SLAC/LBNL Variance Request
10CFR 851 to Cal/OSHA

Mike Ratelle - SLAC
October, 2018
In 2015 efforts to streamline our contract began:

- Congressional commission concluded DOE needs to make major changes in how it manages (or micro-manages) contractors
- Former DOE Secretary Moniz was very interested in a “Revolutionary Approach”

Stanford/SLAC ideal candidate:
- Strong presence by Stanford in operation and oversight of SLAC
- SLAC poses “low risk” profile compared to many other DOE labs (no classified, few national security activities, limited hazardous activities)
- Strong local DOE Site Office management plus excellent working relationship with SLAC management identifying and managing risks appropriately
Goals

- Eliminate redundant/duplicative requirements
- Clarify conflicting requirements
- Eliminate non-value added requirements
- Give more authority to local DOE Site Office

Results

- 20% reduction in contract size
- Eliminated redundant, duplicative, conflicting requirements
- SSO line management has authority/accountability for changes/deviations
- New requirements are assessed and are determined whether covered or applicable
- Stanford policies incorporated (e.g., HR, cybersecurity, biosafety) wherever possible
We are seeking a permanent variance as defined in 10 CFR 851 Subpart D

- Using the variance process prescribed in 10 CFR 851 Subpart D, the SC is seeking a permanent variance of the following
  - Subpart B-Program Requirements
  - Subpart C-Specific Program Requirements
  - Appendix A to Part 851 –Worker Health and Safety Functional Areas
- These Subparts and the Appendix would be replaced with program requirements, sources and standards contained in and defined by Cal/OSHA along with other applicable consensus standards
- We believe this passes both tests specified in 10 CFR 851 Subpart D-Variances-in that the Cal/OSHA standards specifically:
  1. ...would provide workers a place of employment which is as safe and healthful as would result from compliance with the standard from which the variance is sought. (851.31 (2) (ii)), and
  2. Does not present an undue risk to worker safety and health. (851.32 (b) (2))
We are NOT seeking to change

10 CFR Parts 20, 820, 830, and 835: Anything associated with nuclear or radiological operations
10 CFR Part 850: Chronic Beryllium Disease Prevention Program
10 CFR 851: Subpart A-General Provisions
10 CFR 851: Subpart D-Variances
10 CFR 851: Subpart E-Enforcement Processes
10 CFR 851: Appendix B: General Statement of Enforcement Policy

We are specifically **not** seeking to be regulated by Federal OSHA or Cal/OSHA
Why are we seeking a permanent variance?

It makes things simpler for the worker…and simpler means SAFER

• Because of the diversity of our users, scientists, and contractors most spend the majority of their time working with OSHA standards not 10CFR851.

• Having two similar but different safety programs is the equivalent of going back and forth between the English and metric systems while driving…it adds a distraction and as a result, makes things less safe.

Cal/OSHA provides some standards that are more protective than Federal OSHA

• Including confined spaces, bloodborne pathogens, hazard communications, ergonomic standards as well as heat illness prevention

Cal/OSHA updates their standard more frequently than 10CFR851
Why are we seeking a *permanent variance*?

Cal/OSHA has an OSHA approved State Plan which by law must be at least as effective as the Federal OSHA.

Cal/OSHA has best in class programs including an *Injury and Illness Prevention Program* (IIPP) which has served as a model that Federal OSHA has been evaluating for possible adoption at the national level.

Cal/OSHA has a excellent program to communicate with the limited and non-English speaking workforce, a significant issue in California.
Why are we seeking a permanent variance?

It allows us to perform our mission more effectively. When we published an expression of interest to complete work, 22 contractors were interested, 11 of those contractors asked for additional information but SLAC received just 1 bid.

Why?
• Many did not want to figure out how to translate Cal/OSHA program to comply with 10CFR851
• Many contractors did not understand how the DOE works in this regard
• Increased risk (safety & financial) for contractors
• The really good contractors have enough backlog that they can ignore this work

The reality of the matter:
• We get fewer bids,
• That end up costing us more,
• From non top-tier contractors
SLAC’s Health & Safety Program is based on a specific DOE law—10CFR 851:

- **Subpart A:** General Provisions: Compliance Order
- **Subpart B:** Program Requirements
- **Subpart C:** Specific Program Requirements
- **Subpart D:** Procedures for DOE Contractors Seeking a Variance in Safety Protocol
- **Subpart E:** DOE Enforcement Process
- **Appendix A:** Worker Safety and Health Functional Areas
- **Appendix B:** General Statement of Enforcement Policy (for DOE)
Next Steps—Replace Subparts B, C & App. A

- Subpart A: General Provisions: Compliance Order
- Subpart B: Program Requirements ➔ Subpart B: Cal/OSHA
- Subpart C: Specific Program Requirements ➔ Subpart C: Cal/OSHA
- Subpart D: Procedures for DOE Contractors Seeking a Variance in Safety Protocol
- Subpart E: DOE Enforcement Process
- Appendix A: Worker Safety and Health Functional Areas ➔ App. A: Cal/OSHA
- Appendix B: General Statement of Enforcement Policy (for DOE)
10CFR851 vs. Cal/OSHA

851—Subpart B: Program Requirements:
✓ Provide a hazard free place of employment
✓ Develop & ensure that work is performed in compliance with worker safety and health program (WSHP)
✓ DOE Site Office must approve our WSHP annually

Cal/OSHA (§3203) Requirements:
✓ Every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program

DOE/Stanford Contract:
✓ Annual IIPP approval by DOE Site Office
**10CFR851 vs. Cal/OSHA**

**Subpart C: Specific Program Requirements**

*Include in WSHP:*

- ✓ Management responsibilities and workers rights & responsibilities
- ✓ Hazard identification, assessment, prevention & abatement
- ✓ Safety and health standards
- ✓ Recordkeeping, reporting

**Cal/OSHA (§3203) Requirements:**

*Include in IIPP:*

- ✓ Responsibilities
- ✓ Compliance mechanisms
- ✓ Communication
- ✓ Hazard assessment/correction
- ✓ Accident exposure investigation
- ✓ Training
- ✓ Recordkeeping
Appendix A—Misc. H&S Topics

• Construction Safety
• Occupational Medicine
• Fire Protection
• Industrial Hygiene
• Biological Safety
• Pressure Safety
• Workplace Violence
• Motor Vehicle Safety
• Firearm Safety
• etc.

Cal/OSHA + SLAC IIPP

• All topics covered either in Cal OSHA or other California regulations
• Stanford Policies
• SLAC IIPP
• Not applicable (e.g., firearm safety)
### 851 to Cal/OSHA Pilot: General Approach

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<thead>
<tr>
<th>851</th>
<th>Cal/OSHA</th>
<th>IIPP</th>
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<tbody>
<tr>
<td><strong>Examples of topics/areas where exemptions are sought (i.e., what we will not follow):</strong></td>
<td><strong>Fed OSHA ≈ Cal/OSHA</strong></td>
<td><strong>Examples of 851 topics that will be included in SLAC IIPP:</strong></td>
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<td>- At SLAC Occ Med for construction &amp; service subcontractors who are already covered by their employer</td>
<td>- Fall Protection</td>
<td>- Occ Med for SLAC employees &amp; independent contractors not covered by an employer’s Cal/OSHA IIPP</td>
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<td>- All consensus/referenced standards except those codified under other regulations</td>
<td>- Confined Space</td>
<td>- Consensus/reference standards-fully adopt or tailor best practices per SME &amp; lab management (e.g., ANSI Fall Protection, Respiratory, Laser Standards, etc.)</td>
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<td>- Respiratory Protection</td>
<td>- Annual approval by DOE Head Field Element</td>
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<td>- Lead, Asbestos</td>
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<td>- Chemical Exposure</td>
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<td>- Process Safety</td>
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<td>- Hearing Conservation</td>
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<td>- Powered Industrial Vehicles</td>
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#### Note: Occ Med exemptions do not pertain to radiation and beryllium programs

#### Areas where Cal/OSHA exceeds Fed OSHA, 851

- Ergonomics, aerosol transmissible disease/zoonotics, heat illness prevention program, lead and asbestos pre-abatement notifications
Subpart D: Variance:  
✓ To make this change SLAC must submit a request for a variance to DOE  
✓ Must notify all workers of our request for variance  
  • Represented workers–today’s meeting  
  • SLAC Today articles  
  • Posters in breakrooms, buildings  
  • More information to follow

Subpart E: Enforcement:  
✓ Stays the same  
✓ DOE will continue to enforce and ensure that SLAC complies with Cal/OSHA regulations and our IIPP  
✓ DOE Whistleblower laws remain in effect  
✓ Right to contact DOE with Employee Concerns remains
Final Thoughts

• With the presence of a strong DOE Site Office, independent oversight, and an effective DOE Office of Enforcement, we believe using Cal/OSHA standards will improve safety at SLAC and allow us to perform our mission work more effectively.

• While this may make some uncomfortable, 851 is titled Worker Safety and Health Program; we have an obligation to provide the worker with the best program possible, which also means the simplest and most straightforward safety and health program possible.
### Proposed Implementation Timetable

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<th>TASK</th>
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<td>Draft one variance for each laboratory, and individual Lab Implementation Plans (work in collaboration with local site offices) and submit for Under Secretary’s approval. The variances shall fully comply with the Part 851 variance procedure and will include: (i) A description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the contractor; and (ii) 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.</td>
<td>2 months</td>
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<td>Develop a review process to analyze changes with the local site offices.</td>
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<td>Two months to draft variance package</td>
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<td>Nine months to develop IIPP, update ESH program, subcontractor T&amp;Cs, training, etc.</td>
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<td>Update ESH Manuals and other health and safety associated documentation, policies, procedures, forms and training in accordance with Implementation Plan by:</td>
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<tr>
<td>1. Reviewing and incorporating Cal-OSHA requirements;</td>
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<td>2. Reviewing Part 851 listed consensus standards and;</td>
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<td>• Analyzing for supplemental regulatory references (CA Building</td>
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<td>• Analyzing, reviewing and conducting applicability and risk-based standard tailoring by laboratory SMEs in collaboration with corresponding site offices;</td>
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<td>• Complying with any conditions imposed in the variance approval documents;</td>
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<td>One month for Site Office/Head Field Element approval</td>
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<td>Total: 12 months to full implementation</td>
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<td>Review lower tier subcontractor terms and conditions (T&amp;Cs) to ensure procurement contracts reflect corresponding changes and flow downs.</td>
<td>+1 month</td>
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<td>Obtain DOE Head Field Element approval of the IIPP and associated ESH manuals.</td>
<td>At 12 months 24 months after full implementation</td>
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<td>Implement full pilot program at LBNL and SLAC.</td>
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<td>Evaluate pilot.</td>
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MEMORANDUM FOR THE DEPUTY SECRETARY

FROM: PAUL M. GOLAN
MANAGER, BERKELEY AND SLAC SITE OFFICES

PATRICIA R. WORTHINGTON
DIRECTOR, OFFICE OF HEALTH AND SAFETY
OFFICE OF ENVIRONMENT, HEALTH, SAFETY AND SECURITY

SUBJECT: ACTION: Approval of a Worker Safety Pilot at SLAC and LBNL

ISSUE: Whether to launch worker safety pilots at SLAC National Accelerator Laboratory (SLAC) and Lawrence Berkeley National Laboratory (LBNL), allowing the laboratories’ contractors to comply with the State of California’s OSHA (CAL OSHA) regulations as a means to comply with requirements of Title 10, Code of Federal Regulations, part 851, Worker Safety and Health Program (10 CFR part 851).

BACKGROUND: In 1970, the Congress created the Occupational Safety and Health Administration (OSHA) to assure safe and healthful conditions for workers by setting and enforcing standards. In accordance with its authorizing statute, OSHA permits States to develop and implement worker safety plans, which are approved by the Secretary of Labor. To be approved, a plan must develop and enforce safety and health standards which are, or will be, at least as effective as the Federal standards promulgated by OSHA. In 1977, the Secretary of Labor certified the State of California’s “CAL OSHA” plan, which has continued to operate for over 40 years.

In 2002, the Congress passed Public Law 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (NDAA 2003). Section 3173 of that Act includes a requirement that the Secretary of Energy promulgate regulations for industrial and construction health and safety at Department of Energy (DOE) facilities operated by contractors and indemnified under the Atomic Energy Act. The Act stipulates that the regulations provide a level of protection for workers at such facilities that is substantially equivalent to the level of protection that existed at the time the statute was enacted.

Given this statutory mandate, DOE is required to maintain a substantially equivalent level of protection that existed in 2003. Further, the statute requires that DOE “tailor
Questions