

## Department of Energy

## § 820.61

the grounds therefor with particularity, set forth the relief or order sought, and be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon.

(b) *Answer to motions.* Except as otherwise specified by a particular provision of this part or by the Presiding Officer, a party shall have the right to file a written answer to the motion of another party within 10 days after the filing of such motion. The answer shall be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. If no answer is filed within the designated period, the party may be deemed to have waived any objection to the granting of the motion. The Presiding Officer may set a shorter or longer time for an answer, or make such other orders concerning the disposition of motions as he deems appropriate.

(c) *Decision.* The Presiding Officer shall rule on a motion as soon as practicable after the filing of the answer. The decision of the Presiding Officer on any motion shall not be subject to administrative appeal.

### Subpart C—Compliance Orders

#### § 820.40 Purpose and scope.

This subpart provides for the issuance of Compliance Orders to prevent, rectify or penalize violations of the Act, a Nuclear Statute, or a DOE Nuclear Safety Requirement and to require action consistent with the Act, a Nuclear Statute, or a DOE Nuclear Safety Requirement.

#### § 820.41 Compliance order.

The Secretary may issue to any person involved in a DOE nuclear activity a Compliance Order that:

(a) Identifies a situation that violates, potentially violates, or otherwise is inconsistent with the Act, a Nuclear Statute, or a DOE Nuclear Safety Requirement;

(b) Mandates a remedy or other action; and,

(c) States the reasons for the remedy or other action.

#### § 820.42 Final order.

A Compliance Order is a Final Order that constitutes a DOE Nuclear Safety

Requirement that is effective immediately unless the Order specifies a different effective date.

#### § 820.43 Appeal.

Within fifteen days of the issuance of a Compliance Order, the recipient of the Order may request the Secretary to rescind or modify the Order. A request shall not stay the effectiveness of a Compliance Order unless the Secretary issues an order to that effect.

### Subpart D—Interpretations

#### § 820.50 Purpose and scope.

This subpart provides for interpretations of the Act, Nuclear Statutes, and DOE Nuclear Safety Requirements. Any written or oral response to any written or oral question which is not provided pursuant to this subpart does not constitute an interpretation and does not provide any basis for action inconsistent with the Act, a Nuclear Statute, or a DOE Nuclear Safety Requirement.

#### § 820.51 General Counsel.

The General Counsel shall be the DOE Official responsible for formulating and issuing any interpretation concerning the Act, a Nuclear Statute or a DOE Nuclear Safety Requirement.

#### § 820.52 Procedures.

The General Counsel may utilize any procedure which he deems appropriate to comply with his responsibilities under this subpart. All interpretations issued under this subpart must be filed with the Office of the Docketing Clerk which shall maintain a docket for interpretations.

### Subpart E—Exemption Relief

#### § 820.60 Purpose and scope.

This subpart provides for exemption relief from provisions of DOE Nuclear Safety Requirements at nuclear facilities.

#### § 820.61 Secretarial officer.

The Secretarial Officer who is primarily responsible for the activity to which a DOE Nuclear Safety Requirement relates may grant a temporary or

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permanent exemption from that requirement as requested by any person subject to its provisions; 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. This authority may not be further delegated.

### § 820.62 Criteria.

The criteria for granting an exemption to a DOE Nuclear Safety Requirement are determinations that the exemption:

- (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 the 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
  - (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.

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### § 820.63 Procedures.

The Secretarial Officer shall utilize any procedures deemed necessary and appropriate to comply with his responsibilities under this subpart. All exemption decisions must set forth in writing the reasons for granting or denying the exemption, and if granted, the basis for the determination that the criteria in § 820.62 have been met and the terms of the exemption. All exemption decisions must be filed with the Office of the Docketing Clerk which shall maintain a docket for exemption decisions issued pursuant to this subpart.

### § 820.64 Terms and conditions.

An exemption may contain appropriate terms and conditions including, but not limited to, provisions that :

- (a) Limit its duration;
- (b) Require alternative action;
- (c) Require partial compliance; or
- (d) Establish a schedule for full or partial compliance.

### § 820.65 Implementation plan.

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 § 820.62(d).

### § 820.66 Appeal.

Within fifteen (15) days of the filing of an exemption decision by a Secretarial Officer, the person requesting the exemption may file a Request for Review with the Secretary, or the Secretary may file, *sua sponte*, a Notice of Review. The Request to Review shall state specifically the respects in which the exemption determination is claimed to be erroneous, the grounds of the request, and the relief requested.

### § 820.67 Final order.

If no filing is made under § 820.66, an exemption decision becomes a Final Order fifteen (15) days after it is filed