

Approved: 8-30-2011

**SUBJECT: INDEPENDENT OVERSIGHT PROGRAM**

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1. **PURPOSE.** To prescribe the requirements and responsibilities for the Department of Energy (DOE) Independent Oversight Program. The DOE Independent Oversight Program is implemented by the Office of Health, Safety, and Security's Office of Enforcement and Oversight. The Office of Enforcement and Oversight is an independent office within DOE in that it has no line management or policy-making responsibilities or authorities. The Independent Oversight Program comprises one element of DOE's multi-faceted approach to oversight as described in DOE P 226.1B, *Department of Energy Oversight Policy*, dated 4-25-11. Effective oversight, including independent oversight, of DOE federal and contractor operations is an integral part of the Department's responsibility as a self-regulating agency to provide assurance of its safety and security posture to its leadership, its workers, and the public. The Independent Oversight Program is designed to enhance DOE safety and security programs<sup>1</sup> by providing DOE and contractor managers, Congress, and other stakeholders with an independent evaluation of the adequacy of DOE policy and requirements, and the effectiveness of DOE and contractor line management performance in safety and security and other critical functions as directed by the Secretary.
2. **CANCELLATION.** DOE O 470.2B, *Independent Oversight and Performance Assurance Program*, dated 10-31-02. (This order is superseded completely by DOE O 227.1).

Cancellation of a directive does not, by itself, modify or otherwise affect any contractual or regulatory obligation to comply with the directive. Contractor Requirements 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contract unless and until the contract or regulatory commitment is modified to either eliminate requirements that are no longer applicable or substitute a new set of requirements.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 Elements.** Except as noted in paragraph 3.c., this Order applies to all DOE elements, including the National Nuclear Security Administration (NNSA).

The NNSA Administrator 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

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<sup>1</sup> Throughout this directive, safety and security programs means (1) programs for the protection of the public, the environment, and worker health and safety; and (2) programs for the protection of security assets to include special nuclear materials and sensitive and classified information in all forms. This includes cyber security and emergency management programs.

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 provided in attachment 1 sets forth requirements of this Order that apply to contracts that include the CRD.

The CRD or its requirements must be included in:

- (1) All DOE site/facility management and operating contracts
  - (2) DOE contracts that contain the clauses Security (48 CFR 952.204-2), Classification/Declassification (48 CFR 952.204-70), and/or Integration of environment, safety and health into work planning and execution (48 CFR 952.223-71).
- c. Equivalencies/Exemptions. Equivalencies and exemptions to this Order are processed in accordance with DOE O 251.1C, *Departmental Directives Program*, dated 1-15-09.
    - (1) Equivalency. In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 USC sections 2406 and 2511 and to ensure consistency through 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) Exemption. Consistent with Secretarial Delegation Order Number 00-033.00B to the Administrator and Chief Executive Officer, Bonneville Power Administration, this order does not apply to oversight of environmental programs or occupational safety and health programs at Bonneville Power Administration.
    - (3) Exemption. Pursuant to Executive Order 12333, with respect to intelligence-related activities of the Director, Office of Intelligence and Counterintelligence, this Order applies only to information protection (including related physical security measures) and cyber security measures.

#### 4. REQUIREMENTS.

- a. Program Independence. The Office of Enforcement and Oversight is responsible for independent oversight of safety and security, and other critical functions as directed by the Secretary, within DOE, reporting through the Chief Health, Safety and Security Officer to the Secretary. To provide an objective evaluation of the

Department's performance, the Office of Enforcement and Oversight must be independent of all DOE elements that have line management responsibilities for safety or security programs.

b. Independent Oversight Activities.

- (1) The Office of Enforcement and Oversight must conduct independent evaluations of DOE sites, facilities, organizations, and operations in the areas of safety and security.
- (2) The Office of Enforcement and Oversight must evaluate the effectiveness of DOE and contractor line management in implementing and overseeing safety and security programs to determine the adequacy of DOE policies and requirements and their implementation.
- (3) The Office of Enforcement and Oversight must evaluate performance against applicable laws, statutes, rules, executive orders, national standards, DOE directives, DOE-approved plans and program documents (e.g., security plans, emergency plans, authorization basis documents, worker safety and health programs, quality assurance program plans), site-specific procedures, and contractual requirements. This includes requirements promulgated by Program Secretarial Officers and formally authorized for use by organizations under their cognizance.
- (4) Independent Oversight activities conducted by the Office of Enforcement and Oversight (hereafter referred to as Independent Oversight appraisals) must be prioritized and implemented in a manner that supports DOE line management in accomplishing its line management oversight and achieving DOE mission objectives safely and securely. The scope of Independent Oversight appraisals must focus on high consequence activities, such as high hazard nuclear operations, and the protection of high value security assets (e.g., Category I quantities of special nuclear material and classified information assets, including special access programs, Sensitive Compartmented Information, and such Restricted Data Sigma categories as 14, 15, 18, and 20). Other areas of consideration for Independent Oversight appraisals are organizations whose performance may present significant risk (e.g., less than expected safety or security performance records and/or serious or recurring incidents or violations of requirements).
- (5) Persons who perform Independent Oversight appraisals must be technically qualified and knowledgeable in the areas they assess.
- (6) Independent Oversight appraisal activities must be coordinated with affected DOE line management and staff offices to promote efficient and

effective use of resources, including working with program offices and field elements to incorporate the scheduling, planning, and coordination into existing assessment planning processes. This must be balanced with the need for the Office of Enforcement and Oversight to collect sufficient information for the Independent Oversight Program to be executed effectively. Appraisals can consist of: (1) teams led and staffed by Office of Enforcement and Oversight personnel; (2) activities conducted by the Office of Enforcement and Oversight in conjunction with DOE line management and/or DOE staff office assessments and reviews; and (3) activities conducted by the Office of Enforcement and Oversight at DOE sites to gain information about operational performance status. Disagreements regarding scheduling appraisals that cannot be resolved between the Office of Enforcement and Oversight and the cognizant manager must be elevated through organizational management levels up to and including the Deputy Secretary for resolution.

- c. Licensed DOE Facilities or Activities. Independent Oversight appraisal activities for DOE facilities or activities licensed by the Nuclear Regulatory Commission must, except where excluded by law or DOE policy, be structured to minimize or eliminate duplication of oversight efforts while ensuring DOE safety and security programs and associated facilities are independently evaluated. Accordingly, the scheduling of independent oversight activities must take into account the inspection and assessment activities of the Nuclear Regulatory Commission.
- d. Conduct of Safety and Security Independent Oversight Appraisals.
  - (1) The Office of Enforcement and Oversight must use a formal documented process to manage and conduct Independent Oversight appraisals that is published and accessible to DOE employees.
  - (2) The Office of Enforcement and Oversight must assure that appraisal team members have no conflict of interest or appearance of conflict of interest with the subjects they review.
  - (3) The Office of Enforcement and Oversight must document all of its Independent Oversight appraisal activities. The appraisal documentation must clearly identify findings (or their site- or program-specific equivalent), recommendations and/or opportunities for improvement, where applicable. Findings must reference applicable requirements to facilitate disposition by the site's or program's issues management system. Appraisals may also identify ratings (e.g., effective performance, needs improvement, or significant weakness) where appropriate to convey the appraisal results.

- (4) The factual accuracy of appraisal results must be verified by the cognizant DOE management responsible for the program or activity. Disagreements regarding the factual accuracy of the appraisal results or findings that cannot be resolved between the Office of Enforcement and Oversight and the cognizant manager must be elevated through organizational management levels up to and including the Deputy Secretary for resolution.
- (5) The Office of Enforcement and Oversight must coordinate with the affected cognizant Program Secretarial Officers, DOE field elements, and Under Secretaries before briefing other DOE personnel on appraisal results. The Office of Enforcement and Oversight must coordinate with the affected DOE organizations and the Departmental Representative to the Defense Nuclear Facilities Safety Board (DNFSB) before briefing the DNFSB. The secretarial officer and/or DOE field element manager must be offered the opportunity to address the appraisal outcomes.

e. Response to Major Vulnerabilities or Imminent Danger.

- (1) Office of Enforcement and Oversight personnel must notify the cognizant DOE manager verbally as soon as possible and provide written notification within 24 hours when appraisal activities indicate either of the following conditions:
  - (a) an imminent danger or condition that presents an unacceptable immediate risk to workers, public health, or the environment, or
  - (b) a major vulnerability (e.g., unacceptable risk of special nuclear material theft or diversion, radiological or industrial sabotage, espionage, or significant compromise of classified information).
- (2) When notified of either of the above conditions, cognizant DOE management must take actions to mitigate the short and long-term risk, and must notify the Program Secretarial Officer and Office of Enforcement and Oversight within 10 working days of actions taken and any compensatory measures planned.
- (3) If the cognizant DOE management disagrees with the Office of Enforcement and Oversight's assessment of the severity of the identified condition or the need for prompt action, this must immediately be brought to the attention of the Program Secretarial Officer or NNSA Administrator or Under Secretary as applicable, and Chief Health, Safety and Security Officer for resolution.

f. Corrective Actions.

- (1) Corrective action plans must be developed and implemented for Independent Oversight appraisal findings. Cognizant DOE managers must use site- and program-specific issues management processes and systems developed in accordance with DOE O 226.1B, *Implementation of Department of Energy Oversight Policy*, dated 4-25-11, to manage these corrective action plans and track them to completion.
- (2) At the discretion of the Director of the Office of Enforcement and Oversight or when requested by the cognizant DOE manager, the Office of Enforcement and Oversight must review corrective action plans developed in response to appraisal results and provide comments for consideration.
- (3) The Office of Enforcement and Oversight must establish and implement a tailored approach for following up on findings based on significance and complexity. The approach must include selected appraisals to review the timeliness and adequacy of corrective actions, verify and validate the effectiveness of the corrective actions, and confirm closure of findings.
- (4) Cognizant DOE managers must provide the Office of Enforcement and Oversight with information on corrective actions related to appraisals of their organization, sites, and/or contractor activities when requested by the Director, Office of Enforcement and Oversight.
- (5) Disagreements regarding the adequacy or effectiveness of corrective actions that cannot be resolved between the Office of Enforcement and Oversight and the cognizant DOE manager must be elevated through organizational management levels until resolution is obtained. If needed, issues must be elevated to the Deputy Secretary for resolution.

5. RESPONSIBILITIES.a. Program Secretarial Officers, including the NNSA Administrator.<sup>2</sup>

- (1) Where appropriate, review and provide comments on the factual accuracy of draft appraisal reports.
- (2) Take timely and appropriate action to address findings and other deficiencies identified in appraisal reports.

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<sup>2</sup> In most cases, the program secretarial officer is also the lead program secretarial officer for a site or facility. If the program secretarial officer is not also the lead program secretarial officer, the program secretarial officer is responsible for coordinating with the lead program secretarial officer on any findings that require input or action from the lead program secretarial officer.

- (3) Provide the Office of Enforcement and Oversight with requested documentation, points of contact, access to sites, facilities, and operations in support of appraisal activities.
- (4) Work with the Chief, Health, Safety and Security Officer to resolve disagreements on appraisal schedules, appraisal results, or findings that are unable to be resolved at lower organizational levels. Escalate those issues to the Deputy Secretary, if necessary, to achieve resolution.

b. Chief Health, Safety and Security Officer.

Work with Program Secretarial Officers to resolve disagreements on appraisal schedules, appraisal results, or findings that are unable to be resolved at lower organizational levels. Escalate those issues to the Deputy Secretary, if necessary, to achieve resolution.

c. Director, Office of Enforcement and Oversight.

- (1) Direct and manage the safety and security independent oversight program.
- (2) Develop and maintain documents that describe the safety and security independent oversight program and implementing methods.
- (3) Determine the appropriate distribution of appraisal reports. Post the title and date of all final appraisal reports on the Office of Enforcement and Oversight website. Post a copy of final appraisal reports that do not contain or reveal classified or controlled unclassified information.
- (4) Conduct the annual evaluation of cyber security on national security systems.
- (5) Coordinate with the Office of Intelligence and Counterintelligence for the annual review of national security systems processing intelligence information.
- (6) Provide updates, as appropriate, on the status of appraisals to the Secretary, Deputy Secretary, Under Secretaries, Program Secretarial Officers, Chief Health, Safety and Security Officer, and applicable Offices of Primary Interest (OPI) for DOE directives.
- (7) Brief senior DOE officials, including the NNSA Administrator, Under Secretaries, Program Secretarial Officers, OPI managers, Heads of Field Elements, and senior representatives of affected contractors on the results of appraisal activities where appropriate.

- (8) Notify the DOE Inspector General when appraisal activities identify concerns involving potential criminal activities and/or waste, fraud, and abuse.
  - (9) Coordinate the scheduling, notification, and planning of appraisal activities with appropriate Program Secretarial Officers and/or Heads of Field Elements.
  - (10) Coordinate with the applicable OPIs to ensure accurate understanding of requirements related to safety and security findings and deficiencies identified during appraisals.
- d. Heads of Field Elements.<sup>3</sup>
- (1) Identify contracts to which the CRD requirements should apply and notify the cognizant contracting officers.
  - (2) Review and comment on the factual accuracy of draft appraisal reports.
  - (3) Take timely and appropriate action to address the findings and other deficiencies identified in appraisal reports.
  - (4) Provide the Office of Enforcement and Oversight with requested documentation, points of contact, and information concerning programs under their jurisdiction; ensure necessary support for appraisal activities, including access to sites, facilities and operations; and provide work space for appraisal teams.
- e. Contracting Officers. Incorporate the CRD into contracts in a timely fashion upon notification of its applicability. If delegated the authority from the Program Secretarial Officer or Head of the Field Element, the contracting officer may incorporate equivalent contract clauses or requirements into contracts in lieu of the CRD.
- f. Executive Secretary of the Special Access Program Oversight Committee. Assist the Office of Enforcement and Oversight in obtaining access to special access programs as required to provide effective independent oversight of the overall DOE security program.
- g. Offices of Primary Interest (for DOE Directives).

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<sup>3</sup> Operations offices, service centers, site offices, area offices, project management offices, government-owned government-operated facilities and regional offices of federally-staffed laboratories that report directly to a DOE Headquarters office.



- (1) Coordinate resolution of applicable policy findings identified in final appraisal reports with Program Secretarial Officers and Heads of Field Elements, and assist in resolving other findings or deficiencies applicable to OPI subject areas.
- (2) As applicable, review and comment on the factual accuracy of draft appraisal reports.
- (3) In coordination with the responsible Program Secretarial Officer, develop, implement, and track to completion corrective actions for findings related to policies or activities of the OPI.
- (4) Provide clarification regarding requirements contained in DOE directives under their cognizance.

6. REFERENCES.

- a. DOE P 226.1B, *Department of Energy Oversight Policy*, dated 4-25-11, which establishes DOE's expectations for implementation of a comprehensive and robust oversight process.
- b. DOE O 226.1B, *Implementation of Department of Energy Oversight Policy*, dated 4-25-11, which establishes requirements and provides direction for implementing DOE P 226.1B.
- c. DOE O 251.1C, *Departmental Directives Program*, dated 01-15-09 (or latest version), which establishes requirements and responsibilities for implementing the DOE Directives Program.

7. DEFINITIONS. See Appendix 1.

8. CONTACT. Questions concerning this Order should be directed to the Office of Enforcement and Oversight at 301-903-2178.

BY ORDER OF THE SECRETARY OF ENERGY:



DANIEL B. PONEMAN  
Deputy Secretary



## DEFINITIONS

**Appraisal:** An appraisal is an Independent Oversight activity conducted by the Office of Enforcement and Oversight to evaluate the effectiveness of line management performance or the adequacy of DOE policies and requirements.

**Cognizant Manager:** The DOE field or Headquarters manager who is directly responsible for program management and direction, and the development and implementation of corrective actions. Cognizant managers may be line managers or managers of support organizations.

**Deficiency:** A deficiency is an inadequacy (e.g., failure to implement a requirement or meet a performance standard) that is found during an appraisal. Deficiencies may serve as the basis for one or more findings.

**Directives:** Directives are defined in DOE Order 251.1C, *Departmental Directives Program*, dated 1-15-09.

**Findings:** Findings are items identified in appraisal reports that warrant a high level of attention on the part of management and aspects of a program that do not meet the intent of DOE policies and requirements. If left uncorrected, findings could adversely affect the DOE mission, the environment, worker safety or health, the public or national security. Findings define the specific nature of the deficiency, whether it is localized or indicative of a systemic problem, and identify which organization is responsible for corrective actions. Alternative terminology may be used to denote findings identified in appraisal reports to be consistent with program or site-specific terminology for items requiring corrective action.

**Imminent Danger:** Conditions or practices in the workplace where a danger exists which could reasonably be expected to cause death or serious physical harm either immediately or before the abatement of such danger, through normal procedures, would otherwise be required.

**Independent Oversight:** Independent oversight refers exclusively to oversight by DOE Headquarters organizations that do not have line management responsibility for the activity. Oversight by supporting organizations that are direct reports to line management is not considered DOE independent oversight. Within DOE, the sole responsibility for independent oversight of safety and security programs resides with the Office of Enforcement and Oversight, reporting through the Chief Health, Safety and Security Officer to the Office of the Secretary of Energy.

**Line Management:** Line management refers the unbroken chain of responsibility that extends from the Secretary of Energy to the Deputy Secretary, to the Secretarial Officers who set program policy and plans and develop assigned program, and to the program, to the program and Field Element Managers, and to the contractors and subcontractors who are responsible for execution of these programs. It is distinct from DOE support organizations, such as the Office of Health, Safety and Security and the Office of Management, which also have support responsibilities and functions important to security and safety.

**Major Vulnerability:** A vulnerability which, if detected and exploited, could reasonably be expected to result in a successful attack causing serious damage to the national security.

**Policy:** The term “DOE policy” or “policy” when used in lower case in this Order is meant to be all inclusive of documents describing the philosophies, fundamental values, administration, requirements, and expectations for operation of the Department. It includes but is not limited to DOE Policies issued under DOE O 251.1C.

**Program Secretarial Officers:** Heads of DOE Departmental Elements listed on the Office of Management web site at <https://www.directives.doe.gov/references>.

**Safety and security programs:** Includes (1) programs for the protection of the public, the environment, worker health and safety; and (2) programs for the protection of security assets to include special nuclear materials and sensitive and classified information in all forms. Within the scope of this directive, safety and security programs include cyber security and emergency management programs.

## CONTRACTOR REQUIREMENTS DOCUMENT

### DOE O 227.1, *Independent Oversight Program*

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

The contractor must meet the following requirements:

1. The contractor must support the conduct of independent oversight appraisal activities conducted by the Office of Enforcement and Oversight at sites and facilities for which they are responsible. This support includes, but is not limited to, providing the following:
  - a. timely identification of points of contact to provide information and support during appraisals;
  - b. documentation and information concerning safety and security programs<sup>4</sup> for which they are responsible;
  - c. access to contractor-managed facilities and personnel; and
  - d. work space and administrative support for appraisal teams.
2. When notified by the Office of Enforcement and Oversight of an imminent danger or condition or major vulnerability that presents an unacceptable immediate risk to workers, the public, the environment, or national security, the responsible contractor organization must take the following actions in coordination with DOE line management:
  - a. promptly identify and implement immediate compensatory actions to mitigate the condition,
  - b. within 5 working days, notify the cognizant DOE line manager of actions taken and compensatory measures planned, and
  - c. develop and implement actions (including determining costs and identifying funds) to eliminate the vulnerability or reduce the level of risk to an acceptable level as soon as possible.

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<sup>4</sup> Throughout this document, safety and security programs means (1) programs for the protection of the public, the environment, and worker health and safety; and (2) programs for the protection of security assets to include special nuclear materials and sensitive and classified information in all forms. This includes cyber security and emergency management programs.

3. When requested, the contractor must review and provide comments on the factual accuracy of draft appraisal reports through the responsible DOE field element.
4. Draft appraisal reports must be controlled by contractor personnel.
5. The contractor must prepare, implement, and track to completion corrective actions to address findings and deficiencies identified in Office of Enforcement and Oversight appraisal reports.
6. The contractor must provide information on corrective actions to DOE when requested to support Office of Enforcement and Oversight appraisal activities.