

Response to the EFCOG Fire Protection Sub-group  
10 CFR 851 Implementation Questions  
prepared by: Dennis Kubicki, Secretary  
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Preamble: As all three of the following questions involve cross-cutting issues that affect other responsible organizations at DOE Headquarters, the responses were coordinated more widely than would normally be the case for more limited-scope questions to the DOE Headquarters Fire Council. Additionally, since the responses to Questions 1 and 2 involve a pending Interpretive Ruling from the DOE Office of the General Council, the answers should be considered preliminary and subject to revision based on this Ruling. Similarly, since new guidance on the Noncompliance Tracking System for Part 851 will be forthcoming from the DOE Office of Price-Anderson Enforcement, the response to Question 3 may be subject to further clarification.

Question #1: Four part question regarding the management and approval of existing fire protection exemptions.

1. Will existing fire protection exemptions from specific criteria of applicable NFPA codes and standard, developed and approved in accordance with the processes mandated in DOE O 420.1A, require submittal as a variance request in accordance with 10 CFR 851, Subpart D?
2. If the answer to question 1 above is no, are there additional requirements or recommendations associated with the documentation or classification of existing exemptions (e.g. transmitted to DOE general council as information; transmitted to DOE general council for categorization and filing as permanent, temporary, or national security variance; specifically identified in contractor written safety and health program).
3. If the answer to question 1 above is yes, will the existing exemptions be required to be reformatted and categorized in accordance with 10 CFR 851.31(c) and 10 CFR 851.31(d) respectively?
4. If the answer to question 1 above is yes, what is the maximum expected processing time of a variance request?

Question #1 Background, Basis and EFCOG recommendation.

There are numerous existing fire protection exemptions that have been approved in accordance with the practices directed by DOE O 420.1A. The existing exemption requests were required to address similar criteria to that specified 10 CFR 851.31(c). Approval authorities have historically varied across the complex, with some exemptions approved at Head Quarters and others at Field Offices.

It is considered necessary and prudent to recognize existing approved exemptions for the purposes of 10 CFR 851 reportability and enforcement unless it is established that a

significant worker safety risk exists that was not adequately mitigated by the conditions of the exemption. In nearly all cases there would be extensive effort and capital investment required to correct the documented and approved conditions of the existing exemptions.

If existing exemptions fall under Subpart D applicability, the anticipated processing time and associated schedule impacts must be understood to enable implementation of compliant programs in accordance with the scheduled enforcement date of 10 CFR 851.

It is recommended that existing exemptions be accepted. It is further recommended that future exemptions to the NFPA codes and standards not specifically cited in 10 CFR Subpart C continue to be managed in accordance with the fire protection program criteria of DOE O 420.1B and its implementation guidance versus the variance process of 10 CFR 851.

Response: A comprehensive response to the questions above will be provided in conjunction with a pending “Interpretive Ruling” by the DOE Office of the General Council (GC). As defined in Section 851.3 of the DOE Worker Health and Safety Rule, an Interpretive Ruling is “a statement by the General Council concerning the meaning or effect of a requirement of this part which relates to a specific factual situation *but may also be a ruling of general applicability if the General Council determines such action to be appropriate*” (emphasis added).

As currently envisioned by the working group that is assisting GC; the Ruling will be multi-faceted. It will address the acceptable use of “equivalencies,” as variously defined in the codes and standards promulgated by the National Fire Protection Association (NFPA). Such equivalencies have been used historically within the DOE fire protection community as a means of demonstrating compliance with these codes and standards. The equivalency process will likely have to demonstrate consistency and a degree of rigor, such as that described in DOE fire safety directives and guidance. Currently at issue is whether the equivalency concept can be applied to other industry codes and standards when such codes and standards do not contain explicit language that sanctions this approach.

The Interpretive Ruling will address the issue of existing exemptions from the provisions of DOE Orders (such as DOE O 5480.7A, DOE O 420.1A and DOE O 440.1). As currently envisioned, it will likely direct that such exemptions be resubmitted to the responsible CSO for reconsideration as a “Variance” under the provisions of Section 851.31 of the Rule. While it is expected that there will be a need for brief correspondence related to these submittals, the Ruling is not expected to require a significant degree of “repackaging” or re-justification. After review by the CSO, requests for approval of these historic exemptions as Variances must be further considered by the DOE Headquarters Office of Environment, Safety and Health in accordance with the requirements of Section 851.31.

The Interpretive Ruling will address the “Code of Record” concept as has been historically applied within DOE. Many facets of this issue have yet to be resolved within the context of the draft Ruling. Such issues include the scope of the application of the concept to the spectrum of industry codes and standards that govern DOE worker health and safety; the need to address significant safety issues by the application of the provisions of recently promulgated codes and standards to existing processes and facility; the need to reflect enhancements and technological innovations from new codes and standards; among other issues. Consequently, it is not possible to characterize the likely content of the final Ruling on this point at this time.

Additional details on these issues will be forthcoming, when available.

Update (11/01/06, EBG): The EFCOG supported the 10 CFR 851 “Tech Team” in the formulation of an EFCOG position on this issue. The position submitted to DOE read as follows:

**EFCOG Issue #57.** Will previously approved documents (exemptions and equivalencies) need to be reformatted and resubmitted as variances?

Proposed Response

Previously approved exemptions and equivalencies to codes and standards listed or invoked by reference under the rule, by definition, provided an adequate level of worker protection under the requirements previously written into DOE O 440.1A. Therefore, they are acceptable under the rule unless they are formally rescinded by DOE. If rescinded, the contractor has the option of either resubmitting them for review to the Authority Having Jurisdiction (AHJ) or making application for a variance in accordance with the rule.

**EFCOG Issue #20.** NFPA & NEC have provisions for AHJ and equivalency. Do these caveats apply?

Proposed Response

Equivalencies

After the rule takes effect, equivalencies to the codes and standards listed or invoked by reference under the rule would not need to be submitted as a variance if either of the following two conditions are met:

1. The code or standard includes a process for addressing equivalencies (i.e. specifically allows the use of an AHJ or equivalent (e.g. subject matter expert));
2. The code or standard does not include a process for addressing equivalencies, but a process for addressing interpretations and equivalencies (e.g. subject matter expert) of the subject code or standard is provided for in the contractor's Worker Safety & Health Program.

Exemptions

1. Exemptions to DOE Orders/Manuals previously received will need to be resubmitted as variance requests (either temporary, permanent, or weapons) if there is a continuing requirement for them.
2. After the rule takes effect, all exemptions to codes and standards shall be submitted as variance requests if they exceed established de minimis limits.

10 CFR 851 Implementation Guide Language (7/20/06)

### **3.3.4.1. Authority Having Jurisdiction (AHJ) and equivalencies**

The *National Electric Code*, NFPA 70 is a standard that is explicitly identified in the Rule and that includes provisions for an AHJ. NFPA 70 includes an AHJ with authority to approve equivalencies [NFPA 70 (2005), Annex G 80.9 (C)]. NFPA 70 defines the AHJ as “the organization, office, or individual responsible for approving equipment, materials, an installation, or a procedure. NFPA 70 contains several provisions that allow the AHJ to approve alternatives that provide equivalent levels of protection, i.e., “equivalencies” to the levels provided by the standard. The DOE *Fire Protection Design Criteria* (DOE-STD-1066-99) and the DOE *Glossary of Environment, Safety and Health Terms* (DOE-HDBK-1188-2006) define the AHJ as the head of the DOE field element or designee unless otherwise directed by the Cognizant Secretarial Officer. Section 1.3 of the DOE *Electrical Safety Handbook* (DOE-HDBK-1092-2004) indicates that the AHJ for electrical safety can be any DOE person having the requisite knowledge and abilities that is designated to be the AHJ by DOE management. The preamble to the Rule on Page 6912 states: “The recommendation made by two commenters (Exs. 36, 42) that the Authority Having Jurisdiction (AHJ) be responsible for approving fire safety codes and standards equivalencies (as required by DOE Order 420.1A) instead of the DOE site manager (as would be required by the proposed rule) is acceptable to DOE.”

For implementation of the Rule, the AHJ should be the head of the DOE field element or designee that has the requisite knowledge and abilities or has access to someone that has the knowledge and abilities. Individuals meeting the requirements of *Fire Protection Engineering Functional Area Qualification Standard*, DOE-STD-1137-2000, and *Electrical Systems Functional Area Qualification Standard*, DOE-STD-1170-2003, available at <http://www.eh.doe.gov/techstds/standard/standard.html#1001>, are examples of persons that have the requisite knowledge and abilities to advise the head of the DOE field element or designee on fire protection or electrical safety equivalencies, respectively.

Equivalencies that were granted prior to the promulgation of the Rule, and in accordance with AHJ and equivalency provisions of a code or standard that is included in a DOE-approved worker safety and health program, should continue to be acceptable to DOE and not require a variance. (See section 3.4 of this Guide for information about variances.) Those equivalencies should be identified in the

DOE-approved worker safety and health program. The equivalency process is separate from the variance process outlined in subpart D of the Rule.

The following discussion is focused on the AHJ for electrical safety but the principles also apply to fire prevention and any other functional area requirements in the Rule that have AHJ provisions.

The Model Electrical Safety Program (MESP) in DOE's *Electrical Safety Handbook* (DOE-HDBK-1092-2004) provides an example of an acceptable electrical safety program for DOE contractors. Section 4 of the MESP defines the AHJ as the entity that interprets applicable electrical safety requirements including those established in NFPA 70 and the electrical safety provisions of the OSHA standards. Section 4 of the MESP further states that the AHJ approves electrical equipment, wiring methods, electrical installations, and utilization equipment for compliance. This is only correct for situations in which an AHJ provision applies as explained directly below.

The Rule, in 10 CFR 851.23, defines mandatory electrical safety requirements as NFPA 70 and NFPA 70E as well as the applicable electrical safety regulations promulgated by OSHA such as Subpart S of 29 CFR 1910 for general industry operations and Subpart K of 29 CFR 1926 for construction operations. DOE's intent in 10 CFR 851 is that the technical requirements of 10 CFR 851.23 be applied consistent with the provisions of the individual standards as well as the programmatic requirements of the Rule.

Specifically, DOE intends for the AHJ provisions discussed in the MESP to apply in full to the implementation of NFPA 70 but only to components of the OSHA regulations that incorporate NFPA standards by reference. DOE's rationale for this intent is that the AHJ provisions of the MESP parallel those established in NFPA standards such as NFPA 70. For example, Article 90-4 of NFPA 70 establishes that the AHJ has the responsibility to interpret rules, approve equipment and materials, and waive specific requirements of NFPA 70 or permit the use of alternate methods where such methods provide equivalent protection. Thus, in mandating compliance with NFPA 70 in 10 CFR 851.23, DOE adopts the full text of the standard including the AHJ provisions of that standard.

On the other hand, Subpart S of 29 CFR 1910 contains some requirements that are affected by NFPA 70 and others that are not. OSHA standards that do not incorporate a consensus standard that includes an AHJ provision do not provide for an AHJ who can permit the use of alternate methods. The Rule provides that such deviations from the letter of the OSHA standards be permitted only if approved through the formal variance process outlined in subpart D of the Rule.

DOE encourages the use of an AHJ when permitted by the applicable code or

standard in assisting in the proper interpretation of electrical safety requirements. Interpretations of electrical safety requirements in the absence of a code or standard that includes an AHJ provision are not binding on DOE unless issued under the provisions of 10 CFR 851.7, *Requests for a binding interpretive ruling*.

#### **3.3.4.3. Previously granted exemptions**

DOE Orders allow the approval of exemptions from requirements in DOE Orders, Notices, and Manuals (DOE M 251.1-1A *Directives System Manual*, Chapter VII, paragraph 4) and many such exemptions have been granted at DOE sites. The Rule has no provision for these pre-existing exemptions. The Rule's variance process (Subpart D) can be used to request relief from a Rule requirement (see 3.4 of this Guide for more information about variances).

#### **3.3.10. Consideration of variance. (851.30)**

The Rule allows the Under Secretary to grant variances that meet the requirements of 851.31 (851.30) after considering the recommendation of the Assistant Secretary for Environment, Safety and Health. In applying for a variance, contractors must establish why they cannot comply with a standard by its effective date, the safeguards the contractor is taking, and that the contractor has a program to come into compliance with the standard as quickly as practicable. The authority to grant variance can not be delegated. (See section 3.4.2.3

Certain codes and standards provide implementation flexibility in the form of—

- An Authority Having Jurisdiction that can permit the use of alternate methods where such methods provide equivalent protection (referred to as “equivalencies”). (Section 3.3.4.1 of this Guide discusses the AHJ and equivalencies). The AHJ is authorized to approve equivalencies, and
- Acceptability of the code that was in effect at the time a facility or item of equipment was constructed (referred to as the Code of Record) rather than the current code. (Section 3.3.4.2 of this Guide discusses Code of Record.)

Any of the above flexibility provisions that exist in the codes and standards that are explicitly referenced in the Rule in 851.27(b) are considered part of the Rule and can be exercised in implementing the Rule.

The Rule does not provide for applying similar flexibility to codes and standards, either those that are explicitly incorporated in the Rule or those that are adopted by a site and included in their worker safety and health program, that do not contain flexibility provisions. Most consensus codes and standards contain such provisions so the fact that the Rule does not provide generic flexibility for codes and standards should rarely present a problem to DOE sites.

Contractors should discuss the possibility of filing a variance application with

representatives of the head of the field element and the Cognizant Secretarial Office prior to filing the request in order to gain a preliminary view of the likelihood of the request being granted and the necessary supporting material. Such discussions are encouraged as a means to improve the efficient use of resources. The head of the field element also should provide the CSO with its recommendation for the approval and terms and conditions (851.33) of variance applications that it supports. The head of the field element should coordinate variance applications for which multiple CSOs have responsibilities for programs that would be affected by the variance.

Question #2: Will the code of record provisions identified in DOE O 420.1B, Chapter II, Section 3.a.(3)(a) be acknowledged by 10 CFR 851 as the design basis for NEC-2005 required by 10 CFR 851.23(a)(13) and the NFPA codes and standards implemented by the site specific fire protection programs in accordance with 10 CFR 851.24(a)?

Question #2 Background, Basis and EFCOG recommendation.

The current DOE infrastructure is either in place or under construction in accordance with approved construction documents. The design basis for existing and in-progress installations was derived and accepted based on previous editions of the NEC. Accordingly, the existing infrastructure, a significant capitol investment, is in various states of compliance relative to requirements specific to the NEC-2005.

10 CFR 851 and its draft implementation guide are silent on the retroactive application of design related requirements. If a clarification is not provided that acknowledges the code of record concept or similar language standard to the jurisdictional administrative processes for design/construction requirements (e.g. International Building Code, NFPA codes and standards) across the United States, there will be the potential for substantial implementation costs and impacts. These include:

Extensive implementation planning resources allocated to assess existing, approved infrastructure against the criteria of current, mandated codes. Based on the historical code of record allowances associated with the DOE infrastructure, this type of evaluation has not been required or performed and would be a substantial undertaking. Many of the installations are concealed and not capable of examination.

The above examination would be expected to result in the generation of an extensive body of variance requests associated with existing compliant installations that are no longer so because of the NEC-2005 mandated citation. The variance requests would tax the administrative processes of the Rule, and if not approved, require substantial resources to correct said conditions.

Code cycles mandate the retroactive incorporation of changes where the consensus code making body establishes them as necessary to address significant risks to personnel safety, property or emergency responders.

It is recommended that a binding interpretive ruling be issued against 10 CFR 851 that incorporates the code of record language from DOE O 420.1B, Chapter II, Section 3.a.(3)(a).

Response: With regard to the National Electrical Code (NEC), which is explicitly identified as being applicable to contractors under 10 CFR 851.23(a)(13), Annex G of the NEC contains provisions that would allow for the recognition of a “code of record” for the electrical installations in existing buildings. This Annex is required to be specifically invoked by the Authority Having Jurisdiction for it to be applicable. DOE is considering the adoption of Annex G via the above-referenced pending Interpretive Ruling, through appropriate text in the pending Implementation Guide to Part 851, or through some comparable administrative means.

With regard to the remaining NFPA codes and standards that are invoked by the general language of 10 CFR 851.24(a), the “code of record” concept is acknowledged as being applicable, as it has been historically within DOE. Additional direction on this issue will be forthcoming in the pending Interpretive Ruling.

Further details on this issue will be forthcoming, when available.

Update (08/09/2006, EBG): The EFCOG supported the 10 CFR 851 “Tech Team” in the formulation of an EFCOG position on this issue. The position submitted to DOE read as follows:

**Code of Record (Grandfathering)**

Codes and standards that are identified as the code of record for design and construction for existing facilities are valid. The application of codes and standards, listed or invoked by reference under the rule, to existing facilities is based on the 'application/retroactivity' language within the subject code (e.g. The code states that it applies only to new facilities and modifications). New facilities or modifications thereto must be constructed to meet the codes and standards in effect when design criteria are approved. New design/modifications would follow the normal application of engineering practices for code applicability.

Update (11/01/06, EBG): The following guidance has been generated by the Office of General Council:

**Guidance on Application of Consensus Safety and Health Standards  
Adopted in Part 851**

The Department of Energy’s Worker Safety and Health Program regulation, 10 CFR Part 851, was published in the Federal Register on February 9, 2006. 71 Fed. R. 6858-6948. Since its publication, DOE’s Office of General Counsel (OGC) has been

asked for guidance regarding the meaning of certain terms in the regulation. The following is intended to address the limited issue of how consensus safety and health standards adopted in the regulation should be applied. OGC may issue additional guidance on other questions relating to Part 851.

Sections 851.23 and 851.27 of DOE's recently adopted regulation 10 CFR Part 851, *Worker Safety and Health Program*, require contractor compliance with specific consensus safety and health standards to the extent the standards are applicable to the hazards at their covered workplaces. For instance, § 851.23 (a) (10) requires compliance with American National Standards Institute (ANSI) Z88.2, "American National Standard for Respiratory Protection," (1992) and § 851.23 (a) (13) requires compliance with National Fire Protection Association (NFPA) 70, "National Electrical Code," (2005 ) (if the particular standards are applicable to the contractor's workplace). Because the standards incorporated in the regulation include specific issuance dates, a number of contractors have expressed concern that application of the modern standards to many of the older DOE facilities (in some cases, much older) would require DOE contractors to undertake expensive retrofits or to seek numerous variances from the requirements in these standards.

As an initial matter, in considering the application of these external standards in the regulation, an important concept is that, unless the regulation states otherwise, the entire standard, including its scope and any other instructions as to how the standard is to be applied, is included as part of the regulation. Therefore, if the standards adopted in Part 851 indicate that they are not to be applied retroactively or, they apply only to design and construction, as opposed to existing facilities, they would not apply to existing facilities that are not undergoing new construction.

The great majority of the referenced standards contain language indicating that they apply to “design and construction” or, in the case of the National Electrical Code, “installations”—*not* to existing facilities or existing electrical systems. In addition, many of the standards clearly indicate that they are not intended to be applied retroactively. Using individuals with the appropriate expertise to properly interpret and apply the codes is also included in the introductory language of many of the codes. As an example, the following text, or very similar text, is included in many of the codes; “The Code sets forth engineering requirements deemed necessary *for safe design and construction* of pressure piping. While safety is the basic consideration, this factor alone will not necessarily govern the final specifications for any piping system. *The designer is cautioned that the Code is not a design handbook; it does not do away with the need for the designer or for competent engineering judgment.*” American Society of Mechanical Engineers (ASME) Code for Pressure Piping, B31, Power Piping (ASME B31.1 (2001), p. xv (Emphasis added).

As a second example, the Scope of NFPA 70 specifically indicates that it “covers the *installation* of electrical conductors, equipment, and raceways; signaling and communications conductors, equipment, and raceways; and optical fiber cables and raceways; and raceways for [specifically identified uses]” § 90.2 (A) (Emphasis added). If the contractor is not *installing* the *specified* materials or equipment or for the *specified* uses, NFPA 70 does not apply. In addition, the enforcement guidance found in Annex G of the code states that “*Additions, alterations, or repairs to any building, structure, or premises shall conform to that required of a new building without requiring the existing building to comply with all the requirements of this Code.*” § 80.9, Applications (Emphasis added).

Three ASME codes adopted in 10 CFR Part 851 do not contain the design/construction language described above. They are; ASME B31G-1991, ASME B31.8s-2001, and ASME B31.8-2003. Of these three codes, ASME B31G-1991 (reaffirmed 2004) deals with the remaining strength of corroded pipes and, therefore, it would not be expected to apply to new construction. Similarly, ASME B31.8s-2001 “Managing System Integrity of Gas Pipelines” does not contain this language because it deals with existing pipelines. ASME B31.8-2003 “Gas Transmission and Distribution Piping Systems” contains the construction language along with additional statements regarding the “maintenance of gas transmission or distribution pipelines.” The statement in ASME B31.8-2003 “*supervisory personnel having experience or knowledge to make adequate provisions for such unusual conditions*” indicates that this code also includes the need for qualified experts. Since these three codes deal in whole or in part with maintenance of existing facilities or systems, compliance or variances is required for applicable facilities or systems.

NFPA 70E “Standard for Electrical Safety in the Workplace” “addresses those electrical safety requirements *for employee work places that are necessary for the practical safeguarding of employees...*” (Emphasis added). The primary focus of NFPA 70E is safety-related work practices and maintenance requirements, safety requirements for special equipment and safety-related installation procedural

requirements. Its provisions mostly address safe work procedures/processes and, therefore, compliance is unlikely to necessitate extensive backfits or variances.

10 CFR 851 Implementation Guide Language (7/20/06)

**3.3.4.2. Code of Record**

Certain codes and standards provide implementation flexibility in the form of “Code of Record.” Code of Record refers to acceptability of the code that was in effect at the time a facility or item of equipment was constructed rather than the current code or standard. Code of Record provisions that exist in the codes and standards that are explicitly referenced in the Rule in 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). In addition, the pressure safety codes specify that current code requirements apply only to new design and construction. Similarly, flexibility provisions in codes and standards that are not explicitly identified in the Rule but are included in the contractor’s DOE-approved worker safety and health program can be exercised in implementing the Rule.

Question #3:

In an effort to understand the reporting thresholds of the Rule, non compliance examples have been formulated. Please indicate your opinion as to whether the following examples are:

- a. NTS reportable (per the Rule, Level I and II would be reported, these are also the noncompliance carrying potential financial penalty)
  - b. de minimus (per the Rule, noncompliance having no direct or immediate relationship to safety or health, will not be the subject of formal enforcement action, could be addressed through the equivalency process within NFPA, must be tracked locally).
  - c. something less than de minimus. It is recognized that this is not a category in the Rule; however there must be some threshold for which no action is needed or desired.
- 1) 100 (1%) of the 10,000 automatic sprinklers are obstructed by ductwork or have improper spacing (1 ft maximum noncompliance with head to head or distance to wall) as required by NFPA 13.
  - 2) 1000 (10%) of the 10,000 automatic sprinklers are obstructed by ductwork or have improper spacing (1 ft maximum noncompliance with head to head or distance to wall) as required by NFPA 13.
  - 3) one sprinkler head of the 10,000 automatic sprinklers located 1 inch too far from the wall per NFPA 13.

- 4) Emergency lighting is provided throughout the facility as required by the NFPA 101 Life Safety code; however, two office areas totaling 50,000 ft<sup>2</sup> have less than the required 1 ft.-candle having only 0.5 ft-candle.
- 5) Emergency lighting is provided throughout the facility but testing indicates that an average of only 0.5 ft-candle is provided throughout.
- 6) 100 (1%) of the 10,000 firewall penetrations in life safety related firewalls (exit passageways or horizontal exit walls) do not have listed penetrations.
- 7) 1000 (10%) of the 10,000 firewall penetrations in life safety related walls (exit passageways or horizontal exit walls) do not have listed penetrations.
- 8) Headroom on doorways in offices constructed of movable office partitions is 6 ft. 6 in. due to support members above doorway connecting the panels whereas the Life Safety code requires a minimum headroom of 6 ft. 8 in. thus a noncompliance of 2 inches. The noncompliance occurs 10 times in a new office area.
- 9) Headroom on doorways in offices constructed of movable office partitions is 6 ft. 6 in. due to support members above doorway connecting the panels whereas the Life Safety code requires a minimum headroom of 6 ft. 8 in. thus a noncompliance of 2 inches. The noncompliance occurs throughout all offices for a total of 500 occurrences.
- 10) Travel distance to exits exceeds the maximum allowance of 250 ft. of the Life Safety code by 50 ft. in 3 locations.
- 11) Travel distance to exits exceeds the maximum allowance of 250 ft. of the Life Safety code by 5 ft. in 3 locations.
- 12) Security requirements result in some exit doors having passage hardware such that two separate operations are required to unlatch the door which is a noncompliance with NFPA 101 - 7.2.1.5.9.2 which requires no more than one releasing operation in order to unlatch the exit door.

Please indicate a, b, or c for each of the above.

### Response

After due consideration of the nature of this question, the DOE Headquarters Office of Price-Anderson Enforcement (EH-6) concluded that it would be imprudent and potentially misleading to respond in the manner requested (i.e. by annotating each example with a letter that corresponds to the above-delineated summary of actual or suggested reporting thresholds). This is based, in part, on the fact that the **ultimate** reporting threshold for actual instances of noncompliance to Part 851 would likely be affected by circumstances that are not identified in the examples. For instance, Example 3, which might superficially be considered non-reportable, might actually exceed reporting thresholds if this condition were part of a repetitive pattern of sprinkler system installation variances or if this condition were shown to have contributed in some way to an increase in the severity or consequences of an actual fire. It is the totality of conditions, considered as a whole by a responsible and knowledgeable contractor representative(s), which form the basis of decisions regarding NTS entries.

Additionally, as supplementary guidance on the voluntary use of the Noncompliance Tracking System for Part 851 is pending from EH-6, it was felt that the EFCOG Fire Protection Subgroup should have an opportunity to review this guidance first, with the expectation that it will provide useful insights into the process for considering individual candidates for NTS entries.

A further consideration is the desire on the part of EH-6 to avoid becoming directly involved in the decisions regarding individual instances of noncompliance. In other words, if they began to provide insights into the type of specific examples cited above, they run the risk of being asked to provide similar incites into a wide spectrum of future potential issues of noncompliance. Such considerations and decisions should be addressed by DOE contractors, consistent with Appendix B of Part 851.

For further assistance on this matter, please contact Mr. Phil Wilhelm of the Office of Price-Anderson Enforcement on 301-903-5678.