

contractor responsible for a workplace would: (1) Select and use procedures, controls, and work processes in a tailored manner in particular workplaces to implement the selected standards; and (2) select controls on the basis of the following hierarchy in descending order: engineering controls, administrative controls, work practices, and personal protective equipment. Where appropriate, the program might identify specific procedures, controls and work processes and describe how these procedures, controls and work processes would be used to achieve a tailored implementation. At a minimum, proposed § 851.101(c)(4)(C) would require a description of the process by which the set of selected workplace safety and health standards would flow down to a particular workplace, including how a contractor would select the procedures, controls, and work processes to implement the standards in a tailored manner for particular covered workplaces. This description would address the extent to which the flowdown might require additional analysis at the facility, activity and workplace levels. In addition, proposed § 851.101(c)(4)(C) would require a description of how the program was integrated on site, facility, activity and workplace levels, taking into account differences and similarities between the work, hazards, and workplace safety and health standards and, if applicable, coordinated with other worker safety and health programs at the site.

Implementation should focus on workplace hazards that are more likely to cause serious harm to workers. Accordingly, proposed § 851.101(c)(6) would require the worker safety and health program to prioritize the abatement of hazards on the basis of a qualitative evaluation of the relative risk to workers posed by identified workplace hazards. In addition, proposed § 851.101(c)(7) would require a worker safety and health program to address how implementation would incorporate certain features into the worker safety and health program. These features include line management commitment, information and training, ongoing workplace monitoring and observation, medical surveillance and applicability to subcontractors.

#### 5. Evaluation and Feedback

A key element for a successful worker safety and health program is feedback and continuous improvement. Proposed § 851.101(c)(5) would require a contractor to describe how it will update and maintain the program on a continuous basis. The contractor would

describe its procedures and processes for feedback activities such as lessons learned, training, updating, document control, and configuration control that may support a worker safety and health program. Moreover, the process of defining the scope of work, analyzing the hazards associated with the work, and identifying a set of standards should be an iterative process performed continually to provide feedback and improvement. This iterative process would provide a contractor with the information necessary to make continual changes and improvements to all aspects of the program and to comply with proposed § 851.102(c) that would require a contractor to evaluate and update a worker safety and health program to reflect changes in the work and the hazards. In addition to contractor initiated revisions, proposed § 851.102(c)(3) would require a contractor to modify a worker safety and health program to incorporate any changes, conditions, or workplace safety and health standards directed by DOE.

#### *F. Submission, Approval and Revision of Worker Safety and Health Programs*

##### 1. DOE Approval

Beginning one year after publication of the final rule, proposed § 851.102(a) would prohibit work from being performed at a DOE workplace unless the Program Secretarial Officer (PSO) (which proposed § 851.3 would define as "the Assistant Secretary, Deputy Administrator, Program Office Director, or equivalent DOE official who has primary line management responsibility for a contractor) had approved the worker safety and health program for the workplace on the basis of a determination that the program would achieve a level of protection at least substantially equivalent to the level of protection that existed in comparable DOE workplaces in 2002. A worker protection evaluation report would document the approval and determination. As part of the approval process, the PSO could direct the contractor to modify the worker safety and health program.

To approve the program, DOE would review the content and quality of the worker safety and health program for a DOE site to determine whether the rigor and detail were appropriate for the complexity and hazards expected at workplaces located at the site. DOE also would review the sufficiency of the analysis of work and hazards that supported the program. After approval of a program, DOE would focus its attention on how well a contractor

performed in providing safe and healthy workplaces, rather than on the details of how the contractor developed the program.

#### 2. Submittal and Compliance Dates

Proposed § 851.102(b) would require a contractor to submit a worker safety and health program to DOE for approval 180 days after publication of the final rule. This date would give a DOE contractor six months to submit a plan after the issuance of the final rule. The Act provides that the regulations shall take effect one year after the promulgation date of the regulations. DOE would not undertake enforcement actions pursuant to this rule on the basis of conduct prior to the effective date. DOE believes these dates should give contractors ample time to submit programs for approval and begin implementation since contractors already have a contractual obligation to have worker protection programs that should satisfy all or most of the requirements set forth in the proposed regulations.

#### 3. Annual Update

Proposed § 851.102(c) would require a contractor to maintain the worker safety and health program for a workplace by evaluating and updating the worker safety and health program to reflect changes in the work and the hazards. On an annual basis, the contractor would have to submit either an updated worker safety and health program to DOE for approval or a letter stating that no changes were necessary in the currently approved worker safety and health program. Annual updates are an important tool in meeting the requirement for continuous feedback and evaluation and allow a contractor to notify DOE of changes occurring during the past year such as new work to be performed, changes in the facility, building of new facilities or decommissioning of old facilities, associated hazards and performance problems. Only those changes in the workplace that have a potential to impact the worker safety and health program would need to be reflected in the worker safety and health program.

#### *G. Guidance Documents*

Proposed § 851.8 would explicitly limit the potential role of a "guidance document" as a source of enforceable worker safety and health requirements. DOE would continue to issue guidance documents to assist contractors in developing their worker safety and health programs, including selecting a set of standards and describing implementing procedures, controls, and work processes, but contractors would