

of problems, DOE may exercise discretion as follows:

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

- (1) The violation is promptly identified and reported to DOE before DOE learns of it;
- (2) The violation is not willful or a violation that could reasonably be expected to have been prevented by the DOE contractor's corrective action for a previous violation;
- (3) The DOE contractor, upon discovery of the violation, has taken or begun to take prompt and appropriate action to correct the violation; and
- (4) The DOE contractor 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.

b. DOE may refrain from proposing a civil penalty for a violation involving a past problem that meets all of the following criteria:

- (1) It was identified by a DOE contractor as a result of a formal effort such as an annual self assessment that has a defined scope and timetable which is being aggressively implemented and reported;
- (2) Comprehensive corrective action has been taken or is well underway within a reasonable time following identification; and
- (3) It was not likely to be identified by routine contractor efforts such as normal surveillance or quality assurance activities.

c. DOE will not issue a notice of violation for cases in which the violation discovered by the DOE contractor cannot reasonably be linked to the conduct of that contractor, provided that prompt and appropriate action is taken by the DOE contractor upon identification of the past violation to report to DOE and remedy the problem.

d. DOE may refrain from issuing a notice of violation for an act or omission constituting noncompliance that meets all of the following criteria:

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

e. DOE may refrain from issuing a notice of violation for an act or omission constituting noncompliance that meets all of the following criteria:

- (1) It was an isolated Severity Level III violation identified during an inspection or evaluation conducted by the Office of Independent Oversight and Performance Assur-

ance, or a DOE security survey, or during some other DOE assessment activity;

(2) The identified noncompliance was properly reported by the contractor upon discovery;

(3) The contractor initiated or completed appropriate assessment and corrective actions within a reasonable period, usually before the termination of the onsite inspection or integrated performance assessment; and

(4) The violation was not willful or one which could reasonably be expected to have been prevented by the DOE contractor's corrective action for a previous violation.

f. In situations where corrective actions have been completed before termination of an inspection or assessment, 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. However, in all instances, the contractor is required to report the noncompliance through established reporting mechanisms so the non-compliance issue and any corrective actions can be properly tracked and monitored.

g. 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 contractor 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 contractor acted reasonably and in a timely manner appropriate to the security 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 security significance or character of the concern arising out of the initial violation.

h. 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.

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APPENDIX A TO SUBPART B TO PART 830—GENERAL STATEMENT OF SAFETY BASIS POLICY

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 7101 *et seq.*; and 50 U.S.C. 2401 *et seq.*

SOURCE: 66 FR 1818, Jan. 10, 2001, unless otherwise noted.

§ 830.1 Scope.

This part governs the conduct of DOE contractors, DOE personnel, and other persons conducting activities (including providing items and services) that affect, or may affect, the safety of DOE nuclear facilities.

§ 830.2 Exclusions.

This part does not apply to:

(a) Activities that are regulated through a license by the Nuclear Regulatory Commission (NRC) or a State under an Agreement with the NRC, including activities certified by the NRC under section 1701 of the Atomic Energy Act (Act);

(b) Activities conducted under the authority of the Director, Naval Nuclear Propulsion, pursuant to Executive Order 12344, as set forth in Public Law 106-65;

(c) Transportation activities which are regulated by the Department of Transportation;

(d) Activities conducted under the Nuclear Waste Policy Act of 1982, as amended, and any facility identified under section 202(5) of the Energy Reorganization Act of 1974, as amended; and

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(e) Activities related to the launch approval and actual launch of nuclear energy systems into space.

§ 830.3 Definitions.

(a) The following definitions apply to this part:

Administrative controls means the provisions relating to organization and management, procedures, record-keeping, assessment, and reporting necessary to ensure safe operation of a facility.

Bases appendix means an appendix that describes the basis of the limits and other requirements in technical safety requirements.

Critical assembly means special nuclear devices designed and used to sustain nuclear reactions, which may be subject to frequent core and lattice configuration change and which frequently may be used as mockups of reactor configurations.

Criticality means the condition in which a nuclear fission chain reaction becomes self-sustaining.

Design features means the design features of a nuclear facility specified in the technical safety requirements that, if altered or modified, would have a significant effect on safe operation.

Document means recorded information that describes, specifies, reports, certifies, requires, or provides data or results.

Documented safety analysis means a documented analysis of the extent to which a nuclear facility can be operated safely with respect to workers, the public, and the environment, including a description of the conditions, safe boundaries, and hazard controls that provide the basis for ensuring safety.

Environmental restoration activities means the process(es) by which contaminated sites and facilities are identified and characterized and by which contamination is contained, treated, or removed and disposed.

Existing DOE nuclear facility means a DOE nuclear facility in operation before April 9, 2001.

Fissionable materials means a nuclide capable of sustaining a neutron-induced chain reaction (*e.g.*, uranium-233,