

Department of Energy

§ 851.7

(b) A Compliance Order is a final order that is effective immediately unless the Order specifies a different effective date.

(c) Within 15 calendar days of the issuance of a Compliance Order, the recipient of the Order may request the Secretary to rescind or modify the Order. A request does not stay the effectiveness of a Compliance Order unless the Secretary issues an order to that effect.

(d) A copy of the Compliance Order must be prominently posted, once issued, at or near the location where the violation, potential violation, or inconsistency occurred until it is corrected.

§ 851.5 Enforcement.

(a) A contractor that is indemnified under section 170d. of the AEA (or any subcontractor or supplier thereto) and that violates (or whose employee violates) any requirement of this part shall be subject to a civil penalty of up to \$70,000 for each such violation. If any violation under this subsection is a continuing violation, each day of the violation shall constitute a separate violation for the purpose of computing the civil penalty.

(b) A contractor that violates any requirement of this part may be subject to a reduction in fees or other payments under a contract with DOE, pursuant to the contract's *Conditional Payment of Fee* clause, or other contract clause providing for such reductions.

(c) DOE may not penalize a contractor under both paragraphs (a) and (b) of this section for the same violation of a requirement of this part.

(d) For contractors listed in subsection d. of section 234A of the AEA, 42 U.S.C. 2282a(d), the total amount of civil penalties under paragraph (a) and contract penalties under paragraph (b) of this section may not exceed the total amount of fees paid by DOE to the contractor in that fiscal year.

(e) DOE shall not penalize a contractor under both sections 234A and 234C of the AEA for the same violation.

(f) DOE enforcement actions through civil penalties under paragraph (a) of this section, start on February 9, 2007.

EFFECTIVE DATE NOTE: At 74 FR 66033, Dec. 14, 2009, § 851.5 was amended by revising the

first sentence of paragraph (a), effective January 13, 2010. For the convenience of the user, the revised text is set forth as follows:

§ 851.5 Enforcement.

(a) A contractor that is indemnified under section 170d. of the AEA (or any subcontractor or supplier thereto) and that violates (or whose employee violates) any requirement of this part shall be subject to a civil penalty of up to \$75,000 for each such violation. * * *

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§ 851.6 Petitions for generally applicable rulemaking.

(a) *Right to file.* Any person may file a petition for generally applicable rulemaking to amend or interpret provisions of this part.

(b) *How to file.* Any person who wants to file a petition for generally applicable rulemaking pursuant to this section must file by mail or messenger in an envelope addressed to the Office of General Counsel, GC-1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

(c) *Content of rulemaking petitions.* A petition under this section must:

(1) Be labeled "Petition for Rulemaking Under 10 CFR 851;"

(2) Describe with particularity the provision of this part to be amended and the text of regulatory language to be added; and

(3) Explain why, if relevant, DOE should not choose to make policy by precedent through adjudication of petitions for assessment of civil penalty.

(d) *Determinations upon rulemaking petitions.* After considering the petition and other information DOE deems relevant, DOE may grant the petition and issue an appropriate rulemaking notice, or deny the petition because the rule being sought:

(1) Would be inconsistent with statutory law;

(2) Would establish a generally applicable policy in a subject matter area that should be left to case-by-case determinations; or

(3) For other good cause.

§ 851.7 Requests for a binding interpretive ruling.

(a) *Right to file.* Any person subject to this part shall have the right to file a