851 Rule Implementation Improvement Efforts

USW Health, Safety and Environment Conference
HSS Workshop
March 7, 2012

Bill McArthur
Director, Office of Worker Safety and Health Policy
Office of Health, Safety and Security
U.S. Department of Energy

10 CFR 851~ Worker Safety and Health Program

Office of Health, Safety and Security

Federal Register

Thursday,
February 9, 2006

Part II

Department of Energy

10 CFR Parts 850 and 851
Chronic Beryllium Disease Prevention Program; Worker Safety and Health Program; Final Rule

mandates affecting small governments, so these requirements do not apply.

I. Review Under Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use), 66 FR 28355 (May 22, 2001) requires preparation and submission to OMB of a Statement of Energy Effects for significant regulatory actions under Executive Order 12866 that are likely to have a significant adverse effect on the supply, distribution, or use of energy. DOE has determined that the rule published today does not have a significant adverse effect on the supply, distribution, or use of energy and thus the requirement to prepare a Statement of Energy Effects does not apply.

J. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a "Family Policymaking Assessment" for any rule that may affect family well-being. This rule has no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

K. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most dissemination of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 850

Beryllium, Chronic beryllium disease, Hazardous substances, Lung diseases, Occupational safety and health, Reporting and recordkeeping requirements.

10 CFR Part 851

Civil penalty, Federal buildings and facilities, Incorporation by reference, Occupational safety and health, Safety, Reporting and recordkeeping requirements.

Issued in Washington, DC, on January 20, 2006.

John Spitaleri Shaw,
Assistant Secretary for Environment, Safety and Health.

■ For the reasons set forth in the preamble, the Department of Energy is amending chapter III of title 10 of the Code of Federal Regulations as follows:

PART 850—CHRONIC BERYLLIUM DISEASE PREVENTION PROGRAM

■ 1. The authority citation for part 850 is revised to read as follows:

Authority: 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 29 U.S.C. 668; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*, E.O. 12196, 3 CFR 1981 comp., at 145 as amended.

■ 2. Section 850.1 is revised to read as follows:

§ 850.1 Scope.

This part provides for establishment of a chronic beryllium disease prevention program (CBDPP) that supplements and is deemed an integral part of the worker safety and health program under part 851 of this chapter.

■ 3. Section 850.4 is revised to read as follows:

§ 850.4 Enforcement.

DOE may take appropriate steps pursuant to part 851 of this chapter to enforce compliance by contractors with this part and any DOE-approved CBDPP.

■ 4. A new part 851 is added to Chapter III to read as follows:

PART 851—WORKER SAFETY AND HEALTH PROGRAM

Subpart A—General Provisions

Sec.
851.1 Scope and purpose.
851.2 Exclusions.
851.3 Definitions.
851.4 Compliance order.
851.5 Enforcement.
851.6 Petitions for generally applicable rulemaking.
851.7 Request for a binding interpretive ruling.
851.8 Informal requests for information.

Subpart B—Program Requirements

851.10 General requirements.
851.11 Development and approval of worker safety and health program.
851.12 Implementation.
851.13 Compliance.

Subpart C—Specific Program Requirements

851.20 Management responsibilities and worker rights and responsibilities.
851.21 Hazard identification and assessment.
851.22 Hazard prevention and abatement.
851.23 Safety and health standards.
851.24 Functional areas.
851.25 Training and information.
851.26 Recordkeeping and reporting.
851.27 Reference sources.

Subpart D—Variances

851.30 Consideration of variances.
851.31 Variance process.
851.32 Action on variance requests.
851.33 Terms and conditions.
851.34 Requests for conferences.

Subpart E—Enforcement Process

851.40 Investigations and inspections.
851.41 Settlement.
851.42 Preliminary notice of violation.
851.43 Final notice of violation.
851.44 Administrative appeal.
851.45 Direction to NNSA contractors.

Appendix A to Part 851—Worker Safety and Health Functional Areas

Appendix B to Part 851—General Statement of Enforcement Policy

Authority: 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 42 U.S.C. 5801 *et seq.*; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

Subpart A—General Provisions

§ 851.1 Scope and purpose.

(a) The worker safety and health requirements in this part govern the conduct of contractor activities at DOE sites.

(b) This part establishes the:

(1) Requirements for a worker safety and health program that reduces or prevents occupational injuries, illnesses, and accidental losses by providing DOE contractors and their workers with safe and healthful workplaces at DOE sites; and

(2) Procedures for investigating whether a violation of a requirement of this part has occurred, for determining the nature and extent of any such violation, and for imposing an appropriate remedy.

§ 851.2 Exclusions.

(a) This part does not apply to work at a DOE site:

10 CFR 851 ~ Background

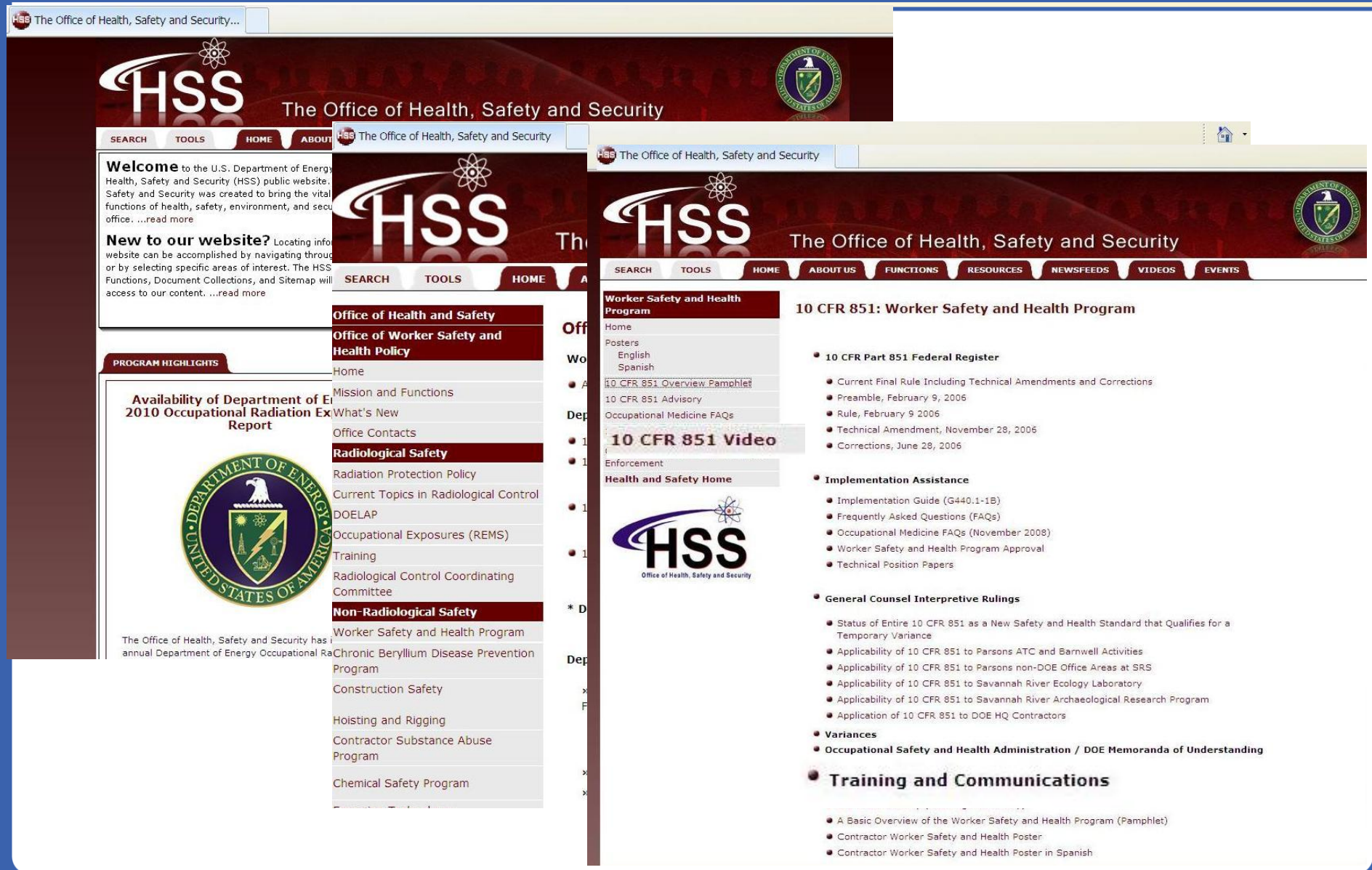
- Jan 23, 2002 ~ *Bob Stump National Defense Authorization Act for Fiscal Year 2003*
  - Amend Atomic Energy Act, new Section 234 C require Secretary to promulgate regulations for worker safety and health
  - Based on DOE O 440.1A, *Worker Protection Management for DOE Federal and Contractor Employees*
  - Applies Only to Contractors covered under the AEC
- 10 CFR 851, *Worker Safety and Health Program*
  - February 9, 2006 ~ published in federal register
  - February 7, 2007 ~ WSH programs submitted for approval
  - May 25, 2007 ~ No work without a WSH program in place

851 ~ Implementation Assistance

- DOE Guide 440.1-1B, *Worker Safety and Health Program for DOE (including the National Nuclear Security Administration) Federal and Contractor Employees*
  - Revised and updated 10/20/11

- Teleconferences on request
- Workshops
- Response Line – Technical clarifications
- Web based variance process and database

851 ~ Training Aids



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WORKER SAFETY AND HEALTH PROGRAM
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10 CFR 851: Worker Safety and Health Program

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  - Preamble, February 9, 2006
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  - Application of 10 CFR 851 to DOE HQ Contractors
- **Variances**
- **Occupational Safety and Health Administration / DOE Memoranda of Un**
- **Training and Communications**
  - 851 Rule Advisory (One Page Summary)
  - A Basic Overview of the Worker Safety and Health Program (Pamphlet)
  - Contractor Worker Safety and Health Poster
  - Contractor Worker Safety and Health Poster in Spanish

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EMPLOYEES:

Must have access to:
- DOE safety and health publications;
- The worker safety and health program for their location;
- This safety and health poster;
- Copies of their medical records and records of their exposures to toxic and harmful substances or conditions; and
- Results of inspections and accident investigations.

Must be able to:
- Express concerns related to worker safety and health;
- Decline to perform an assigned task because of a belief that the task poses an imminent risk of death or serious physical harm; and
- Stop work in imminently dangerous conditions.

EMPLOYERS must:
- Establish a written Worker Safety and Health Program;
- Use qualified worker safety and health staff;
- Provide mechanisms to involve workers and their elected representatives in developing the safety and health program;
- Establish procedures for workers to report without reprisal job-related hazards and for prompt response to such reports;
- Provide for regular communication with workers about workplace safety and health matters; and
- Display this poster in the workplace where it is accessible to all workers.

This poster is available at:
www.hss.doe.doe.gov/healthsafety/wshp/rule851/safeworkplace6–07-final.pdf

10 CFR 851, Worker Safety and Health Program is available at:
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For More Information Contact:

Name:
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301-903-####

Safety and Health Advisory

10 CFR 851 "Worker Safety and Health Program"

September 2006

PURPOSE OF THIS ADVISORY

This Advisory informs the Department of Energy (DOE) community that a new safety and health program has been established. This new Rule, 10 CFR 851, Worker Safety and Health Program will have a significant impact on operations at Department of Energy (DOE) facilities.

BACKGROUND

The 2002 Bob Stump National Defense Authorization Act amended the Atomic Energy Act by adding section 234C "Worker Health and Safety Rules for Department of Energy Nuclear Facilities." It required DOE to promulgate a worker safety and health rule. DOE published the Rule in the Federal Register on February 9, 2006. It establishes worker safety and health requirements that govern the conduct of contractor activities at non-nuclear, as well as nuclear, sites.

WHAT IS THE PURPOSE OF THE RULE?

The Rule requires that DOE contractor workers are provided with a workplace that is free from recognized hazards that can cause death or serious physical harm. To accomplish this objective, the Rule establishes management responsibilities, worker rights, safety and health standards, and required training. The Rule will replace the Contractor Requirements Document (CRD) of DOE O 440.1A "Worker Protection Management for DOE Federal and Contractor Employees."

WHO IS COVERED BY THE RULE?

WHAT IS REQUIRED OF THE CONTRACTOR?

The contractor must provide DOE with a WSHP that describes the methods they will use to implement the requirements of the Rule. Contractors must:
- Submit a WSHP to DOE by February 26, 2007,
- Give labor organizations timely notice of development of the WSHP,
- Comply with all requirements by May 25, 2007, and,
- Identify closure facility hazards and controls within 90 days of identifying those hazards.

Contractors have additional responsibilities such as:
- Establishing written safety and health policy and goals,
- Providing mechanisms to involve workers in the safety and health program,
- Establishing procedures for workers to report hazards and stop work, and
- Using qualified safety and health professionals.

WHAT IS REQUIRED OF WORKERS?

Workers must comply with the safety and health requirements of the Rule. They also have certain rights such as:
- Having access to safety and health information,
- Observing monitoring of hazardous chemicals, and
- Receiving results of monitoring and inspections.

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Name:
Phone:
E-mail:

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851 ~ Work Group

- Worker Safety and Health Implementation Work Group
  - Members Include:
    - HSS, NNSA, USW, IUOE, BCTD, EFCOG, HAMTC, HAMMER, LIUNA
  - Draft Charter and Task Matrix Developed
    - Communicate Expectations of WSHP
    - Share Approaches to Worker Involvement in WSHP
    - Identify Approaches to determine Worker Knowledge of 10 CFR 851
    - Provide Information on Enforcement Programs & processes
  - Workshop March 15, 2011

851 ~ Contact Information

Office of Health and Safety (HS-10):

301-903-5926

Office of Worker Safety and Health Policy (HS-11):

301-903-6061

Regulatory Response Line:

800-292-8061

851 Web site:

www.hss.energy.gov/HealthSafety/WSHP/rule851/851final.html

~ 10 CFR 851 ~

Questions?