

to DOE in section 3173 of Public Law 107–314, Bob Stump National Defense Authorization Act for Fiscal Year 2003 (December 2, 2002) (“NDA”), amending the Atomic Energy Act (“AEA”) to add section 234C. The policy set forth herein is applicable to violations of safety and health regulations in this part by DOE contractors, including DOE contractors who are indemnified under the Price Anderson Act, 42 U.S.C. 2210(d), and their subcontractors and suppliers (hereafter collectively referred to as DOE contractors). This policy statement is not a regulation and is intended only to provide general guidance to those persons subject to the regulations in this part. It is not intended to establish a “cookbook” approach to the initiation and resolution of situations involving noncompliance with the regulations in this part. Rather, DOE intends to consider the particular facts of each noncompliance situation in determining whether enforcement sanctions are appropriate and, if so, the appropriate magnitude of those sanctions. DOE may well deviate from this policy statement when appropriate in the circumstances of particular cases. This policy statement is not applicable to activities and facilities covered under E.O. 12344, 42 U.S.C. 7158 note, pertaining to Naval Nuclear Propulsion, and other activities excluded from the scope of the rule.

(b) The DOE goal in the compliance arena is to enhance and protect the safety and health of workers at DOE facilities by fostering a culture among both the DOE line organizations and the contractors that actively seeks to attain and sustain compliance with the regulations in this part. The enforcement program and policy have been developed with the express purpose of achieving safety inquisitiveness and voluntary compliance. DOE will establish effective administrative processes and positive incentives to the contractors for the open and prompt identification and reporting of noncompliances, performance of effective root cause analysis, and initiation of comprehensive corrective actions to resolve both noncompliance conditions and program or process deficiencies that led to noncompliance.

(c) In the development of the DOE enforcement policy, DOE recognizes that the reasonable exercise of its enforcement authority can help to reduce the likelihood of serious incidents. This can be accomplished by providing greater emphasis on a culture of safety in existing DOE operations, and strong incentives for contractors to identify and correct noncompliance conditions and processes in order to protect human health and the environment. DOE wants to facilitate, encourage, and support contractor initiatives for the prompt identification and correction of problems. DOE will give due consideration to such initiatives and activities in exercising its enforcement discretion.

(d) DOE may modify or remit civil penalties in a manner consistent with the mitigation and adjustment factors set forth in this policy with or without conditions. DOE will carefully consider the facts of each case of noncompliance and will exercise

appropriate discretion in taking any enforcement action. Part of the function of a sound enforcement program is to assure a proper and continuing level of safety vigilance. The reasonable exercise of enforcement authority will be facilitated by the appropriate application of safety requirements to DOE facilities and by promoting and coordinating the proper contractor and DOE safety compliance attitude toward those requirements.

II. Purpose

The purpose of the DOE enforcement program is to promote and protect the safety and health of workers at DOE facilities by:

- (a) Ensuring compliance by DOE contractors with the regulations in this part.
- (b) Providing positive incentives for DOE contractors:
 - (1) Timely self-identification by contractors of worker safety deficiencies,
 - (2) Prompt and complete reporting of such deficiencies to DOE,
 - (3) Prompt correction of safety deficiencies in a manner that precludes recurrence, and,
 - (4) Identification of modifications in practices or facilities that can improve worker safety and health.
- (c) Deterring future violations of DOE requirements by a DOE contractor.
- (d) Encouraging the continuous overall improvement of operations at DOE facilities.

III. Statutory Authority

The Department of Energy Organization Act, 42 U.S.C. 7101–7385o, the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. 5801–5911 and the Atomic Energy Act of 1954, as amended, (AEA) 42 U.S.C. 2011, require DOE to protect the public safety and health, as well as the safety of workers at DOE facilities, in conducting its activities, and grant DOE broad authority to achieve this goal. Section 234C of the AEA makes DOE contractors covered by the DOE Price-Anderson indemnification system, and their subcontractors and suppliers, subject to civil penalties for violations of the worker safety and health requirements promulgated in this part. 42 U.S.C. 2282c.

IV. Responsibilities

(a) The Director, as the principal enforcement officer of the DOE, has been delegated the authority to conduct enforcement investigations and conferences, issue Notices of Violations and proposed civil penalties, Enforcement Letters, Consent Orders, subpoenas, orders to compel attendance and disclosure of information or documents obtained during an investigation or inspection. The Secretary issues Compliance Orders.

(b) The NNSA Administrator, rather than the Director, signs, issues and serves the following actions that direct NNSA contractors: subpoenas; orders to compel attendance; disclosure of information or documents obtained during an investigation or inspection; Preliminary Notices of Violations; and Final Notices of Violations. The NNSA Administrator acts after consideration of the Director's recommendation.

V. Procedural Framework

(a) Title 10 CFR part 851 sets forth the procedures DOE will use in exercising its enforcement authority, including the issuance of Notices of Violation and the resolution of an administrative appeal in the event a DOE contractor elects to petition the Office of Hearings and Appeals for review.

(b) Pursuant to 10 CFR part 851 subpart C, the Director initiates the enforcement process by initiating and conducting investigations and inspections and issuing a Preliminary Notice of Violation (PNOV) with or without a proposed civil penalty. The DOE contractor is required to respond in writing to the PNOV within 30 days, either admitting the violation and waiving its right to contest the proposed civil penalty and paying it, admitting the violation but asserting the existence of mitigating circumstances that warrant either the total or partial remission of the civil penalty, or denying that the violation has occurred and providing the basis for its belief that the PNOV is incorrect. After evaluation of the DOE contractor's response, the Director may determine that no violation has occurred, that the violation occurred as alleged in the PNOV but that the proposed civil penalty should be remitted in whole or in part, or that the violation occurred as alleged in the PNOV and that the proposed civil penalty is appropriate, notwithstanding the asserted mitigating circumstances. In the latter two instances, the Director will issue a Final Notice of Violation (FNOV) or an FNOV and proposed civil penalty.

(c) An opportunity to challenge an FNOV is provided in administrative appeal provisions. 10 CFR 851.205. Any contractor that receives an FNOV may petition the Office of Hearings and Appeals for review of the final notice in accordance with 10 CFR part 1003, Subpart G, within 30 calendar days from receipt of the final notice. An administrative appeal proceeding is not initiated until the DOE contractor against which an FNOV has been issued requests an administrative hearing rather than waiving its right to contest the FNOV and proposed civil penalty, if any, and paying the civil penalty. However, it should be emphasized that DOE encourages the voluntary resolution of a noncompliance situation at any time, either informally prior to the initiation of the enforcement process or by consent order before or after any formal proceeding has begun.

VI. Severity of Violations

(a) Violations of the worker safety and health requirements in this part have varying degrees of safety and health significance. Therefore, the relative importance of each violation must be identified as the first step in the enforcement process. Violations of the worker safety and health requirements are categorized in three levels of severity to identify their relative seriousness. Notices of Violation are issued for noncompliance which, when appropriate, propose civil penalties commensurate with the severity level of the violations involved.

(b) To assess the potential safety and health impact of a particular violation, DOE will categorize violations of worker safety and health requirements as follows: