

Approved: 9-27-2016

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contract unless and until the contract or regulatory commitment is modified to either eliminate requirements that are no longer applicable or substitute a new set of requirements.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 Administrator of the National Nuclear Security Administration (NNSA) must assure that NNSA employees comply with their responsibilities under this Directive. 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) sets forth contractor requirements of this Order that apply to contracts that include the CRD. The CRD must be included in all contracts and subcontracts that have a value in excess of \$5.5 million and a performance period of more than 120 days. 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 Title 50, United States Code (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 conduct and supervise audits and investigations relating to waste, abuse, misuse, corruption, criminal acts, or mismanagement relating to DOE programs, operations, facilities, contracts, and information technology systems.
- b. In support of the above Act, individuals for whom this Directive is applicable are expected to report allegations and/or actual instances of fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement relating to DOE programs to the OIG.
- c. The OIG will provide a variety of means for receiving such reports and allegations. These means are detailed on the OIG website, under the subject of Hotline.
- d. Supervisors must not impede, discourage, or prohibit employees from reporting such matters directly to the OIG.
- e. Supervisors must not retaliate against employees who report such matters to appropriate authorities, including the OIG, other management officials, and cognizant Employee Concerns offices. Credible allegations of such retaliation must be reported to the OIG or other appropriate authority (e.g., Office of Special Counsel, Employee Concerns.)

5. RESPONSIBILITIES.

- a. OIG.
 - (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 as well as whistleblower retaliation claims.
 - (3) Provides and maintains confidentiality for DOE Federal employees in accordance with 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 OIG review. Because of their unique role within DOE, the OIG also applies this provision to DOE facility management contractor employees. All others who report allegations are not automatically entitled to confidentiality. Such individuals may request confidentiality, which will be evaluated on a case-by-case basis.

- (4) 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. Should no credible evidence or corroboration become available, the allegation may be closed without further action.
- (5) Designates an OIG representative for each DOE facility or site (see IG website for current list).
- (6) Notifies appropriate officials of DOE and NNSA elements of allegations involving the following matters:
 - (a) Notifying the Office of Environment, Health, Safety, and Security and/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 Department employees misusing classified systems or information, and sensitive but unclassified information.
 - (b) Notifying the Office of Enterprise Assessments of allegations involving contractor violations of classified information security requirements.
 - (c) Notifying the Deputy Administrator for Naval Reactors of allegations involving the security of special nuclear material, classified information, and or sensitive but unclassified information under that office's responsibility.
 - (d) 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.
- (7) 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 contracts and subcontracts with a value of \$5.5 million or more and with a period of performance of 120 days or longer.
- c. Contracting Officer. Ensures the CRD is incorporated into contracts and subcontracts that have a value in excess of \$5.5 million and a performance period of more than 120 days in accordance with the laws, regulations, and DOE directives clause, through negotiation or modification, as appropriate.
- d. OIG Site and Facility Representatives. Communicate regularly and in a timely manner 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 violations of law, rule or regulation (including criminal acts under Title 18 of the U.S.C., *Crimes and Criminal Procedure*); gross mismanagement; a gross waste of funds; serious threats to environment, safety, and health; and abuse of authority relating to DOE programs, operations, facilities, contracts, or information technology systems. Appropriate authorities include but are not limited to the OIG, a supervisor, an Employee Concerns office, general counsel, security officials, the U.S. Government Accountability Office, the U.S. Office of Special Counsel, outside law enforcement agency such as the Federal

Bureau of Investigation (FBI), or state/local police. Employees are not expected to report allegations based on mere suspicion or speculation. When in doubt, officials are encouraged to contact a local OIG representative to determine whether reporting is necessary.

- (2) Team leaders, supervisors, managers, and oversight/compliance officials who receive, or become aware of, any such credible allegation from an employee or any other source must make a timely report to the OIG after receipt or discovery, unless (1) the allegation has been provided to the OIG already; (2) it is clear to him/her that the allegation is frivolous and has no basis in fact; or (3) the allegation is exempt from reporting to the OIG. Absent extenuating circumstances, notification should be made within 30 calendar days.
- (3) Reportable violations of Title 18 of the U.S.C. 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 intrusions and other crimes involving information technology systems; and conspiracy to commit any of these acts by Government officers and employees, grantees, contractors, and other persons doing business with the DOE.
- (4) The following issues are exempt from reporting to the OIG:
 - (a) Threats of actual or imminent bodily injury or death (such as assault, arson, etc.). Such matters 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 in accordance with DOE O 475.1, Counterintelligence Program.
- (5) The following issues may be reported to the OIG, but are routinely referred to other appropriate authorities:
 - (a) Regulatory violations already submitted to or discovered by the Office of Enterprise Assessments;
 - (b) Professional disagreements of opinion;
 - (c) Non-compliance with internal office policies and procedures; policy disagreements;
 - (d) Security infractions;

- (e) Employee grievances and disputes among employees;
 - (f) Prohibited personnel practices;
 - (g) Hatch Act violations (which should be reported to the Office of Special Counsel);
 - (h) Employee performance concerns, and minor conduct issues such as tardiness and other minor leave issues, insubordinate behavior and failure to follow instructions, and discourteous and unprofessional behavior;
 - (i) Failure to pay legitimate debts;
 - (j) Equal employment opportunity complaints (including sexual harassment complaints);
 - (k) Classification appeals (related to both documents and personnel positions);
 - (l) Theft of personal property; and
 - (m) Off-duty conduct that does not involve DOE funds, programs, operations, facilities, contracts, or information technology systems.
- (6) 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.
- (7) Individuals who contact the OIG are not required to reveal 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 the allegations.
- (8) With the exceptions of traffic violations and thefts of personal property, ensure that criminal allegations or offenses involving DOE funds, programs, operations, facilities, contracts, or information technology systems that are reported to an outside law enforcement agency such as the FBI or state/local police are reported to the OIG within 3 business days of making or becoming aware of such a report to ensure timely and appropriate coordination among law enforcement agencies with DOE jurisdiction.

- (9) 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.
- (10) 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 as amended through P.L. 114-113 enacted December 18, 2015, the *Inspector General Act of 1978*, as amended, Title 5, 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 U.S. Federal criminal code, which defines elements of Federal crimes and prescribes rules that govern all criminal procedures in the U.S. Federal courts.
- e. Executive Order (E.O.) 12333, "United States Intelligence Activities," dated December 4, 1981, 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 February 29, 2008, which establishes intelligence reporting requirements for the OIG.
- g. E.O. 12344, "Naval Nuclear Propulsion Program," dated February 1, 1982, 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 October 17, 1990, 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 February 25, 2008, which establishes DOE responsibilities and requirements for cooperating with the OIG.
 - k. DOE O 475.1, *Counterintelligence Program*, dated December 10, 2004, which establishes Counterintelligence (CI) Program requirements and responsibilities for DOE the NNSA.
 - l. P.L. 106-65, Title XXXII, *National Nuclear Security Administration Act*, as amended, which establishes a separately organized agency within the DOE.
 - m. 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 subcontracts with a value of \$5.5 million or more and with a period of performance of 120 days or longer.

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 not deter or dissuade employees from notifying an appropriate authority of actual or suspected violations of law, rule or regulation (including criminal acts under Title 18 of the United States Code, *Crimes and Criminal Procedure*); gross mismanagement; a gross waste of funds; serious threats to environment, safety, and health; and abuse of authority relating to DOE programs, operations, facilities, contracts, or information technology systems. Appropriate authorities include but are not limited to the Office of Inspector General (OIG), a supervisor, an Employee Concerns office, general counsel, security officials, the U.S. Government Accountability Office, outside law enforcement agency such as the Federal Bureau of Investigation (FBI) or State/local police. Employees are not expected to report allegations based on mere suspicion or speculation. When in doubt, officials are encouraged to contact a local OIG representative to determine whether reporting is necessary.

Individuals who contact the OIG are not required to reveal 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. 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 facility management contractor employees. All others who report allegations are not automatically entitled to confidentiality. Such individuals may request confidentiality, which will be evaluated on a case-by-case basis.

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.

- a. 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.) However, 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 to the Department's Deputy Director of Counterintelligence.
- b. The following issues may be reported to the OIG, but are routinely referred to other appropriate authorities:
- (1) Regulatory violations already submitted to or discovered by the Office of Enterprise Assessments;
 - (2) Professional disagreements of opinion;
 - (3) Non-compliance with internal office policies and procedures; policy disagreements;
 - (4) Security infractions;
 - (5) Employee grievances and disputes among employees;
 - (6) Prohibited personnel practices;
 - (7) Employee performance concerns, and minor conduct issues such as tardiness and other minor leave issues, insubordinate behavior and failure to follow instructions, and discourteous and unprofessional behavior;
 - (8) Failure to pay legitimate debts;
 - (9) Equal employment opportunity complaints (including sexual harassment complaints);
 - (10) Classification appeals (related to both documents and personnel positions);
 - (11) Theft of personal property; and
 - (12) Off-duty conduct that does not involve DOE funds, programs, operations, facilities, contracts, or information technology systems.

2. SPECIFIC CONTRACTOR REQUIREMENTS.

- a. In accordance with Federal Acquisition Regulation (FAR) clause 52.203-13, the contractor shall timely disclose, in writing, to the OIG whenever, in connection

with the award, performance, or closeout of a DOE contract or any subcontract thereunder, the contractor has credible evidence that a principal, employee, agent, or subcontractor of the contractor has committed:

- (1) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the U.S. Code; or
 - (2) A violation of the civil False Claims Act, found in Title 31 of the U.S. Code.
- b. Notify employees annually of their duty to report actual or suspected violations of law, rule, or regulation outlined above.
- c. Prominently display DOE OIG hotline posters within business segments performing work under a DOE contract and at contract work sites.
- d. Contractor personnel with appropriate authority may gather additional information prior to reporting the matter to the OIG, provided:
- (1) relevant information and documents are not altered, destroyed or hidden, and
 - (2) personnel are not influenced in their recollection of events or discouraged or prohibited from contacting, or cooperating with, the OIG.
- e. With the exceptions of traffic violations and thefts of personal property, ensure that criminal allegations or offenses involving DOE funds, programs, operations, facilities, contracts, or information technology systems that are reported to an outside law enforcement agency such as the FBI or state/local police are reported to the OIG within 3 business days of making or becoming aware of such a report to ensure timely and appropriate coordination among law enforcement agencies with DOE jurisdiction.
- f. 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.
- g. Ensure that no employee with authority takes or threatens to take any action against any employee as a reprisal for making a whistleblower complaint or disclosing information in support of a whistleblower complaint to a supervisor, management official, the OIG or other appropriate authority.
- h. Report to the OIG any credible evidence, including a credible statement from the alleged victim, that reprisal action is being or has been taken, or is 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.