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**DOE-STD-1083-95  
February 1995**

## **DOE STANDARD**

# **REQUESTING AND GRANTING EXEMPTIONS TO NUCLEAR SAFETY RULES**



**U.S. Department of Energy  
Washington, D.C. 20585**

**AREA SAFT**

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### FOREWORD

1. This Department of Energy (DOE) standard has been prepared by the Office of Environment, Safety and Health with the assistance of Hank George of Synergy Consultants and Steve Hosford of Phoenix Consultants. In addition, representatives of DOE Program Offices and Operations and Field Offices, as well as DOE Management and Operating contractors, contributed substantially to the development of this standard. This standard provides an acceptable process for requesting and granting exemptions to DOE nuclear safety rules. It does not provide the authorization for granting exemptions. Authorization for granting exemptions to nuclear safety rules is provided through Title 10 of the Code of Federal Regulations Part 820 (10 CFR Part 820), Subpart E, "Exemption Relief."

2. Beneficial comments (recommendations, additions, and deletions) and any pertinent data that may improve this document should be sent to the Office of Nuclear Safety Policy and Standards (EH-60), U.S. Department of Energy, Washington, D.C. 20585, by letter or by using the self-addressed Standardization Document Improvement Proposal (DOE F 1300.3) appearing in Attachment 1 to this document.

3. The provisions of 10 CFR Part 820.63 allow DOE to determine the procedures to be used to comply with the responsibilities regarding exemption relief from DOE nuclear safety rules. The procedure in this standard defines an acceptable method for meeting these responsibilities. If any conflicts are identified between this standard and the provisions of 10 CFR Part 820, the provisions of 10 CFR Part 820 apply. This standard does not supersede or replace any requirement specified in any DOE Rule, Order, Notice, Immediate Action Directive, or Manual (requirements documents). The Office of Nuclear Safety Policy and Standards in the Office of Environment, Safety and Health should be made aware of conflicts between this standard and requirements documents so that any necessary modifications can be made to the standard.

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4. DOE technical standards such as this technical standard do not establish requirements. However, all or part of the provisions in a technical standard can become requirements under the following circumstances:

- (1) they are explicitly stated to be requirements in a DOE requirements document; or
- (2) the organization makes a commitment to meet a standard in a contract or in a plan or program required by a DOE requirements document.

Throughout this standard, the word "shall" is used to denote actions which must be performed if this standard is to be met. If the provisions in this technical standard are made requirements through one of the two ways discussed above, then the "shall" statements would become requirements.

5. The term "Operations Office" is used throughout this document. Where it is used, the term "Field Office" shall be substituted where appropriate.

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### 1. SCOPE

DOE may grant temporary or permanent exemptions to its nuclear safety rules provided that the provisions of 10 CFR Part 820, Subpart E, "Exemption Relief," are met. The provisions of 10 CFR Part 820 state that the Secretarial Officer (as described in Section 3.5, below) shall utilize any procedures deemed necessary and appropriate to comply with the exemption responsibilities. This standard establishes an acceptable procedure to be used to request and grant exemptions to DOE nuclear safety rules in accordance with 10 CFR Part 820.

### 2. APPLICABILITY

This standard is intended for use by all DOE elements and their contractors when requesting or granting exemptions to the following rules and their subparts:

10 CFR PART 830, "NUCLEAR SAFETY MANAGEMENT"

10 CFR PART 834, "RADIATION PROTECTION OF THE PUBLIC AND THE ENVIRONMENT" (proposed), and

10 CFR PART 835, "OCCUPATIONAL RADIATION PROTECTION"

or any other rule in 10 CFR which DOE has adopted and determined to be related to nuclear safety.

### 3. EXEMPTIONS

3.1 Criteria. 10 CFR Part 820.62 states the criteria which must be met in order for DOE to grant an exemption to the nuclear safety rules. These criteria are repeated below.

The criteria for granting an exemption to a DOE nuclear safety requirement are determinations that the exemption:

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- (a) Would be authorized by law;
- (b) Would not present an undue risk to public health and safety, the environment, or facility workers;
- (c) Would be consistent with safe operation of a DOE nuclear facility; and
- (d) Involves special circumstances, including the following:
  - (1) Application of the requirement in the particular circumstances conflicts with other requirements; or
  - (2) Application of the requirement in the particular circumstances would not serve or is not necessary to achieve its underlying purpose, or would result in resource impacts which are not justified by the safety improvements; or
  - (3) Application of the requirement would result in a situation significantly different than that contemplated when the requirement was adopted, or that is significantly different from that encountered by others similarly situated; or
  - (4) The exemption would result in benefit to human health and safety that compensates for any detriment that may result from the grant of the exemption; or
  - (5) Circumstances exist which would justify temporary relief from application of the requirement while taking good faith action to achieve compliance; or



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- (6) There is present any other material circumstance not considered when the requirement was adopted for which it would be in the public interest to grant an exemption.

Exemptions shall be processed and approved in the manner discussed in this standard.

3.2 Request for Exemption. The contractor shall submit the request for an exemption with supporting justification to the Operations Office Manager.

The request and the supporting justification shall:

- (a) identify the requirements or parts of requirements from which exemptions are being requested;
- (b) identify if the exemption being requested is temporary or permanent;
- (c) identify the specific activities that would be necessary to implement the requirement for which the exemption is being requested;
- (d) state and provide supporting justification that the exemption:
  - (1) is authorized by law,
  - (2) would not present an undue risk to the public health and safety, the environment, or facility workers, and
  - (3) is consistent with the safe operation of a DOE nuclear facility;
- (e) discuss the special circumstances which warrant the exemption (see 10 CFR Part 820.62 and above);

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- (f) provide justification that there will be no significant increase in risk to the public, facility workers, or the environment that would result from granting the exemption versus implementing the requirement;
- (g) discuss any proposed alternatives or mitigating actions taken to provide protection from the hazard covered by the requirement;
- (h) state what benefit is realized by not meeting the requirement from which the exemption is requested;
- (i) identify any urgent circumstances warranting the necessity for a temporary relief, as well as when compliance will be achieved, if temporary relief is requested; and
- (j) include any additional information which is not requested above, but is helpful to understand the request and support its approval.

The exemption request shall also identify and justify the date (if any) by which the exemption decision must be made to prevent or minimize impacts on safety, operations, or missions.

Consistent with the National Environmental Policy Act (NEPA) and the Department of Energy NEPA Implementing Procedures (10 CFR Part 1021), if the requested exemption will have a significant environmental impact which has not been previously considered in a NEPA analysis, the exemption request shall address those impacts.

It is anticipated that contractors will discuss the possibility of filing an exemption request with representatives of the Operations Office and the Program 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.

**3.3 Operations Office Manager Responsibilities.** The Operations Office Manager shall assess the decision date requested by the contractor and either concur with the date or provide an

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alternate date with the basis. The Operations Office Manager shall ensure that the request for exemption along with the Operations Office assessment of the requested decision date is transmitted to the Secretarial Officer responsible for the activity for which the exemption is being requested (Cognizant Secretarial Officer) within 4 days of receipt of the request. The Operations Office Manager shall also ensure that a copy of the request is transmitted to the Assistant Secretary of Environment, Safety and Health if the request relates to an exemption from radiological protection provisions (10 CFR Part 834 or 835).

The Operations Office shall also provide the Program Office with its recommendation and support on the approval of the exemption request on a schedule to be mutually agreed.

3.4 Evaluations. The approving Secretarial Officer (see section 3.5) is responsible for evaluating the request for an exemption. Any exemption decision shall be documented in a letter to the requesting contractor setting forth the reasons for granting or denying the requested exemption. For any exemption which is approved, the documentation shall also include the basis for determining that the criteria of 10 CFR Part 820, Subpart E, have been met.

Exemptions shall be evaluated in accordance the Department of Energy NEPA Implementing Procedures (10 CFR Part 1021) whenever they will have a significant environmental impact that has not been previously considered in a NEPA analysis.

Because contractors are required to comply with the nuclear safety rules, failure to decide exemption requests in a timely manner could result in negative mission impacts, unnecessary shutdowns, and/or additional costs. Therefore, the approving Secretarial Officer shall ensure that exemptions are evaluated and decided in a timely manner. Exemption decisions shall be issued within 180 days except where special circumstances warrant a delay in the decision. In these cases, the approving Secretarial Officer shall provide the reason for the delay and the projected decision date in writing to the requesting contractor, the Operations Office Manager, and the Cognizant Secretarial Officer within 180 days of the request for exemption.

3.5 Evaluations of Exemptions from Radiological Protection Requirements Because exemptions from the radiological protection requirements of 10 CFR Part 834 and 835 require

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approval by the Assistant Secretary of Environment, Safety and Health, those exemptions shall be processed as follows:

- (1) the exemption request shall be reviewed by the Program Office responsible for the activity in coordination with the Operations Office;
- (2) once the review is complete and within 90 days of the receipt of the exemption request, the Cognizant Secretarial Officer shall forward a recommendation for approval or disapproval, and the basis therefor, to the Assistant Secretary for Environment, Safety and Health;
- (3) the Assistant Secretary for Environment, Safety and Health may choose to accept the evaluation of the Program Office or perform a separate evaluation;
- (4) the Assistant Secretary of Environment Safety and Health shall document the exemption decision in a letter to the requesting contractor with a copy to the Cognizant Secretarial Officer and the Operations Office Manager.

3.6 Approval Authorization. 10 CFR Part 820.61, "Secretarial Officer," states, in part, that the Secretarial Officer who is primarily responsible for the activity to which a nuclear safety requirement relates may grant an exemption from that requirement, provided that the Secretarial Officer responsible for environment, safety and health matters shall exercise this authority with respect to provisions relating to radiological protection of workers, the public and the environment. Consequently, exemptions to rules relating to radiological protection (10 CFR PART 835, "OCCUPATIONAL RADIATION PROTECTION" or 10 CFR PART 834, "RADIATION PROTECTION OF THE PUBLIC AND THE ENVIRONMENT" [proposed]) shall be approved by the Assistant Secretary for Environment, Safety and Health. The Cognizant Secretarial Officer responsible for the activity or facility to which the requirement is being applied shall approve exemptions to nuclear safety rules other than those relating to radiological protection.

Activities which involve multiple Cognizant Secretarial Officers require approval (or concurrence in the case of exemptions to radiological protection) of all of the affected Cognizant Secretarial

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Officers. In such cases, the approvals and concurrences shall be coordinated by the Manager of the Operations Office.

3.7 Approvals and Rejections. The approving Secretarial Officer may approve or reject a request for an exemption or return it to the contractor with written directions on how to change it to make it acceptable. Alternatively, the approving Secretarial Officer may modify the request in consultation with the contractor and approve a modified exemption. In such cases, the change shall be fully documented and justified in the approval letter. In addition, an exemption may contain appropriate terms and conditions as discussed in 10 CFR Part 820.64, "Terms and Conditions." Those provisions include, but are not limited to provisions which:

- (a) limit its duration;
- (b) require alternative action;
- (c) require partial compliance; or
- (d) establish a schedule for full or partial compliance.

Exemptions which are granted for a limited duration are temporary exemptions.

In the event that DOE rejects a request for exemption, it is incumbent upon DOE to (1) ensure that sufficient funding has been or will be provided for the contractor to perform reasonable actions to comply with the requirements or (2) direct the contractor to cease or curtail operations so that compliance can be achieved within current funding.

3.8 Delegation. 10 CFR Part 820.61 states that the authority to grant an exemption may not be delegated.

3.9 Documentation. In accordance with the requirements of 10 CFR Part 820.63, "Procedures," the approving Secretarial Officer shall submit copies of all exemption decisions to the Office of the Docketing Clerk in the Office of Environment, Safety and Health. The Office of the

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Docketing Clerk shall maintain a comprehensive docket for exemption decisions. The approving Secretarial Officer shall also ensure that the requesting organization receives a copy of the decision within 48 hours after filing the decision.

### 4. EXEMPTIONS TO ESTABLISH IMPLEMENTATION PLANS

The provisions of 10 CFR Part 820.65 are as follows:

With respect to a DOE Nuclear Safety Requirement for which there is no regulatory provision for an implementation plan or schedule, an exemption may be granted to establish an implementation plan which reasonably demonstrates that full compliance with the requirement will be achieved within two years of the effective date of the requirement without a determination of special circumstances under Paragraph 820.62(d).

The majority of nuclear safety rules (final and proposed) specify that compliance is to be achieved in accordance with a schedule either specified in the rule or in a plan or program required by the rule (referred to as "implementation plans" in 10 CFR Part 820.65). Both of these provisions permit "phased-in" implementation of the requirements. However, a few of the nuclear safety rules contain requirements which are to be fully implemented by the effective date of the rule. DOE believes these requirements are already substantially implemented through contractual requirements. It is recognized that a few contractors may not be in full compliance with these rules when they are issued and may need up to two years to achieve full compliance. Consequently, for those nuclear safety rules which do not contain a provision for phased-in compliance through either a specified schedule or an implementation plan, 10 CFR Part 820.65 permits DOE to approve an exemption to establish a schedule for achieving compliance for up to two years from the effective date of the rule without a determination of special circumstance (see 10 CFR Part 820.62.d for special circumstances).

For any exemption granted under the provisions of 10 CFR Part 820.65, the contractor must demonstrate and DOE must agree that: (1) the exemption is authorized by law, (2) there will be no undue risk to human health or safety or the environment as a result of granting the exemption, and (3) the exemption would be consistent with the safe operation of the facility.

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10 CFR Part 820.65 does not apply to nuclear safety rules which contain provisions for phased-in compliance through either a future schedule or an implementation plan. The implementation plan referred to in the rule includes plans and programs such as the Radiation Protection Program specified in 10 CFR Part 835 which will contain schedules for achieving compliance with the rule. Consequently, the provisions of 10 CFR Part 820.65 will not apply to the majority of the rules.

Paragraph 10 CFR Part 820.65 does not address the inclusion of exemption requests in implementation plans. That issue is discussed in DOE Standard 1082-94, "Preparation, Review, and Approval of Implementation Plans."

### 5. APPEAL

5.1 Appeal by the Contractor. 10 CFR Part 820.66, "Appeal," specifies that within fifteen (15) working days of filing an exemption decision by the Secretarial Officer, the person requesting the exemption (contractor) may file a Request to Review with the Secretary, or the Secretary may file a Notice of Review. The Request to Review shall specifically state why the exemption determination is claimed to be erroneous, the grounds of the request, and the relief requested.

5.2 Notice of Review. If the contractor submits a Request to Review to the Secretary, the Secretary will determine if a review of the decision is to be conducted. If a review is to be performed, the Secretary will issue a Notice of Review. The Secretary may accept the decision of the Secretarial Officer who approved or rejected the exemption request, change the decision, or modify the decision by issuing a Final Order.

## 6. FINAL ORDER

10 CFR Part 820.67, "Final Order," states if no filing is made under Section 820.66 (i.e, a Request to Review), an exemption decision becomes a Final Order fifteen (15) days after it is filed by a Secretarial Officer with the Office of the Docketing Clerk. If a Request to Review is filed within fifteen days of filing the exemption decision, then the exemption decision would become a Final Order 45 days after it is filed by a Secretarial Officer, unless the Secretary stays the effective date or issues a Final Order that modifies the decision.

## 7. SUBJECT TERM (KEY WORD) LISTING

The following list of subject terms (key words) is provided so that this document may be found during retrieval searches.

appeal  
compliance  
enforcement  
exemption  
final order  
implementation plan  
Notice of Review  
nuclear safety requirement  
regulation  
relief  
rule  
special circumstances  
temporary exemption



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CONCLUDING MATERIAL

Review Activities:

DOE HQ

DP  
EH  
EM  
ER  
FE  
HR  
NE  
NN  
PO  
PR  
RW

FIELD OFFICES

AL  
CH  
ETEC  
FERNALD  
ID  
NV  
Oakland  
OR  
RL  
RF  
SR

Power Authorities

BPA  
WAPA

AREA OFFICES

Amarillo  
Brookhaven  
Dayton  
Golden  
Kansas City

LABORATORIES

ANL  
BNL  
INEL  
LANL  
LBL  
LLNL  
METC  
PNL  
PPNL  
Sandia  
SSCL  
SLAC

Preparing Activity:

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