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**Support for Implementing the 10 CFR Part 851 Technical Amendment
Updates to Standards Incorporated by Reference
Published December 18, 2017
Questions & Answers**

1. Why did DOE update the consensus standards and why now?

DOE updated the consensus standards to address longstanding comments from stakeholders across the DOE complex regarding the outdated consensus standards within the rule. Stakeholders at several sites emphasized this need during the Office of Health and Safety *Title 10, Code of Federal Regulations, Part 851* Outreach and Awareness Site Visits to several sites during 2013-2016. Updating these consensus standards allowed DOE to adopt current best practices for protecting DOE's workers.

Additionally, the Office of the Federal Register recommends that Federal Agencies periodically review and update standards incorporated by reference (Administrative Conference of the United States, *Adoption of Recommendations*, Federal Register, Vol 77, No. 10, Tuesday, January 17, 2012, page 2259): "Agencies should periodically review regulations and make technical amendments (i.e., non-substantive amendments that do not require notice and comment)."

The technical amendment went into effect January 17, 2018, and compliance is required by January 17, 2019. This timeframe was established shortly after the Office of Health and Safety recognized the need to update the standards incorporated by reference and implement the procedures to finalize the technical amendment.

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.

In order to effectively implement the requirements in the applicable consensus standards by the January 17, 2019, compliance date, AU recommends the following actions:

- For hazards where immediate control is not possible or technically feasible before the compliance date, provide a written hazard abatement plan to the Head of the DOE Field Element that meets the requirements specified in Section 851.22, *Hazard prevention and abatement*. Provide justification and documentation for risk, interim worker protective measures, cost, and an implementation schedule for short-term and long-term abatement of the identified hazards.
- Revise the worker safety and health program (WSHP) as needed (see § 851.11, *Development and approval of worker safety and health program*). Include in the revised WSHP the written hazard abatement plan and implementation schedule. Submit

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the updated WSHP to the appropriate Head of DOE Field Element for approval at least 90 days prior to the January 17, 2019, deadline for compliance with part 851.

DOE G 440.1-1B Chg 1 (Admin Chg), *Worker Safety and Health Program for DOE (Including the National Nuclear Security Administration) Federal and Contractor Employees*, provides guidance on hazard abatement at paragraph 6.3.1, *Hazard Prevention and Abatement*. The guide is located at: <https://www.directives.doe.gov/directives-documents/400-series/0440.1-EGuide-1B-admchg1>.

3. What will be the extent of EA enforcement actions associated with meeting the changes to 10 CFR Part 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.

[NOTE: Answer provided by the Office of Enterprise Assessment (EA), Office of Worker Safety and Health Enforcement.]

4. What, if any, will be the EA enforcement fines for delayed implementation of 10 CFR Part 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*.

[NOTE: Answer provided by the Office of Enterprise Assessment, Office of Worker Safety and Health Enforcement.]

5. Will, or can, the implementation date of 1/17/2019 be extended?

No, the implementation date will not be changed. However, the Office of Health and Safety will provide the following support to assist the complex with implementation:

- Develop clarification letters/notices to ensure consistent implementation;
- Collaborate with the Office of the General Counsel to ensure clarification letters/notices conform to the requirements in the regulations;
- Conduct webinars as needed to communicate the responses or clarifications;
- Provide guidance in developing, managing, and implementing a worker safety and health program in the part 851 implementation guide (DOE G 440.1B, Change 1)

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located at: <https://www.directives.doe.gov/directives-documents/400-series/0440.1-EGuide-1B-admchg1>;

- Develop responses to questions submitted on the Safety and Health Response Line and make the responses available on the Worker Safety and Health Program (10 CFR Part 851/DOE O 440.1B) Website located at: <https://www.energy.gov/ehss/safety-and-health-regulatory-and-policy-response-line>;
- Add a “Frequently asked Questions” tab on the AU-11 Website for easy access to the questions and responses;
- Work with the Programs’ subject matter experts to determine other methods or procedures needed in assisting the Field offices, laboratories and contractors.

6. Has DOE prepared an informational pamphlet, guide, or crosswalk outlining the changes?

No, a pamphlet is not being planned at this time. Crosswalks and gap analyses of the changes are being developed by some DOE subject matter experts for their organization’s needs. This also may provide an opportunity to collate and share this information throughout the DOE community.

7. How does DOE expect DOE contractors to address any new costs associated with complying with the updated consensus standards?

AU recommends that contractors conduct site hazard identification and assessments as needed to determine compliance with the applicable, updated consensus standards listed in section 851.23. If gaps are identified, abate all hazards where immediate control is possible. For hazards where immediate control is not possible or technically feasible before the compliance date, provide a written hazard abatement plan that meets the requirements specified in section 851.22. Provide justification and documentation for risk, interim worker protective measures, cost, and an implementation schedule for short-term and long-term abatement of the identified hazards. It is recommended that as Heads of DOE Field Elements become aware of areas with funding issues, they make decisions and provide funding as necessary to comply with any necessary abatement plan’s implementation schedule.

8. Does the technical amendment need to be placed in our contract or is 10 CFR 851 a law that automatically applies?

The current version of 10 CFR Part 851 is a regulation that automatically applies to DOE sites covered under 10 CFR Part 851 (a small number of DOE sites are not regulated by DOE, and therefore, 10 CFR Part 851 does not apply), whether or not it is specified in the contract. However, DOE Contract Officers ensure that applicable regulations that are identified on the “A-list” are in contracts pursuant to the contract clause found at 48 CFR §

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970.5204-2, *Laws, regulations, and DOE directives*. Any “A-list” that specifies 10 CFR Part 851 published on a date earlier than January 17, 2018, needs to be updated.

9. Are current contractors excluded from the new rule or must they resubmit a revised Worker Safety and Health Program (WSHP)?

Current contractors are not excluded from the updated rule. Currently approved Worker Safety and Health Programs that do not include the technical amendment must be revised and submitted to the Head DOE Field Element for review and approval at least 90 days prior to the January 17, 2019 implementation deadline.

10. When a contractor incorporates the technical amendment into the written Worker Safety and Health Program, are those changes considered significant - which would require them to go through the Head of DOE Field Element for review and approval?

The Technical Amendment would be considered significant per 851.11(c)(1) and, therefore, would need to go to the appropriate Head of DOE Field Element for review and approval:

10 CFR 851.11(c)(1): “Contractors must submit an update of the worker safety and health program to the appropriate Head of DOE Field Element, for review and approval whenever a significant change or addition to the program is made, or a change in contractors occurs.”

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.

12. Since several of the new consensus standards appear to apply only to nuclear facilities, has DOE considered exempting Federal facilities from 10 CFR 851 that are completely out of a “nuclear” fence so that we can fall under OSHA only?

No, DOE has not considered exempting Federal facilities from 10 CFR 851 that are completely out of a “nuclear” fence so that we can fall under the Occupational Safety and Health Administration (OSHA) only. To do so, would require DOE to amend the rule through notice and public comment and any amendment would be required to be consistent with the provisions of 42 USC § 2282c that the regulations “provide a level of protection for workers at such facilities that is substantially equivalent to the level of protection” provided by DOE pursuant to archived DOE Order 440.1A. That archived Order contained enhancements over OSHA’s regulations.

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The standards listed in the technical amendment are the updated versions of the standards that were incorporated by reference in 2006.

The rule applies to DOE contractors at covered workplaces regardless of whether or not the work is performed in nuclear facilities. Applicability is addressed in 10 CFR §§ 851.1 and 851.2. The definition of a covered workplace is defined in 10 CFR § 851.3 *Definitions*:

“A covered workplace means a place at a DOE site where a contractor is responsible for performing work in furtherance of a DOE mission.”

Title 10 CFR § 851.10, *General Requirements*, provides, in pertinent part, that “(a) With respect to a covered workplace for which a contractor is responsible, the contractor must: ... (2) Ensure that work is performed in accordance with: (i) All applicable requirements of this part.”

DOE, and not OSHA, is the regulatory authority for DOE contractor worker safety and health at most DOE sites. However, a small number of DOE sites are regulated by OSHA rather than DOE.

13. With respect to respiratory protection:

- a. Why was the specific designation (DOE STD 1167-2003) of DOE STD 1167-2003, *The Department of Energy Respiratory Acceptance Program for Supplied-Air Suits*, left out and replaced by only the title?**

Omitting the specific designation (i.e., DOE STD 1167-2003) of DOE STD 1167-2003, *The Department of Energy Respiratory Acceptance Program for Supplied-Air Suits*, results in 10 CFR Part 851, Appendix A, paragraph 6(f), referring to the version of DOE’s acceptance program for supplied-air suits that is current at any time. This approach allows 10 CFR Part 851 to be up to date without having to publish a Technical Amendment.

- b. What are military type masks and why was “in accordance with Presidential Decision Directive 39, U.S. POLICY ON COUNTER TERRORISM,” left out?**

Presidential Decision Directive 39, *U.S. POLICY ON COUNTER TERRORISM*, is a high-level document that includes no respiratory protection content. The 2006 10 CFR Part 851, appendix A, § 6(f), reference to military type masks was a generic reference rather than a reference for specific masks. Omitting Presidential Decision Directive 39 from 10 CFR Part 851, Appendix A, § 6(f), clarifies that security personnel may use any appropriate military type masks for respiratory protection for their security operations and that this paragraph does not require the military type masks to be tested under the DOE Respirator Acceptance Program for Supplied-Air Suits.

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- 14. Are DOE contractors required to comply with the 2016 ACGIH TLV for beryllium (0.05 µg/m³ – inhalable)?**

No, DOE does not expect its contractors to comply with the ACGIH[®] 2016 TLV[®] of 0.05 µg/m³ – inhalable for beryllium. Title 10 CFR Part 850, *Chronic Beryllium Disease Prevention Program*, provides DOE’s regulatory requirements regarding occupational exposure to beryllium.

DOE expects to address this issue its upcoming amendment to 10 CFR Part 850, which currently is undergoing the resolution of public comments received on the June 7, 2016 notice of proposed rulemaking.

- 15. NFPA 70E-2018 was published in October 2017. Will the 2018 revision be formally adopted and published in the Federal Register?**

DOE plans to periodically update the standards incorporated by reference in 10 CFR Part 851 approximately every 3 years; these updates will include the version of NFPA 70E that is current at that time.

- 16. The technical amendment to 10 CFR Part 851 “invokes” ASME B31.3-2014, yet refers to ASME B31.3-2016 when they say “copies are available.” Please clarify which version of the standard is meant to be invoked – 2014 or 2016?**

The consensus standard incorporated by reference is ASME B31.3-2014. The reference to B31.3-2016 on page 59952 in the Technical Amendment published in the Federal Register on December 18, 2017, is a typographical error that DOE will have corrected. ASME B31.3-2014 is the correct version to follow.

- 17. Do we need to apply for a variance to use consensus standards that have been updated (use newer versions that are not incorporated by reference in 10 CFR Part 851)?**

No, contractors do not need to apply for a variance to use consensus standards that have been updated (use newer versions that are not incorporated by reference in 10 CFR Part 851). However, the use of newer versions of a standard must be approved by the appropriate Head of DOE Field Element and included in the Contractor’s Worker Safety and Health Program. [See Response Line D16-05-002, located at: [https://www.energy.gov/ehss/safety-and-health-regulatory-and-policy-response-line.](https://www.energy.gov/ehss/safety-and-health-regulatory-and-policy-response-line)]

- 18. Does the following from the updated rule mean that DOE contractors cannot use successor (i.e., updated or revised standards and codes to 10 CFR Part 851 standards incorporated by reference) without an amendment of 10 CFR Part 851, even with DOE Field Element approval? For example, NFPA 70E 2018? This question is based on the following section of the updated rule:**

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10 CFR § 851.27 “Materials incorporated by reference. (a) General. We incorporate by reference the following standards into part 851. The material has been approved for incorporation by the Director of the Federal Register under 5 U.S.C. 552a and 1 CFR part 51. Any subsequent amendment to a standard by the standard-setting organization will not affect the DOE regulations unless, and until, amended by DOE. Material is incorporated as it exists on the date of the approval. To use a subsequent amendment to a standard, DOE must publish a document in the Federal Register and the material must be available to the public.”

No, the statement does not mean that a DOE contractor cannot use successor standards without an amendment to part 851. The statement: “To use a subsequent amendment to a standard, DOE must publish a document in the Federal Register and the material must be available to the public” is wording that the Director of the Federal Register requires for IBRs. This statement refers to the responsibility of DOE (i.e., the Office of Worker Safety and Health Policy, not the contractor) to publish an amendment in the Federal Register if DOE decides to incorporate by reference an updated standard into 10 CFR Part 851 that will be required of all DOE contractors covered by the rule’s scope.

A contractor is not precluded from using an updated standard (e.g., NFPA 70E 2018), prior to DOE amending 10 CFR Part 851. Contractors may use an updated standard when it is included in their WSHP and the program has been reviewed and approved by the appropriate Head of 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.”

a. Do contractors have the option to comply with other explosives safety standards, such as DoD or NFPA, in lieu of DOE standards?

No, 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*.

10 CFR Part 851 did not require the use of DoD or NFPA explosives safety standards in lieu of the appropriate technical standard, DOE STD 1212-2012. Contractors wanting to use such standards in lieu of DOE STD 1212-2012, must apply for a permanent variance pursuant to 10 CFR Part 851, Subpart B. Note: permanent variances are required by 10 CFR 851.31(d)(2) (ii) to show “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.

b. Is continued application and compliance with the previously referenced DOE M 440.1-1A no longer appropriate?

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Application and compliance with DOE M 440.1-1A, is no longer appropriate. DOE M 440.1-1A, *DOE Explosives Safety Manual*, was cancelled and replaced by DOE STD 1212-2012, *Explosives Safety*.

- c. **If the intent of the amendment is to require compliance with DOE explosives safety standard DOE STD-1212, is there flexibility in which version is applied?**

No, the appropriate explosives safety technical standard is the current version, DOE STD 1212-2012, *Explosives Safety*.

- d. **How would further updates to the technical standards be enforced?**

Compliance with DOE STD 1212-2012 is required by January 17, 2019. As STD 1212-2012 is updated, contractors will be required to comply when the revised standard's provisions become effective. DOE's Office of Enforcement will enforce the provisions, as specified in the standard.

[NOTE: Answer provided by the Office of Enterprise Assessment, Office of Worker Safety and Health Enforcement.]

- e. **If the current technical standard is split into a technical standard and handbook [original question used the term "guidebook"], what will be enforceable as law? The contents of just the technical standard or both documents?**

DOE Technical Standards can be made mandatory through regulation or contractual provisions and therefore, enforceable. DOE Handbooks are intended to be guidance documents:

DOE O 252.1A (Admin Chg 1), *Technical Standards Program*, "Appendix A, *Technical Standard Document Types*:

1. DOE Standards. a. Provide specific standardized approaches, methodologies, technical criteria, or other information on accomplishing a task, developing a plan, and/or performing a calculation or assessment to implement a DOE requirement. b. Provide a common shared approach or methodology for implementing a DOE requirement such that its implementation is consistent across DOE programs and operations. c. Can be made mandatory via DOE regulatory or contractual provisions.
2. DOE Handbooks. a. Provide a compilation of good practices, lessons-learned, or reference information that serve as resources on specific topics. b. Provide general, textbook-type information on a variety of subjects."

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- f. **It doesn't say "Contractors must comply with all the policy and requirements. Therefore, does that mean that not all of the requirements have to be followed?"**

Contractors are expected to follow all of the requirements in the appropriate explosives safety technical standard (DOE STD 1212-2012, *Explosives Safety*).

20. **Is there a complex-wide, DOE approved process that contractors can use to implement updated editions of the referenced code or standard?**

There is no complex-wide DOE process that DOE contractors can use to implement updated editions of standards. The Energy Facility Contractors Group (EFCOG) sometimes generates implementation guidance that is useful for its members. Their guidance typically is detailed where possible but is sufficiently general to be applicable to the unique conditions at each facility. [See for example, EFCOG Best Practice #206 *Adoption of NFPA 70E 2018 in place of NFPA 70E 2015* at: <http://efcog.org/wp-content/uploads/2018/01/EFCOG-Adoption-of-2018-NFPA-70E-in-place-of-2015-NFPA-70E.pdf>.]

21. **If a site has compiled a negative exposure assessment from sampling data on a given chemical agent, should they reevaluate those data in the context of a new exposure limit to determine the need for further action?**

Yes. A contractor should reevaluate negative exposure assessment data for chemical agents that have a new exposure limit to determine if that data suggests the need for actions to comply with the updated standard.

22. **In regard to 10 CFR Part 851, Appendix A, Part 4, *Pressure Safety*:**

- a. **Does DOE consider API 620 and API 625 to be national consensus codes that are applicable when the design pressure falls below the scope of ASME BPVC VIII, even though API 620 and API 625 are not incorporated by reference in 10 CFR Part 851?**

Yes. DOE considers API 620 and API 625 to be national consensus codes that are applicable when the design pressure falls below the scope of ASME BPVC VIII, even though API 620 and API 625 are not standards incorporated by reference in 10 CFR Part 851.

10 CFR Part 851 Appendix A, Section 4(c), *Pressure Safety*, states:

“When national consensus codes are not applicable (because of pressure range, vessel geometry, use of special materials, etc.), contractors must implement measures to provide equivalent protection and ensure a level of safety greater

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than, or equal to, the level of protection afforded by the ASME or applicable state or local code.”

It would be up to each contractor to apply these API standards with the approval of the appropriate Head of DOE Field Element, which must also be consistent with:

10 CFR § 851.23, *Safety and Health Standards*, (b) Nothing in this part must be construed as relieving a contractor from complying with any additional specific safety and health requirements that it determines to be necessary to protect the safety and health of workers.

b. Should the API standards be included in part 4(b)?

Including API standards in 10 CFR Part 851 may be reviewed for future updates to 10 CFR Part 851.

c. If not, are contractors required to justify an equivalent level of safety and protection per part 4(c) for tanks conforming to either API 620 or API 625?

Contractors would not need to justify an equivalent level of safety and protection for tanks conforming to either API 620 or API 625, as DOE considers API 620 and API 625 to be national consensus codes that “provide equivalent protection and ensure a level of safety greater than or equal to the level of protection afforded by the ASME or applicable state or local code,” in accordance with the requirements of 10 CFR Part 851, Appendix A, Section 4(c).

d. Research projects are increasingly becoming international in nature. May contractors use pressure equipment that conforms to the applicable harmonized EN standards of the European Pressure Equipment Directive 2014/68/EU in place of the ASME standards listed in 4(b)?

Contractors may apply for a variance to provide an equivalent level of safety and protection provided by the ASME standards listed in 4(b) by using the process provided in 10 CFR § 851.31, *Variance process*. Per 10 § 851.31(d)(2)(ii), the contractor is required to provide:

“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.”

23. What is the process for Field Element Managers to inform contractors that submittal of a full and current Worker Safety and Health Program (WSHP) is necessary?

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Title 10 CFR Part 851 does not address a process for Field Element Managers to inform contractors that submittal of a full and current WSHP is necessary. DOE's Office of Health and Safety has been, and will continue to be, aggressively communicating the Technical Amendment throughout the Department. DOE contracting officers may be maintaining awareness of updated regulations in order to ensure that regulations identified on the "A List" included in contracts pursuant to the contract clause found at 48 CFR § 970.5204-2, Laws, regulations, and DOE directives, are updated. Also, many contractors watch for changes in DOE requirements in order to keep their requirements lists up to date.

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 for construction have not changed with the Technical Amendment. DOE G 440.1-1B, Chg 1 (Admin Chg), *Worker Safety and Health Program for DOE (Including the National Nuclear Security Administration) Federal and Contractor Employees*, provides a detailed explanation of code of record. Paragraph 6.4.2., *Code of Record*, includes: "Code of Record provisions that exist in the codes and standards that are explicitly referenced in 10 CFR § 851.27(b) are considered part of the Rule and can be exercised in implementing the Rule. For example, NFPA 70 indicates that it applies to new buildings but not to existing buildings (NFPA 70 (2005), Annex G 80.13)." Similarly, contractors should review the applicable pressure safety codes for code of record provisions.

25. At what level of effort or cost must modifications to existing facilities meet the new 10 CFR Part 851 design requirements (e.g., Compressed Gas Association changes, National Electric Code)? 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. 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 detailed explanation of code of record:

Paragraph 6.4.2., *Code of Record*: "Code of Record provisions that exist in the codes and standards that are explicitly referenced in 10 CFR § 851.27(b) are considered part of the Rule and can be exercised in implementing the Rule. For example, NFPA 70 indicates that it applies to new buildings but not to existing buildings [NFPA 70 (2005), Annex G 80.13]."

26. What does DOE do with the submitted WSHPs, are they publicly available to other contractors?

DOE does not have a Department-wide program to make contractors' WSHPs publicly available. However, although it is not required, contractors typically post their WSHPs on their internal Websites and some also may post their WSHPs on their public-facing

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Website. Under certain limited circumstances, § 851.11, *Development and approval of worker safety and health program*, subsection (a)(2), requires contractors to make their WSHPs available to other contractors: “If more than one contractor is responsible for covered workplaces, each contractor must: (i) Establish and maintain a worker safety and health program for the workplaces for which the contractor is responsible; and (ii) Coordinate with the other contractors responsible for work at the covered workplaces to ensure that there are clear roles, responsibilities and procedures to ensure the safety and health of workers at multi-contractor workplaces.”

§ 851.20, *Management responsibilities and worker rights and responsibilities*, requires that the written WSHP approved by the appropriate Head of DOE Field Element be available to the contractors’ employees and (b)(2)(ii) requires that workers at a covered workplace have the right, without reprisal, to have access to the WSHP for the covered workplace.

27. What are DOE expectations, examples, or guides for implementing the occupational health aspects of 10 CFR Part 851?

The technical amendment did not amend 10 CFR Part 851, Appendix A, Section 8, *Occupational Medicine*.

28. Can DOE Voluntary Protection Program (VPP) entities be exempt from EA assessments associated with implementation of 10 CFR Part 851?

Title 10 CFR Part 851 does not provide any language that allows VPP participants to be exempt from participating in assessments.

29. Will DOE offer or sponsor an Integrated Safety Management (ISM) meeting to share implementation issues, concepts, and successes?

The DOE ISM Champions currently are holding planning meetings. It is too early in their planning to know if they will include a meeting to share implementation issues, concepts, and successes concerning the 10 CFR Part 851 Technical Amendment. However, the DOE Office of Worker Safety and Health Policy has held, and will continue to hold, complex-wide web conferences to develop the answers to the questions raised concerning the technical amendment, as well as to share implementation issues, concepts, and successes.

30. At what level and how is the Energy Facility Contractors Group (EFCOG) engaged in standardizing or sharing best practices associated with the Technical Amendment?

Answering this question requires input from EFCOG, which may be available as answers to these questions are further developed.

31. How will the Federal Technical Capabilities Panel incorporate Technical Amendment changes into Functional Area Qualifications (FAQ) Standards?

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Functional Area Qualifications standards for which 10 CFR Part 851 is relevant will need to address the current version of the rule, which includes the standards incorporated by reference in the technical amendment.