

DOE'S NEW WORKER SAFETY AND HEALTH Rule

10 CFR PART 851

Rule Overview and EFCOG Project Team Update

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ORIGIN AND PURPOSE OF THE NEW RULE

- National Defense Authorization Act of 2003 Added Section 234C to the Atomic Energy Act
- Congress Required DOE to Promulgate New Worker Safety and Health Regulations That Would:
 - Maintain “The Level of Protection Currently Provided to ... Workers”
 - Provide Flexibility to Tailor Implementation to Site-Specific Hazards
 - Recognize Special Circumstances for “Closure” Facilities
 - Authorize Price-Anderson Amendments Act (PAAA) Civil Penalties or Fee Reductions for Violations

STATUTORY LIMITATIONS ON MONETARY PENALTIES

- Section 234C Also Imposes Certain Limitations on DOE's Authority to Seek Monetary Remedies:
 - DOE May Not Assess Civil Penalties and Fee Reductions for the Same Violation
 - Nonprofits May Be Subject to Civil Penalties or Fee Reductions But Not in Excess of Total Fees Paid by DOE
 - DOE May Not Assess Civil Penalties under Both AEA Section 234A (Nuclear/Radiological Safety) and 234C for the Same Violation (But Both Apply)

DOE'S RESPONSE TO CONGRESS' DIRECTION

- Final Rule Published – February 9, 2006
- Effective Date – February 9, 2007
- The Final Rule:
 - Requires Preparation and Submittal of Worker Safety and Health Programs for DOE Approval by February 26, 2007
 - Imposes New Safety and Health Requirements
 - Establishes WHS Enforcement/Penalty Regime

MAJOR ELEMENTS OF THE NEW RULE

- Subpart A – General Provisions
- Subpart B – Program Requirements
- Subpart C – Specific Program Requirements
- Subpart D – Variances
- Subpart E – Enforcement Process
- Appendix A – Functional Areas
- Appendix B – Enforcement Policy

SUBPART A – GENERAL PROVISIONS

- Governs Contractor and Subc. Activities at DOE Sites
- Exclusions from the Rule:
 - Work Regulated by OSHA
 - Naval Nuclear Propulsion Program Activities
 - Radiological Hazards or Nuclear Explosives Operations “to the Extent Regulated” by 10 CFR Part 20, 820, 830 or 835
- Sec. May Issue Immediately Eff. Compliance Orders
- Indemnified Contractors Subject to Civil Penalties Up to \$70,000 Per Violation *or* Reduction in Fees Under the CPOF Clause, But Not Both

SUBPART B – PROGRAM REQUIREMENTS

- A Contractor Must:
 - Provide Place of Employment Free from Recognized Hazards That Are Causing or Have the “Potential” to Cause Death or Serious Physical Harm (the General Duty Clause)
 - Ensure Work Is Performed in Accordance with All Applicable Requirements *and* with the Worker Safety and Health Program for That Workplace

SUBPART B – PROGRAM REQUIREMENTS

- A Contractor Must:
 - By February 26, 2007 Submit Written Worker Safety and Health Program to the Head of the DOE Field Element for Approval
 - Submit *One* Program for All Covered Workplaces at a DOE Site If the Contractor Is Responsible for More Than One Such Workplace
 - Develop and Maintain Its Own Program, in Coordination with Other Contractors, to Ensure Clear Roles, Responsibilities and Procedures at Multi-Contractor Workplaces

SUBPART B – PROGRAM REQUIREMENTS

- The Worker Safety and Health Program Must:
 - Describe Methods for Implementing the Substantive Requirements of Part 851, Subpart C
 - Integrate the Subpart C Requirements with the Integrated Safety Management System
- Programs Are “Deemed Approved” 90 Days After Submission If Not Previously Explicitly Approved or Rejected
- As of May 25, 2007, Full Compliance Must Be Achieved and “No Work May Be Performed at a Covered Workplace Unless an Approved ... Program Is In Place”

SUBPART C – SPECIFIC PROGRAM REQUIREMENTS

- Management Responsibilities and Worker Rights and Responsibilities
- Hazard Identification and Assessment
- Hazard Prevention and Abatement
- Safety and Health Standards/Functional Areas
- Training and Information
- Recordkeeping and Reporting
- Reference Sources

SUBPART D – VARIANCES FROM STANDARDS

- Variance Process Patterned after OSHA's 29 CFR 1905 Process and OSHA Requests/Responses Will Be Relevant to DOE's Determinations
- DOE Intends to Apply OSHA's Policies on *De Minimis* Violations
- Variances Granted *Only* by the Under Secretary
- Requires a Written Application Containing Certain Prescribed Information

SUBPART E – ENFORCEMENT PROCESS AND APPENDIX B – ENFORCEMENT POLICY

- EH-6 Conducts Investigations and Inspections
- Any Worker or Representative (*i.e.*, Union) May Request an Investigation or Inspection
- In the Course of an Investigation, Contractors May Submit Statements of Fact and/or Memoranda of Law
- Provisions for Enforcement Conferences, Enforcement Letters, Settlement, Preliminary and Final Notices of Violation, Civil Penalties, Fee Reductions, and Administrative Appeals

EFCOG & DOE 851 Project

- EFCOG & DOE formed Project Teams in May 2006 to assist in 10CFR851 Implementation
- EFCOG Team includes:
 - Executive Sponsors
 - Pam Horning, Bob Pedde, Mike Schlender
 - Project Leadership
 - Proj.Mgr./Sec. - Joe Yanek, Fluor & Will Brocker, ANL
 - Technical Team Lead – Dave Jackson, FH
 - Legal Team Lead – Steve Cooke, PNNL
 - Enforcement Team – Bill Luce, WSRC

EFCOG & DOE 851 Project continued

- DOE Team includes EH, All PSOs and OGC
 - Executive Sponsor: Russell Shearer, Acting EH 1
 - Project Managers: Steve Cary (EH), Don Erbschloe (Science), Frank Russo (NNSA) and Steve Sohinki (EH)
 - Technical, Legal and Enforcement Leads Identified
- Teams working together but under a “Firewall” Concept
- Three Joint Project Team Meetings Held
 - May, July, August 2006
- 100+ Issues Identified, Majority Staffed by EFCOG Teams and Formally Transmitted to DOE for Action
 - Most being Accepted as Submitted by EFCOG Team
 - Resolutions being Posted on DOE 851 Website
 - 20 Areas of Rule Populated with Q&As

Current Activity Update

- 2 Cycles Review/Comment DOE 851 IG Completed
 - Feedback Incorporated into Guide
- DOE Integrated Enforcement Program Guidance Developed
 - Unclear if it will be Changed to Incorporate Security with New Org.
 - EFCOG Matrix for Tailoring of Actions Accepted by DOE
- Voluntary Noncompliance Reporting in DOE's Enforcement WHS Noncompliance Tracking System in Progress
 - EFCOG Chair Letter to Members Issued to Encourage Reporting
 - Reporting by Contractors Still Very Low (40 Across Complex)
- DOE Mock Inspection Lessons Learned to be Issued
- NNSA Developed "Standard Review Plan" Approach for Contractor Program Plan Reviews
 - Endorsed by new HSS Organization // available on WEb
- DOE Regional Workshops planned for 4QCY06
 - Timing/Scope Unclear at this time
- Joint EFCOG/DOE 851 Project Meetings to be Continued
 - Next Meeting early to Mid-December

Highlights of Remaining Issues

- Confusion - Variances, Equivalencies, Exemptions to Orders
- Code of Record for Facilities under Construction/In Design
 - Legacy Facility Issue Resolved
- Use of FAR Definition for Commercial Services/Goods
 - Yes, No or Process for Tailored Approach ?
- Small Business Contractors to DOE
 - How Covered?, Liability to Primes?, Occ. Med. Coverage/Support?
- Management of Visiting Workers (<, >, 30 Days)
 - Interns versus Visiting Researchers
- Services provided by State or City/County Employees
- Control of Off-site Work Spaces
- Occ. Med. Programs and How to be Flowed Down to Subcs.
- Plus Numerous Open Legal Issues submitted by EFCOG 851 Project Team