

Sunshine Act Meetings

Federal Register

Vol. 56, No. 236

Monday, December 9, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, December 17, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

- Application of the Chicago Board of Trade for contract designation in European Currency Board futures
- Application of the New York Mercantile Exchange for contract designation in Sour Crude Oil Futures
- Application of the New York Mercantile Exchange for contract designation in Heating Oil—Crude Oil Spread Options
- Application of the New York Mercantile Exchange for contract designation in Unleaded Gasoline—Crude Oil Spread Options

CONTACT PERSON FOR MORE

INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-29498 Filed 12-5-91; 2:28 pm]

BILLING CODE 6351-01-M

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Commission Meeting,
Thursday, December 12, 1991

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, December 12, 1991, which is scheduled to commence at 9:30 a.m., in room 856, at 1919 M Street, N.W., Washington, DC.

Item No., Bureau, and Subject

- 1—Common Carrier—Title: American Telephone and Telegraph Company's Petition for Rulemaking (CC Docket No. 91-64). Summary: The Commission will consider adoption of a *Report and Order* concerning the procedures used by interstate long distance carriers to verify customer orders for service.
- 2—Common Carrier—Title: Amendment of Part 22 of the Commission's Rules

Concerning the Use of Cellular Telephones in Aircraft and Cell Enhancers in the Domestic Public Cellular Radio Service (CC Docket No. 88-411). Summary: The Commission will consider adoption of a *Report and Order* concerning the use of cellular telephones in aircraft and the routine use of cell enhancers.

- 3—Common Carrier—Title: Regulation of International Accounting Rates (CC Docket No. 90-337, Phase II). Summary: The Commission will consider adoption of a *First Report and Order* concerning U.S. carrier accounting and settlement arrangements with their foreign correspondents.

- 4—Common Carrier—Title: Part 22 Rule Making on Cellular Radio Comparative Renewal Proceedings (CC Docket No. 90-358). Summary: The Commission will consider adoption of a *Report and Order* concerning standards for filing cellular renewal applications and applications competing with those renewal applications and for conducting comparative renewal hearings.

- 5—Common Carrier, Office of International Communications—Title: Regulations of International Common Carrier Services. Summary: The Commission will consider adoption of a *Notice of Proposed Rule Making* concerning the regulation of international common carrier services.

- 6—Mass Media General Counsel—Title: Codification of the Commission's Political Programming Policies (MM Docket No. 91-168). Summary: The Commission will consider adoption of a *Report and Order* concerning political programming policies.

- 7—Mass Media—Title: Amendment of Part 76 of the Commission's Rules to Eliminate the Prohibition on Common Ownership of Cable Television Systems and National Television Networks (MM Docket No. 82-434). Summary: The Commission will consider adoption of a *Second Further Notice of Proposed Rule Making* which invites further comment on proposals to eliminate or modify the ban on common ownership of cable systems and broadcast TV networks.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Federal Communications Commission.

Dated: December 5, 1991.

Donna R. Searcy,

Secretary.

[FR Doc. 91-29491 Filed 12-5-91; 2:26 p.m.]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that 5:01 p.m. on Wednesday, December 4, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met jointly with the Board of Directors of the Resolution Trust Corporation in closed session to consider matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), Mr. Stephen R. Steinbrink, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), and Chairman William Taylor, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b)(c)(2), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, N.W., Washington, DC.

Dated: December 5, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary

[FR Doc. 91-29492 Filed 12-5-91; 2:27 pm]

BILLING CODE 6714-01-M

Corrections

Federal Register

Vol. 56, No. 236

Monday, December 9, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 919

[Docket No. FV-91-250]

Peaches Grown in Mesa County, Colorado; Order Directing That a Referendum Be Conducted; Determination of Representative Period for Voter Eligibility; and Designation of Referendum Agents To Conduct the Referendum

Correction

In proposed rule document 91-7279 beginning on page 12865 in the issue of Thursday, March 28, 1991, make the following correction:

On page 12866, in the first column, in the file line at the end of the document, "FR Doc. 91-7229" should read "FR Doc. 91-7279".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Forest Service

National Commission on Wildfire Disasters

Correction

In notice document 91-26766, appearing on page 56625, in the issue of Wednesday, November 6, 1991, make the following corrections:

1. In the second column, the name of the commission should read as set forth above.

2. In the same column, under the heading **SUMMARY**, in the second and sixth lines, "Wildlife" should read "Wildfire".

3. In the same column, under the heading **FOR FURTHER INFORMATION CONTACT**, in the second line, "Pendleton" should read "Pendleton".

4. In the same column, under the heading **SUPPLEMENTARY INFORMATION**,

in the second line, "Wildlife" should read "Wildfire".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 911183-1283]

RIN 0648-AE48

Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

Correction

In proposed rule document 91-28301, beginning on page 59922, in the issue of Tuesday, November 26, 1991, make the following correction:

On page 59924, in the second column, in the *Authority*, citation, "1802" should read "1801".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

Correction

In notice document 91-22346 beginning on page 47069 in the issue of Tuesday, September 17, 1991, make the following correction:

On page 47070, in the first column, in the file line at the end of the document, "FR Doc 91-22340" should read "FR Doc 91-22346".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement—Library Programs Invitation to Apply for New Awards for Fiscal Year 1992

Correction

In notice document 91-13909 beginning on page 27156 in the issue of Wednesday, June 12, 1991, make the following correction:

On page 27158, in the third column, in the file line at the end of the document,

"FR Doc. 91-1309" should read "FR Doc. 91-13909".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Animal Drugs, Feeds, and Related Products; Change of Sponsor

Correction

In rule document 91-24169, beginning on page 50652, in the issue of Tuesday, October 8, 1991, and corrected in the issue of November 25, 1991, on page 59331, the following corrections are reprinted correctly below:

§ 520.2260b [Corrected]

2. On page 50653, in the second column, in § 520.2260b, in the first line, "Section 520.2260c" should read "Section 520.2260b".

In the same document, on the same page, in the second column, in correction number 3, make the following correction:

§ 520.2260c [Corrected]

3. On page 50653, in the same column, in § 520.2260c, in the first line, "Section 520.2260b" should read "Section 520.2260c".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91E-0369]

Determination of Regulatory Review Period for Purposes of Patent Extension; Fludara

Correction

In notice document 91-27750, beginning on page 58388, in the issue of Tuesday, November 19, 1991, make the following corrections:

On page 58389, in the second column, in the fourth full paragraph, in the third and eighth lines, "1991" should read "1992".

BILLING CODE 1505-01-D

Best of Federal Register

Monday
December 9, 1991

Part II

Department of Energy

10 CFR Part 820

Procedural Rules for DOE Nuclear
Activities; Proposed Rule and Public
Hearing

DEPARTMENT OF ENERGY

10 CFR Part 820

[Docket No. NS-RM-91-820]

Procedural Rules for DOE Nuclear Activities

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy (DOE) is proposing procedural rules to be used in applying its substantive rules, regulations and orders relating to nuclear safety (DOE Nuclear Safety Requirements). The proposed procedural rules are intended to be an essential part of the framework through which DOE deals with its contractors and other persons to ensure its nuclear facilities are operated in a manner that protects the public health and safety and the environment. In particular, the proposed rules would implement the provisions of the Price-Anderson Amendments Act of 1988 (Pub. L. No. 100-408, August 20, 1988) (PAAA) which subjects DOE contractors to potential civil and criminal penalties for violations of applicable DOE Nuclear Safety Requirements.

DATES: Written comments (20 copies) may be submitted to the address listed below by February 3, 1992. A hearing will be held on January 13, 1992. Request to speak at hearing must be submitted on or before January 8, 1992.

ADDRESSES: Comments should be addressed to: Keith Christopher, Office of Nuclear Safety, NS-30, room 8H-089, Docket No. NS-RM-91-820, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586-7594 or FTS 896-7594.

A hearing will be held at: 9 a.m., Auditorium Building, U.S. Department of Energy, 19901 Germantown Road (Route 118), Germantown, Maryland.

The envelope and written comment should indicate the docket number. Written comments and hearing testimony may be examined between 9 a.m. and 4 p.m. Monday through Friday at: U.S. Department of Energy, Freedom of Information Reading Room, room 1E-190, Docket No. NS-RM-91-820, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586-6020 or FTS 896-6020.

FOR FURTHER INFORMATION CONTACT:

Keith Christopher, Office of Nuclear Safety, NS-30, room 8H-089, Docket No. NS-RM-91-820, U.S. Department of Energy, 1000 Independence Ave.

SW., Washington, DC 20585, (202) 586-7594 or FTS 896-7594

or

Ben McRae or Susan Kuznick, Office of General Counsel, GC-31, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586-6975 or FTS 896-6975.

SUPPLEMENTARY INFORMATION:

I. Introduction

II. Notice of Inquiry

- A. Applicable Nuclear Safety Requirements
- B. Relationship With M&O Contractors
- C. Treatment of Nonprofit Educational Institutions
- D. Proposed Enforcement Policy

III. Proposal

IV. Procedural Requirements

- A. Review Under Executive Order 12291
- B. Review Under the Regulatory Flexibility Act
- C. Paperwork Reduction Act
- D. National Environmental Policy Act
- E. Review Under Executive Order 12812

V. Public Comment Procedures

- A. Written Comments
- B. Public Hearing

I. Introduction

DOE owns numerous nuclear facilities. To a large extent, DOE has continued the practice of its predecessors to contract with private industry and educational institutions to operate these facilities. The use of contractors provides DOE with expertise and resources which otherwise would not be readily available for carrying out its missions.

Recently, DOE has undertaken a thorough review of operations at its nuclear facilities. In particular, DOE has been examining the performance of its contractors in achieving the goals of protecting the public health and safety and the environment. As a result of its review, DOE is taking steps to improve its ability to enforce its nuclear safety requirements. DOE also is taking steps to provide contractors with incentives to act in a manner consistent with these requirements and to penalize inconsistent action.

When Congress enacted the PAAA, it considered the treatment of DOE contractors and renewed DOE's authority to indemnify these contractors for public liability arising from a nuclear incident. In addition, the PAAA made most DOE contractors so indemnified, and their subcontractors and suppliers, subject to civil and criminal penalties for violations of applicable DOE nuclear safety requirements.

II. Notice of Inquiry

On September 21, 1989, DOE published a Notice of Inquiry and Request for Public Comments on

Implementation of the Price-Anderson Amendments Act of 1988 Civil and Criminal Penalty Authority. (NOI). 54 FR 38865 (September 21, 1989). The NOI set forth the background and framework of the penalty provisions of the PAAA. It also indicated that adapting the NRC enforcement policy to DOE "may be the preferred option" for developing a DOE enforcement policy that addresses mitigation factors.

DOE received comments in response to this NOI from nineteen (19) parties: Six current DOE non-profit management and operating (M&O) contractors statutorily-exempt from civil penalties (Battelle Memorial Institute, Fermi National Accelerator Laboratory, University of California, University of Chicago, Associated Universities, Inc., and Princeton University); five current DOE for-profit M&O contractors (Kaiser Engineers Hanford, EG&G, Inc., Martin Marietta Energy Systems, Inc., Westinghouse Electric Corporation, and General Electric Company); two current DOE non-profit contractors not statutorily-exempt from civil penalties (Oak Ridge Associated Universities and Southeastern Universities Research Associations); one non-M&O DOE contractor (Nuclear Fuel Services); one organization of research universities (Council on Governmental Relations); the American Nuclear Energy Council, which represents certain organizations within the nuclear industry; the law firm of Powell, Goldstein, Frazer & Murphy; Congressman Fortney H. (Pete) Stark; and the Section of Public Contract Law of the American Bar Association.

Comments on the NOI generally addressed issues in four broad categories: (1) The applicable Nuclear Safety Requirements; (2) the effect of PAAA penalty implementation on M&O contractors; (3) the treatment of nonprofit educational institutions; and (4) the DOE General Statement of Enforcement Policy. A summary of the major comments and our responses follows:

A. Applicable Nuclear Safety Requirements

Seventeen of the nineteen parties who provided comments urged DOE to review its Nuclear Safety Requirements and provide a specific and concise delineation of those requirements the violation of which would subject persons to PAAA penalties. These comments indicated it was important that the Nuclear Safety Requirements that will be the subject of enforcement be clearly described and understood by parties expected to be in compliance.

One comment noted that because existing Nuclear Safety Requirements contained in DOE Orders were developed without regard to their use for assessing penalties, DOE should review and modify, as needed, the existing DOE Orders with a view to their new use for the imposition of penalties. Another comment stated that the present body of DOE Orders and Order supplements is outmoded, irrelevant, unclear or inconsistent, leading to different approaches among DOE offices and that DOE should commence a separate rulemaking to adopt new nuclear-safety standards.

DOE has carefully reviewed the comments concerning what nuclear safety requirements should be the basis for civil penalties under the PAAA. As an initial matter, DOE reaffirms the validity of all existing DOE rules, orders or regulations relating to nuclear safety, including all the DOE Orders issued as Directives. These existing requirements were established pursuant to the Department's broad authority under the Atomic Energy Act to issue rules, orders and regulations to govern the conduct of activity under that Act in a manner that protects the public health and safety and the environment. Passage of the PAAA has not changed the obligation of contractors to comply with the existing requirements or their responsibilities under the Atomic Energy Act and their contracts.

DOE recognizes, however, the legitimate concerns of its contractors for clarity and certainty concerning the requirements that will be the subject of PAAA civil penalties. DOE also has taken into account that most of the existing Nuclear Safety Requirements and contracts were adopted prior to the enactment of the PAAA. After careful consideration of the various factors, DOE is proposing in § 820.20(d) to refrain from imposing any PAAA civil penalties on the basis of DOE Nuclear Safety Requirements that are not: (1) Regulations set forth in the Code of Federal Regulations (CFR); (2) Compliance Orders issued by the Secretary; or (3) a program, plan or other provision required to implement a CFR regulation or a Compliance Order.

DOE is reviewing its Nuclear Safety Requirements and intends to propose regulations to revise and update these requirements where appropriate. The rulemaking process will permit contractors and other interested persons an opportunity to express their views on particular requirements and to clarify any ambiguity in the existing requirements.

Initially, DOE intends to set forth Nuclear Safety Requirements in 10 CFR

parts 820, 830, 834, 835. In addition to procedural rules, part 820 will contain substantive provisions, such as the information requirements in § 820.11. Part 830 will set forth substantive rules for the operation of DOE nuclear facilities. Parts 834 and 835 will set forth rules for the protection of the public, facility workers, and the environment from radiation.

In addition, in order to ensure protection of the public health and safety and the environment during the transition to this more formalized regulatory structure, DOE is proposing in subpart G of part 820 a specific regulatory provision concerning assessment of PAAA civil penalties for violations of technical specifications and operational safety requirements that apply to each reactor and non-reactor nuclear facility. Technical specifications and operational safety requirements form the basic conditions, limits and other requirements to control operation of DOE nuclear facilities such that the health and safety of workers and the public are protected. Existing technical specifications and operational safety requirements and any changes thereto have been developed by the contractors themselves and, in most cases, have been approved by DOE. To the extent existing technical specifications and operational safety requirements do not relate to nuclear safety, DOE will not assess PAAA civil penalties.

B. Relationship with Contractors

Several comments addressed the effect of the PAAA on the financial arrangements between DOE and its contractors. One comment noted that the introduction of PAAA penalties is a fundamental change in the contracting relationship and must be accompanied, if implemented, with changes to the fundamental M&O contract provisions, including increased fees. One comment stated that a contractor's liability should be proportionate to its potential benefit under the contract. Another stated that DOE should take into account that commercial, licensed nuclear facility operators may have a financial incentive to comply with applicable requirements, while a DOE M&O contractor has no similar financial incentive. This comment stated that any cost incurred by an M&O contractor to comply with Nuclear Safety Requirements should be reimbursed by the Government. Several comments stated that penalty assessments should be addressed in the award fee determination so that the maximum amount of penalties assessed would not exceed the amount of award fee paid.

DOE has carefully considered the relationship between enforcement of DOE Nuclear Safety Requirements and the financial arrangements between DOE and its contractors. DOE presented the award fee system to Congress as the means by which safety incentives were incorporated into DOE's major nuclear contracts, but Congress enacted the PAAA penalty provisions to provide, we believe, additional safety incentives for DOE contractors. See 134 Cong. Rec. 113, p. H6127, August 2, 1988. The obligation to comply with DOE Nuclear Safety Requirements and the liability for civil and criminal penalties for violations of these requirements are independent of any contractual arrangements and cannot be modified or eliminated by the operation of a contract. Therefore, DOE does not plan to make adjustments to a contractor's paid award fee or penalty assessments to prevent contractors from incurring losses through both an award fee reduction and a penalty assessment. Thus, it would be possible for a contractor to receive a low award fee because of generally poor safety performance and penalties for one or more specific violations of Nuclear Safety Requirements.

DOE recognizes that the PAAA imposes a greater risk of liability on its contractors. Accordingly, DOE recently issued a final rule amending its Acquisition Regulations to change the structure and amounts of fees to be paid its profit making and fee bearing M&O contractors. 56 FR 28099 (June 19, 1991). That rule provides an enhanced award fee structure with the potential for M&O contractors to earn higher fees, provided they comply with DOE Nuclear Safety Requirements.

One comment stated that DOE must establish a realistic baseline of the conditions that exist at each facility and identify when a facility is not currently in compliance with the appropriately identified regulatory requirements. On November 2, 1990, DOE requested each DOE contractor subject to PAAA penalties to: (1) Confirm that the contractor is in compliance with all current technical specifications and operational safety requirements, or (2) indicate that the contractor is in noncompliance with one or more technical specifications or operational safety requirements, identifying what corrective action the contractor intends to take and on what schedule, and/or (3) indicate that one or more technical specifications or operational safety requirements have been determined to be inapplicable to the facility operated by the contractor, and identify the

specific modifications to the technical specifications or operational safety requirements that are necessary and a schedule for making such modifications. DOE will consider this information when determining whether to assess PAAA civil penalties. Moreover, the November 2 request indicated that "no civil penalties will be imposed for instances of noncompliance identified in response to [that request] and for which prompt corrective action approved by the appropriate PSO is proposed and taken."

Other comments stated that: DOE should recognize its supervisory responsibility and leadership role in the decision-making at a DOE facility; DOE should recognize that the M&O contractors are subject to Government funding limitations relating to capital improvements, manpower, equipment, and time constraints; no contractor should be subject to enforcement action if the contractor had no responsibility for creating the violation or where DOE failed to fund the measures necessary for correction of the violation; the Secretary should take into account the statutorily authorized "ability to pay" and "effect on ability to continue to do business" in determining the amount of any civil penalty assessed against a contractor; DOE should take into account whether the contractor had control over the events which led to the violation, the predictability of the violation and the events leading to it, the precautions taken by the contractor (or lack of precautions) with respect to the activity leading to the violation, whether the contractor knew or should have known that the action being undertaken constituted a violation and was reasonably preventable by the contractor, the extent of management controls, and whether there has been a breakdown of management controls. All of these concerns have been addressed in the proposed General Statement of Enforcement Policy, appendix to part 820.

C. Treatment of Nonprofit Educational Institutions

The PAAA authorizes the Secretary to determine by rule whether nonprofit educational institutions should receive automatic remission of PAAA civil penalties. Most of the comments on this issue urged that the Secretary exclude from civil penalties, or provide automatic remission of any civil penalties to, nonprofit educational institutions, and their subcontractors and suppliers. Only one comment expressed the view that neither "certain persons" (listed in the statute as exempt from civil penalties), 42 U.S.C. 2282a(d),

nor educational institutions, (to whom the Secretary may, by statute, grant automatic remission of civil penalties, 42 U.S.C. 2282(b)(2)), should be exempt from the civil penalties of the PAAA, "because the financial risk should be the same for all M&O contractors."

As discussed below, DOE is proposing in § 820.20(c) that all nonprofit educational institutions should receive automatic remission of PAAA civil penalties, and that nonprofit educational institutions that are subcontractors and suppliers to other DOE contractors also receive automatic remission. DOE recognizes that the contractors that are statutorily exempt from PAAA civil penalties are nonprofit educational institutions except for one, which is a for-profit corporation operating on a not-for-profit basis for DOE (American Telephone and Telegraph Company and its subsidiaries operating Sandia National Laboratory). In the interest of fairness, DOE believes that all nonprofit educational institutions should similarly be free from the financial burden of PAAA civil penalties.

DOE emphasizes that neither the exemption from nor the automatic remission of PAAA civil penalties relieves any person from the obligation to comply with DOE Nuclear Safety Requirements. DOE intends to investigate, issue Notices of Violation, and take all other appropriate action with respect to violations of DOE Nuclear Safety Requirements by persons granted either an exemption from or a remission of PAAA civil penalties.

D. Proposed Enforcement Policy

In the NOI, DOE discussed three alternatives for a General Statement of Enforcement Policy that would inform DOE contractors, subcontractors and suppliers how DOE plans to exercise its enforcement discretion with respect to PAAA civil penalties. The NOI indicated the preferred option was to adapt the NRC policy statement on its enforcement activities to DOE's needs.

Two comments urged that DOE adopt a simplified multi-level penalty system (alternative 2), which takes into account DOE's unique situation rather than simply transferring wholesale the enforcement policies of any other agency, such as the NRC. An opposing view was expressed by one comment which stated that adopting a simplified multilevel penalty system would not afford the flexibility that the PAAA authorizes for the determination of the amount of the penalty to be assessed. Another comment stated that none of the three enforcement policy alternatives set forth in the NOI are adequate and that DOE should adopt an

enforcement policy tailored to the needs of DOE, utilizing, where appropriate, the best features of other agency enforcement policies. Most comments on this issue rejected alternative 3 which would impose penalties that relate directly to the cost to the Government of nuclear safety violations, or require the contractor to take corrective actions at its own expense.

DOE has decided to propose an enforcement policy based on the system used by the NRC, modified to reflect DOE's special circumstances. In general, the proposed enforcement policy would implement PAAA civil penalties on the basis of the severity of a violation, taking into account any relevant mitigating factors, or factors suggesting that escalation of the base civil penalty is appropriate.

III. Proposal

DOE is proposing procedural rules that are intended to be an important part of the framework through which DOE deals with its contractors and other persons to ensure its nuclear facilities are operated in a manner that protects the public health and safety, the environment and facility workers. In particular, the proposed procedural rules would be used to determine whether to impose the civil penalties authorized by the PAAA, and if so, what the magnitude of the civil penalties should be.

The proposed procedural rules would be part 820 of title 10 of the Code of Federal Regulations. Proposed part 820 consists of six subparts and an appendix. Proposed subpart A sets forth rules of general applicability. Proposed subpart B deals with enforcement proceedings, including the assessment of civil penalties. Proposed subpart C provides for the issuance of Compliance Orders. Proposed subpart D provides for interpretations and rulings. Proposed subpart E provides for granting exemption relief. Proposed subpart F sets forth the procedure for referring criminal violations to the Attorney General. Proposed subpart G would codify the requirement that all DOE contractors must comply with applicable technical specifications and operational safety requirements. Proposed appendix 1 sets forth the General Statement of Enforcement Policy.

A. Subpart A

1. Purpose and Scope.

Proposed § 820.1 describes the scope of the procedural rules. Proposed paragraph (a) makes clear the scope is broad enough to cover all persons

subject to DOE's jurisdiction. The applicability of the proposed procedural rules, as well as the proposed Nuclear Safety Requirements in parts 830, 834 and 835, is neither dependent on any contractual term or condition nor modifiable by any contractual term or condition. Limitations on the assessment of PAAA civil penalties under the proposed rules are set forth in the scope paragraph of proposed subpart B.

2. Definitions

Proposed § 820.2 contains definitions for many of the terms used in the proposed rules. To a large extent, these definitions are self-explanatory. There are several items in the definitions, however, which should be noted.

The proposed definitions of the "Secretary", the "General Counsel", and the "Director" indicate these terms also include any person to whom the identified official has delegated a particular function; provided that, a function cannot be delegated in a manner that violates the requirement in proposed § 820.3 concerning the separation of functions. Thus, the Secretary could delegate the handling of many of the administrative functions assigned him under the proposed rules, such as selection of an administrative law judge to serve as the Presiding Officer in a PAAA adjudication. In addition, the proposed definition of the Director indicates that the functions assigned to the Director would be assigned to the Deputy Assistant Secretary for Naval Reactors with respect to matters relating to Naval nuclear propulsion.

The proposed definition of "DOE Official" is used to designate the person in charge of an action under the proposed rules. For example, the term "DOE Official" is used in proposed § 820.09 to indicate the authority in that section could be exercised by whomever is in charge of a particular action, such as the Director with respect to an investigation or the General Counsel with respect to an interpretation.

The proposed definition of "Presiding Officer" describes the role of the administrative law judge who is in charge of a PAAA adjudication. As the DOE Official in charge of the adjudication, a Presiding Officer would be granted broad authority to take all actions necessary or appropriate to conduct a fair and impartial adjudication, to elicit all the facts fully, to adjudicate all issues, and to avoid delays. Among his powers, the Presiding Officer could (1) establish a schedule, (2) require attendance at conferences to settle, simplify, or expedite an enforcement proceeding, (3) rule upon

motions, requests, offers of proof, and procedural questions, and issue all necessary orders, (4) exercise all the evidentiary measures in proposed § 820.09, (5) admit or exclude evidence, and (6) decide all questions of fact, law, or discretion. A Presiding Officer, however, could not consider the validity of a regulation or interpretation issued by DOE.

The proposed definition of "Department" and "DOE" indicate these terms are intended to include any of the predecessors of the Department of Energy.

The proposed definition of "DOE Nuclear Safety Requirements" is written broadly to encompass all existing and future rules, regulations, and orders which pertain to matters of nuclear safety in connection with DOE's nuclear activities, including any DOE Directive or other order issued without notice and comment and any program, plan or other provision intended to implement a rule, regulation, order or DOE's responsibilities under the Atomic Energy Act or any other statute that relates to DOE nuclear activities. For example, technical specifications would constitute Nuclear Safety Requirements. DOE Nuclear Safety Requirements also would include any regulations DOE might propose to set forth or revise an existing Nuclear Safety Requirement or to adopt a new requirement. DOE Nuclear Safety Requirements also would include any Compliance Order issued pursuant to proposed Subpart D. As discussed previously, even though the proposed definition is broad enough to encompass all requirements that contribute to the protection of the public health and safety, the environment, and facility workers, DOE intends to assess civil penalties only for violations of those Nuclear Safety Requirements set forth in proposed § 820.20(d), that is, (1) regulations set forth in the CFR, (2) Compliance Orders, and (3) programs, plans or other provisions that implement these regulations or orders.

The proposed definition of "remedy" indicates DOE has the authority to take whatever action is necessary or appropriate to protect the public health and safety and the environment. DOE anticipates the issuance of Notices of Violation and the assessment of the civil penalties authorized by the PAAA would be primary remedies for violations of DOE Nuclear Safety Requirements. A remedy, however, could mandate the taking or cessation of any action necessary or appropriate to achieve compliance with the Atomic Energy Act, any other statutory provision that relates to DOE nuclear activities and for which DOE is

responsible, or a DOE Nuclear Safety Requirement. Likewise, the remedy could be the modification, suspension, or termination of a contract. Remedies under part 820 are not intended to exclude any other remedies that might be available to DOE. For example, in addition to a part 820 remedy, DOE might pursue a contractual remedy to the extent a violation of a Nuclear Safety Requirement also represents a violation of the terms and conditions of a contract.

The proposed definition of "PAAA adjudication" is used to denote that portion of the enforcement process which commences when a respondent requests an on-the-record adjudication of an assessment of a civil penalty and terminates when the Presiding Officer files an initial decision. An administrative law judge would preside over a PAAA adjudication of which the sole purpose would be to determine whether there was a basis for the assessment of a civil penalty and, if so, whether an appropriate amount was assessed.

The proposed definition of "person" is the same as the definition in the Atomic Energy Act. When used in connection with the assessment of PAAA civil penalties, person would refer only to DOE contractors and their subcontractors and suppliers since PAAA civil penalties can be assessed only against these persons. The definition of person, however, would encompass affiliated entities. Thus, the parent organization of a contractor would be responsible for any penalty assessed against the contractor.

The proposed definition of "filing" makes clear that documents filed in a proceeding under proposed part 820 must be provided to the Hearing Clerk and served on the person to whom the document is addressed. No computation of any time period would begin until both elements of filing are complied with.

3. Separation of Functions

Proposed § 820.3 would create a clear separation between the investigative/prosecutorial function and the decision-making function when a respondent requests an on-the-record adjudication of the assessment of a civil penalty. The Director would be the person responsible for investigating and prosecuting administratively possible violations of DOE Nuclear Safety Requirements. Once the formal, on-the-record adjudication of the assessment of a civil penalty commences, the Director would be prohibited from any *ex parte* communication with any person who

might make a decision on the basis of the record in the case or any person who might advise the decision maker. The Presiding Officer during a PAAA adjudication would be an administrative law judge who would be prohibited from any activity, association, or consultation inconsistent with his decision-making function.

4. Conflict of Interest

Proposed § 820.4 would prohibit a DOE Official from participating in any action where he had a financial interest or any other relationship that would make his participation inappropriate. It also would permit a person with an interest in an action to request the General Counsel to disqualify a DOE Official from participation in an action because of a conflict of interest. In the case of a PAAA adjudication, a motion would be filed with the Presiding Officer. Any request to disqualify would have to be accompanied by an affidavit setting forth the alleged conflict of interest.

5. Service

Proposed § 820.05 discusses service under the proposed rules. In general, service could be made either by personal delivery or by mail. The DOE Official could authorize or require other means, including express mail. Proof of service could be shown by the written acknowledgement of the person served, a certificate of service, or an affidavit of the server.

The proposed section makes clear that a document would have to be served when it was filed with the Hearing Clerk. In a PAAA adjudication, any document filed with the Hearing Clerk would also have to be served on the participants in the proceeding. In situations where the filed document was addressed to the DOE Official in a proceeding, the act of filing would constitute service on the DOE Official and the Hearing Clerk would be responsible for providing the DOE Official with a copy of the filed document.

6. Computation and Extension of Time

Proposed § 820.6 discusses time periods under the proposed rules. In computing time periods, the day on which a period commenced would not be included. Saturdays, Sundays, and Federal legal holidays would be included, except where the period would expire on a Saturday, Sunday or Federal legal holiday in which case the period would be extended to include the next business day. When service was made by mail, five days would be added to the time period. When service was made by

express mail, two days would be added. The DOE Official could extend any time period.

No time period that commenced with the filing of a document would commence until service was complete on the addressee of the document. In those cases where a document was deemed filed, it also would be deemed served at the same time. For example, proposed § 820.37 provides that an initial order would be deemed filed as a final order thirty days after the initial order was filed and that civil penalties must be paid within thirty days after the final order was filed. If an initial order was filed and served on the addressee by mail, then thirty-five days later the initial order would be deemed filed as a final order. Since service of the final order is deemed to occur at the same time the final order was deemed filed, then thirty days later the civil penalties would have to be paid.

7. Questions of Policy and Law

Proposed § 820.8 discusses the certification of questions of policy and law. In general, there would be no administrative appeal of rulings, orders, and other decisions by a DOE Official during an action under the proposed rules. A Presiding Officer, however, could determine that there existed an important question of law or policy for which there was substantial grounds for difference of opinion and that an immediate decision would materially advance a PAAA Adjudication or that a decision at the conclusion of the proceeding would be inadequate or ineffective. In such a case, the Presiding Officer could certify a question to the Secretary. Within thirty days of the certification, the Secretary would issue an order discussing the certified question or dismissing the certification. Ordinarily the order would be based on the certification by the Presiding Officer, but additional information and briefs could be requested.

8. Evidentiary Procedures

Proposed § 820.8 would give a DOE Official broad authority to gather information in connection with an action under the proposed rules. The DOE Official could sign, issue and serve subpoenas and Special Report Orders (SRO's), administer oaths, take sworn testimony, compel attendance of and sequester witnesses, and compel production of any records, letters, memoranda, or other relevant documents and of tangible evidence.

9. Special Assistant

Proposed § 820.9 recognizes the highly technical nature of actions under the

proposed rules and would provide a DOE Official with the option of using a special assistant to assist in explaining, understanding, developing, and resolving technical issues that arise in connection with an action under the proposed rules. The special assistant could brief the DOE Official on technical matters, question witnesses, or serve as a special master to hear presentations by the parties on technical issues. Special assistants could be employees of DOE, the Nuclear Regulatory Commission or other governmental agencies, or consultants from the private sector. Special assistants would be subject to the rule against conflict of interest.

10. Hearing Clerk

Proposed § 820.10 describes the role of the Hearing Clerk, an office which DOE intends to establish to handle many of the administrative matters in connection with proceedings under the proposed rules. The Hearing Clerk would be responsible for maintaining a docket for each enforcement action, commencing with the filing of a Preliminary Notice of Violation. The Hearing Clerk also would maintain separate dockets for the interpretations issued pursuant to subpart D and the exemptions issued pursuant to subpart E. The Hearing Clerk would operate a public reading room where documents in a docket could be examined and copied.

11. Information Requirements

Proposed § 820.11 sets forth the obligations of those persons who provide information to DOE or maintain information for inspection by DOE. All information would have to be provided and maintained in a complete and accurate manner that would permit DOE to carry out its responsibilities. Moreover, the concealment or destruction of any information concerning a violation of a DOE Nuclear Safety Requirement, the Atomic Energy Act or any other statute relating to a DOE nuclear activity would be prohibited. Concealment would include the act of knowingly and intentionally not informing DOE of significant information concerning a violation.

12. Classified, Confidential, or Controlled Information

Proposed § 820.12 makes clear DOE's authority to protect classified, confidential, or controlled material. This authority would be exercised in a manner that minimized interference with the operation of the proposed procedures. Proposed section 820.12 also would reaffirm the obligations of

persons to protect classified confidential, or controlled information.

B. Subpart B—Enforcement Process

1. Scope

Proposed § 820.20 sets forth the purpose and scope of the enforcement process. The enforcement process would be used to investigate and determine whether a violation had occurred or was continuing to occur, to assure violations were rectified, to prevent and deter future violations, and to adjudicate the assessment of a civil penalty. The enforcement process could involve several different stages. The first stage normally would be an investigation, inquiry or inspection by the Director regarding a potential or alleged violation. The second stage would be an enforcement action by the Director in which he determined that a violation had occurred and proposed an appropriate remedy. The third stage, if requested by the respondent, would be adjudication by a Presiding Officer regarding the assessment of a civil penalty. The final stage would be the issuance of a final order by the Secretary.

Proposed paragraphs (b), (c), and (d) set forth limitations on the assessment of PAAA civil penalties in the enforcement process. The PAAA authorizes the assessment of civil penalties against DOE contractors, and the subcontractors and the suppliers thereto, who are indemnified by DOE for public liability for a nuclear incident pursuant to section 170d of the AEA. Proposed paragraph (b) would exempt current contractors at certain DOE laboratories from the assessment of civil penalties under the procedural rules. Proposed paragraph (c) would provide for the automatic remission of any civil penalties assessed against a nonprofit educational institution under the procedural rules. The PAAA mandates the exemption in proposed paragraph (b) and requires DOE to consider the automatic remission in proposed paragraph (c). Since all but one of the contractors statutorily exempted by the PAAA are nonprofit educational institutions, DOE believes fairness dictates similar treatment for all other nonprofit educational institutions. Proposed paragraph (d) would provide PAAA civil penalties could be assessed only for violations of DOE Nuclear Safety Requirements which were (1) regulations set forth in the Code of Federal Regulations, (2) Compliance Orders issued pursuant to proposed subpart D, and (3) programs, plans, or other provisions required to implement a CFR regulation or Compliance Order.

Technical specifications and operational safety requirements would be identified explicitly as Nuclear Safety Requirements by proposed subpart G of part 820 and, thus, would be covered by proposed paragraph (d). Proposed paragraphs (b), (c) and (d) only relate to the assessment of civil penalties and do not limit criminal penalties or other actions under the proposed procedural rules.

2. Investigations

Proposed § 820.21 would grant the Director broad investigatory power, including authority to issue subpoenas and employ other evidentiary procedures under proposed § 820.09. DOE intends to investigate vigorously those situations that might have been or might be violations of DOE Nuclear Safety Requirements. The Director could initiate an investigation *sua sponte* or upon a request from any person. The Director could close an investigation at any time without foreclosing further investigation. In conducting an investigation, the Director would have to disclose its general nature and purpose to any person who was required to testify or otherwise provide evidentiary material. A person would have the right to provide the Director with documents, statements of facts, memorandum of law, or other explanatory material at any time during an investigation.

3. Informal Conference

Proposed § 820.22 would permit the Director, *sua sponte* or upon request of a person against whom enforcement action was being considered to convene an informal conference to discuss the preliminary conclusions of an investigation, inquiry or inspection concerning the existence of violations of DOE Nuclear Safety Requirements, their significance and cause, any mitigating or aggravating circumstances, and any other useful information. The Director could compel attendance at an informal conference. An informal conference would not normally be open to the public and there would be no transcript.

4. Consent Order

Proposed § 820.23 describes the settlement process. DOE encourages the settlement of enforcement proceedings at any time. To this end, the Director and a respondent or a person against whom enforcement action was being contemplated or had been initiated could meet at any time to discuss settlement. Such a meeting would not be open to the public and there would be no transcript. If a settlement was agreed upon, it would be set forth in a Consent Order signed by the Director and the

respondent or the person under investigation and filed with the Hearing Clerk. The Consent Order would become a Final Order thirty days after it was filed unless the Secretary filed a rejection or a modified Consent Order. A modified Consent Order would become a Final Order if it was signed by the Director and the respondent or the person under investigation within fifteen days of its filing.

5. Preliminary Notice of Violation

Proposed § 820.24 would authorize the Director to file a Preliminary Notice of Violation when he had reason to believe a person had violated or was continuing to violate a DOE Nuclear Safety Requirement. A Preliminary Notice of Violation would have to (1) specify the Nuclear Safety Requirement to which the violation related, (2) state the basis for the belief a violation had occurred or was continuing to occur, (3) set forth any proposed remedy, including the amount of any civil penalty, and (4) explain the reasoning behind any proposed remedy.

A person would have to reply to a Preliminary Notice of Violation within fifteen days of its filing. The reply would have to be in writing, describe the circumstances surrounding the alleged violation to the best of the person's knowledge, indicate the extent to which the person had or had not violated DOE Nuclear Safety Requirements, discuss any actions that had been, were being, or would be taken to correct the violation to the extent it was admitted, and answer fully any questions set forth in the notice.

The respondent to a Preliminary Notice of Violation would have the option to avoid further proceedings by agreeing to comply with the proposed remedy and waiving any rights to challenge the Notice or the remedy. If the respondent elected this option, the Preliminary Notice of Violation, including the proposed remedy, would be deemed a Final Order.

6. Final Notice of Violation

Proposed § 820.25 would authorize the Director to file a Final Notice of Violation when he determined a person had violated, or was continuing to violate a DOE Nuclear Safety Requirement. A Final Notice of Violation would have to (1) specify the Nuclear Safety Requirement to which the violation related, (2) state the basis for the determination a violation had occurred, or was continuing to occur, (3) set forth any remedy, including the amount of any proposed civil penalty, (4) explain the reasoning behind any remedy, and (5), if the Final Notice of

Violation assessed a civil penalty, inform the respondent of his right (A) to waive further proceedings and pay the civil penalty within sixty days, (B) to request an on-the-record adjudication of the assessment, or (C) to seek judicial review of the assessment.

If a Final Notice of Violation did not assess a civil penalty, it would become a Final Order 15 days after its filing unless the Secretary filed an order which modified the Final Notice of Violation. If the Final Notice of Violation assessed a civil penalty and the respondent decided to waive further proceedings or seek judicial review of the assessment, it would become a Final Order upon the filing of the waiver or the notice of intent to seek judicial review. If the Final Notice of Violation assessed a civil penalty and the respondent requested an on-the-record adjudication, the filing of the request would initiate a PAAA adjudication to which the Director would become the party responsible for prosecuting the assessment of the civil penalty.

7. PAAA Adjudication

Proposed § 820.26 discusses the initiation of a PAAA Adjudication and the appointment by the Secretary of an administrative law judge to serve as the Presiding Officer. The filing of a request for an on-the-record adjudication would commence a PAAA adjudication and the compilation of the record on which the Secretary would decide whether to assess a civil penalty. The Final Notice of Violation would become the first document in the record and could serve as the basis for a decision even if no other documents were filed as part of the record. When a request for an on-the-record adjudication was filed with the Hearing Clerk, he would notify the Secretary who would appoint an Administrative Law Judge to serve as the Presiding Officer during a PAAA adjudication.

8. Answer

Proposed § 820.27 would require the respondent to file an Answer to a Final Notice of Violation if he elected an on-the-record adjudication. The Answer could (1) contest any material fact upon which the civil penalty was based, (2) contend the civil penalty was inappropriate, or (3) contend the respondent was entitled to a judgment as a matter of law. The Answer could admit, deny, or explain each of the factual allegations in the Notice. If the respondent had no knowledge of a particular allegation, he would have to so state and the allegation would be deemed denied. If the respondent failed to respond to a particular allegation, it

would be deemed admitted. The Answer also would have to state (1) any defenses the respondent intended to assert, and (2) any facts or issues the respondent intended to contest. The Answer and the request for an on-the-record adjudication could be combined in one document.

9. Prehearing Actions

Proposed § 820.28 discusses the steps in a PAAA adjudication after the filing of an Answer. When an Answer was filed, the Hearing Clerk would be required to forward to the Presiding Officer the Final Notice of Violation, the Answer, and any other documents already filed in the enforcement proceeding. As soon as practicable thereafter, the Presiding Officer would notify the parties when and where any prehearing conference or other prehearing measure would take place. In most proceedings, the prehearing conference would be the only formal prehearing measure. The Presiding Officer could direct the parties to attend the prehearing conference and to consider, in his discretion (1) the settlement of the proceeding, (2) the simplification of issues, (3) the stipulation of facts not in dispute, (4) the necessity or desirability of amendments to pleadings, (5) the exchange of exhibits, (6) the limitation of the number of witnesses, (7) the time and place for the hearing, and (8) any other measures to expedite the adjudication. No later than five days before the prehearing conference, each party would have to provide the Presiding Officer and the other parties (1) the names of the witnesses the party intended to call, (2) a brief narrative of their expected testimony, and (3) copies of all documents and exhibits the party intended to introduce into evidence. No witness, testimony, or evidence not identified prior to the prehearing conference could be admissible in the hearing unless the Presiding Officer found there existed a good reason why the required identification was not provided prior to the prehearing and the admission of the witness, testimony, or evidence was necessary for a fair hearing. No discovery measures other than the exchange of witnesses, testimony, and evidence prior to the prehearing would be permitted unless the Presiding Officer ordered additional discovery measures. The party requesting the additional discovery measure would have the burden of demonstrating the need and usefulness of the discovery measure. In the event the Presiding Officer decided a prehearing conference was unnecessary or impractical, he could require a

telephonic conference or other measure to accomplish the objectives of the prehearing conference.

10. Hearing

Proposed § 820.29 discusses the conduct of a hearing. In general, the Federal Rules of Evidence would govern conduct during a hearing. The Presiding Officer would have the discretion, however, to modify these Rules to facilitate the hearing. Proposed § 820.29 would state the general policy of admitting all evidence that was not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value. Within this general policy, the Presiding Officer could permit the introduction and consideration of evidence that might be barred by certain evidentiary rules, for example the "Hearsay Rule", or could act to limit the scope and length of evidence and to protect confidential, classified, or controlled information.

Unlike the Federal Rules of Evidence, proposed § 820.29 would prohibit direct oral testimony. Except as permitted by the Presiding Officer, all direct testimony would have to be set forth in a verified statement which must be received by the Presiding Officer and other parties no less than ten days prior to its presentation at the hearing. The witness who prepared the direct testimony would have to be available at the hearing for oral cross-examination. The use of written direct testimony is intended to expedite the hearing and to promote a full disclosure of the facts.

Proposed § 820.29 also discusses burden of proof. The Director would have the burden of establishing a prima facie case that a violation had occurred or was continuing to occur and that the remedy was appropriate. Thereafter, the respondent would have the burden of establishing any defense. The Presiding Officer would decide each matter in dispute upon a preponderance of the evidence.

11. Post-hearing Filings

Proposed § 820.30 would provide for filings after the close of a hearing. Except where the Presiding Officer had established a different schedule, within fifteen days of the filing of the hearing transcript, parties could file proposed findings of fact, conclusions of law, and a proposed order, together with briefs in support thereof. Parties could file reply briefs within thirty days of the filing of the hearing transcript. All filings would have to contain adequate references to the record and authorities relied upon.

12. Initial Decision

Proposed § 820.31 would provide for the Presiding Officer to file an Initial Decision as soon as practicable after the period for filing reply briefs. The Initial Decision would contain findings of fact, conclusions regarding all material issues of law or discretion, any remedy, and a proposed order. The Initial Decision would discuss the basis for any civil penalty and the extent to which it considered the criteria set forth in the General Statement of Enforcement Policy (Proposed appendix to part 820) in determining the amount of any civil penalty.

A party could file comments on an Initial Decision within fifteen days of its filing. The comments should indicate clearly and specifically what part, if any, of the Initial Decision should be modified and the reason for the modification. The filing of comments would constitute a request to the Secretary to reconsider the Initial Decision before it became a Final Order. This would be the only administrative appeal of the Presiding Officer's decision.

The filing of an Initial Decision would complete the PAAA adjudication and the role of the Presiding Officer unless the Secretary remanded all or part of the matter for further adjudication. After the filing of an Initial Decision, the Secretary would become the DOE Official in charge of the enforcement proceeding while he considered the record.

13. Final Order

Proposed § 820.32 sets forth the process by which an Initial Decision would become a Final Order. An Initial Decision would be deemed to be filed as a Final Order thirty days after the filing of the Initial Decision, unless the Secretary filed a Final Order that modified the Initial Decision or filed a Notice of Review. If the Secretary filed a Notice of Review, he would file a Final Order as soon as practicable. Prior to the filing of a Final Order, the Secretary could order additional procedures, including the submission of briefs, reply briefs, or any other document or information, or he could remand the matter for further proceedings.

14. Default Order

Proposed § 820.33 would provide for the filing of a Default Order, which would constitute an Initial Decision that could become a Final Order pursuant to proposed § 820.32. A party would be in default if it failed to comply with a provision of the proposed rules or an order of the Presiding Officer. Upon

motion by another party or *sua sponte*, the Presiding Officer could file a Default Order against the party in default. When a Presiding Officer acted *sua sponte*, he would have to file a Notice of Intent to file a Default Order. The party in default would have ten days to answer the motion or the Notice of Intent. After the ten day period, the Presiding Officer could file a Default Order, which would constitute an Initial Decision that could become a Final Order pursuant to the provision of proposed § 820.32. A Default Order against the Director would result in the dismissal of the enforcement proceeding with prejudice. A Default Order against a respondent would constitute, for purposes of the pending proceeding only, a finding of all facts in the Final Notice of Violation.

15. Accelerated Decision

Proposed § 820.34 would permit the Presiding Officer, upon motion by a party or *sua sponte*, to file an Accelerated Decision in favor of the Director or the respondent at any time during a PAAA adjudication. The Presiding Officer could file an Accelerated Decision only if he determined that no genuine issue of material fact existed and a party was entitled to judgment as a matter of law, as to all or part of the issues being adjudicated. If an Accelerated Decision related to all the issues and claims in the proceeding, it would constitute an Initial Decision that could become a Final Order in thirty days pursuant to the provisions of proposed § 820.32. If an Accelerated Decision related to less than all issues or claims in the proceeding, the enforcement proceeding would continue with respect to the other issues and claims.

16. Ex Parte Communications

Proposed § 820.35 would prohibit any *ex parte* communications during a PAAA adjudication under the proposed rules. In the event this prohibition was violated, all parties would have to be advised of the *ex parte* communication and given an opportunity to comment. The proposed section makes clear this prohibition is not intended to prevent the Director from communicating with other DOE employees prior to the commencement of a PAAA adjudication. Thus, the Secretary could oversee the investigation phase of an enforcement proceeding, including the decision to issue a Final Notice of Violation. Thereafter, the Director could not communicate with the Secretary, but would be required to exercise his delegated authority in accordance with the policies of the Secretary.

17. Filing and Service of Documents

Proposed § 820.36 discusses the requirements concerning the filing and service of documents in an enforcement action. Commencing with the Preliminary Notice of Violation, the original and three copies of any notice, ruling, order, motion, comment, answer, communication, or other document which relates to an enforcement action would have to be filed with the Hearing Clerk. The only specific format requirement for documents in an enforcement action would be (1) a caption on the first page which identified the respondent and the Docket Number and (2) the signature of the respondent or his attorney on the original. In addition, the initial document filed by a respondent would contain his name, address, and telephone number. Any change in this information would have to be communicated promptly to the Hearing Clerk and the other participants in the proceeding. No document would be considered part of the record of a PAAA adjudication unless it was filed with the Hearing Clerk.

18. Parties

Proposed § 820.37 would make the Director and the respondent the only mandatory parties to a PAAA adjudication. The Presiding Officer, however, would have the discretion to permit interventions by persons who might be liable if a civil penalty were assessed. Any other person could file a motion to participate in the adjudication as *amicus curiae*.

19. Consolidation and Severance

Proposed § 820.38 would provide the Presiding Officer with the authority to order the consolidation of two or more PAAA adjudications under the proposed rules. Consolidation would be appropriate if (1) there existed common parties or common questions of law or fact, (2) consolidation would expedite or simplify the adjudication and (3) the right of the parties would not be affected adversely. The Presiding Officer also would have the authority to sever a PAAA adjudication with respect to any or all parties or issues.

20. Motions

Proposed § 820.38 discusses motions to the Presiding Officer in a PAAA adjudication under the proposed rules. In general, motions should (1) be filed with the Hearing Clerk (2) be served on all other participants, (3) state the relief sought and the reasons therefor, and (4) be accompanied by any affidavit, certificate, evidence, or legal

memorandum that supports the motion. Another party would have to respond to a motion within ten days after its filing. This response should be accompanied by any affidavit, certificate, evidence or legal memorandum that supports the party's position. The Presiding Officer would rule on a motion as soon as practicable after the time period for responses has expired. The ruling of the Presiding Officer would be final and not subject to appeal. In addition to written motions, the Presiding Officer could permit an oral motion during a hearing or conference and could rule on the oral motion after permitting the other parties an opportunity to state their views.

C. Subpart C—Compliance Orders

1. Scope

Proposed § 820.40 discusses the purpose and scope of Compliance Orders. Section 161 of the Atomic Energy Act grants the Secretary broad authority to order those actions he deems necessary to protect the public, facility workers and the environment from any injury because of activity under that Act. Proposed subpart C is intended to make clear that no provision of proposed part 820 would limit the Secretary's power under the Atomic Energy Act or any other statute to order immediately any action or remedy he deems necessary. Moreover, Compliance Orders would not be subject to the DOE Acquisition Regulations or required any authorization by a contracting officer.

2. Compliance Order

Proposed § 820.41 sets forth the authority of the Secretary to issue a Compliance Order to any person in connection with any DOE nuclear activity. The Compliance Order would state the action or remedy which the Secretary deemed necessary and the reasons for the action or remedy.

3. Final Order

Proposed § 820.42 would provide that a Compliance Order would be a Final Order which constituted a DOE Nuclear Safety Requirement. If a person did not comply with a Compliance Order, a Preliminary Notice of Violation could be filed or an injunction could be requested under the Atomic Energy Act.

4. Appeal

Proposed § 820.43 would grant the recipient of a Compliance Order the right to request the Secretary to rescind or modify the Compliance Order within 15 days of its issuance. A Compliance Order would be effective immediately upon issuance and the filing of a request

under this section would not stay the effectiveness of such an Order. The Secretary, however, could issue a Compliance Order that provided for an effective date after the issuance date and for a longer period to appeal the terms of the Order.

D. Subpart D—Interpretations

1. Scope

Proposed § 820.50 discusses the purpose and scope of interpretations. Interpretations would be the only pronouncements by DOE concerning the meaning and legal effect of the Atomic Energy Act, any other statute relating to a DOE nuclear activity, or a DOE Nuclear Safety Requirement on which a person could rely. Any written or oral response by a DOE employee to any written or oral question involving an interpretation of a statute or a requirement which was not issued pursuant to this subpart would not be binding on DOE and would provide no basis for action inconsistent with a statutory provision or a requirement. This subpart is not intended to have any effect on any official pronouncement by another Federal agency concerning a specific statutory or regulatory provision for which that agency is responsible.

2. General Counsel

Proposed § 820.51 would designate the General Counsel as the DOE Official responsible for issuing interpretations. In general, interpretations would relate to an actual situation and could be relied upon only by the person to whom the interpretation was specifically addressed. The General Counsel would have the discretion, however, to issue rulings that would have general applicability and relate to a general factual pattern.

3. Procedures

Proposed § 820.52 would grant the General Counsel the discretionary authority to employ whatever procedures he deemed appropriate to evaluate the need for an interpretation and then to formulate the interpretation. For example, the General Counsel might issue an SRO to obtain more facts on a situation for which an interpretation was requested or he might request written comments on a proposed ruling. The General Counsel would have to file an interpretation with the Hearing Clerk.

E. Subpart E—Exemptions

1. Purpose and Scope

Proposed § 820.60 discusses the granting of exemption relief. In general, DOE Nuclear Safety Requirements should contain sufficient flexibility to

accommodate differences at individual DOE nuclear facilities, while still protecting the public health and safety, the environment and facility workers. DOE Nuclear Safety Requirements, however, might not anticipate every situation. Accordingly, situations could arise where compliance with a DOE Nuclear Safety Requirement would be inappropriate, impractical or impossible. Exemption relief in such situations might be appropriate if the relief would not be contrary to the intent of the DOE Nuclear Safety Requirement and would not endanger the environment or the health and safety of the public or facility workers.

Several sections of proposed parts 830, 834 and 835 would provide for programs, plans or other provisions to implement various regulatory requirements. These programs, plans and other provisions are intended to assist the achievement of these regulatory requirements by setting forth in detail the actions a person will take to comply with a requirement. As such, they might incorporate the suggested actions in the safety guide that related to a requirement or any other appropriate implementing action. They, however, are not intended and cannot be used to evade a regulatory requirement. Neither explicit language nor the lack of specificity in a program, plan or other provision can create an exemption to a regulatory requirement or relieve a person from the obligation to take necessary and appropriate actions to implement a requirement. Proposed subpart E is intended to be the sole means by which exemption relief would be granted.

2. Secretarial Officer

Proposed § 820.61 would place responsibility for granting exemption relief in the Secretarial Officer who had line authority for the activity to which the exemption relates. The Secretarial Officer responsible for environmental matters would grant exemption relief from the requirements in proposed parts 834 and 835 concerning the radiological protection of the public, facility workers, and the environment.

DOE intends to maintain strong central control of its nuclear activities and to eliminate inconsistent and conflicting regulatory regimes at different DOE nuclear facilities. Centralized responsibility for granting exemption relief is an essential component of DOE's goal of establishing a uniform regulatory framework for all its facilities. Persons at a facility should not decide what regulations will apply to that facility. Accordingly, the

authority to grant exemptions could not be delegated.

3. Criteria

Proposed § 820.62 discusses the criteria DOE will follow in determining whether exemption relief is appropriate. Relief could be granted only if relief was consistent with the purposes of the Atomic Energy Act and DOE Nuclear Safety Requirements, did not endanger the public health and safety, the environment, or facility workers, was consistent with the safe and efficient operation of a DOE nuclear facility, and was necessary because of special circumstances not contemplated when the DOE Nuclear Safety Requirement in question was promulgated. Examples of special circumstances would include situations where (1) application of the requirement would conflict with another DOE Nuclear Safety Requirement, (2) application of the requirement would not serve the underlying purposes of the requirement, or (3) exemption from the requirement would result in benefit to the public health and safety and the environment that compensated for any detriment that might result from the grant of the exemption relief.

4. Procedures

Proposed § 820.63 would permit the Secretarial Officer to utilize whatever procedures he found appropriate for determining whether to grant exemption relief. Proposed § 820.63 also would require the DOE Official to set forth in writing the reasons for granting or denying the exemption, and, if the exemption was granted, the terms of the exemption and the basis for the determination that the criteria in proposed § 820.62 had been satisfied. The Secretarial Officer would have to file his exemption decision with the Hearing Clerk.

F. Subpart F—Criminal Penalties

1. Scope

Proposed § 820.70 indicates the scope and purpose of proposed subpart F would be the establishment of procedures for dealing with criminal violations of the Atomic Energy Act and DOE Nuclear Safety Requirements.

2. Standard

Proposed § 820.71 would establish the standard for determining possible criminal violations to be whether a person had, by act or omission, violated, caused to be violated, attempted to violate, or conspired to violate any section of the Atomic Energy Act or a DOE Nuclear Safety Requirement. This proposed standard is intended to be

sufficiently broad to cover all potential criminal violations of the Atomic Energy Act.

3. Referral to the Attorney General

Proposed § 820.72 would provide for referring any potential criminal violation to the Attorney General for investigation or prosecution.

G. Subpart G—Enforcement of Technical Specifications and Operational Safety Requirements

1. Scope

Proposed § 821.81 makes clear that existing technical specifications and operational safety requirements are DOE Nuclear Safety Requirements.

2. General Rule

Proposed § 821.8 makes clear that a person must comply with technical specifications and operational safety requirements and that non-compliance could result in the assessment of a civil penalty under subpart B. Enforcement of technical specifications and operational safety requirements is intended to be a transitional measure for the period until the rules in part 830, especially those on technical safety requirements, become fully effective. DOE does not intend to assess civil penalties for violations of existing technical specifications or operational safety requirements that do not relate to nuclear safety.

IV. Procedural Requirements

A. Review Under Executive Order 12291

Executive Order 12291, entitled "Federal Regulations," requires that a regulatory impact analysis be prepared prior to the promulgation of a "major rule." The DOE has concluded that this action is not a "major rule" for purposes of the Executive Order because its promulgation will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets.

Pursuant to section 3(c) of E.O. 12291, these rules were submitted to the Director of the Office of Management and Budget. The Director has concluded his review under that Executive Order.

B. Review Under the Regulatory Flexibility Act

These proposed rules were reviewed under the Regulatory Flexibility Act of

1980, Public Law 96-354, which requires preparation of a regulatory flexibility analysis for any rule that is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this regulation will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

The proposed information and reporting requirements are not substantially different from existing reporting requirements contained in DOE contracts with DOE prime contractors covered by these rules. DOE will submit any new information collection requests concerning these proposed rules to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501.1 *et seq.*, and the procedures implementing that Act, 5 CFR part 1320.

D. Review Under the National Environmental Policy Act

The DOE has reviewed the promulgation of these rules with respect to its responsibilities under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality regulations for implementing NEPA (40 CFR Parts 1500-1508). The proposed rulemaking specifies procedures and standards for DOE enforcement actions under the PAAA. As noted in the CEQ regulations, major Federal actions "do not include bringing judicial or administrative civil or criminal enforcement actions" (40 CFR 1508.18(a)). Therefore, DOE has concluded that the proposed rulemaking does not represent a major Federal action with significant effects on the human environment within the meaning of NEPA and that no further review under NEPA is required.

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in

all decisions involved in promulgation and implementing a policy action.

Today's proposed rules, when finalized, will not have a substantial direct effect on the institutional interests or traditional functions of States.

V. Public Comments Procedures

A. Written Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the proposed rule set forth in this notice. Twenty copies of written comments should be submitted to the address indicated in the "ADDRESSES" section of this notice. All comments received will be available for public inspection in the DOE Freedom of Information Reading Room, room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Written comments received by February 3, 1992 will be assessed and considered prior to publication of the final rule. Any information that a commenter considers to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the appropriateness of confidential status for the information, and, to treat it in accordance with its determination. See 10 CFR 1004.11.

DOE is interested in comments concerning the potential costs and benefits of this regulation, either to the general public, DOE contractors, or DOE. DOE is particularly interested in comments that discuss whether or not DOE may be subjecting its contractors to additional costs that are not contemplated by existing contractual relations or the PAAA. Comments concerning this subject should address the specific nature and scope of the additional costs to which contractors would be subjected and explain why these concerns are not already addressed in the current contractual relationship or PAAA.

B. Public Hearing

Requests to speak at the hearing must be submitted to the address and by the time indicated in the "ADDRESSES" section of this notice. Requests for oral presentations should contain a telephone number where the requester may be contacted prior to the hearing. Speakers are requested to submit twenty copies of their statement to DOE at the hearing.

DOE reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures

governing the conduct of the hearing. The length of each presentation is limited to 10 minutes. The hearing begins at 9 a.m.

A DOE official will be designated to preside at the hearing. This will not be a judicial-type hearing. Questions may be asked only by those conducting the hearing. Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made available to the public. The entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection in the DOE Freedom of Information Reading Room, 1E-190, 1000 Independence Ave., SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Transcripts may be purchased from the hearing transcriber/reporter.

List of Subjects in 10 CFR Part 820

Government contracts, DOE contracts, nuclear safety, civil penalty, criminal penalty.

For the reasons set out in this preamble, chapter III of title 10 of the Code of Federal Regulations is proposed to be amended by adding a new part 820 as set forth below.

Issued in Washington, DC on November 20, 1991.

John C. Tuck,
Under Secretary.

A new part 820 is added to read as follows:

PART 820—PROCEDURAL RULES

Subpart A—General

- Sec.
- 820.1 Purpose and scope.
- 820.2 Definitions.
- 820.3 Separation of functions.
- 820.4 Conflict of interest.
- 820.5 Service.
- 820.6 Computation and extension of time.
- 820.7 Questions of policy or law.
- 820.8 Evidentiary matters.
- 820.9 Special assistant.
- 820.10 Office of the Hearing Clerk.
- 820.11 Information requirements.
- 820.12 Classified confidential, and controlled information.

Subpart B—Enforcement Process

- 820.20 Purpose and scope.
- 820.21 Investigations and inspections.
- 820.22 Informal conference.
- 820.23 Consent order.
- 820.24 Preliminary notice of violation.
- 820.25 Final notice of violation.
- 820.26 PAAA Adjudication.
- 820.27 Answer.
- 820.28 Prehearing actions.
- 820.29 Hearing.
- 820.30 Post-hearing filings.

- 820.31 Initial decision.
- 820.32 Final order.
- 820.33 Default order.
- 820.34 Accelerated decision.
- 820.35 *Ex Parte* discussions.
- 820.36 Filing, form, and service of documents.
- 820.37 Participation in a PAAA adjudication.
- 820.38 Consolidation and severance.
- 820.39 Motions.

Subpart C—Compliance Orders

- 820.40 Purpose and scope.
- 820.41 Compliance order.
- 820.42 Final order.
- 820.43 Appeal.

Subpart D—Interpretations

- 820.50 Purpose and scope.
- 820.51 General Counsel.
- 820.52 Procedures.

Subpart E—Exemption Relief

- 820.60 Purpose and scope.
- 820.61 Secretarial officer.
- 820.62 Criteria.
- 820.63 Procedures.

Subpart F—Criminal Penalties

- 820.70 Scope.
- 820.71 Standard.
- 820.72 Referral to the Attorney General.

Subpart G—Enforcement of Technical Specifications and Operational Safety Requirements

- 820.80 Purpose and scope.
- 820.81 General rule.

Appendix to Part 820—General Statement of Enforcement Policy

Authority: 42 U.S.C. 2201; 7191.

Subpart A—General

§ 820.1 Purpose and scope.

(a) *Scope.* This part sets forth the procedures to govern the conduct of persons involved in DOE nuclear activities and, in particular, to achieve compliance with the DOE Nuclear Safety Requirements by all persons subject to those requirements.

(b) *Questions not addressed by these rules.* Questions that are not addressed in this part shall be resolved at the discretion of the DOE Official.

§ 820.2 Definitions.

(a) The following definitions apply to this part:

Act means the Atomic Energy Act of 1954, as amended.

Administrative Law Judge means an Administrative Law Judge appointed under 5 U.S.C. 3105.

Consent Agreement means any written document, signed by the Director and a person, containing stipulations or conclusions of fact or law and a remedy acceptable to both the Director and the person.

Department means the United States Department of Energy or any predecessor agency.

Director means the Director of the Office of Nuclear Safety, or his designee, except that with regard to activities and facilities covered under E.O. 12344, 42 U.S.C. 7158 note, pertaining to Naval nuclear propulsion, the Director shall mean the Deputy Assistant Secretary for Naval Reactors or his designee.

DOE means the United States Department of Energy or any predecessor agency.

DOE Nuclear Safety Requirements means the rules, regulations, or orders relating to nuclear safety adopted by DOE (or by another Agency if DOE specifically identifies the rule, regulation, or order) to govern the conduct of persons in connection with any DOE nuclear activity and includes any programs, plans, or other provisions intended to implement these rules, regulations, orders, a Nuclear Statute or the Act, including technical specifications and operational safety requirements for DOE nuclear facilities.

DOE Official means the person, or his designee, in charge of making a decision under this part.

Filing means, except as otherwise specifically indicated, the completion of providing a document to the Office of the Hearing Clerk and serving the document on the person to whom the document is addressed.

Final Notice of Violation means a document filed by the Director in which the Director determines the respondent has violated or is continuing to violate a nuclear safety requirement and includes:

- (1) A statement specifying the DOE Nuclear Safety Requirement to which the violation relates;
- (2) A concise statement of the basis for the determination;
- (3) Any remedy, including the amount of any civil penalty;
- (4) A statement explaining the reasoning behind any remedy; and
- (5) If the Notice assesses a civil penalty, notice of respondent's right:
 - (i) To waive further proceedings and pay the civil penalty;
 - (ii) To request an on-the-record adjudication of the assessment of the civil penalty; or
 - (iii) To seek judicial review of the assessment of the civil penalty.

Final Order means an order of the Secretary that represents final agency action and, where appropriate, imposes a remedy with which the recipient of the order must comply.

General Counsel means the General Counsel of DOE or his designee.

Hearing means an on-the-record adjudication open to the public and conducted under the procedures set forth in this part.

Hearing Clerk means the Office with which documents for an enforcement action must be filed and which is responsible for maintaining a record and a public docket.

Interpretation means a statement by the General Counsel concerning the meaning or effect of the Act, a Nuclear Statute, or a DOE Nuclear Safety Requirement which relates to a specific factual situation but may also be a ruling of general applicability where the General Counsel determines such action to be appropriate.

Initial Decision means the decision filed by the Presiding Officer based upon the record of the PAAA adjudication out of which it arises.

Nuclear Statute means any statute or provision of a statute that relates to a DOE nuclear activity and for which DOE is responsible.

Operational Safety Requirement means those provisions that define the conditions, safe boundaries, and bases thereof, and the management or administrative controls required to ensure the safe operation of a nonreactor nuclear facility.

PAAA adjudication means the portion of the enforcement process that commences when a respondent requests an on-the-record adjudication of the assessment of a civil penalty and terminates when a Presiding Officer files an initial decision.

Party means the Director and the respondent in a PAAA adjudication under this part.

Person means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency, any State or political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity and any legal successor, representative, agent or agency of the foregoing; provided that person does not include the Department or the United States Nuclear Regulatory Commission.

Preliminary Notice of Violation means a document filed by the Director in which the Director sets forth his preliminary conclusions that the respondent has violated or is continuing to violate a DOE Nuclear Safety Requirement and includes:

- (1) A statement specifying the DOE Nuclear Safety Requirement to which the violation relates;
- (2) A concise statement of the basis for alleging the violation,

(3) Any proposed remedy, including the amount of any proposed civil penalty; and

(4) A statement explaining the reasoning behind any proposed remedy.

Presiding Officer means the Administrative Law Judge designated to be in charge of a PAAA adjudication who shall conduct a fair and impartial hearing, assure that the facts are fully elicited, adjudicate all issues, avoid delay, and shall have authority to:

- (1) Conduct an adjudicatory hearing under this part;
- (2) Rule upon motions, requests, and offers of proof, dispose of procedural requests, and issue all necessary orders;
- (3) Exercise the authority set forth in section 820.13;
- (4) Admit or exclude evidence;
- (5) Hear and decide questions of fact, law, or discretion, except for the validity of regulations and interpretations issued by DOE;
- (6) Require parties to attend conferences for the settlement or simplification of the issues, or the expedition of the proceedings;
- (7) Draw adverse inferences against a party that fails to comply with his orders;
- (8) Do all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these rules.

Remedy means any action necessary or appropriate to rectify, prevent, or penalize a violation of the Act, a Nuclear Statute, or a DOE Nuclear Safety Requirements, including the assessment of civil penalties, the requirement of specific actions, or the modification, suspension or rescission of a contract.

Respondent means any person to whom the Director addresses a Preliminary Notice of Violation.

Secretarial Officer means the Assistant Secretary or Office Director who is primarily responsible for the conduct of an activity under the Act.

Secretary means the Secretary of Energy or his designee.

Technical Specification means any provision that defines the conditions, safe boundaries, and bases thereof, and the management or administrative controls required to ensure the safe operation of a nuclear reactor facility.

(b) Terms defined in the Act and not defined in these rules are used consistent with the meanings given in the Act.

(c) As used in this part, words in the singular also include the plural and words in the masculine gender also

include the feminine and vice versa, as the case may require.

§ 820.3 Separation of functions.

(a) *Separation of functions.* After a respondent requests an on-the-record adjudication of an assessment of a civil penalty, no person shall participate in a decision-making function in an enforcement proceeding if he has been, is or will be responsible for an investigative or prosecutorial function related to that proceeding or if he reports to the person responsible for the investigative or prosecutorial function.

(b) *Director.* The Director shall be responsible for the investigation and prosecution of violations of the DOE Nuclear Safety Requirements. After the commencement of an adjudication, the Director shall not discuss *ex parte* the merits of the proceeding with a DOE Official or any person likely to advise the DOE Official in the decision of the proceeding.

(c) *Presiding Officer.* A Presiding Officer shall perform no duties inconsistent with his responsibilities as a Presiding Officer, and will not be responsible to or subject to the supervision or direction of any officer or employee engaged in the performance of an investigative or prosecutorial function. The Presiding Officer may not consult any person other than a member of his staff or a special assistant on any fact at issue unless on notice and opportunity for all parties to participate, except as required for the disposition of *ex parte* matters as authorized by law.

§ 820.4 Conflict of interest.

A DOE Official may not perform functions provided for in this Part regarding any matter in which he has a financial interest or has any relationship that would make it inappropriate for him to act. A DOE Official shall withdraw at any time from any action in which he deems himself disqualified or unable to act for any reason. Any interested person may at any time request the General Counsel to disqualify a DOE Official or request that the General Counsel disqualify himself. In the case of a PAAA Adjudication, a motion to disqualify shall be made to the Presiding Officer. The request shall be supported by affidavits setting forth the grounds for disqualification of the DOE Official. A decision shall be made as soon as practicable and information may be requested from any person concerning the matter. If a DOE Official is disqualified or withdraws from the proceeding, a qualified individual who has none of the infirmities listed in this section shall replace him.

§ 820.5 Service.

(a) *General rule.* Any document filed with the Hearing Clerk must be served on the addressee of the document and shall not be considered filed until service is complete and unless accompanied by proof of service; provided that the filing with the Hearing Clerk of any document addressed to the DOE Official shall be considered service on the DOE Official.

(b) *Service in a PAAA adjudication.* Any document filed in a PAAA adjudication must be served on all other participants in the adjudication.

(c) *Who may be served.* Any paper required to be served upon a person shall be served upon him or upon the representative designated by him or by law to receive service of papers. When an attorney has entered an appearance on behalf of a person, service must be made upon the attorney of record.

(d) *How service may be made.* Service may be made by personal delivery, by first class, certified or registered mail or as otherwise authorized or required by the DOE Official. The DOE Official may require service by express mail.

(e) *When service is complete.* Service upon a person is complete:

(1) By personal delivery, on handing the paper to the individual, or leaving it at his office with his clerk or other person in charge or, if there is no one in charge, leaving it in a conspicuous place therein or, if the office is closed or the person to be served has no office, leaving it at his usual place of residence with some person of suitable age and discretion then residing there;

(2) By mail, on deposit in the United States mail, properly stamped and addressed; or

(3) By any other means authorized or required by the DOE Official.

(f) *Proof of service.* Proof of service, stating the name and address of the person on whom served and the manner and date of service, shall be shown for each document filed, and may be made by:

(1) Written acknowledgement of the person served or his counsel,

(2) The certificate of counsel if he has made the service;

(3) The affidavit of the person making the service; or

(4) Any other means authorized or required by the DOE Official.

(g) *Deemed service.* If a document is deemed filed under this part, then the service requirements shall be deemed satisfied when the document is deemed filed.

§ 820.6 Computation and extension of time.

(a) *Computation.* In computing any period of time set forth in this part, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday or Federal legal holiday, the stated time period shall be extended to include the next business day.

(b) *Extensions of time.* A DOE Official may grant an extension of any time period set forth in this part.

(c) *Service by mail.* Where a pleading or document is served by mail, five (5) days shall be added to the time allowed by these rules for the filing of a responsive pleading or document. Where a pleading or document is served by express mail, only two (2) days shall be added.

§ 820.7 Questions of policy or law.

(a) *Certification.* There shall be no interlocutory appeal from any ruling order, or action decision of a DOE Official except as permitted by this section. A Presiding Officer in a PAAA Adjudication may certify, in his discretion, a question to the Secretary, when the order or ruling involves an important question of law or policy concerning which there is substantial grounds for difference of opinion, and either an immediate decision will materially advance the ultimate termination of the proceeding, or subsequent review will be inadequate or ineffective.

(b) *Decision.* The certified question shall be decided as soon as practicable. If the Secretary determines that the question was improvidently certified, or if he takes no action within thirty days of the certification, the certification is dismissed. The Secretary may decide the question on the basis of the submission made by the Presiding Officer or may request further information from any person.

§ 820.8 Evidentiary matters.

(a) *General.* A DOE Official may sign, issue and serve subpoenas; administer oaths and affirmations; take sworn testimony; compel attendance of and sequester witnesses; control dissemination of any record of testimony taken pursuant to this section, subpoena and reproduce books, papers, correspondence, memoranda, contracts, agreements, or other relevant records or tangible evidence including, but not limited to, information retained in

computerized or other automated systems in possession of the subpoenaed person.

(b) *Special Report Orders.* A DOE Official may issue a Special Report Order (SRO) requiring any person involved in a DOE nuclear activity or otherwise subject to the jurisdiction of DOE to file a special report providing information relating to a DOE Nuclear Safety Requirement, the Act, or a Nuclear Statute, including but not limited to written answers to specific questions. The SRO may be in addition to any other reports required by this part.

(c) *Extension of time.* The DOE Official who issues a subpoena or SRO pursuant to this section, for good cause shown, may extend the time prescribed for compliance with the subpoena or SRO and negotiate and approve the terms of satisfactory compliance.

(d) *Reconsideration.* Prior to the time specified for compliance, but in no event more than 10 days after the date of service of the subpoena or SRO, the person upon whom the document was served may request reconsideration of the subpoena or SRO with the DOE Official who issued the document. If the subpoena or SRO is not modified or rescinded within 10 days of the date of the filing of the request, the subpoena or SRO shall be effective as issued and the person upon whom the document was served shall comply with the subpoena or SRO within 20 days of the date of the filing. There is no administrative appeal of a subpoena or SRO.

(e) *Service.* A subpoena or SRO shall be served in the manner set forth in § 820.5, except that service by mail must be made by registered or certified mail.

(f) *Fees.* (1) A witness subpoenaed by a DOE Official shall be paid the same fees and mileage as paid to a witness in the district courts of the United States.

(2) If a subpoena is issued at the request of a person other than an officer or agency of the United States, the witness fees and mileage shall be paid by the person who requested the subpoena. However, at the request of the person, the witness fees and mileage shall be paid by the DOE if the person shows:

(i) The presence of the subpoenaed witness will materially advance the proceeding; and

(ii) the person who requested that the subpoena be issued would suffer a serious hardship if required to pay the witness fees and mileage. The DOE Official issuing the subpoena shall make the determination required by this subsection.

(g) *Enforcement.* If any person upon whom a subpoena or SRO is served

pursuant to this section, refuses or fails to comply with any provision of the subpoena or SRO, an action may be commenced in the United States District Court to enforce the subpoena or SRO.

(h) *Certification.* (1) Documents produced in response to a subpoena shall be accompanied by the sworn certification, under penalty of perjury, of the person to whom the subpoena was directed or his authorized agent that a diligent search has been made for each document responsive to the subpoena, and to the best of his knowledge, information, and belief all such documents responsive to the subpoena are being produced unless withheld on the grounds of privilege pursuant to paragraph (i) of this section.

(2) Any information furnished in response to an SRO shall be accompanied by the sworn certification under penalty of perjury of the person to whom it was directed or his authorized agent who actually provides the information that to the best of his knowledge, information and belief a diligent effort has been made to provide all information required by the SRO, and all information furnished is true, complete, and correct unless withheld on grounds of privilege pursuant to paragraph (i).

(3) If any document responsive to a subpoena is not produced or any information required by an SRO is not furnished, the certification shall include a statement setting forth every reason for failing to comply with the subpoena or SRO.

(i) *Withheld information.* If a person to whom a subpoena or SRO is directed withholds any document or information because of a claim of attorney-client or other privilege, the person submitting the certification required by paragraph (h) of this section also shall submit a written list of the documents or the information withheld indicating a description of each document or information, the date of the document, each person shown on the document as having received a copy of the document, each person shown on the document as having prepared or been sent the document, the privilege relied upon as the basis for withholding the document or information, a memorandum of law supporting the claim of privilege, and an identification of the person whose privilege is being asserted.

(j) *Testimony.* (1) If testimony is taken pursuant to a subpoena, the DOE Official shall determine whether the testimony shall be recorded and the means by which the testimony is recorded.

(2) A witness whose testimony is recorded may procure a copy of his

testimony by making a written request for a copy and paying the appropriate fees. Upon proper identification, any witness or his attorney has the right to inspect the official transcript of the witness' own testimony.

(k) *Sequestration.* The DOE Official may sequester any person who furnishes documents or gives testimony. Unless permitted by the DOE Official, neither a witness nor his attorney shall be present during the examination of any other witnesses.

(l) *Attorney.* (1) Any witness whose testimony is taken may be accompanied, represented and advised by his attorney; provided that, if the witness claims a privilege to refuse to answer a question on the grounds of self-incrimination, the witness must assert the privilege personally.

(2) The DOE Official shall take all necessary action to regulate the course of testimony and to avoid delay and prevent or restrain contemptuous or obstructionist conduct or contemptuous language. The DOE Official may take actions as the circumstances may warrant in regard to any instances where any attorney refuses to comply with directions or provisions of this section.

§ 820.9 Special assistant.

A DOE Official may appoint a person to serve as a special assistant to assist the DOE Official in the conduct of any proceeding under this Part. Such appointment may occur at any appropriate time. A special assistant shall be subject to the disqualification provisions in § 820.5. A special assistant may perform those duties assigned by the DOE Official, including but not limited to, serving as technical interrogators, technical advisors and special master.

§ 820.10 Office of the hearing clerk.

(a) *Docket.* The Hearing Clerk shall maintain a docket for enforcement actions commencing with the filing of a Preliminary Notice of Violation, interpretations issued pursuant to subpart D of this part, exemptions issued pursuant to subpart E of this part and any other matters designated by the Secretary. A docket for an enforcement action shall contain all documents required to be filed in the proceeding.

(b) *Public inspection.* Subject to the provisions of law restricting the public disclosure of certain information, any person may, during Agency business hours, inspect and copy any document filed with the Hearing Clerk. The cost of duplicating documents shall be borne by the person seeking copies of such

documents. The DOE Official may waive this cost in appropriate cases.

(c) *Transcript.* Except as otherwise provided in this part, after the filing of a Preliminary Notice of Violation, all hearings, conferences, and other meetings in the enforcement process shall be transcribed verbatim. A copy of the transcript shall be filed with the Hearing Clerk promptly. The Hearing Clerk shall serve all participants with notice of the availability of the transcript and shall furnish the participants with a copy of the transcript upon payment of the cost of reproduction, unless a participant can show that the cost is unduly burdensome.

§ 820.11 Information requirements.

(a) Any information provided to DOE by any person or maintained by any person for inspection by DOE shall be complete and accurate in all material respects.

(b) No person involved in a DOE nuclear activity shall conceal or destroy any information concerning a violation of a DOE Nuclear Safety Requirement, a Nuclear Statute, or the Act.

§ 820.12 Classified, confidential, and controlled information.

(a) *General rule.* The DOE Official in charge of a proceeding under this part may utilize any procedures he deems appropriate to safeguard and prevent disclosure of classified, confidential, and controlled information, including Restricted Data and National Security Information, to unauthorized persons, with minimum impairment of rights and obligations under this part.

(b) *Obligation to protect restricted information.* Nothing in this Part shall relieve any person from safeguarding classified, confidential, and controlled information, including Restricted Data or National Security Information, in accordance with the applicable provisions of federal statutes and the rules, regulations, and orders of any federal agency.

Subpart B—Enforcement Process

§ 820.20 Purpose and scope.

(a) *Purpose.* This subpart establishes the procedures for investigating the nature and extent of violations of the DOE Nuclear Safety Requirements, for determining, whether a violation has occurred, for imposing an appropriate remedy, and for adjudicating the assessment of a civil penalty.

(b) *Exemptions.* The following contractors, and subcontractors and suppliers thereto, are exempt from the assessment of civil penalties under this

subpart with respect to the activities specified below:

- (1) The University of Chicago for activities associated with Argonne National Laboratory;
- (2) The University of California for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory;
- (3) American Telephone and Telegraph Company and its subsidiaries for activities associated with Sandia National Laboratory;
- (4) University Research Association, Inc. for activities associated with FERMI National Laboratory;
- (5) Princeton University for activities associated with Princeton Plasma Physics Laboratory;
- (6) The Associated Universities, Inc. for activities associated with the Brookhaven National Laboratory; and
- (7) Battelle Memorial Institute for activities associated with Pacific Northwest Laboratory.

(c) *Nonprofit educational institutions.* Any educational institution that is considered nonprofit under the United States Internal Revenue Code shall receive automatic remission of any civil penalty assessed under this part.

(d) *Basis for civil penalties.* DOE may assess civil penalties on the basis of a violation of:

- (1) Any DOE Nuclear Safety Requirement set forth in the Code of Federal Regulations;
- (2) Any Compliance Order issued pursuant to Subpart D; or
- (3) Any program, plan or other provision required to implement any requirement or order identified in paragraph (d)(1) or (d)(2).

§ 820.21 Investigations and inspections.

(a) The Director may initiate and conduct investigations and inspections relating to the scope, nature and extent of compliance by a person with the Act and the DOE Nuclear Safety Requirements and take such action as he deems necessary and appropriate to the conduct of the investigation or inspection, including any action pursuant to § 820.8.

(b) Any person may request the Director to initiate an investigation or inspection pursuant to paragraph (a) of this section. A request for an investigation or inspection shall set forth the subject matter or activity to be investigated or inspected as fully as possible and include supporting documentation and information. No particular forms or procedures are required.

(c) Any person who is requested to furnish documentary evidence or

testimony in an investigation or during an inspection shall be informed, upon written request, of the general purpose of the investigation or inspection.

(d) Information or documents that are obtained during any investigation or inspection shall not be disclosed unless the Director directs or authorizes the public disclosure of the investigation the information or documents are a matter of public record or disclosure is not precluded by the Freedom of Information Act, 5 U.S.C. 552 and 10 CFR part 1004. A request for confidential treatment of information for purposes of the Freedom of Information Act shall not prevent disclosure by the Director if disclosure is determined to be in the public interest and otherwise permitted or required by law.

(e) During the course of an investigation or inspection any person may submit at any time any document, statement of facts or memorandum of law for the purpose of explaining the person's position or furnish information which the person considers relevant to a matter or activity under investigation or inspection.

(f) If facts disclosed by an investigation or inspection indicate that further action is unnecessary or unwarranted, the investigation may be closed without prejudice to further investigation or inspection by the Director at any time that circumstances so warrant.

§ 820.22 Informal conference.

The Director may convene an informal conference to discuss any situation that might be a violation of the Act or a DOE Nuclear Safety Requirement, its significance and cause, any corrective taken or not taken by the person, any mitigating or aggravating circumstances, and any other useful information. The Director may compel a person to attend the conference. This conference will not normally be open to the public and there shall be no transcript.

§ 820.23 Consent order.

(a) *Settlement policy.* DOE encourages settlement of an enforcement proceeding at any time if the settlement is consistent with the objectives of the Act and the DOE Nuclear Safety Requirements. The Director and a person may confer at any time concerning settlement. These settlement conferences shall not be open to the public and there shall be no transcript.

(b) *Consent Order.* Notwithstanding any other provision of this part, DOE may at any time resolve an outstanding enforcement proceeding with a Consent

Order. A Consent Order must be signed by the Director and the person who is its subject, or a duly authorized representative, must indicate agreement to the terms contained therein and must be filed. A Consent Order need not constitute an admission by any person that the Act or a DOE Nuclear Safety Requirement has been violated, nor need it constitute a finding by the DOE that such person has violated the Act or a DOE Nuclear Safety Requirement. A Consent Order shall, however, set forth the relevant facts which form the basis for the Order and what remedy, if any, is imposed.

(c) *Effect On PAAA Adjudication.* If a Consent Order is signed after the commencement of a PAAA adjudication, the adjudication shall be stayed until the completion of the Secretarial Review Process. If the Consent Order becomes a Final Order, the adjudication shall be terminated or modified as specified in the Order.

(d) *Secretarial Review.* A Consent Order shall become a Final Order 30 days after it is filed unless the Secretary files a rejection of the Consent Order or a Modified Consent Order. A Modified Consent Order shall become a Final Order if the Director and the person who is its subject sign it within 15 days of its filing.

§ 820.24 Preliminary notice of violation.

(a) If the Director has reason to believe a person has violated or is continuing to violate a provision of the Act or a DOE Nuclear Safety Requirement, he may file a Preliminary Notice of Violation.

(b) Within 15 days after the filing of a Preliminary Notice of Violation, the respondent shall file a reply.

(c) The reply shall be in writing and signed by the person filing it. The reply shall contain a statement of all relevant facts pertaining to the situation that is the subject of the Notice. The reply shall state any facts, explanations and arguments which support a denial that a violation has occurred as alleged; demonstrate any extenuating circumstances or other reason why the proposed remedy should not be imposed or should be mitigated; and furnish full and complete answers to the questions set forth in the Notice. Copies of all relevant documents shall be submitted with the reply. The reply shall include a discussion of the relevant authorities which support the position asserted, including rulings, regulations, interpretations, and previous decisions issued by DOE.

(d) The respondent may terminate an enforcement action if the reply agrees to comply with the proposed remedy and

waives any right to contest the Notice or the remedy. If a respondent elects this option, the Preliminary Notice of Violation shall be deemed a Final Order upon the filing of the reply.

§ 820.25 Final notice of violation.

(a) *General rule.* If, after reviewing the reply submitted by the respondent, the Director determines that a person violated or is continuing to violate a provision of the Act or a DOE Nuclear Safety Requirement, he may file a Final Notice of Violation.

(b) *Effect of Final Notice.* (1) If a Final Notice of Violation does not contain a civil penalty, it shall be deemed filed as a Final Order 15 days after the Final Notice is filed unless the Secretary files a Final Order which modifies the Final Notice.

(2) If a Final Notice of Violation contains a civil penalty, the respondent must file within 15 days after the filing of the Final Notice:

- (i) A waiver of further proceedings;
- (ii) A request for an on-the-record adjudication; or
- (iii) A notice of intent to seek judicial review.

(c) *Effect of waiver.* If a respondent waives further proceedings, the Final Notice of Violation shall be deemed a Final Order enforceable against the respondent. The respondent must pay any civil penalty set forth in the Notice of Violation within 60 days of the filing of waiver unless the Director grants additional time.

(d) *Effect of request.* If a respondent files a request for an on-the-record adjudication, then a PAAA adjudication commences.

(e) *Effect of Notice of Intent.* If a respondent files a Notice of Intent, the Final Notice of Violation shall be deemed a Final Order enforceable against the respondent.

(f) *Amendment.* The Director may amend the Final Notice of Violation at any time before an action takes place pursuant to paragraph (b) of this section. An amendment shall add 15 days to the time periods under paragraph (b) of this section.

(g) *Withdrawal.* The Director may withdraw the Final Notice of Violation, or any part thereof, at any time before an action under paragraph (b) of this section.

§ 820.26 PAAA adjudication.

If a respondent files a request for an on-the-record adjudication, a PAAA adjudication is initiated and the Hearing Clerk shall notify the Secretary who shall appoint an Administrative Law Judge to be the Presiding Officer.

§ 820.27 Answer.

(a) *General.* If a respondent files a request for an on-the-record adjudication pursuant to § 820.24, he shall file a written answer to the Final Notice of Violation at the same time the request is filed.

(b) *Contents of the answer.* The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the Final Notice of Violation with regard to which respondent has any knowledge, information or belief. Where respondent has no knowledge, information or belief of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state the circumstance or argument that is alleged to constitute the grounds of defense and the facts that respondent intends to place at issue.

(c) *Failure to admit, deny, or explain.* Failure of respondent to admit, deny, or explain any material factual allegation contained in the Final Notice of Violation constitutes an admission of the allegation.

(d) *Amendment of the answer.* The respondent may amend the answer to the Final Notice of Violation upon motion granted by the Presiding Officer.

§ 820.28 Prehearing actions.

(a) *General.* The Presiding Officer shall establish a schedule for the adjudication and take such other actions as he determines appropriate to conduct the adjudication in a fair and expeditious manner.

(b) *Prehearing conference.* The Presiding Officer, at any time before a hearing begins, may direct the parties and their counsel, or other representatives, to appear at a conference before him to consider, as appropriate:

- (1) The settlement of the case;
- (2) The simplification of issues and stipulation of facts not in dispute;
- (3) The necessity or desirability of amendments to pleadings;
- (4) The exchange of exhibits;
- (5) The limitation of the number of expert or other witnesses;
- (6) Setting a time and place for the hearing; and
- (7) Any other matters that may expedite the disposition of the proceeding.

(c) Exchange of witness lists and documents. Unless otherwise ordered by the Presiding Officer, at least five (5) days before any prehearing conference, each party shall make available to all other parties, as appropriate the names of the expert and other witnesses he intends to call, together with a brief

narrative summary of their expected testimony, and copies of all documents and exhibits that each party intends to introduce into evidence. Documents and exhibits shall be marked for identification as ordered by the Presiding Officer. Documents that have not been exchanged and witnesses whose names have not been exchanged shall not be introduced into evidence or allowed to testify without permission of the Presiding Officer. The Presiding Officer shall allow the parties reasonable opportunity to review new evidence.

(d) *Prehearing Conference Order*. The Presiding Officer shall prepare an order incorporating any action taken at the conference. The summary shall incorporate any written stipulations or agreements of the parties and all rulings and appropriate orders containing directions to the parties.

(e) *Alternative to prehearing conference*. If a prehearing conference is unnecessary or impracticable, the Presiding Officer, on motion or *sua sponte*, may direct the parties to make appropriate filings with him to accomplish any of the objectives set forth in this section.

(f) *Other discovery*. (1) Except as provided by paragraph (c) of this section, further discovery under this section shall be permitted only upon determination by the Presiding Officer:

(i) That such discovery will not in any way unreasonably delay the proceeding;

(ii) That the information to be obtained is not otherwise obtainable; and

(iii) That such information has significant probative value.

(2) The Presiding Officer shall order depositions upon oral questions only upon a showing of good cause and upon a finding that:

(i) The information sought cannot be obtained by alternative methods; or

(ii) There is substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(3) Any party to the proceeding desiring an order to take further discovery shall make a motion therefor. Such a motion shall set forth:

(i) The circumstances warranting the taking of the discovery;

(ii) The nature of the information expected to be discovered; and

(iii) The proposed time and place where it will be taken. If the Presiding Officer determines that the motion should be granted, he shall issue an order for the taking of such discovery together with the conditions and terms thereof.

(4) When the information sought to be obtained is within the control of one of the parties, failure to comply with an order issued pursuant to this paragraph may lead to the inference that the information to be discovered would be adverse to the party from whom the information was sought, or the issuance of a default order under § 820.38.

§ 820.29 Hearing.

(a) *General*. Except as otherwise provided by this part or the Presiding Officer, a hearing shall be conducted in accordance with the Federal Rules of Evidence. The Presiding Officer shall have the discretion to admit all evidence that is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value, if he believes the evidence might facilitate the fair and expeditious resolution of the proceeding, but such evidence may be reasonably limited by the Presiding Officer in scope and length in order to permit prompt resolution of the proceeding. In the presentation, admission, disposition, and use of evidence, the Presiding Officer shall preserve the confidentiality of trade secrets and other commercial and financial information, and shall protect classified and unclassified controlled nuclear information, as well as any other information protected from public disclosure pursuant to law or regulation. The confidential, trade secret, or classified or otherwise protected status of any information shall not, however, preclude its being introduced into evidence. The Presiding Officer may make such orders as may be necessary to consider such evidence *in camera*, including the preparation of a supplemental initial decision to address questions of law, fact, or discretion that arise out of that portion of the evidence that is confidential, includes trade secrets, is classified, or is otherwise protected.

(b) *Subpoenas*. The attendance of witnesses or the production of documentary evidence may be required by subpoena.

(c) *Examination of witnesses*. There shall be no direct oral testimony by witnesses, except as permitted by the Presiding Officer. In lieu of oral testimony, the Presiding Officer shall admit into the record as evidence verified written statements of fact or opinion prepared by a witness. The admissibility of the evidence contained in the statement shall be subject to the same rules as if the testimony were produced under oral examination. Before any such statement is read or admitted into evidence, the witness shall have delivered a copy of the statement to the Presiding Officer and

the opposing counsel not less than 10 days prior to the date the witness is scheduled to testify. The witness presenting the statement shall swear or affirm that the statement is true and accurate to the best of his knowledge, information, and belief and shall be subject to appropriate oral cross-examination upon the contents thereof provided such cross-examination is not unduly repetitious.

(d) *Burden of presentation; Burden of persuasion*. The Director has the burden of going forward with and of proving that the violation occurred as set forth in the Notice of Violation and that the proposed civil penalty is appropriate. Following the establishment of a *prima facie* case, respondent shall have the burden of presenting and of going forward with any defense to the allegations set forth in the Notice of Violation. Each matter of controversy shall be determined by the Presiding Officer upon a preponderance of the evidence.

§ 820.30 Post-hearing filings.

Within fifteen days after the filing of the transcript of the hearing, or within such longer time as may be fixed by the Presiding Officer, any party may file for the consideration of the Presiding Officer, proposed findings of fact, conclusions of law, and a proposed order, together with briefs in support thereof. Reply briefs may be filed within ten days of the filing of briefs. All filings shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on.

§ 820.31 Initial decision.

(a) *Initial decision*. The Presiding Officer shall file an Initial Decision as soon as practicable after the period for filing reply briefs under § 830.30 has expired. The Initial Decision shall contain findings of fact, conclusions regarding all material issues of law or discretion, as well as reasons therefor, any remedy and a proposed Final Order. A party may file comments on an Initial Decision within fifteen days of its filing.

(b) *Amount of civil penalty*. If the Presiding Officer determines that a violation has occurred and that a civil penalty is appropriate, the Initial Decision shall set forth the dollar amount of the civil penalty. If the Presiding Officer decides to assess a penalty different in amount from the penalty assessed in the Final Notice of Violation, the Initial Decision shall set forth the specific reasons for the increase or decrease.

§ 820.32 Final Order.

(a) *Effect of initial decision.* The Initial Decision shall be deemed filed as a Final Order thirty days after the filing of the Initial Decision unless the Secretary files a Final Order that modifies the Initial Decision or the Secretary files a Notice of Review.

(b) *Notice of Review.* If the Secretary files a Notice of Review, he shall file a Final Order as soon as practicable after completing his review. The Secretary may, at his discretion, order additional procedures, remand the matter, or modify the remedy, including an increase or decrease in the amount of the civil penalty from the amount recommended to be assessed in the Initial Decision.

(c) *Payment of a civil penalty.* The respondent shall pay the full amount of any civil penalty assessed in the Final Order within thirty (30) days after the Final Order is filed unless otherwise agreed by the parties.

§ 820.33 Default order.

(a) *Default.* Upon motion by a party or his filing of a Notice of Intent to issue a Default Order, the Presiding Officer may find a party to be in default if the party fails to comply with the provisions of this part or an order of the Presiding Officer. The alleged defaulting party shall have ten days to answer the motion or the Notice of Intent. No finding of default shall be made against the respondent unless the Director presents sufficient evidence to the Presiding Officer to establish a *prima facie* case against the respondent. Default by respondent constitutes, for purposes of the pending action only, an admission of all facts alleged in the Final Notice of Violation and a waiver of respondent's rights to an on-the-record adjudication of such factual allegations. Default by the Director shall result in an order to dismiss the Final Notice of Violation with prejudice.

(b) *Effect of default order.* When the Presiding Officer finds a default has occurred, he shall file a Default Order against the defaulting party. This order shall constitute an Initial Decision.

(c) *Contents of a default order.* A Default Order shall include findings of fact showing the grounds for the order, conclusions regarding all material issues of fact, law or discretion, and the remedy.

§ 820.34 Accelerated decision.

(a) *General.* The Presiding Officer, upon motion of any party or *sua sponte*, may at any time render an Accelerated Decision in favor of the Director or the respondent as to all or any part of the adjudication, without further hearing or

upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law, as to all or any part of the adjudication. In addition, the Presiding Officer, upon motion of the respondent, may render at any time an Accelerated Decision to dismiss an action without further hearing or upon such limited additional evidence as he requires, on the basis of failure to establish a *prima facie* case or other grounds that show no right to relief on the part of the Director.

(b) *Effect of Accelerated Decision.* (1) If an Accelerated Decision is rendered as to all the issues and claims in the adjudication, the decision constitutes an Initial Decision of the Presiding Officer, and shall be filed with the Hearing Clerk.

(2) If an Accelerated Decision is rendered on less than all issues or claims in the adjudication, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts remain controverted in good faith. He shall thereupon file an interlocutory order specifying the facts that appear substantially uncontroverted, and the issues and claims upon which the adjudication will proceed.

§ 820.35 Ex parte Discussions.

At no time after a respondent has requested an on-the-record adjudication of the assessment of a civil penalty shall a DOE Official, or any person who is likely to advise a DOE Official in the decision on the case, discuss *ex parte* the merits of the proceeding with any interested person outside DOE, with any DOE staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any *ex parte* memorandum or other communication addressed to a DOE Official during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as argument made in the proceeding and shall be served upon all other parties. Any oral communication shall be set forth in a written memorandum and served on all other parties. The other parties shall be given an opportunity to reply to such memorandum or communication.

§ 820.36 Filing, Form, and Service of Documents.

(a) *Filing in an enforcement proceeding.* The original and three copies of any document in an enforcement proceeding shall be filed with the Hearing Clerk commencing

with the filing of a Preliminary Notice of Violation.

(b) *Form of documents in an enforcement proceeding.* (1) Except as provided herein, or by order of the DOE Official, there are no specific requirements as to the form of documents filed in an Enforcement Proceeding.

(2) The first page of every document shall contain a caption identifying the respondent and the docket number.

(3) The original of any document (other than exhibits) shall be signed by the person filing it or by his counsel or other representative. The signature constitutes a representation by the signer that he has read the pleading, letter or other document, that to the best of his knowledge, information and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The initial document filed by any person shall contain his name, address and telephone number. Any changes in this information shall be communicated promptly to the Hearing Clerk and all participants to the proceeding. A person who fails to furnish such information and any changes thereto shall be deemed to have waived his right to notice and service under this Part.

(5) The Hearing Clerk may refuse to file any document that does not comply with this section. Written notice of such refusal, stating the reasons therefor, shall be promptly given to the person submitting the document. Such person may amend and resubmit any document refused for filing.

§ 820.37 Participation in a PAAA adjudication.

(a) *Parties.* In a PAAA adjudication, the Director and the respondent shall be the only parties; provided that the Presiding Officer may permit a person to intervene as a party if the person demonstrates it could be liable in the event a civil penalty is assessed.

(b) *Appearances.* Any party to a PAAA adjudication may appear in person or by counsel or other representative. A partner may appear on behalf of a partnership and an officer may appear on behalf of a corporation. Persons who appear as counsel or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

(c) *Amicus Curiae.* Persons not parties to a PAAA adjudication who wish to file briefs may so move. The motion shall identify the interest of the person and shall state the reasons why the proposed amicus brief is desirable. If the

motion is granted, the Presiding Officer shall issue an order setting the time for filing such brief. An *amicus curiae* is eligible to participate in any briefing after his motion is granted, and shall be served with all briefs, reply briefs, motions, and orders relating to issues to be briefed.

§ 820.38 Consolidation and severance.

(a) *Consolidation.* The Presiding Officer may, by motion or *sua sponte*, consolidate any or all matters at issue in two or more PAAA adjudications under this part where there exists common parties or common questions of fact or law, consolidation would expedite and simplify consideration of the issues, and consolidation would not adversely affect the rights of parties engaged in otherwise separate adjudications.

(b) *Severance.* The Presiding Officer may, by motion or *sua sponte*, for good cause shown order any PAAA adjudication severed with respect to any or all parties or issues.

§ 820.39 Motions.

(a) *General.* All motions in a PAAA adjudication except those made orally, shall be in writing, state the grounds therefore with particularity, set forth the relief or order sought, and be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon.

(b) *Answer to motions.* Except as otherwise specified by a particular provision of this part or by the Presiding Officer, a party shall have the right to file a written answer to the motion of another party within 10 days after the filing of such motion. The answer shall be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. If no answer is filed within the designated period, the party may be deemed to have waived any objection to the granting of the motion. The Presiding Officer may set a shorter or longer time for an answer, or make such other orders concerning the disposition of motions as he deems appropriate.

(c) *Decision.* The Presiding Officer shall rule on a motion as soon as practicable after the filing of the answer. The decision of the Presiding Officer on any motion shall not be subject to administrative appeal.

Subpart C—Compliance Orders

§ 820.40 Purpose and scope.

This subpart provides for the issuance of Compliance Orders to prevent, rectify or penalize violations of the Act, a Nuclear Statute, or a DOE Nuclear Safety Requirement and to require

action consistent with the Act, a Nuclear Statute, or a DOE Nuclear Safety Requirement.

§ 820.41 Compliance order.

The Secretary may issue to any person involved in a DOE nuclear activity a Compliance Order that:

(a) identifies a situation that violates, potentially violates, or otherwise is inconsistent with the Act, a Nuclear Statute, or a DOE Nuclear Safety Requirement;

(b) mandates a remedy or other action; and,

(c) states the reasons for the remedy or other action.

§ 820.42 Final Order.

A Compliance Order is a Final Order that constitutes a DOE Nuclear Safety Requirement that is effective immediately unless the Order specifies a different effective date.

§ 820.43 Appeal.

Within fifteen days of the issuance of a Compliance Order, the recipient of the Order may request the Secretary to rescind or modify the Order. A request shall not stay the effectiveness of a Compliance Order unless the Secretary issues an order to that effect.

Subpart D—Interpretations

§ 820.50 Purpose and scope.

This Subpart provides for interpretations of the Act, Nuclear Statutes, and DOE Nuclear Safety Requirements. Any written or oral response to any written or oral question which is not provided pursuant to this Subpart does not constitute an interpretation and does not provide any basis for action inconsistent with the Act, a Nuclear Statute, or a DOE Nuclear Safety Requirement.

§ 820.51 General Counsel.

The General Counsel shall be the DOE Official responsible for formulating and issuing any interpretation concerning the Act, a Nuclear Statute or a DOE Nuclear Safety Requirement.

§ 820.52 Procedures.

The General Counsel may utilize any procedure which he deems appropriate to comply with his responsibilities under this subpart. All interpretations must be filed with the Office of the Hearing Clerk which shall maintain a docket for interpretations issued pursuant to this subpart.

Subpart E—Exemption Relief

§ 820.60 Purpose and scope.

This Subpart provides for exemption relief from provisions of the DOE Nuclear Safety Requirements.

§ 820.61 Secretarial officer.

The Secretarial Officer who is primarily responsible for the activity to which a Nuclear Safety Requirement relates may grant an exemption from that requirement; provided that, the Secretarial Officer responsible for environmental matters shall exercise this authority with respect to the provisions of 10 CFR parts 834 and 835. This authority may not be delegated.

§ 820.62 Criteria.

The criteria for granting an exemption to a Nuclear Safety Requirement are determinations the exemption:

(a) Would be consistent with the purposes of the Act and the DOE Nuclear Safety Requirements;

(b) Would not endanger the public health and safety, the environment, or facility workers;

(c) Would be consistent with the safe and efficient operation of a DOE nuclear facility; and

(d) Involves special circumstances, including the following:

(1) Application of the requirement in the particular circumstances conflicts with other requirements; or

(2) Application of the requirement in the particular circumstances would not serve its underlying purpose or is not necessary to achieve its underlying purpose; or

(3) Compliance would result in a situation significantly different than that contemplated when the requirement was adopted, or that is significantly different from that encountered by others similarly situated; or

(4) The exemption would result in benefit to the public health and safety that compensates for any detriment that may result from the grant of the exemption; or

(5) There is present any other material circumstances not considered when the requirement was adopted for which it would be in the public interest to grant an exemption.

§ 820.63 Procedures.

The Secretarial Officer may utilize any procedures he deems appropriate to comply with his responsibilities under this Part; provided that any exemption decision must set forth in writing the reasons for granting or denying the exemption, and if granted, the basis for the determination that the criteria in

§ 820.72 have been met and the terms of the exemption. All exemption decisions must be filed with the Office of the Hearing Clerk which shall maintain a docket for exemption decisions issued pursuant to this subpart.

Subpart F—Criminal Penalties

§ 820.70 Scope.

This subpart provides for the identification of criminal violations of the Act or DOE Nuclear Safety Requirements and the referral of such violations to the Department of Justice.

§ 820.71 Standard.

If a person subject to the Act or the DOE Nuclear Safety Requirements has, by act or omission, violated, caused to be violated attempted to violate, or conspired to violate any section of the Act or any applicable Nuclear Safety Requirement, the person shall be subject to criminal sanctions under the Act.

§ 820.72 Referral to the Attorney General.

If there is reason to believe a criminal violation of the Act or the DOE Nuclear Safety Requirements has occurred, DOE may refer the matter to the Attorney General of the United States for investigation or prosecution.

Subpart G—Enforcement of Technical Specifications and Operational Safety Requirements

§ 820.80 Purpose and scope.

This Subpart sets forth the DOE Nuclear Safety Requirement that a person must comply with technical specifications and operational safety requirements.

§ 820.81 General rule.

(a) *Compliance.* A person must comply with any technical specification or operational safety requirement that relates to an activity under the Act in which the person is engaged.

(b) *Violation.* Non-compliance with paragraph (a) of this section shall be a violation of a DOE Nuclear Safety Requirement for which a remedy may be assessed pursuant to subpart B of this part.

Appendix to Part 820—General Statement of Enforcement Policy

I. Introduction

This policy statement sets forth the general framework through which the U.S. Department of Energy (DOE) will seek to enforce compliance with its nuclear safety rules, regulations and orders (hereafter collectively referred to as nuclear safety requirements) and, in particular, exercise the civil penalty authority provided to DOE in the Price-Anderson Amendments Act of 1988, 42 U.S.C. 2282a (PAAA). The policy set forth

herein is applicable to violations of DOE nuclear safety requirements by 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 nuclear entities). This policy statement is *not* a regulation and is intended only to provide general guidance to those persons subject to DOE's nuclear safety requirements as specified in the PAAA. It is not intended to establish a "cookbook" approach to the initiation and resolution of situations involving non-compliance with DOE nuclear safety requirements. 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.

Both the Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*, and the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*, require DOE to protect the public health and safety, as well as the safety of workers at DOE facilities, in conducting its nuclear activities, and grant DOE broad authority to achieve this goal. Consistent with this responsibility, DOE will take prompt and vigorous enforcement action when dealing with DOE nuclear entities which do not achieve the meticulous attention to detail and strict compliance with nuclear safety requirements which DOE expects. Each potential enforcement situation will require the exercise of discretion in determining its proper disposition after consideration of this policy. In no case, however, will nuclear entities which cannot achieve and maintain, in their conduct of operations, an adequate level of public and worker protection be permitted to continue their involvement in DOE's nuclear activities.

II. Purpose

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

- a. Ensuring compliance by DOE nuclear entities with applicable DOE nuclear safety requirements.
- b. Providing positive incentives for a DOE nuclear entity's:
 - (1) Timely self-identification of nuclear safety deficiencies,
 - (2) Prompt and complete reporting of such deficiencies to DOE,
 - (3) Root cause analyses of nuclear safety deficiencies,
 - (4) Prompt correction of nuclear safety deficiencies in a manner which precludes recurrence, and
 - (4) Identification of modifications in practices or facilities that can improve public or worker radiological health and safety.
- c. Deterring future violations of DOE requirements by a DOE nuclear entity.
- d. Encouraging the continuous overall improvement of operations at DOE nuclear facilities.

III. Statutory Authority

Section 17 of the PAAA makes most DOE contractors covered by the DOE Price-Anderson indemnification system, and their subcontractors and suppliers, subject to civil penalties for violations of applicable DOE nuclear safety rules, regulations and orders. 42 U.S.C. 2282a. Furthermore, section 18 of the PAAA makes all employees of DOE contractors, and their subcontractors and suppliers, subject to criminal penalties, including monetary penalties and imprisonment, for knowing and willful violations of applicable DOE nuclear safety rules, regulations and orders. 42 U.S.C. 2273(c). Suspected, or alleged, criminal violations are referred to the Department of Justice for appropriate action. 42 U.S.C. 2271. Therefore, DOE's enforcement policy will apply only to civil penalties. However, referral of a case to the Department of Justice does not preclude DOE from taking civil enforcement action in accordance with this policy statement. Such actions will be coordinated with the Department of Justice to the extent practicable.

IV. Responsibilities

The Office of Nuclear Safety has been assigned by the Secretary of Energy the responsibility to implement the enforcement authority provided the Department in the PAAA. The Director of Enforcement, Office of Nuclear Safety, as the principal enforcement officer of the DOE, has been delegated the authority to issue Notices of Violations and proposed civil penalties.

V. Procedural Framework

10 CFR part 820 of DOE's regulations sets forth the procedures DOE will use in exercising its enforcement authority, including the issuance of Notices of Violation and the resolution of contested enforcement actions in the event a DOE nuclear entity opts to litigate contested issues before an Administrative Law Judge.

Pursuant to 10 CFR 820.22, the Director of Enforcement initiates the civil penalty process by issuing a Preliminary Notice of Violation and Proposed Civil Penalty (PNOV). The DOE nuclear entity is required to respond, in writing, to the PNOV, either (1) admitting the violation, waiving its right to contest the proposed civil penalty and paying it, (2) admitting the violation but asserting the existence of mitigating circumstances that warrant either the total or partial remission of the civil penalty, or (3) denying that the violation has occurred and providing the basis for its belief that the PNOV is incorrect. After evaluation of the DOE nuclear entity's response, the Director of Enforcement may (1) determine that no violation has occurred, (2) that the violation occurred as alleged in the PNOV but that the proposed civil penalty should be remitted in whole or in part, or (3) 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 of Enforcement will issue a Final Notice of Violation (FNOV) or an FNOV and Proposed Civil Penalty. An opportunity to challenge a proposed civil

penalty either before an Administrative Law Judge or in a United States District Court is provided in the PAAA, 42 U.S.C. 2282a(c), and 10 CFR part 820 sets forth the procedures associated with an administrative hearing, should the contractor opt for that method of challenging the proposed civil penalty. A formal administrative enforcement proceeding pursuant to section 554 of the Administrative Procedures Act is not initiated until the DOE nuclear entity against which a civil penalty has been proposed requests an administrative hearing rather than waiving its right to contest the civil penalty and paying it. 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 an administrative proceeding or, by consent order, after a formal proceeding has begun.

VI. Severity of Violations

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

Severity Level I has been assigned to violations that are the most significant and Severity Level III violations are the least significant. Severity Level I is reserved for violations of DOE nuclear safety requirements which involve actual or high potential for adverse impact on the safety of the public or workers at DOE facilities. Severity Level II violations represent a significant lack of attention or carelessness toward responsibilities of DOE nuclear entities for the protection of public or worker safety which could, if uncorrected, potentially lead to an adverse impact on public or worker safety at DOE facilities. Severity Level III violations are less serious but are of more than minor concern: i.e., if left uncorrected, they could lead to a more serious concern. In some cases, violations may be evaluated in the aggregate and a single severity level assigned for a group of violations.

Isolated minor violations of DOE nuclear safety requirements will not be the subject of formal enforcement action through the issuance of a Notice of Violation. However, these minor violations will be identified and tracked to assure that appropriate corrective/remedial action is taken to prevent their recurrence. If circumstances demonstrate that a number of related minor violations have occurred in the same time frame (e.g. all identified during the same inspection), or that related minor violations have recurred despite prior notice to the DOE nuclear entity and sufficient opportunity to correct the problem, DOE may choose in its discretion to consider the minor violations in the aggregate as a more serious concern warranting a Severity Level III designation, a Notice of Violation and a possible civil penalty.

The severity level of a violation will be dependent, in part, on the degree of culpability of the DOE nuclear entity with regard to the violation. Thus, inadvertent or negligent violations will be viewed differently than those in which there is gross negligence, deception or wilfulness. In addition to the significance of the underlying violation and level of culpability involved, DOE will also consider the position, training and experience of the person involved in the violation. Thus, for example, a violation may be deemed to be more significant if a senior manager of an organization is involved rather than a foreman or non-supervisory employee. In this regard, while management involvement, direct or indirect, in a violation may lead to an increase in the severity level of a violation and proposed civil penalty, the lack of such involvement will not constitute grounds to reduce the severity level of a violation or mitigate a civil penalty. Allowance of mitigation in such circumstances could encourage lack of management involvement in DOE nuclear entity activities and a decrease in protection of public and worker health and safety.

Other factors which will be considered by DOE in determining the appropriate severity level of a violation are the duration of the violation, the past performance of the DOE nuclear entity in the particular activity area involved, whether the DOE nuclear entity had prior notice of a potential problem, and whether there are multiple examples of the violation in the same time frame rather than an isolated occurrence. The relative weight given to each of these factors in arriving at the appropriate severity level will be dependent on the circumstances of each case.

DOE expects contractors to provide full, complete, timely, and accurate information and reports. Accordingly, the severity level of a violation involving either (1) failure to make a required report or notification to the DOE or (2) an untimely report or notification, will be based upon the significance of, and the circumstances surrounding, the matter that should have been reported. A contractor will not normally be cited for a failure to report a condition or event unless the contractor was actually aware, or should have been aware of the condition or event which it failed to report.

VII. Enforcement Conferences

Should DOE determine, after completion of all inspection and investigation activities associated with a potential or alleged violation of DOE nuclear safety requirements, that (1) there is a reasonable basis to believe that a violation has actually occurred, and (2) the violation may warrant a civil penalty or issuance of an enforcement order, DOE will normally hold an enforcement conference with the DOE nuclear entity involved prior to taking enforcement action. DOE may also elect to hold an enforcement conference for potential violations which would not ordinarily warrant a civil penalty or enforcement order but which could, if repeated, lead to such action. The purpose of the enforcement conference is to (1) assure the accuracy of the facts upon which the preliminary determination to consider enforcement action is based, (2) discuss the

potential or alleged violations, their significance and causes, and the nature of and schedule for the DOE nuclear entity's corrective actions, (3) determine whether there are any aggravating or mitigating circumstances, and (4) obtain other information which will help determine the appropriate enforcement action.

DOE nuclear entities will be informed prior to a meeting when that meeting is considered to be an enforcement conference. Such conferences are informal mechanisms for candid discussions regarding potential or alleged violations and will not normally be open to the public. In circumstances for which immediate enforcement action is necessary in the interest of public or worker health and safety, such action will be taken prior to the enforcement conference, which may still be held after the necessary DOE action has been taken.

VIII. Enforcement Actions

This section describes the enforcement sanctions available to DOE and specifies the conditions under which each may be used. The basic sanctions are Notices of Violation and civil penalties. In determining whether to impose enforcement sanctions, DOE will consider enforcement actions taken by other Federal or State regulatory bodies having concurrent jurisdiction, e.g. instances which involve NRC licensed entities which are also DOE nuclear entities, and in which the NRC exercises its own enforcement authority.

The nature and extent of the enforcement action is intended to reflect the seriousness of the violation involved. For the vast majority of violations for which DOE assigns severity levels as described previously, a Notice of Violation will be issued, requiring a formal response from the recipient describing the nature of and schedule for corrective actions it intends to take regarding the violation. Administrative actions, such as determination of award fees where DOE contracts provide for such determinations, will be considered separately from any civil penalties that may be imposed under this Enforcement Policy. Likewise, imposition of a civil penalty will be based on the circumstances of each case, unaffected by any award fee determination.

A. Notice of Violation

A Notice of Violation (either a Preliminary or Final Notice) is a document setting forth the conclusion of the DOE Office of Nuclear Safety that one or more violations of DOE nuclear safety requirements has occurred. Such a notice normally requires the recipient to provide a written response which may take one of several positions described in Section V of this policy statement. In the event that the recipient concedes the occurrence of the violation, it is required to describe (1) corrective steps which have been taken and the results achieved; (2) remedial actions which will be taken to prevent recurrence; and (3) the date by which full compliance will be achieved.

DOE will use the Notice of Violation as the standard method for formalizing the existence of a violation and, in appropriate cases as described in section VI.B, the notice of violation will be issued in conjunction with

the proposed imposition of a civil penalty. In certain limited instances, as described in section VI.D, DOE may refrain from the issuance of an otherwise appropriate Notice of Violation. However, a Notice of Violation will virtually always be issued (1) for willful violations, (2) if past corrective actions for similar violations have not been sufficient to prevent recurrence, and there are no other mitigating circumstances or (3) if the circumstances otherwise warrant increasing Severity Level III violations to a higher severity level.

DOE nuclear entities are not ordinarily cited for violations resulting from matters not within their control, such as equipment failures that were not avoidable by reasonable quality assurance measures, proper maintenance, or management controls. With regard to the issue of funding, however, DOE does not consider an asserted lack of funding to be a justification for noncompliance with DOE nuclear safety requirements. Should a contractor believe that a shortage of funding precludes it from achieving compliance with one or more DOE nuclear safety requirements, it must pursue one of two alternative courses of action. First, it may request, in writing, an exemption from the requirement(s) in question from the appropriate Program Secretarial Officer (PSO), explicitly addressing the criteria for exemptions set forth in 10 CFR 820.62. A justification for continued operation for the period during which the exception request is being considered should also be submitted. In such a case, the PSO must grant or deny the request in writing, explaining the rationale for his or her decision. Second, if the criteria for approval of an exception cannot be demonstrated, the contractor, in conjunction with the PSO, must take appropriate steps to modify, curtail, suspend or cease the activities which cannot be conducted in compliance with the DOE nuclear safety requirement(s) in question.

DOE expects the contractors which operate its facilities to have the proper management and supervisory systems in place to assure that all activities at DOE facilities, regardless of who performs them, are carried out in compliance with all DOE nuclear safety requirements. Therefore, contractors are normally held responsible for the acts of their employees and subcontractor employees in the conduct of activities at DOE facilities. Accordingly, this policy should not be construed to excuse personnel errors.

Finally, certain contractors are explicitly exempted from the imposition of civil penalties pursuant to the provisions of the PAAA, 42 U.S.C. 2282a(d), for activities conducted at specified facilities. In addition, in fairness to non-profit educational institutions, the Department has determined that they should be likewise exempted, 10 CFR 820.20. However, compliance with DOE nuclear safety requirements is no less important for these facilities than for other facilities in the DOE complex which work with, store or dispose of radioactive materials. Indeed, the exempted contractors conduct some of the most important nuclear-related research and development activities performed for the Department. Therefore, in order to serve the purposes of this

enforcement policy and to emphasize the importance the Department places on compliance with all of its nuclear safety requirements, DOE intends to issue Notices of Violation to the exempted contractors and non-profit educational institutions when appropriate under this policy statement, notwithstanding the statutory and regulatory exemptions from the imposition of civil penalties.

B. Civil Penalty

A civil penalty is a monetary penalty that may be imposed for violations of applicable DOE nuclear safety requirements. Civil penalties are designed to emphasize the need for lasting remedial action, deter future violations, and underscore the importance of DOE nuclear entity self-identification, reporting and correction of violations of nuclear safety requirements.

Absent mitigating circumstances as described below, or circumstances otherwise warranting the exercise of enforcement discretion by DOE as described in section VII.D, civil penalties will be proposed for Severity Level I and II violations. Civil penalties will be proposed for Severity Level III violations which are similar to previous violations for which the contractor did not take effective corrective action. "Similar" violations are those which could reasonably have been expected to have been prevented by corrective action for the previous violation. DOE normally considers civil penalties only for similar Severity Level III violations that occur after the date of the last Tiger Team Inspection, integrated performance assessment or within two years, whichever period is greater.

DOE will impose different base level civil penalties, considering (1) the severity level of the violation(s), and (2) a categorization of DOE facilities operated by Price-Anderson indemnified contractors. Tables 1A and 1B show the base civil penalties for the various categories of facilities. However, as described above in section IV, the imposition of civil penalties generally takes into account the gravity, circumstances, and extent of the violation or violations and, with respect to the violator, any history of prior similar violations and the degree of culpability.

Regarding the factor of ability of DOE nuclear entities to pay the civil penalties, it is not DOE's intention that the economic impact of a civil penalty be such that it puts a DOE nuclear entity out of business. Contract termination, rather than civil penalties, is used when the intent is to terminate these activities. The deterrent effect of civil penalties is best served when the amount of such penalties takes this factor into account.

DOE will review each case involving a proposed civil penalty on its own merits and adjust the base civil penalty values upward or downward appropriately. As indicated above, Tables 1A and 1B identify the base civil penalty values for different severity levels, and different categories of facilities. After considering all relevant circumstances, civil penalties may be escalated or mitigated based upon the adjustment factors described below in section VII.C. In no instance will a civil penalty for any one violation exceed \$100,000 per day. However, it should be

emphasized that if the DOE nuclear entity is or should have been aware of a violation and has not reported it to DOE and taken corrective action despite an opportunity to do so, each day the condition existed may be considered as a separate violation and, as such, subject to a separate civil penalty. Further, as described above in section IV.D, the duration of a violation will be taken into account in determining the appropriate severity level of the base civil penalty.

TABLE 1A—BASE CIVIL PENALTIES

Facility categories	Base civil penalty ¹
Category A Reactors, (>20 MWT).....	\$100,000
Transuranic material production, processing, reprocessing, handling, storage, or waste disposal facilities; device assembly facilities.....	75,000
Non-transuranic material production, processing, reprocessing, handling, storage or waste disposal facilities....	50,000
Category B reactors (<20 MWT), including critical facilities ²	10,000
All other nuclear facilities, including those with inventories consisting solely of sealed sources.....	10,000

¹ Potential base civil penalties set forth in this table are, pursuant to the PAAA, per day for each violation.

² Critical Facilities are experimental facilities used to measure neutron multiplication characteristics (at essentially zero power) of assemblies of fuel, moderator and other materials.

TABLE 1B—SEVERITY LEVEL BASE CIVIL PENALTIES

Severity level	Base civil penalty amount (Percentage of amount in Table 1A)
I.....	100
II.....	50
III.....	20

C. Adjustment Factors

DOE's enforcement program is not an end in itself, but a means to achieve compliance with DOE nuclear safety requirements, and civil penalties are not collected to swell the coffers of the United States Treasury, but to emphasize the importance of compliance and to deter future violations. The single most important goal of the DOE enforcement program is to encourage (1) early identification and reporting of nuclear safety deficiencies and violations of DOE nuclear safety requirements by the DOE nuclear entities themselves rather than by DOE, and (2) the prompt correction of any deficiencies and violations so identified. DOE believes that DOE nuclear entities are in the best position to identify and promptly correct noncompliance with DOE nuclear safety requirements. DOE expects that these entities should have in place internal compliance programs which will ensure the detection, reporting and prompt correction of nuclear safety-related problems that may constitute,

or lead to, violations of DOE nuclear safety requirements before, rather than after, DOE has identified such violations. Thus, DOE nuclear entities will almost always be aware of nuclear safety problems before they are discovered by DOE. Obviously, public and worker health and safety is enhanced if deficiencies are discovered (and promptly corrected) by the DOE nuclear entity, rather than by DOE, which may not otherwise become aware of a deficiency until later on, during the course of an inspection, performance assessment, or following an incident at the facility. Early identification of nuclear safety-related problems by DOE nuclear entities has the added benefit of allowing information which could prevent such problems at other facilities in the DOE complex to be shared with all appropriate DOE nuclear entities.

Pursuant to this enforcement philosophy, DOE will provide substantial incentive for the early self-identification, reporting and prompt correction of problems which constitute, or could lead to, violations of DOE nuclear safety requirements. Thus, application of the adjustment factors set forth below may result in no civil penalty being assessed for violations that are identified, reported, and promptly and effectively corrected by the DOE nuclear entity.

On the other hand, ineffective programs for problem identification and correction are unacceptable. Thus, for example, where a contractor fails to disclose and promptly correct violations of which it was aware or should have been aware, substantial civil penalties are warranted and may be sought, including the assessment of civil penalties for continuing violations on a per day basis.

Further, in cases involving willfulness, flagrant DOE-identified violations, repeated poor performance in an area of concern, or serious breakdown in management controls, DOE intends to apply its full statutory enforcement authority where such action is warranted.

1. Identification and Reporting

Reduction of up to 50% of the base civil penalty shown in Tables 1A and 1B may be given when a DOE nuclear entity identifies the violation and promptly reports the violation to the DOE. In weighing this factor, consideration will be given to, among other things, the opportunity available to discover the violation, the ease of discovery and the promptness and completeness of any required report. No consideration will be given to a reduction in penalty if the DOE nuclear entity does not take prompt action to report the problem to DOE upon discovery, or if the immediate actions necessary to restore compliance with DOE nuclear safety requirements or place the facility or operation in a safe configuration are not taken.

2. Corrective Action to Prevent Recurrence

The promptness (or lack thereof) and extent to which the DOE nuclear entity takes corrective action, including actions to identify root cause and prevent recurrence, may result in up to a 50% increase or decrease in the base civil penalty shown in Tables 1A and 1B. For example, very extensive corrective action may result in reducing the proposed

civil penalty as much as 50% of the base value shown in Table 1. On the other hand, the civil penalty may be increased as much as 50% of the base value if initiation or corrective action is not prompt or if the corrective action is only minimally acceptable. In weighing this factor, consideration will be given to, among other things, the appropriateness, timeliness and degree of initiative associated with the corrective action. The comprehensiveness of the corrective action will also be considered, taking into account factors such as whether the action is focused narrowly to the specific violation or broadly to the general area of concern.

3. DOE's Contribution to a Violation

There may be circumstances in which a violation of a DOE nuclear safety requirement results, in part or entirely, from a direction given by DOE personnel to a DOE nuclear entity to either take, or forbear from taking an action at a DOE facility. In such cases, DOE may refrain from issuing an NOV, and may mitigate, either partially or entirely, any proposed civil penalty, provided that the direction upon which the DOE nuclear entity relied is documented in writing, contemporaneously with the direction. It should be emphasized, however, that pursuant to 10 CFR 820.60 *et seq.*, no interpretation of a DOE nuclear safety requirement is binding upon DOE unless issued in writing by the General Counsel. Further, as discussed in Section VII(A) of this policy statement, lack of funding will not be considered as a mitigating factor in enforcement actions.

D. Exercise of Discretion

Because DOE wants to encourage and support DOE nuclear entity initiative for prompt self-identification, reporting and correction of problems, DOE may exercise discretion as follows:

1. In accordance with the discussion in Section C above, DOE may refrain from issuing a civil penalty for a violation which meets all of the following criteria:

- The violation is promptly identified and reported to DOE before DOE learns of it.
- The violation is not willful or a violation that could reasonably be expected to have been prevented by the DOE nuclear entity's corrective action for a previous violation.
- The DOE nuclear entity, upon discovery of the violation, has taken or begun to take prompt and appropriate action to correct the violation.
- The DOE nuclear entity has taken, or has agreed to take, remedial action satisfactory to DOE to preclude recurrence of the violation and the underlying conditions which caused it.

2. DOE may refrain from proposing a civil penalty for a violation involving a past problem, such as in engineering design or installation, that meets all of the following criteria:

- It was identified by a DOE nuclear entity as a result of a formal effort such as a Safety System Functional Inspection, Design Reconstitution program, or other program that has a defined scope and timetable which is being aggressively implemented and reported;

- Comprehensive corrective action has been taken or is well underway within a reasonable time following identification; and
- It was not likely to be identified by routine contractor efforts such as normal surveillance or quality assurance activities.

DOE will not issue a Notice of Violation for cases in which the violation discovered by the DOE nuclear entity cannot reasonably be linked to the conduct of that entity in the design, construction or operation of the DOE facility involved, provided that prompt and appropriate action is taken by the DOE nuclear entity upon identification of the past violation to report to DOE and remedy the problem.

3. DOE may refrain from issuing a Notice of Violation for an item of noncompliance that meets all of the following criteria:

- It was promptly identified by the DOE nuclear entity;
- It is normally classified at a Severity Level III;
- It was promptly reported to DOE;
- Prompt and appropriate corrective action will be taken, including measures to prevent recurrence; and
- It was not a willful violation or a violation that could reasonably be expected to have been prevented by the DOE nuclear entity's corrective action for a previous violation.

4. DOE may refrain from issuing a Notice of Violation for an item of noncompliance that meets all of the following criteria:

- It was an isolated Severity Level III violation identified during a Tiger Team inspection conducted by the Office of Environment, Safety and Health, or during an inspection or integrated performance assessment conducted by the Office of Nuclear Safety.

- The contractor has initiated or completed appropriate corrective action before the termination of the onsite inspection or integrated performance assessment.

- The violation is not willful or one which could reasonably be expected to have been prevented by the DOE nuclear entity's corrective action for a previous violation.

In these situations, a formal response from the contractor is not required and the inspection or integrated performance assessment report serves to document the violation and the corrective action.

5. If DOE initiates an enforcement action for a violation at a Severity Level II or III and, as part of the corrective action for that violation, the DOE nuclear entity identifies other examples of the violation with the same root cause, DOE may refrain from initiating an additional enforcement action. In determining whether to exercise this discretion, DOE will consider whether the DOE nuclear entity acted reasonably and in a timely manner appropriate to the safety significance of the initial violation, the comprehensiveness of the corrective action, whether the matter was reported, and whether the additional violation(s) substantially change the safety significance or character of the concern arising out of the initial violation.

It should be emphasized that the preceding paragraphs are solely intended to be examples indicating when enforcement discretion may be exercised to forego the issuance of a civil penalty or, in some cases, the initiation of any enforcement action at all. However, notwithstanding these examples, a civil penalty may be proposed or Notice of Violation issued when, in DOE's judgment, such action is warranted on the basis of the circumstances of an individual case.

IX. Procurement of Products or Services and the Reporting of Defects

DOE's enforcement policy is also applicable to subcontractors and suppliers to DOE Price-Anderson indemnified contractors. Through procurement contracts with these DOE contractors, subcontractors and suppliers are generally required to have quality assurance programs that meet applicable DOE nuclear safety requirements. Suppliers of products or services provided in support of or for use in DOE facilities operated by Price Anderson-indemnified contractors are subject to certain requirements designed to ensure the high quality of the products or services supplied to DOE facilities that could, if deficient, adversely affect public or worker safety. In particular, 10 CFR 830.122 requires that DOE be notified whenever a DOE nuclear entity obtains information reasonably indicating that a DOE facility (including its structures, systems and components) which conducts activities subject to the provisions of the Atomic Energy Act of 1954, as amended or DOE nuclear safety requirements either (1) fails to comply with any provision of the Atomic Energy Act or any applicable DOE nuclear safety requirement or (2) contains a defect or has been supplied with a product or service which could create or result in a substantial safety hazard.

DOE will conduct audits and inspections of its contractors to (1) determine whether they are ensuring that subcontractors and suppliers are meeting their contractual obligations with regard to quality of products or services that could have an adverse effect on public or worker radiological safety, and (2) ensure that DOE contractors have in place adequate programs to determine whether products or services supplied to them for DOE facilities meet applicable DOE requirements and that standard products or services are not used by Price Anderson-indemnified contractors at the facilities they operate for DOE. As part of the effort of ensuring that contractual and regulatory requirements are met, DOE may also audit or inspect subcontractors and suppliers. These inspections could include examination of the quality assurance programs and their implementation by the subcontractors and suppliers through examination of product quality.

When audits or inspections determine that subcontractors or suppliers have failed to comply with applicable DOE nuclear safety

requirements or to fulfill contractual commitments designed to ensure the quality of a safety significant product or service, enforcement action will be taken. Notices of Violations and civil penalties will be issued, as appropriate, for DOE contractor failures to ensure that their subcontractors and suppliers provide products and services that meet applicable DOE requirements. Notices of Violations and civil penalties will also be issued to subcontractors and suppliers of DOE contractors which fail to comply with the reporting requirements set forth in 10 CFR 830.72, or any other applicable DOE nuclear safety requirements.

X. Inaccurate and Incomplete Information

A violation of DOE nuclear safety requirements for providing complete and accurate information to DOE, 10 CFR 820.11, can result in the full range of enforcement sanctions, depending upon the circumstances of the particular case and consideration of the factors discussed in this section. Violations involving inaccurate or incomplete information or the failure to provide significant information (See 10 CFR 830.72) identified by a DOE nuclear entity normally will be categorized based on the guidance in Section VI, "Severity of Violations".

DOE recognizes that oral information may in some situations be inherently less reliable than written submittals because of the absence of an opportunity for reflection and management review. However, DOE must be able to rely on oral communications from officials of DOE nuclear entities concerning significant information. In determining whether to take enforcement action for an oral statement, consideration will be given to such factors as (1) the degree of knowledge that the communicator should have had, regarding the matter, in view of his or her position, training, and experience; (2) the opportunity and time available prior to the communication to assure the accuracy or completeness of the information; (3) the degree of intent or negligence, if any, involved; (4) the formality of the communication; (5) the reasonableness of DOE reliance on the information; (6) the importance of the information that was wrong or not provided; and (7) the reasonableness of the explanation for not providing complete and accurate information.

Absent gross negligence or willfulness, an incomplete or inaccurate oral statement normally will not be subject to enforcement action unless it involves significant information provided by an official of a DOE nuclear entity. However, enforcement action may be taken for an unintentionally incomplete or inaccurate oral statement provided to DOE by an official of a DOE nuclear entity or others on behalf of the DOE nuclear entity, if a record was made of the oral information and provided to the DOE nuclear entity thereby permitting an opportunity to correct the oral information, such as if a transcript of the communication

or meeting summary containing the error was made available to the DOE nuclear entity and was not subsequently corrected in a timely manner.

When a DOE nuclear entity has corrected inaccurate or incomplete information, the decision to issue a citation for the initial inaccurate or incomplete information normally will be dependent on the circumstances, including the ease of detection of the error, the timeliness of the correction, whether DOE or the DOE nuclear entity identified the problem with the communication, and whether DOE relied on the information prior to the correction. Generally, if the matter was promptly identified and corrected by the DOE nuclear entity prior to reliance by DOE, or before DOE raised a question about the information, no enforcement action will be taken for the initial inaccurate or incomplete information. On the other hand, if the misinformation is identified after DOE relies on it, or after some question is raised regarding the accuracy of the information, then some enforcement action normally will be taken even if it is in fact corrected.

If the initial submission was accurate when made but later turns out to be erroneous because of newly discovered information or advance in technology, a citation normally would not be appropriate if, when the new information became available, the initial submission was corrected.

The failure to correct inaccurate or incomplete information that the DOE nuclear entity does not identify as significant normally will not constitute a separate violation. However, the circumstances surrounding the failure to correct may be considered relevant to the determination of enforcement action for the initial inaccurate or incomplete statement. For example, an unintentionally inaccurate or incomplete submission may be treated as a more severe matter if a DOE nuclear entity later determines that the initial submission was in error and does not correct it or if there were clear opportunities to identify the error.

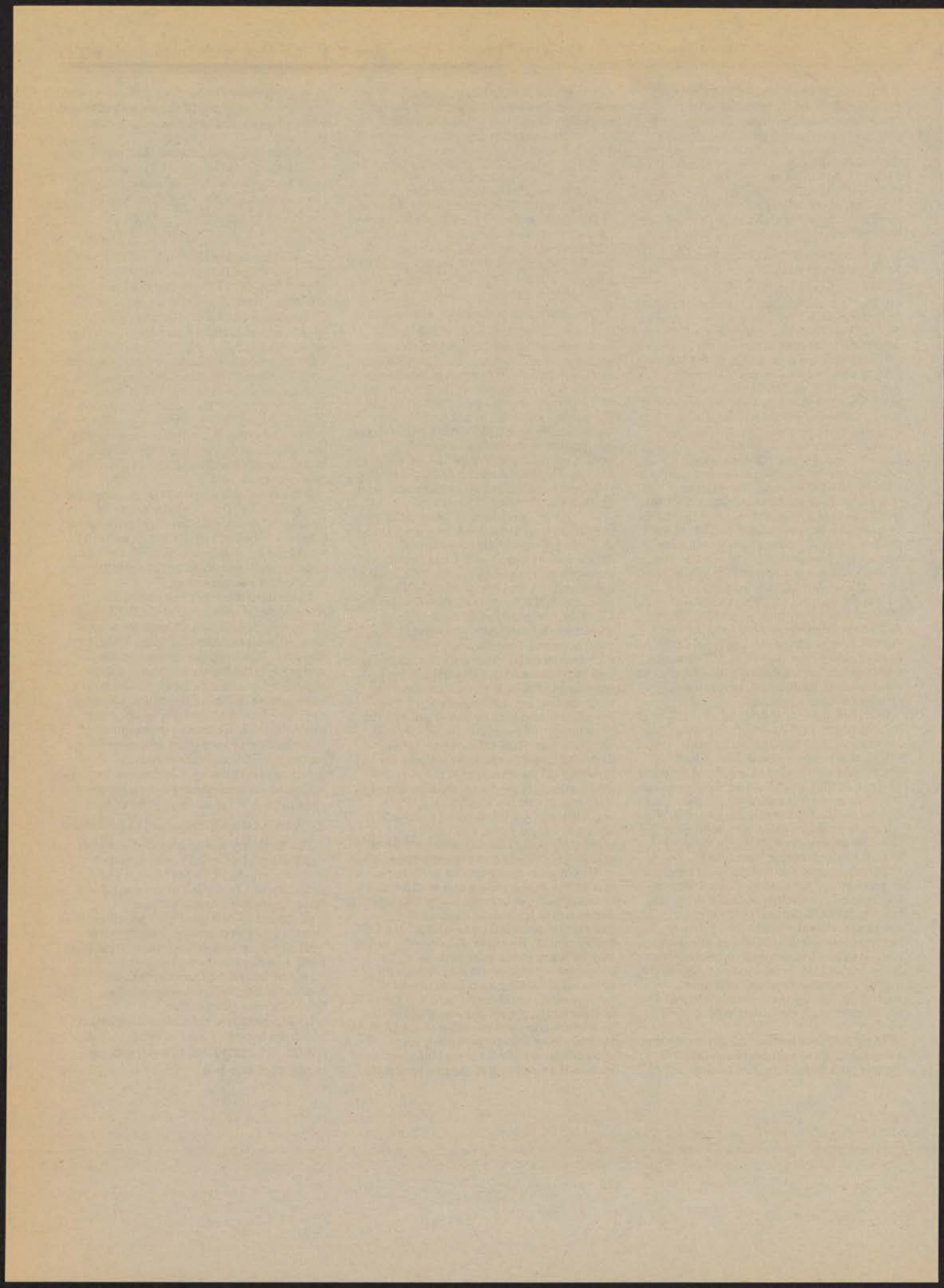
XI. Secretarial Notification and Consultation

The Secretary will be provided written notification of all enforcement actions involving proposed civil penalties. The Secretary will be consulted prior to taking action in the following situations:

- (1) Proposals to impose civil penalties in an amount equal to or greater than \$100,000;
- (2) Any proposed enforcement action that involves a Severity Level I violation;
- (3) Any action the Director, Office of Nuclear Safety, believes warrants the Secretary's involvement; or
- (4) Any proposed enforcement action on which the Secretary asks to be consulted.

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10 CFR Part 830

**Monday
December 9, 1991**

Part III

**Department of
Energy**

10 CFR Part 830

**Nuclear Safety Management; Contractor
and Subcontractor Activities; Proposed
Rule and Public Hearing**

DEPARTMENT OF ENERGY

10 CFR Part 830

[Docket No. NE-RM-91-830]

Nuclear Safety Management

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy (DOE) proposes the addition of a new part to its regulations establishing a body of rules for DOE contractor and subcontractor activities that will form the basic requirements for ensuring nuclear safety at DOE facilities. These requirements stem from the Department's ongoing effort to strengthen the protection of health, safety, and the environment from the nuclear, radiological, and chemical hazards posed by these DOE facilities. In addition, violations of these requirements will provide a basis for civil and criminal penalties under the authority established by the Price-Anderson Amendments Act of 1988 (PAAA).

DATES: Written comments (20 copies) should be submitted to the address listed below by February 7, 1992. A hearing will be held on January 14, 1992. Requests to speak at the hearing must be submitted on or before January 8, 1992.

ADDRESSES: Written comments (20 copies) and requests to speak at the hearing should be addressed to:

Stephen Stern, U.S. Department of Energy, Office of Nuclear Energy, NE-72-GTN, 1000 Independence Avenue SW., Washington, DC 20585, (301) 903-2527 or FTS 233-2527.

A hearing will be held at 9 a.m. at: U.S. Department of Energy, Germantown Auditorium Building, 19901 Germantown Road (Route 118), Germantown, MD 20874.

Written comments and the hearing transcript may be examined between 9 a.m. and 4 p.m., Monday through Friday, in: U.S. Department of Energy, Freedom of Information Reading Room, room 1E-190, 1000 Independence Avenue SW., Washington, DC 20585, (301) 586-6020 or FTS 896-6020.

FOR FURTHER INFORMATION CONTACT:

Stephen Stern, U.S. Department of Energy, Office of Nuclear Energy, NE-72-GTN, 1000 Independence Avenue SW., Washington, DC 20585, (301) 903-2527 or FTS 233-2527.

or

Ben McRae, U.S. Department of Energy, Office of General Counsel, GC-31-

FORS, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6975 or FTS 896-6975.

SUPPLEMENTARY INFORMATION:

- I. Background
 - A. Applicability of these Requirements
 - B. Safety Guides
- II. Proposed Rules
 - A. Section 830.110 Safety Analysis Reports
 - B. Section 830.112 Unreviewed Safety Questions
 - C. Section 830.120 Quality Assurance Requirements
 - D. Section 830.122 Defect Identification and Reporting
 - E. Section 830.310 Conduct of Operations at DOE Nuclear Facilities
 - F. Section 830.320 Technical Safety Requirements
 - G. Section 830.330 Training and Certification
 - H. Section 830.340 Maintenance Management
 - I. Section 830.350 Categorization, Notification, Reporting, and Processing of Operational Occurrences at DOE Nuclear Facilities
- III. Procedural Requirements
 - A. Review Under Executive Order 12291
 - B. Review Under the Regulatory Flexibility Act
 - C. Review Under the Paperwork Reduction Act
 - D. Review Under the National Environmental Policy Act
 - E. Review Under Executive Order 12612
- IV. Public Comment Procedures
 - A. Written Comments
 - B. Public Hearing

I. Background

Historically, the Department of Energy (DOE) has established nuclear safety requirements for its facilities through a system of internal Departmental Directives (DOE Orders). DOE now proposes to revise this system of establishing nuclear safety requirements through the promulgation of rules. As rules are promulgated covering subjects that were previously covered by DOE Orders, DOE will act to amend or delete the affected Orders or portions thereof. DOE Orders will remain in effect for non-nuclear facilities.

During the past several years, DOE has made a concerted effort to review and improve all aspects of DOE operations and facility safety. This effort was a result of concerns about facility aging, specific operational occurrences, the formality with which DOE operations were conducted, and the rigor and consistency with which DOE Orders were implemented. As a result of these concerns, a 1987 study by the National Academy of Sciences (NAS) was conducted to assess current operations at DOE production reactors. (Two subsequent NAS studies assessed other aspects of nuclear safety in the DOE complex.) The results of this effort

highlighted several areas warranting review, including the need for improvement in DOE communications and management (thus providing an increased emphasis on safety), specific guidance for nuclear facilities, and for a better system for assessing the adequacy of implementation of specific requirements.

In 1988, the Price-Anderson Amendments Act (PAAA) was enacted. This act, among other things, subjects DOE contractors, who enter into indemnification agreements under the Price-Anderson Act, 42 U.S.C. 2210(d), and their subcontractors and suppliers, to civil and criminal penalties for violations of applicable DOE rules, regulations, or orders related to nuclear safety. The PAAA, coupled with DOE efforts to improve the assurance of safety in its nuclear operations, led DOE to conclude that basic DOE nuclear safety requirements should be established through rulemaking. These requirements would revise and supplement the existing requirements, and in particular, establish specific requirements for applicable DOE nuclear facilities and provide a structured means for measuring the adequacy of the implementation and compliance on a facility-specific basis. Compliance would be measured against specific requirements and against provisions of programs required by these requirements and approved by DOE.

DOE nuclear safety requirements would address four major objectives: (1) Preventing the uncontrolled release of radioactivity to the environment; (2) preventing inadvertent criticality; (3) limiting and monitoring facility staff exposure to radiation and radioactivity; and, (4) protecting the public from exposure to radiation and radioactive contamination. Additional requirements related to protecting facility workers are to be codified in 10 CFR part 835, proposed separately in this issue of the *Federal Register*. 10 CFR part 834, to be published in the later issue, will contain additional requirements related to protecting the public and the environment.

A. Applicability of These Requirements

The rules in part 830 would be applicable to DOE nuclear facilities only. Except as described below, and unless otherwise noted specifically in a particular rule, the rules in this part would apply to all DOE contractors, and their subcontractors and suppliers, for all activities performed for DOE in connection with a DOE nuclear facility.

Part 830 rules would not be applicable to the following:

(1) Activities that are regulated through license by the Nuclear Regulatory Commission (NRC) or a NRC Agreement State.

(2) Activities conducted under the Naval Nuclear Propulsion Program.

(3) Activities conducted under the Nuclear Explosives and Weapons Safety Program relating to the prevention of accidental or unauthorized nuclear detonations.

The Department would enforce the rules in part 830 (in accordance with procedures to be included in part 820 of title 10) against DOE contractors, subcontractors, and suppliers.

These rules, unlike the current DOE Order system, would not define DOE staff responsibilities in support of facility operations. DOE staff responsibilities related to nuclear safety, including the responsibilities related to the implementation and assessment of implementation of these rules, would be defined in separate documents.

These documents will be promulgated as part of the system of internal Departmental Directives.

B. Safety Guides

As appropriate, rules would be accompanied by Safety Guides. Safety Guides would provide concise information to assist in rule implementation. Safety Guides would be written at a level of detail and specificity appropriate for each topic covered by the rule. Copies of the draft Safety Guides related to the rules proposed in this notice may be examined at the DOE Freedom of Information Act Reading Room and may be obtained by contacting Stephen Stern, Department of Energy, NE-74, 1000 Independence Avenue SW., Washington, DC 20585, or by calling (301) 903-2527.

II. Proposed Rules

The proposed rules included in this notice are individually described as follows: (1) Safety Analysis Reports, requiring the contractor for each facility to analyze the safety of its activities; (2) Unreviewed Safety Questions, allowing operations to be modified through changes, tests, and experiments without prior DOE approval if the defined activity is consistent with and bounded by the facility's Safety Analysis Report and Technical Safety Requirements; (3) Quality Assurance Requirements, requiring the implementation of a formalized quality assurance program; (4) Defect Identification and Reporting, requiring contractors, subcontractors, and suppliers to identify and report

defective items and services that pose a substantial safety hazard and have been procured for use at a DOE nuclear facility; (5) Conduct of Operations at DOE Nuclear Facilities, delineating the manner and proper means to carry out activities that can affect the safety of operations; (6) Technical Safety Requirements, setting forth operational limitations based on plant-specific safety analyses; (7) Training and Certification, requiring the implementation of training programs for nuclear facility personnel performing duties important to the safe operation of a facility; (8) Maintenance Management, setting forth those requirements necessary to maintain operational safety by preserving equipment reliability, operability, and functional condition. Each of these rules bears a relationship to the others, forming a cohesive safety framework; and (9) Categorization, Notification, Reporting, and Processing of Operational Occurrences at DOE Nuclear Facilities, requiring that each facility inform specified DOE personnel of any event or condition that has resulted in an actual or potential degradation in safety.

In general, the contractor primarily responsible for the design, construction, operation, or decommissioning of a facility would be responsible for compliance with the proposed rules. Some of the proposed rules do, however, identify other persons. In addition, the proposed general rule makes clear that all persons must act consistently with the proposed rules.

In general, compliance with the proposed rules would be a prerequisite for operation of a nuclear facility. However, the rules would provide, in some cases, for a transition period for existing facilities. For purposes of a particular rule, the determination whether a facility was an existing facility would be based on the effective date of that rule.

The rule concerning Safety Analysis Reports (SARs) would establish requirements for contractors to develop and document the information to be relied upon by DOE for authorizing the initial operation of each facility and to allow its continued operation. Safety Analysis Reports would define the performance capabilities of systems, structures, components, and personnel and would be aimed at confirming the ability of the systems, structures, components, and personnel to perform their intended safety function under normal, abnormal, accident, and specified failure conditions. Therefore, a Safety Analysis Report would establish a safety basis that would provide a foundation for almost every other rule.

The Safety Analysis Report for a facility would define the bounds for determining the existence of an Unreviewed Safety Question; would provide the basis for developing and selecting those limits to be set forth in the Technical Safety Requirements; would define, through analysis, those systems, structures, components, and activities that impact safety, which in turn would provide guidance for setting maintenance standards and procedural guidance. The Safety Analysis Report would consider nuclear safety hazards that might be present at a facility.

Technical Safety Requirements would set forth the minimum acceptable limits for operations under normal and specified failure conditions. Technical Safety Requirements would be a distillation of those aspects of Safety Analysis Reports that are required in order to ensure the performance of systems, structures, components, and personnel. Technical Safety Requirements also would set limits for operations under certain failure conditions. These limits would be derived from the safety analysis and risks associated with each failure condition. Technical Safety Requirements would define those limits that could not be changed without prior DOE authorization. They also would establish, along with the Safety Analysis Report, the basis for authorizing a facility to operate. This authorization basis would be relied upon for determining an Unreviewed Safety Question under § 830.112. Technical Safety Requirements would set forth surveillance requirements that would be intended to check the material and performance conditions of systems, structures, and components that would provide input into the maintenance management program. Technical Safety Requirements would establish administrative and staffing requirements that would be supported by programs for training, quality assurance, and the conduct of operations.

The rule covering determination of Unreviewed Safety Questions is intended to preserve the authorization basis, while avoiding burdening the DOE review and approval process with a requirement for prior approval of all changes.

The rule covering Maintenance Management would set forth standards to preserve and maintain the material condition and functioning of all systems and components as set forth in the Safety Analysis Report and Technical Safety Requirements for each facility. This rule also would set forth standards

for the conduct of maintenance and post-maintenance testing.

The rule for addressing Defect Identification and Reporting would require DOE contractors, subcontractors, and suppliers to identify, evaluate, and report defective items and services. The rule would ensure that all DOE facilities known or suspected to have used defective items and services would be notified so that appropriate corrective action could be taken.

Categorization, Notification, Reporting, and Processing requirements contained in proposed § 830.350 would bear an indirect relationship to other rules being promulgated in that the trending and analysis of these problems and their causes would provide significant input for improvements to operations, programs, and the implementation of new requirements.

The rules covering Quality Assurance, Conduct of Operations, and Training and Certification all would set performance standards for management and personnel necessary to ensure the integrity of work products and the conduct of duties and activities. These requirements would be integrated into all aspects of facility design, operations, and maintenance.

The requirements contained in each of these proposed rules are summarized below:

A. Section 830.110 Safety Analysis Reports

The contractors responsible for design, construction, operation or decommissioning of DOE nuclear facilities would have to perform safety analyses that establish and evaluate the adequacy of the safety basis of each facility and prepare Safety Analysis Reports (SARs) to document the findings of the safety analyses. The SARs would be reviewed and approved by DOE. The SAR would define the safety basis, document the logic of its derivation, and justify its adequacy.

For existing facilities, the rule would require contractors to upgrade existing SARs. The rule also would require the contractor responsible for each facility to define and analyze its design/operating basis and its current configuration. The rule would require the inclusion of an aspect to safety that is broader than those previously defined by DOE Order requirements, which dealt primarily with hardware and design. The rule would set forth topical areas that must be addressed in each SAR, including facility description and operation, principal safety criteria, external hazards analysis, accident analysis, procedures and training,

human factors, quality assurance, management organization, derivation of technical safety requirements, radiation protection, and operations. The rule would call for a level of effort and documentation commensurate with the hazard inherent in the facility and its spectrum of accident analysis. The rule would require periodic updating of SARs. For nuclear facilities, § 830.110 would supersede the requirements contained in several DOE Orders, principally DOE 5481.1B. The Department is continuing to refine the criteria on hazard classification presented in § 830.110(d) and is particularly interested in obtaining public comment on this matter.

B. Section 830.112 Unreviewed Safety Questions

A situation outside the bounds of the current safety analysis for a nuclear facility (as documented in its Safety Analysis Report) would constitute an Unreviewed Safety Question. Section 830.112 would permit contractors to make changes and to conduct tests and/or experiments when these activities had been determined not to involve an Unreviewed Safety Question (and when they did not require a change in the Technical Safety Requirements). This determination would have to be documented and reviewed as set forth in the rule. This rule also would require that if an error or discrepancy in the facility analysis were discovered that might reduce the margin of safety, the requirements of § 830.112 would have to be applied and an Unreviewed Safety Question evaluation would have to be completed. The intent of this proposed rule is to allow contractors the needed flexibility to conduct day-to-day operations when proposed changes do not impact the facility authorization basis relied upon by DOE, requiring that only those changes with a potential impact on the safety basis of the facility be subject to prior approval by DOE, and thereby maintaining the proper safety focus. Proposed § 830.112 is based on DOE 5481.1B, 5480.5, and 5480.6 and on NRC's similar rule (10 CFR 50.59). For DOE nuclear facilities, § 830.112 would supersede paragraphs 5s 7b(19), 7c(9), and 7e(13) of DOE 5480.5 and paragraphs 5x, 7b(18), 7c(14), and 7e(19) of DOE 5480.6.

C. Section 830.120 Quality Assurance Requirements

This rule would mandate the development and implementation of a formalized quality assurance program to address three functional areas of work that constitute quality assurance: Management, performance, and

assessment. To ensure consistency with the intent of the proposed rule, DOE would review and approve contractor-proposed quality assurance programs and would evaluate contractors' performance against the approved program. This proposed rule is based, in part, on the experience of the Nuclear Regulatory Commission in implementing the quality assurance requirements of 10 CFR part 50 appendix B, and parallels chapter 17.3 of the NRC Standard Review Plan (NUREG-0800). For nuclear facilities, this rule would supersede the existing guidance in DOE Order 5700.6, "Quality Assurance."

D. Section 830.122 Defect Identification and Reporting

This rule would require DOE contractors, subcontractors, and suppliers to identify, evaluate, and report defective items and services. It would establish requirements to ensure that DOE contractors were cognizant of defects that posed an actual or potential substantial safety hazard. The rule would ensure that all DOE facilities known or suspected to have used defective items or services were notified so that appropriate corrective action could be taken. The rule is based, in part, on the NRC provision set forth in 10 CFR part 21.

E. Section 830.310 Conduct of Operations at DOE Nuclear Facilities

This rule would require the contractor for each facility to implement a program and procedures to provide the proper level of guidance for operations to be conducted in an organized and disciplined manner. This rule would ensure establishment of the responsibilities of personnel, as well as to ensure that the tools needed to conduct those responsibilities in a safe and reliable manner are provided. This rule would require that operations be managed, organized, and conducted in a manner to ensure an acceptable level of safety; that personnel have procedures in place to control their operations; that contractor line organizations review existing and planned programs important to safe and reliable operations; and that contractor line organizations assess the effectiveness of corporate directives, plans, or procedures at facilities under their cognizance. To ensure consistency with the intent of the proposed rule, DOE would review and approve contractor-proposed plans for the conduct of operations and evaluate contractor compliance against the approved program. For nuclear facilities, § 830.310 would supersede DOE 5480.19.

F. Section 830.320 Technical Safety Requirements

This rule would set forth requirements for the scope, format, and technical content of Technical Safety Requirements. The resulting document would replace the Technical Specifications used for nuclear reactors and the Operational Safety Requirements used for non-reactor nuclear facilities. Technical Safety Requirements would define the conditions under which operations must be carried out at a DOE reactor or non-reactor facility. Technical Safety Requirements would be derived from the facility-specific Safety Analyses Report. Prevention and mitigation of radioactive and nonradioactive hazardous material releases and inadvertent criticality would be addressed in the development of the Technical Safety Requirements, which must include Operational Limits, Technical and Administrative Controls, Design Features, Surveillance Requirements, and the basis for each of these limits as derived from the Safety Analysis Report.

Systems, structures, and components acting as barriers against release of radioactive or other hazardous materials would be required to be identified. Parameters that indicate the potential for, or actual breach of, those barriers would be among those to be included in the Technical Safety Requirements, as well as instruments relied upon to measure these parameters. Limits for Technical Safety Requirements would be commensurate with the potential consequences of a barrier breach.

Surveillance testing requirements for systems, structures, components, instruments, and controls needed to support the operating limits for the detection and prevention of the uncontrolled release of radioactive or other hazardous materials also would have to be included. The frequency of surveillance tests also would have to be established.

DOE would review and approve contractor-proposed Technical Safety Requirements. Contractors would have to comply with their DOE-approved Technical Safety Requirements.

The proposed rule is based, in part, on NRC's experience in use of Technical Specifications to control operation of commercial nuclear power plants and particularly considers NRC's Technical Specifications Improvement Program. Section 830.320 would replace existing requirements contained in DOE 5480.5 and 5480.6.

G. Section 830.330 Training and Certification

This rule would require the contractor for each nuclear facility to develop and implement a training and certification program. This program would ensure that operators and supervisors whose performance was vital to the safe operation of DOE nuclear facilities would be trained to conduct their duties in a safe and effective manner. The rule would set forth the requirements for initial and continuing training programs; the administration of written, operational, and medical examinations; control manipulation lists for normal, abnormal, and emergency operations; operator proficiency; documentation of the use of, or need for, full-scope or partial-task simulators; and maintenance of records to document training and certification. This rule would ensure that initial and continuing training be conducted and documented to demonstrate that operators and supervisors have learned to operate the nuclear facility competently and safely. The rule would also require the establishment of training and qualification programs for other nuclear facility personnel important to the safe operation of a facility. To ensure consistency with the intent of the proposed rule, DOE would review and approve contractor-proposed programs for training and certification of operators and supervisors and the training and qualification programs for other nuclear facility personnel, and evaluate contractor compliance against the approved program. These programs would reflect the specific needs of Category A reactor facilities, Category B reactor facilities, and non-reactor nuclear facilities. Proposed § 830.330 is based on DOE 5480.5 and 5480.6, the recently issued DOE 5480.20, and NRC's training requirements in 10 CFR part 55. For nuclear facilities, this rule would supersede DOE 5480.20 and those portions of DOE 5480.5 and 5480.6 that deal with training.

H. Section 830.340 Maintenance Management

This rule would require the contractor for each nuclear facility to develop a maintenance program that included identification of all structures, systems, and components performing a safety function (as defined in the Safety Analysis Report); a description of the maintenance organization (including structure, authorities, responsibilities, qualifications, and resources); a description of procedures for conducting and documenting maintenance activities; a description of inspection

and testing programs and/or activities necessary for continued detection of material and functional conditions; and provisions for self-assessment of program effectiveness and the implementation of assessment feedback. Each DOE nuclear facility contractor would be required to develop a Maintenance Implementation Plan for each nuclear facility under its cognizance. To ensure consistency with the intent of the proposed rule, DOE would review and approve contractor-proposed Maintenance Implementation Plans and evaluate contractor compliance against the approved plan. For nuclear facilities, this rule would supersede DOE 4330.4A.

I. Section 830.350 Categorization, Notification, Reporting, and Processing of Operational Occurrences at DOE Nuclear Facilities

This rule would require the contractor responsible for each nuclear facility to identify and report all occurrences meeting threshold requirements defined in the rule. The rule would set forth time limitations for oral and documented notification, define occurrence categories based on the safety significance or the potential safety impact of the occurrence, and require that analysis be completed to determine event causes, thereby allowing the implementation of appropriate corrective actions. In addition, it would require contractors to develop and implement lessons learned from the operating experience information generated by these requirements. Contractors would be required to develop procedures for application of the proposed rule at their facilities. DOE would approve these procedures and evaluate contractor compliance against them as well as against the specific requirements established in the rule. Proposed § 830.350 is based on DOE 5000.3A and the similar NRC rules (10 CFR 50.72, and 10 CFR 50.73). For DOE nuclear facilities, this rule would supersede DOE 5000.3A.

III. Procedural Requirements*A. Review Under Executive Order 12291*

Executive Order 12291, entitled "Federal Regulations," requires that a regulatory impact analysis be prepared prior to the promulgation of a "major rule." DOE has concluded that this action is not a "major rule." DOE has concluded that this action is not a "major rule" for purpose of the Executive Order because its promulgation will not result in any of the following: (1) An annual effect on

the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in domestic or export market.

Pursuant to section 3(c) of E.O. 12291, this rule was submitted to the Director of the Office of Management and Budget. The Director has concluded his review under that Executive Order.

B. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which requires preparation of a regulatory flexibility analysis for any rule that is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this regulation will not have a significant economic impact on a substantial number of small entities; therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

The proposed information and reporting requirements in this part are not substantially different from existing reporting requirements contained in DOE contracts with DOE prime contractors covered by this rule. DOE will submit the collection of any new information requests concerning this proposed rule to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501.1 *et seq.*, and the procedures implementing that Act, 5 CFR 1320.1 *et seq.*

D. Review Under the National Environmental Policy Act

The DOE has reviewed the promulgation of this rule with respect to its responsibilities under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality regulations for implementing NEPA (40 CFR parts 1500-1508). The environmental impacts of the proposed action have been found to be clearly insignificant.

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41,685 (October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on

the relationship between the national government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

DOE's proposed rule, when finalized, will not have a substantial direct effect on the institutional interests or traditional functions of States.

IV. Public Comment Procedures

A. Written Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed rules set forth in this notice. Twenty copies of written comments should be submitted to the address indicated in the "ADDRESSES" section of this notice. All comments received will be available for public inspection in the DOE Reading Room, room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by the date indicated in the "DATES" section of this notice will be carefully assessed and fully considered prior to publication of the final rules. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to its determination.

DOE is interested in comments concerning the potential costs and benefits of this regulation, either to the general public, DOE contractors, or DOE. DOE is particularly interested in comments that discuss whether or not DOE may be subjecting its contractors to additional costs that are not contemplated by existing contractual relations or the PAAA. Comments concerning this subject should address the specific nature and scope of the additional costs to which contractors would be subjected and explain why these concerns are not already addressed in the current contractual relationship or PAAA.

B. Public Hearing

Requests to speak at the hearing must be submitted to the address indicated in the "ADDRESSES" section of this notice and received by the date indicated in the "Dates" section of this Notice. Requests for oral presentations should

contain a telephone number where speakers may be contacted prior to the hearing. Speakers are requested to submit 20 copies of their statement to DOE at the hearing.

DOE reserves the right to select the persons to be heard at the hearing, in the event there are more requests to be heard than time allows, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 10 minutes. The hearing will begin at 9 a.m.

A DOE official will be designated to preside at the hearing. This will not be a judicial-type hearing. Questions may be asked only by those conducting the hearing. Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made available to the public. The entire record of the hearing, including the transcript, will be retained by DOE and made available for public inspection and copying in the DOE Freedom of Information Office, 1E-190, 1000 Independence Avenue SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Transcripts may be purchased from the court reporter.

List of Subjects in 10 CFR Part 830

Federal buildings and facilities, Nuclear energy, Nuclear material, Nuclear reactors, Reporting and recordkeeping requirements and Safety.

Issued in Washington, DC, on November 20, 1991.

John C. Tuck,
Under Secretary.

For the reasons set forth in the preamble, title 10, chapter III, of the Code of Federal Regulations is proposed to be amended by adding a new part 830 as follows:

PART 830—NUCLEAR SAFETY MANAGEMENT

Sec.	
830.1	Scope.
830.2	Exclusions.
830.3	Definitions.
830.4	General Rule.
830.5	Enforcement.
830.6	Records.
830.7	Graded Approach.

Subpart A—General Provisions

830.100	Scope of subpart.
830.110	Safety analysis reports.
830.111	Configuration management.
	[Reserved]
830.112	Unreviewed safety questions.

- 830.120 Quality assurance requirements.
- 830.121 Software control. [Reserved]
- 830.122 Defect identification and reporting
- 830.130 Human factors. [Reserved]
- 830.131 Fitness for duty. [Reserved]
- 830.132 Safety concern management. [Reserved]
- 830.140 Decontamination and decommissioning. [Reserved]

Subpart B—Design

- 830.200 Scope.
- 830.210 Reactor design criteria. [Reserved]
- 830.211 Non-reactor nuclear facility design criteria. [Reserved]
- 830.212 Facility protection systems. [Reserved]
- 830.213 Fire protection. [Reserved]
- 830.214 Environmental qualification. [Reserved]
- 830.215 Protection against extreme external phenomenon. [Reserved]

Subpart C—Operations

- 830.300 Scope.
- 830.310 Conduct of operations at DOE nuclear facilities.
- 830.320 Technical safety requirements.
- 830.330 Training and certification.
- 830.340 Maintenance management.
- 830.341 Material condition and aging. [Reserved]
- 830.350 Categorization, notification, reporting, and processing of operational occurrences at DOE nuclear facilities.
- 830.351 Performance indicators. [Reserved]
- 830.360 Criticality safety. [Reserved]
- 830.370 Emergency preparedness. [Reserved]

Subpart D—Material Management

- 830.400 Scope.
 - 830.410 Packaging for transport. [Reserved]
 - 830.420 Transportation. [Reserved]
 - 830.430 Disposal. [Reserved]
- Authority: 42 U.S.C. 2201; 7191

§ 830.1 Scope.

The rules in this part govern the conduct of DOE Contractors and other persons at DOE nuclear facilities.

§ 830.2 Exclusions.

The rules in this part do not apply to:

- (a) Activities that are regulated through a license by the Nuclear Regulatory Commission or a State under an Agreement with the Nuclear Regulatory Commission;

- (b) Activities conducted under the authority of the Director, Naval Nuclear Propulsion Program, as described in Public Law 98-525; or

- (c) Activities conducted under the Nuclear Explosives and Weapons Safety Program relating to the prevention of accidental or unauthorized nuclear detonations.

§ 830.3 Definitions.

(a) The following definitions apply to this part:

Administrative Controls means provisions relating to organization and

management, procedures, recordkeeping, assessment, and reporting necessary to ensure safe operation of a facility.

Administrative Limits means those procedural limits, self-imposed by the contractor, relating to nuclear safety. These limits are generally more restrictive and specific than externally imposed limits by Federal, State, or other entities.

Category A reactor facilities means those production, test, and research reactors designated by DOE based on power level (e.g., design thermal power rating of 20 megawatts steady state and higher), potential fission product inventory, and experimental capability.

Category B reactor facilities means those test and research reactors designated by DOE based on power level (e.g., design thermal power rating of less than 20 megawatts steady state), potential fission product inventory, and experimental capability.

Certification means the process by which contractor nuclear facility management provides written endorsement of the satisfactory achievement of qualification of a person for a position.

Contractor means any person under contract with the Department of Energy with responsibility to perform activities in connection with a nuclear facility.

Controlled Document means a document whose content is maintained uniform among the copies by an administrative control system.

Controls means, when used with respect to nuclear reactors, apparatus and mechanisms that, when manipulated, directly affect the reactivity or power level of a reactor or the status of an engineered safety feature. When used with respect to any other nuclear facility, "controls" means apparatus and mechanisms that, when manipulated could affect the chemical, physical, metallurgical, or nuclear process of the nuclear facility in such a manner as to affect the protection of health and safety.

Department or DOE means the Department of Energy.

Design Basis Accidents or DBA means accidents that are postulated for the purpose of establishing functional requirements for safety significant structures, systems, components, and equipment.

Document means recorded information that describes, specifies, reports, certifies, requires, or provides data or results. A document is not considered a record until it meets the definition of record.

DOE Facility Representative means the individual, or his designee for each

major facility or group of lesser facilities, who is assigned responsibility by DOE for monitoring the performance of the facility and its operations

Existing Facility means a DOE nuclear facility that has received authorization to operate on or before the effective date of the requirement, or if authorization is not required, a DOE nuclear facility that has begun normal operation on or before the effective date of the requirement.

Facility Manager means that individual, or his designee, who exercises the authority of a contractor for the design, construction, operation, or decommissioning of a DOE nuclear facility or group of related facilities, including authority to direct physical changes to the facility.

Federally permitted release means any release that satisfies the definition of "federally permitted release" in 40 CFR 302.3.

Final SAR or FSAR means the SAR submitted to and approved by DOE prior to the authorization to operate a new nuclear facility.

Fissionable materials means nuclides capable of sustaining a neutron-induced fission chain reaction (e.g., uranium-233, uranium-235, plutonium-238, plutonium-239, plutonium-241, neptunium-237, americium-241, and curium-244).

Graded Approach means a process by which the level of analysis, documentation, and actions necessary to comply with a requirement in this part are commensurate with:

- (1) The relative importance to safety, safeguards, and security;
- (2) The magnitude of any hazard involved;
- (3) The life cycle stage of a facility;
- (4) The programmatic mission of a facility;
- (5) The particular characteristics of a facility; and
- (6) Any other relevant factor.

Hazard means a source of danger (i.e., material, energy source, or operation) with the potential to cause illness, injury, or death to personnel or damage to a facility or to the environment (without regards for the likelihood or credibility of accident scenarios or consequence mitigation).

Hazardous substance or material means any solid, liquid, or gaseous material that is toxic, explosive, flammable, corrosive, or otherwise physically or biologically threatening to health. Oil is excluded from this definition.

Item is an all-inclusive term used in place of any of the following: Appurtenance, assembly, component, equipment, material, module, part,

structure, subassembly, subsystem, system, unit, or support systems.

Limiting Conditions for Operation or LCOs means the limits that represent the lowest functional capability or performance level of safety-related items required for the safe operation of a facility.

Limiting Control Settings or LCSs means the settings on process variables associated with safety systems that control the facility function and will prevent exceeding the associated safety limit.

Medical examination means an examination performed by a licensed medical physician to determine the physical condition and general health of a person for duty.

New Facility means a DOE nuclear facility that does not qualify as an existing facility.

Non-reactor nuclear facility means those activities or operations that involve radioactive and/or fissionable materials in such form and quantity that a nuclear hazard potentially exists to the employees or the general public. Included are activities or operations that—

- (1) Produce, process, or store radioactive liquid or solid waste, fissionable materials, or tritium;
- (2) Conduct separations operations;
- (3) Conduct irradiated materials inspection, fuel fabrication, decontamination, or recovery operations;
- (4) Conduct fuel enrichment operations; or
- (5) Perform environmental remediation or waste management activities involving radioactive materials.

Incidental use and generating of radioactive materials in a facility operation (e.g., check and calibration sources, use of radioactive sources in research and experimental and analytical laboratory activities, electron microscopes, and X-ray machines) would not ordinarily require the facility to be included in this definition. Accelerators and reactors and their operations are not included. The application of any rule to a non-reactor nuclear facility shall be applied using a graded approach.

Nuclear facility means reactor and non-reactor nuclear facilities.

Nuclear facility operator means a person certified by contractor nuclear facility management to manipulate or handle fissionable materials radioactive materials, or tritium or to manipulate the controls of equipment used or produce, process, transfer, store, or package such materials at DOE non-reactor nuclear

facilities. Personnel in these positions typically include fissionable material handlers, tritium operators, chemical process operators, waste tank operators, and enrichment plant operators.

Nuclear facility supervisor means a person certified by contractor nuclear facility management to manipulate, handle, or direct the manipulation or handling of fissionable materials, radioactive materials, or tritium or to manipulate or direct the manipulation of the controls of equipment used to produce, process, transfer, store, or package such materials at DOE non-reactor nuclear facilities. Personnel in these positions typically include fissionable material handler supervisors, tritium operator supervisors, chemical process operator supervisors, waste tank operator supervisors, and enrichment plant operator supervisors.

Occurrence Report means a documented evaluation of an event or condition that is prepared in sufficient detail to enable the reader to assess its significance, consequences, or implications and to evaluate the actions being proposed or employed to correct the event or condition or to avoid recurrence.

Operating Limits means those limits which are required for nuclear facilities to ensure the safe operation of the facility. Specifically, these limits include Safety Limits, Limiting Control Settings, and Limiting Conditions for Operation.

Person means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency, any State or political subdivision of, or any political entity within a State, any foreign government or nation or other entity and any legal successor, representative, agent or agency of the foregoing; provided that person does not include the Department or the United States Nuclear Regulatory Commission.

Preliminary SAR or PSAR means the SAR submitted to and approved by DOE prior to the construction and preoperational testing of a nuclear facility.

Process means a system of actions designated to achieve an end or result.

Program Manager means the DOE Headquarters (HQ) individual, or his designee appointed by and under the direction of a Program Secretarial Officer, who is directly involved in the operation of a facility under his cognizance and who holds signature authority to provide technical direction through DOE Field Organizations to DOE contractors for these facilities.

Program Secretarial Officers (PSOs) means the heads of DOE offices with

responsibility for specific DOE nuclear facilities. These include the Assistant Secretaries for Nuclear Energy, and Defense Program and the Directors of Energy Research, Civilian Radioactive Waste Management, Environmental Restoration and Waste Management, and New Production Reactors.

Quality means the degree to which an item or process meets, fails to meet, or exceeds the user's requirements and expectations.

Quality Assurance means all those actions that provide confidence that quality is achieved.

Quality Assurance Program or QAP means the overall program for a DOE nuclear facility which assigns responsibilities and authorities, defines policies and requirements, and provides for the performance and assessment of work.

Reactor means, unless it is modified by word such as containment, vessel, or core, the entire nuclear reactor facility, including the housing, equipment, and associated areas devoted to the operation and maintenance of one or more reactor cores. Any apparatus that is designed or used to sustain nuclear chain reactions in a controlled manner, including critical and pulsed assemblies and research, test, and power reactors, is defined as a reactor. All assemblies designed to perform subcritical experiments that could potentially reach criticality are also to be considered reactors. Critical assemblies are special nuclear devices designed and used to sustain nuclear reactions. Critical assemblies may be subject to frequent core and lattice configuration change and may be used frequently as mockups of reactor configurations.

Reactor operator means a person certified by contractor nuclear facility management to operate (manipulate the controls of) a DOE-owned reactor.

Record means a completed document or other media that provides objective evidence of an item or process.

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of substances into the environment. This includes abandoning/discharding any type of receptacle containing substances or the stockpiling of a reportable quantity of a hazardous substance in unenclosed containment structures.

Reportable Occurrence means an event or condition to be reported in accordance with the criteria in this part.

Reportable Quantity means, for any Comprehensive Environmental Response, Compensation and Liability

Act (CERCLA) hazardous substance, the quantity established in Table 302.4 of § 302.4 and appendix B of 40 CFR part 302, the release of which requires notification unless federally permitted.

Risk means the quantitative or qualitative expression of possible loss that considers both the probability that a hazard will cause harm and the consequences of that event.

Safety Analysis means a documented process: (1) To provide systematic identification of hazards within a given DOE operation; (2) to describe and analyze the adequacy of the measures taken to eliminate, control, or mitigate identified hazards; and (3) to analyze and evaluate potential accidents and their associated risks.

Safety Analysis Report or SAR means that report which documents the adequacy of safety analysis for a nuclear facility to ensure that the facility can be constructed, operated, maintained, shut down, and decommissioned safely and in compliance with applicable laws and regulations.

Safety Basis means the combination of information relating to the control of hazards at a nuclear facility (including design, engineering analyses, and administrative controls) upon which DOE depends for its conclusion that activities at the facility can be conducted safely.

Safety Limit or SL means a limit on process variables associated with those passive physical barriers that are necessary for the intended facility function and that required to guard against the uncontrolled release of radioactive or other hazardous materials.

Senior reactor operator means a person certified by contractor nuclear facility management to operate and direct the operation of a DOE-owned reactor.

Service means the performance of work, such as design, fabrication, inspection, nondestructive examination, repair, or installation.

Surveillance Requirement or SR means a requirement relating to test, calibration, or inspection that ensures the necessary operability and quality of safety-related items required for the safe operation of a facility.

Technical Safety Requirements or TSRs means those requirements that define the conditions, safe boundaries, and the management or administrative controls necessary to the safe operation of a nuclear facility and to reduce the potential risk to the public and facility workers from uncontrolled releases of radioactive materials or from radiation exposures due to inadvertent criticality.

A TSR consists of operating controls, use and application instructions, and the bases thereof.

TSR Bases means the reasons for operating limits, surveillance requirements, administrative controls, and use and application instructions.

TSR Design Features means the passive design features of a facility that, if altered, or modified, would have a significant effect on the safe operation of the facility.

(b) Terms defined in the Act and not defined in these results are used consistent with the meanings given in the Act.

(c) As used in this part, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require.

§ 830.4 General rule.

(a) No person shall take or cause to be taken any action inconsistent with the requirements of this part or any program, plan, schedule, or other process established by this part.

(b) With respect to a particular DOE nuclear facility, the contractor responsible for the design, construction, operation, or decommissioning of that facility shall be responsible for implementation of and compliance with the requirements of this part.

§ 830.5 Enforcement.

The requirements in this part are subject to enforcement by all appropriate means, including the imposition of civil and criminal penalties in accordance with the provisions of part 820 of this chapter.

§ 830.6 Records.

A person shall maintain complete and accurate records as necessary to substantiate its compliance with the requirements of this part.

§ 830.7 Graded approach.

(a) Where indicated in a subpart, a graded approach shall be utilized to comply with the requirements.

(b) Any submission to DOE concerning a requirement shall indicate whether a graded approach is being utilized to comply with the requirement and shall set forth the justification for the graded approach.

Subpart A—General Provisions

§ 830.100 Scope of subpart.

This subpart prescribes requirements that are generally applicable to more than one phase of the life cycle of a DOE nuclear facility.

§ 830.110 Safety analysis report.

(a) *General rule.* A contractor responsible for a DOE nuclear facility shall—

(1) Perform a safety analysis that develops and evaluates the adequacy of the safety basis for the facility;

(2) Prepare an SAR, including a hazard analysis, to document the safety analysis and submit the SAR to DOE for approval; and

(3) Carry out its responsibilities concerning the facility in accordance with the SAR, as approved and modified by DOE.

(b) *Graded approach.* A graded approach shall be used in preparation of an SAR. Justification for the level of analysis and documentation shall be provided for each hazard considered.

(c) *Scope and content of Safety Analysis Reports.* A SAR shall:

(1) Define the safety basis;

(2) Document the logic of its derivation;

(3) Justify its adequacy;

(4) Document the assumptions employed in the safety analysis;

(5) Set forth the results of the safety analysis.

(d) *Contents of Safety Analysis Report.* A SAR shall contain sections that set forth:

(1) Executive summary;

(2) Applicable statutes, rules, and Departmental orders;

(3) Site characteristics;

(4) Facility description and operation including design of principal structures, components, systems, engineered safety features, and processes;

(5) Hazard analysis and classification of the facility under paragraph (e) of this section;

(6) Principal safety criteria;

(7) Radioactive waste management;

(8) Inadvertent criticality protection;

(9) Radiation protection;

(10) Analysis of normal, abnormal,

and accident conditions, including design basis accidents; assessment of risks; consideration of natural and man-made external events; assessment of contributory and causal events, mechanisms, and phenomena; and consideration of the need for analysis of beyond-design-basis accidents;

(11) Management, organization, and institutional safety provisions;

(12) Procedures and training;

(13) Human factors;

(14) Initial testing, in-service surveillance, and maintenance;

(15) Derivation of Technical Safety Requirements;

(16) Operational safety;

(17) Quality assurance;

(18) Emergency preparedness; and

(19) Provisions for decontamination and decommissioning.

(e) *Hazard classification for DOE nuclear facilities and operations.* A contractor shall perform a hazard analysis for a DOE nuclear facility in accordance with the following requirements.

(1) *Classification Categories.* The consequences of unmitigated releases of radioactive material shall be evaluated facilities and classified by the following hazard categories:

(i) *Category 1 hazard.* The hazard analysis shows the potential for significant off-site consequences.

(ii) *Category 2 hazard.* The hazard analysis shows the potential for significant on-site consequences.

(iii) *Category 3 hazard.* The hazard analysis shows the potential for only localized consequences.

(2) *Inventory of hazardous materials.* The hazard analysis shall be based on an inventory enveloping all radioactive materials that are stored, utilized, or may be formed within a nuclear facility.

(3) *Evaluation of potential releases.* The hazard analysis shall identify energy sources or processes that might contribute to the generation or uncontrolled release of radioactive materials. The hazard analysis shall estimate the consequences of accidents in which the facility or process and/or materials in the inventory are assumed to interact, react, or be released in a manner to produce a threat or challenge to the health and safety of individuals, on and off site.

(4) *Submission of hazard analysis to DOE.* The hazard analysis shall be submitted to DOE for approval:

(i) For a new facility, as part of the Preliminary SAR (PSAR); or

(ii) For a facility subject to paragraph (g) of this section, in accordance with the safety analysis plan and schedule required by paragraph (g)(2) of this section.

(f) *Approval of Safety Analysis Reports for new DOE nuclear facilities.*

(1) A contractor shall obtain DOE approval of a PSAR prior to construction and preoperational testing of a new facility; provided that DOE authorize limited activities of this type without approval of a PSAR. A PSAR shall document the adequacy of the safety basis for a new nuclear facility and provide assurance that the facility can be constructed, operated, maintained, and shut down safely and in compliance with applicable laws and regulations.

(2) A contractor shall submit the FSAR to DOE for approval prior to the authorization to operate a new facility. A FSAR shall document the adequacy of the safety basis and provide assurance

that the facility can be operated, maintained, and shut down safely and in compliance with applicable laws and regulations.

(3) DOE may direct, in writing, that the PSAR and FSAR for a facility be merged into a single SAR that meets the requirements of paragraphs (f)(1) and (f)(2) of this section. DOE may also direct, in writing, that a SAR be submitted in stages.

(4) If a SAR for a new facility is scheduled to be submitted before one year after the effective date of this section, contractors shall comply with the requirements of paragraph (g) of this section.

(g) *Preparation and submittal of upgraded Safety Analysis Reports for existing DOE nuclear facilities.* (1) A contractor of an existing facility shall implement a program to upgrade, as necessary, the safety analysis for the facility to reflect the current safety basis and to bring the safety analysis and SAR for the facility into compliance with this section and provide assurance that the facility can be operated, maintained, and shut down safely and in compliance with applicable laws and regulations. Upgraded SARs shall be submitted to DOE for approval in accordance with the plan and schedule required by paragraph (g)(2) of this section.

(2) *Plan and schedule for Safety Analysis Reports.* Within 6 months of the effective date of this section, each contractor subject to paragraph (f) (1) of this section shall submit to the Department, for its review and approval, an overall plan and schedule for complying with paragraph (g)(1) of this section. This submittal shall describe the need for upgrading the SAR and shall include a preliminary assessment of facility hazards; the basis for the content, schedule, and level of detail proposed; bases for interim operation or restrictions on interim operations; and administrative controls during the upgrade process. The plan and schedule submitted by a contractor shall be considered approved 180 days after submittal, unless it is approved or rejected by DOE at an earlier date and shall contain any changes made or directed by DOE. Any change to an approved plan or schedule must be approved by DOE. The contractor shall comply with the plan and schedule, as approved and modified by DOE.

(h) *Periodic updates of Safety Analysis Reports.* A contractor of a nuclear facility shall annually update the SAR for the facility to ensure that the information in the SAR is current, remains applicable, and reflects all changes implemented up to 6 months

prior to the filing of the updated SAR. The DOE approval of any Unreviewed Safety Question pursuant to § 830.112, and the material submitted by the contractor to DOE in support of that approval, shall be considered an addendum to the SAR until the information is incorporated into the SAR as part of the next periodic update.

(i) *Additional information.* DOE may require a contractor to prepare and submit at any time to DOE additional information necessary to supplement an SAR in order to facilitate a DOE decision regarding the safety of a facility.

(j) *Document control.* A contractor must maintain such document control as may be necessary to ensure that all users of a SAR designated by DOE or the contractor as authorized users, including DOE line management and the Department's safety oversight groups, have a current edition.

§ 830.111 Configuration management. [Reserved]

§ 830.112 Unreviewed safety questions.

(a) A contractor responsible for the operation of a DOE nuclear facility shall:

(1) Perform all safety evaluations required by paragraph (b) of this section to determine whether a situation involves a USQ;

(2) Prior to implementation of a proposed action, obtain DOE approval for situations determined to involve a USQ or a change in a TSR; and

(3) Develop and implement procedures to govern the need for, and the performance of, safety evaluations under this section.

(b) A safety evaluation shall be performed for:

(1) Temporary or permanent changes in the facility as described in the existing safety analyses;

(2) Temporary or permanent changes in the procedures as derived from existing safety analyses; or

(3) Test or experiments not described in existing safety analyses.

(c) A situation involves a USQ if:

(1) The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the facility safety analyses could be increased;

(2) The possibility for an accident or malfunction of a different type than any evaluated previously in the facility safety analyses could be created; or

(3) Any margin of safety, as defined in the bases of the TSRs, could be reduced.

(d) When a contractor identifies information that indicates a potential inadequacy of previous analyses as defined in the SAR or a possible reduction in safety margins as defined in the TSRs, the contractor shall:

- (1) Notify DOE of the situation upon discovery of the information;
- (2) Make an evaluation in accordance with paragraphs (a) and (c) of this section;
- (3) Take action to place the facility in a safe condition until the safety evaluation is completed; and
- (4) Submit the completed safety evaluation prior to removing any operational restrictions initiated pursuant to paragraph (d)(2) of this section.

(e) For all safety evaluation required under this section, a contractor shall:

- (1) Document the basis for the USQ determination, utilizing the procedures provided for in paragraph (a)(3) of this section and the criteria of paragraph (c) of this section;
- (2) Maintain documentation required by paragraph (e)(1) of this section for the authorized operating period of the facility and ensure the complete transfer of all documentation to any subsequent contractor prior to termination of its contract;
- (3) Incorporate in the existing SAR for the facility, pursuant to § 830.110(g), any changes that are needed as a result of the safety evaluation or any action taken pursuant to this section; and
- (4) Submit to DOE, on a schedule corresponding to the updates of the SAR for the facility, a report summarizing all situations for which a safety evaluation was required by this section and indicating all "changes" considered in a safety evaluation and implemented 6 months or more before the submittal date of the report.

§ 830.120 Quality assurance requirements.

(a) General rule.

(1) A contractor responsible for a DOE nuclear facility shall:

- (i) Conduct its activities in accordance with the criteria of paragraph (b); of this section;
- (ii) Develop and submit for approval by DOE and QAP for the facility; and
- (iii) Implement the QAP, as approved and modified by DOE.

(2) A subcontractor or a supplier of a contractor shall comply with the standards of quality set forth in the QAP.

(b) Quality Assurance criteria—(1)

Management—(i) Criterion 1—Program. The contractor shall develop, implement, and maintain a written QAP. The QAP shall describe the organizational structure, functional

responsibilities, levels of authority, and interfaces for those managing, performing, and assessing adequacy of work. The QAP shall describe the contractor's management system, including planning, scheduling, and cost-control considerations.

(ii) *Criterion 2—Personnel Training and Qualification.* Personnel shall be trained and qualified to ensure that they are capable of performing their assigned work. Personnel shall be provided continuing training to ensure that job proficiency is maintained.

(iii) *Criterion 3—Quality Improvement.* The contractor shall establish and implement processes to detect and prevent quality problems and to ensure quality improvement. Items and processes that do not meet established requirements shall be identified, controlled, and corrected. Correction shall include identifying the causes of problems and preventing recurrence. Item reliability, process implementation, and other quality-related information shall be reviewed and the data analyzed to identify items and processes needing improvement.

(iv) *Criterion 4—Documents and Records.* Documents shall be prepared, reviewed, approved, issued, used, and revised to prescribe processes, specify requirements, or establish design. Records shall be specified, prepared, reviewed, approved, and maintained.

(2) *Performance—(i) Criterion 5—Work Processes.* Work shall be performed to establish technical standards and administrative controls. Work shall be performed under controlled conditions using approved instructions, procedures, or other appropriate means. Items shall be identified and controlled to ensure their proper use. Items shall be maintained to prevent their damage, loss, or deterioration. Equipment used for process monitoring or data collection shall be calibrated and maintained.

(ii) *Criterion 6—Design.* Items and processes shall be designed using sound engineering/scientific principles and appropriate standards. Design work, including changes, shall incorporate applicable requirements and design bases. Design interfaces shall be identified and controlled. The adequacy of design products shall be verified or validated by individuals or groups other than those who performed the work. Verification and validation work shall be completed before approval and implementation of the design.

(iii) *Criterion 7—Procurement.* Procured items and services shall meet established requirements and perform as specified. Prospective suppliers shall be evaluated and selected on the basis

of specified criteria. The contractor shall ensure that approved suppliers can continue to provide acceptable items and services.

(iv) *Criterion 8—Inspection and Acceptance Testing.* Inspection and acceptance testing of specified items and processes shall be conducted using established acceptance and performance criteria. Equipment used for inspections and tests shall be calibrated and maintained.

(3) *Assessment—(i) Criterion 9—Management Assessment.* Management at all levels shall periodically assess the integrated quality assurance program and its performance. Problems that hinder the organization from achieving its objectives shall be identified and corrected.

(ii) *Criterion 10—Independent Assessment.* Planned and periodic independent assessments shall be conducted to measure items quality and process effectiveness and to promote improvement. The organization performing independent assessments shall have sufficient authority and freedom from the line organization to carry out its responsibilities. Persons conducting independent assessments shall be technically qualified and knowledgeable in the areas assessed.

(c) *Quality Assurance Program.* (1) A contractor shall develop a QAP by applying the quality assurance criteria specified in paragraph (b) of this section. A QAP shall include a discussion of how the criteria of paragraph (b) of this section will be satisfied, taking into consideration the risk associated with the facility. The contractor shall use appropriate standards, wherever applicable, to develop and implement its QAP.

(2) A contractor shall obtain DOE approval of a QAP for a new facility prior to commencing work.

(3) A contractor of an existing facility shall ensure that the QAP for the facility meets the requirements of § 830.120 and shall submit the QAP, together with an implementation plan, to DOE for approval within 180 days after the effective date of this section. A QAP shall be regarded as approved by DOE 180 days after submittal, unless approved or rejected by DOE at an earlier date. A QAP shall include any modification made or directed by DOE.

(4) A contractor may, at any time, make changes to an approved QAP. Changes made over the previous year to an approved QAP shall be submitted annually to DOE for review. A change shall be regarded as approved by DOE 90 days after submittal, unless approved or rejected by DOE at an earlier date. A

QAP shall include any modification made or directed by DOE. A submittal shall identify the changes, the pages affected, the reason for the changes, and the basis for concluding that the revised program continues to satisfy the requirements of this section. Changes made to correct spelling, punctuation, or other editorial items do not require explanation.

§ 830.121 Software control. [Reserved]

§ 830.122 Defect identification and reporting.

(a) *General rule.* (1) A subcontractor or supplier to a contractor shall identify and report an actually or potentially defective item or service in accordance with the requirements of this section. A report shall contain sufficient information to permit a contractor to evaluate the impact of the defective item or service on a facility.

(2) The responsibility for identifying and reporting a defective item or service shall extend to all levels and individuals of a contractor, subcontractor, or supplier organization.

(3) A contractor shall ensure that its subcontractors and suppliers comply with this section.

(b) *Notification of DOE Contractors.* (1) A subcontractor or supplier shall notify a purchaser within 2 days after it identifies an actually or potentially defective item or service. If the first notification is by means other than in writing, a written report must be submitted within 5 working days.

(2) The notification shall include:

(i) Name and address of the person providing the notification;

(ii) Nature of the defect and any substantial safety hazard that could result, if known;

(iii) A description of the defective item or service, including specific information, such as:

(A) Its intended or actual applications, if known;

(B) Manufacturer's name;

(C) Item model numbers;

(D) Name and addresses of the original and any intermediate suppliers;

(E) Number of defective items; and

(F) Potential failure modes;

(iv) Identification of the facilities where the defective items and services have been supplied, to the extent known;

(v) Actions that have been taken or are being planned to correct the defective items or service, including designation of the organization responsible for implementing the corrective actions and the schedule for completion; and

(vi) Identification of the organization to whom notifications have or will be

made as required by paragraph (b)(1) of this section.

§ 830.130 Human factors. [Reserved]

§ 830.131 Fitness for duty. [Reserved]

§ 830.132 Safety concern management. [Reserved]

§ 830.140 Decontamination and decommissioning. [Reserved]

Subpart B—Design

§ 830.200 Scope.

This subpart prescribes requirements that are principally applicable to the design of DOE nuclear facilities.

§ 830.210 Reactor design criteria. [Reserved]

§ 830.211 Non-reactor nuclear facility design criteria. [Reserved]

§ 830.212 Facility protection systems. [Reserved]

§ 830.213 Fire protection. [Reserved]

§ 830.214 Environmental qualification. [Reserved]

§ 830.215 Protection against extreme external phenomenon. [Reserved]

Subpart C—Operations

§ 830.300 Scope.

This subpart prescribes requirements that are principally applicable to the operation of DOE nuclear facilities.

§ 830.310 Conduct of operations at DOE nuclear facilities.

(a) A contractor responsible for the operation of a DOE nuclear facility shall:

(1) Establish and implement a program to control the conduct of operations at the facility;

(2) Prepare and submit to DOE a conduct of operations plan to document the requirements, standards, and procedures that constitute the conduct of operations program; and

(3) Comply with the conduct of operations plan, as approved and modified by DOE.

(b) A conduct of operations program shall address:

(1) Operations organization and administration;

(2) Shift routines and operating practices;

(3) Control area activities;

(4) Communications;

(5) Control of on-shift training;

(6) Investigation of abnormal events;

(7) Notifications;

(8) Control of equipment and system status;

(9) Lockout and tagout;

(10) Independent verification;
(11) Logkeeping;
(12) Operations turnover;
(13) Operations aspects of facility chemistry and unique processes;
(14) Required reading;
(15) Timely orders to operators;
(16) Operations procedures;
(17) Operator aid postings; and
(18) Equipment and piping labeling.

(c) A contractor shall use a graded approach in applying the elements in paragraph (b) of this section to operations under his cognizance.

(d) Within 6 months of the effective date of this section, a contractor of an existing facility shall submit a conduct of operations plan that:

(1) Describes the program to control the conduct of operations at the facility;

(2) Indicates how each element in paragraph (b) of this section is applied within the contractors requirements, standards, procedures, or other measures; and

(3) Documents the application of the graded approach in paragraph (c) of this section by identifying where and explaining why the program modifies or does not address an element in paragraph 9(b) of this section.

(e) Conduct of operations plans shall be considered approved 180 days after submittal, unless approved or rejected by DOE at an earlier date, and shall include any modifications made or directed by DOE.

(f) A change in a conduct of operations plan that reduces the level of compliance must be submitted to DOE and receive DOE approval prior to implementation.

(g) A contractor shall assess its implementation of a conduct of operations program and its effectiveness on facility operations through management observation and audit. A contractor shall assure that all deviations from the program are formally noted and corrected as required to comply with this section.

§ 830.320 Technical safety requirements.

(a) A contractor responsible for a DOE nuclear facility shall:

(1) Prepare the TSR for the facility;

(2) Submit the TSR to DOE for approval; and

(3) Operate the facility in accordance with the TSR as approved and modified by DOE;

(b) DOE may waive the application of this section in any situation where DOE determines, on the basis of the safety analysis for the facility, TSRs would not be appropriate.

(c) TSRs shall be based on the facility SAR and shall set forth specific limits

and other requirements as specified in this section.

(d) A TSR shall consist of the following:

(1) *Operating Limits (OLs).*—(i) *Safety Limits (SLs).* This section of the TSR shall contain the safety limits on the process variables. If a safety limit for a nuclear facility is exceeded, the nuclear facility shall be immediately placed in the most stable, safe condition attainable, including total shutdown, except where such action might reduce the margin of safety. If a safety limit for a nuclear reactor is exceeded, the reactor shall be shut down immediately. The safe, stable condition entered as corrective action shall be maintained until DOE authorizes further operations.

(ii) *Limiting Control Settings (LCSs).* This section of the TSR shall contain the settings for automatic alarms and for automatic or nonautomatic initiation of protective actions related to those variables having significant safety functions. The specific settings chosen must correct a situation automatically or manually such that the related SL is not exceeded. If an automatic alarm or protective device does not function as required during an applicable operating mode, the contractor shall take action as defined in the LCS to maintain the variables within the requirements and to repair the automatic device promptly or to shut down the affected part of the process and, if required, to shut down the facility.

(iii) *Limiting Conditions for Operation (LCOs).* This section of the TSR shall contain the limits on functional capability or performance level. If a limiting condition for operation is not met, the contractor shall take any remedial actions defined by the TSR until the condition can be met.

(2) *Surveillance Requirements (SRs).* This section of the TSR shall contain the surveillance requirements necessary to maintain operation of the facility within the SLs, LCSs, and LCOs. If a surveillance requirement is not successfully completed or accomplished within its required frequency, the systems or components involved shall be assumed to be inoperative and actions defined by limiting control setting or limiting condition for operation shall be taken until the systems or components can be shown to be operable.

(3) *Administrative Controls.* This section of the TSR shall contain the requirements associated with administrative controls, including those for reporting deviations from the TSR. Staffing requirements for facility positions important to safe operation of the facility shall be included in the

administrative controls subsection of the TSR. Physical and administrative controls of the criticality safety program shall also be provided in this section.

(4) *Use and application.* This section of the TSR shall contain the basic instructions for using and applying the safety restrictions contained in the TSR. Definitions of terms, operating modes, frequency notations, and actions to be taken in the event of violations of OLs or SRs are to be included in this section.

(5) *Appendices.*—(i) *Bases.* This Appendix shall provide summary statements of the reasons for the OLs and associated SRs. The basis shall show how the numeric value, the condition, or the surveillance fulfills the purpose derived from the safety documentation. The primary purpose for describing the basis of each requirement is to ensure that any future changes to the requirement will not affect its original intent or purpose.

(ii) *Design features.* This appendix shall describe passive design features of the facility that, if altered or modified, would have a significant effect on safe operation. If design features are in a DOE-approved SAR pursuant to this part, this appendix is not required.

(e) A TSR shall be kept current at all times so that it reflects the facility as it exists and as it is analyzed in the SAR. A contractor shall determine whether revisions to a TSR are required upon originating or revising a SAR, and, if so, shall prepare revisions and submit them with their bases for DOE approval concurrent with the revised SAR.

(f) All proposed revisions to a TSR shall be submitted for DOE approval prior to implementation of the revision. The submittal shall include the bases for the proposed revision.

(g) Only the current DOE-approved TSRs shall be used for the operation of the facility. The current DOE-approved TSRs shall be a controlled document.

(h) A contractor may take emergency actions that depart from approved TSRs when no actions consistent with the TSRs are immediately apparent, and when these actions are needed to protect the public health and safety. Such actions shall be approved, as a minimum, by a certified operator.

(i) A contractor shall submit TSRs to DOE for approval in accordance with the following schedules:

(1) For a new facility, the TSRs shall be approved by DOE before operation of the facility.

(2) For an existing facility (or a new facility expected to be operational within 6 months of the effective date of this section) that does not have approved Technical Specifications or Operational Safety Requirements, the

TSRs shall be submitted for DOE approval within 6 months of the effective date of this section.

(3) For an existing facility that has DOE-approved Technical Specifications or Operational Safety Requirements, a review shall be conducted by the contractor to compare these documents with the provisions of this section.

(i) If the existing Technical Specifications or Operational Safety Requirements comply with the provisions of this section (except for format), the contractor shall submit a statement to DOE stipulating to that fact within 6 months of the effective date of this section. A copy of the existing documents shall accompany the statement. DOE shall review this statement for approval. The existing Technical Specifications or Operational Safety Requirements shall be converted to TSRs (i.e., reprinting, changing references in procedures, etc.) when revisions are made to the documents or, in any event, within 3 years after the effective date of this section. During the interim period until the revised TSRs are approved by DOE, the existing Technical Specifications or Operational Safety Requirements shall be treated as a DOE-approved TSR for purposes of this section.

(ii) If the existing Technical Specifications or Operational Safety Requirements do not comply with the provisions of this section, the contractor shall make the revisions necessary to bring the document into compliance with this section and shall submit the resulting TSR to DOE for review and approval within 6 months of the effective date of this section. Upon approval, the TSR shall replace the existing Technical Specifications or Operational Safety Requirements.

(4) TSRs shall be considered approved 180 days after its submittal to DOE, unless approved or rejected by DOE at an earlier date, and shall include any modifications made or directed by DOE.

§ 830.330 Training and certification.

(a) *General rule.* A contractor responsible for a DOE nuclear facility shall:

(1) Develop and implement the training programs required by this section;

(2) Evaluate and certify personnel as required by this section;

(3) Prepare and submit to DOE a training plan that sets forth its implementation of the training and certification requirements of this section; and

(4) Comply with the training plan for the facility as approved and modified by DOE.

(b) *Certified personnel.*—(1) *Training programs.* Initial and continuing training programs for personnel to be certified shall be developed and implemented to ensure they are qualified to perform job requirements. Training program content shall be designed based on an analysis of job duties derived from information in the SAR, system description manuals and operating procedures, TSRs, and lessons learned from occurrence reports. The program shall utilize a systematic approach to training that includes the following basic elements:

(i) Systematic analysis of the jobs to be performed;

(ii) Learning objectives derived from the analysis that describe desired performance after training;

(iii) Training design and implementation based on the learning objectives;

(iv) Evaluation of trainee mastery of the objectives during training; and

(v) Evaluation and revision of the training based on the performance of trained personnel in the job setting.

(2) *Initial training.* An initial training program shall be established in accordance with paragraph (b)(1) of this section to develop or enhance the knowledge, skills, and ability of certified operators (reactor operators and nuclear facility operators) and certified supervisors (senior reactor operators and nuclear facility supervisors) to perform job assignments. The program shall consist of a combination of classroom and on-the-job training and shall include simulator and laboratory training for those facilities required to have simulators or which have laboratory facilities, as it applies to the position. Classroom training may include lectures, seminars, computer-based, and structured self-study training activities. The program shall include training on basic theory and fundamentals, principles of facility operation and operating characteristics, facility systems, and normal, abnormal, and emergency operating procedures.

(3) *Certification.* Reactor operators and senior reactor operators at DOE Category A and Category B reactor facilities and nuclear facility operators and nuclear facility supervisors at DOE non-reactor nuclear facilities shall be certified.

(i) The program leading to certification shall be governed by written procedures, which shall include requirements for documented assessment of the person's qualifications through examinations and operational evaluations.

(ii) Certification shall be valid for a period of 2 years, unless revoked for cause, at which time the certified individual shall be recertified in accordance with paragraph (b)(10) of this section.

(4) *Continuing training.* Continuing training programs shall be established in accordance with paragraph (b)(1) of this section to maintain and enhance the knowledge and proficiency of certified operators and certified supervisors. These programs shall:

(i) Be administered on a 2-year cycle and shall be followed by successive continuing training programs; and

(ii) Consist of preplanned classroom training, on-the-job training, and operational evaluations and shall include the following, at a minimum, as related to job performance:

(A) Training and examination covering abnormal procedures and emergencies at least annually;

(B) Training in significant facility system and component changes, applicable procedure changes, applicable industry and facility-specific operating experience, and selected fundamentals with emphasis on seldom-used knowledge and skills necessary to ensure nuclear safety;

(C) Training drills conducted in the nuclear facility to enable personnel and operating teams to respond to abnormal or accident situations;

(D) Instruction in the use of facility systems to control or mitigate accidents, including both classroom and on-the-job training conducted in the facility; and

(E) training in the following subjects, as applicable to the position, whenever examinations and experience (industry and nuclear facility-specific) or other evidence indicates a need for emphasis:

(1) Theory and principles of nuclear facility operation;

(2) General and specific facility operating characteristics;

(3) Facility instrumentation and control;

(4) Facility protection systems;

(5) Engineered safety features;

(6) Normal, abnormal, and emergency operating procedures;

(7) Radiation control and safety; and

(8) TSRs.

(5) *Written examinations and operational evaluations.* (i) Written examinations and operational evaluations shall be prepared and administered to demonstrate that the knowledge, skills, and abilities of certified operators and certified supervisors are satisfactory. Written examinations shall contain a representative selection of questions derived in accordance with paragraph (b)(1) of this section. Operational

evaluations, to the extent applicable to the facility, shall require the candidate to demonstrate an understanding of, and the ability to perform the actions necessary to operate the facility safely. Operational evaluations shall contain questions and operational exercises, and may include system and/or component operations. Operational evaluations shall include a walkthrough or a combination walkthrough and simulator examination (for those DOE facilities having simulators).

(ii) Written procedures for development, approval, security, administration, and maintenance of examinations and operational evaluations shall be established.

(iii) Candidates for initial certification or recertification shall not engage in any activity that compromises the integrity of any examination or operational evaluation required by this section.

(6) *Simulator requirements.* DOE production reactors shall have a full-scope simulator for reactor operator and senior reactor operator training. If a full-scope simulator is to be utilized for more than one production reactor, the differences between the simulator and each reactor shall be identified and documented by the contractor and approved by the Department. At DOE Category A test and research reactors, an evaluation of the need for a full-scope or partial-task simulator shall be conducted.

(7) *Control manipulations.* A contractor shall establish a list of control manipulations important to the safe operation of the nuclear facility that shall be performed by certified operators and certified supervisors. The list shall be based on duties required by normal, abnormal, and emergency operating procedures. Certified supervisors need only direct control manipulations to meet this requirement; however, at Category A and Category B reactor facilities, senior reactor operator candidates shall perform control manipulations as part of initial certification.

(8) *Operator proficiency requirements.* Certified operators and certified supervisors shall actively participate in certification duties to maintain an active certification status. Procedures to define requirements and frequency necessary to maintain an active status shall be established.

(9) *Medical requirements.* A candidate for certification shall receive an initial medical examination by a physician and shall be reexamined at least every 2 years to verify health and physical fitness to perform assigned tasks safely. The contractor shall

establish written procedures to control the administration of medical examinations for certified personnel.

(10) *Recertification.* At the conclusion of the 2-year continuing training program, certified personnel who will continue to perform duties requiring certification shall be required to recertify. Recertification shall be based on a determination that:

(i) The candidate has performed certification duties competently and safely during the past certification period;

(ii) The candidate has a current medical examination as required by paragraph (b)(9) of this section;

(iii) The candidate is capable of continuing to assume certification duties competently and safely;

(iv) The candidate has successfully completed the continuing training program as required by paragraph (b)(4) of this section, and

(v) The candidate has passed a comprehensive recertification written examination and operational evaluation, as applicable to the position.

(11) *Records.* Training records shall be maintained pursuant to administrative procedures included in the training program required by this section. Documents related to initial certification and the most recent certification shall be retained in individual records.

(c) *Exclusions.* Certification is not required by this section for an individual who—

(1) Under the direction and in the presence of a certified operator or certified supervisor, manipulates the controls of:

(i) A nuclear facility as part of the individual's training as a student; or

(ii) A nuclear facility as part of the individual's training in a facility's training program as approved by DOE to qualify for operator or supervisor certification under this section.

(2) In the presence and under the direction of a certified senior reactor operator, manipulates the controls of a reactor facility to load or unload the fuel into, out of, or within the reactor vessel.

(d) *Non-certified personnel.* Training and qualification programs for personnel who are not required to be certified (auxiliary operations personnel, maintenance personnel, and technical support staff personnel) shall be established and described in the SAR for the nuclear facility and the training plan required by paragraph (e) of this section. These programs shall be developed utilizing a systematic approach to training.

(e) *Training plan.* (1) A training plan shall include:

(i) Descriptions of initial and continuing training programs including the certification and recertification process;

(ii) The results of the evaluation required by paragraph (b)(6) of this section for Category A reactors not specifically required to have a simulator;

(iii) Descriptions of training and qualification programs for personnel in addition to the personnel required to be certified in accordance with this section;

(iv) The list of control manipulations; and

(v) Procedures for—

(A) Examination and operational evaluation development, approval, security, administration, and maintenance;

(B) Recordkeeping requirements;

(C) Administration of medical requirements;

(D) Reinstatement of certification; and

(E) Maintaining operator proficiency.

(2) A training plan for an existing facility shall be submitted for approval within 6 months of the effective date of this section. A training plan shall be considered approved 180 days after submittal, unless approved or rejected by DOE at an earlier date. A training plan shall include any modification made or directed by DOE.

(3) Where a contractor has more than one nuclear facility at a given site, a consolidated plan may be utilized if the facility differences can be effectively accommodated.

(4) A contractor shall submit to DOE changes to an approved program. Changes that reduce the commitments in the plan must receive DOE approval prior to implementation.

§ 830.340 Maintenance management.

(a) *General rule.* A Contractor responsible for a DOE nuclear facility shall:

(1) Develop, implement, and conduct operations at a facility in accordance with the maintenance program for the facility;

(2) Prepare and submit to DOE a Maintenance Implementation Plan (MIP); and

(3) Comply with the MIP, as approved and modified by DOE.

(b) *Maintenance program.* (1) A maintenance program for a DOE nuclear facility shall contain provisions sufficient to preserve, predict, or restore the availability, operability, and reliability of plant structures, systems, and components important to safe and reliable operation of the nuclear facility.

(2) A maintenance program shall clearly define:

(i) The structures, systems, and components that comprise the nuclear facility;

(ii) The requirements of the maintenance program that are derived from the elements described in paragraph (b)(3) of this section using the graded approach described in paragraph (c) of this section;

(iii) The management systems used to control those activities, including the means for monitoring and measuring the effectiveness of the program and the management of maintenance backlog;

(iv) The assignment of responsibilities and authority for all levels of the maintenance organization;

(v) Mechanisms to feedback such relevant information as trend analysis and instrumentation performance/reliability data in order to identify necessary program modifications;

(vi) Provisions for identification and evaluation of possible component, system design, occupational safety and health, or other relevant problems;

(vii) Performance indicators and criteria to be utilized to measure equipment, systems, and personnel effectiveness in maintenance activities; and

(viii) Interfaces between maintenance and other organizations (e.g., involving operations, engineering, quality, and safety).

(3) A maintenance program shall address each of the following elements:

(i) Organization and administration;

(ii) Maintenance training and qualification;

(iii) Maintenance facilities, equipment, and tools;

(iv) Types of maintenance;

(v) Maintenance procedures and other work-related documents;

(vi) Planning, scheduling, and coordinating maintenance activities;

(vii) Management involvement in control of maintenance activities;

(viii) Postmaintenance testing;

(ix) Procurement of parts, materials, and services;

(x) Material receipt, inspection, handling, storage, retrieving, and issuance;

(xi) Control and calibration of measuring and test equipment;

(xii) Maintenance tools and equipment control;

(xiii) Facility condition inspections;

(xiv) Management involvement with facility operations;

(xv) Maintenance history and trending;

(xvi) Analysis of maintenance-related problems; and

(xvii) Modification work.

(4) A maintenance program shall provide for periodic inspections of structures, systems, and components important to the safe operation of DOE nuclear facilities shall be performed to determine whether deterioration is taking place and to identify and address aging effects that threaten safety and performance.

(c) *Graded approach.* A graded approach shall be used in the development and implementation of DOE nuclear facility maintenance programs. The structures, systems, and components to be maintained, the types of maintenance to be conducted, and the frequency of those maintenance actions shall be determined by a systematic analysis acceptable to DOE.

(d) *Maintenance Implementation Plan.*

(1) A contractor shall prepare a MIP to document the maintenance program for a nuclear facility. Where a contractor has more than one nuclear facility at a given site, a consolidated plan may be utilized when facility differences can be effectively accommodated.

(2) A contractor of an existing facility shall submit a MIP within 12 months after the effective date of this section. A MIP or a change or update thereto shall be considered approved 180 days after submittal, unless approved or rejected by DOE at an earlier date. A MIP shall include any modification made or directed by DOE.

§ 830.341 Material condition and aging. [Reserved]

§ 830.350 Categorization, notification, reporting, and processing of operational occurrences at DOE nuclear facilities.

(a) *General requirements.* A contractor responsible for a DOE nuclear facility shall:

(1) Categorize operational occurrences at the facility;

(2) Prepare and submit, to DOE, procedures concerning the categorization, notification, and reporting required by this section;

(3) Comply with the procedures, as approved and modified by DOE;

(4) Develop and implement lessons learned from the operating experience information generated by this section; and

(5) Designate a facility manager to categorize, notify, and report to the responsible DOE Facility Representative and Program Manager, each reportable occurrence.

(b) *Categorization.* (1) A facility manager shall categorize a reportable occurrence as soon as reasonably possible and in all cases within 2 hours of discovery of the event or condition. If categorization is not clear, the

occurrence shall be conservatively categorized at the higher level being considered. The occurrence categorization shall be elevated, maintained, or lowered, as appropriate, as further information is obtained.

(2) *Emergencies.* Emergencies are the category of the most serious reportable occurrences and include:

(i) Any unintentional nuclear criticality that results or could result in actual or potential facility damage or release of radioactive material to the environment;

(ii) Any actual or potential release of radioactive material to the environment that results or could result in significant off-site consequences;

(iii) Any natural or man-made occurrence that poses an actual or potential threat to the structural integrity of a DOE nuclear facility and that results or could result in significant off-site consequences;

(iv) Any occurrence that involves an actual or potential significant degradation of the level of safety of a DOE nuclear facility that results or could result in significant off-site consequences;

(v) Any safeguards or security occurrence that is an actual or potential threat to DOE operations, facilities, or personnel and that results or could result in significant effects on the public health and safety and/or on national security; and

(vi) Any occurrence that requires activation of the site emergency plan.

(3) *Unusual Occurrences.* Unusual Occurrences are the category of nonemergency reportable occurrences that have significant impact or potential for impact on safety, the environment, health, safeguards and security, or operations and include:

(i) The actual or potential release of radioactive materials to the environment that results or could result in significant on-site consequences;

(ii) The release of radioactive materials above limits established in, or in violation of, safety, environmental, or health requirements defined in Federal permits, Federal regulations, or DOE standards;

(iii) Significant internal or external threats (including, but not limited to, safeguards and security) to safety, environmental or health protection, to the protection of nuclear or special nuclear material, or to the ability of a DOE nuclear facility to operate;

(iv) Significant degradation of safety systems, structures, or components necessary to fulfill safety functions, or of environmental, safety, or health conditions;

(v) Any fatality resulting from an occurrence;

(vi) Significant exposure to radioactive materials, or significant off-site or on-site contamination;

(vii) Failure of environmental monitoring equipment that results in the inability to demonstrate compliance with applicable regulations;

(viii) Failure of safety systems, structures, or components necessary to fulfill safety functions;

(ix) Failure or significant degradation of administrative controls which are required to ensure safety, environment, or health protection;

(x) Any occurrence that results in an unanticipated significant delay in achieving programmatic objectives or a significant increase in cost of operations;

(xi) The actuation of emergency systems or engineered safety features, except as required for an approved test procedure;

(xii) Violation of TSRs;

(xiii) The identification of information that indicates a potential inadequacy of previous safety analyses or a possible reduction of safety margins (including information that indicates that the facility may be operating outside its authorization basis or in an unanalyzed condition);

(xiv) Identification of an Unreviewed Safety Question; and

(xv) Violation of DOE safety or environmental requirements or the loss of control or release of radioactive material above allowable limits.

(4) *Off-Normal Occurrences.* Off-Normal Occurrences are the category of abnormal or unplanned reportable occurrences that adversely affect, potentially affect, or are indicative of degradation in the level of safety, safeguards and security, environmental, or health protection performance or operation of a DOE nuclear facility and include:

(i) Occurrences that result in the release of radioactive materials below limits established by Federal permits, Federal regulations, or DOE standards but that must be reported to state or local agencies;

(ii) Internal or external threats (including, but not limited to safeguards and security) to safety, to environmental or health protection, or to the ability of a DOE nuclear facility to operate;

(iii) Degradation of environmental, safety, or health conditions;

(iv) Serious personnel injury or significant lost workday cases, personnel contamination, assimilation, exposure, or significant on-site or off-site contamination of radioactive

materials in excess of administrative limits but within regulatory limits;

(v) Discovery of a condition that could prevent the functioning of systems, structures, components, or administrative controls necessary to ensure safety, health, or environmental protection. Reporting is required regardless of whether the system, structure, components, or administrative control was required to be operable at the time of the discovery;

(vi) The degradation of environmental monitoring equipment that, if failed, would result in the inability to demonstrate compliance with applicable regulations;

(vii) The violation of safety, environmental, or health administrative limits;

(viii) Operational procedural violations, including maintenance and administrative procedures having the potential to impact the safety, security, environmental, or health performance or operation of a DOE nuclear facility; and

(ix) The identification, by contractors, subcontractors or suppliers, of an actual or potentially defective item or service.

(c) *Notification.*—(1) *Oral Notification.* A facility manager shall provide DOE with oral notification of occurrences categorized as Emergencies and Unusual Occurrences. In such cases, the facility manager shall simultaneously contact the DOE Facility Representative and the DOE Program Manager via the Headquarters Emergency Operations Center:

(i) Within 15 minutes of categorization of an occurrence as an Emergency; or

(ii) As soon as practical and in all cases within 2 hours of categorization of an occurrence as an Unusual Occurrence.

(2) *Follow-up Notification.* A facility manager shall provide follow-up oral notification to the DOE Facility Representative and the DOE Program Manager simultaneously via the Headquarters Emergency Operations Center within 2 hours of any of the following conditions:

(i) The identification of further degradation in the level of safety of the facility or other worsening conditions;

(ii) A change from one emergency action level or category to another; or

(iii) Termination of an emergency.

(3) *Documented notification.* A facility manager shall provide documented notification of all reportable occurrences to the DOE Facility Representative and the DOE Program Manager within 24 hours of categorization of the occurrence. The notification shall include the information specified in paragraphs (d)(4)(i) through (d)(4)(ix) of this section.

(d) *Occurrence Report.* (1) A facility manager shall prepare and submit an Occurrence Report to the DOE Facility Representative and the DOE Program Manager within 10 working days of categorization of an occurrence. To the extent possible at that time, the report shall include all of the content requirements of paragraph (d)(4) of this section.

(2) An Occurrence Report shall be updated when significant new information is available.

(3) Completion of the final Occurrence Report is required when the analysis of the occurrence has been completed, root cause(s) and contributing cause(s) finalized, corrective action(s) determined and scheduled, and lessons learned identified. The final Occurrence Report shall be submitted to the DOE Facility Representative within 45 days of categorization of the occurrence and shall include all of the content requirements of paragraph (d)(4) of this section. If the required analysis cannot be completed within 45 days, an update to the 10-day Occurrence Report shall be submitted within 45 days and shall include a detailed explanation of the delay and an estimated date for submittal of the Final Occurrence Report.

(4) The Occurrence Report shall contain, at a minimum, the following information about each reportable occurrence involving each DOE nuclear facility:

(i) An alphanumeric occurrence report number identifying the DOE field office, area office (if applicable), the DOE contractor or laboratory involved, the facility, the year of the occurrence, and the sequential number of the occurrence;

(ii) Category of the occurrence;

(iii) DOE contractor and DOE program office responsible for the facility involved;

(iv) All system(s), equipment, structural items, administrative controls, or procedures involved in the occurrence, including information related to manufacturers, types, models numbers, and procedure numbers;

(v) Date and time when the occurrence was identified and categorized;

(vi) Date and time of notification of DOE and state and local authorities;

(vii) A thorough and complete description of what occurred, including a sequence of events and a description of failures, so that DOE and contractor personnel, not familiar with the facility-specific design features or administrative controls employed, can understand the complete occurrence;

(viii) Operational status of the facility or equipment at the time of the

occurrence, including the status of systems, structures, or components that were inoperable at the start of the event and that contributed to the event;

(ix) Immediate or remedial actions taken to place the facility, system, or equipment in a safe, stable condition, to return them to service, or to correct or alleviate the anomalous condition, and the results of those actions;

(x) Cause of the occurrence, including direct and contributing causes and the root cause;

(xi) Recommendations about whether further evaluation is required and, if so, before or after returning the facility to operation;

(xii) Action taken or planned to correct the problem and the identified cause and to prevent recurrence;

(xiii) Impact of the occurrence on the environment, health and safety of workers, the public, and on-site and off-site environs (including quantities of radioactive materials released);

(xiv) Levels of contamination, human exposures, and known or projected health impacts;

(xv) Impact of the occurrence on the affected DOE program and/or project;

(xvi) Impact of the occurrence on the adequacy of national codes and standards and DOE requirements;

(xvii) Lessons learned from the occurrence that could be of importance to other DOE facility contractors or that shall be addressed in personnel training or DOE facility procedures;

(xviii) Any previous similar events at the same DOE facility that are known to the DOE contractor; and

(xix) The name and telephone number of a person within the DOE contractor's organization who is knowledgeable about the occurrence.

(e) *Procedures.* A contractor shall develop, implement, and comply with procedures to carry out the requirements of this section for a DOE facility. Procedures for an existing DOE facility shall be submitted to DOE within 6 months of the effective date of this section.

(f) *Distribution.* A contractor shall send the notification report and occurrence reports (10-day and final) to the DOE Facility Representative and the DOE Program Manager.

(g) *Operational Data Base.* The documentation and distribution requirements of this section shall be satisfied by utilization of the centralized DOE operational data base, the Occurrence Reporting and Processing System (ORPS).

§ 830.351 Performance indicators.

[Reserved]

§ 830.360 Criticality safety. [Reserved]

§ 830.370 Emergency preparedness.

[Reserved]

Subpart D—Material Management

§ 830.400 Scope.

This subpart prescribes requirements that are principally applicable to the control of byproduct, source, and special nuclear materials.

§ 830.410 Packaging for transport.

[Reserved]

§ 830.420 Transportation. [Reserved]

§ 830.430 Disposal. [Reserved]

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