

## **Applicability of 10 CFR 851 to Offsite Contractors**

Several questions regarding which contractors are covered by 10 CFR 851 (Rule) have continued to cause concern, for example is a contractor who leases a facility located off the DOE site and performs work for DOE at this facility covered under the Rule. If the facility is leased or owned by DOE the Rule clearly applies. However, if the facility is not owned or leased by the DOR it may not be clear if the contractor is covered by the Rule or not.

In making a determination of Rule applicability DOE and the Contractor should consider two elements; 1) is the contractor performing work in furtherance of the DOE mission, and 2) is there some sort of DOE control over the space. In general any work performed by a DOE contractor is in furtherance of the mission, however, the second element may be more difficult to determine. For example, a contractor may be leasing a facility from a private source, however, the lease contract is reviewed and approved by DOE and all of the work performed at the facility is for DOE. In this case there is a level of control by the DOE and the facility would fall under 10 CFR 851.

If DOE and the Contractor have looked at these two elements and are still having difficulty in determining the Rule applicability the specific situations may need to be reviewed by the Office of General Counsel (OGC). To assist in making the determination, OGC should be provided with all the details of the specific situation regarding the Contractors facilities (lease details, location, etc.) and type of work performed for DOE. To assure proper protection of DOE contractor employees DOE and the Contractor should assume that the contractor is covered by the rule until such time as the Office of General Counsel has made a ruling on the applicability of 851 to the contractor with the unique situation.