

ORDER

DRAFT
DOE O 227.1

Approved: XX-XX-XX

INDEPENDENT OVERSIGHT PROGRAM



U.S. DEPARTMENT OF ENERGY
Office of Health, Safety and Security

INDEPENDENT OVERSIGHT PROGRAM

1. PURPOSE. To prescribe the requirements and responsibilities for the Department of Energy (DOE) Independent Oversight Program. The Independent Oversight Program comprises one element of DOE's multi-faceted approach to oversight as described in DOE P 226.1, *Department of Energy Oversight Policy*. Effective oversight, including independent oversight, of DOE federal and contractor operations is an integral part of the Department's responsibility as a self-regulating agency to provide assurance of its safety and security posture to its leadership, its workers, and the public. The Independent Oversight Program is designed to enhance DOE safety and security programs¹ by providing DOE and contractor managers, Congress, and other stakeholders with an independent evaluation of the adequacy of DOE policy and requirements, and the effectiveness of DOE and contractor line management performance in safety and security and other critical functions as directed by the Secretary.

2. CANCELLATION. DOE O 470.2B, *Independent Oversight and Performance Assurance Program*, dated 10-31-02. (This order is superseded completely by O 227.1).

Cancellation of a directive does not, by itself, modify or otherwise affect any contractual or regulatory obligation to comply with the directive. Contractor Requirements Documents (CRDs) that have been incorporated into a contract remain in effect throughout the term of the contract unless and until the contract or regulatory commitment is modified to either eliminate requirements that are no longer applicable or substitute a new set of requirements.

3. APPLICABILITY.

- a. Departmental Elements. Except as noted in paragraph 3.c., this Order applies to all DOE elements, including the National Nuclear Security Administration (NNSA).

The NNSA Administrator must assure that NNSA employees comply with their responsibilities under this directive. Nothing in this directive will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of Public Law (P.L.) 106-65 to establish Administration specific policies, unless disapproved by the Secretary.

- b. DOE Contractors. Except for the equivalencies/exemptions in paragraph 3.c., the CRD provided in attachment 1 sets forth requirements of this Order that apply to contracts that include the CRD.

¹ Throughout this directive, safety and security programs means (1) programs for the protection of the public, the environment, and worker health and safety; and (2) programs for the protection of security assets to include special nuclear materials and sensitive and classified information in all forms.

The CRD must be included in:

- (1) All DOE site/facility management contracts consistent with the Department of Energy Acquisition Regulation clause entitled Laws, regulations, and DOE directives, 48 CFR 970.5204-2. See paragraph 5.d.(1) below.
 - (2) Other DOE contracts that contain the clauses Security (48 CFR 952.204-2), Classification/Declassification (48 CFR 952.204-70), and/or Integration of environment, safety and health into work planning and execution (48 CFR 952.223-71). See paragraph 5.e. below.
- c. Equivalencies/Exemptions. Equivalencies and exemptions to this Order are processed in accordance with DOE O 251.1C, *Departmental Directives Program*.
- (1) Equivalency. In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 USC sections 2406 and 2511 and to ensure consistency through the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this Directive for activities under the Director's cognizance, as deemed appropriate.
 - (2) Exemption. Consistent with Secretarial Delegation Order Number 00-033.00B to the Administrator and Chief Executive Officer, Bonneville Power Administration, this order does not apply to oversight of environmental programs or occupational safety and health programs at Bonneville Power Administration.
 - (3) Exemption. Pursuant to Executive Order 12333, with respect to intelligence-related activities of the Director, Office of Intelligence and Counterintelligence, this Order applies only to information protection (including related physical security measures) and cyber security measures.

4. REQUIREMENTS.

- a. Program Independence. The Office of Independent Oversight (hereafter referred to as Independent Oversight) is responsible for independent oversight of safety and security within DOE, reporting through the Chief Health, Safety and Security Officer to the Secretary. To provide an objective evaluation of the Department's performance, Independent Oversight must be independent of all DOE elements that have line management responsibilities for safety or security programs.
- b. Independent Oversight Activities.
 - (1) Independent Oversight must conduct independent evaluations of DOE sites, facilities, organizations, and operations in the areas of safety and security.

- (2) Independent Oversight must evaluate the effectiveness of DOE and contractor line management in implementing and overseeing safety and security programs to determine the adequacy of DOE policies and requirements and their implementation.
- (3) Independent Oversight must evaluate performance against applicable laws, statutes, rules, executive orders, national standards, DOE directives, DOE-approved plans and program documents (e.g., security plans, emergency plans, authorization basis documents, worker safety and health programs, quality assurance program plans), site-specific procedures, and contractually mandated requirements. This includes requirements promulgated by Program Secretarial Officers and formally authorized for use by organizations under their cognizance. Other DOE guidance, while not to be considered or applied as requirements, provides supplemental information about acceptable methods for implementing requirements contained in rules, DOE directives, or contract clauses. While the basis for independent oversight must measure against Departmental requirements, appraisal activities will focus on observing and evaluating safety and security performance.
- (4) Independent Oversight must be performed using a wide variety of review mechanisms that are collectively referred to as appraisals. An appraisal is any Independent Oversight activity that is conducted to evaluate the effectiveness of line management performance or the adequacy of DOE rules, policies, and directives. Appraisals can consist of: (1) teams led and staffed by Independent Oversight; (2) activities conducted by Independent Oversight in conjunction with DOE line management and/or DOE staff office assessments and reviews; and (3) activities conducted by Independent Oversight at DOE sites to gain operational awareness.
- (5) Independent Oversight activities must be prioritized and implemented in a manner that supports DOE line management in accomplishing its line management oversight and achieving DOE mission objectives safely and securely. The focus of Independent Oversight will be on high consequence activities, such as high hazard nuclear operations, and the protection of high value security assets (e.g., Category I quantities of special nuclear material and classified information assets, including special access programs, Sensitive Compartmented Information, and such Restricted Data Sigma categories as 14, 15, 18, and 20). For other activities and assets, Independent Oversight will focus on contractors with poor safety or security performance records and/or serious or recurring incidents or violations of requirements.
- (6) Independent Oversight appraisal activities must be coordinated with affected DOE line management and staff offices to promote efficient and effective use of resources. This must be balanced with the need for Independent Oversight to collect sufficient information for the Independent Oversight program to be executed effectively. Disagreements regarding scheduling appraisals that cannot

be resolved between Independent Oversight and the cognizant manager must be elevated through organizational management levels up to and including the Deputy Secretary for resolution.

- c. Licensed DOE Facilities or Activities. Independent oversight appraisal activities for DOE facilities or activities licensed by the Nuclear Regulatory Commission must, except where excluded by law or DOE policy, be structured to minimize or eliminate duplication of oversight efforts while ensuring DOE safety and security programs and associated facilities are independently evaluated. Accordingly, the scheduling of independent oversight activities must take into account the inspection and assessment activities of the Nuclear Regulatory Commission.
- d. Conduct of Safety and Security Independent Oversight Appraisals.
 - (1) Appraisals must be scheduled, planned, coordinated, conducted, and reported in accordance with Independent Oversight specific appraisal process protocols. Independent Oversight must select sites, facilities, programs, operations, and activities for appraisals based on a planning process that considers risks, hazards, past performance, facility conditions, anticipated changes in mission or operations, changes in contractors or management organizations, and other factors potentially affecting performance, risk, or hazards.
 - (2) Appraisals must be conducted to evaluate performance against policies and requirements and the adequacy of policies and requirements. Data collection activities include, but are not limited to, measurement of actual performance (i.e., work observations and performance testing), facility walkthroughs, interviews, and document reviews. Available classified and unclassified information sources must be used to determine the effectiveness of protection afforded to workers, the public, the environment, and national security interests, and the ability of protection programs to prevent an unacceptable immediate risk to workers, the public, or the environment or the inadvertent release of national security assets or information.
 - (3) Independent Oversight must document all of its appraisal activities. The format and content (i.e., level of detail) of the documentation will vary according to the nature and scope of the activity. For appraisals that are conducted by a team of individuals led by Independent Oversight, Independent Oversight will develop an appraisal report in accordance with section f. below.
 - (4) The factual accuracy of appraisal results must be verified by the cognizant DOE management (field element, program office and/or support organization) responsible for the program or activity.
 - (5) Appraisals may identify findings (or their site- or program-specific equivalent). Findings must be clearly identified in the appraisal report to facilitate the

development of corrective actions by the responsible organization. Findings must reference applicable requirements.

- (6) Findings and other deficiencies identified in appraisal reports must be analyzed and tracked in accordance with cognizant contractor and/or DOE line management issues management systems required by DOE Order 226.1, *Implementation of Department of Energy Oversight Policy*.
- (7) When appropriate, appraisal results must identify recommendations and/or opportunities for improvement based on the results of the appraisal that can assist line and program managers in improving program implementation or performance. Appraisals may also identify ratings (e.g., effective performance, needs improvement, or significant weakness) where appropriate to convey the appraisal results.

e. Response to Major Vulnerabilities or Imminent Danger.

- (1) Independent Oversight must notify the cognizant DOE manager verbally as soon as possible and provide written notification within 24 hours when appraisal activities indicate either of the following conditions:
 - (a) an imminent danger or condition that presents an unacceptable immediate risk to workers, public health, or the environment, or
 - (b) a major security vulnerability (e.g., unacceptable risk of special nuclear material theft or diversion, radiological or industrial sabotage, espionage, or significant compromise of classified information).
- (2) When notified by Independent Oversight of either of the above conditions, cognizant DOE management must take the following actions:
 - (a) promptly validate the conditions, and identify and implement immediate compensatory actions to mitigate the condition,
 - (b) within 10 working days, notify the Program Secretarial Officer and Independent Oversight of actions taken and compensatory measures planned, and
 - (c) develop and implement actions (including determining costs and identifying funds) to eliminate the vulnerability or reduce the level of danger to an acceptable level as soon as possible.
- (3) If the cognizant DOE management disagrees with Independent Oversight's assessment of the severity of the identified condition or the need for prompt action, this must immediately be brought to the attention of the Program Secretarial Officer and Chief Health, Safety and Security Officer for resolution.

- f. Reporting. For appraisals that are conducted by a team of individuals led by Independent Oversight and that include formally scheduled on-site appraisal activities (i.e., interviews, performance tests, work observations), Independent Oversight must prepare and issue an appraisal report as follows:
- (1) During the course of data collection, Independent Oversight must provide multiple opportunities to validate the information collected and used to develop the appraisal report. During the later stages of the appraisal, Independent Oversight prepares an initial draft report or compilation of the data collected and submits it to the responsible DOE management organizations for initial validation and review for factual accuracy. These organizations complete their reviews based on the established appraisal schedule.
 - (2) After considering the factual accuracy comments and making revisions as appropriate, Independent Oversight must distribute a final draft report to the responsible DOE management for formal review and comment. Depending upon the nature of the appraisal, this may include the DOE field element, Program Secretarial Officer, NNSA Administrator or Under Secretary (as applicable), and applicable DOE Office of Primary Interest (OPI).
 - (3) Cognizant DOE management must review and comment on the final draft report within 15 working days of receiving the report unless an extension is granted by the Independent Oversight Director. Affected DOE line management organizations must provide a unified response. Applicable OPIs may provide comments separately.
 - (4) Independent Oversight must review comments on the factual accuracy of the final draft report and prepare the final report.
 - (5) Disagreements regarding findings that cannot be resolved between Independent Oversight and the cognizant manager must be elevated through organizational management levels until resolution is obtained. If needed, issues must be elevated to the Deputy Secretary and/or Secretary for resolution.
 - (6) Independent Oversight must determine the appropriate distribution of the final report to other organizations. Independent Oversight will post the title and date of all final appraisal reports on its website. Depending upon the nature of the appraisal, Independent Oversight may post a copy of final appraisal reports that do not contain or reveal classified or controlled unclassified information.
 - (7) Considering the scope and nature of the appraisal, Independent Oversight must, as appropriate, provide updates on the status of the appraisal to the Secretary; Deputy Secretary; Under Secretaries; Program Secretarial Officers; Chief Health, Safety and Security Officer; and applicable OPIs.

- (8) As deemed appropriate by the Independent Oversight Director, the following individuals may be briefed on the results of appraisal activities: the Secretary, Deputy Secretary, Under Secretaries, Program Secretarial Officers, managers of affected DOE field elements, senior representatives of affected contractors, and applicable OPIs.
- (9) Independent Oversight must coordinate with cognizant Program Secretarial Officers, affected DOE field elements, Under Secretaries, and, if applicable, the Departmental Representative to the Defense Nuclear Facilities Safety Board (DNFSB) before briefing other DOE personnel or the DNFSB. Based on the timing of those briefings, if any, the secretarial officer and/or DOE field element manager will be offered the opportunity to also present their approaches to implementing corrective actions.
- (10) Independent Oversight must coordinate with Public Affairs, Congressional and Intergovernmental Affairs, DOE line management organizations, Under Secretaries (as applicable), and the Office of the Secretary before providing appraisal results to external stakeholders.

g. Corrective Actions.

- (1) Cognizant DOE managers must use site- and program-specific issues management processes and systems to develop, implement, and track to completion corrective actions when addressing findings or other deficiencies identified in appraisal reports.
- (2) When requested by the cognizant DOE manager or at the discretion of the Independent Oversight Director, Independent Oversight must review corrective action plans and provide comments for consideration.
- (3) Independent Oversight must establish and implement a tailored approach for following up on findings based on significance and complexity. The approach must include selected appraisals to review the timeliness and adequacy of corrective actions, verify and validate the effectiveness of the corrective actions, and confirm closure of findings.
- (4) Cognizant DOE managers must provide Independent Oversight with information on corrective actions related to appraisals of their organization, sites, and/or contractor activities when requested by the Independent Oversight Director.
- (5) Disagreements regarding the adequacy or effectiveness of corrective actions that cannot be resolved between Independent Oversight and the cognizant DOE manager must be elevated through organizational management levels until resolution is obtained. If needed, issues must be elevated to the Deputy Secretary and/or Secretary for resolution.

5. RESPONSIBILITIES.

a. Program Secretarial Officers, including the NNSA Administrator.

- (1) As line management, accept accountability for the performance of a site, facility, laboratory, operation or organization including its performance with respect to safety and security.²
- (2) Where appropriate, review drafts of appraisal reports to be issued by Independent Oversight for factual accuracy.
- (3) Take timely and appropriate corrective action to address findings and other deficiencies identified in appraisal reports in accordance with program- and site-specific issues management processes and systems.
- (4) Provide Independent Oversight with requested documentation, points of contact, access to sites, facilities, and operations in support of appraisal activities.
- (5) Work with the Chief, Health, Safety and Security Officer to resolve disagreements on safety and security findings and deficiencies that are unable to be resolved at lower organizational levels. Escalate those issues to the Office of the Secretary, if necessary, to achieve resolution.

b. Chief Health, Safety and Security Officer.

Works with Program Secretarial Officers to resolve disagreements on safety and security findings and deficiencies that are unable to be resolved at lower organizational levels. Escalates those issues to the Office of the Secretary, if necessary, to achieve resolution.

c. Director, Office of Independent Oversight:

- (1) Directs, manages, and conducts the safety and security independent oversight program.
- (2) Develops and maintains safety and security independent oversight policies, procedures, standards, guidelines and other necessary protocols.
- (3) Notifies the cognizant DOE manager as soon as possible of major vulnerabilities or imminent danger or condition identified during appraisal activities.
- (4) Conducts the annual evaluation of cyber security on national security systems.

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

- (5) Coordinates with the Office of Intelligence and Counterintelligence for the annual review of national security systems processing intelligence information.
 - (6) Briefs senior DOE officials, including the NNSA Administrator, Under Secretaries, Program Secretarial Officers, OPI managers, Heads of Field Elements, and senior representatives of affected contractors on the results of appraisal activities where appropriate.
 - (7) Notifies the DOE Inspector General when appraisal activities identify concerns involving potential criminal activities and/or waste, fraud, and abuse.
 - (8) Coordinates the scheduling, notification, and planning of appraisal activities with appropriate Program Secretarial Officers and/or Heads of Field Elements.
 - (9) Establishes and implements a tailored approach to follow-up on appraisal findings based on significance and complexity.
 - (10) Coordinates with the applicable OPIs to ensure accurate interpretation of requirements related to safety and security findings and deficiencies identified during appraisals.
 - (11) Coordinates with the Office of Enforcement when appraisal activities identify potential noncompliances with regulations promulgated pursuant to section 234 of the Atomic Energy Act.
- d. Heads of Field Elements/Contracting Officers.
- (1) Identify contracts to which the CRD should apply and notify the cognizant contracting officers.
 - (2) Review draft appraisal reports for factual accuracy and provide comments in accordance with the appraisal schedule.
 - (3) Take timely and appropriate corrective action to address the findings and other deficiencies identified in appraisal reports in accordance with program- and site-specific issues management processes and systems.
 - (4) Provide Independent Oversight with requested documentation, points of contact, and information concerning programs under their jurisdiction; ensure necessary support for appraisal activities, including access to sites, facilities and operations; and provide work space for appraisal teams.
- e. Contracting Officers. Incorporate the CRD into contracts in a timely fashion upon notification of its applicability.

- f. Executive Secretary of the Special Access Program Oversight Committee. Assist Independent Oversight in obtaining access to special access programs as required to provide effective independent oversight of the overall DOE security program.
 - g. Offices of Primary Interest (for DOE Directives).
 - (1) Coordinate resolution of applicable policy findings identified in final appraisal reports with Program Secretarial Officers and Heads of Field Elements.
 - (2) Coordinate with Program Secretarial Officers and Heads of Field Elements to assist in resolving other findings or deficiencies applicable to the OPI identified in final appraisal reports.
 - (3) As applicable, review draft appraisal reports to be issued by Independent Oversight for factual accuracy regarding policies and/or activities under their cognizance.
 - (4) In coordination with the responsible Program Secretarial Officer, develop, implement, and track to completion corrective actions for findings related to policies or activities of the OPI.
 - (5) Provide official DOE interpretation of requirements contained in DOE directives under their cognizance.
6. REFERENCES. None
7. DEFINITIONS. See Appendix 1.
8. CONTACT. Questions concerning this Order should be directed to the Office of Independent Oversight at 301-903-2178.

BY ORDER OF THE SECRETARY OF ENERGY:

DANIEL B. PONEMAN
Deputy Secretary

DEFINITIONS

Appraisal: An Independent Oversight activity conducted to evaluate the effectiveness of line management performance or the adequacy of DOE policies and requirements.

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

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

Directives: Directives are defined in DOE Order 251.1, *Departmental Directives Program*.

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

Heads of Field Elements: First-tier field managers of the site and operations offices and listed in the *Correspondence Style Guide* of the Executive Secretariat. Field Elements is a general term for all DOE sites (excluding individual duty stations) located outside of the Washington, D.C. metropolitan area.

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

Independent Oversight: Independent oversight is the objective evaluation of the Department's safety and security performance without being subject to or influenced by the Department's policy or line management organizations. Within DOE, the sole responsibility for independent oversight of safety and security programs resides with the Office of Independent Oversight, reporting through the Chief Health, Safety and Security Officer to the Office of the Secretary of Energy.

Line Management: Line management refers to that portion of the Department's organization that has a linear reporting relationship extending from the Secretary to the people in the facilities directly performing the Department's missions. It is the chain of command that extends from the Secretary to the Program Secretarial Officers, to the field organizations, to the contractors and subcontractors responsible for performing work. It is distinct from DOE support organizations, which also have support responsibilities and functions important to security and safety.

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

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

Program Secretarial Officers: Heads of organizations listed under Program Secretarial Officers (PSOs) in the *Correspondence Style Guide* of the Executive Secretariat. For the purpose of this Order, Program Secretarial Officers are also considered to include each of the Power Marketing Administrators.

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

CONTRACTOR REQUIREMENTS DOCUMENT

DOE O 227.1, *Independent Oversight Program*

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

The contractor must meet the following requirements:

1. The contractor must support the conduct of Independent Oversight appraisal activities at sites and facilities for which they are responsible. This support includes, but is not limited to, the following:
 - a. timely identification of points of contact to provide information and support during appraisals;
 - b. documentation and information concerning safety and security programs³ for which they are responsible;
 - c. access to contractor-managed facilities and personnel; and
 - d. provision of work space and administrative support for appraisal teams.
2. When notified by Independent Oversight of an imminent danger or condition or major security vulnerability that presents an unacceptable immediate risk to workers, the public, the environment, or national security, the responsible contractor organization must take the following actions in coordination with DOE line management:
 - a. promptly identify and implement immediate compensatory actions to mitigate the condition,
 - b. within 5 working days, notify the cognizant DOE line manager of actions taken and compensatory measures planned, and
 - c. develop and implement actions (including determining costs and identifying funds) to eliminate the vulnerability or reduce the level of risk to an acceptable level as soon as possible.
3. When requested, the contractor must review draft appraisal reports for factual accuracy and provide comments through the responsible DOE field element in accordance with the appraisal schedule.

³ Throughout this document, safety and security programs means (1) programs for the protection of the public, the environment, and worker health and safety; and (2) programs for the protection of security assets to include special nuclear materials and sensitive and classified information in all forms.

4. Draft appraisal reports provided for review must be controlled by contractor personnel.
5. The contractor must prepare, implement, and track to completion corrective actions that address findings and other deficiencies identified during Independent Oversight appraisals in accordance with site- and program-specific issues management processes and systems.
6. The contractor must provide information on corrective actions to DOE when requested to support Independent Oversight appraisal activities.