

CHAPTER 1 - GENERAL

1.1. Purpose

This document provides detailed guidance and procedures to implement the General Statement of Department of Energy's (DOE) Enforcement Policy (Enforcement Policy or Policy), described in 10 CFR 820 Appendix A, as amended. A copy of this Enforcement Policy is included for ready reference in Appendix A to this document. The guidance provided in this document is qualified, however, by the admonishment to exercise discretion in determining the proper disposition of each potential enforcement action. As discussed in subsequent chapters, the Office of Enforcement and Investigation will apply a number of factors in assessing each potential enforcement situation. Enforcement sanctions are imposed in accordance with the Enforcement Policy for the purpose of promoting public and worker health and safety in the performance of activities at DOE facilities by DOE contractors (and their subcontractors and suppliers) who are indemnified under the Price-Anderson Amendments Act (PAAA) of 1988, 42 U.S.C. 2210(d) . These indemnified contractors, and their suppliers and subcontractors, will be referred to in this document collectively as 'DOE contractors.' It should be remembered that the purpose of the Department's enforcement policy is to improve nuclear safety for our workers and the public, and this goal should be the prime consideration in exercising enforcement discretion.

1.2. Uses

- a. This enforcement document is administered by the Office of Enforcement and Investigation located in the Office of the Assistant Secretary for Environment, Safety and Health. The Office of Enforcement and Investigation has responsibility for enforcing nuclear safety requirements and has also been assigned enforcement adjudication responsibility under 10 CFR 820, Subpart B. Further, the Office of Enforcement and Investigation has criminal referral responsibilities pursuant to the PAAA, as described in Section 1.2.d. below.
- b. This enforcement document outlines the authority and responsibilities assigned to the Office of Enforcement and Investigation in the Office of the Assistant Secretary for Environment, Safety and Health. The Office of the Assistant Secretary for Environment, Safety and Health implements DOE's statutory enforcement program (Section 17 of PAAA) which authorizes

citations and civil monetary penalties for violations of DOE nuclear safety regulations. The Director, Office of Enforcement and Investigation, has been delegated the authority to issue Notices of Violation and recommend proposed civil penalties (10 CFR 820.24,.25) for PAAA violations. Before issuing Notices of Violation, the Director will obtain concurrences of other DOE officials as appropriate.

- c. The Enforcement Program described in these procedures is applicable to DOE contractors for violations of nuclear safety requirements under the authority of PAAA.**
- d. Section 18 of the PAAA (42 U.S.C. 2273(c)) also makes DOE contractors subject to criminal penalties for knowing and willful violations of applicable DOE nuclear safety rules, regulations and orders. Since suspected criminal violations are referred to the Department of Justice (DOJ) for appropriate action, this enforcement procedure addresses only civil matters. Referrals to DOJ do not preclude DOE from taking civil enforcement actions appropriately coordinated with the DOJ.**
- e. PAAA is applicable to all indemnified DOE contractors. However, provisions for civil penalties do not apply to DOE contractors currently operating the following DOE National Laboratory sites:**

- Argonne**
- Fermi**
- Lawrence Livermore**
- Lawrence Berkeley**
- Los Alamos**
- Pacific Northwest**
- Princeton Plasma Physics**

It should be noted that these contractors are not exempt from citations (i.e., Notices of Violation) or criminal penalties. All other nonprofit educational institutions that are DOE contractors presently have automatic remission of civil penalties as described in 10 CFR 820.20(d), but are not exempt from citations or criminal penalties.

- f. This enforcement procedure contains both requirements and guidance. Requirements are applicable to the Office of Enforcement and Investigation staff and support personnel, and exceptions to them must be authorized by the Director. Guidance describes the normal or expected course of action, but permits flexibility to deviate as needed for the particular circumstance.**
- g. DOE will exercise appropriate discretion in determining the disposition of any potential enforcement action, which may vary from the guidance in this procedure. It should be recognized that these procedures are internal to the**

Office of Enforcement and Investigation and may be modified to suit individual circumstances. Therefore, the failure by this office to follow the guidance and requirements in this enforcement procedure is not a basis to invalidate an enforcement action.

- h. In general, all records and correspondence related to a pending enforcement action prior to the issuance of a Preliminary Notice of Violation (PNOV) are considered "predecisional" and are not subject to disclosure under the Freedom of Information Act (FOIA).

1.3. Interim Enforcement Guidance

From time to time, enforcement issues will arise that will require the Office of Enforcement and Investigation to issue guidance to clarify the procedures set forth in this enforcement procedure. The Director will endeavor to provide such guidance in a timely manner, and assure its wide distribution. Such supplemental guidance will generally be forwarded to PAAA Coordinators at each site for information.

1.4. Definitions (See also 10 CFR 820.2)

- a. Contractor - Any person or entity under a contract of indemnification with DOE with the responsibility to perform activities in connection with any DOE facility, laboratory, or program subject to nuclear safety requirements. As used in this enforcement procedure, reference to a contractor also includes its subcontractors or suppliers.
- b. Director - Refers to the Director of the Office of Enforcement and Investigation (also referred to in 10 CFR 820 as Director of Enforcement) in the Office of the Assistant Secretary for Environment, Safety and Health.
- c. EH-1 - Refers to the Assistant Secretary for Environment, Safety and Health.
- d. Enforcement Process - The process and procedures set forth in 10 CFR 820, Subpart B including adjudication of contested violations issued pursuant to the PAAA and other activities described in the Enforcement Policy, 10 CFR 820, Appendix A.
- e. Excluded Facility or Activity - A facility or activity that is not subject to a DOE nuclear safety requirement as a result of exclusionary provisions in a substantive rule. This category may also include facilities or activities that do not meet an enforcement threshold that would make it appropriate for an enforcement action.
- f. Exemption - Relief, waiver, or release from DOE nuclear safety requirements, either temporary or permanent, as granted by the responsible Secretarial

Officer pursuant to the provisions of 10 CFR 820, Subpart E.

- g. Price-Anderson Noncompliance (Violation) - The term noncompliance and violation are essentially interchangeable in that both terms connote a failure to comply with an applicable nuclear safety requirement. Noncompliances having the requisite safety significance will be subject to Notices of Violation and, if appropriate, civil penalties. Isolated minor noncompliances involving minimal or low safety significance will be tracked by the contractor and subject to periodic review.**
- h. Nuclear Safety Requirements - Legally binding obligations which are set forth in applicable statutes, DOE regulations, and PAAA Compliance Orders, that govern specific nuclear activities and are subject to PAAA enforcement actions. DOE facilities and activities subject to DOE nuclear safety requirements may be subject to other requirements set forth in orders, notices, standards, safety guides, and handbooks of 'good practice.' These other requirements are not enforceable through PAAA provisions. These other requirements may also be referred to elsewhere as 'nuclear safety requirements' if they are related to nuclear activities, and thus care should be exercised as appropriate to differentiate the statutorily mandated PAAA enforceable requirements from other requirements.**
- i. PAAA Adjudication - The adjudication process and procedures set forth in 10 CFR 820, Subpart B. May also be defined as an enforcement adjudication.**
- j. Cognizant Secretarial Officers (CSOs) - The heads of DOE offices with responsibility for specific DOE facilities. These include the Assistant Secretaries, Environmental Restoration and Waste Management (EM), and Defense Programs (DP), and the Directors of Energy Research (ER), and Civilian Radioactive Waste Management (RW).**
- k. Secretarial Officer (SO) - The head of a Secretarial Office such as the Assistant Secretary for Environment, Safety and Health or a CSO as defined above.**
- l. Similar Violation - A violation that reasonably could have been prevented by a contractor's implementation of corrective actions for a previous violation.**
- m. System - As used in this enforcement procedure, includes systems of administrative and managerial controls, as well as physical systems.**
- n. Willfulness - An attitude toward compliance with DOE nuclear safety requirements that ranges from deliberate intent to violate regulatory requirements or conduct that is so egregious that it constitutes a reckless disregard for a requirement. (Willfulness does not include acts that reflect ordinary carelessness, for example, inadvertent clerical errors.)**