

Chapter 16 Revision History: Revisions by date (Newest to oldest)**August 13, 2021:**

- Revised Page 16-2 to include 15-day requirement for OPI response
- Revised contact information on Page 16-3

December 12, 2019: Revised entire document**July 3, 2018:** Revised contact information on Page 16-3**March 27, 2018:**

- Revised Page 16-2 to include Office of Primary Interest (OPI) and General Counsel (GC)
- Revised Attachment 1600-1
- Revised Attachment 1600-2

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Chapter 16

Equivalencies and Exemptions (Deviations)

Purpose

The U.S. Department of Energy (DOE) safeguards and security (S&S) orders require implementation of measures to protect DOE security interests. Due to a variety of reasons, a DOE organization may be unable to comply with a directive's specified methodology, but can achieve the security intention in another equally effective manner; or the organization may not be able to comply with the requirement at all.

DOE Order 251.1D, *Departmental Directives Program*, Appendix E, establishes a process for requesting and approving "equivalencies and exemptions" to DOE requirements. DOE Headquarters (HQ) equivalencies and exemptions must be approved by the Associate Under Secretary for Environment, Health, Safety, and Security (AU-1) or designee, which for DOE HQ is the Director of the Office of Headquarters Security Operations (AU-40), designated as the DOE HQ Officially Designated Federal Security Authority (ODFSA).

All approved S&S equivalencies and exemptions are maintained in the Safeguards and Security Information Management System (SSIMS) database.

This chapter describes the requirements, processes, and responsibilities for managing DOE HQ S&S equivalencies and exemptions.

Requirements

Definitions:

1. Equivalencies – Alternatives to how a requirement in a directive is met in cases where the "how" is specified. These represent acceptable, alternative approaches to achieving the goal of a directive's requirement.
2. Exemptions – A release from compliance with one or more requirements in a directive, as granted by the exempting organization's Head of the Departmental Element.

Equivalency and Exemption Request Process:

The Headquarters Security Officer (HSO) of the DOE HQ element requesting an equivalency or exemption should first consult with the DOE HQ Equivalency and Exemption Program Manager, in the Office of Information Security (AU-42). The DOE HQ Equivalency and Exemption Program Manager ensures that the subject matter expert (SME) within AU-40 is informed of the element's inability to meet the S&S requirement and their intention to submit a request.

The DOE HQ element HSO and the AU-40 SME will evaluate the circumstances associated with the proposed request. If it is verified that an equivalency or exemption is warranted, the DOE HQ element HSO and the AU-40 SME will determine whether an equivalency or an exemption is needed. The AU-40 SME will assist the DOE HQ element HSO to identify and justify the use of the chosen equivalency or exemption including the identification of compensatory measures and residual risks, as applicable.

Equivalencies must demonstrate that the alternate method will provide an acceptable level of protection, with no increased risk to public health and safety, the environment, workers, or security. Exemptions must clearly delineate compensatory measures, if any, to reduce risk to a reasonably achievable level and identify residual risks.

The DOE HQ element HSO will need to obtain advice from the Office of General Counsel (GC) and the Office of Primary Interest (OPI) (DOE Order 251.1D) prior to submitting the Equivalency and Exemption memorandum to the DOE HQ ODFSA. Once a request for advice is submitted, the OPI will have 15 working days to respond.

The Head of the DOE HQ element is responsible for submitting an equivalency and exemption request via memorandum (see Attachment 1600-1) to the DOE HQ ODFSA that:

- Identifies the requirement(s) for which the equivalency/exemption is being sought.
- Explains the equivalency/exemption.
- Justifies the reasons for the equivalency/exemption.
- Identifies the locations of the offices (Germantown (GTN), Forrestal (FORS), Room Number, etc.) for which the equivalency/exemption is being sought.
- Confirms that the application of the exemption or equivalency does not conflict with applicable Federal law or regulations.
- Indicates when compliance will be achieved in cases of an equivalency.
- Describes alternative or mitigating actions, including associated risks, that have been or will be taken to ensure adequate protection of the public, workers, and the environment for the period during which the exemption will be effective, when applicable; and
- Describes conclusions and recommendations from the OPI review of the exemption/equivalency and resolution of recommendations.

The DOE HQ ODFSA may coordinate with AU-1 before approving or disapproving S&S equivalency or exemption requests.

If the request is approved, the DOE HQ Equivalency and Exemption Program Manager issues an equivalency/exemption number, which is added on the request memo. A copy of the approved request is forwarded to the Safeguards and Security Information Management (SSIMS) data entry specialist, for the registration of the active Equivalency and Exemption into SSIMS. The approved request will be provided to AU-40 for inclusion in the DOE HQ Site Security Plan. A response memorandum will be provided to the requesting element, to include a copy of the active Equivalency and Exemption SSIMS form.

Expiration Dates of Equivalencies and Exemptions:

The DOE HQ Equivalency and Exemption Program Manager will establish a system to review equivalencies and exemptions that have expiration dates as not all require an expiration date. For example, if the equivalencies or exemptions is linked to a deficiency regarding a contract, the expiration date may be identified as the end of contract. If a equivalencies or exemptions is associated with a construction project, the construction completion date may be identified as the expiration date.

If it is determined that the approved equivalency or exemption is no longer needed prior to an assigned expiration date, the DOE HQ element HSO should notify AU-40 before discontinuing the approved alternative or compensatory measure(s).

Upon closure of the equivalencies and exemptions in SSIMS, a confirmation will be sent to the DOE HQ element HSO, as well as AU-40, to update the DOE HQ Site Security Plan.

Points of Contact

For the names and contact information for the positions identified in this chapter, call (301) 903-9986 or (301) 903-9990.

Forms/Samples/Graphics

*Template **Equivalency or Exemption** Request Memorandum (see Attachment 1600-1)*

ATTACHMENT 1600-1
Template Equivalency or Exemption Request Memorandum

MEMORANDUM FOR JAMES A. HUTTON

DIRECTOR
OFFICE OF HEADQUARTERS SECURITY
OPERATIONS
OFFICE OF ENVIRONMENT, HEALTH, SAFETY AND
SECURITY

FROM: (NAME), (HEAD OF ELEMENT)
NAME OF ELEMENT

SUBJECT: (Name of Element) Request for Equivalency (or Exemption)

This memorandum is to request your approval of an (equivalency) or (exemption) to the requirement identified in DOE Order_____, (Title), Paragraph_____.

Executive Summary – Number of equivalencies/exemptions requesting. Confirmation of application of exemption/equivalency does not conflict with federal law or regulations. Describe conclusion and recommendations from the OPI review of the exemption/equivalency and resolution of recommendations.

Background – Explain the equivalencies/exemptions. Identify location of office for which the exemption/ equivalency is being sought.

Standard – DOE Order and wording of actual citation (Ex., DOE O 470.4B, 1.a)
Justification – Why the requirement cannot be met.

Mitigation (Protective measures) – describe any alternative or mitigating actions, to include associated risks, that have been or will be taken to ensure adequate protection of the public, workers, and the environment for the period during which the exemption will be effective. Indicate when compliance will be achieved in cases of an equivalency.

If you have any questions related to this request, please contact (Name), the Headquarters Security Officer for (Element). (Name) can be contacted at phone number _____.

APPROVED:_____ Date: _____

DISAPPROVED:_____ Date: _____

EQUIVALENCY/EXEMPTION NUMBER: _____

EXPIRATION DATE (if applicable): _____

cc: GC
AU-50
AU-41 SME