10 CFR 851 "Worker Safety and Health Program"
Frequently Asked Question's

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10 CFR 851.11 Development and approval of the worker safety and health program

Section (a) requires that contractors prepare and submit to DOE a written worker safety and Health program.

> **Question 1:** Will worker safety and health programs be required from subcontractors?
>
> **Response:** Yes.

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10 CFR 851.11 Development and approval of the worker safety and health program

Section (a) requires that contractors prepare and submit to DOE a written worker safety and Health program.

> **Question 2:** Integrated Safety Management (ISM) currently requires a written program, will the rule change the scope or content of these plans?
>
> **Response:** The rule does not change any requirements for ISM descriptions; however, it is possible to use the ISM description as a starting point for the written safety and health program.

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10 CFR 851.11 Development and approval of the worker safety and health program

Section (a) requires that contractors prepare and submit to DOE a written worker safety and Health program.

> **Question 3:** The rule requires worker involvement in the development of the program. What are the expectations for the level and extent of this involvement?
>
> **Response:** TBD

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10 CFR 851.11 Development and approval of the worker safety and health program

Section (a) requires that contractors prepare and submit to DOE a written worker safety and Health program.

> **Question 4:** Do all changes in the worker safety and health program require DOE approval before they can be implemented?
>
> **Response:** TBD

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10 CFR 851.11 Development and approval of the worker safety and health program

Section (a) requires that contractors prepare and submit to DOE a written worker safety and Health program.

> **Question 5:** What types of changes can be implemented without formal approval?
>
> **Response:** TBD

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10 CFR 851.11 Development and approval of the worker safety and health program

Section (a) requires that contractors prepare and submit to DOE a written worker safety and Health program.

> **Question 6:** Can changes be approved by DOE through written correspondence and implemented before the worker safety and health program is revised?
>
> **Response:** TBD

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10 CFR 851.11 Development and approval of the worker safety and health program

Section (a) requires that contractors prepare and submit to DOE a written worker safety and Health program.

> **Question 7:** Should proposed variances be included in the submitted worker safety and health program?
>
> **Response:** Variances in the appropriate format and containing the required information may be submitted at anytime.

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10 CFR 851.11 Development and approval of the worker safety and health program

Section (a) requires that contractors prepare and submit to DOE a written worker safety and Health program.

> **Question 8:** Does each subcontractor require a written program? Does the Field Element review and approve the written program? There are many subcontractors who come on site with just a few workers for short durations of time.
>
> **Response:** A contractor is defined as any entity, including affiliated entities such as a parent corporation, under contract with DOE, or a subcontractor at any tier, that has responsibilities for performing work at a DOE site in furtherance of a DOE mission. The scope of the rule includes the "conduct of contractor activities at DOE sites". As such all subcontractors are required to have a written program, however, it is possible for the subcontractor to use the same program as the parent contractor.

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10 CFR 851.11 Development and approval of the worker safety and health program

Section (a) requires that contractors prepare and submit to DOE a written worker safety and Health program.

> **Question 9:** What is the best approach to document your health and safety program? The regulation provides several alternatives, but what are the pros and cons of each approach? How much detail is desired? If we follow the 10CFR835 approach is that acceptable? By discussing each approach to the plan and the pros and cons, Contractors will better understand what DOE wants and what will work best. The result may still be different types of plans, but the understanding will be more uniform and consistent and the plans will be of higher quality. Most labs are starting to work on their plans soon and a delay in discussing these approaches could result in rework.
>
> **Response:** TBD

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10 CFR 851.11 Development and approval of the worker safety and health program

Section (a) requires that contractors prepare and submit to DOE a written worker safety and Health program.

> **Question 10:** What if labs extract only necessary portions of their Integrated Safety Management System (ISMS)? For example, environmental and radiological hazards are regulated elsewhere.
>
> **Response:** 10 CFR 851 does not cover environmental or radiological hazards. It is possible to extract portions of the sites ISMS or to provide a crosswalk of the ISMS showing how it covers the requirements in 10 CFR 851.

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10 CFR 851.11 Development and approval of the worker safety and health program

Section (a) requires that contractors prepare and submit to DOE a written worker safety and Health program.

> **Question 11:** What is the significance and importance of crosswalks between the 851 requirements and laboratory safety documents?
>
> **Response:** 10 CFR 851 requires a written Safety and Health Program that describes the methods for implementing the requirements of subpart C. A crosswalk of the laboratories safety documents may fulfill this requirement.

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10 CFR 851.11 Development and approval of the worker safety and health program

Section (b), discusses DOE evaluation and approval of submitted written worker safety and health programs.

> **Question 12:** Do the Field Elements have the latitude to provide partial approvals of the written program?
>
> **Response:** TBD

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10 CFR 851.11 Development and approval of the worker safety and health program

Section (b), discusses DOE evaluation and approval of submitted written worker safety and health programs.

> **Question 13:** For changes in the written program, can "re-approvals" be just for the changed sections, or does the entire written program require a review and approval?
>
> **Response:** The concern for the written program is any "significant change" and just as changes to the DOE directives system those changes must be approved. If no changes are made to the written program then a letter indicating no changes have been made may be submitted to DOE.

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10 CFR 851.11 Development and approval of the worker safety and health program

Section (b), discusses DOE evaluation and approval of submitted written worker safety and health programs.

Section (b)(3) requires that contractors furnish a copy of the approved worker safety and health program, upon written request, to the affected workers or their designated representatives.

> **Question 14:** Will posting the worker safety and health plan on the site's website fulfill the requirements of 851.11(b)(3) for providing a copy of the program to affected workers?
>
> **Response:** Posting of the worker safety and health program on the site's website would fulfill the requirements of 851.11(b)(3) as long as all employees have easy access to a computer which can access the information.

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10 CFR 851.12 Implementation

Section (b), states: "Nothing precludes the contractor from taking additional protective action...".

> **Question 1:** Could DOE expand on the meaning of this and how the Office of Enforcement foresees enforcement actions? It would be helpful to tie in the adequacy of the ten functional programs of paragraph 10 CFR 851.27 into this discussion segment.
>
> **Response:** TBD Steve Solhinki

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10 CFR 851.20 Management responsibilities and worker rights and responsibilities

Section 851.20(a)(2), requires use of "qualified workers".

Question 1: Please expand upon how this section will be viewed and enforced.

Response: TBD Dave Weitzman, Steve Solhinki

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10 CFR 851.20 Management responsibilities and worker rights and responsibilities

Section (a)(7), "Prompt Response to Reports" states contractors must have a prompt response to reports of job-related fatalities, injuries, illnesses, incidents, and hazards.

> **Question 2:** What is the definition of "prompt response"? Is it that the worker's item has been addressed, or is it that the worker receives feedback that the item has been initially received? A Safety Log Book entry on the back shift Friday may not be seen until the following Monday, then several days before it is acted on.
>
> **Response:** TBD

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10 CFR 851.21 Hazard identification and assessment

Section (a)(5), "Evaluate operations, procedures, and facilities" states that procedures must include methods to identify workplace hazards.

> **Question 1:** The "Wall to Wall" baseline evaluation, as discussed in the Implementation Guide, would generate very discrete list of hazards needing correction. Is this same level of detail expected as a facility goes through D&D? Some non-compliance hazards may be present for minutes, hours, days. Would DOE need to approve contractor mitigating strategies?
>
> **Response:** TBD

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10 CFR 851.22 Hazard prevention and abatement

Section (a) states: "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."

> **Question 1:** There are currently a number of weapon systems that are being approved for fielding by the Protective Forces in support of the Design Basis Threat that potentially pose significant hazards, yet there is no "standard" to evaluate what are appropriate controls or satisfactory abatement. Will military standards be acceptable?
>
> **Response:** TBD Pat Tran

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10 CFR 851.23 Safety and health standards

Section (a) states: "Contractors must comply with the following safety and health standards that are applicable to the hazards that are applicable to the hazards at their covered workplace".

> **Question 1:** Subparagraph (9) sites the "American Conference of Governmental Industrial Hygienists (ACGIH) 'Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices,' (2005)" which implies that noise exposures above 140 dB are prohibited. A number of the weapons or pyrotechnic devises employed by Protective Forces provide impact noise significantly above 140 dB (at least 175 dB). How can Protective Force personnel be provided with protection that would allow them to follow the standard?
>
> **Response:** The 2005 TLV for Noise indicates that the MIL-STD-1474C provides hearing protection guidance for situations where impulses above a C-weighted peak of 140 dB occur.

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10 CFR 851.26 Recordkeeping and Reporting

Section (a), specifies Contractor recordkeeping requirements.

> **Question 1:** Could DOE expand upon the recordkeeping expectations, including the complete hazard inventory, assessment, measurement and control?
>
> **Response:** TBD Janet Macon

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10 CFR 851.27 Reference sources

Section (b) lists standards incorporated by reference, including several American Society of Mechanical Engineers (ASME) standards, some of the referenced standards are dated as late as 2003.

> **Question 1:** For older buildings (which meet obsolete building codes), how will their infractions be viewed? Is it acceptable to comply with ASME codes from the original design specifications, or does DOE expect contractors to use updated ASME codes? What about buildings that are built to meet state life safety codes?
>
> **Response:** TBD Dave Weitzman

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10 CFR 851.27 Reference sources

Question 2: Many of the standards incorporated by reference in the Rule provide for a local "Authority Having Jurisdiction (AHJ)" type of officer who has the discretion to determine "equivalencies" to the standards. For some of these standards, such as the National Fire Protection Association (NFPA) standards, DOE directives provide for local determinations at the Site Office or Contractor level. The rule is silent on equivalencies and related determinations. How will DOE address local discretion on equivalencies, and what will be DOE's expectations for Field Offices?

Response: TBD Dennis Kubicki/Steve Solhinki

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10 CFR 851.31 Variance process

Section (d)(3) National defense variance, appears to have a typographical error in paragraph (i) where it states "...in addition to the content required in paragraph (b) of this section, include:"

> **Question 1:** Should the correct reference should be paragraph (c); Content.
>
> **Response:** Yes, that is a typographical error. The reference should be paragraph (c).

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10 CFR 851.40 Investigations and Inspections

Section (a) states that the Director may initiate and conduct investigations and inspections.

> **Question 1:** How will the Office of Enforcement conduct on-site audits? Will they perform strict compliance inspections, or programmatic reviews?
>
> **Response:** TBD Steve Solhinki

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10 CFR 851 Appendix A - Worker Safety and Health Functional Areas

Section 1 (d), states that construction contractors are required to prepare a written construction project safety and health plan.

> **Question 1:** How are these plans approved? Do construction contractors also prepare a written program? Are they separate from the laboratory written program?
>
> Response: TBD Pat Finn

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10 CFR 851 Appendix A - Worker Safety and Health Functional Areas

Section 5 (c), states: "Contractors must ensure that firearms instructors and armorers have been certified by the Safeguards and Security National Training Center to conduct the level of activity provided. Personnel must not be allowed to conduct activities for which they have not been certified."

> **Question 2:** Currently Protective Forces throughout the DOE complex are fielding weapon systems that the DOE National Training Center does not have the qualified personnel or the facilities to provide this training/certification. Currently contractors are using the weapon manufacturer for training/certification, and obtaining additional training via the military with the concurrence of their local DOE. Will this be acceptable?
>
> **Response:** TBD Pat Tran

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10 CFR 851 Appendix B General Statement of Enforcement Policy

VII. Enforcement Conferences

Question 1: What are the roles of the DOE Headquarters Primary Secretarial Office and the DOE Field Offices for (a) NOV hearings, (b) enforcement at the site, (c) other enforcement or rule responsibilities?

Response: TBD Steve Solhinki

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IX. Enforcement Actions

1. Notice of Violation: In part (d) the regulation discusses DOE's expectation for contractors to have proper management and supervisory systems in place to assure that all activities at covered workplaces are carried out in compliance with the Rule.

> **Question 2:** When a violation is of a subcontractor to the M&O, what are the enforcement expectations of the contractor and DOE? Is the prime contractor issued fines or expected to provide input to the NOV hearings, for example?
>
> **Response:** TBD Steve Solhinki

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10 CFR 851 Appendix B General Statement of Enforcement Policy

4. Identification and Reporting: The regulation and guide discuss reporting Severity Level I and II non-compliances. Interpreting how to categorize the non-compliances into Severity Level I or II or de minimis could vary greatly between labs.

> **Question 3:** What guidance can DOE provide to minimize categorization differences between facilities? One possible discussion topic might be to have each lab contribute 3-5 non-compliance scenarios, and then put this together into a 1-2 hour workshop. The workshop would be: How to categorize your non-compliances. By discussing the logic used we could obtain a degree of consistency in our approach. Example: employee is observed wearing a dust mask in a work environment that requires a full-face respirator, the potential exposure exceeds the PEL. This is a serious violation, but is it likely to result in death of serious injury? What is the severity level of this example?
>
> **Response:** TBD Steve Solhinki

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10 CFR 851 Appendix B General Statement of Enforcement Policy

Question 4: What are the thresholds and criteria for self reporting into the Noncompliance Tracking System (NTS)?

Response: TBD Steve Solhinki

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10 CFR 851 Appendix B General Statement of Enforcement Policy

Question 5: Could DOE describe in more detail, with examples, the three levels of violation severity, Level 1, Level 2 and de minimus?

Response: TBD Steve Solhinki

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10 CFR 851 Appendix B General Statement of Enforcement Policy

Question 6: In 2003 the Occupational Safety and Health Administration (OSHA) audited several DOE laboratories and identified over 15,000 instances that OSHA could interpret as serious violations. (Currently, DOE is on pace to address all these instances by May 2006.) If the rule had been in place during these OSHA audits, what would be DOE's expectations for reporting into the NTS and for corrective actions?

Response: TBD Steve Solhinki

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10 CFR 851 Appendix B General Statement of Enforcement Policy

Question 7: When the DOE identifies a violation, who submits the finding to the NTS, DOE or contractor?

Response: TBD Steve Solhinki

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10 CFR 851 Appendix B General Statement of Enforcement Policy

Question 8: What are the legal obligations for DOE employees, if they observe a noncompliance while touring a site?

Response: DOE employees have no stated legal obligations in 10 CFR 851.

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10 CFR 851 Appendix B General Statement of Enforcement Policy

Near Miss Occurrence Reporting: The draft guide criteria proposes using categories 1 through 4 for near misses. Occurrence Reporting Category 4 events do not require causal analyses, however, the Noncompliance Tracking System (NTS) system would. This essentially turns the Category 4 events into Category 3 events.

> **Question 8:** What is the rationale for including Category 4 events, and what are DOE's expectations for Category 4 events entered into NTS?
>
> **Response:** TBD Steve Solhinki

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10 CFR 851 Appendix B General Statement of Enforcement Policy

NTS Trial Period: During the trial period of using the NTS prior to February 9, 2007, we may find that reporting exceeds the level of expectations.

> **Question 9:** What will the expectations be for providing all the documentation that is possible for an NTS entry? Will the labs need to recreate an NTS entry for issues identified during open reporting? What circumstances could require maintaining an NTS entry from the trial period?
>
> **Response:** TBD Steve Solhinki

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NTS Trial Period: During the trial period of using the NTS prior to February 9, 2007, we may find that reporting exceeds the level of expectations.

> **Question 10:** Will there be a 'dry run' period to 'test' the NTS system? How will the 'test' entries be handled by the DOE Office of Enforcement?
>
> **Response:** TBD Steve Solhinki

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10 CFR 851 Appendix B General Statement of Enforcement Policy

NTS Trial Period: During the trial period of using the NTS prior to February 9, 2007, we may find that reporting exceeds the level of expectations.

> **Question 11:** Are occurrences prior to February 9, 2007 enforceable? If a hazard is created before February 9, 2007 but still exists after February 9, 2007, is that hazard/occurrence enforceable?
>
> **Response:** TBD Steve Solhinki

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10 CFR 851 Appendix B General Statement of Enforcement Policy

NTS Trial Period: During the trial period of using the NTS prior to February 9, 2007, we may find that reporting exceeds the level of expectations.

> **Question 12:** Will the draft enforcement guide be available before June 1, 2006, when the NTS trial period begins? Will it be available prior to the May 11-12, 2006, Implementation meeting at ANL
>
> **Response:** TBD Steve Solhinki

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10 CFR 851 Appendix B General Statement of Enforcement Policy

NTS Trial Period: During the trial period of using the NTS prior to February 9, 2007, we may find that reporting exceeds the level of expectations.

> **Question 13:** It appears that the Office of Enforcement will be interacting with the EFCOG Las Vegas meeting during the April 24-28, 2006 meeting. Will there be a compilation of information and outputs from this working meeting that can be shared with the DOE complex?
>
> **Response:** TBD Steve Solhinki

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10 CFR 851 Appendix B General Statement of Enforcement Policy

Near Miss Occurrence Reporting: The draft criteria proposes using categories 1 through 4 for near misses. Occurrence Reporting Category 4 events do not require causal analyses, however, the Noncompliance Tracking System (NTS) system would. This essentially turns the Category 4 events into Category 3 events.

> **Question 14:** What is the rationale for including Category 4 events, and what are DOE's expectations for Category 4 events entered into NTS?
>
> **Response:** TBD Steve Solhinki

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10 CFR 851 Appendix B General Statement of Enforcement Policy

5. Self-Identification and Tracking Systems: The regulation discusses use of internal tracking systems.

> **Question 15:** What are the expectations for contractors' internal tracking systems? What elements does DOE expect to see? What would DOE consider as deficiencies in an internal tracking system?
>
> **Response:** TBD Steve Solhinki

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10 CFR 851 Appendix B General Statement of Enforcement Policy

5. Self-Identification and Tracking Systems: The regulation discusses use of internal tracking systems.

> **Question 16:** What is the best approach (or alternatively several good approaches) for maintaining an internal log of non-compliances? Labs may take different approaches to this log. Should it document every non-compliance? What about non-compliances that are corrected on the spot? Are multiple tracking systems expected? Who reviews the log to ensure the proper regulatory citation and the proper risk categorization (Severity Level)? What guidance can DOE provide to lead to a more consistent approach?
>
> **Response:** TBD Steve Solhinki

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7. Corrective Action to Prevent Recurrence: The regulation discusses evaluation of DOE contractor corrective actions.

> **Question 17:** How are the corrective action and their completion viewed for different levels of hazards, and who sets the milestones?
>
> **Response:** TBD Steve Solhinki

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10 CFR 851 Appendix B General Statement of Enforcement Policy

8. DOE's Contribution to a Violation: The regulation discusses circumstances in which a violation results from a direction from DOE.

> **Question 18:** The penalty determination has dependency on the DOE's 'contribution to the violation.' Can you describe this in more detail?
>
> **Response:** TBD Steve Solhinki

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