

**DEPARTMENT OF ENERGY OFFICE OF GENERAL COUNSEL INTERPRETATION
REGARDING THE APPLICATION OF 10 C.F.R. § 835.102, INTERNAL AUDITS**

The Department of Energy's (DOE) General Counsel (GC) has been asked to provide a legal interpretation¹ regarding internal audits, performed pursuant to 10 C.F.R. § 835.102, of radiation protection programs. This interpretation addresses the following question:

Does 10 C.F.R. § 835.102² allow more than 36 months to pass between reviews of each functional element of a radiation protection program so long as all functional elements are reviewed within a 36 month period?

For the reasons explained below, no more than 36 months may pass between reviews of each of the functional elements.

The text of 10 CFR § 835.102 states that “all functional elements are reviewed no less frequently than every 36 months.” It does not refer to a 36 month period of review, or state that elements may be evaluated at any time during a 36 month review period. Instead, it sets out 36 months as the maximum amount of time that may pass between reviews, and notes that “all functional elements” are subject to this requirement. According to Merriam-Webster's dictionary, “all” means “every member or individual component of.”³ Similarly, the Cambridge Dictionary defines “all” as “every one of, or the complete number of; the whole.”⁴ Courts will often look to dictionary definitions of a word appearing in a statute or regulation to guide them in interpreting its meaning. *See, e.g., Crawford v. Metro Gov't of Nashville*, 555 U.S. 271, 276 (2009) (noting that words left undefined by statute carry their ordinary meaning, and relying on dictionary definitions to determine that meaning); *Lawrence v. City of Philadelphia*, 527 F.3d 299, 317 (3rd Cir. 2008) (stating that the “plain meaning” or “ordinary usage of a term” is the first consideration when interpreting a statute, and noting that “it is permissible to use a dictionary to determine a term's plain meaning”). Pursuant to these definitions, the regulation requires “every one of,” or “every ... individual component of,” the full collection of functional elements of a radiation protection program to be reviewed every 36 months. Therefore, according to the plain text of this regulation, no more than 36 months may pass between reviews of every individual element of a radiation protection program.

The preambles to the current and prior versions of the rule, as published in the *Federal Register*, suggest that a review interval of longer than 36 months was not contemplated. Like the regulation itself, they make no reference to a review cycle or a review period. While the preamble to the 1998 revision notes DOE's “initiative to eliminate redundant and unnecessarily stringent requirements” (63 Fed. Reg. 59662, 59662), the revision did not alter the language of Section 835.102 to provide for a longer interval between element reviews. The preamble to the 1993 rule includes a comment noting that the Nuclear Regulatory Commission requires a one-

¹ See 10 C.F.R. § 820.51.

² “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 every 36 months.”

³ *All*, Merriam-Webster Online Dictionary, available at <https://www.merriam-webster.com/dictionary/all>.

⁴ *All*, Cambridge Dictionary Online, available at <http://dictionary.cambridge.org/us/dictionary/english/all>.

year review interval, while § 835.102 only requires review every three years. The response to the comment states that adopting a maximum period of three years between audits is acceptable in this case because the audit program “is only one part of a comprehensive assessment program.” (58 Fed. Reg. 65458, 65469). This indicates that three years was found to be the sufficient interval, given the assessment program. Performing an element review at the beginning of one cycle and at the end of the next consecutive cycle, which would allow a total of nearly six years to pass between audits of program elements, would, therefore, not be sufficient.

The plain language of the regulation states that *all* elements must be reviewed every 36 months, without reference to a 36 month review cycle. The regulation’s preamble does not contradict the plain language of the regulation or introduce the notion of a period of review during which evaluation of individual elements may take place at any time. Therefore, pursuant to 10 CFR § 835.102, no more than 36 months are permitted to pass between reviews of each of the functional elements.

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