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Department of Energy

# memorandum

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REPLY TO  
ATTN OF: DP-31:M.Pitt:3-6582SUBJECT: SUPPLEMENTAL PROGRAM GUIDANCE REGARDING THE CONDUCT OF ORDER COMPLIANCE  
SELF-ASSESSMENTS AT DEFENSE PROGRAM FACILITIESTO: Manager, Albuquerque Operations Office  
Manager, Nevada Operations Office  
Manager, Oakland Operations Office  
Manager, Oak Ridge Operations Office  
Manager, Savannah River Operations Office

This supplemental guidance is based on experience gained from Defense Programs (DP) self-assessment activities and the need for a more efficient use of resources (i.e., directing resources at safety issues rather than at the development of extensive documentation for requirements that have negligible safety benefit). Developing documentation in the form of exemption requests for Order requirements with negligible benefit to individual facilities utilizes inordinate resources but does nothing to improve facility safety or enhance compliance with other, more appropriate requirements. It has been suggested by DP field elements that the need for such documentation in these instances be reconsidered. In addition, expending resources to implement Order requirements that offer negligible safety benefit is not prudent. This supplemental guidance responds also to input received from numerous sources in the field and provides for closure of DP Order Compliance Self-Assessment (OCSA) and transition to ongoing standards/requirements implementation assessments.

DP Headquarters (HQ) agrees that an alternate approach is warranted in circumstances where there is clearly no safety impact from noncompliance with requirements that offer negligible safety benefit or value added. This conclusion is based on projected resource expenditure rates for developing exemption requests or for implementing Order requirements with negligible safety benefit, and on the lessons learned from experience with the existing guidance. The supplemental guidance also develops the DP OCSA approach to a point where it is generally consistent with the approach being developed in the Criteria for the Department of Energy's Standards Program, DOE/EH/-0416.

Under the existing OCSA guidance provided by DP, no distinction is made between: (1) applicable requirements that are appropriate, and (2) applicable requirements that are inappropriate (i.e., applicable requirements that provide no safety benefit). This lack of distinction requires the development and submittal of exemption requests for applicable Order requirements that are inappropriate on the basis that compliance would provide negligible safety benefit. The original intent in requiring exemption requests for applicable but inappropriate Order requirements was to assure existence of adequate documentation to justify non-implementation. Since the authority to grant exemptions from Order requirements rests with the Secretary in some cases, formal documentation



and concurrence from the Assistant Secretary for Environment, Safety and Health (EH-1) are necessary. The supplemental guidance provided in this memorandum assures that exemptions are sought only when absolutely necessary, i.e., when noncompliance could result in adverse environmental, safety or health impacts.

Under the existing guidance that exemption requests be developed for all applicable requirements, exemptions from Order requirements having negligible safety benefit must be justified by the DOE line organizations and contractors. Based on the recognition that the DOE Nuclear Safety Orders are currently being revamped and requirements issued as rules, the field should not be required to assess compliance with Order requirements that have negligible safety benefit and are not likely to be promulgated in DOE rules. DP HQ will bring such cases to the attention of the Office of Primary Interest, as appropriate.

Given the apparent marginal utility of some applicable DOE Order requirements for particular DP facilities, and faced with the need to do more with fewer resources, DP HQ and field elements are hereby relieved of the requirement to develop exemption requests for applicable DOE Order requirements that provide negligible safety benefit. It should be clearly understood that each site, facility, or activity manager, as appropriate, is expected to maintain an informal written record justifying the exclusion of these requirements from the OCSA process, including the identification of the individual(s) responsible for the decision. Subject matter experts at each facility should be prepared to defend these justifications to cognizant DOE operations office managers or their delegates. The adequacy of each justification will be subject to review by DOE at the appropriate level of authority as needed. Agreements between operations office and contractor or laboratory staffs regarding excluded requirements should be coordinated with cognizant DP HQ line management as necessary. Order requirements for which the safety benefit is undetermined or unknown shall remain candidates for exemption requests or Compliance Schedule Approvals pending determination of the value added of compliance with such requirements.

The attached Discussion Paper (Attachment 1) provides a detailed rationale in support of this supplemental guidance, and Attachment 2 describes the modified OCSA process to be applied based on same.

Your continued support in implementing the DOE response to the Defense Nuclear Facilities Safety Board Recommendation 90-2 is greatly appreciated. Mr. Maurice Pitt (301-903-6582) is the designated point of contact with regard to this supplemental guidance.



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## **CONDUCT OF DP ORDER COMPLIANCE SELF-ASSESSMENTS**

Defense Programs (DP) has committed to completing Phase 1 assessments of the Department of Energy's (DOE) Orders of Interest to the Defense Nuclear Facilities Safety Board (DNFSB) prior to completing facility Standards/Requirements Identification Documents (S/RIDs) at a number of its facilities (these facilities are listed in the DOE Implementation Plan in Response to Recommendation 90-2 of the DNFSB). DP also has committed to performing Phase 2 assessments on a sampling basis of adherence to documents that implement these DOE order requirements during the interim as S/RIDs are being developed. The purpose of this paper is to discuss how to effectively modify and reach closure on the DP Order Compliance Self-Assessment (OCSA) Program prior to fully transitioning into the Standards/Requirement (S/R) Program. This paper provides background information related to the DP OCSA Program and the S/R Program, describes modifications that should be made to the conduct of DP OCSAs, and presents the criteria and rationale for obtaining DP OCSA Program closure.

### **BACKGROUND**

#### **History of DP Order Compliance Self-Assessment**

DP facilities began conducting order compliance self-assessments in August 1990. Over a year later in November 1991, the process for conducting order compliance self-assessments was formalized and documented in DP-AP-202, "Order Compliance Self-Assessment Instruction." Based on further experience with the self-assessment process, DP-AP-202 was updated, and a revision was issued in August 1992.

The DP OCSA process was established on the premise that the DOE Orders contained the requirements necessary to perform work safely at DOE sites and facilities. A literal interpretation of this premise was then used to implement the self-assessment process. Each DOE Order of Interest to the DNFSB was broken down line-by-line into a discrete set of requirements (mandatory and non-mandatory). Each "mandatory" requirement was required to be assessed. If the requirement was not applicable, then a justification had to be developed and documented. If the requirement was applicable, the requirement had to be either implemented or exempted. DP-AP-202 did not make a distinction between Phase 1 and Phase 2 assessments and required that each requirement and adherence to associated programs, policies and procedures to implement the requirement be assessed.

Experience showed that assessing DOE Orders line-by-line was inefficient and costly, led to questionable interpretations of requirements that were not written to stand-alone, and led to the implementation of a significant number of requirements that had little or no meaningful impact on ES&H. In an attempt to alleviate some of these problems, DP developed a new breakdown of the Order requirements by rolling up some of the line-by-line requirements. Although this effort significantly reduced the number of Order requirements that had to be assessed, it did not entirely eliminate

the inherent problems with the line-by-line approach (e.g., simply combining two requirements into one requirement without changing their content does not reduce the required actions to be performed).

### **Standards/Requirements Program**

Revision 5 of the 90-2 Implementation Plan describes the S/R Program and requires that the Program be implemented in accordance with the two following instructions: the S/RID Development and Approval Instruction and the S/R Implementation Assessment Instruction. The objectives of the S/R Program are to identify the standards/requirements that apply to DOE defense nuclear facilities, determine the adequacy of those standards/requirements, and to assess the implementation of same.

The S/RID will serve as the mechanism for documenting the necessary and sufficient requirements to provide adequate protection to the health and safety of the worker, the public, and the environment. S/RIDs will be developed by the implementing organization and approved by DOE.

The requirements to be included in an S/RID will be drawn from a number of sources including federal, state and local laws and regulations (including DOE rules), DOE Orders, and industry standards. All applicable ES&H requirements from federal, state and local laws and regulations (including DOE rules) must be included in an S/RID, unless appropriate exemptions are granted. However, only applicable and appropriate ES&H requirements from DOE Orders will be included in S/RIDs. If a DOE Order requirement is not applicable, no justification is required to be documented. If an applicable DOE Order requirement is not included in an S/RID, the basis or rationale for not including the requirement should be informally documented and retained, including the identification of the individual(s) responsible for the decision to exclude the Order requirement. (These provisions are basically consistent with the evolving "Criteria for the Department's Standards Program" (DOE/EH/-416))

The S/R Implementation Assessment Instruction makes a clear distinction between the conduct of Phase 1 and Phase 2 assessments. Phase 1 assessment is essentially a one-time activity (except for new or revised S/RID requirements) that ensures requirements have been appropriately characterized and corresponding actions and conditions necessary for compliance are specified in implementing documents. Phase 2 assessment is an ongoing activity for the life of a site, facility, or activity that ensures actions and conditions are, in fact, as specified in the implementing documents.

### **DOE Directives**

Most of the DOE Orders related to nuclear safety are in the process of being converted to nuclear safety rules. This involves transferring the requirements (but not policy, guidance, or assignment of DOE staff responsibilities) from those DOE Orders into DOE Rules. Guidance related to implementation of the requirements is being incorporated into DOE Safety/Implementation Guides. DOE staff responsibilities included in the

DOE Orders have been incorporated into the DOE Manual of Functions, Assignments, and Responsibilities for Nuclear Safety. Notices of proposed rulemaking for all nuclear safety requirements from DOE Orders are planned to be issued by the end of 1996.

*to understand!*

Additionally, at the same time that nuclear safety Orders are being converted to rules, EH has created a Policy/Standards Process Improvement Team that is actively revising the DOE ES&H Directives (e.g., Orders and Notices). This team is reviewing the ES&H Directives to determine whether statements are policy, requirements, guidance, or technical standards. The intent is to rewrite the Directives so that they will contain only responsibilities and requirements. The requirements will be outcome-oriented statements that establish what is to be expected, but not how to fulfill the expectations. Policy statements will be refined and moved to separate Policy Directives, and guidance and technical standard information will be moved to Safety/Implementation Guides or Technical Standards, as appropriate. This team has completed binning statements and has identified 4,500 ES&H requirements in 50 EH Directives. The team plans to integrate the requirements to eliminate redundancies and conflicts, thereby further reducing the number of ES&H requirements.

Furthermore, DOE is in the process of reducing the number of its Orders in accordance with Executive Order 12861, "Elimination of One-Half of Executive Branch Internal Regulations." This process has led to the elimination of two DOE Orders of Interest to the DNFSB and the consolidation of other DOE Orders. One consolidation effort has created a new Order, DOE Order 5632.1C, which replaces 9 other DOE Orders (1 Order of Interest to the DNFSB and 8 other Orders that are not of interest to the DNFSB).

#### PROPOSED MODIFIED DP ORDER COMPLIANCE SELF-ASSESSMENT PROGRAM

Improved efficiency and effectiveness can be accomplished by modifying the DP OCSA Program with regard to the selection of DOE Order requirements for assessment, and the process for conducting Phase 2 assessments. A discussion of the proposed modified process is provided below.

#### Selection of DOE Order Requirements

First, DP HQ should monitor closely the changes being made in the DOE Orders and other directives to ensure that the STRIDE listing of requirements being used by the sites, facilities and activities is consistent with (not necessarily identical to) the new versions of the directives. Changes in scope or content should be disseminated immediately. The mapping of old to new requirements will be important to authenticate the OCSA assessment results as applicable to the new requirements when they are formally revised.

Based on the requirements of the S/R Program, the changes being made to DOE directives, and the focus on value added requirements in the Criteria for the Department's Standards Program, the scope of DOE Order requirements included in specific DP OCSA Programs should be modified from all

applicable requirements to applicable and appropriate requirements (e.g., those requirements that have a meaningful impact on ES&H). Each organization implementing the DP OCSA Program should make this determination with the expectation that the selected DOE Order requirements will be included in the S/RID. Each organization should also document informally its rationale for not including specific applicable DOE Order requirements in its OCSA Program. Assessment of the selected set of requirements would be the basis for reaching closure on the OCSA, and the starting point for the development and approval of S/RIDs. (It should be noted that since Phase 2 assessments are against an organization's implementing documentation, the basis for conducting Phase 2 assessments on a smart sampling basis will not change until, and unless, those documents are changed.)

The following reasons provide justification for assessing only applicable and appropriate requirements:

- o the DP OCSA process is recognized as an interim measure that will be replaced by the S/R Program; i.e., the use of the S/RIDs as the necessary and sufficient sets of requirements that are described by the Criteria for the Department's Standards Program, and the inclusion in S/RIDs of only applicable and appropriate requirements from DOE Orders. Requiring organizations to assess and implement requirements that most likely will not be contained in their S/RIDs is not cost-effective and does little to improve safety.
- o DOE Orders are undergoing significant revision to clarify which statements in Orders are requirements. This revision process has identified a significantly fewer number of requirements than are presently listed for assessment by the current DP OCSA Program. Requiring organizations to assess and implement requirements that most likely will not remain as requirements in DOE Orders (or eventually DOE Rules) is highly inefficient and not cost-effective.
- o the DOE Order exemption processes are inefficient and inconsistent. This factor has compelled many M&O contractors to implement requirements that have no meaningful impact on ES&H rather than to exempt them<sup>1</sup>. The effect of this approach is significant short-term and continuing long-term implementation costs with no or little ES&H benefit.
- o the significant budget reductions being proposed for DOE by the President and Congress (somewhere between 10-25%) make it critical that DOE maximize the benefit-to-cost ratio of its operations.

*Potential danger:  
if the requirements are  
left out but end up  
in the NRS list.*

*Which determinations  
which one to renew?*

<sup>1</sup>One of the exemption criteria from 10 CFR 820.62 state, "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."

Continuing with a DP OCSA Program that is inefficient and does not recognize recent DOE program efforts (e.g., the S/R Program and the Order reduction efforts) is not cost effective.

Using the "applicable and appropriate" approach to select requirements for interim DP Order Compliance would directly tie into the established S/R Program processes and avoid wasting a large amount of resources on assessing and implementing requirements that may not be included in the S/RID. This approach would provide DOE with the needed assurance that activities are being performed safely during the period of S/RID development. Additionally, because DOE can monitor the Order requirement selection process, DOE can be assured that appropriate Order requirements are being selected for assessment during the interim period.

*Who has this responsibility?  
How is it assigned?*

In summary, this approach will help prevent the implementation of Order requirements marginal to safety will allow efficient allocation of resources during the Phase 1 implementation assessments, and will assist in preventing the simple transference of all applicable ES&H Order requirements into the S/RID, which could lead to unnecessary long-term implementation costs.

### Phase 2 Assessment Process

The purpose of Phase 2 assessments is to provide a continuing basis for confidence that the actions and conditions at a site, facility, or activity adhere to the documents that implement necessary and sufficient ES&H requirements. This purpose is common to the OCSA program as well as the S/R Program. Consequently, the development of Phase 2 plans and schedules will be the same for the two programs, and changes would be required only if the implementing documents are changed to reflect new or revised requirements. The proposed modifications of the OCSA process is not expected to result in any immediate changes to existing implementing documents.

Each site, facility and activity within the OCSA program should be required to document plans and schedules for implementing Phase 2 assessments. Many of the DP sites, facilities, and activities are currently implementing some form of Phase 2 assessment program. They should be encouraged to use existing programs, or to modify them for use, to meet the Phase 2 assessment requirements described in the S/R Implementation Assessment Instruction. Among these is the requirement that Phase 2 assessments give priority to high risk areas or areas of known weakness. Facilities without any existing program may need additional HQ guidance in the development of an acceptable program of Phase 2 assessments. It would then be further required that the plans and schedules be carried out to provide evidence of Phase 2 compliance.

Although the Phase 2 assessments give priority to areas of high risk or known weakness, the schedule for the assessments should ensure that all functional areas are addressed at reasonable intervals. OCSA Phase 2

assessments should address the areas of weakness and high risk in each of the site, facility, or activity's functional areas prior to the transfer to the S/R Program.

#### **DP ORDER COMPLIANCE SELF-ASSESSMENT PROGRAM CLOSURE CRITERIA AND RATIONALE**

The DP OCSA Program is an interim measure for ensuring that DOE ES&H requirements are being appropriately implemented. The S/R Program subsumes the DP OCSA Program by establishing a new, permanent process for ensuring that all appropriate ES&H requirements (from DOE and non-DOE sources) are properly identified and implemented. The proposed modified DP OCSA Program is fully compatible with the S/R Program and the results of the modified DP OCSA Program can be transferred directly into the S/R Program. Therefore, the transition from the modified DP OCSA Program to the S/R Program is expected to be relatively straightforward, provided that certain criteria are met to ensure that implementation of ES&H programs is not compromised during the transition period. These criteria are discussed below.

Before closing out the DP OCSA Program, the following activities must be completed:

- o completion of Phase 1 assessments of all applicable and *appropriate* requirements in the DOE Orders of Interest to the DNFSB
- o completed corrective actions for all Phase 1 noncompliances that are not to be resolved pursuant to an RFA or a DOE-approved Implementation Plan
- o DOE approval of all RFAs and Implementation Plans related to applicable and *appropriate* requirements
- o Performance of Phase 2 assessments that cover high ES&H risk areas and known areas of weakness (smart sample) in each functional area addressed by the DOE Orders of Interest to the DNFSB.

Completion of these DP OCSA Program activities will ensure that compliance with applicable and appropriate DOE requirements is established or actions are being taken to come into compliance with these requirements.

Furthermore, in order to fully transition from the modified DP OCSA Program to the S/R Program at a specific site, facility, or activity, the following conditions that serve as the foundation for a fully functional S/R Program must be in place before completely terminating the conduct of the DP OCSA Program:

- o an approved S/RID must exist
- o programs and written procedures must exist for conducting Phase 1 and Phase 2 assessments in accordance with the S/R Implementation Assessment Instruction



- o an annual Phase 2 assessment plan must exist that identifies how adherence to the actions and conditions specified in the documents that implement the requirements in the S/RID will be assessed.

These conditions ensure that an agreed upon ES&H requirements base has been established and that implementation assessments programs continue to function to ensure effective ES&H program implementation. Be advised that the decision to exclude any DOE Order statements prior to approval of an S/RID may be reversed due to the adequacy determination by DOE as part of the S/RID approval process. Decisions on S/RID adequacy and approval shall be made by DOE at the appropriate level of authority.

In making the transition from the DP OCSA Program to the S/R Program, all of the S/R Program conditions identified above must be in place before replacing the DP OCSA Program activities with the equivalent S/R Program activities. Generally, Phase 2 assessments under the DP OCSA Program must continue until Phase 2 assessments under the S/R Program begin following approval of the S/RID.

Closing out the DP OCSA Program in the manner described above will allow definitive statements to be made with regard to compliance with the DOE Orders of Interest to the Board and will provide a solid foundation for effectively implementing the S/R Program.

## ATTACHMENT 2

**Modified Order Compliance Self Assessment  
Process**

Each DOE Order statement per the RSAD/STRIDE breakdown is reviewed to determine applicability. If the statement is determined to be nonapplicable, the requirement is eliminated from further consideration. If the statement is determined to be applicable, then its safety benefit is evaluated (e.g., is the requirement necessary to provide adequate protection). If the compliance with the statement is deemed to provide negligible safety benefit, the rationale for non assessment is informally documented and retained by the organization performing the assessment, and the statement is eliminated from further consideration. If compliance with the statement is determined to provide safety benefit, then compliance with that statement is assessed in accordance with the guidance contained in the Standards/Requirements Implementation Assessment Instruction, dated September 1994.

In developing Standards/Requirements Identification Documents (S/RIDs), requirements from Federal and State regulations, DOE rules, and relevant industry standards are combined with the DOE Order statements that were assessed for compliance through the Order Compliance Self Assessment processes. An adequacy assessment is performed and requirements (including those from DOE Orders) are added or deleted to complete S/RID development. Subsequent to their development, S/RIDs are the basis for compliance assessments. Once an S/RID is approved by appropriate DOE line management, the Office of Primary Interest (OPI) may challenge its content. If there is no challenge, then the S/RID requirements remain unchanged. If a challenge is mounted by the OPI, then the issue is resolved between DOE line management and the OPI. If the OPI challenge is not upheld as a result of the resolution process, then the issue is closed and the S/RID requirements are unchanged. If the OPI challenge is sustained, then the S/RID is revised to incorporate additional requirements as necessary. Assessment relative to any additional requirements would then be conducted.

The attachment illustrates the above described process.

Attachment

# PROPOSED 90-2 IMPLEMENTATION PROCESS

