

safety and health program; provided that an enforcement letter may not create the basis for any legally enforceable requirement pursuant to this part.

(k) The Director may sign, issue and serve subpoenas.

§ 851.202 Settlement.

(a) DOE encourages settlement of a proceeding under this subpart at any time if the settlement is consistent with this part. The Director and a contractor may confer at any time concerning settlement. A settlement conference is not open to the public and DOE does not make a transcript of the conference.

(b) Notwithstanding any other provision of this part, the Director may resolve any issues in an outstanding proceeding under this subpart with a consent order.

(1) The Director and the contractor, or a duly authorized representative, must sign the consent order and indicate agreement to the terms contained therein.

(2) A contractor does not need to admit in a consent order that a requirement of this part has been violated.

(3) DOE does not need to make a finding in a consent order that a contractor has violated a requirement of this part.

(4) A consent order must set forth the relevant facts which form the basis for the order and what remedy, if any, is imposed.

(5) A consent order shall constitute a final order.

§ 851.203 Preliminary notice of violation.

(a) Based on a determination by the Director that there is a reasonable basis to believe a contractor has violated or is continuing to violate a requirement of this part, the Director may issue a preliminary notice of violation to the contractor.

(b) The Director must send a preliminary notice of violation by certified mail, return receipt requested.

(c) A preliminary notice of violation must indicate:

(1) The date, facts, and nature of each act or omission upon which each alleged violation is based;

(2) The particular provision of the regulation involved in each alleged violation;

(3) The proposed remedy for each alleged violation, including the amount of any civil penalty; and

(4) The right of the contractor to submit a written reply to the Director within 30 calendar days of receipt of the preliminary notice of violation.

(d) A reply to a preliminary notice of violation must contain a statement of all

relevant facts pertaining to an alleged violation.

(1) The reply must:

(i) State any facts, explanations and arguments which support a denial of the alleged violation;

(ii) Demonstrate any extenuating circumstances or other reason why a proposed remedy should not be imposed or should be mitigated;

(iii) Discuss the relevant authorities which support the position asserted, including rulings, regulations, interpretations, and previous decisions issued by DOE; and

(iv) Furnish full and complete answers to any questions set forth in the preliminary notice.

(2) Copies of all relevant documents must be submitted with the reply.

(e) If a contractor fails to submit a written reply within 30 calendar days of receipt of a preliminary notice of violation:

(1) The contractor relinquishes any right to appeal any matter in the preliminary notice; and

(2) The preliminary notice, including any proposed remedies therein, constitutes a final order.

§ 851.204 Final notice of violation.

(a) If a contractor submits a written reply within 30 calendar days of receipt of a preliminary notice of violation, the Director must review the submitted reply and make a final determination whether the contractor violated or is continuing to violate a requirement of this part.

(b) Based on a determination by the Director that a contractor has violated or is continuing to violate a requirement of this part, the Director may issue to the contractor a final notice of violation that states concisely the determined violation and any remedy, including the amount of any civil penalty imposed on the contractor. The final notice of violation must state that the contractor may petition the Office of Hearings and Appeals for review of the final notice in accordance with 10 CFR part 1003, subpart G.

(c) The Director must send a final notice of violation by certified mail, return receipt requested.

(d) If a contractor fails to submit a petition for review to the Office of Hearings and Appeals within 30 calendar days of receipt of a final notice of violation pursuant to § 851.205:

(1) The contractor relinquishes any right to appeal any matter in the final notice; and

(2) The final notice, including any remedies therein, constitutes a final order.

§ 851.205 Administrative appeal.

(a) Any contractor that receives a final notice of violation may petition the Office of Hearings and Appeals for review of the final notice in accordance with part 1003, subpart G of this title, within 30 calendar days from receipt of the final notice.

(b) In order to exhaust administrative remedies with respect to a final notice of violation, the contractor must petition the Office of Hearings and Appeals for review in accordance with paragraph (a) of this section.

§ 851.206 Direction to NNSA contractors.

(a) Notwithstanding any other provision of this part, the NNSA Administrator, rather than the Director, signs, issues and serves the following actions that direct NNSA contractors:

- (1) Subpoenas;
- (2) Orders to compel attendance;
- (3) Disclosures of information or documents obtained during an investigation or inspection;
- (4) Preliminary notices of violations; and
- (5) Final notices of violations.

(b) The NNSA Administrator shall act after consideration of the Director's recommendation.

Appendix A to Part 851—Generally Acceptable Worker Safety and Health Standards and Programs

I. Safety and Health Standards

A. Title 29 of the Code of Federal Regulations (CFR), Part 1910, "Occupational Safety and Health Standards."

B. Title 29 CFR Part 1915, "Shipyard Employment."

C. Title 29 CFR Part 1917, "Marine Terminals."

D. Title 29 CFR Part 1918, "Safety and Health Regulations for Longshoring."

E. Title 29 CFR Part 1926, "Safety and Health Regulations for Construction."

F. Title 29 CFR Part 1928, "Occupational Safety and Health Standards for Agriculture."

G. American Conference of Governmental Industrial Hygienists (ACGIH), "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices" (most recent edition), when ACGIH Threshold Limit Values (TLVs) are lower (more protective) than Occupational Safety and Health Administration (OSHA) Permissible Exposure Limits. When ACGIH TLVs are used as exposure limits, DOE operations must nonetheless comply with the other provisions of any applicable OSHA-expanded health standard.

H. Exposure limits and technical requirements of the American National Standards Institute (ANSI) Z136.1, *Safe Use of Lasers*.

I. ANSI Z88.2, *Practices for Respiratory Protection*.

J. ANSI Z49.1, *Safety in Welding, Cutting and Allied Processes*, Sections 4.3 and E4.3 (of the 1994 edition or equivalent sections of subsequent editions).