



**10 CFR 851**

**Enforcement Program Overview**

**for Occupational Medicine**

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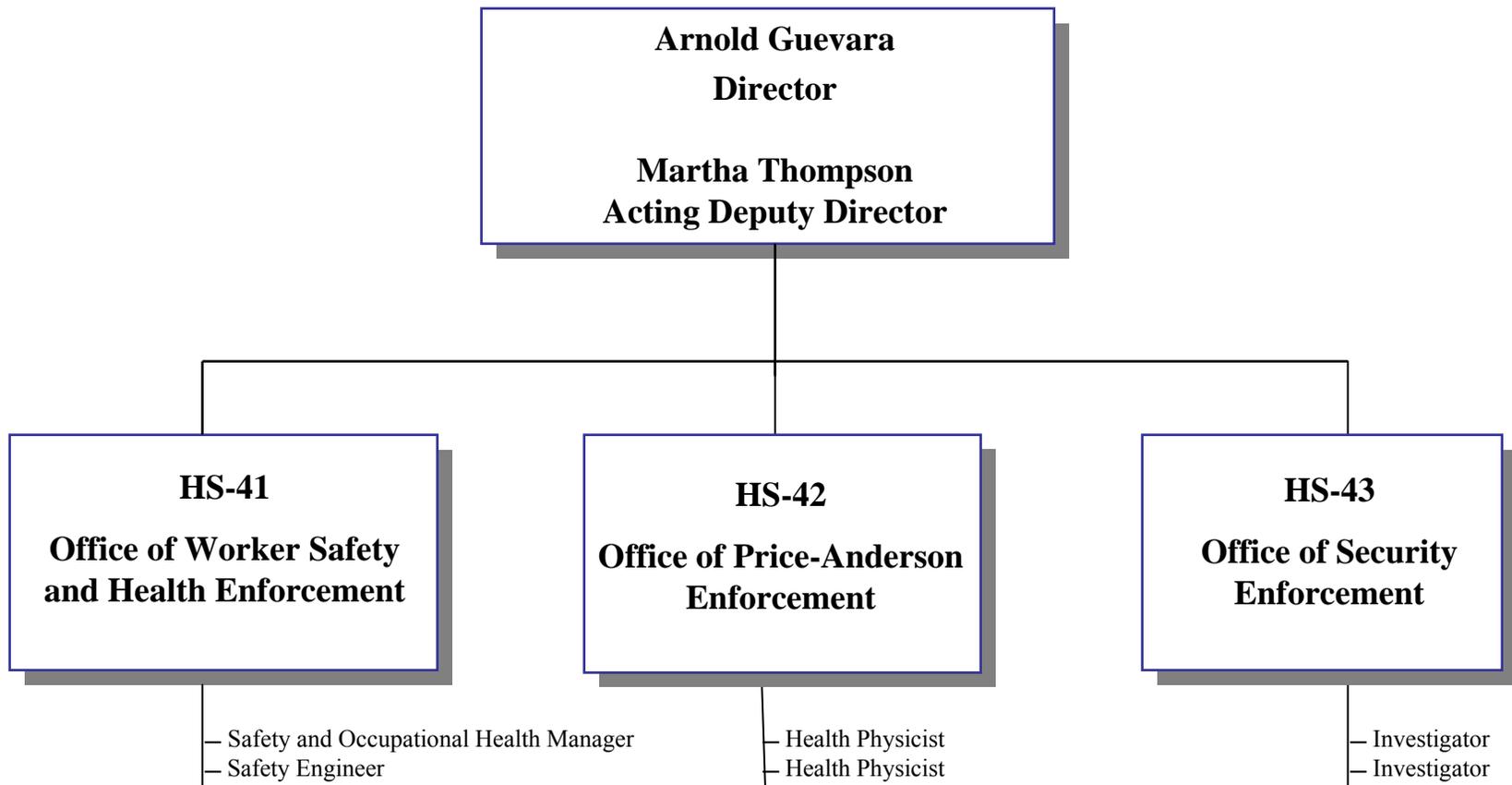
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# Office of Enforcement Organizational Infrastructure





## **Legislative Mandate for 10 CFR 851**



### **Public Law 107-314:**

**“The Secretary shall promulgate regulations for industrial and construction health and safety at Department of Energy facilities...”**

**“Such regulations shall...provide a level of protection...that is substantially equivalent to the level of protection currently provided to such workers at such facilities.”**



## 10 CFR 851 Requirements Basis



- **10 CFR 851 adopted the requirements of DOE Order 440.1A**
- **10 CFR 851 enforcement provisions became applicable to 10 CFR 850, *Chronic Beryllium Disease Prevention Program***



## Specific Program Requirements



- **Management and Worker Responsibilities**
- **Hazard Identification**
- **Hazard Prevention**
- **Safety and Health Standards**
- **Functional Areas (Appendix A)**
- **Training**
- **Record Keeping**
- **References**



## **General Approach to Enforcement**



- **Outlined in Appendix B of 10 CFR 851**
- **Based on Existing Nuclear Safety Enforcement Approach**
- **Enforcement of 10 CFR 851 Will Be Conducted in a Similar Fashion**
- **Enforcement Provisions Became Effective on February 9, 2007**



## Severity Levels



- **Level I – Violations involving potential for death or serious physical harm**
- **Level II – Violations that cannot reasonably be predicted to cause death or serious harm but are directly related to worker health and safety**
- **De Minimus – Violations that have no direct or immediate relationship to safety and health**



## Penalties



- **Maximum of \$70,000 per violation per day**
- **Severity Level I – 100% of maximum**
- **Severity Level II – 50% of maximum**
- **De Minimus – Will not result in issuance of a Notice of Violation**
- **Other isolated minor violations will not result in Notices of Violation**



## **New Option for Penalties**



- **Director of Enforcement authorized to seek contract fee reductions in lieu of civil penalties**
- **Contract penalties not to exceed total fees paid to contractor in that fiscal year**



## Enforcement Program Elements



- **Enforcement program is primarily focused on investigations of noncompliant conditions associated with actual or potential for injury or illness**
- **Inspection authority will rely on other resources; focused inspections may occur as a result of investigations**
- **Enforcement program reviews evaluate contractor noncompliance screening and reporting processes**



## Incentives for Self-Reporting



- **Contractors have the option of self-reporting noncompliances above established thresholds into the Noncompliance Tracking System (NTS)**
- **Noncompliances that do not meet reporting thresholds are expected to be tracked locally**
- **Self-identification and reporting of a noncompliance is a major factor in when considering mitigation of penalties**



## NTS Reporting Thresholds



- **Noncompliances Associated with Occurrences**
- **Management Issue Noncompliances**
  - **Repetitive Noncompliances**
  - **Programmatic Issue**
  - **Intentional Violation or Misrepresentation**
- **Other Significant Conditions**
  - **Severity Level I violations with “high” relative risk**



## **10 CFR 851 Occupational Medicine Requirements**



- **10 CFR 851 requirements expanded upon 440.1A requirements**
- **10 CFR 851 requirements are not consistent with OSHA requirements for medical surveillance**
- **Key example: Program coverage applies to all employees who are on-site more than 30 days in 12 month period**



## Most Prevalent Implementation Issues



- **Application to subcontractors**
- **30-day rule, “required” health evaluations and transient workforce**
- **Liability issues**



## Approaches to Occupational Medicine Challenges



- **There is no mechanism to request or receive an “exemption” from 10 CFR 851 requirements**
- **Variance process - temporary or permanent**
- **Self-report noncompliances – NTS reports require corrective action plans**



## Variations



- **Temporary variance: short-term relief for new standards**
- **Permanent variance: methods/processes in place provide a workplace that is as safe and healthful as those that follow the standard**
- **Cost is not a factor when evaluating variances**



## Experience To Date



- **At least five contractors working on variances**
- **Six contractors submitted NTS reports pertaining to implementation of Occupational Medicine requirements**



## Path Forward



- **Additional Occupational Medicine guidance (August 2007) is available at**  
[www.hss.energy.gov/HealthSafety/WSHP/rule851/851final.html](http://www.hss.energy.gov/HealthSafety/WSHP/rule851/851final.html)
- **HSS continues to seek ways to assist contractors in achieving compliance**
- **HSS meets routinely with union leaders**



## **Additional Resources**



### **Enforcement Program Plan**

**[http://www.hss.energy.gov/Enforce/EPO\\_0907.pdf](http://www.hss.energy.gov/Enforce/EPO_0907.pdf)**