10 CFR 851 Technical Amendment: Standards Incorporated by Reference Questions and Answers

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Audio Considerations

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Contacts

10 CFR 851 Policy

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Introductions

HQ Participants:
Agenda

• Discussion of the Q&As for the Technical Amendment
• Further Questions and Discussion
10 CFR 851 Technical Amendment
Q & A’s

• Q & As are posted at EHSS WS&H website at the first bullet under: IMPLEMENTATION ASSISTANCE AND TOOLS at: https://www.energy.gov/ehss/worker-safety-and-health

• They are also at: https://orau.org/ihos/doe-worker-safety-health/10-cfr-851.html, under 10 CFR 851 Technical Amendment: Standards Incorporated by Reference, January 10, 2018 (Federal Register Publication)
2. Are DOE contractors required to comply with the updated standards in the technical amendment?

**Yes.** The date of implementation compliance is January 17, 2019, one year from the effective date of January 17, 2018.
11. If contractors must submit a new written Worker Safety and Health Program, is there a due date for submittal and acceptance?

An updated written Worker Safety and Health Program must be submitted to the Head of DOE Field Element for review and approval at least 90 days prior to the January 17, 2019 implementation deadline.

(Q #10 – Incorporation of the Technical Amendment is a significant change, so an update is needed).
5. Will or can the implementation date of January 17, 2019 be extended?

No, the implementation date will not be changed.

However, the Office of Health and Safety will provide support to assist the complex with implementation.
In order to effectively implement the requirements in the applicable consensus standards by the January 17, 2019, compliance date, **AU recommends the following actions:**

*(See Matt Moury memo, March 13, 2018)*
Recommendations for Implementation

Matt Moury memo, March 13, 2018 at EHSS

Webpage:

Recommended Actions from Memo:

DOE Contractors:
• Review current WS&H Program
• Conduct Hazard Assessments, if needed
• If gaps identified, abate if possible
  – Example Gap Analyses:
• Revise WS&H Program;
• If can’t abate before January 2019, provide a written hazard abatement plan, and include in WS&H Program
Abatement Plan:
• Meet requirements of 851.22, *Hazard Prevention and Abatement*
• Justification and documentation of risk
• Interim worker protection measures
• Cost
• Implementation schedule
• Submit to head of DOE Field element for review and approval at least 90 days prior to January 17, 2019.
Heads of DOE Field Elements

• Review WS&H Programs
• Consider funding issues
• Periodically review the plan’s implementation schedule
18. May DOE contractors use successor, (i.e., updated or revised standards and codes) without an amendment of 10 CFR Part 851? (e.g., NFPA 70E 2018? ) See 851.27.

Yes, contractors may use successor standards when it is included in their written WS&H program and has been approved by the Head of the DOE Field Element.
19. Appendix A, Section 3, *Explosives Safety*, was amended to remove invoking language of DOE Manual (M) 440.1-1A, and was replaced with “*Contractors must comply with the policy and requirements specified in the appropriate explosives safety technical standards.*” Which explosive safety standard would be considered appropriate?

Contractors are expected to follow the requirements in the most recent version of the explosives safety technical standard, which is **DOE STD 1212-2012, Explosives Safety**.
24. What will be the code of record date after which all new constructions must fully meet the current 10 CFR Part 851?

Code of record provisions have not changed with the Technical Amendment. The code of record is that which is current at the time a project is designed.

DOE G 440.1-1B, Chg 1 (Admin Chg), provides a more detailed explanation of code of record.
25. At what level of effort/cost must modifications to existing facilities meet the new 10 CFR Part 851 design requirements? Does the entire facility need to come up to current code of records or just the modifications?

Code of record provisions have not changed with the Technical Amendment.

For example, NFPA 70 Annex G (2005)/Annex H (2017), Section 80.9, Additions, Alterations, or Repairs: shall conform to that required for a new building, without requiring the existing building to comply with all requirements if the code. (Unless the AHJ determines conditions are unsafe).
Enforcement Questions
3. What will be the extent of EA enforcement actions associated with meeting the changes to 10 CFR 851?

The Office of Enforcement may initiate enforcement action against Contractors that fail to comply with 10 CFR Part 851. That may include failure to comply with the requirements specified in the Technical Amendment.
4. What, if any will be the EA enforcement fines for delayed implementation of 10 CFR 851 technical amendment changes?

Contractors are required to comply with the Part 851 Technical Amendment by January 17, 2019. Contractors may elect to apply for a variance to specific provisions of the Amendment through DOE’s variance process.

Contractors that do not comply with the provisions and have not received a variance may be subject to civil penalties in accordance with 10 CFR Part 851, Appendix B—General Statement of Enforcement Policy.
Other Questions?