

§ 820.11 Information requirements.

(a) Any information pertaining to a nuclear activity 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 deemed 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) *Basis for civil penalties.* DOE may assess civil penalties against any person subject to the provisions of this part who has entered into an agreement of indemnification under 42 U.S.C. 2210(d) (or any subcontractor or supplier thereto), unless exempted from civil penalties as provided in paragraph (c) of this section, 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 C of this part; or

(3) Any program, plan or other provision required to implement any requirement or order identified in paragraphs (b)(1) or (b)(2) of this section.

(c) *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.

(d) *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.

§ 820.21 Investigations.

(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, information 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. Upon such authorization, the information or documents are a matter of public record and 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 correction 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 any or all issues in 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 enforcement adjudication.* If a Consent Order is signed after the commencement of an enforcement adjudication, the adjudication of the issues subject to the Consent Order 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.