



Department of Energy
National Nuclear Security Administration
Washington, DC 20585



OCT 13 2005

The Honorable A. J. Eggenberger
Chairman
Defense Nuclear Facilities Safety Board
625 Indiana Avenue, NW
Suite 700
Washington, D.C. 20004-2901

Dear Mr. Chairman:

This is in response to your July 29, 2005, letter concerning National Nuclear Security Administration (NNSA) Policy Letters. Two interrelated actions have been initiated by NNSA with regard to policies and procedures.

On August 18, 2005, NNSA transmitted to the Office of Management proposed revisions to Chapter VII (Exemptions) of DOE M 251.1.1A, "Directives System Manual." This language, drafted by the NNSA's former General Counsel, is intended to make the exemption process of Chapter VII consistent with the requirements of the NNSA Act to provide for review of our exemptions by the appropriate parties and to establish a reasonable time frame (30 days is the prescribed time period in the current manual) and to fill a procedural gap in the current process. The current process permits final approval of an exemption if no objection is received from the Cognizant Secretarial Officer, the Office of Primary Interest, or the DOE General Counsel within 30 days and allows for those offices to request additional information, with no time frame for considering it. The draft submittal by the NNSA would permit the NNSA Administrator to approve the exemption 14 days after NNSA submits any requested additional information, provided that there is no further objection from the interested DOE offices. We have requested that this language be added prior to RevCom review of the revised manual which is expected shortly.

The NNSA has agreed in principle to revisions in the framework for policy guidance. The NNSA Policy Letter system (NAP-1) will be eliminated and replaced with a new directives system for NNSA. The enclosed White Paper describes the system in detail. The highlights are:

- It is fully consistent with the NNSA Act and is logically connected with the Department of Energy's Directives System and includes three types of directives: (1) NNSA Policies; (2) NNSA Orders and Manuals; and (3) NNSA Operating Procedures.
- NNSA Policies would provide for development, pursuant to the



Administrator's authority under section 3212(d) of the NNSA Act, of NNSA-specific policies. NNSA Orders and Manuals would provide NNSA-specific guidance for implementing both DOE Policies and Orders and NNSA Policies to contractors and Federal employees. NNSA Operating Procedures would extend the ability to issue procedural guidance to all Headquarters elements, with the limitations that such procedures would not contain contractor requirements and need to be consistent with existing requirements.

- The new system, while consistent with the DOE Directives System, will limit the number and length of NNSA directive documents, and avoid repeating Secretarial policy and existing DOE direction.
- The NNSA Directives system will adopt the protocol described in DOE M 251.1-1A, "Directives System Manual," for obtaining DNFSB input. NNSA Policies, Orders, and Manuals will be numbered consistent with the DOE Directives System. Procedures will be numbered consistent with NNSA structure (i.e., NA-10, NA-20, etc.) but will reference a DOE or NNSA requirement.

When the Office of Management advises the date for release of the revision to DOE M 251.1-1A into RevCom for review, we will provide a timeline for execution and implementation of the actions described above. In the meantime, we are proceeding by vetting the White Paper proposals with staff at the NNSA Site Offices and Service Center. Their input is essential to acceptance and implementation of a revised policy system.

We look forward to working with you to ensure that the Board has an opportunity to review the NNSA Directives that affect health and safety at defense nuclear facilities.

Sincerely,



Linton F. Brooks
Administrator

Enclosures

cc: Mark B. Whitaker, Jr., Departmental Representative to the DNFSB

PROPOSED AMENDMENT

CHAPTER VII

DIRECTIVES SYSTEM MANUAL

This proposal tracks existing Chapter VII in the Directives System Manual.

Current subparagraph (2) is amended to read as follows:

For environment, safety and health requirements for Category I Hazard Nuclear Facilities, exemptions are approved by the Cognizant Secretarial Officer or, for NNSA, by the Under Secretary for Nuclear Security.

Subparagraph 4(b) is amended by adding a new section (2) as follows:

Prior to approving an exemption, the Under Secretary for Nuclear Security will provide notification to and seek the views of the Office of Primary Interest, the Cognizant Secretarial Officer and the General Counsel at least 30 calendar days prior to final approval. If the Office of Primary Interest, the Cognizant Secretarial Officer or the General Counsel indicates its disagreement with NNSA's proposal for exemption within the 30 day period, the Under Secretary will raise the matter to the Deputy Secretary for resolution.

Subparagraph 4(b)(2) is renumbered as subparagraph (3) and is amended by adding a new section (a) as follows:

For a proposed exemption for NNSA, the Office of Primary Interest, the Cognizant Secretarial Officer and the General Counsel have had the opportunity to review the proposed exemption as provided in Paragraph 4(b)(2) above.

Subparagraph 4(b)(2)(a) is re-lettered 4(b)(3)(b) and amended to read:

For other than NNSA exemptions, the Cognizant Secretarial Officer and the Office of Primary interest concur with the proposed exemption decision, or

Subparagraph 4(b)(2)(b) is re-lettered 4(b)(3)(c) and amended to read:

The 30-calendar-day review period passes without objection or request for additional information from the Cognizant Secretarial Officer, the Office of Primary Interest or the General Counsel.

A new subparagraph 4(b)(3)(d) is added as follows:

For NNSA proposals, where additional information has been requested, 14 days from the provision of the information pass without objection.

Enclosure 2
White Paper
Proposal for Revising NNSA's Directives System
Version 3

This paper sets out a proposal for revising NNSA's Directives System that is consistent with the NNSA Act (Pub. L. No. 106-65, as amended), and is logically connected with the Department of Energy's Directives System. It begins with a short review of the NNSA Act, the DOE Directives System and the current NNSA system. It closes with the proposal and contains a detailed listing of NNSA Act issues related to control, direction and procedures.

NNSA Act Issues Related to Directives

On one hand, the NNSA Act created a "separately organized" agency within the Department of Energy, with its own head and its own unique organizational structure (sec. 3211(a)). Under the NNSA Act, the NNSA Administrator has authority over and responsibility for, with the exception of certain Naval Reactors functions, "all programs and activities of the Administration," including "policy development and guidance" (sec. 3212 (b)(2)). Section 3202 limits those who may exert "authority, direction, and control" over the Administrator to the Secretary and Deputy Secretary of Energy, without redelegation, and section 3220 similarly limits the individuals within the Department of Energy who may exercise "authority, direction, and control" over NNSA employees and contractors.

The NNSA Act specifically requires the NNSA Administrator to develop procedures governing the following: (1) protection of classified information (sec. 3231), (2) access by individuals to classified areas and information (sec. 3234), (3) government access to information on NNSA computers (sec. 3235), (4) the NNSA planning programming, and budget process (sec. 3252), (5) environmental protection, safety, and health requirements (sec. 3261), (6) compliance with the Federal Acquisition Regulation (sec. 3262), (7) sharing of technology with the Department of Defense (sec. 3263), and (8) use of National Security Laboratories by non-NNSA entities (sec. 3264).

On the other hand, the NNSA Act clarifies that while NNSA is to be a "separately organized" agency, it is still an organization within the Department of Energy. Section 3203 provides that the Secretary is ultimately responsible for establishing NNSA policy, and section 3212(d) limits the Administrator's authority to establish NNSA policy as follows: "The Administrator may establish Administration-specific policies, unless disapproved by the Secretary of Energy."

Current DOE Directives System

The Department of Energy (DOE) Directives System is the means by which DOE policies, requirements, and responsibilities are developed and communicated throughout the Department. Directives include Policies, Orders, Notices, Manuals, and Guides

which are intended to direct, guide, inform, and instruct employees in the performance of their jobs, and enable them to work effectively within the Department and with agencies, contractors, and the public. Regulations and Technical Standards are also elements of the DOE Directives System. A Contractor Requirements Document attached to a DOE Directive defines how an order applies to DOE contractors.

The NNSA Act does not specifically extend the applicability of the DOE Directives System to the NNSA, but, as an organizational element within the Department, NNSA is subject to a DOE Directive if either the Secretary or the Deputy Secretary issues the Directive, or if the NNSA Administrator agrees to abide by it, provided that the DOE Directive is implemented by NNSA in a manner consistent with the “authority, direction, and control” provision in section 3220 of the NNSA Act.

Listed below are the mandatory and non-mandatory elements of the DOE Directives System:

Policies describe the philosophies and fundamental values of the Department. Other documents in the Directives System flow from Policies and must be consistent with them.

Regulations establish enforceable requirements pursuant to the Department’s authority under law and in accordance with the Administrative Procedure Act (5 U.S.C. § 551, et seq.). The Office of General Counsel manages development of Regulations.

Orders establish management objectives, requirements, and assignment of responsibilities for Federal employees; they also establish intended requirements for contractors.

Notices, like Orders, establish management objectives and requirements, and assign responsibilities for Federal employees and intended requirements for contractors. Notices are also used to communicate general information throughout the Department. However, Notices are issued for immediate or short-term use and expire no later than one year from issuance. Where appropriate, an extension is granted through the issuance of an additional Notice or the requirements may be incorporated into a revised Order or Manual.

Manuals identify procedural requirements for Federal employees and intended requirements for contractors that may supplement other directives and provide more instruction about how the provisions of those directives shall be carried out.

NOTE: Provisions contained in an Order, Manual, Notice, or a source other than a Regulation are made requirements applicable to contractors when identified in a Contractor Requirements Document **and** incorporated in the relevant contract.

Guides provide nonmandatory, supplemental information about acceptable methods for implementing requirements, including lessons learned, suggested practices, instructions, and suggested performance measures. Guides may identify acceptable ways to

implement requirements by referencing appropriate Technical Standards, but they shall not impose additional requirements.

Technical Standards and Related Documents are nonmandatory criteria managed under the Technical Standards Program to provide guidance to contractors and DOE personnel on acceptable methods for meeting requirements.

DOE elements and contractors can be audited to the requirements contained within Policies, Regulations, Orders, Notices and Manuals, but not to Guides or Technical Standards.

Current NNSA Directives System

NNSA's current Directive System is defined by NNSA Policy Letter, NAP-1, "Establishment of a Policy Letter System for Managing Policy, Directives, and Business Practices Within the National Nuclear Security Administration." This document establishes a "Policy Letter" system designed to "provide direction and guidance to all its elements."

NAP-1 establishes two types of guidance documents: Directives Policy Letters that (a) establish new policy or directives that are unique to the Administration or (b) supplement or indicate how the Administration will implement a Departmental Directive including implementation of directives in a cost efficient manner; and Business Operating Policy Letters that provide business and operating guidance.

NAP-1 was issued under the authority of Section 3212(b)(2) of the NNSA Act, but does not address Section 3212(d) that states: "The Administrator may establish Administration-specific policies, unless disapproved by the Secretary of Energy."

The current NAP system provides only cursory connection to the DOE Directives process.

The process for issuing Business Operating Policy Letters (BOPs) is less well defined than the NAP process. At least one BOP has been signed by the Administrator (BOP-006.001), but most have been signed by an Associate Administrator; some have been signed by the Senior Procurement Executive. There is no set procedure for review or approval.

Proposed NNSA Directives System

This paper describes a revised NNSA Directives System that is consistent with the NNSA Act and is logically connected with the Department of Energy's Directives System. The proposed NNSA system would include three types of directives: (1) NNSA Policies, (2) NNSA Orders and Manuals and (3) NNSA Operating Procedures.

NNSA Policies would provide for development, pursuant to the Administrator's authority under section 3212(d) of the NNSA Act, of NNSA-specific policies. Consistent with section 3212(d), these policies would be subject to disapproval by the Secretary. NNSA Orders and Manuals would provide NNSA-specific guidance for implementing both DOE Policies and Orders and NNSA Policies to contractors and Federal employees. These documents would be issued by the Administrator and would not require concurrence from the Secretary. Finally, NNSA Operating Procedures would extend the ability to issue procedural guidance to all HQ elements, with the limitations that such procedures would not contain contractor requirements and need to be consistent with existing requirements.

The new system, while consistent with the DOE Directives System, would seek to limit the number and length of NNSA directive documents, and avoid repeating Secretarial policy and existing DOE direction.

NNSA would control each of these processes using tailored procedures within the DOE RevCom system that is currently used for review of all other DOE Directives and Technical Standards.

A. NNSA Policies

1. Set NNSA Policy consistent with the NNSA Act
2. Subject to Secretarial Disapproval
3. Signed by the Administrator, Principal Deputy Administrator or designee
4. Reference to DOE Policy that does not apply to NNSA if NNSA Policy is inconsistent with an existing DOE Policy
5. Do not include a Contractor Requirements Document
6. Set an auditable standard
7. Require NNSA field review and approval by NNSA Management Council
8. Numbered consistent with the DOE Directives System

B. NNSA Orders and Manuals

1. Provide NNSA direction (implementation guidance) based on a Federal Regulation, DOE Policy or Order, or an NNSA Policy or Order
2. If the NNSA directive conflicts with a DOE Order or Manual signed by the Secretary or the Deputy Secretary, NNSA must obtain an exemption from the requirements of the DOE Order or Manual.
3. Otherwise, do not require Secretarial concurrence
4. Signed by the Administrator, Principal Deputy Administrator or designee
5. May contain a Contractor Requirements Document
6. Set an auditable standard
7. Require NNSA field review and approval by NNSA Management Council
8. Numbered consistent with the DOE Directives System

C. NNSA Operating Procedures

1. Provide NNSA-specific procedures for implementing a requirement
2. Do not require Secretarial concurrence
3. Do not conflict with existing DOE Directives
4. Signed by a Deputy or Associate Administrator
5. Do not include a Contractor Requirements Document
6. Set an auditable standard
7. Reviewed through the NNSA Leadership Coalition prior to promulgation
8. Numbered consistent with NNSA structure (i.e., NA-10, NA-20, etc.) but reference DOE or NNSA requirement

NNSA Act References

SEC. 3202. UNDER SECRETARY FOR NUCLEAR SECURITY OF DEPARTMENT OF ENERGY.

Section 202 of the Department of Energy Organization Act (42 U.S.C.7132) is amended by adding at the end the following new subsection:

“(3)...In carrying out the functions of the Administrator, the Under Secretary shall be subject to the authority, direction, and control of the Secretary. Such authority, direction, and control may be delegated only to the Deputy Secretary of Energy, without redelegation.”

SEC. 3203. ESTABLISHMENT OF POLICY FOR NATIONAL NUCLEAR SECURITY ADMINISTRATION.

(a) ESTABLISHMENT OF POLICY FOR ADMINISTRATION.—The Department of Energy Organization Act is amended by adding...the following new section:

Sec. 213. (a) The Secretary shall be responsible for establishing policy for the National Nuclear Security Administration.

SEC. 3211. ESTABLISHMENT AND MISSION.

(a) ESTABLISHMENT.—There is established within the Department of Energy a separately organized agency to be known as the National Nuclear Security Administration.

(c) OPERATIONS AND ACTIVITIES TO BE CARRIED OUT CONSISTENT WITH CERTAIN PRINCIPLES.—In carrying out the mission of the Administration, the Administrator shall ensure that all operations and activities of the Administration are consistent with the principles of protecting the environment and safeguarding the safety and health of the public and of the workforce of the Administration.

SEC. 3212. ADMINISTRATOR FOR NUCLEAR SECURITY

(b) FUNCTIONS.—The Administrator has authority over, and is responsible for, all programs and activities of the Administration (except for the functions of the Deputy Administrator for Naval Reactors specified in the Executive order referred to in section 3216(b)), including the following:

- (1) Strategic management.
- (2) Policy development and guidance.
- (3) Budget formulation, guidance, and execution, and other financial matters.
...(Fifteen additional functions listed separately).

(d) POLICY AUTHORITY.—The Administrator may establish Administration-specific policies, unless disapproved by the Secretary of Energy.

SEC. 3220. STATUS OF ADMINISTRATION AND CONTRACTOR PERSONNEL WITHIN DEPARTMENT OF ENERGY.

(a) STATUS OF ADMINISTRATION PERSONNEL.—Each officer or employee of the Administration –

- (1) shall be responsible to and subject to the authority, direction, and control of—
- (A) the Secretary acting through the Administrator and consistent with section 202(c)(3) of the Department of Energy Organization Act;
 - (B) the Administrator; or
 - (C) the Administrator's designee within the Administration; and

(2) shall not be responsible to, or subject to the authority, direction, or control of, any other officer, employee, or agent of the Department of Energy.

(b) STATUS OF CONTRACTOR PERSONNEL.—Each officer or employee of a contractor of the Administration shall not be responsible to, or subject to the authority, direction, or control of, any officer, employee, or agent of the Department of Energy who is not an employee of the Administration, except for the Secretary of Energy consistent with section 202(c)(3) of the Department of Energy Organization Act.

SEC. 3231. PROTECTION OF NATIONAL SECURITY INFORMATION.

(a) POLICIES AND PROCEDURES REQUIRED.—The Administrator shall establish procedures to ensure the maximum protection of classified information in the possession of the Administration.

SEC. 3232. OFFICE OF DEFENSE NUCLEAR COUNTERINTELLIGENCE AND OFFICE OF DEFENSE NUCLEAR SECURITY.

(b) CHIEF OF DEFENSE NUCLEAR COUNTERINTELLIGENCE.—

(1) The head of the Office of Defense Nuclear Counterintelligence is the Chief of Defense Nuclear Counterintelligence, who shall report to the Administrator and shall implement the counterintelligence policies directed by the Secretary and Administrator.

(c) CHIEF OF DEFENSE NUCLEAR SECURITY.—

(1) The head of the Office of Defense Nuclear Security is the Chief of Defense Nuclear Security, who shall report to the Administrator and shall implement the security policies directed by the Secretary and Administrator.

SEC. 3234. PROCEDURES RELATING TO ACCESS BY INDIVIDUALS TO CLASSIFIED AREAS AND INFORMATION OF ADMINISTRATION.

The Administrator shall establish appropriate procedures to ensure that any individual is not permitted unescorted access to any classified area, or access to classified information,

of the Administration until that individual has been verified to hold the appropriate security clearances.

SEC. 3235. GOVERNMENT ACCESS TO INFORMATION ON ADMINISTRATION COMPUTERS.

(a) PROCEDURES REQUIRED.—The Administrator shall establish procedures to govern access to information on Administration computers.

SEC. 3252. PLANNING, PROGRAMMING, AND BUDGETING PROCESS.

(a) PROCEDURES REQUIRED — The Administrator shall establish procedures to ensure that the planning, programming, budgeting, and financial activities of the Administration comport with sound financial and fiscal management principles.

SEC. 3261. ENVIRONMENTAL PROTECTION, SAFETY, AND HEALTH REQUIREMENTS.

(a) COMPLIANCE REQUIRED.—The Administrator shall ensure that the Administration complies with all applicable environmental, safety, and health statutes and substantive requirements.

(b) PROCEDURES REQUIRED.—The Administrator shall develop procedures for meeting such requirements.

(c) RULE OF CONSTRUCTION.—Nothing in this title shall diminish the authority of the Secretary of Energy to ascertain and ensure that such compliance occurs.

SEC. 3262. COMPLIANCE WITH FEDERAL ACQUISITION REGULATION.

The Administrator shall establish procedures to ensure that the mission and programs of the Administration are executed in full compliance with all applicable provisions of the Federal Acquisition Regulation issued pursuant to the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.).