation or basis for action inconsistent with the proposed regulations.

### **III. Procedural Review Requirements**

#### *A. Review Under Executive Order 12866*

Today's proposed regulatory action has been determined to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), as amended by Executive Order 13258 (67 FR 9385, February 26, 2002). Accordingly, DOE submitted this notice of proposed rulemaking to the Office of Information and Regulatory Affairs of the Office of Management and Budget, which has completed its review.

#### *B. 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 4779, February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: eliminate drafting errors and needless ambiguity, write regulations to minimize litigation, provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Section 3(b) requires Federal agencies to make every reasonable effort to ensure that a regulation, among other things: clearly specifies the preemptive effect, if any, adequately defines key terms, and addresses other important issues affecting the clarity and general draftsmanship under 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 has completed the required review and determined that, to the

extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

#### *C. Review Under Executive Order 13132*

Executive Order 13132 (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.

Today's regulatory action has been determined not to be a "policy that has federalism implications," that is, it does not have substantial direct effects on the states, on the relationship between the national government and the states, nor on the distribution of power and responsibility among the various levels of government under Executive Order 13132 (64 FR 43255, August 10, 1999). Accordingly, no "federalism summary impact statement" was prepared or subjected to review under the Executive Order by the Director of the Office of Management and Budget.

#### *D. 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 has determined that the proposed rule would not have such effects and concluded that Executive Order 13175 does not apply to this proposed rule.

#### *E. 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 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)).

Today's proposed regulation would establish DOE's requirements for worker safety and health at DOE sites. The contractors who manage and operate DOE facilities would be principally responsible for implementing the rule requirements. DOE considered whether these contractors are "small businesses," as that term is defined in