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POLICY STATEMENT ON THE IDENTIFICATION, IMPLEMENTATION AND
COMPLIANCE WITH ENVIRONMENT, SAFETY AND HEALTH REQUIREMENTS

PURPOSE

This policy statement sets forth the framework for identifying, implementing and complying with environment, safety and health (ES&H) requirements so that work is performed in the DOE complex in a manner that assures adequate protection of workers, the public and the environment. This framework is an integral part of the Department's commitment to a standards-based management system.

This policy statement reaffirms the commitments in the Department Nuclear Safety Policy Statement (September 9, 1991) and the Department Environment, Safety and Health Policy Statement (July 20, 1993), including the commitments to excellence and continuous improvement in all Departmental operations.

SCOPE

This policy statement applies to ES&H requirements applicable to work performed in the DOE complex. A requirement may be mandated by a Federal, state or local law or regulation or by a contract or other form of mutual agreement.

IDENTIFICATION OF REQUIREMENTS

Integrated Safety Review

The Department is committed to using integrated safety reviews to assure adequate protection for workers, the public and the environment. An integrated safety review starts with a disciplined analysis of the work to be performed, the potential hazards associated with that work, and the facilities required to conduct that work. On the basis of this analysis, an appropriate set of ES&H requirements is identified to assure adequate protection taking into account the nature of the facilities and activities and the associated hazards. This set includes all applicable statutory and regulatory requirements plus those DOE Orders and other standards that are determined to be appropriate for incorporation as contractual requirements to assure adequate protection. The development of Standards/Requirements Identification Documents (S/RIDS) and the necessary and sufficient process are examples of integrated safety review processes.

Necessary And Sufficient Process

The Department is developing the necessary and sufficient process

through which the Department, contractors, workers and other affected parties can work together to identify an appropriately tailored set of ES&H requirements for a particular workplace commensurate with the hazards associated with that workplace. The necessary and sufficient process will provide a disciplined approach for conducting integrated safety reviews and will prevent arbitrary imposition of requirements that add cost but no value. The Department Standards Committee has pilot demonstrations and other initiatives underway that will lead to further direction and guidance on the necessary and sufficient process by the end of 1995.

Transition To Rules And Revised Orders

The Department is replacing a number of its Orders with new rules and revised Orders. The resulting transition must be managed so as to assure adequate protection throughout; consistent with maintaining adequate protection, costs and benefits should be considered appropriately.

Even though many ES&H Orders will be canceled as corresponding rules and revised Orders are issued, cancellation of these Orders does not, by itself, modify or otherwise affect any contractual obligation based on the canceled Orders. Requirements in canceled Orders which are incorporated and implemented in a contract will remain in effect until the contract is modified to delete those requirements. If a contractor submits proposed modifications to a contract to utilize the revised ES&H Orders, Departmental line management will respond to this submission within 90 days.

To facilitate an orderly transition, the Department is developing a database (or "crosswalk") to show how elements in canceled ES&H Orders relate to requirements and guidance in the new system.

Prior to changing a contract to delete a requirement in a canceled ES&H Order, the crosswalk must be available and Departmental line management responsible for approving such contract changes must confirm that the revised contract requirements will continue to assure adequate protection of workers, the public and the environment. With respect to nuclear safety requirements for a Department of Energy defense nuclear facility (as that term is defined in the Atomic Energy Act of 1954), this decision must be based on an integrated safety review that is appropriate to the proposed contract changes and the related hazards.

IMPLEMENTATION OF REQUIREMENTS

Ensuring Adequate Protection At Diverse Facilities

Compliance with a requirement is achieved through the implementation of programs, plans, practices, procedures and other actions that are appropriate to meet the requirement for a particular workplace. The Department will work with its contractors to tailor implementation to reflect the circumstances of a particular workplace. For high risk workplaces, this case-

by-case process may result in a decision to continue application of many existing programs, plans, practices and procedures. For other workplaces, this process may result in a decision to use implementation measures followed at comparable non-DOE workplaces. While implementation will vary to reflect the diversity of the DOE complex, the commitment to assuring adequate protection will remain constant.

Continuity of Ongoing Efforts

During the transition to requirements in new rules and revised DOE Orders, the Department and its contractors should take advantage of implementation efforts already underway, especially where these efforts reflect recent initiatives, such as the development of Standards/Requirements Identification Documents (S/RIDs) or the necessary and sufficient process, to establish integrated approaches to safety management. Where appropriate, implementation need not trigger major revision to existing programs, plans, practices and procedures. Contractors can "stay the course" and use existing programs, plans, practices and procedures developed under canceled Orders if they meet the requirements in new rules and revised Orders and if continuation of these programs, plans, practices and procedures makes sense.

Implementation Plans

Certain rules and Orders, including those permitting requirements to be applied in a tailored fashion, require development and approval of implementation plans. An implementation plan has two purposes. First, it identifies the programs, plans, practices, procedures and other actions to be used in complying with a requirement in a manner commensurate with the hazards associated with a particular workplace. Second, where compliance with a requirement cannot be achieved in a specified time, an implementation plan will (1) identify those compensatory measures deemed necessary to provide for adequate protection during a period of noncompliance, (2) establish a schedule for future actions for achieving compliance, and (3) identify needed resources.

Guidance

Guidance documents, including technical standards, can assist contractors in implementing requirements. Because of the importance of guidance documents to implementation, the Department will endeavor to develop and issue guidance documents concurrently with the development of requirements.

Guidance documents are intended to provide useful information and methodologies on how a requirement might be implemented. They include background information regarding the intent of the requirement and its technical underpinnings. Many list DOE or consensus standards that provide acceptable methods to meet the expectations of a requirement if implemented appropriately for a particular workplace.

Unlike the requirements specifically set forth in a DOE Order,

the provisions in guidance documents are not mandatory. They are intended to describe the rationale for the objectives of requirements and to identify acceptable methods for implementing requirements. Failure to follow a guidance document does not in itself indicate noncompliance with a specific Order requirement - a finding of noncompliance must be based on a failure to satisfy the requirement. The guidance provided in implementation guides and standards referenced therein are considered acceptable methods to satisfy Order requirements. Alternative methods that satisfy the requirements of an Order are also acceptable.

Guidance documents are intended to be "living documents" that evolve to reflect comments and lessons learned. In order to provide appropriate opportunities for public input on guidance relating to nuclear safety rules, the Department will: (1) make such guidance documents readily available to the public when issued; (2) publish notice of their availability in the Federal Register; and (3) accept comments from the public concerning guidance documents.

COMPLIANCE WITH REQUIREMENTS

The Department is committed to working with its contractors to achieve compliance with requirements. If cooperative efforts do not result in an acceptable level of compliance, the Department will not hesitate to seek compliance through the use of statutory, regulatory, and contractual enforcement tools.

Contractual Mechanisms

New contracts will include applicable Department of Energy Acquisition Regulation (DEAR) clauses relating to compliance with ES&H requirements to assure adequate protection of workers, the public and the environment. The Department also will develop, and thereafter include in contracts, a standard clause to permit a contractor to modify or replace the ES&H requirements in DOE Orders with a set of requirements determined to be necessary and sufficient to assure an adequate level of safety for a particular workplace, which then would serve as the basis for compliance and enforcement.

In addition, the level of a contractor's performance in implementing ES&H requirements will be a major factor in determinations relating to the award of discretionary fees under DOE contracts. Moreover, the extent to which a contractor complies with ES&H requirements will be a major factor in determining whether circumstances warrant competition rather than extending a contract and, in egregious cases, may be a basis for terminating a contract.

Nuclear Safety Requirements

With respect to ES&H requirements that are also nuclear safety requirements, the Department has additional enforcement tools. Where appropriate, the Department will issue Compliance Orders, as authorized by Subpart C of 10 C.F.R. Part 820, to prevent or rectify any violation of any nuclear safety requirement. The

Department will evaluate violations of nuclear safety requirements that have been adopted by rulemaking or imposed by Compliance Order to determine whether the violation warrants the issuance of a Notice of Violation pursuant to Subpart B of 10 C.F.R. Part 820 and, if so, whether the Department should impose civil penalties or another appropriate sanction. In evaluating the severity of violations, the Department will be guided by the Enforcement Policy Statement, which is an appendix to 10 C.F.R. Part 820. Whenever the Department discovers any potential criminal violation of the Atomic Energy Act that endangers workers, the public or the environment, the Department will refer the matter to the Department of Justice.

BY ORDER OF THE SECRETARY OF ENERGY:

ROBERT R. NORDHAUS
General Counsel

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