

U.S. Department of Energy
Washington, DC

ORDER

DRAFT
DOE O 221.1B

Approved: XX-XX-XXXX

SUBJECT: REPORTING FRAUD, WASTE AND ABUSE TO THE OFFICE OF INSPECTOR GENERAL

1. PURPOSE. To establish requirements and responsibilities for reporting fraud, waste, abuse, misuse, corruption, criminal acts, and mismanagement to the Department of Energy (DOE), Office of Inspector General (OIG).
2. CANCELLATION. DOE O 221.1A, *Reporting Fraud, Waste and Abuse to the Office of Inspector General*, dated 4-19-08. Cancellation of a directive does not, by itself, modify or otherwise affect any contractual obligation to comply with the directive. Contractor Requirement Documents (CRDs) that have been incorporated into a contract remain in effect throughout the term of the contract unless and until the contract or regulatory commitment is modified to either eliminate requirements that are no longer applicable or substitute a new set of requirements.
3. APPLICABILITY.
 - a. Departmental Applicability. This Order applies to all DOE staff, program offices, and field elements, including those created after the Order is issued; the power marketing administrations; and the National Nuclear Security Administration (NNSA), a separately organized Agency within the DOE reporting to the Secretary. Nothing in this directive will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of Public Law (P.L.) 106-65 to establish Administration-specific policies, unless disapproved by the Secretary.
 - b. DOE Contractors. Except for the equivalencies/exemptions in paragraph 3.c., the CRD (attachment 1) sets forth contractor requirements of this Order that apply to contracts that include the CRD. The CRD must be included in all major facilities management contracts and subcontracts. The requirements contained in the CRD may be included in other contracts at DOE sites and negotiated into individual contracts.
 - c. Equivalencies/Exemptions for DOE O 221.1B.
 - (1) Equivalency. In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 U.S.C. sections 2406 and 2511, and to ensure consistency throughout the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this directive for activities under the Director's cognizance, as deemed appropriate.

(2) Exemptions. None

4. REQUIREMENTS.

- a. As set forth in P.L. 95-452, *The Inspector General Act of 1978*, as amended, the OIG has the authority and responsibility to prevent and detect fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement relating to DOE programs, operations, facilities, contracts, and information technology systems.
- b. The OIG will work cooperatively with appropriate law enforcement entities, prosecutors, DOE components, and other agencies where appropriate.
- c. Employees must notify an appropriate authority of any information they have regarding actual or suspected fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement, relating to DOE programs, operations, facilities, contracts, or information technology systems. Appropriate authorities include the OIG, a supervisor, an employee concerns office, general counsel, security officials, outside law enforcement agency such as the Federal Bureau of Investigation (FBI), or state/local police. Reportable violations of laws and regulations include, but are not limited to: theft; false statements; false claims; mischarging; bribery; kickbacks; financial and personal conflicts of interest; mail and wire fraud; embezzlement; environmental, safety, and health violations; computer crimes; and conspiracy to commit any of these acts by Government officers and employees, grantees, contractors, and other persons doing business with DOE.

Team leaders, supervisors, managers, and oversight officials (e.g., employee concerns, security personnel) who receive, or become aware of, such an allegation from an employee or any other source must report it to the OIG within 3 business days of discovery, unless (1) the allegation has been provided to the OIG already, or (2) it is clear to him/her that the allegation is frivolous and has no basis in fact.

- d. The following issues are exempt from reporting to the OIG:
 - (1) Threats of actual or imminent bodily injury or death (such as assault, arson, etc.). Threats of actual or imminent bodily injury or death must be reported immediately to site security and Federal, state, or local law enforcement authorities in accordance with DOE or local site guidance.
 - (2) Information about espionage. Information regarding espionage, including approaches made by representatives of other governments for the commission of espionage or the collection of information, must be reported in accordance with DOE O 475.1, *Counterintelligence Program*.

- (3) Non-compliance with internal office policies and procedures, security infractions (unless the infraction involves the violation of criminal statutes), employee grievances, equal employment opportunity complaints (including sexual harassment complaints), classification appeals, appeals of security clearance adjudications, theft of Government property with nominal value (unless a pattern is identified), and off-duty conduct that does not involve DOE funds, programs, operations, facilities, contracts, or information technology systems.
 - e. Confidentiality for DOE Federal employees is established by the *Inspector General Act of 1978*, section 7(b), which prevents the OIG from disclosing the identity of a DOE Federal employee who reports an allegation or provides information, without the employee's consent, unless the OIG determines that disclosure is unavoidable during the course of the investigation. Because of their unique role within DOE, the OIG also applies this provision to DOE facilities management contractor employees. All others who report allegations are not automatically entitled to confidentiality. Such individuals may request confidentiality and these requests will be evaluated on a case-by-case basis.
 - f. Any employee who has authority over any personnel action must not take or threaten to take any action against an employee as a reprisal for making a complaint or disclosing information to a supervisor, management official, the OIG or other appropriate authority.
5. RESPONSIBILITIES. Office of Inspector General:
- (1) Notifies all DOE employees at least annually of their duty to report actual or suspected fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement, relating to DOE programs, operations, facilities, contracts, or information technology systems to an appropriate authority.
 - (2) Operates and publicizes a hotline to permit individuals or entities to report actual or suspected violations.
 - (3) Processes allegations in accordance with OIG policies and procedures. Upon receipt and evaluation of a specific and credible allegation, the OIG may take one of the following actions: open an investigation, audit, or inspection; refer the matter to DOE management for appropriate review and action; or refer the allegation to another Federal agency. Allegations with limited specificity or merit, or that lack a clear violation of law, rule or regulation, may be held in abeyance until additional, specific details are reported or the incident report is closed for lack of credible evidence or corroboration.

- (4) Designates an OIG representative for each DOE facility or site.
 - (5) Notifies appropriate officials of DOE and NNSA elements of allegations involving the following matters:
 - (a) Notifying the Office of Health, Safety, and Security or the NNSA's Office of the Associate Administrator for Defense Nuclear Security, as appropriate, of allegations involving the security of special nuclear material and classified systems or information.
 - (b) Notifying the Deputy Administrator for Naval Reactors of allegations involving the security of special nuclear material or classified or sensitive information under that office's responsibility.
 - (c) Notifying the Deputy Director of Counterintelligence of allegations regarding espionage and approaches made by representatives of other governments for the commission of espionage or the collection of information.
 - (6) Notifies appropriate officials of DOE and NNSA elements of allegations involving matters under their purview, unless the OIG determines that such notification might jeopardize the successful progress or completion of an inquiry. This includes:
 - (a) Notifying the DOE's Chief Information Officer of allegations relating to the security of classified or unclassified computer systems and information.
 - (b) Notifying appropriate environmental, safety, or health oversight offices of allegations regarding potential or actual threats of environmental, safety, or health hazards to workers or the public.
 - (c) Notifying the DOE designated agency ethics official of alleged violations of the Standards of Conduct.
- b. DOE Staff Offices, Program Offices, and Field Elements, including NNSA must:
- (1) Display DOE OIG hotline contact information in common areas under their responsibility, such as cafeterias, public telephone areas, official bulletin boards, reception rooms, and building lobbies, and published in telephone directories and employee newsletters under their responsibility.
 - (2) Ensure that no nondisclosure policy, directive, form, or agreement is implemented or enforced that restricts employees from reporting information about actual or suspected fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement, to the OIG.

- (3) Ensure that no employee with authority takes or threatens to take any action against an employee as a reprisal for making a complaint or disclosing information to a supervisor, management official, the OIG, or other appropriate authority.
 - (4) Notify contracting officers of affected contracts to incorporate the CRD of this Order into the contracts.
- c. Contracting Officer. Includes the CRD in affected contracts once notified that this order must be applied to a contract.
- d. OIG Site and Facility Representatives. Communicates regularly and in a timely basis with the DOE officials at the facilities or sites.
- e. Employees of DOE must:
 - (1) Notify an appropriate authority of any information they have regarding actual or suspected fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement, relating to DOE programs, operations, facilities, contracts, or information technology systems. Appropriate authorities include the OIG, a supervisor, an employee concerns office, general counsel, security officials, outside law enforcement agency such as the FBI, or state/local police. Reportable violations of laws and regulations include but are not limited to: false statements; false claims; mischarging; bribery; kickbacks; financial and personal conflicts of interest; mail or wire fraud; embezzlement; environmental, safety, and health violations; computer crimes; and conspiracy to commit any of these acts by Government officers and employees, grantees, contractors, and other persons doing business with the DOE.

Individuals who contact the OIG are encouraged to provide relevant and specific details of the issue, including the identity of the person, company, or organization alleged to have engaged in wrongdoing; a description of the alleged impropriety; the DOE facility and program affected by the alleged misconduct; contract numbers; date(s) of alleged wrongdoing; how the complainant is aware of the alleged impropriety; the identity of potential witnesses; and the identity and location of supporting documentation.

Individuals who contact the OIG are not required to provide their identity to the OIG. However, persons who report allegations are encouraged to identify themselves in the event additional questions arise as the OIG evaluates or pursues their allegations.

- (2) With the exceptions of traffic violations and thefts of personal property, ensure that allegations involving a suspected or actual crime that are reported to an outside law enforcement agency such as the FBI or state/local police are reported to the OIG within 24 hours of such a report.
- (3) Report to the OIG any allegations that reprisal action has been taken, or threatened to be taken, against an employee for making a complaint or disclosing information to a supervisor, management official, the OIG, or other appropriate authority.

6. REFERENCES.

- a. Public Law (P.L.) 95-452, the *Inspector General Act of 1978*, as amended, Title 5, United States Code (U.S.C.), App. 3, which sets forth the authority and functions of the Inspector General.
- b. P.L. 101-12, *Whistleblower Protection Act of 1989*, and P.L. 112-199, *Whistleblower Protection Enhancement Act of 2012*, which strengthen the protection available to Federal employees against prohibited personnel practices.
- c. Title 10, Code of Federal Regulations (C.F.R.), Part 1010, *Conduct of Employees*, which requires an employee to report fraud, waste, abuse, and corruption in DOE programs.
- d. Title 18, U.S.C., *Crimes and Criminal Procedures*, the Federal criminal code of the United States, which defines elements of Federal crimes and prescribes rules that govern all criminal procedures in the Federal courts of the United States.
- e. Executive Order (E.O.) 12333, "United States Intelligence Activities," dated 12-4-81, which designates the DOE as a member of the Intelligence Community.
- f. E.O. 13462, "President's Intelligence Advisory Board and Intelligence Oversight Board," dated 2-29-08, which establishes intelligence reporting requirements for the OIG.
- g. E.O. 12344, "Naval Nuclear Propulsion Program," dated 2-1-82, which preserves the basic structure, policies, and practices developed for the program in the past and establishes additional policies, organization, and administrative procedures to ensure that the program will continue to function with excellence.
- h. Title 50, U.S.C., Section 2511, *Naval Nuclear Propulsion Program*, which provides that E.O. 12344 shall remain in force until changed by law.

- i. E.O. 12731, “Principles of Ethical Conduct for Government Officers and Employees,” dated 10-17-90, which establishes the requirement for Government employees to disclose fraud, waste, abuse, and corruption.
 - j. DOE O 221.2A, *Cooperation with the Office of Inspector General*, dated 2-25-08, which establishes DOE responsibilities and requirements for cooperating with the OIG.
 - k. P.L. 106-65, Title XXXII, *National Nuclear Security Administration Act*, as amended, which establishes a separately organized agency within the DOE.
 - l. Title 48, C.F.R., Part 52, Subpart 52.2, Section 52.203-13, *Contractor Code of Business Ethics and Conduct*, which establishes requirements for Government contractors.
7. CONTACT. Questions concerning this Order should be addressed to the OIG at 202-586-4393.

BY ORDER OF THE SECRETARY OF ENERGY:

ELIZABETH SHERWOOD-RANDALL
Deputy Secretary

CONTRACTOR REQUIREMENTS DOCUMENT
DOE O 221.1B, *REPORTING FRAUD, WASTE AND ABUSE*
TO THE OFFICE OF INSPECTOR GENERAL

Regardless of the performer of the work, the contractor is responsible for complying with the requirements of this Contractor Requirements Document (CRD). The contractor is responsible for flowing down the requirements of this CRD to subcontractors at any tier to the extent necessary to ensure contractor's compliance with the requirements.

As directed by the contracting officer, the contractor must meet the following requirements.

1. GENERAL REQUIREMENTS. Department of Energy (DOE) contractors, including National Nuclear Security Administration (NNSA) contractors, must ensure that their employees who have information about actual or suspected fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement relating to DOE programs, operations, facilities, contracts, or information technology systems, notify an appropriate authority. Appropriate authorities include the Office of Inspector General (OIG), a supervisor, an employee concerns office, general counsel, security officials, outside law enforcement agency such as the Federal Bureau of Investigation (FBI) or state/local police. Reportable violations of laws and regulations include, but are not limited to: theft; false statements; false claims; mischarging; bribery; kickbacks; financial and personal conflicts of interest; mail and wire fraud; embezzlement; environmental, safety, and health violations; computer crimes; and conspiracy to commit any of these acts by Government officers and employees, grantees, contractors, and other persons doing business with DOE.

Contractor principals, managers, supervisors and oversight officials (e.g., employee concerns, security personnel, internal auditors) who receive, or become aware of, such an allegation from an employee or any other source must report it to the OIG within 3 business days of discovery, unless the allegation has been provided to the OIG already.

Individuals who contact the OIG are encouraged to provide relevant and specific details of the issue, including the identity of the person, company, or organization alleged to have engaged in wrongdoing; a description of the alleged impropriety; the DOE facility and program affected by the alleged misconduct; contract numbers; date(s) of alleged wrongdoing; how the complainant is aware of the alleged impropriety; the identity of potential witnesses; and the identity and location of supporting documentation.

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- a. Threats of actual or imminent bodily injury or death (such as assault, arson, etc.). Threats of actual or imminent bodily injury or death must be reported immediately to site security and Federal, state, or local law enforcement authorities in accordance with DOE or local site guidance.
- b. Information about espionage. Information regarding espionage, including approaches made by representatives of other governments for the commission of espionage or the collection of information, must be reported to the Deputy Director of Counterintelligence.
- c. Non-compliance with internal office policies and procedures, security infractions (unless the infraction involves the violation of criminal statutes), employee grievances, equal employment opportunity complaints (including sexual harassment complaints), classification appeals, appeals of security clearance adjudications, theft of Government property with nominal value (unless a pattern is identified), and off-duty conduct that does not involve DOE funds, programs, operations, facilities, contracts, or information technology systems.

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2. SPECIFIC CONTRACTOR REQUIREMENTS.

- a. Notify employees annually of their duty to report actual or suspected violations of law, rule, or regulation outlined above.
- b. Display DOE OIG hotline contact information in common areas under their responsibility, such as cafeterias, public telephone areas, official bulletin boards, reception rooms, and building lobbies, and published in telephone directories and employee newsletters under their responsibility.
- c. With the exceptions of traffic violations and thefts of personal property, ensure that allegations involving a suspected or actual crime reported to an outside law enforcement agency such as the FBI or state/local police are reported to the OIG within 24 hours of receipt of such a report.
- d. Ensure that no nondisclosure policy, directive, form, or agreement is implemented or enforced that restricts employees from reporting information about actual or suspected violations of law, statute, or regulation involving fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement to the OIG.

- e. Ensure that no employee with authority takes or threatens to take any action against any employee as a reprisal for making a complaint or disclosing information to a supervisor, management official, the OIG or other appropriate authority. Allegations of such retaliation or threats of retaliation must be reported to the OIG.
- f. Adhere to the provisions of Federal Acquisition Regulation 52.203-13, which requires that contractors shall timely disclose, in writing, to the OIG, with a copy to the contracting officer, whenever the contractor has credible evidence that a principal, employee, agent, or subcontractor of the contractor has committed a violation of the civil *False Claims Act* or of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations in connection with the award, performance, or closeout of a contract or any related subcontract. The individual making the disclosure must be an officer or manager empowered to speak for the company.