Application for Permanent Variance to Title 10 Code of Federal Regulations (C.F.R.) Part 851, *Worker Safety and Health Program*, for National Nuclear Security Administration (NNSA) Contractors

The contractors referenced below and NNSA seek a permanent variance from certain requirements in 10 C.F.R. Part 851 that would enable NNSA contractors to follow the requirements as stated in this application.

This variance is necessary to accelerate the President's deregulatory effort set forth in Executive Order (EO) 14270, *Zero-Based Regulation to Unleash American Energy,* and in accordance with a memorandum from the NNSA Principal Deputy Administrator stating, "*The Goal of the modernization initiative is to: Streamline and reduce government regulations: Tailor (or eliminate, where appropriate) operational and administrative requirements to improve efficiency/effectiveness based on a risk management framework that considers both the proportionality of the hazard/risk and available mitigations*."

Upon approval, this variance will remain in effect until future amendments to 10 C.F.R. Part 851 are effective and verified by NNSA's Office of Environment, Safety and Health (NA-ESH) to be consistent with the variance. To the extent that the variance applies to future NNSA contractors not currently named, NA-ESH will provide information concerning such contractors to the Department of Energy's (DOE) Office of Environment, Health, Safety and Security (EHSS) as early as practical after such information becomes available to NA-ESH.

Below is information required by 10 C.F.R. Part 851, Subpart D, *Variances*.

1. The name and address of the contractor (10 C.F.R. § 851.31(c)(1)).

Name	Address
Battelle	500 King Ave., Columbus, OH 43201
Consolidated Nuclear Security, LLC	PO Box 2009, Mail Stop 8245, Oak Ridge, TN 37831
Fluor	6700 Las Colinas Blvd, Irving, TX 75039
Honeywell Federal Manufacturing & Technologies, LLC	14510 Botts Rd., Kansas City, MO 64147
Honeywell International, Inc.	695 Vista Blvd., Sparks, NV 89434
Honeywell International, Inc.	101 Constitution Avenue, N.W., Suite 500W Washington, D.C. 20001
Huntington Ingalls Industries	4101 Washington Ave., Newport News, VA 23607
Jacobs Engineer Group, Inc.	1301 N. Green Valley Parkway, Henderson, NV 89074
Lawrence Livermore National Security, LLC	2300 First Street, Suite 204, Livermore, CA 94550
Mission Support and Test Services (MSTS)	2900 East Rd., Los Alamos, NM

National Technology & Engineering Solutions of Sandia	1515 Eubank Blvd. SE, PO Box 5800, Albuquerque, NM 87185
PanTeXas Deterrence, LLC (PXD)	777 Hidden Ridge, Irving, TX 75038
Savannah River Nuclear Solutions, LLC	203 Laurens St. SW, Aiken, SC 29801
Stoller Newport News Nuclear Inc.	183 Central Park Sq., Los Alamos, NM 87544
Texas A&M University System	301 Tarrow St., College Station, TX 77840
Triad National Security, LLC	*Comprised of: Battelle, Texas A&M University System, and University of California*
University of California	1111 Franklin St., Oakland, CA 94607
Other NNSA contractors not currently named	NNSA will provide this information to EHSS as early as practical after such information becomes available to NA-ESH.

2. **The address of the DOE site or sites involved (10 C.F.R. § 851.31(c)(2)).**

Name	**DOE Site or Sites Involved**
Battelle	Los Alamos National Laboratory, Sm-30 Bikini Atoll Rd, Los Alamos, NM 87545
Consolidated Nuclear Security, LLC	Y-12 National Security Complex, 301 Bear Creek Rd, Oak Ridge, TN 37830
Fluor	Los Alamos National Laboratory, Sm-30 Bikini Atoll Rd, Los Alamos, NM 87545
Honeywell Federal Manufacturing & Technologies, LLC	Kansas City National Security Campus, 14520 Botts Rd, Kansas City, MO 64147
Honeywell International, Inc.	Nevada National Security Site, 232 Energy Way, North Las Vegas, NV
Honeywell International, Inc.	Sandia National Laboratory, 1515 Eubank Blvd SE, Albuquerque, NM 87123
Huntington Ingalls Industries	Los Alamos National Laboratory, Sm-30 Bikini Atoll Rd, Los Alamos, NM 87545
Jacobs Engineer Group, Inc.	Nevada National Security Site, 232 Energy Way, North Las Vegas, NV
Lawrence Livermore National Security, LLC	Lawrence Livermore National Laboratory
Mission Support and Test Services (MSTS)	Nevada National Security Site, 232 Energy Way, North Las Vegas, NV
National Technology & Engineering Solutions of Sandia	Sandia National Laboratory, 1515 Eubank Blvd SE, Albuquerque, NM 87123
PanTeXas Deterrence, LLC (PXD)	Pantex Plant, US Highway 60, Panhandle, TX 79068
Savannah River Nuclear Solutions, LLC	Savannha River National Laboratory / Savannah River Site, Aiken, South Carolina
Stoller Newport News Nuclear Inc.	Nevada National Security Site

Texas A&M University System	Los Alamos National Laboratory, Sm-30 Bikini Atoll Rd, Los Alamos, NM 87545
Triad National Security, LLC	Los Alamos National Laboratory, Sm-30 Bikini Atoll Rd, Los Alamos, NM 87545
University of California	Los Alamos National Laboratory, Sm-30 Bikini Atoll Rd, Los Alamos, NM 87545
Other NNSA contractors not currently named.	NNSA will provide this information to EHSS as early as practical after such information becomes available to NA-ESH.

3. A specification of the standard, or portion thereof, from which the contractor seeks a variance (10 C.F.R. § 851.31(c)(3)).

The contractors referenced above and NNSA seek a permanent variance to the requirements in 10 C.F.R. §§ 851.11 *Development and approvals of worker safety and health program*; 851.23 *Safety and health standards*; 851.24 *Functional areas*; and 851.27 *Materials incorporated by reference*, that would enable NNSA contractors to follow the requirements as follows:

Direction to contractors operating under NNSA responsibility.

(a) This section applies only to DOE sites under DOE's NNSA responsibility, including nuclear facilities authorized by DOE's NNSA.

(b) Notwithstanding any other provision of this part, the following provisions do not apply to facilities covered by paragraph (a) of this section:

(1) Section 851.11(b) and any other requirements in §851.11(a) and (c) of this part requiring approval by DOE of the contractor's worker safety and health programs and updates;

(2) Section 851.23(a)(9), (10), (11), (12), (13), and (14);

(3) Section 851.24;

(4) Section 851.27(b), (c)(1), (c)(2), and (c)(3); and

(c) Notwithstanding any other provision of this part, the following provisions apply to facilities covered by paragraph (a) of this section:

(1) Appendix A to this part is applicable only as guidance, not as a requirement;

(2) Variances to any requirement of this part are to be submitted to, and require the approval of the Under Secretary of Nuclear Security, as applicable; and

(3) Any enforcement action taken under this part must be performed after consultation with the cognizant Head of DOE Field Element or DOE

employee with authority to approve the relevant safety basis, as applicable.

4. A description of the steps that the contractor has taken to inform the affected workers of the application, which must include giving a copy thereof to their authorized representative, posting a statement, giving a summary of the application and specifying where a copy may be examined at the place or places where notices to workers are normally posted (10 C.F.R. § 851.31(c)(4)).

NNSA contractors will be provided with documents associated with the granting of this variance, including this variance application, and such documents will be reflected in their contracts. NNSA contractors will still be held accountable to meet Occupational Safety and Health Administration (OSHA) standards incorporated in 10 C.F.R. Part 851.

5. A description of how affected workers have been informed of their right to petition the EHSS Director or designee for a conference (10 C.F.R. § 851.31(c)(5)).

Workers will be informed through their contractor management. NNSA seeks to apply OSHA requirements in a manner consistent with 10 C.F.R. Part 851 with relief from 10 C.F.R. Part 851 as specified in this request.

6. Any requests for a conference, as provided in §851.34 (10 C.F.R. § 851.31(c)(6)).

There are no requests for conference as provided in §851.34.

7. Additional information for a permanent variance (10 C.F.R. § 851.31(d)(2)).

a. A description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the contractor (10 C.F.R. § 851.31(d)(2)(i)).

NNSA seeks a variance to apply the provisions, listed above, to contractors operating under NNSA's responsibility, which would apply to activities related to the construction, maintenance, and operation at a NNSA facility by a contractor when that facility is authorized by DOE, regardless of the location of the facility. It also would apply to all activities undertaken by the Management and Operating contractor, which is under the responsibility of NNSA.

This proposed approach removes overly-prescriptive, individualized approval requirements in §851.11 concerning worker safety and health programs and updates in favor of more streamlined and efficient control by NNSA and updates through DOE's normal oversight authorities and processes. Approval of the contractor's plan does not affect the quality of the submittal and, therefore, doesn't impact "safe and healthful" expectations.

This variance would exclude the following standards: American Conference of Governmental Industrial Hygienists, *Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices* (2016); American National Standards Institute (ANSI/ASSE) Z88.2, "American National Standard Practices for Respiratory Protection" (2015); ANSI Z136.1, "Safe

Use of Lasers," (2014); ANSI Z49.1, "Safety in Welding, Cutting and Allied Processes," Sections 4.3 and E4.3 (2012); National Fire Protection Association (NFPA) 70, "National Electrical Code," (2017); NFPA 70E, "Standard for Electrical Safety in the Workplace," (2015); the requirement in §851.24 relating to worker safety and health program functional areas; and materials incorporated by reference in §851.27. DOE makes this proposal because those standards can be overly conservative, as compared to Occupational Safety and Health Administration (OSHA) requirements (*e.g.*, 29 CFR Parts 1910 and 1926), and impose unnecessary administrative and operational burdens to contractors.

The Threshold Limit Values (TLVs) referenced above lead contractors to take excessive precautions or require personal protective equipment (PPE) when doing so would not be required for industry, however, TLVs may be used as guidelines to assist in the control of health hazards consistent with the stated intent of their development. 10 CFR 851, Appendix A ("Appendix A") applies to NNSA contractors only as non-binding guidance and not as mandatory requirements. Operational experience has demonstrated that Appendix A creates confusion by, for example, requiring contractors to develop sections of a worker safety and health program that do not apply to their scope of their work. Additionally, some sections of Appendix A include standards or codes that have been revised or updated, which contractors are not able to utilize because specific revision numbers are referenced.

Finally, any enforcement action taken under Part 851 must be performed after consultation with the cognizant Head of DOE Field Element or DOE employee with authority to approve the relevant safety basis, as applicable.

b. A statement showing how the conditions, practices, means, methods, operations, or processes used or proposed to be used would provide workers a place of employment which is as safe and healthful as would result from compliance with the standard from which a variance is sought (10 C.F.R. § 851.31(d)(2)(ii)).

Granting this variance would provide significant advantages that can enhance operational efficiency and safety for NNSA contractors. These benefits include:

- *Increased Flexibility*: The revision of certain regulatory requirements would provide contractors with the ability to customize their safety and health programs to better align with their specific operational contexts. This flexibility allows contractors to implement tailored programs that can lead to the implementation of more effective and relevant measures that enhance overall safety.
- *Streamlined Processes*: By removing redundant compliance steps, the proposed changes are intended to reduce administrative burdens on contractors. This streamlining enables a greater focus on core operational activities, resulting in enhanced efficiency and productivity because contractors will only need to comply with the relevant compliance

requirements. These streamlined processes also enhance overall safety by shifting focus away from bureaucratic compliance and towards safety-significant activities.

- *Cost Savings*: The reduction in compliance-related activities would likely increase cost savings, allowing contractors to reallocate resources previously devoted to paperwork and approvals toward strengthening safety programs, training initiatives, and other critical areas.
- *Enhanced Agility*: The diminished bureaucratic hurdles, such as the allowance for the CSO for Safety to approve variances, would allow contractors to respond more swiftly to changes in project scope, emerging safety concerns, or advancements in technology. This agility could help maintain project timelines and minimize potential delays.
- *Encouragement of Best Practices*: The guidance model encourages contractors to explore and implement industry best practices that are most relevant to their operations. For example, removing requirements to meet specific editions of consensus standards, which may become quickly outdated, enables contractors to continually be aware of, and incorporate, industry best practices. This focus on continuous improvement is intended to lead to innovative safety protocols and enhanced worker protection.
- *Promotion of Collaboration:* The proposed flexible approach removes overly-prescriptive requirements that would foster collaboration between DOE and contractors, facilitating the sharing of knowledge and experiences and contributing to the enhancement of safety practices across the DOE network. In particular, this approach incentivizes NNSA contractors to seek new best practices from industry that increase efficiency while maintaining safety; once implemented, NNSA can share those practices with other contractors.
- *Focus on Risk Management*: The shift toward non-binding guidance rather than overly-prescriptive requirements for contractors operating under NNSA responsibility would enable contractors to prioritize risk management tailored to their unique operational hazards. Allowing for this risk-based approach could lead to more effective hazard identification, assessment, and control.
- *Improved Worker Engagement*: By removing overly-prescriptive requirements, the proposed changes will empower contractors to develop safety practices, based on industry and OSHA standards and informed by their own operational experience, rather than relying on DOE to dictate exactly which practices to use. Because many of those practices will be developed by the contractors' employees, the proposed changes would also foster a sense of ownership among those employees. Increased worker involvement in safety protocol development could enhance engagement and accountability, which NNSA believes is a necessary component for the successful operation of these facilities.

- *Alignment with Industry Standards*: The proposed changes would facilitate better alignment with evolving industry safety standards and best practices, allowing contractors to adapt more readily to advancements in safety technology and methodologies.

Overall, granting this variance would create a more efficient, innovative, and proactive safety environment for NNSA contractors. By minimizing bureaucratic constraints, granting this variance would allow NNSA contractors to better manage risks, protect worker safety, and enhance overall operational performance, thereby providing long-term benefits to NNSA and its national security mission.