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SUBPART A – GENERAL PROVISIONS			
Item #	851.1 - Scope and purpose	Team	Priority
1.	<p><i>The definition of contractor includes subcontractors, do subcontractors have to submit 851 programs (also referred to as plans and descriptions) to work on site?</i></p> <p>Subcontractors can operate under the contractor plan or their own. The decision of which plan to use can depend on how big or what type of contract we are talking about. If subcontractors work to their own plan, the work cannot begin until the plan is approved by DOE.</p> <p>As part of deciding whether to cover a sub-contractor in an umbrella plan, you may want to double check the wording in the rule about “primary responsibility.”</p>	L	1
2.	<p><i>Can we get a better definition of “furtherance of DOE Mission” (e.g., service subcontractor landscape person, cafeteria worker who operates on DOE property)? Vending machine person is talked about in the preamble.</i></p>	L	1
3.	<p><i>What about work for others? Is this seen as in furtherance of DOE mission?</i></p> <p>At this point, OE is not sure how the rule applies to these examples. They may need an interpretation.</p>	L	1
4.	<p><i>The preamble discusses some vendors, but what about a vendor that installs a laser? Is that work performed under 851? What about a delivery contractor delivering product that must be off-loaded by a crane?</i></p>	L	1
5.	<p><i>The Labs have personnel working all over the country working on DOE or Homeland Security. Off-site locations where DOE does not lease, own or control are outside the defined scope in the rule, but is this what DOE meant by their scope?</i></p>	L	1
6.	<p><i>How will Worker Safety and Health Plans transition between prime contractors when work scope is transferred between different contracts?</i></p>	T	1

E = Enforcement, L = Legal, T = Technical
 Priority 1 = ???, 2 = ???, 3 = ???

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Item #	851.2 - Exclusions	Team	Priority
7.	<i>What does regulated by OSHA mean? Ex. Off site facilities that are on DOE owned land, also private land. Definitions clearly say – controlled by DOE. DOE controls the operations within a leased or private facility – it is 851. PNNL has private facilities that are used to fulfill DOE mission. The state WSHA thinks they have jurisdiction for these facilities – but used for DOE mission. Unclear/ Double? jurisdiction. Scope – does it apply to the site or the work activities- what is deciding factor? Preamble says exclusion is for OSHA- not state OSHA. For states that have state OSHA program, the federal OSHA regulates federal facilities. If it is under fed OSHA – it is not under 851. Comment that states that have state OSHA – do not have federal OSHA. If the interpretation stands as now – there is potential for dual regulation. State OSHA applies to office building in town. If on Federal ground, DOE and 851 apply. Still have issue of contractor-leased facilities off DOE property.</i>	L	1
	851.2 - Exclusions		
8.	<i>Is work conducted off-site intended to be covered by the site plan? If so, is work conducted off-site in enforcement space? The preamble exclusion only applies to OSHA, not to state OSHA programs. This answer may need to be case by case rather than generic.</i>	E	2
9.	<i>Employees working at NASA, Air Force, or Department of Agriculture sites should also be addressed. Also, what applies at a facilities leased by the contractor using DOE funds?</i> As the discussion continued, there was disagreement in the comments related to when State OSHA, Federal OSHA, and 851 apply. One comment made was that Federal buildings fall under federal OSHA in even in states with a state OSHA program. Before this line of reasoning could be applied to the application of 851, a disagreement arose regarding the accuracy of whether federal buildings always fell under federal OSHA.	E	2
	851.3 - Definitions		
	None	N/A	N/A
	851.4 - Compliance order		
	None	N/A	N/A

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Item #	851.5 - Enforcement	Team	Priority
10.	<i>It remains unclear how contractors should consistently roll-down 851 requirements to subcontractors, including managing geographic responsibilities at sites with multiple contractors and the relationship between prime contractors and DOE IDIQ direct contractors.</i>	L	1
11.	<i>Is DOE contemplating coming up with language for flow-down into the subcontracts (DEAR Clauses)? Now you have to tell subs they may be subject to \$70,000 fines. In the preamble – DOE stated they did not plan to develop this clause. This is left up to the individual Contractors. This is legally applicable with or without a contract clause.</i>	E	3
12.	<i>Question: All contractors – indemnified or not – are covered by 851 (except exclusions). The only question is if you are subject to contract fine or civil penalty. Example: There may be a situation where 90% work is nuclear (indemnified) and 10% non-nuclear (or vice versa) –will the fine be contract fine or civil penalty? This question needs further evaluation and maybe an interpretation.</i>	E	3
13.	<i>Implementation guide (page 8) references fines and penalties relating to subs for indemnified Contractors. Needs clarification. Does 851 apply to suppliers who perform work activity at a location other than a DOE site? (OE- If DOE doesn't control the site – 851 doesn't apply.) Does the contract with a vendor constitute DOE control? If DOE pays the cost of leases – does this constitute DOE control? Preamble defines that Office of Enforcement makes the call on whether it will be contract fine or civil penalty. OE will have lots of input by DOE line. This will require better input/ sharing between OE and DOE line. Current thinking is that NOV will be issued either way with contract cases or civil penalty. When NOV is issued, will the NOV include amount EH-6: I think OE will do that.</i>	E	3
	851.6 - Petitions for generally applicable rulemaking		
	None	N/A	N/A

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Item #	851.7/.8 - Request for a binding interpretive ruling/Informal requests for information	Team	Priority
14.	<i>Will DOE use interpretive OSHA rulings?</i> Implementation Guide will define this better. (OSHA interpretive rulings sometimes conflict with each other.) In the enforcement section, it indicates OSHA interpretive rulings will be used unless General Counsel has different t decision. (See section H). In applying the OSHA rulings, be careful to assure that your situation matches the situation addressed by the interpretation.	T	1
15.	<i>There is a lack of guidance on the interpretive ruling request process and the required response from OGC. *Secondary Enforcement Issue (Interpretation of Wk SP Issue)</i>	N/A	N/A

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SUBPART B – PROGRAM REQUIREMENTS			
Item #	851.10 - General requirements	Team	Priority
16.	<i>What is meant by a “covered workplace? “This section is an area where the terms (“covered workplace,” “furtherance of DOE mission,” “DOE controlled site”) come together to demonstrate that definitions need to be very clear to help understand applicability.</i>	L	1
17.	<i>Does OE have enough staff to start assessing contractor has workplace “free” of hazards? OE – common sense comes into this enforcement approach. OE – trust us. Means you can’t hide behind the lack of a specific standard that addresses an egregious situation.</i>	N/A	N/A
18.	<i>“How” something is dealt with may be in procedures – is DOE looking for procedures or high level? This will be addressed in Implementation Guide. Guide will help define some consistency on what will be submitted. Sohinki will find out schedule for releasing implementation guide. Comments that “Billy” indicated around the first of June.</i>	T	2
851.11 - Development and approval of worker safety and health program			
19.	<i>In regards to Subpart C – there are a lot of old facilities and there is a pre-existing clause in Contract – is it required to go back and assess compliance to NEC? This is clarification on request for variance process. OE- Contractor must identify legacy issues! This must go through Billy McCarthy shop. Buildings that were built 3 years ago or design started three years ago (Waste Treatment Plan) do not meet current NEC - is this going to require re-evaluation and id of lack of meeting current NEC and submittal of variance. Code of Record, equivalencies, - these are still issues that Bill McCarthy must deal with. If I identify a building does not meet the current code – isn’t the issue how I go about protecting the worker from the hazard of this code change. (Issue of what law says and spirit of the law) Is there a mechanism to identify a “de minimus” condition? Enforcement Guide needs clear direction on what you need to submit / use to allow work to be conducted in or on facilities that may not meet exact code today. The answer to this question will not come from Enforcement Guide – this must come from Billy McCarther. OE cares about the clarity of the rules that must be enforced. Rule does not contain a grandfathering clause. Bill Mcc must come up with approach that protects the worker and considers old facilities. The group discussed “Duty of Care” concept in UK.</i>	T	1

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Item #	851.11 - Development and approval of worker safety and health program (cont.)	Team	Priority
20.	<p><i>NFPA/NEC contain words about refurbishing buildings as codes change – they have provisions for equivalency do these caveats apply? Sometimes the codes (NFPA) defer to having the authority with jurisdiction (DOE) have interpretive authority – this conflicts with have General Counsel being interpretive authority. (What takes precedence – federal law 851 or code?) What is DOE’s view on authority having jurisdiction (AHJ) when standard says it is AHJ and 851 indicates GC? Also, note that sometimes the NCE authorizes designer to interpret the code, does 851 negate that authorization? Is there a role for EH-6 in enforcement process? OE – says yes.</i></p> <p>When people are trying to do the right thing OE tries to give them credit. OE encourages contractors to do gap analysis between rule and what is being done – then work with line to reach a path forward. If situation is not remediated, but working on path forward, OE is not going after folks for these types of issues.</p>	T	1
21.	<p><i>Question about what constitutes “significant” for submitting updates on WH&S Plan? OE – there isn’t a great answer yet. Implementation Plan has some guidance.</i></p>	T	2
	<p><i>Is annual measured from approval date or submission date (Suggest clarification in implementation plan.)? OE comment is that you don’t have plan till it is approved. The clock starts when approved.</i></p>	T	3
	851.12 - Implementation – None	N/A	N/A
	851.13 - Compliance		
22.	<p>Hanford DOE has stated it is willing to accept ISMSD document as WH&S Plan. May 2007 = date for having plan up and approved.</p> <p><i>Need a way to inform DOE of status of moving forward on improving issues. Enforcement Guide should give guidance on how to do this.</i></p> <p>Discussion moved to the possibility of double payment because of civil penalty and decrease in Contractor award. OE confirmed they will work with DOE Line. (ex. DOE Line thinks Contractor deserves lower fee due to general OSH issues. There has already been OE fine for a specific issue. The 2 entities need to talk. The letter of the law doesn’t seem to include a specific statement that prevents double jeopardy. Guy falling doesn’t necessarily mean a noncompliance with 851 (standard). Be careful to identify where there is a noncompliance with a requirement.</p>	N/A	N/A

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SUBPART C – SPECIFIC PROGRAM REQUIREMENTS			
Item #	851.20 - Management responsibilities and worker rights and responsibilities	Team	Priority
23.	<p><i>There is reference to a poster – will DOE develop this or each site? OE indicates Ben Marcy is working on this.</i></p> <p>New expectation, any worker can request and expect to be monitored rather than "representative" worker. Need to understand what would be the affect if multiple people on a single job all requesting to be monitored--limitations on dosimetry, expanded analysis costs, etc. Request DOE formally interpret specific opportunity to request monitoring or to use representative data.</p>	N/A	N/A
851.21 - Hazard identification and assessment			
24.	<p><i>Question about establishing a baseline from an IH/IS perspective - is this what all contractors are doing?</i></p>	T	1
25.	<p><i>Management of baseline hazard identification assessments and periodic updates for the broad range of facilities becomes a significant contractor issue. Baselines are not necessarily available for all facilities, particularly those judged (through professional expertise) to not warrant a baseline. If the expectation is to maintain completely current safety and hygiene hazard list on <u>all</u> facilities, regardless of their use or potential risks (in order to demonstrate why monitoring is not required), then this will become a significant dilution to hygiene and safety resources. DOE needs to define "appropriate" in this subjective and regulatory environment because there is no clear definition of when not to perform baselines and periodic assessments.</i></p>	T	1
26.	<p><i>Use of the term “risk” – the rule doesn’t seem to define what to do with information on risk – once you get that info. The rule is unclear about mitigated risk, unmitigated risk, quantifying risk, or SOM accepting residual risk.</i></p> <p><i>Risk determination process–CDNS, Site submittals (how do we determine safety significance of new standards?).</i></p>	T	2

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Item #	851.21 - Hazard identification and assessment (cont.)	Team	Priority
27.	<i>21(b) Seems this is a provision for dealing with closure sites differently – seems to indicate there is a way to deal with implementation variances/ equivalencies. The rule isn't effective till Feb. 07 so provision to tell Local field office within 90 days becomes effective in Feb 07 or when discovered between now and then? OE: This is a recognition that it doesn't make sense to take actions for closure sites that you may take for sites with longer lifespan.). Question: when does the 90 days start – ex. You have a facility that is cold shutdown and you only visit occasionally is the 90 when you next visit the facility or 90 days of baseline?</i>	T	2
28.	<i>10CFR851 does not discuss the relationship between closure plans and the WSHP submittal due February 07. A process description is needed to clarify interaction with 430.1B</i>	T	2
29.	<i>Question about DOE expanding scope of DOE Order 150.1C, hazard assessments – this may take some time to get implemented – is 851 working with DOE on this?</i>	T	3
851.22 - Hazard prevention and abatement			
30.	<i>How are facilities expected to address known/currently identified legacy issues, especially in the current environment where limitations on funding will severely limit site's ability to perform abatement actions? Would maintaining a list of known hazards (especially those not being actively abated) provide a shield against an enforcement action?</i>	E	3
851.23 - Safety and health standards			
31.	<i>Need to address codes and standards that are incorporated by reference. Contractors are concerned with the expansion of Standards not specifically called out in the rule.</i>	T	1
32.	<i>How can you show equivalent level of protection with current/updated standards? Give examples.</i>	T	2

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Item #	851.23 - Safety and health standards (cont.)	Team	Priority
33.	<p><i>TLVs set for 2005 – but they change annually in the same way as for respiratory protection. If you aren't following the most recent set of TLVs, will this be noncompliance?</i> OE: What is in the rule applies.</p> <p>This is a question for all dated standards. Up front explanation says that Contractor decides how the Contractor will handle changes in standards that become more conservative. <i>Seems to set up situation where standards / expectations change and 851 hasn't moved forward to encompass this change – allowing less protection for worker.</i> Applying a later version of the standard than what is identified in current version of 851 - OSHA talks about this as de minimus violation. A suggestion was made that contractors describe how they manage changes to standards in their plans. The philosophy of what you should put in your plan was also discussed. A suggestion was made to not put detail in your plan because it opens for enforcement. Keep the “do good things” in the VPP, etc. OE: new science reveals lower TLVs needed Contractor needs to protect the worker – this is a separate issue of 851. Many of Contractor programs are beyond 851 (VPP sites). <i>Will work control process be subject to enforcement if it is put in the Plan?</i> Moderator indicated yes. Discussion on how some WSH&H Plans include cyber security, HR, etc. Putting all this stuff in 851 Plan puts it in enforcement space. The group then discussed minimalist approach versus just sending in ISM, VPP Plans. Discussion about how violation of RPP does not necessarily equate to violation of 835.</p>	T	3
34.	<p><i>NNSA-SC to identify which standards specifically cited in the rule contains methods to define equivalencies or manage exceptions (Code of Record, grandfathering, equivalency methods).</i></p>	N/A	N/A
851.24 - Functional areas			
35.	<p><i>Shall we follow state or BATF definition of firearms?</i></p>	T	1
36.	<p><i>Why was Industrial Safety left out of this list?</i> OE: industrial safety is a broad category that includes many areas that wouldn't be identified as functional areas (e.g., machine guarding).</p>	N/A	N/A

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Item #	851.25 - Training and information	Team	Priority
37.	<i>The definition of worker is “employee of DOE Contractor....” Does this term include subcontractor construction workers? Does Contractor have responsibility to train subcontractors – or to assure they have the appropriate training? The group discussed how Contractor provides or assures subcontractors have radiation protection training. The Contractor decides how to handle this. Clarification – this section on training is just a part of the 851 Plan – not something separate and different. This issue ties into whether the subcontractor will have separate WS&H Plan – or operate under the prime Contractor’s plan.</i>	L	1
851.26 - Recordkeeping and reporting			
38.	<i>The discussion identified that records of daily activities (e.g., a daily walk-through) must be accurate, consistent with this part of the rule, and be maintained as a record. Records may include email. The expected scope of non-NTS reporting / Tracking needs to be defined. Significant resources may be needed to manage information on event precursors (including near misses) depending on how DOE integrates reporting per DOE O 226.1 and this rule.</i>	T	1
39.	<i>Need clarification of 851.26(a)1 hazard inventory requirement. Some believe it is a list of non-compliances, some believe it is an inventory of hazards identified in JHAs, and there may be other interpretations of the requirement.</i>	T	2
40.	<i>What record keeping requirements exist for transient hazards within facilities?</i>	T	3
41.	<i>Need DOE guidance on use of “Risk Based” approach for NTS reporting. Need to have final reporting thresholds finalized.</i>	N/A	N/A
851.27 - Reference sources			
42.	<i>? Under the Fire Protection section it references NFPA codes in total. In section 27 it refers to 70 and 70E. Bill McCarther stated in Gaithersburg Meeting that this needs to be figured out.</i>	T	1
43.	<i>851.23 lists the standards. Are all the standards in 851.27 also enforceable?</i>	E	2

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SUBPART D – VARIANCES			
Item #	851.30 - Consideration of variances	Team	Priority
44.	<i>Use of Consensus Standards Processes for equivalencies, code of record, grandfathering, etc., instead of submitting variances needs to be clarified. At the Savannah River Site, significant portions of the fire protection systems do not meet the standards from the exact year of the Codes mentioned in 851. Exemptions have previously been approved at the site level. Therefore, it appears that there would need to be a significant number of variance requests submitted to meet the intent of this section unless there is a process for grandfathering previously approved exceptions and equivalencies.</i>	L	1
851. 31 - Variance process			
45.	<i>Is it intended to limit the variance process to only standards in 851.23? A lot of the standards include reference to daughter standards – do these have to be assessed as part of the baseline? Rule seems to switch back between all encompassing and standards within this part.</i>	T	1
851.32 - Action on variance requests			
46.	<i>De minimus – Is there any thought to define de minimus process in the Implementation Guide (process to use to gain acceptance with DOE line – allow it to be accepted)? Definition of de minimus seems to need clarification. (Ladder width doesn't meet criteria, what process do I use to document, and move forward to continue to use the ladders?) What is the possibility of using the OSHA interpretations for de minimus? What is the possibility of allowing the Site Office to be the approver for de minimis violation classifications (OSHA or defined process)?</i>	E	1
47.	<i>This section says “grounds for denial for variance – may be denied if enforcement may be handled as a de minimus violation”. No way to id something you want to do permanently if it is a de minimus. This leads into setting up Contractor for “willful” by noncompliance and no variance process. Discussion of identifying this, put in log, discuss with local DOE line, and moving forward. If variance was turned down due to de minimus – there is section that says no NOV's for de minimus violations.</i>	T	1

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Item #	851.32 - Action on variance requests (cont.)	Team	Priority
48.	<p><i>How do de minimus violations play into the process for identifying trends which may result in enforcement actions?</i> OE indicates this will be a judgment case.</p> <p>Only a couple of folks indicated they will use the variance process a lot. Compliance assessment to id baseline will result in creation of variance requests. 440.1A and CRDs will contribute to variance process. OE: You must identify all issues, plan to protect worker, and plan to correct them. Opposite approach: Rule says you must meet the standard by the date. If you don't – it needs variance. Waste Treatment Plant is meeting current design codes specified in contract – 851 requires a variance request or change the Contract. Yet, 851 preamble indicates they don't expect to see too many variance requests. Some DOE lines expect to see variances in similar time as WS&H Plan. Various rumors are circulating on willingness to accept/ authorize variances.</p>	N/A	N/A
851.33 - Terms and conditions			
	None	N/A	N/A
851.34 - Requests for conferences			
	None	N/A	N/A

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SUBPART E – ENFORCEMENT PROCESS			
Item #	851.40 - Investigations and inspections	Team	Priority
49.	<p><i>Requested information on pilot field inspections, how results will be shared, and practice NTS reporting.</i> OE: Inspections that OSHA did few years ago – is not what OE has in mind for this. OE will do focused inspections where there may be issues with recurring problems in functional areas. Small teams will be on site for short amounts of time. Prototype inspections are a learning exercise for OE and the Contractors. Sites were selected for a variety of types of activities (Pantex - weapons, Oak Ridge – Lab, WTP – construction.) No formal report to be issued. But, after all 3 are done, they will share lessons learned type of document. Truly a no fault exercise dealing with real issues. Real issues should be treated by the Contractor in the same manner they usually deal with issues. OE requests 851 NTS reporting starting June 1 and continuing through early Feb. (roughly 6 months). They have received comments on NTS criteria but proceed to use in order to provide learning for OE. Comments on thresholds or the NTS system are encouraged.</p> <p><i>At what point do you consider a contractor to be recalcitrant if not submitting 851 NTS during trial period?</i> OE: reminds folks that reporting is voluntary but may gently remind Contractors to do this.</p> <p><i>At what point will slate be wiped clean? Will items reported during this period be used to id repetitive in the future?</i> OE: Things identified during this period will not be used in the future.</p> <p><i>What about violations that began before Feb. 9th and extends beyond?</i> OE: It is enforceable if it continues to exist.</p> <p><i>What about draft 851 NTS and practice of closing these with local DOE Offices – does this need to be done?</i> OE: OE was most interested in the thresholds – but it would be instructive to follow these things to formal closure with local DOE so they can compare if process is similar to the nuclear side (easier or more difficult). (Seems to recommend the draft NTS go through whole process.) Hope to see Reporting Guide by early June.</p> <p><i>Contractors are requesting more guidance on repetitive and programmatic for OSH stuff.</i> OE will think about this.</p> <p><i>Using scenario of person falling down stairs and breaks leg - may not be an OSHA noncompliance.</i> This would be ORPS reportable – but not NTS. Talk to local field office and OE to help quell any early flags. OE indicates this type of issue will raise flags with them. Comment: Person breaking leg is Significance Category 3 NTS. Reinforces need for identifying the noncompliance (maybe stairs were or were not in compliance) and communication with DOE/OE. OE: The Table in the draft guidance is not an automatic</p>	N/A	N/A

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	<p>NTS – but it should be considered. There must be an associated noncompliance. OE is using the testing period to specifically see if they want to require Significance Category 4. ORPS folks are looking to refine definition of “near miss”. The sooner Contractors start reporting – the more data for OE to decide on final criteria.</p> <p><i>(Monday questions- Issue – how much info needed when citing noncompliance for 851? – OE wants to see a reference to 1910.XXX personnel protective equipment). OE expects to see identification of all the noncompliances (id all standards violated, not just first few).</i></p> <p>OE is already anticipating issues with the “employee concern” provision. OE is developing protocols. OE does not expect to take on significant work load in this area (will refer to other work groups first).</p> <p><i>How does OE expect to enforce any subpoena issued? OE: has never had to do this in nuclear area – OE still needs to think this through.</i></p>		
	851.41 - Settlement		
	None	N/A	N/A
	851.42 - Preliminary notice of violation		
	None	N/A	N/A
	851.43 - Final notice of violation		
50.	<p><i>Does OE anticipate issuing more PNOVs, faster? OE: the OSH stuff is more clear cut and may be faster. May decide to go from on-site inspection straight to a PNOV and have the Contractor respond. Alternatively, they may combine investigation report and PNOV. OE hesitates not having enforcement conference because this makes senior management focus on the issue. OE is still talking about how to shorten the process.</i></p>	???	???
	851.44 - Administrative appeal		
51.	These dates are firm. Make sure senior management understands.	???	???
	851.45 - Direction to NNSA contractors		
52.	NNSA had a meeting May 3&4 th at the DOE Nevada Test Site.	???	???

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Appendix A to Part 851 – Worker Safety and Health Functional Areas			
Item #	Construction Safety	Team	Priority
53.	<i>Can you confirm that the drawings that must be provided are only those drawings required by OSHA?</i> Yes	T	3
54.	A (1)(ii) <i>As-built drawings are the last to come along. When are the as-builts required? (Ex. scaffolding and shoring)</i> OE: One section is not exclusive of the other. Group discussion indicates that intent is to give the workers the drawings and plans during hazards discussion prior to work. Sections A-2 and A-3 seem to be clear they need to be available.	T	3
55.	B – <i>Does designated construction contractor person representative have to be available at all times during active construction? Can same individual check multiple construction sites each day or be on one site only?</i> Key issue is definition of “site “In the plan the contractor must designate individuals “..... <i>Question – can these people be designated by title –vs. name?</i>	T	3
Appendix A - Fire Protection			
56.	There are numerous minor NFPA code requirements that we have not addressed (via compliance or written equivalencies) since they were considered as “de minimis” in nature. How are “de minimis” NFPA code issues to be addressed in the future since 851 references the option of issuing “de minimis” violations for non compliance issues?	E	1
57.	Will DOE approved documents (exemptions and equivalencies) need to be reformatted and resubmitted as variances?	L	1
58.	DOE Order 420.1B establishes the guide lines for a comprehensive fire protection program. A draft implementation guidance document has been issued for review which references specific NFPA code editions. Will contractor be allowed to use to continue using the code of record concept for a building or will Order 420.1b which references specific NFPA code editions be required to be met?	L	1
59.	Bill McCarther recognizes the last sentence does need some level of clarification.	N/A	N/A
Appendix A - Explosives Safety			
	None	N/A	N/A

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Item #	Appendix A - Pressure Safety	Team	Priority
60.	<i>This section lists ASME codes which may be different than what is contractually identified for Waste Treatment Plan. This presents an issue – does the regulation carry more weight than the contract? Yes. Refers to “Strictest state and local code” why does this show up here? (Ex. State of NY has stricter codes than what is referenced.) In South Carolina, the state codes are stricter but they say they don’t apply to federal work. Rumor has there will be a guide on this. Jerry Myers is POC for pressure vessel work</i>	T	2
61.	<i>DOE has not forwarded their Implementation Guide on Pressure System Safety. Contractors remain concerned that there may be insufficient time to utilize the guide to determine the need for variance submittals, that negative decisions on the approval of those variances might not consider life cycle cost or cost/benefit ratios (i.e., the additional safety margin attained by pressure safety modifications would not be cost-justifiable), and that treating individual cases as de minimus violations would place the contractor in a precarious enforcement position.</i>	T	3
Appendix A - Fire Protection			
62.	<i>Appendix A section 2 establishes the basic requirements for comprehensive fire protection program without indicating exactly what that means. DOE O 420.1B should be cited as the basis, and clarification is needed as to the applicability of 10 CFR 29 Part 1910 & 10 CFR 29 Part 1926 fire protection requirements. As previously indicated in the discussion on Pressure Safety (above), significant concern remains over the need for and the application of the variance process. The latest unofficial guidance update from the DOE Fire Protection Committee is that existing equivalencies (EQs) will be accepted “AS IS” but that exemptions (EXs) will need to be reformatted and resubmitted to DOE HQ as variances</i>	T	2
Appendix A - Firearms Safety			
63.	<i>Whose definition of firearms will be used (BATF)? Do powder actuated tools fall under this definition? No.</i>	T	3
Appendix A - Industrial Hygiene			
64.	<i>The rule calls for initial baseline in all work areas. Does this really mean “ALL”? Does the term “where appropriate” allow hazard assessment to drive monitoring and sampling? Is there an expectation to re-baseline or use information that is already accumulated to establish the baseline? Discussion: Compliance with 6A may already provide baseline information – and need to only update.</i>	T	2

E = Enforcement, L = Legal, T = Technical
 Priority 1 = ???, 2 = ???, 3 = ???

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Item #	Appendix A - Biological Safety	Team	Priority
65.	<p><i>This section talks about biological and etiologic agents. Whose definition of biological and etiologic agents are we to use (CDC, Fish & Wildlife, Agriculture, UN, seven different agencies)?</i></p> <p><i>Previous interpretations of the need for a biological safety program had made a clear distinction between needing a program if live cultures were being actively managed and those for vaccination or analysis as part of normal operations. SRS routinely conducts direct microbiology analyses of environmental samples collected from water, air, sediments and soils. SRS does not isolate, purify, culture, process, store or ship any biological etiologic agents. The majority of these direct microbial analyses target environmental microorganisms of interest for bioremediation and environmental clean-up. SRS does monitor levels of naturally occurring Legionella (by immunofluorescence and direct microscopy of filters) in water samples collected from cooling towers at SRS as part of a program to ensure that water quality and disinfection are properly maintained. SRS does not isolate, purify, culture, process, store or ship any Legionella cultures. Our quality control standards for immunofluorescence are commercially purchased certified standards containing dead Legionella cells. We would like clarification that these activities do not meet the threshold for establishment of a full-scale biological and etiologic agent safety program.</i></p>	T	2
Appendix A - Occupational Medicine			
66.	<p><i>What is comprehensive medical service? (Construction = hearing, etc.) What is considered as “comprehensive?”</i></p> <p><i>Request clarification on D. 2 – contractors must notify Occupational Medicine when gone more 5 days, subpart H – monitor ill and injured workers --- Are these all work related injuries and illnesses or any /all? Is Occupational Medicine responsible for intervening in cases already being management by personal physicians?</i></p> <p><i>Section E – Occupational Medicine must participate in worker teams – what type of participation is expected?</i></p> <p><i>Section d-4 Provide Occupational Medicine access to work place – some work involves clearances, etc – How will Occupational Medicine get on site – when clearance is involved (sub-contractor specific providers or our own work at other sites)?</i></p> <p><i>Section J – Occupational Medicine must include measures to prevent morbidity Is this for general preventative program or specific to the work related issues? (non-work related preventable diseases)</i></p> <p><i>If you have 100 subcontractors onsite, will all of these be expected to be subject to prime contractor’s</i></p>	T	2

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	<p><i>Occupational Medicine program? What if they have their own program? Is the intent that everyone on site be included in annual medical program (ex. Administrative staff)? Complicating issue is if Contractors and subcontractors use many health providers in community – do we provide all of them full blown access and assume auditing responsibility of them?</i></p> <p><i>If someone is on the site for limited and unlimited amounts of time – do they have to be included (ex students, post docs, facility users, site residents (NIH), etc.)?</i></p> <p><i>What is meant by worker protection teams (E-2)?</i></p> <p><i>Section 2 I: At time of employment, the rule requires medical placement baseline for duty assignment. Placement evaluations are not generally part of agreement with unions in construction.</i></p> <p><i>Occupational Medicine must approve EAP, rehabilitation programs. Often these programs are provided from the corporation. Do EAPs have to be separated from the corporate program to allow Occupational Medicine oversight?</i></p> <p><i>What method do we use to evaluate people psychologically?</i></p>		
Appendix A - Motor Vehicle Safety			
67.	This matches DOE Order 440.1A.	N/A	N/A
Appendix A - Electrical Safety			
68.	None	N/A	N/A
Appendix A - Nanotechnology			
69.	Reserved	N/A	N/A
Appendix A - Workplace Violence			
70.	Reserved	N/A	N/A
Appendix B - Enforcement Policy			
71.	<p><i>You have a noncompliance for contractor who is subject to contract penalties (not subject to civil penalties) – do they have to file an NTS report? OE: Yes</i></p> <p><i>Why? NTS reports are filed for mitigation.</i></p> <p><i>If no mitigation, why file? OE: OE they are subject to the rule – and NOV may be issued. If there is an egregious situation –OE will issue NOV. Civil penalties are assessed for non-indemnified contractors. OE will not issue phantom penalty. Discussion: the Contractor must continue with causal analysis etc but primary client becomes the local DOE Contracting Officer.</i></p>	E	2

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Item #	General Issue	Team	Priority
72.	<i>Struggling with status of summer students, guests, etc where there is no contractual relationship. Are these folks included under 851? How do you deal with this in enforcement space? Idea: Seems like issue is whose work control process they are using?</i> A discussion ensued. If they come onto your site – do they read your S&H guidance document? From a rule perspective – these folks may be using your facility or equipment – but not in furtherance of DOE Mission. They are on a DOE site – but not in furtherance of DOE mission. Labs don't have control over these folks. This may need an official interpretation by Gen. Council.	L	1
Inaccurate Information: 7C			
73.	<i>Does this extend to top of company? Do criminal penalties apply?</i> OE: Yes, OE will send memo to Dept of Justice and ask if they are interested in investigating.	N/A	N/A
Inaccurate Information			
74.	<i>Seems similar to 820?</i> Cite it under 851 provision (if 851 applies) – not 820.11.	N/A	N/A

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