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Main +1 703-849-8888 Fax +1 703-207-7266

3120 Fairview Park Drive, Suite 360
Falls Church, VA 22042 USA

March 23, 2026

U.S. Department of Energy
Office of Nuclear Energy

Re: Docket No. DOE-HQ-2025-0243; RIN 1901-AB74;
Worker Safety and Health Requirements to Support Reform of Nuclear Reactor Testing

Dear Mr. Moorman:

On behalf of the American Industrial Hygiene Association (AIHA), thank you for the opportunity to comment on the Department of Energy's notice of proposed rulemaking to amend 10 CFR part 851. AIHA is the association for scientists and professionals committed to preserving and ensuring occupational and environmental health and safety in the workplace and community. Our members include Certified Industrial Hygienists (CIHs) and other occupational and environmental health and safety professionals with substantial expertise in radiation safety and health.

AIHA also believes it is important to recognize that the nuclear industry is not a poor-performing outlier in occupational safety and health; by conventional BLS measures, it is one of the nation's strongest-performing industrial sectors. In 2024, BLS reported a total recordable injury-and-illness rate of just 0.2 cases per 100 full-time workers for nuclear electric power generation compared with 1.7 for electric power generation overall, 1.9 for utilities, and 2.3 for the private industry as a whole. Fatal events are likewise comparatively rare in this space: BLS reported 30 fatal work injuries across the entire utilities sector in 2024, with a fatal-injury rate of 2.3 per 100,000 full-time equivalent workers, far below sectors such as agriculture, transportation and warehousing, and construction. Those data reinforce that the nuclear field already operates within a highly disciplined safety culture and that DOE should be especially cautious before weakening mandatory baseline protections in a sector that demonstrably performs at a high level on national worker-safety measures.

At the outset, **AIHA notes that this rulemaking concerns DOE's worker safety and health program requirements under part 851, not the Department's separate ionizing-radiation regulations.** Because part 851 expressly does not apply to radiological hazards to the extent regulated by 10 CFR parts 20, 820, 830, or 835, AIHA's comments focus on the worker safety and health program elements actually addressed in this proposal.

AIHA recognizes that 42 U.S.C. § 2282c directs DOE to include flexibility in these regulations so implementation may be tailored to particular work environments. At the same time, Congress required that DOE's regulations provide worker protection that is "substantially equivalent" to the protection previously provided and further specified that this flexibility does not diminish enforcement or the application of other worker health and safety obligations. In AIHA's view, any final rule should be evaluated against **all** of those statutory guardrails, not only the flexibility provision.

AIHA supports DOE's interest in reducing unnecessary delay and agrees that some clarification may be useful, including the proposal to clarify that part 851 applies to DOE-authorized operations performed in furtherance of a DOE mission even when those activities occur off DOE-owned or leased property. However, AIHA does not support the proposed Office of Nuclear Energy-specific carve-out in new § 851.46. DOE states that it considered broader changes across the Department but chose to limit this proposal to Office of Nuclear Energy contractors because Executive Order 14301 imposed an expedited timeline and affected only that office. **A materially different worker protection framework should not be created within DOE on the basis of an accelerated schedule alone.** Doing so risks adding another layer of inconsistency to an already complex regulatory landscape.

AIHA is particularly concerned by the proposal to exempt Office of Nuclear Energy contractors from § 851.24 and to make Appendix A applicable only as guidance rather than as a mandatory requirement. Current § 851.24 requires a structured approach to worker safety and health across applicable functional areas, including construction safety, fire protection, firearms safety, explosives safety, pressure safety, electrical safety, industrial hygiene, occupational medicine, biological safety, and motor vehicle safety. Appendix A currently provides the mandatory implementation requirements for that structured approach. DOE explains that Appendix A can create confusion because some sections may not apply to a given contractor's scope of work. AIHA agrees that requirements should be tailored to actual hazards, but the appropriate solution is targeted revision, clearer applicability language, or an expedited alternative-compliance process, not wholesale conversion of the mandatory baseline into nonbinding guidance for one subset of DOE contractors.

AIHA also opposes DOE's proposal to exclude consensus standards that have long served as part of the Part 851 framework. Current § 851.23 requires compliance with the ACGIH TLVs when they are more protective than OSHA limits, as well as specified ANSI respiratory protection and welding provisions. DOE's own 2023 policy clarification states that ACGIH TLVs apply both when they are lower than an OSHA PEL and when OSHA has no PEL and explains that DOE adopted these requirements in part to address gaps in OSHA's standards. The current NPRM would remove those ACGIH and ANSI requirements for Office of Nuclear Energy contractors on the theory that they are "overly conservative," relying in part on a cold-stress example at Idaho National Laboratory. In AIHA's view, a narrow example of local burden does not justify categorical removal of consensus standards that DOE has previously identified as necessary to provide adequate worker protection.

AIHA recognizes DOE's concern that incorporation by reference of specific editions can become outdated over time. But DOE has addressed that problem before, through targeted updating rather than elimination. In its 2017 technical amendment to part 851, DOE updated incorporated standards to later editions and explained that doing so would allow the Department to adopt current best practices and procedures in safety and health. That remains the better path here. If DOE believes the current edition-specific references are too rigid, it should update those references or create a mechanism allowing use of a newer edition upon a documented determination that the newer edition provides equivalent or better protection.

The proposal also does not adequately justify abandoning existing oversight tools. Current § 851.11 already includes a streamlined approval mechanism under which worker safety and health programs and updates are deemed approved if DOE does not act within 90 days. Part 851 also already contains a variance process, and DOE's own Worker Safety and Health Program page lists multiple approved variances covering Subparts B and C and Appendix A at sites including LBNL, SLAC, LLNL, Fermilab, and DICE. Those examples show that DOE can address site-specific conditions within the existing framework. AIHA is additionally concerned that proposed § 851.46 would remove § 851.11(b) for Office of Nuclear Energy contractors, which currently includes requirements that no work proceed without an approved program,

that the approved program be sent to EHSS, and that the approved program be furnished to affected workers or their designated representatives upon request. The proposal's shift to local approval of variances and its consultation requirement before enforcement action likewise raise concerns about transparency, consistency, and independence of oversight.

For these reasons, AIHA respectfully recommends that DOE withdraw or substantially revise proposed § 851.46. At minimum, DOE should retain a mandatory Appendix A baseline or replace it with equally enforceable hazard-based requirements for Office of Nuclear Energy contractors; retain the ACGIH and ANSI requirements or adopt a mechanism allowing use of newer consensus-standard editions upon a documented demonstration of equivalent or better protection; preserve written DOE review or, at minimum, require written programs and updates to be provided to EHSS and made available to workers and their representatives; continue to rely on the established Part 851 variance framework, with expedited timelines if necessary; and provide a fuller technical basis demonstrating that any final rule will maintain worker protection that is substantially equivalent to the protection currently provided, consistent with 42 U.S.C. § 2282c.

AIHA supports efficient deployment of advanced nuclear technologies, but efficiency should be achieved through clearer applicability provisions, updated standards, and faster review pathways, not by converting mandatory worker protections into guidance for a select class of DOE contractors. Thank you again for the opportunity to comment on this important proposal.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lawrence D. Sloan".

Lawrence D. Sloan, MBA, CAE, FASAE
Chief Executive Officer
American Industrial Hygiene Association