



The Secretary of Energy

Washington, DC 20585

October 27, 2020

MEMORANDUM FOR MARK W. MENEZES
DEPUTY SECRETARY

PAUL M. DABBAR
UNDER SECRETARY FOR SCIENCE

LISA E. GORDON-HAGERTY
UNDER SECRETARY FOR NUCLEAR SECURITY
ADMINISTRATOR, NNSA

FROM:

DAN BROUILLETTE

A handwritten signature in black ink, appearing to read "Dan Brouillette", written over the printed name.

SUBJECT:

Extension of Suspension and Exercise of Enforcement
Discretion for Certain Safety and Security Requirements and
Requirements During the Ongoing COVID-19 Pandemic

In April, I provided a list of safety and security requirements contained in current Department of Energy (DOE) directives. These directives detail safety and security requirements and deadlines with which the Department is unable to comply as a result of limitations related to the current Coronavirus Disease 2019 (COVID-19) pandemic. These limitations include those imposed by the maximum telework and social distancing policies that DOE implemented throughout the complex. As a result, normal safety and security requirements were suspended for 180 days.

Similarly, the April memorandum provided a list of safety and security requirements contained in current regulations issued and administered by DOE, directing that the National Nuclear Security Administration and the DOE Office of Enterprise Assessments exercise regulatory enforcement discretion and not pursue enforcement actions for violations of those particular requirements for 180 days, beginning on March 13, 2020.

These suspensions were based on the President's determination of the state of the pandemic and the Office of Management and Budget guidance to Federal agencies directing department and agency leaders to assertively safeguard the health and safety of their workforce, while remaining open to serve the American people and conduct mission critical functions.

In response, the Department has taken steps to ensure the health and safety of its workforce, both Federal employees and contractor-employed workers, instituting maximum telework flexibilities, with sites in various stages of resuming normal operations.

While we have seen a significant portion of our workforce return safely, a significant number of our Federal and contractor employees still continue to telework in the face of the ongoing pandemic.

Therefore, I hereby order that obligations imposed by the specific requirements enumerated in the attachments to this memorandum continue to be suspended, or that the exercise of enforcement discretion related to these requirements be continued at each of the Department's sites. This status will remain applicable until a given site achieves a "Phase 3 – Return to Work" status, at which point the requirements enumerated in the attachments to this memorandum will return to force at that site, with a reasonable amount of time provided for the site to return to compliance which accounts for the specific activities which must happen and the ability to perform those activities while safeguarding workers in Phase 3 during the pandemic.

As was previously the case, I expect all programs to continue to document these deviations so that we can ensure a smooth transition back to normal course and maintain communication with employees to discuss the decisions, risks, and impacts associated with deviations from directives and regulatory requirements. I also expect the programs to work with each site, as local conditions warrant and as the sites move to Phase 3, such that this transition can be achieved as expeditiously and prudently as possible.

The Office of the Associate Under Secretary for Environment, Health, Safety and Security will work with the National Nuclear Security Administration, the Office of Enforcement, and DOE Program Offices to implement this suspension and exercise of enforcement discretion. Please contact the Associate Under Secretary for Environment, Health, Safety and Security, Matthew B. Moury, at (202) 586-5175, with any questions or concerns.

Attachments:

Attachment 1 – April 22, Memo from S1 to the Under Secretaries

Attachment 2 – Revised Safety Directive Relief Requirements Matrix

Attachment 3 – Revised Safety Regulatory Relief Requirements Matrix

cc:

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S. Lane Genatowski, AR

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Elliot Mainzer, BPA

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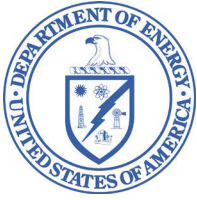
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April 22, 2020

MEMORANDUM FOR MARK W. MENEZES
UNDER SECRETARY OF ENERGY

PAUL M. DABBAR
UNDER SECRETARY FOR SCIENCE

LISA E. GORDON-HAGERTY
UNDER SECRETARY FOR NUCLEAR SECURITY
ADMINISTRATOR, NNSA

FROM: DAN BROUILLETTE

A handwritten signature in black ink, appearing to read "Dan Brouillette".

SUBJECT: Temporary Suspension and Exercise of Enforcement Discretion
for Certain Safety Requirements and Requirements During
Pendency of the COVID-19 Crisis

On March 13, 2020, the President determined that the ongoing Coronavirus Disease 2019 (COVID-19) pandemic is of sufficient severity and magnitude to warrant an emergency determination under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207, based on the fact that the United States is in the midst of a significant public health emergency, which the World Health Organization has officially declared as a global pandemic.

On March 15, the Acting Director of the Office of Management and Budget issued guidance (OMB Memorandum M-20-15) to Federal agencies directing department and agency leaders to assertively safeguard the health and safety of their workforce while remaining open to serve the American people and conduct mission critical functions.

In the few weeks since those actions, in an attempt to slow the spread of COVID-19, hundreds of millions of Americans have been asked not to go to their place of work or school, and not to leave their house at all, unless it is essential that they do so. As of April 7, a vast majority of states, the Navajo Nation and many cities and counties instructed residents to stay at home in an attempt to stunt the spread of COVID-19. This means at least 316 million people in at least 42 states, three counties, nine cities, the District of Columbia and Puerto Rico were urged to stay home. Yet the critical work of the Department of Energy must continue.

We have already taken steps to ensure the health and safety of our workforce, both Federal employees and contractor-employed workers. We have instituted maximum telework flexibilities for all Federal employees of the Department, including in our

Washington Headquarters and DOE sites around the country. Departmental Elements are working with contracting officers and the Office of Management to maximize telework for contractors across the complex.

As we know, much of the work of the Department is managed through the issuance of Orders within the DOE Directives system. Appropriately, these Orders provide milestones and timeframes for measuring success and demonstrating compliance. In times of normal operation we fully expect those requirements to be met so that we can meet our mission goals. However, these are not normal times. Certain requirements in a number of DOE Directives, while important for typical operation, are difficult to adhere to during times of national crisis. Moreover, at a time when the vast majority of our workforce is teleworking to ensure their safety, it is not possible to comply with many of these requirements. However, we do not want our facilities and personnel to be in non-compliance with these requirements as they continue the important work of the Department.

Attached to this memorandum is a list of safety and security requirements contained in current DOE Directives that detail responsibilities and deadlines where compliance is adversely impacted because of this national emergency when maximum telework and social distancing activities are being implemented throughout the Department and which may therefore be suspended, at least initially, for 180 days. As such, I hereby order that obligations imposed by the specific requirements enumerated in the attachment be suspended, beginning March 13, 2020, for 180 days from the date they would otherwise apply. We will revisit the circumstances existing with regard to the COVID-19 pandemic prior to the expiration of this 180-day period to determine if this suspension should be continued. Additionally, if circumstance suggest doing so, this deadline may be terminated prior to the full 180 days, with 30-days' notice. At the end of the suspension, compliance with these requirements will resume in their normal course.

Similarly, attached to this memorandum is a list of safety and security requirements contained in current regulations issued and administered by DOE. By this memorandum, I am directing that the National Nuclear Security Administration (NNSA) and the DOE Office of Enterprise Assessments (EA) exercise regulatory enforcement discretion and not pursue enforcement actions for violations of those particular requirements, beginning on March 13, 2020, for 180 days. Correspondingly, DOE's Office of Acquisition Management, in coordination with the NNSA's Office of Acquisition and Project Management, will issue implementing guidance to contracting officers. We will revisit the circumstances existing with regard to the COVID-19 pandemic during this 180-day period to determine if this exercise of discretion should be continued. If the circumstances suggest doing so, this deadline may be terminated prior to the full 180 days, with 30-days' notice. NNSA and EA will jointly issue supplemental guidance on the enforcement discretion policy.

With regard to the attached lists of safety and security requirements contained in current DOE Orders, Directives and regulations, the requirements are those that have been identified as of the date of this memorandum. We will revisit these lists and add or remove requirements as necessary during the pendency of the emergency.

I strongly encourage all Programs document these deviations to ensure a smooth transition back to normal course and maintain communication with employees to discuss the decisions, risks, and impacts associated with deviations from Directives and regulatory requirements.

The Office of the Associate Under Secretary for Environment, Health, Safety and Security will work with Program Offices to implement this suspension. Please contact Matthew B. Moury, at (202) 586-5175, with any questions or concerns.

Attachments

cc:

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Safety and Security Directives

September 2020

Federal Substance Abuse Testing Program	
Source of Requirement	Requirement
DOE O 343.1, Federal Substance Abuse Testing Program	
DOE O 343.1 4.b.(1)	4.b.(1) Employees in the positions listed in Appendix A, referred to as testing designated positions (TDP), are subject to random testing.
DOE O 343.1 4.b.(2)	4.b.(2) All applicants, including current DOE employees, for TDP are subject to pre-employment (also referred to as applicant) testing.
DOE O 343.1 4.b.(4)	4.b.(4) Employees who volunteer to be included in the random testing program.
Hoisting and Rigging	
Source of Requirement	Requirement
DOE-STD-1090-2020, Hoisting and Rigging	Crane operator training requires a periodic refresher training which includes a hands-on portion (classroom).
Facility Safety	
Source of Requirement	Requirement
Order 420, Facility Safety	<p>Fire Protection requirements (all)</p> <p>For fire protection program requirements, the safety of personnel and facilities remains a priority. Therefore, during this national emergency when maximum telework and social distancing activities are being implemented throughout the Department, the Authority Having Jurisdiction (AHJ) has the authority to make modifications to the DOE-approved Fire Protection Program required per Chapter II of DOE Order 420.1C, <i>Facility Safety</i>. These modifications must focus on changes to requirements that are unable to be completed because of the maximum telework and social distancing DOE/Contractor workforce and must maintain the safety of personnel and facilities within the Department. These changes also must be documented (with appropriate justification) by the AHJ, tracked during the national emergency, and communicated to the Program.</p>
Integrated Safety Management	
Source of Requirement	Requirement
DOE O 450.2 (chg 1), Integrated Safety Management	Appendix A Section c.(1)(b) A documented comprehensive self-assessment must be performed periodically (at intervals no greater than 2 years) based on the criteria presented in this Appendix.
Identifying Classified Information	
Source of Requirement	Requirement

Safety and Security Directives

September 2020

DOE 475.2B, Identifying Classified Information	
DOE 475.2B	5.i.(12), 5.j.(10), Attachment 1, 2.k, Requirement to compile statistics
DOE 475.2B	Attachment 3, 2c, Classification Guidance; Guidance distribution within 60 calendar days
DOE 475.2B	Attachment 4, 4a and b, Classification/Declassification Review Requirements; Respond to classification challenges and appeals within 60 days
DOE 475.2B	Attachment 5, 1, Classification Program Evaluations; Classification Program Self-assessments and Evaluations requirements Program Classification Officers, Classification Officer and Headquarter Classification Representatives
DOE 475.2B	Attachment 5, 1, Classification Program Evaluations; Classification Program Self-assessments and Evaluations requirements Program Classification Officers, Classification Officer and Headquarter Classification Representatives
DOE 475.2B	Attachment 5, 3, Correction action within 60 days of completion of assessments
DOE 475.2B	Attachment 6, Classification Education Program; Refresher training requirements for: <ul style="list-style-type: none"> • Individual with access to classified information • Original Classifiers • Program Classification Officers and Classification Officers • Headquarters Classification Representatives and Alternates • Derivate Classifiers (including email DCs) • Derivative Declassifiers
Unclassified Controlled Nuclear Information	
Source of Requirement	Requirement
DOE 471.1B, Identification and Protection of UCNI	
DOE 471.1B	5.a.(6), Attachment 1,3.e, Provide UCNI guidance within 30 calendar days to AU-60
DOE 471.1B	5.a.(9), Attachment 1,3.h, UCNI guidance distributed within 30 days
DOE 471.1B	5.b.(6), Attachment 1,4.f, Reviewing Official recertification requirements
DOE 471.1B	5.k, Attachment 1,8.a and b, Program Classification Officer, Classification Officer, and Headquarters Classification Representative evaluations and self-assessments of UCNI program
DOE 471.1B	5.l., Attachment 1, 9, UCNI refresher briefings for individuals with access

Safety and Security Regulations

September 2020

Worker Substance Abuse Programs	
Source of Requirement	Requirement
10 CFR Part 707, Workplace Substance Abuse	Each workplace substance abuse program will provide for random testing for evidence of the use of illegal drugs of employees in testing designated positions as identified in §707.7.* *Note that when sites return to Phase 3 – Return to Work status without temporary additional flexibilities and random testing is resumed, the testing rate prescribed in §707(a)(2) may be adjusted accordingly.
Occupational Radiation Protection	
Source of Requirement	Requirement
10 CFR Part 835, Occupational Radiation Protection	
§835.1202	Each accountable sealed radioactive source shall be inventoried at intervals not to exceed six months.
§835.901(e)	Radiation safety training shall be provided to individuals when there is a significant change to radiation protection policies and procedures that may affect the individual and at intervals not to exceed 24 months.
§835.102	Internal audits of the radiation protection program, including examination of program content and implementation, shall be conducted through a process that ensures that all functional elements are reviewed no less frequently than 36 months.
Worker Health and Safety	
Source of Requirement	Requirement
10 CFR Part 851, Worker Health and Safety Program, §851.23	
NFPA 70E, Standard for Electrical Safety in the Workplace	
NFPA 70E	Annual refresher training requirement for cardiopulmonary resuscitation and automated defibrillator.
NFPA 70E	Retraining in safety-related work practices shall be performed at intervals not to exceed three years for lockout/tagout. (Only under specific conditions: reestablish employee proficiency; new or revised control methods, when necessary).
NFPA 70E	Retraining for lockout/tagout is required at intervals not to exceed 3 years. (Only under specific conditions: reestablish employee proficiency; new or revised control methods, when necessary).

Safety and Security Regulations

September 2020

29 CFR Part 1910, Occupational Safety and Health Standards	
§1910.95(g)(6)	Occupational noise exposure: Annual audiogram. At least annually after obtaining the baseline audiogram, the employer shall obtain a new audiogram for each employee exposed at or above an 8-hour time-weighted average of 85 decibels.
§1910.95(k)(2)	Occupational noise exposure: The Training program (k)(1) shall be repeated annually for each employee included in the hearing conservation program. Information provided in the training program shall be updated to be consistent with changes in protective equipment and work processes.
§1910.119(g)(2)	Process safety management of highly hazardous chemicals: Refresher training. Refresher training shall be provided at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process. The employer, in consultation with the employees involved in operating the process, shall determine the appropriate frequency of refresher training.
§1910.120(e)(8) / 1926.65(e)(8)	Hazardous waste operations and emergency response. Refresher training. Employees specified in paragraph §1910.120(e)(1), and managers and supervisors specified in paragraph §1910.120(e)(4) of this section, shall receive eight hours of refresher training annually on the items specified in paragraph §1910.120(e)(2) and/or §1910.120(e)(4) of this section, any critique of incidents that have occurred in the past year that can serve as training examples of related work, and other relevant topics.
§1910.134(d)(1)(iii)	The employer shall select a NIOSH-certified respirator. Limited to N95 equivalent filtering face-piece respirators used for bio aerosols (e.g., viruses) only when NIOSH certified N95 respirators are unavailable.
§1910.134(f)(2)	Respiratory protection. The employer shall ensure that an employee using a tight-fitting facepiece respirator is fit tested ... at least annually thereafter.
§1910.134(k)	Respiratory Protection. Training and information. This paragraph requires the employer to provide effective training to employees who are required to use respirators. The training must be comprehensive, understandable, and recur annually, and more often if necessary.
§1910.134(e)(3)	Respiratory protection. Respirator follow-up medical examination
§1910.146(g)	Permit Required Confined Spaces re-training (one-time training unless change in assigned duties; change in the permit space operations; employer has reason to believe that there are deviations from the permit space entry procedures.
§1910.147(c)(7)(iii)	Hazardous Energy Control Retraining (Only under specific conditions: reestablish employee proficiency; new or revised control methods, as necessary).
§1910.157(g)(2)	Portable Fire Extinguishers. The employer shall provide the education required in paragraph §1910.157(g)(1) of this section ... at least annually.
§1910.178(l)(4)(iii)	Powered industrial trucks operator performance evaluation every 3 years.

Safety and Security Regulations

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§1910.1001(j)(7)(i)	Asbestos: Training shall be provided ... at least annually thereafter.
§1910.1001(l)(3)(i)	Asbestos: Periodic medical examinations shall be made available annually.
§1910.1025(l)(1)(iv)	Lead: The training program shall be repeated at least annually for each employee.
§1910.1027(l)(4)(i)	Cadmium: A periodic medical examination shall be provided ... biennially.
§1910.1027(m)(4)(i)	Cadmium: Training shall be provided ... least annually.
“§1910.1028(i)(3)(i)	Benzene: For all workers required to wear respirators for at least 30 days a year, requires annual medical examination.
§1910.1028(j)(3)(i)	Benzene: If exposures (to benzene) are above the action level, employees shall be provided with information and training at least annually thereafter.
§1910.1030(g)(2)(ii)(B)	Blood borne pathogens: Training shall be provided at least annually.
§1910.1053(i)(3)	<i>Respirable Crystalline Silica: Periodic examinations.</i> The employer shall make available medical examinations that include the procedures described in paragraph (i)(2) of this section (except paragraph (i)(2)(v)) at least every three years, or more frequently if recommended by the PLHCP.
Beryllium	
Source of Requirement	Requirement
10 CFR 850, Chronic Beryllium Disease Prevention Program	
§850.34(b)(2)	Periodic Evaluation (i). The responsible employer must provide to beryllium workers a medical evaluation annually, and to other beryllium-associated workers a medical evaluation every three years.
§850.37(d)	The responsible employer must provide the training required by this section ... at least every two years.
Respiratory Protection	
Source of Requirement	Requirement
NFPA 1582, Standard on Comprehensive Occupational Medical Program for Fire Departments.	Annual pulmonary testing for powered air purification use.