

## FOREWORD

These operational procedures are one of a series prepared by the Office of Enforcement and Investigation, EH-10, to provide information on the conduct of the Department of Energy's (DOE's) statutory nuclear safety enforcement program. This document describes DOE's philosophy on effective identification and reporting of nuclear safety noncompliances and identifies threshold reporting criteria that EH-10 will find acceptable in evaluating noncompliances reported in DOE's Noncompliance Tracking System (NTS). The criteria are derived from portions of DOE Order 232.1A, Occurrence Reporting and Processing of Operations Information, and its attendant Manual.

Prompt contractor identification, reporting to DOE, and the timely correction of nuclear safety noncompliances provides DOE with a basis to exercise enforcement discretion to mitigate civil penalties, and suspend the issuance of Notices of Violation for certain violations. To the extent that these expectations are met for particular noncompliances, DOE intends to appropriately exercise its enforcement discretion in considering whether, and to what extent, to undertake enforcement action.

Although these procedures are prepared primarily for use of EH-10 in evaluating reported noncompliances, EH-10 recognizes that contractors and other DOE organizations may find them useful in establishing their own reporting program. Also, EH-10 is willing to consider any beneficial comments (recommendations, additions, deletions) consistent with DOE's Enforcement Policy (Appendix A to 10 CFR 820). Such comments may be sent to:

U.S. Department of Energy  
Office of Enforcement and Investigation, EH-10  
19901 Germantown Road  
Germantown, MD 20874-1290

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CHANGES IN  
"IDENTIFYING, REPORTING, AND TRACKING NUCLEAR SAFETY NONCOMPLIANCES  
UNDER PRICE-ANDERSON AMENDMENTS ACT OF 1988"

DOE Handbook 1089-95 has been replaced with a new operational procedure, Identifying, Reporting, and Tracking Nuclear Safety Noncompliances Under Price-Anderson Amendments Act of 1988. As part of this revision, the document has been reorganized to reflect changes in the Price-Anderson Amendment Act (PAAA) enforcement program and recent experience with reporting nuclear safety noncompliances. A number of the changes are minor editorial rewordings to clarify intent, update references, and reflect new organizational nomenclature. Other changes reflect the change in status of this document from a DOE Handbook to an EH-10 operational procedure. More substantive changes, including those made to reflect recent revisions to the Enforcement Policy (Appendix A of 10 CFR 820) are detailed below.

Changes are grouped into three categories as follows:

Policy Clarifications: This category includes reorganization of material, expanded examples, and additional explanatory information that track policy changes made in the enforcement program.

Changes to Threshold Reporting Criteria: This includes changes to the reporting tables, elimination of reporting categories and reorganization of others.

Use of More Precise Terminology: Revisions made reflect changes throughout the document that will improve understanding of the reporting requirements.

Questions on this Operational Procedure may be directed to the DOE Office of Enforcement and Investigation at 301-903-0100.

## POLICY CLARIFICATIONS

1. A revised Foreword clarifies the purpose for the procedure and provides a contact point for comments and suggestions. See Foreword.

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2. Clarifies the discussion on DOE Enforcement Policy by adding statistics on noncompliance reports reviewed and enforcement actions taken. Describes typical features of noncompliances that resulted in enforcement actions. See 1.2, 2<sup>nd</sup> paragraph following the quote.
  3. Clarifies that incentives for prompt reporting may include reduction in an enforcement action's severity level for certain non-profit contractors that are not subject to civil penalties. Changes the term "mitigation of civil penalties" to "enforcement action mitigation" to cover this situation. See:
    - 1.5, new material on mitigation for nonprofit contractors
    - 1.4, 2<sup>nd</sup> paragraph
    - 1.4.1, 2<sup>nd</sup> paragraph, first and last sentences.
    - 1.4.2, 1<sup>st</sup> sentence.
  4. New introductory material to the section on timely self identification clarifies that mitigation credit is not generally given for a self-disclosing event. See 1.4.1, 1<sup>st</sup> paragraph.
  5. Clarifies examples of prompt identification by eliminating one example, adding one, and revising two others. See 1.4.1.a.
  6. Clarifies prompt reporting to mean reporting to the NTS. Changes the example to reduce from five days to three the time a supervisor spent in confirming the noncompliance. See 1.4.1.b.
  7. Clarifies that corrective actions must correct the noncompliance as well as prevent recurrence. See 1.4.2, next to last sentence, and 4.1.2, 2<sup>nd</sup> sentence.
  8. Changes listing of DOE nuclear safety rules to remove draft rules and subparts of 10 CFR Part 830. Notes that DOE is considering other rules that will be subject to reporting when issued and effective. See 1.5.
  9. Restructures the section on Noncompliance Identification from four into five sections. Replaces the category "Reports Occurrences Under DOE O 261..." with "Event Related or Safety System Degradation" and adds "Worker Self-Identified" as a separate section (this

was previously included in the "Other" category). See 2.

10. Clarifies that the Office of Enforcement and Investigation staff may make entries into an NTS report to indicate that it has been reviewed and is being closed without any further enforcement action. See 3, 2<sup>nd</sup> paragraph.
11. Clarifies that DOE may periodically evaluate noncompliances reported into contractor internal tracking systems. See 3, 3<sup>rd</sup> paragraph.
12. Clarifies the discussion on intentional violation and misrepresentation to include early experience with the enforcement program. Replaces one example with a new one. See 3.1.3, first three paragraphs and Example 1.
13. Clarifies relationship between reporting to the NTS and reporting under the DOE Occurrence Reporting program by expanding the discussion in this section and stating DOE's expectation that unusual occurrence reports are not the only source of information considered for NTS reporting. See 3.2.
14. Removes the NTS Users Manual as an appendix to this procedure. The Users Manual is now a stand-alone document. See 4.1, 2<sup>nd</sup> paragraph.
15. Notes that DOE field elements may be involved in the timing of corrective activities if significant commitment of funds or additional funds are needed. See 4.1.2, 2<sup>nd</sup> paragraph.
16. Clarifies requirements for closing NTS reports after completion of corrective actions. Notes the need for verification by DOE field elements of completion of corrective actions before the Office of Enforcement and Investigation will close the report. See 4.1.2, 3<sup>rd</sup> and 4<sup>th</sup> paragraphs.
17. Eliminates unnecessary guidance on data entry into NTS previously contained in sections 5C, "Contractor PAAA Coordinator," and 5D, "Originator."
18. Summarizes criteria that should be met by contractor tracking systems in order to credit them for reporting minor noncompliances. See 4.2.

19. Clarifies information on the use of contractor tracking systems for tracking noncompliances that are below the thresholds for reporting into NTS. See 5.2.
20. Eliminates redundant material summarizing DOE's reporting philosophy which was previously contained in section 7.

#### CHANGES TO THRESHOLD REPORTING CRITERIA

1. Restructures the section on significance thresholds and renames it as "Criteria for Reportable Noncompliances." Changes the focus of the introductory material from "significant" to "reportable" noncompliances to emphasize that this section only addresses determination of information to be entered into NTS. See 3, 1<sup>st</sup> paragraph.
2. Restructures the material describing the types of reportable noncompliances into two major categories: "Programmatic Deficiencies" and "Noncompliances Involving DOE M 232.1-1 Occurrences." See 3.1 and 3.2.
3. Streamlines five sub-categories of programmatic deficiencies into three by combining "Intentional Violation" and "Misrepresentation" into a single entry and eliminating "Significant Management Failure" as a separate category. Clarifies introductory material to note that programmatic deficiencies may be identified through self-assessment or root-cause analysis of an otherwise non-reportable noncompliance that becomes reportable because of special factors. See 3.1.
4. Clarifies that contractors should review internal noncompliance tracking systems to identify trends or recurring noncompliances reportable into the NTS system. The old example is replaced with a new one that more clearly demonstrates the concept of repetitive or recurring noncompliances. See 3.1.1.
5. Clarifies the discussion on programmatic breakdown. Adds discussion of site-wide problems identified during the first several years of the enforcement program, and replaces one example with a new one. See 3.1.2.
6. Reorganizes three tables summarizing threshold criteria into two by eliminating "Failure of

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- Administrative Actions” as a separate table. Removes “Significant Management Failures” and “Misrepresentation” as separate categories in Table 3-1. Removes “Violation/Inadequate Procedures” and “Unsatisfactory Surveillance/Inspections” as subgroups in Table 3-2, and adds new explanatory notes to several subgroups. See Tables 3-1 and 3-2.
7. Clarifies expectations for reporting by adding a new section on consideration of safety significance. This section notes DOE’s expectation that reports meeting the threshold criteria will be submitted without contractors making a detailed evaluation of safety significance or predicting whether DOE will pursue an investigation. See 3.3.
  8. Clarifies that noncompliances associated with radiological activities and nuclear activities, in addition to nuclear facilities, must be reported. See 4.1.2, 2<sup>nd</sup> paragraph.

#### USE OF MORE PRECISE TERMINOLOGY

1. Replaces the term “minor noncompliance” with “noncompliance below an NTS reporting threshold” throughout the document. This reflects the change in reporting noncompliances based solely on threshold criteria rather than separate consideration of significance.
2. Eliminates the phrase “M&O contractor” and clarifies the general term “contractor” to include Management and Operating, Management and Integrating and other direct contractors, subcontractors, and suppliers. This change reflects DOE’s new contracting arrangements. See 1.6.1 and 4.1.2, 2<sup>nd</sup> paragraph.
3. Eliminates mention that Part 830 requirements are limited to nuclear facilities. Adds text from 10 CFR 830 to define nuclear facility. See 1.6.3.
4. Distinguishes between the terms “noncompliance,” any failure to comply with a nuclear safety requirement, and “violation,” a noncompliance that DOE has identified as significant in a Notice of Violation. Previously these terms were considered to be synonymous. As a result of this change, the term “potential noncompliance” is eliminated throughout the procedure. See 1.6.4 and 1.6.5.
5. Broadens definition of “enforcement action” to include an enforcement letter and a Consent Order. See 1.6.6.

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**IDENTIFYING, REPORTING, AND TRACKING**

**NUCLEAR SAFETY NONCOMPLIANCES**

**UNDER PRICE-ANDERSON AMENDMENTS ACT OF 1988**

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## 1. INTRODUCTION

### 1.1 DEPARTMENT OF ENERGY ENFORCEMENT AUTHORITY

The Price-Anderson Act provides indemnification<sup>1</sup> to DOE contractors who manage and operate nuclear facilities in the DOE complex. In 1988, the Price-Anderson Amendments Act (PAAA) was signed into law to continue this indemnification. The PAAA subjects DOE indemnified contractors, subcontractors, and suppliers to potential civil and criminal penalties for violations of DOE rules, regulations, and compliance orders relating to nuclear safety requirements. As part of its agreement to continue the indemnification coverage, Congress mandated that DOE enforce nuclear safety requirements to minimize the risk to workers and the public. DOE's Office of Enforcement and Investigation (OEI) has the responsibility to carry out the statutory enforcement authority provided to DOE in the PAAA. On August 17, 1993, DOE published its enforcement procedural rules and enforcement policy (10 CFR Part 820, Appendix A, General Statement of Enforcement Policy). Appendix A was further amended on October 7, 1997, (effective November 7, 1997) to amplify DOE's policies regarding self-reporting events, enforcement letters, and civil penalties. DOE's enforcement policy sets forth the Department's strategy for ensuring contractor compliance with nuclear safety requirements.

### 1.2 DEPARTMENT OF ENERGY GENERAL ENFORCEMENT POLICY SUMMARY

The goal of DOE's enforcement policy is to enhance and protect the radiological health and safety of the public and workers at DOE facilities through a process that encourages timely identification, open and prompt reporting, and comprehensive correction of noncompliance conditions. The cornerstone of DOE's enforcement policy is voluntary compliance through contractor initiatives to effectively understand and implement nuclear safety requirements, critically self-assess activities, and promptly identify, report, and correct noncompliance conditions. As it is stated in 10 CFR 820, Appendix A:

"The single most important goal of the DOE enforcement program is to encourage early identification and reporting of nuclear safety deficiencies and violations of DOE Nuclear Safety Requirements by the DOE contractors themselves rather than by DOE, and the

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<sup>1</sup> By indemnifying the contractor, the government acts as an insurer against any findings of liability arising from the nuclear activities of the contractor within the scope of its contract.

prompt correction of any deficiencies and violations so identified. DOE believes that the contractors are in the best position to identify and promptly correct noncompliances with DOE Nuclear Safety Requirements.

...it should be emphasized that if the DOE contractor is or should have been aware of a violation and has not reported it to DOE and taken appropriate corrective action despite an opportunity to do so, each day the condition existed may be considered as a separate violation and, as such, subject to a separate civil penalty."

The enforcement policy sets forth base civil penalties that are determined by a violation's severity level (Severity Level I, II, or III). DOE will apply a number of factors in assessing each potential enforcement situation. In determining whether an enforcement action will be mitigated, DOE will consider, among other factors, the opportunity available to discover the violation, the ease of discovery, the promptness and completeness of the notification report to DOE, and the corrective actions. DOE will also consider other factors such as safety significance or administrative, management, or programmatic weaknesses in considering whether to mitigate a potential enforcement action. No consideration will be given to a reduction in penalty or severity level if the contractor does not identify a noncompliance in a timely manner or does not take prompt action to report a problem to DOE upon discovery and initiate appropriate corrective actions.

A report of a noncompliance in either the DOE NTS or a contractor's tracking system will not automatically initiate enforcement action by DOE. Rather, DOE will review and evaluate all available information prior to determining whether the noncompliance has the requisite safety significance to warrant commencing a more detailed enforcement review. To illustrate, from late 1995 through 1996, DOE received over 100 NTS reports. Additionally, DOE received and reviewed 130 other cases of noncompliance identified by DOE or others. In this same time period, DOE issued seven enforcement actions with Preliminary Notices of Violation, four of which included a civil penalty. In all seven enforcement actions, the noncompliance condition was identified by DOE and not by the contractor. In several of these cases, the noncompliance directly related to the event was disclosed by the event itself but DOE had to pressure the contractor to investigate the noncompliance's broader implications or programmatic aspects.

None of the seven enforcement actions was based on a case where contractor initiative identified the noncompliance and the contractor took the initiative to submit a report into the NTS and implement prompt and comprehensive corrective actions<sup>2</sup>.

While DOE prefers voluntary reporting of noncompliances, a specific noncompliance issue does not have to be submitted to DOE by the contractor before an enforcement evaluation is initiated. A noncompliance issue may be brought directly to the attention of OEI staff by external sources. If DOE initiates an enforcement investigation as a result of information received from an external source, the contractor will be promptly informed unless the nature of the violation is such that notification would compromise the ability of DOE to properly complete the investigation. This circumstance is expected to be a rare occurrence and would normally be based on an egregious issue (such as intentional violation, concealment, or misrepresentation of information) or an allegation raised by a confidential source. In any case, a noncompliance will be reported to the contractor immediately by DOE if, left uncorrected, it constitutes an immediate threat to public or worker health and safety.

DOE fully expects to rely on the accuracy and completeness of information provided by its contractors. 10 CFR Part 820.11, Information Requirements, requires that any information pertaining to a nuclear activity provided to or maintained for DOE by a contractor shall be complete and accurate in all material respects. No person involved in a DOE nuclear activity shall deliberately falsify, conceal, or destroy any information concerning a noncompliance.

### 1.3 POLICY FOR ENFORCEMENT ACTIONS

Civil penalties are normally proposed for Severity Level I and II violations, and typically for Severity Level III violations that are similar to previous violations where effective corrective actions were not taken. If voluntary compliance activities are not effective and noncompliances with nuclear safety requirements occur, DOE is empowered to initiate enforcement actions consistent with 10 CFR Part 820 procedural requirements. The safety significance of a violation, coupled with contractor performance in identification and response, will play a major role in the enforcement process in determining whether a Notice of Violation, with or without a civil penalty, will be issued and the violation's severity level. A noncompliance below an NTS reporting

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<sup>2</sup> Further details on cases considered and enforcement actions taken are contained in DOE's Enforcement Program annual reports.

threshold described in these operational procedures will not be subject to formal enforcement action unless DOE determines it is repetitive and indicative of an underlying programmatic issue. Noncompliances of this type should be evaluated by the contractor to assure appropriate corrective action is taken to prevent recurrence, and to determine if an aggregate of related noncompliances is indicative of a programmatic breakdown, and, thus, reportable.

#### 1.4 POLICY FOR POSITIVE INCENTIVES

As part of its enforcement policy, DOE has established positive incentives for contractors who:

- identify nuclear safety noncompliances in a timely manner;
- promptly and thoroughly report those noncompliances to DOE;
- conduct a root cause analysis of noncompliances; and
- promptly and comprehensively correct nuclear safety noncompliances in a manner that precludes recurrence.

These incentives are the application of adjustment factors to the determination of a severity level or the amount of a civil penalty, or through the exercise of discretion by not issuing a Notice of Violation. It can result in a substantially reduced civil penalty being issued (including no civil penalty), or a reduction in an enforcement action's severity level for certain nonprofit contractors, for a noncompliance that is identified and reported in a timely manner and promptly and effectively corrected.

1.4.1 Timely Self-Identification and Reporting: Timely self-identification means identifying a nuclear safety problem before it leads to an incident with undesirable consequences. The contractor's focus should be on the means and processes to identify such problems, not just reacting to an event. Hence, if identification of a noncompliance is the result of contractor initiative or through a contractor's efforts to understand the broader implications of a particular noncompliance condition or incident, DOE would generally grant mitigation for self-identification, assuming proper reporting occurred. Where an event discloses that such problems exist, and the underlying noncompliances are identified only as a consequence of routine review of the incident, DOE would likely not consider mitigation for self-identification, even if eventually reported by the contractor. This is referred to in the Enforcement Policy as a "self-disclosing" event.



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A reduction of up to 50% of a base civil penalty, or a reduction in the severity level of an enforcement action for certain nonprofit contractors, may be given when a DOE contractor identifies a noncompliance in a timely manner and reports it to DOE. In some instances, DOE may conclude that issuing a Notice of Violation is not warranted if the above criteria have been met. In deciding this, DOE will give consideration to the opportunity available to the contractor to discover the noncompliance, the ease of discovery, and the promptness and completeness of the notification to DOE. Conversely, DOE will not mitigate a base civil penalty, or reduce the severity level of an enforcement action for certain nonprofit contractors, if the contractor does not identify and report a noncompliance in the manner described.

- a. Prompt Identification: DOE has not defined "prompt identification" in terms of hours or days since the facts of a noncompliance will be evaluated on a case-by-case basis. The following examples illustrate how DOE would assess various noncompliance situations.

Example 1. An internal contractor audit, inspection, or surveillance is completed and the findings suggest the existence of a noncompliance condition. The contractor evaluates the information to confirm whether a noncompliance condition exists and, if so, how long the noncompliance condition existed without being detected. This evaluation is completed within about 15 days and the condition was found to exist for only a few weeks. DOE would consider mitigation for the identification component for such a case.

Example 2. A contractor manager identifies two workers who have not received their required Radiation Worker II periodic training to maintain qualifications. After reporting this to management, it is subsequently determined that this represents a broader programmatic problem, not isolated to the two workers originally identified. The evaluation of the original condition and determination of a broader issue occurs over a 15 day period. DOE would consider mitigation for the identification component in this case.

Example 3. A contractor receives notification of a noncompliance from an external source such as a state agency, the Defense Nuclear Facilities Safety Board, or onsite

DOE personnel. DOE expects the contractor to complete an evaluation in an expedient

manner to confirm if a noncompliance condition exists. However, mitigation for identification and reporting will likely not be appropriate because the problem was not identified by the contractor.

Example 4. A noncompliance with a technical safety requirement is identified. An investigation established that the noncompliance had existed for 90 days. DOE would likely not consider reducing a civil penalty or an enforcement action, as appropriate, since the facts do not indicate prompt identification of the noncompliance.

b. Prompt Reporting: For enforcement purposes, prompt reporting is generally that done to the NTS within 20 calendar days after determining a noncompliance condition exists.

Example: A facility manager completes a facility walk-down. During preparation of the written report, a noncompliance is identified. An area supervisor is assigned to review the situation. The supervisor takes three days to confirm that a noncompliance exists. The noncompliance report was lengthy and required a review by a subject matter expert. As a result, the noncompliance was not reported to DOE until 15 days after the noncompliance was identified. This example is still timely, considering the circumstances. DOE would consider mitigation in this case.

1.4.2 Prompt and Comprehensive Corrective Actions: The promptness of and extent to which a contractor takes corrective actions may result in up to a 50% reduction of a base civil penalty, or a reduction in the severity level of an enforcement action for certain nonprofit contractors. It is believed that most investigations and causal analyses should be completed within 45 days of determining that a noncompliance exists. Only those corrective actions sufficiently comprehensive to correct the noncompliance and prevent recurrence will warrant consideration of enforcement action mitigation. DOE anticipates that corrective actions and implementation plans will be identified during this time period as well.

## 1.5 MITIGATION CONSIDERATION FOR CERTAIN NONPROFIT CONTRACTORS

The PAAA specifically excluded certain laboratories from the imposition of civil penalties. DOE has extended this exclusion to other nonprofit educational institutions that serve as contractors.

Thus, DOE is not able to offer civil penalty mitigation as a positive incentive to such contractors. However, it is clear that, in many circumstances, the finding of a violation or the magnitude of a violation is equal to, or greater than, a civil penalty's effect. Thus, to create an incentive for self-identification, reporting, and corrective action for noncompliances, DOE will consider lowering the severity level and extent of enforcement action for a nonprofit contractor who takes proper action to meet the mitigation considerations discussed above. This is discussed in more detail in the Enforcement Policy (10 CFR Part 820, Appendix A) and the Enforcement of DOE Nuclear Safety Requirements Under Price-Anderson Amendments Act of 1988 operational procedures.

### 1.6 APPLICABILITY OF DOE ENFORCEMENT POLICY

The Enforcement Policy applies to all indemnified DOE contractors, subcontractors, and other suppliers who are responsible for performing activities or supplying services or products that are subject to DOE nuclear safety requirements. For purposes of assessment of civil penalties and issuance of Notices of Violation, 10 CFR Part 820.20(b) defines DOE nuclear safety requirements as the following<sup>3</sup>:

- DOE nuclear safety rules set forth in the CFR;
- Compliance Orders issued pursuant to 10 CFR Part 820 Subpart C; and
- any DOE-approved program (including any commitment therein), plan, or other provision required to implement any nuclear safety requirement or Compliance Order identified above.

The substantive nuclear safety rules that have been published in their final form are:

- 10 CFR Part 820 Procedural Rules for DOE Nuclear Activities
- 10 CFR Part 830 Nuclear Safety Management
- 10 CFR Part 835 Occupational Radiation Protection
- 10 CFR Part 708 Contractor Employee Protection

DOE may promulgate other nuclear safety rules. When issued and effective, reporting associated noncompliances will be expected.

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<sup>3</sup> Draft rules are not enforceable.

## 1.7 DEFINITIONS

1.7.1 Contractor: The term contractor means Management and Operating, Management and Integrating, and other direct contractors as well as their subcontractors and suppliers.

1.7.2 Radiological Activities: The requirements in 10 CFR Part 835 are applicable to all DOE activities involving occupational exposure to ionizing radiation of DOE employees and DOE contractor and subcontractor employees, except for an activity specifically excluded under Part 835.1(b).

1.7.3 Nuclear Facility: As defined in 10 CFR 830.3, nuclear facility means reactor and nonreactor nuclear facilities.

1.7.4 Noncompliance: The term noncompliance connotes a failure to comply with an applicable nuclear safety requirement. A noncompliance having the requisite safety significance will be the subject of a Notice of Violation and, if appropriate, a civil penalty. Isolated minor noncompliances involving minimal or low safety significance will normally not be subject to enforcement action unless they are repetitive or multiple examples appear indicative of a larger programmatic breakdown.

1.7.5 Violation: A violation is a noncompliance that DOE has evaluated and found to be a significant failure to comply with an applicable nuclear safety requirement. DOE identifies a violation through a Notice of Violation.

1.7.6 Enforcement Action: The issuance of an enforcement letter, Consent Order, or a Notice of Violation with or without a civil penalty.

## 2. NONCOMPLIANCE IDENTIFICATION

Each contractor should identify noncompliances that occur at its respective nuclear facility(s) or in connection with nuclear activities. To the extent practical, contractors should use existing programs to promptly identify noncompliances with DOE nuclear safety requirements and to implement appropriate corrective actions. DOE expects that a review for noncompliances will be an integral part of facility operations via the various methods of assessment or oversight

activities. Methods of identifying noncompliances include, but are not limited to, the following.

## 2.1 WORKER SELF-IDENTIFIED

An organization with a proper compliance and safety conscious environment will find that workers, in the course of performing their duties, will come across situations that represent abnormal conditions or potential deficiencies. After being properly reported to supervision, or formally reported into an internal deficiency reporting process, these situations should be evaluated for noncompliance with nuclear safety requirements.

## 2.2 CONTRACTOR INTERNAL REVIEWS

Noncompliances may be identified during the course of contractor internal audits, assessments, surveillances, design reviews, walk-downs, or inspections. These reviews are conducted by the contractor in accordance with existing DOE orders and requirements, and should include a review of the findings for nuclear safety noncompliance issues.

## 2.3 EXTERNAL REVIEWS

Noncompliances may also be identified during the course of external audits, assessments, surveillances, inspections, or visits conducted by DOE Headquarters Oversight, Field, Site, or Operations Office personnel; Defense Nuclear Facility Safety Board representatives; or employees of a state government or the Federal government such as EPA, DOT, or OSHA. A deficient condition identified to the contractor by these individuals should be evaluated for nuclear safety requirement noncompliance. If a contractor has an effective self-audit/surveillance program, there should be a minimal number of noncompliances identified through this mechanism.

Although noncompliances so identified may be candidates for enforcement action because they were not identified by the contractor, DOE may refrain from such action or from issuing a civil penalty if the contractor requested assistance from DOE or another government agency in resolving problems and the noncompliance was discovered by DOE or the outside agency while giving assistance. These noncompliances, once identified to facility management, should be evaluated for safety significance and reporting in accordance with the criteria set forth in these procedures.

## 2.4 EVENT-RELATED OR SAFETY SYSTEM DEGRADATION

Another means of noncompliance identification is the review process associated with the observation of an undesirable event or discovery of degraded equipment. These may be events to be considered for reporting to ORPS, and they should also be reviewed against Table 3-2 reporting criteria. Of prime importance are the underlying noncompliance conditions that led or contributed to the incident. It is the set of noncompliances that should be considered for reporting to NTS, depending on whether the set meets any of the Table 3-1 or Table 3-2 reporting thresholds.

## 2.5 OTHER

Other sources for the identification of noncompliances may be allegations or concerns from a "whistle blower" program, local or external "Hot Line" operations, media reports, and congressional inquiries.

## 3. CRITERIA FOR REPORTABLE NONCOMPLIANCES<sup>4</sup>

The first criterion to be considered is whether the occurrence or condition involves a noncompliance with a nuclear safety requirement set forth in a PAAA Rule or a Rule implementation plan. Once it is established that the occurrence or condition in question indeed involves a noncompliance with a nuclear safety requirement, the noncompliance should then be appropriately documented and corrected. PAAA noncompliances meeting or exceeding Table 3-1 or 3-2 reporting thresholds should be reported to the NTS. Noncompliances below the reporting thresholds (i.e., non-NTS reportable noncompliances) should be reported to contractor self-tracking processes. Thus, such identification and reporting enables DOE to consider mitigating enforcement actions. Criteria for determining whether a noncompliance is reportable have been developed by DOE to aid the contractor. These threshold criteria aid in the identification of those noncompliances that, because of their potential or actual adverse impact to the environment or the health and safety of workers or the public, merit additional

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<sup>4</sup> It is anticipated that DOE and contractor PAAA coordinators will meet periodically to discuss reporting decisions and to enable contractors to obtain the benefit of DOE's views. This aspect of the Price-Anderson process, like the information gathering process, is intended to be highly interactive.



management evaluation by both the contractor and DOE.

The OEI, in coordination with appropriate DOE field elements, will review noncompliances reported to the NTS. When appropriate, OEI staff will make an entry to an NTS report to indicate the report has been reviewed and is being closed without any further enforcement action. OEI staff and DOE PAAA coordinators may also, from time to time, evaluate contractor internal PAAA noncompliance tracking cases. If enforcement action is to be taken, steps outlined in DOE's operational procedures described in Enforcement of DOE Nuclear Safety Requirements Under Price-Anderson Amendments Act of 1988 will be pursued.

Where there is legitimate disagreement between the contractor and DOE over whether a noncompliance should be reported to the NTS, it is recommended that the disagreement be addressed at the appropriate level between DOE and contractor management. If agreement cannot be reached, the contractor is encouraged to report the noncompliance. The contractor may note its disagreement with DOE in the NTS report.

Tables 3-1 and 3-2 are intended to assist the contractor in determining if a noncompliance is NTS reportable. Both sets of criteria should be reviewed in order to make this decision.

### 3.1 PROGRAMMATIC DEFICIENCIES

These noncompliances require greater judgment during evaluation than the application of Table 3-2 criteria and are indicative of programmatic, management, or conduct of operations deficiencies. These noncompliances might be identified while performing a self-assessment or through a root cause analysis of an otherwise non-NTS reportable noncompliance. Identification of this type of noncompliance should be reported to the NTS.

3.1.1 Repetitive or Recurring: The same non-NTS reportable noncompliance or a closely similar noncompliance continues to occur, indicating the corrective action, including root cause determination, has not been effective. DOE expects that non-NTS reportable noncompliances will be tracked in a contractor's self-tracking system, and will be routinely reviewed by the contractor for potential trends and repeat occurrences. Such trends or repetitive occurrences should be reported to the NTS.

Example: Two workers are cutting a pipe in a contamination area and wearing respirators as required by the radiation work permit. Two other workers in the same room are working a job that does not require the use of respirators and are not alerted by the job foreman for the pipe cutting operation of the need for respirators. The two workers without respirators receive small but confirmed uptakes. Since a similar instance had previously occurred at this facility by workers co-located to a job requiring respirators, this is determined to represent a *repetitive* issue and is reported to the NTS.

3.1.2 Programmatic Breakdown: Several non-NTS reportable noncompliances have occurred that are related but not identical, indicating a common breakdown in a program or program area. These noncompliances might have a common cause indicating a programmatic weakness. A programmatic breakdown generally involves some weakness in administrative or management controls, or their implementation, to such a degree that systematic problems occur. This weakness might be identified as part of the root cause determination for a single event.

DOE's experience since implementation of the PAAA suggests that a number of noncompliances with common root causes are occurring at sites across the complex. For example, refresher training for radiological workers at a number of sites frequently failed to occur on a timely schedule. This programmatic weakness was found only when reviewed on a site-wide basis. Similarly, work process compliance problems at several sites were found to be programmatic when individual incidents were evaluated on a broader, site-wide basis. Attention was focused on these events to correct the programmatic problem before it led to a personnel contamination incident or offsite release. However, DOE's experience is that, although some cases of programmatic deficiency are being found, contractors are not as likely to analyze data to identify common elements as would be appropriate for an effective nuclear safety program. It is DOE's intent that contractors should be diligent in analyzing data on a sitewide basis to identify common elements that may be impairing effective nuclear safety.

Example 1: A contractor assessment of criticality safety finds that a large number of criticality infraction cases remain open, their corresponding corrective actions being incomplete. The contractor further notes a similarity in several of the infractions. The contractor concludes that a *programmatic* issue of weak criticality control compliance led to

the large number of events, and a second *programmatic* issue existed due to inadequate and untimely corrective action. These issues are reported to the NTS.

Example 2: While disposing of radiologically contaminated equipment, workers did not follow work package instructions to notify radiological control technicians for a survey of the equipment before beginning work. The workers, then, did not know the exact contamination or radiation levels they were exposed to. In addition, the work was done under a general radiation work permit that did not specifically address the scope of work to be performed. The bag holding the contaminated equipment was inadvertently cut during disposal work and was repaired by taping over the cut, rather than by overbagging as required by procedures. The repair method was inadequate to prevent contamination of the bag's exterior and the floor beneath the bag. These multiple instances of failure to follow approved procedures led to the determination that there had been a *programmatic* breakdown of the controls for this activity.

3.1.3 Intentional Violation or Misrepresentation: Most intentional violations involve the failure to perform substantive activities required by nuclear safety requirements coupled with the alteration, concealment, or destruction of documents pertaining to those activities. As stated in 10 CFR 820.11:

"(a) Any information pertaining to a nuclear activity provided to DOE by any person or maintained by any person for inspection by DOE shall be complete and accurate in all material aspects.

(b) No person involved in a DOE activity shall conceal or destroy any information concerning a violation of a DOE Nuclear Safety Requirement, a Nuclear Statute, or the Act."

Early experience with PAAA enforcement suggests that intentional noncompliances seldom, if ever, involve a contractor's senior level of management, but may involve more than one worker or a worker's first line of management. Such activities could, for example, involve falsifying reports of a fire watch where such watches never took place, or changing records to wrongly claim that practical training took place in accordance with site requirements.

Such activities should be met with the strongest possible response because the integrity of the reporting process goes to the heart of any nuclear safety program. Therefore, even individual instances of intentional noncompliance should be reported to the NTS. This will

elevate the visibility given to the matter as well as provide enhanced attention by DOE to the way such matters are handled by senior management. DOE, though, will be the entity to decide whether an intent to deceive existed in conjunction with a document falsification, not the contractor.

Example 1: An individual working in a contamination area is noted by a co-worker to have failed to don the required personnel protective clothing. The co-worker alerts the individual to the noncompliance and suggests the individual leave the area. The individual refuses and continues working in the contamination area. The co-worker notifies the supervisor that a worker is knowingly not complying with radiological protection program procedures. This finding should cause the contractor to notify DOE, including through the NTS, without delay once the noncompliance was found to involve some willful aspects.

Example 2: A facility supervisor directs a radiological control technician to not perform scheduled contamination surveys to avoid paying overtime. The survey records are then falsified to indicate the surveys were performed. Even though not meeting any Table 3-2 criteria, this noncompliance should be reported under Table 3-1 since it involved a willful violation.

If a noncompliance does not meet Table 3-1 criteria, it should be reviewed against Table 3-2 criteria as described in the following.

### 3.2 NONCOMPLIANCES INVOLVING DOE MANUAL M-232.1A-1 OCCURRENCES

DOE is interested in the reporting of nuclear safety noncompliances where those noncompliances are associated with an event or condition that meets any of the criteria listed in Table 3-2, as supplemented by the notes to Table 3-2. "Associated with" means the noncompliance caused or contributed to an event or condition, or occurred concurrently with an event or condition. These criteria were adopted from DOE Manual M-232.1A-1 criteria for unusual occurrences. For example, the underlying or contributing cause of an event or condition could be inadequate work controls that directly led to a safety system degradation beyond authorization basis limits. Inadequate work controls would represent a noncompliance with 10 CFR Part 830.120 requirements and the condition would meet the Table 3-2 reporting threshold under Nature of Occurrence, Subgroup 1.C.

**Table 3-1, PROGRAMMATIC DEFICIENCIES**

Repetitive
Programmatic Issue
Intentional Violation or Misrepresentation

**Table 3-2, NONCOMPLIANCES INVOLVING DOE MANUAL M-232.1A-1 OCCURRENCES**

NATURE OF OCCURRENCE	SUBGROUP	OCCURRENCE CATEGORY
1. Facility Condition	A. Nuclear Criticality Safety	Unusual
	B. Fires/Explosions	Unusual
	C. Safety Status Degradation (note 1)	Unusual
	D. Loss of Control of Radioactive Material/Spread of Contamination	Unusual
	E. Safety Structure/System/Component Degradation	Unusual
	H. Operations	Unusual
2. Environmental	A. Radionuclide Releases	Unusual
	C. Hazardous Material Contamination	Unusual
4. Personnel Radiological Protection	A. Radiation Exposure (note 2)	Unusual
	B. Personnel Contamination (note 3)	Unusual

Notes to Table 3-2:

(1) For OSR/TSR violations, report into NTS those that represent violations of safety limits, limiting conditions for operation, or action statements. Violations of OSR/TSR surveillance or administrative requirements should not be reported into NTS under this criterion but should be considered for reporting under Table 3-1. Other criteria of DOE M-232.1A-1 still apply.

(2) As well as any single unplanned occupational exposure to any individual that exceeds 100 millirem Total Effective Dose Equivalent.

(3) As well as any single occurrence of personnel contamination or clothing (excluding protective clothing) that is greater than 100 times Part 835 Appendix D levels, measured (prior to washing or decontamination) in accordance

with the Radiological Control Manual, Article 338, or equivalent.

DOE is not suggesting the starting point for reporting is to only consider ORPS Unusual Occurrence reports. A deliberate process that incorporates other sources of identification of deficiencies, as described in Section 2, and evaluates these deficiencies for potential reporting per the criteria of Tables 3-1 and 3-2, is expected.

### 3.3 CONSIDERATION OF SAFETY SIGNIFICANCE

DOE expects contractors to submit noncompliance reports to the NTS consistent with this document's reporting threshold guidance. DOE also expects these reports to be submitted without contractors making a detailed evaluation of safety significance, or a prediction of whether DOE would pursue an investigation after receiving the report, as a precondition for reporting. Contractors are expected to provide appropriate information in an NTS report such that DOE understands the circumstances of the noncompliance. Contractors may include their preliminary assessment of a noncompliance's safety significance in the noncompliance condition description portion of an NTS report.

It is recognized that some judgment is required for Table 3-1 issues, such as to conclude that a series of noncompliances constitutes a programmatic problem. DOE recommends that where a condition indicates a sufficient concern to warrant some remedial action to correct a common underlying cause or weakness in controls, the condition be considered a programmatic noncompliance and reported to the NTS. Such reporting does not mean the issue is a serious safety noncompliance. However, DOE will expect some level of dialogue through the NTS to assure that proper steps are being taken to address the noncompliance and root causes.

DOE reserves the right to make an independent judgment on the significance of a noncompliance and to determine whether any investigation by DOE is warranted.

### 3.4 NON-NTS REPORTABLE NONCOMPLIANCES

Noncompliances that do not meet Table 3-1 or 3-2 criteria should be entered into the contractor's tracking system.



#### 4. NONCOMPLIANCE TRACKING SYSTEMS

##### 4.1 DOE NONCOMPLIANCE TRACKING SYSTEM

A centralized data base maintained by DOE allows contractors to promptly report noncompliances and take advantage of the Enforcement Policy's mitigation provision. Reporting a noncompliance that is below an NTS reporting threshold into a contractor's tracking system also constitutes formal reporting to DOE for PAAA enforcement purposes. System requirements for accessing and use of the NTS are included in the Noncompliance Tracking System (NTS) Users Manual. Additional guidance follows.

4.1.1 Description of Noncompliance: This field should contain a clear, concise, factual, and objective description of the noncompliance including any impact to the environment, safety, or health of workers or the public. If the information in this field is not clear or if more information is needed, a DOE representative may request additional information. As stated earlier, DOE will not take enforcement action based solely on information in the NTS.

4.1.2 Corrective Actions: The fields pertaining to corrective actions are the target and actual completion dates, and a brief summary of the root cause and corrective action. The contractor is expected to take as many corrective actions as needed to resolve a noncompliance condition and to prevent the noncompliance from recurring. The contractor need not list every corrective action milestone, but should list those that are significant.

A noncompliance condition should be corrected for the nuclear facility or radiological activity where the noncompliance occurred, as well as for any other facility or activity under contractor management where Price-Anderson is applicable. Corrective actions are not required to be approved by DOE. DOE may, however, be involved in the selection of a corrective action and the timing of work activities if there will be a significant commitment of funds or a request for additional funds to correct the noncompliance. Under normal circumstances, DOE field elements will have this responsibility.

Once corrective actions have been completed and all completion dates entered into the NTS, the contractor then has the option of indicating completion of all corrective actions or leaving the report open for an additional 45 days. The NTS computer system will

automatically recommend closure 45 days after the last corrective action has been completed. This option allows the contractor to add corrective actions, if appropriate, within the 45 day period. An NTS report will not be considered for closure until all reported corrective actions have been completed and verified by DOE.

Once the contractor has indicated all corrective actions have been completed, it is essential that the cognizant DOE field office conduct a verification. The field office PAAA Coordinator would subsequently enter comments into the applicable NTS report indicating either the field office is satisfied all corrective actions have been completed, or the office believes a discrepancy exists and recommends further action to the OEI. After the field office indicates all corrective actions have been completed can closure of the NTS report be recommended to the OEI Director by Enforcement staff. The OEI has, however, occasionally observed NTS reports without field office comment concerning verification after all corrective action completion dates have been posted. In these circumstances, OEI staff will notify the respective field office of the need to comment in a timely manner. NTS reports that still have not received field office comment within 180 days after the latest corrective action completion date will have a statement entered by OEI staff indicating nonverification and will thus be recommended for closure to the Director. An NTS report is officially closed after the OEI Director concurs with staff's recommendation.

Corrective actions described in the NTS are primarily for tracking and closure purposes; it is not a forum to argue the comprehensiveness of corrective actions. If an enforcement action is contemplated, the contractor will have an opportunity to discuss corrective actions in more detail during the enforcement review process. As noted earlier, the contractor will have ample opportunity to update, provide additional detail, or add more corrective actions to a noncompliance report in the event the noncompliance is being considered for enforcement action.

#### 4.2 CONTRACTOR TRACKING SYSTEM

The contractor may record and track non-NTS reportable noncompliances in its existing tracking system. To receive credit for a self-tracking system, the system should:

- in some form annotate those noncompliances that are PAAA noncompliances;

- be able to retrieve PAAA noncompliances for review by DOE; and

- be readily accessible by DOE Field and Program Office Coordinators, as well as OEI staff when they are onsite.

DOE does not encourage, nor will it provide any new funding for developing and maintaining, a separate tracking system for PAAA purposes.

## 5. NOTIFICATION

### 5.1 DOE NONCOMPLIANCE TRACKING SYSTEM

To obtain consideration for enforcement action mitigation based on prompt identification and reporting, the contractor should report noncompliances to the NTS for those meeting Table 3-1 or 3-2 threshold criteria. DOE understands and accepts that the initial description of a noncompliance may be limited. Full investigation into a noncompliance and a causal analysis by the contractor is not required before a noncompliance is reported to DOE. Nor will DOE pursue an enforcement action based solely upon the initial description of a noncompliance. Rather, DOE will review and evaluate all available information prior to determining whether a noncompliance has the requisite safety significance to warrant commencing a more comprehensive review.

### 5.2 CONTRACTOR TRACKING SYSTEM

In most cases, contractors maintain an internal tracking system onsite as a management tool for problems identified and schedules developed to correct those problems. Contractors should use this onsite system for reporting and tracking noncompliances below NTS reporting thresholds. Should a non-NTS reportable noncompliance be reviewed by DOE and considered for enforcement action, the contractor's recording and tracking of the noncompliance would be considered contractor-identified and reported for purposes of mitigation under the Enforcement Policy if the noncompliance is clearly below NTS reporting thresholds. However, a significant mischaracterization of the facts or safety significance of the circumstances of a noncompliance could negate any consideration of mitigation.

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