Public Comments to Proposed Notice of Proposed Rulemaking (NPRM); Request for Comment
Federal Register / Vol.91, No. 13 January 21, 2026 / Proposed Rules

"Worker Safety and Health Requirements to Support Reform of Nuclear Reactor Testing"

February 20, 2026

1. **Introduction:** I am commenting as a former Department of Energy (DOE) employee and support contractor with extensive involvement in the policy development of DOE orders and rule related to worker safety and health (WSH), as well as provided technical field support and oversight of contractor implementation of WSH orders/rule. I also managed negotiations with the Department of Labor, Occupational Safety and Health Administration (OSHA) memorandums of agreement on regulatory jurisdiction of DOE contractor work on DOE sites.

2. **Background:** Sections of the NPRM where comments are offered include:

    a. Section I. Background/Authority
    b. Section II. Discussion of Proposal
    c. Proposed changes to 10 CFR:
        1) Change § 851.3 Definition for *DOE site*
        2) Change § 851.24, Functional areas.
        3) Change § 851.30, Consideration of Variances
        4) Add §851.46, Direction to contractors operating under Office of Nuclear Energy responsibility. This section proposes changes to:
            i. § 851.11 (a), (b), and (c)
            ii. §851.23(a)(9), (10), and (12)
            iii. § 851.24;
            iv. § 851.27(b), (c)(1), and (c)(2)
            v. Subpart D – Variances
            vi. Appendix A to Part 851 – Worker Safety and Health Functional Areas

3. **Analysis and Comments:**

    a. **<u>Section I and II</u>** provides the Office of Nuclear Energy's analysis of proposed changes they believe are necessary to ensure they can effectively support Executive Order (E.O.) 14301, *Reforming Nuclear Reactor Testing at the Department of Energy*. The discussion addresses that pressure from the administration to produce advanced nuclear test reactors within 2 years and to reduce regulatory barriers to that goal. This can adversely affect the safety culture of the organization by creating a classic situation where "schedule pressure" is emphasized (perceived and real in this case) from senior leadership over ensuring safety for the workers. The decision to have the Office of Nuclear Energy (NE) prepare the 10 CFR 851 NPRM and address comments instead of the Office of Environment, Health, Safety and Security (EHSS) as the DOE Office of Primary Interest (responsibility) would also be an indicator of how to push for "speed" versus "safety". NE does not have the needed knowledge

and credentials that EHSS has in understanding the WSH regulatory structure and history and how changes effect worker safety DOE-wide. The change to lower the approval level for a variance to 10 CFR 851 potentially reduces safety because there is no independent analysis of the proposed mechanisms to provide equivalent safety by EHSS. Additionally, the approval level for a variance would be lowered down to the level "feeling" the most pressure to meet administration schedules. The current level of approval and procedure was modeled after the OSHA variance process that applies to all private industry subject to OSHA jurisdiction, and making the proposed changes would put workers subject to NE waivers at a disadvantage (no input by workers or their representatives and less rigor in ensuring the same level of safety as provided for by the standard/requirement in 10 CFR 851.

Section I of the NPRM factually states that the 10 CFR 851 rule was promulgated as directed by section 3173 of the Bob Stump National Defense Authorization Act (NDAA) for Fiscal Year 2003 (codified as 42 U.S.C. 2282c) to "provide a level of protection for workers at such facilities that is substantially equivalent to the level of protection currently provided to such workers at such facilities." The current level of protection at that time was described in DOE Order 440.1. The requirements for safety standards and programs were transferred to 10 CFR 851 to meet the NDAA/U.S. Code requirement for equivalent protection. The proposed changes significantly decrease the WSH protection provided by the deletion of programs and standard requirements (§851.23(a)(9), (10), and (12); § 851.24; § 851.27(b), (c)(1), and (c)(2), and Appendix A to Part 851 – Worker Safety and Health Functional Areas). The analysis of the changes was dutiful to the E.O. to reduce regulations but did not analyze how the changes actually effect safety and health based on safety science. Instead, the analysis relies on antidotal talking points about redundancy and relying on commercial activities to apply appropriate level-of-safety requirements instead of tried-and-true consensus standards and specifications that provide universally-accepted safety, i.e., the use of ACGIH Threshold Limit Values (TLVs®) to protect against chemical exposures adverse to worker health. Following these ACGIH TLVs are particularly important because many OSHA permissible exposure levels (PELs) are out of date and do not get updated to match current knowledge of toxicity and effects of exposures. Chemicals used in or used to manufacture components of advanced nuclear test reactors may not be covered by OSHA PELs.

Recommendation No. 1: Withdraw the NOPR and/or do not publish as a final rule since he does not provide the level of safety the law requires for DOE contractor workers.

b. **§ 851.3 definition for DOE site** adds "or with operations authorized by DOE" to the definition of "DOE site," presumably in order for NE to apply 10 CFR 851to contractors/ompanies/organizations receiving DOE authorization/funds for development of advanced nuclear test reactors on what is currently considered as "non-DOE sites".

There are two main problems that may occur if this definition is changed, as follows:

1) First, the change may not provide the regulatory jurisdiction NE desires to have 10 CFR 851 apply to advanced nuclear test reactor work on private "land", in that 10 CFR §8511.2 Exclusions (a), states that "This part does not apply to work at a DOE-site: (a) Regulated by the Occupational Safety and Health Administration,". DOE has specifically identified through memorandum of understanding mechanisms with OSHA on what occupational safety and health (worker safety and health) regulatory jurisdiction applies to current DOE sites. DOE sites are DOE-self regulated through the AEA and non-AEA DOE sites are regulated by OSHA (for example power administration work/sites). The advanced nuclear test reactor work conducted on private land would most like be regulated by OSHA and therefor excluded from regulation under 10 CFR 851. So, all of the other changes in the NPRM would be mute, except for advanced nuclear test reactor work on a current DOE site such as Idaho National Laboratory where DOE and OSHA have agreed DOE has WSH regulatory jurisdiction.

2) Secondly, most DOE contractors have contract work or subcontracted work in furtherance of a DOE mission performed off-site on private land. For example, much of the components for the Hanford Waste Treatment and Immobilization Plant (Vit Plant) was/is built off-site on private land (and not leased/controlled by DOE) (e.g., melter). Under the current 10 CFR 851definition of "DOE site", this Bechtel (or subcontracted) work is not under DOE WSH jurisdiction/10 CFR 851. If this definition change were to be included in a final rule, there would be potential for conflicts or misunderstandings if DOE has regulatory authority for these private land activities in furtherance of a DOE mission or if OSHA has jurisdiction bringing in the first problem noted above.

Recommendation No. 2: That the proposed change not be made in any final rule and NE should work with Office of the Assistant General Counsel for Environment (GC-51) and EHSS Office of Worker Safety and Health (EH-21) to clearly identify regulatory language that will have 10 CFR 851 cover the NE work on advanced nuclear test reactors on private land and ensure OSHA agrees that DOE has sole regulatory jurisdiction through existing MOU mechanisms with results published in the Federal Register. Also recommend that any different language not inadvertently have all DOE contracted or subcontracted work in furtherance of a DOE mission on private land under 10 CFR 851 where potential conflicts with OSHA regulatory jurisdiction exists.

c. **10 CFR § 851.24 Function Area** proposes to add language to exclude NE contractors from the need to comply with Appendix A Functional areas. The rationale provided is general in nature and argues that contractors or organizations developing WSH Programs will develop better sets of safety requirements. Experience in enforcement, oversight and policy development has demonstrated contractors rarely add additional or different requirements other than those required

by DOE. The NE analysis in the NPRM fails to adequately address the deletion of several important sets of requirements critical to DOE safety operations, including inapplicable:

- National Fire Protection Association Codes and Standards
- DOE Explosives Safety Manual
- ASME Boiler and Pressure Vessel Codes

In addition, two functional area programs that are directly related to successful protection of DOE contractor personnel's health are deleted, including:

- Industrial Hygiene, and;
- Occupational Medicine.

DOE has made significant improvement in the protection of the health of workers by implementing these two health-related programs as well as the ACGIH TLVs. Prior to DOE Order 440.1 and the promulgation of 10 CFR 851, DOE contract workers were not sufficiently protected causing many illnesses. The implementation of these health-related programs and chemical exposure-limiting requirements (ACGIH TLVs) have directly prevented occupational illness and significantly lowered workers' compensation cost.

Recommendation No. 3: Do not amend § 851.24 to except NE organizations from following Appendix A Functional Areas because they significantly lower worker safety and health protections required by law and are needed to provide adequate level of health protections. (See Recommendation No. 1.)

d. **Subpart D – Variances and § 851.30, Consideration of variances** proposed amendments have conflicting language leading to circular arguments. Specific changes to § 851.30 refers back to proposed new § 851.46. The language in § 851.46(a)(5) conflicts and is confusing for how to implement:
    1) If all of Subpart D – Variances "do not apply" to NE DOE sites, then what procedure is used to evaluate variance requests and what criteria is applied to evaluate and grant a variance to any part of Part 851?
    2) § 851.46(c)(2) independently indicates variances to Part 851 can be submitted to and approved by Head of Field Element or the relevant DOE safety basis authority. Without the Subpart D – Variance submittal and review process, as well as the requirement to provide an equivalent level of safety, plan for eventual compliance. Without this process, workers and bargaining units/labor unions would not be notified of the variance request and the have the right to provide input/comment as to the potential impacts to worker safety prior to approving the variance. In addition, variances could be granted for other than technological implementation issues, such as cost.
    3) The variance approval level is "low" in the leadership organization and far below the normal Under Secretary level with an independent professional safety review by EHSS provided to the approving authority. This may allow the lower approving authority to be biased toward approving variances without proper review, input, and alternate equivalent safety provided to workers.

4) After 20 years of implementing Part 851, per EHSS WSH website, there are only 9 approved variances to the regulation. Part 851 implementation experience and the lack of variances to the Part 851 requirements (programs and standards) indicates the regulation is eminently implementable and the variance process is not onerous nor a barrier to identifying alternate methods of compliance when needed.

Recommendation No. 4: Do not include amended language in 851.30(a), 851.46(b)(5) and (c)(2), regarding the elimination of a proven DOE-wide Variance process and approval level in Subpar D- Variances. If the Assistant Secretary for NE believes it necessary, they can always request the variance approval authority (without changing the Part 851 rule) be delegated from the Under Secretary to the Assistant Secretary for NE, keeping the Subpart D process in place (including a safety evaluation by a professional safety organization separate from the implementing DOE line organization).

e. **§ 851.46 Direction to contractors operating under Office of Nuclear Energy responsibility** essentially allows NE to require a lower level of WSH to workers involved in experimental nuclear reactor technologies. The adverse impacts of these proposed amendments are included in sections 3a through 3d above. Addition issues and concerns regarding these amended sections are:

1) The language in 2) § 851.46(a) is too broad and exceeds the E.O. direction to address new advanced nuclear test reactor work/contractors/authorized organizations. The language would inappropriately apply propose deletion of requirements and a lower WSH level of protection to all DOE Management and Operating and Construction contractors at the Idaho National Laboratory, where the full set of Part 851 requirements are currently being implemented. The language "under DOE's Office of Nuclear Energy responsibility" in § 851.46(a) would allow the Idaho Clean-up Contractor and other Office of Environmental Management (EM) contracts at the Idaho National Laboratory to follow these reduced set of requirements. This usurps EM's authority to regulate WSH for their contracts.

Recommendation No. 5: The added section § 851.46 should not be included in a final rule. If it is included in the final rule, recommend § 851.46(a) read as "This section applies only to Office of Nuclear Energy contractors on a DOE site."

2) § 851.46(b) and (b)(1) proposed language appears to want to only delete the requirement for DOE/NE approval of a DOE contractor's initial and updates to their Worker Safety and Health Program (WSHP), however, the imprecise language may be deleting extremely important provisions applicable to a contractor's WSHP, including § 851.11 (a) through (3)(ii), particularly requiring implementing procedures for compliance with Subpart C – Specific Program Requirements. The contractor WSHP is a keystone to ensuring workers are receiving safety protections required by DOE. Since contractor

WSHPs need to be prepared prior to conducting any work, it is not onerous for a DOE Field Element manager's to approve it. The DOE review and approval is essential to ensuring DOE expectations are met and that helps DOE enforce Part 851 both contractually and through the DOE Office of Enforcement mechanisms.

Recommendation No. 6: Delete proposed language in § 851.46(b)(1). If NE believes their review the contractor's WSHP though "normal oversight", then it would be appropriate to prioritize the oversight effort at the beginning of the contract to ensure DOE NE's expectations are set initially and not "inspected in" after work is in progress.

3) § 851.46(c)(3) requires DOE Office of Enforcement to coordinate with NE or the safety basis approval authority prior to any enforcement action. While this coordination action is important and should be accomplished, it is not necessary to include this additional inter DOE organization coordination in Part 851, because it already exists at 851 Appendix B to Part 851 – General Statement of Enforcement Policy, where Office of Enforcement must coordinate with contracting officers when deciding how to enforce violation (contract fee reduction or by civil penalty). In addition, internal requirements and requirements for WSH enforcement already provides for this prior coordination action as outlined in the DOE "SAFETY AND SECURITY ENFORCEMENT PROCESS OVERVIEW" and "SAFETY AND SECURITY ENFORCEMENT COORDINATOR HANDBOOK". This coordination is also already required by DEAR Clause 923.7002(b) Worker safety and health.

Recommendation No. 7: Delete proposed NPRM language § 851.46(c)(3) because it is redundant to existing Part 851, DEAR clause and internal DOE enforcement protocols.

4. **Recommendation Summary:**

Recommendation No. 1: Withdraw the NOPR and/or do not publish as a final rule since he does not provide the level of safety the law requires for DOE contractor workers.

Recommendation No. 2: That the proposed change not be made in any final rule and NE should work with Office of the Assistant General Counsel for Environment (GC-51) and EHSS Office of Worker Safety and Health (EH-21) to clearly identify regulatory language that will have 10 CFR 851 cover the NE work on advanced nuclear test reactors on private land and ensure OSHA agrees that DOE has sole regulatory jurisdiction through existing MOU mechanisms with results published in the Federal Register. Also recommend any different language not inadvertently have all DOE contracted or subcontracted work in furtherance of a DOE mission on private land under 10 CFR 851 where potential conflicts with OSHA regulatory jurisdiction exists.

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Recommendation No. 7: Delete proposed NPRM language § 851.46(c)(3) because it is redundant to existing Part 851, DEAR clause and internal DOE enforcement protocols.

5. **Conclusion:** Proposed Notice of Proposed Rulemaking (NPRM); Request for Comment Federal Register / Vol.91, No. 13 January 21, 2026 / Proposed Rules regarding proposed changes to 10 CFR 851 – Worker Safety and Health Program overall reduces the legally required level of worker safety and health protection for Office of Nuclear Energy contracted or "authorized" activities, removes time-proven and implementable safety and health standards, removes needed DOE approval levels, and adds duplicative/redundant requirements. The proposed rule also inadvertently extends the applicability of Part 851 to operations on private land that is regulated by OSHA, conflicting with the existing exclusion of OSHA regulated sites to Part 851 regulation.