

(1) Regulated by the Occupational Safety and Health Administration (OSHA) on December 2, 2002; or

(2) Operated under the authority of the Director, Naval Nuclear Propulsion, pursuant to Executive Order 12344, as set forth in Public Law 98–525, 42 U.S.C. 7158 note.

(b) This part does not apply to radiological hazards to the extent regulated by 10 CFR parts 820, 830, or 835.

#### **§ 851.3 Definitions.**

The following definitions apply to this part:

*AEA* means the Atomic Energy Act of 1954, 42 U.S.C. 2011 *et seq.*

*Consent order* means any written document, signed by the Director and a contractor, containing stipulations or conclusions of fact or law and a remedy acceptable to both DOE and the contractor.

*Contractor* means any entity, including affiliated entities such as a parent corporation, under contract with DOE (or any subcontractor or supplier thereto).

*Covered workplace* means a place where work is conducted by or on behalf of DOE where DOE has oversight responsibility for safety and health.

*DOE* means the United States Department of Energy, including the National Nuclear Security Administration.

*DOE site* means a DOE-owned or leased area or location where activities and operations are performed at one or more facilities or locations by or on behalf of DOE.

*Director* means the DOE Official(s) to whom the Secretary has assigned the authority to investigate the nature and extent of compliance with the requirements of this part.

*Final notice of violation* means a document that determines a contractor has violated or is continuing to violate a requirement of this part and includes:

(1) A statement specifying the requirement of this part to which the violation relates;

(2) A concise statement of the basis for the determination;

(3) Any remedy, including the amount of any civil penalty; and

(4) A statement explaining the reasoning behind any remedy.

*Final order* means an order of DOE that represents final agency action and, where appropriate, imposes a remedy with which the recipient of the order must comply.

*General Counsel* means the General Counsel of DOE.

*Guidance document* means a document that sets forth information

related to implementing or otherwise complying with a requirement of this part and that DOE has not adopted as a legally binding requirement through notice and comment rulemaking under the Administrative Procedure Act (5 U.S.C. 553).

*Interpretation* means a statement by the General Counsel concerning the meaning or effect of a requirement of this part which relates to a specific factual situation but may also be a ruling of general applicability where the General Counsel determines such action to be appropriate.

*National security workplace* means a covered workplace where national security missions are performed.

*NNSA* means the National Nuclear Security Administration.

*Preliminary notice of violation* means a document that sets forth the preliminary conclusions that a contractor has violated or is continuing to violate a requirement of this part and includes:

(1) A statement specifying the requirement of this part to which the violation relates;

(2) A concise statement of the basis for alleging the violation;

(3) Any remedy, including the amount of any proposed civil penalty; and

(4) A statement explaining the reasoning behind any proposed remedy.

*Program Secretarial Officer (PSO)* means the Assistant Secretary, Deputy Administrator, Program Office Director, or equivalent DOE official who has primary line management responsibility for a contractor.

*Remedy* means any action necessary or appropriate to rectify, prevent, or penalize a violation of a requirement of this part, including a compliance order, the assessment of civil penalties, the reduction of fees or other payments under a contract, the requirement of specific actions, or the modification, suspension or rescission of a contract.

*Secretary* means the Secretary of Energy.

*Transitional workplace* means a covered workplace 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 on behalf of an entity other than DOE.

*Worker* means an employee who performs work at a covered workplace.

*Worker protection evaluation report* means the report prepared by DOE to document the basis for approval by DOE of a worker safety and health program, including any conditions for approval.

*Worker safety and health program* means a program that provides

reasonable assurance of a safe and healthful workplace.

*Workplace hazard* means a physical, chemical, or biological hazard with any potential to cause illness, injury, or death to a person.

*Workplace safety and health standard* means a standard or program which addresses a workplace hazard by requiring conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide a safe and healthful workplace.

#### **§ 851.4 Enforcement.**

(a) The requirements in this part are subject to enforcement by all appropriate means.

(b) A contractor that violates (or whose employee violates) § 851.100 of this part is subject to a reduction in fees or other payments under a contract with DOE, pursuant to the contract's *Conditional Payment of Fee* clause.

(c) A contractor who has entered into an agreement of indemnification under section 170d. of the AEA (or any subcontractor or supplier thereto) and who violates (or whose employee violates) any requirement of this part is subject to a civil penalty of not more than \$70,000 for each such violation. If any violation under this subsection is a continuing violation, each day of the violation shall constitute a separate violation for the purpose of computing the civil penalty.

(d) DOE may not penalize a contractor under both paragraphs (b) and (c) of this section for the same violation of a requirement of this part.

(e) In the case of an entity described in subsection d. of section 234A of the AEA, the total amount of contract penalties under paragraph (b) and civil penalties under paragraph (c) of this section in a fiscal year may not exceed the total amount of fees paid by DOE to that entity in that fiscal year.

(f) DOE may not penalize a contractor under both sections 234A and 234C of the AEA for the same violation.

#### **§ 851.5 Information and records.**

(a) A contractor must maintain complete and accurate records as necessary to substantiate compliance with the requirements of this part.

(b) A contractor may neither conceal nor destroy any information concerning noncompliance or potential noncompliance with the requirements of this part.

(c) Any information pertaining to a requirement in this part provided to DOE by any contractor or maintained by any contractor for inspection by DOE shall be complete and accurate in all material respects.