



## DOE Worker Safety and Health Program Rule Briefing

What You Need to Know about 10 CFR 851



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WORKER EDUCATION & TRAINING PROGRAM



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## What is 10 CFR 851?

- 10 CFR 851 is DOE's Worker Safety and Health Program (WSHP) rule
- Mandated by section 3173 of the Bob Stump National Defense Authorization Act of 2002
- Overarching umbrella rule. Encompasses the existing contractual requirement for compliance with DOE Order 440.1A and assumes contractor integration of the Integrated Safety Management System (ISMS).



## Purpose of the New Rule

- Congress required DOE to issue new worker safety and health regulations that would:
  - Maintain “the level of protection currently provided to...workers”
  - Provide flexibility to tailor implementation to site-specific hazards
  - Recognize special circumstances for “closure” facilities
  - Authorize civil penalties or contract penalties (fee reductions), in the event of a violation, but not both for the same violation



## What does all this mean?

- 851 is an outcome based standard.
  - Lists what needs to be done
  - Does not list how the end results are achieved
- Clarifies existing standards
- Expands coverage by incorporating other Standards by reference



## Key Dates

- The rule is effective February 9, 2007
- Actual effective dates require that contractors:
  - Submit their Worker Safety and Health Program (WSHP) by February 26, 2007
  - Give labor organizations timely notice of development and implementation of the WSHP and upon timely request, bargain concerning implementation of the rule
  - Comply with all requirements by May 25, 2007
  - Identify closure facility hazards and implement controls with 90 days of identifying those hazards



## DOE's View of the Rule and Its Relationship to Existing Programs

- Contractors are already required to establish integrated safety management systems
- Contractors are already required to comply with DOE Order 440.1A “Worker Protection Management for DOE Federal and Contractor Employees,” including development of a written worker protection program and the final rule “codifies” Order 440.1A
- According to DOE, if contractors have met their contractual responsibilities properly, “little, if any additional work will be necessary”



## Main Sections of the Rule

- Subpart A – General Provisions
- Subpart B – Program Requirements
- Subpart C – Specific requirements
- Subpart D - Variances
- Subpart E – Enforcement Process
- Appendix A – Functional Areas
- Appendix B – Enforcement Policy





## Subpart A – General Provisions

- Rule covers contractor and subcontractor activities at DOE sites
- The rule applies to all DOE activities EXCEPT:
  - Radiation, which is addressed by separate rules
  - DOE sites/facilities that have already transitioned to federal/state OSHA oversight
  - Naval Nuclear Propulsion Program activities
  - DOE employees
  - Entities with cooperative agreements or grants from DOE



## Subpart A – General Provisions

- Compliance Orders
  - Secretary may issue immediately effective compliance orders
  - Compliance orders can mandate a remedy, work stoppage or other action
  - 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.



## Subpart A – General Provisions

- Contractors may file rulemaking petitions to amend or interpret provisions of the rule
- Contractors may seek DOE interpretive rulings which are binding on DOE *only* with respect to the person who requested the ruling
- Informal requests on how to comply may be made to HS-11
- Information requests on enforcement policy should be made to HS-41



## Subpart B – Program Requirements

- Contractors must:
  - Provide place of employment free from recognized hazards that cause or have potential to cause death or serious physical harm to workers
  - Ensure work is performed in accordance with all applicable requirements and with the worker safety and health program for that workplace



## Subpart B – Program Requirements

- Contractors must:
  - Submit, by February 26, 2007, written worker safety and health programs to the Head of the DOE Field Element for approval
  - Submit one program for all covered workplaces at a DOE site if the contractor is responsible for more than one such workplace
  - Develop and maintain its own program, in coordination with other contractors, to ensure clear roles, responsibilities and procedures at multi-contractor workplaces



## Subpart B - Program Requirements

- The Worker Safety and Health Program must:
  - Describe methods for implementing the requirements of Subpart C
  - Integrate Subpart C requirements with other site-specific worker protection activities and with ISMS
- Programs are “deemed approved 90 days after submission if they are not specifically approved or rejected by DOE earlier”
- As of May 25, 2007, “no work may be performed at a covered workplace unless an approved WSHP is in place.”



## Subpart B – Program Requirements

- Contractors with labor unions must:
  - Provide timely notice of the WSHP development and implementation
  - Upon request, bargain concerning implementation of the rule
  - Provide a copy of the approved WSHP to affected workers or their representatives, upon written request.



## Subpart B – Program Requirements

- Program updates are required when a significant change or addition is made to the WSHP or a change in contractors occurs
- Contractors must inform DOE annually whether or not changes have occurred in their programs
- Contractors must incorporate new DOE directives into their programs



## Subpart B – Program Requirements

- Contractors may use existing written programs, ISMS description, or an approved Work Smart Standards process to meet the program requirements if:
  - DOE approves such use on the basis of written documentation
  - The contractor provides specific written justification demonstrating the program requirements have been met



## Subpart C – Specific Program Requirements

- Management responsibilities and worker rights and responsibilities
- Hazard identification and assessment
- Hazard prevention and abatement
- Safety and health standards/functional areas
- Training and information
- Recordkeeping and reporting
- Reference sources



## Management Responsibilities

- Management must:
  - Establish written policies and goals for the WSHP
  - Use qualified staff (CIH or CSP) to direct and manage the WSHP
  - Assign program responsibilities, evaluate performance, and hold personnel accountable
  - Provide mechanisms to involve workers and their representatives in development of program goals, objectives and performance measures and in hazard identification and control



## Management Responsibilities

- Provide workers with access to information relevant to the WSHP
- Establish procedures for workers to report, without reprisal, job-related fatalities, injuries, illnesses, incidents and hazards and make recommendations about ways to control hazards
- Provide for prompt response to such reports and recommendations
- Provide for regular communication with workers about workplace safety and health matters



## Management Responsibilities

- Establish stop work procedures and procedures to allow workers to decline work
- Inform workers of their rights and responsibilities by appropriate means, including posting the 851 poster where it is accessible to all workers



**I may not know what I am  
doing, but I got the job!**

## **Scenario #1**



## Worker Rights and Responsibilities

- Workers must comply with the 851 WSHP with respect to the parts applicable to their own actions and conduct.
- Workers have the right, without reprisal, to
  - Participate in activities under the rule on official time
  - Access worker safety and health related information
  - Access limited information on any recordkeeping log
  - Access DOE form 5484.3 containing employee's name as injured or ill



## Worker Rights and Responsibilities

- Be notified when monitoring results indicate overexposure to hazardous materials
- Observe monitoring or measuring of hazardous agents and get results of their own monitoring
- Have an authorized representative present during inspections. If no authorized representative is available, inspector must consult with employees on matters of worker safety and health



## Worker Rights and Responsibilities

- Request and receive results of inspections and accident investigations
- Express concerns related to worker safety and health
- Decline to perform a task due to reasonable belief the task poses an imminent risk of death or serious physical harm
- Stop work when worker discovers imminently dangerous conditions or other serious hazards



## Hazard Identification and Assessment

- Contractors must establish hazard identification and risk assessment procedures
- The procedures must:
  - Assess worker exposure to chemical, physical, biological or safety hazards
  - Document assessment of these hazards
  - Record observations, testing and monitoring results
  - Analyze new facility designs and changes to existing facilities for potential hazards



## Hazard Identification and Assessment

- Evaluate operations, procedures and facilities to identify hazards
- Perform routine job-activity level hazard analysis
- Review site safety and health experience information
- Consider interaction between workplace hazards and other hazards such as radiological hazards
- Contractors must submit a list of closure facility hazards and established controls within 90 days of identifying them



## Hazard Prevention and Abatement

- Contractors must establish and implement a hazard prevention and abatement process to ensure that all identified and potential hazards are prevented or abated in a timely manner
- Abatement actions must be prioritized by risk



## Hazard Prevention and Abatement

- Hazard controls must be selected based on a hierarchy of:
  - Elimination/substitution
  - Engineering controls
  - Administrative controls
  - Personal protective equipment
- Contractors must address hazards when selecting or purchasing equipment, products, and services



## Safety and Health Standards

- Contractors must comply with, among others, the following existing standards as applicable to their facilities:
  - Part 850, DOE Beryllium
  - 29 CFR 1904, OSHA Injury and Illness Recordkeeping
  - 29 CFR 1910, OSHA General Industry Standards
    - Excluding 1910.1096, Ionizing Radiation
  - 29 CFR 1926, OSHA Construction Standards



## Safety and Health Standards

- Other standards incorporated by reference include, among others:
  - 2005 ACGIH Threshold Limit Values
    - Plus any OSHA standard on a listed chemical
  - 1992 ANSI Standard Z88.2 for Respiratory Protection
  - 2000 ANSI Standard Z136.1 for Safe Use of Ladders
  - 1999 ANSI Standard Z49.1 for Welding and Cutting
  - 2005 NFPA 70 National Electrical Code
  - 2004 NFPA 70E Standard for Electrical Safety



## Standards Adopted by Reference

- DOE CFR 850 Beryllium
- Parts of OSHA's Recordkeeping/ Reporting
- CFR 1910 (except 1910.1096), 1915, 1917, 1918, 1926, 1928
- ANSI Respiratory Protection
- ANSI Lasers
- ANSI Welding, Cutting and Allied Processes
- NFPA 70 and 70E Electrical Code
- ACGIH TLVs
- ASME boiler, pressure, vessel and piping codes
- DOE ES&H Reporting Manual
- DOE Explosives Safety Manual



## Functional Areas

- Contractors must address, through a structured approach:
  - Construction safety
  - Fire protection, Explosives
  - Firearms, Pressure
  - Electrical safety
  - Industrial hygiene, Occupational medicine
  - Biological safety
  - Motor vehicle safety



## Training and Information

- Contractors must establish a worker training and information program, which requires:
  - Training and information must be provided to new workers before, or at the time of initial job assignment involving exposure to a hazard
  - Periodic training, as often as needed to ensure workers are adequately trained and informed
  - Additional training when information or changed conditions indicate new or increased hazards
  - Training for workers with WSHP responsibilities



**I am the smartest worker  
on the job. If you don't  
believe it, just ask me.**

## **Scenario #2**



**Houston, we may have a  
problem.**

**Scenario #3**



**Houston, we definitely  
have a problem!!!**

**Scenario #4**



## Training Issues for NIEHS Grantees

- Existing 440.1A and ISMS based training program will need to be updated/revise to reflect the new 851 programs.
- Training for new functional areas may be required.
- No changes appear needed with respect to radiation training.



## Training Issues for NIEHS Grantees

- Specialized training programs such as HAZWOPER and HAZCOM will likely need only minor revisions to reflect the new 851 WSH programs.
- New training programs might be evident as a result of the GAP analysis required by the Standard Review Plan.



## Recordkeeping and Reporting

- Contractors must:
  - Have and maintain records of all hazard inventory information, hazard assessments, exposure measures, and exposure controls
  - Ensure that work-related injuries and illnesses are reported and recorded
  - Analyze data for trends and lessons learned



## Subpart D - Variances

- This section is patterned after OSHA's variance process and procedures.
- Variances can only be granted by the DOE Under Secretary after consideration of recommendations by the Chief Health, Safety and Security Officer (HS-1)
- Contractors may request a temporary, permanent or national defense variance
- Approval criteria include no undue risk to workers



## Subpart E – Enforcement Process

- HS-41 conducts investigations and inspections
- Any worker or representative may request an investigation or inspection (may remain anonymous)
- Contractor may submit statements of fact and/or memoranda of law in the course of an investigation
- Includes provisions for enforcement conferences, enforcement letters, settlement, preliminary and final notices of violation, civil penalties, fee reductions, and administrative appeals.



## Key Elements to Enforcement Approach

- Emphasis on contractor implementation and assurance of compliance with worker safety rules.
- Driving a continuous improvement focus, rather than acceptance of status quo.
- Desired contractor timely self-identification and correction of noncompliance conditions and underlying problems affecting compliance.
- Exercise of broad discretion when contractors exhibit the desired approach.



## Key Elements to Enforcement Approach

- Taking selective enforcement action for significant safety events or significant precursor conditions, including continued repeat events, close-calls, and general adverse performance.
- Periodic reviews of contractor screening and reporting processes, and selective review of compliance issues in program reviews or focused inspections.
- Stimulating contractor transition from a reactive, event-driven approach to identifying and correcting deficiencies towards a proactive assessment-driven approach.

