



DOE Safety and Security Enforcement Process and Program Overview

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Enforcement Program / Process Overview



- Enforceable Regulations and Requirements
- Enforcement Procedural Rules
- Enforcement Philosophy and Approach
- Noncompliance Reporting Expectations
- Enforcement Investigation Process and Outcomes



Enforcement Disciplines



- Derived from the Atomic Energy Act
 - Nuclear Safety
 - Worker Safety and Health
 - Classified Information Security



Nuclear Safety Enforcement



■ Enforceable Nuclear Safety Regulations

- 10 C.F.R. 830, *Nuclear Safety Management*
 - Subpart A: *Quality Assurance Requirements*
 - Subpart B: *Safety Basis Requirements*
- 10 C.F.R. 835, *Occupational Radiation Protection*
- 10 C.F.R. 820.11, *Information Requirements*
- 10 C.F.R. 708, *DOE Contractor Employee Protection Program*



Worker Safety and Health Enforcement



- **Enforceable DOE Worker Safety and Health Regulations**
 - 10 C.F.R. 851, *Worker Safety and Health Program*
 - 10 C.F.R. 850, *Chronic Beryllium Disease Prevention Program*



Worker Safety and Health Enforcement



- **Enforceable Occupational Safety and Health Administration Regulations (invoked by 10 C.F.R. 851)**
 - 29 C.F.R. Part 1910, *Occupational Safety and Health Standards*
 - 29 C.F.R. Part 1926, *Safety and Health Standards for Construction*
 - 29 C.F.R. Part 1904, sections on Injury and Illness Reporting



Worker Safety and Health Enforcement



- **Additional Enforceable Worker Safety and Health Requirements**
 - *NFPA 70, National Electric Code, and 70E, Standard for Electrical Safety in the Workplace*
 - *DOE Manual 231.1-1A, Environment, Safety and Health Reporting Manual*
 - *DOE Manual 440.1-1A, DOE Explosives Safety Manual*
 - *Specified ANSI Standards and Applicable NFPA Standards*
 - *DOE Technical Standard 1167, DOE Respirator Acceptance Program for Supplied-air Suits*



Security Enforcement



- **Enforceable Classified Information Security Regulations**

- 10 C.F.R. Part 1016, *Safeguarding of Restricted Data*
- 10 C.F.R. Part 1045, *Nuclear Classification and Declassification*



Security Enforcement



■ Enforceable Classified Information Security Requirements – DOE Orders

- 205.1B, *DOE Cyber Security Program*
- 231.1B, *Environment, Safety and Health Reporting (Sealed Source-Related Information)*
- 452.8, *Control of Nuclear Weapon Data*
- 470.4B, *Safeguards and Security Program*
- 471.6, *Information Security*



Security Enforcement



- **Enforceable Classified Information Security Requirements – DOE Orders**
 - 472.2, *Personnel Security*
 - 473.3, *Protection Program Operations*
 - 474.2, *Nuclear Material Control and Accountability*
 - 475.1, *Special Access Programs*
 - 475.2A, *Identifying Classified Information*



Security Enforcement



- **Enforceable Classified Information Security Requirements – NNSA Policies**
 - NAP 70.2, *Physical Protection*
 - NAP 70.4, *Information Security*



Enforcement Procedural Rules



- 10 C.F.R. Part 820, *Procedural Rules for DOE Nuclear Activities*
- 10 C.F.R. Part 824, *Procedural Rules for the Assessment of Civil Penalties for Classified Information Security Violations*
- 10 C.F.R. Part 851, *Worker Safety and Health Program* (contains procedural rules and program requirements)



Enforcement Philosophy and Approach



- Appendices to the procedural rules describe DOE's approach to safety and security enforcement
 - Part 820, Appendix A
 - Part 824, Appendix A
 - Part 851, Appendix B

- The *Enforcement Process Overview* provides more detailed information on program approach and implementation



Common Program Elements



- **Common to all three enforcement areas:**
 - Noncompliance identification and evaluation
 - Incentives for contractor self-identification, reporting, and correction of noncompliances
 - Influencing factors for case selection and evaluation
 - Investigation process
 - Enforcement conference
 - Enforcement outcome
 - NNSA Authorities



Enforcement Philosophy



- DOE Contractors viewed as being in best position to identify and promptly correct noncompliances
- Enforcement approach establishes incentives to promote timely identification, reporting, and resolution of noncompliances
- Best if proactively self-identified through contractor assessment processes



Enforcement Approach



- Incentives include:
 - Discretion
 - Mitigation
- Mitigation for timely identification/reporting and corrective actions



Mitigation



- Prompt identification and reporting by contractor can decrease **penalties** or **remedies** up to 50%
- Timeliness and effectiveness of corrective actions can decrease penalties or remedies up to 50%, but if not prompt and effective, can increase **penalties** or **remedies**



Self-Reporting Expectations



- Noncompliance Tracking System (NTS) – all voluntary
- Safeguards and Security Information Management System (SSIMS) – mandatory and voluntary criteria
- Internal tracking for noncompliances not meeting reporting criteria



Reporting Timeliness



- 20 calendar days after determining that a noncompliance exists for nuclear and worker safety
- Use reporting times in DOE Order 470.4B for security noncompliances
- Use a reasonable timeframe for evaluating noncompliances for repetitiveness
 - Annual reviews are not timely



Corrective Actions



- Investigations, causal analyses, and development of corrective actions should typically be completed within:
 - 45 days of identifying a nuclear or worker safety noncompliance
 - 90 days after determining a security incident has occurred
- Effectiveness reviews of corrective actions are conducted for significant noncompliances
- NTS/SSIMS reports and corrective actions provide input to the site lessons-learned process, as appropriate



Enforcement Process



- Review and evaluate performance and compliance information
- Pursue cases of significance
- Use incentives for issues that are self-identified and effectively resolved



Information Sources



- Events
- ORPS and injury reports (CAIRS, OSHA logs)
- Accident investigations
- Nonconformance reports
- Radiological deficiency reports
- Employee concerns
- Self-assessments, corporate assessments
- External assessments (site/program office, HSS, IG, GAO, DNFSB)
- Local Security Surveys
- Security Incident Trending and Analysis
- Security Inquiries



Case Selection Considerations



- Actual / Potential Safety or Security Significance
- Contractor performance history / trends
- Isolated Event or Systemic Problem
- Level of Management Involvement
- Prompt Identification / Reporting
- Comprehensiveness of Corrective Actions
- Willfulness or record falsification
- DOE Line Management Input



Evaluation Process



- Office of Enforcement and Oversight staff may request additional information
- Office of Enforcement and Oversight will consult with DOE line management
- Decision – exercise discretion, issue an Enforcement Letter, or track the noncompliance to closure
- Conduct further investigation



Investigation Process



- Notice of Intent to Investigate letter
 - Segregation of costs
 - Document request

- Investigation components
 - Review of documents (event information, relevant procedures, causal analysis, corrective actions)
 - Onsite interviews



Investigation Process (cont'd)



- Investigation Report
 - Potential violations
 - Regulatory considerations
 - Enforcement conference recommendation



Possible Enforcement Outcomes



- No action
- Enforcement Letter
- Settlement Agreement / Consent Order
- Preliminary Notice of Violation
- Compliance Order
- Special Report Order (Nuclear Safety only)



Preliminary Notice of Violation (PNOV) Process



- Issued by the Office of Enforcement and Oversight or NNSA Administrator
- Identifies specific regulatory violations; severity levels; proposed penalties
- Contractor is obligated to respond within a specified time frame
- May result in issuance of Final Notice of Violation
- Appeal processes differ by rule/discipline



Severity Levels and Civil Penalties



| | Worker Safety & Health | Nuclear Safety | Classified Information Security |
|--------------------|-----------------------------------|-----------------------|--|
| Severity Level I | \$75k (100%) | \$150k (100%) | \$110k (100%) |
| Severity Level II | \$37.5k (50%) | \$75k (50%) | \$55k (50%) |
| Severity Level III | Does not apply | \$15k (10%) | \$11k (10%) |

*Penalties can be assessed on a per violation, per day basis.



Consent Order/ Settlement Agreement Process



- Timeliness in requesting settlement is a key consideration
- Settlement request must provide contractor's justification for settlement
- If request is granted, contractor is provided a proposed Consent Order / Settlement Agreement for review (marked Official Use Only until issued)
- Settlements typically include remedies



Process Differences



- For worker safety and health violations, contractors may be subject to civil penalties *or* fee reductions, but not both
- For NNSA contractors:
 - The NNSA Administrator issues Notices of Violation
 - Settlements are issued jointly by the Administrator and the Office of Enforcement and Oversight