

## 10 CFR Part 851 Coverage of a Contractor That Provides On-Site Maintenance of a Supplied Item

This issue has at least in part already been covered by two of the 851 Position Papers found on the 10 CFR 851 web site at <http://www.hss.energy.gov/HealthSafety/WSHP/rule851/851final.html>. In the answer to the Question "What does 'under contract with DOE mean'?" DOE stated *inter alia* that, "The term 'DOE contractor' must be read in the context of the additional regulatory definition language: 'that has responsibilities for *performing work* at a DOE site . . . . This language dictates that a 'DOE contractor' for purposes of the regulation, must have a *contract to perform services*, as opposed to merely providing supplies, in order to come within the scope of Part 851. . . . Vendors, delivery persons and others who do not have service contracts with DOE, or are subcontractors to such contractors, are excluded from the requirements of Part 851." Further, in the answer to "Are utility providers, such as power or communications providers that may have power or communications lines installed on-site to serve the facility, required to comply with Part 851" DOE stated, "As in the case of the soft drink vendor or delivery person, the fact that utility employees must sometimes come on site to service such things as power or communications lines does not convert the contract into a service contract." Thus, DOE has already stated that those who only provide supplies and equipment under contract are not covered by Part 851, even if, as part of that contract, they provide on-site maintenance of the things supplied. It follows that this exclusion also covers a range of on-site activities that are similarly ancillary to providing supplies, such as maintenance, repair, and calibration of scientific apparatus, office equipment, and industrial equipment. However, the exclusion would not cover those who operate such equipment or use such supplies in the course of providing services on site such as cleanup operations. One additional related question that has arisen is whether the exclusion from Part 851 applies to a contractor who provides on-site maintenance, repair or calibration of supplies, but is not the same entity as the original supplier. Although it might appear that such a contractor is only providing services, it makes no sense to treat the same on-site activities, which are in either case ancillary to a contract to provide supplies, differently just because they involve one entity in the one case and separate entities in the other. Thus, such contractors would also be excluded.