




Department of Energy  
National Nuclear Security Administration  
Washington, DC 20585



MEMORANDUM FOR THE ADMINISTRATOR

FROM: THEODORE D. SHERRY   
NATIONAL SECURITY ENTERPRISE  
FIELD COUNCIL CHAIR

SUBJECT: ACTION: Approve Designation of Exemptions and  
Equivalencies Approval Authority

REFERENCE: Action Items from 9/11/09 ERT Governance Board Meeting.

**BACKGROUND:** Section 6.a (3)(c) of DOE Order 251.1C specifies that the NNSA approval authority for exemptions or equivalencies to requirements in Departmental Directives, unless specified otherwise in a Directive, is the NNSA Administrator or designee. In April 2009, the NNSA Chief of Defense Nuclear Safety obtained senior NNSA management agreement on draft designation language for incorporation into the NNSA Functions, Responsibilities and Authorities Manual (FRAM). The draft language would designate the Site Office Managers as the approval authority for exemptions and equivalencies subject to certain provisions. More recently, the NNSA Governance Board also proposed that NA-1 designate the approval of exemptions and equivalencies to Site Office Managers (SOMs), but to do so by memorandum of decision pending the revision to the NNSA FRAM.

**DISCUSSION:** The provisions of DOE O 251.1C allow individual directives to include provisions for granting exemptions and equivalencies in situations where special provisions are warranted. This includes the latitude to identify the appropriate level for the approval authority. Several directives have taken advantage of this provision. For example, DOE O 420.1, *Facility Safety*, designates the Secretarial Officer as the approval authority for exemptions. However, other directives rely upon the default exemption provisions in the Directives requirements documents to establish the approval authority and process for obtaining exemptions. These provisions formerly indicated that the default exemption approval authority was the Site Office Manager. The current revision of the Directives Order places the decision on approval level for requirements affecting NNSA with the NNSA Administrator, by elevating the decision to his level unless he designates otherwise.

Within NNSA, there were no issues identified with having the Site Office Managers serve as the designated approval authority for exemptions in the past. Furthermore, the Site Office Managers are generally responsible for deciding which specific requirements are included in site operating contracts, and thus subject to exemptions or equivalencies if not met. Designating the Site Office Managers as the approval authority for exemptions

and equivalencies to Directives that do not specify an approval authority continues a practice that ensures decision making at the lowest appropriate level. As directives are revised, higher approval levels can be incorporated into the directive if warranted. For the directives having the highest potential for impact, those affecting establishment, implementation and verification of safety bases at nuclear facility, the requirement for Central Technical Authority concurrence ensures a high level of visibility and review for exemption or equivalency decisions.

Prior to the approval, proposed exemptions and equivalencies will be vetted with appropriate organizations. If concurrence is not reached, then the approval will be elevated to the Administrator for resolution.

**SENSITIVITIES:** This recommended designation is not proposed to circumvent the directives process. A concern has been raised regarding a provision to exclude items that had been explicitly deliberated during REVCOM and how to implement such exclusion. Comments can be deliberated and not accepted at a variety of levels, ranging from a SME at a site office who didn't agree with a contractor's comment, all the way up to a fully vetted discussion that went to the Deputy Secretary for resolution. Moreover, there is no formal documentation or archiving of this process that is accessible by a decision maker to determine whether an exemption request doesn't address an issue that was explicitly discussed and rejected during comment resolution or impasse. After discussion, it was decided that the designation is not intended to be used to grant exemptions for issues that were decided by the Deputy Secretary and Under Secretaries after fulsome debate, and that the Administrator will non-concur on any such exemptions that are proposed. This would make the intention clear, and forbid the deliberate use of the process to circumvent a directive. The provision to notify the Administrator and the Office of Primary Interest (OPI) prior to granting an exemption gives opportunity to enforce this objective. Making it an objective statement rather than a condition would remove the burden of proof from the approval authority to demonstrate that the subject of an exemption was not deliberated during REVCOM (something that probably could not be done), while putting in place a clear policy that can be pointed to as a basis for non-concurrence if someone tries.

**ACTION:** Section 6.a (3)(c) of DOE Order 251.1C, *Departmental Directives Program*, establishes the Administrator or designee as the approval authority for NNSA exemptions and equivalencies from Departmental directives, unless otherwise specified in the directive. By approving this action, the NNSA Administrator is designating the NNSA Site Office Managers, acting on his behalf, to approve exemptions and equivalencies affecting facilities under their cognizance for directives that do not identify an approval authority for exemptions or equivalencies. The following stipulations apply to the exercise of this authority:

- 1) The site office manager must notify the Administrator and Office of Primary Interest (and the Central Technical Authority for nuclear safety requirements identified in Attachment 1 of DOE O 410.1) of the intent to grant the request.

- 2) The Site Office Manager must not approve the request until either 30 calendar days have passed without objection or the Administrator, Office of Primary Interest, and Central Technical Authority (if appropriate) indicate they have no objection, whichever occurs first.
- 3) If there is an objection from the Administrator, Office of Primary Interest, or Central Technical Authority (if appropriate), the Site Office Manager must work with the objecting party to resolve any issues.
- 4) For unresolved objections, the Site Office Manager must raise the issue to the NNSA Administrator or designee for resolution.
- 5) The designation is not intended to be used to grant exemptions for issues that were decided by the Deputy Secretary and Under Secretaries after fulsome debate; the Administrator will object to any such exemptions that are proposed.

By this action, the Administrator is also directing that the Senior Advisor for Environment, Safety and Health (NA-3.6) incorporate the designation described in this memorandum into the next revision of the NNSA FRAM.

POLICY IMPACT: None. This implements the provisions of DOE O 251.1C, Section 6.a (3)(c).

URGENCY: Urgent to continue the momentum of the NNSA Reform Initiatives.

RECOMMENDATION: Approve the designation of exemption and equivalency approvals.

APPROVE:



DISAPPROVE:

DATE:

