



Office of Environment, Safety and Health

WORKER SAFETY AND HEALTH PROGRAM FINAL RULE (10 CFR 851)

SUMMARY

The Department of Energy (DOE)'s Final Worker Safety and Health Rule will be published in the Federal Register in February, 2006 to implement the statutory mandate of section 3173 of the Bob Stump National Defense Authorization Act (NDAA) for Fiscal Year 2003 to establish worker safety and health regulations to govern contractor activities at DOE sites. This program codifies and enhances the worker protection program in operation when the NDAA was enacted. This rule will be effective in February, 2007, one year after the date of publication.

WHY THE NEED FOR A RULE?

1. Congress mandated creation of the rule.
 - Section 3173 of the National Defense Authorization Act (NDAA) amended the Atomic Energy Act to add section 234C.
 - Section 234C directs the Secretary of Energy to promulgate regulations for industrial and construction safety and health at DOE facilities.
2. The rule provides a consistent level of protection for non-nuclear contractor workers.
 - Codifies current worker safety and health requirements for DOE contractor workers and DOE facilities.
3. The rule ensures a uniform level of enforcement of safety and health violations through the assessment of civil or contract penalties.
 - No comparable enforcement mechanism exists to cover non-nuclear safety concerns.

MAJOR PROVISIONS OF THE RULE

The Final Worker Safety and Health Program Rule, 10 CFR 851:

1. Requires contractors to develop a written safety and health plan by 380 days after the date of publication that describes implementation of the required standards. The written program must be approved by the Head of DOE Field Element within 90 days after receipt of the program. No work may be performed after 470 days after the date of publication without an approved program.
2. Requires contractors to comply with worker safety and health standards from OSHA, and other applicable national consensus standards from American Conference of Governmental Industrial Hygienists, National Fire Protection Association, American National Standards Institute, and the American Society for Mechanical Engineers.





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3. Establishes a formal variance process that requires approval by the Under Secretary after considering the recommendations of the Assistant Secretary for Environment, Safety and Health.
4. Requires contractors to develop and implement programs for each applicable functional area at their facility—construction safety, fire protection, explosives safety, pressure safety, firearms safety, industrial hygiene, biological safety, occupational medicine, motor vehicle safety, and electrical safety.
5. Establishes a formal enforcement process that provides a uniform level of protection for safety and health violations similar to Price-Anderson enforcement for nuclear violations. Contractors that violate the rule may be assessed either a contract or civil penalty of not more than \$70,000 for each violation.
6. Requires contractors to comply with Executive Order 13335 (Incentives for the Use of Health Information Technology) to improve health information technology and adopt electronic medical records.

Under 10 CFR 851, DOE will:

1. Expand Price-Anderson Enforcement Authority that presently resides in the Office of Environment, Safety and Health (EH);
2. Establish/implement a formal variance process under which approval will be granted by the Undersecretary after considering the recommendations of EH-1; and
3. Satisfy the requirements of the legislation to provide a level of protection that is equivalent to the level of protection currently provided to contractor workers at DOE facilities.

Brief Summary of the Enforcement Process:

The Worker Safety and Health (WSH) enforcement process is the same as the Nuclear Safety enforcement process except for a few differences that accommodate the transient nature of WSH hazards and the fact that WSH hazards are generally more performance-oriented than documentation- and procedures-based, as are the nuclear safety rules. Contractors will self-identify potential noncompliances into the Noncompliance Tracking System. OE will determine which potential noncompliances warrant investigations. In addition, OE may conduct inspections at a contractor site.

The Director may convene an informal conference to discuss any situation that might be a violation, its significance and cause, any corrective action taken, any mitigating circumstances and any other information.

If facts disclosed by an investigation or inspection indicate that further action is unnecessary or unwarranted, the Director may close the investigation without prejudice.

The Director may also issue enforcement letters that communicate DOE's expectations with respect to any aspect of the requirements of the Rule, including identification and reporting of issues, corrective actions, and implementation of the contractor's safety and health program; provided that an





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enforcement letter may not create the basis for any legally enforceable requirement pursuant to the Rule.

Based on a determination by the Director that there is a reasonable basis to believe a contractor has violated or is continuing to violate the Rule, the Director may issue a preliminary notice of violation (PNOV) to the contractor. The contractor has the obligation to reply to the PNOV, giving relevant facts or circumstances and reasons why a proposed remedy should not be imposed or should be mitigated. If the contractor admits to the violation as stated in the PNOV or fails to respond to the PNOV within 30 days, the PNOV becomes a final order. If the contractor submits a reply that presents a disagreement with any aspect of the PNOV and civil penalty within 30 days, the Director reviews the reply and makes a final determination. The Director may issue a final notice of violation (FNOV) that states concisely the determined violation and any remedy, including the amount of any civil penalty imposed on the contractor. Within 30 days the contractor has the right to appeal the decision to the Office of Hearing and Appeals. If the contractor does not appeal, the FNOV becomes a final order.

For NNSA contractors, the Director recommends a course of enforcement action to the NNSA Administrator as described above, but the Administrator would sign NOVs.

Questions concerning this issue should be directed to Jacqueline D. Rogers of the Office of Health (EH-5) by telephone at (202) 586-4714 or by e-mail at Jackie.rogers@eh.doe.gov

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