

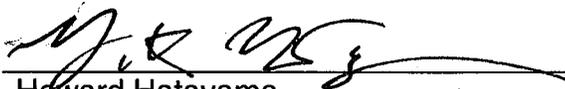
Price-Anderson Amendment Act Compliance Program Manual

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Approved by:


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Date:

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Revision History

Rev. #	Date	Revision Description
1	12/5/11	Incorporate 10 CFR 830, add roles and responsibilities, clarify process, incorporate screening and NTS reportability criteria and forms
2	1/18/13	Incorporates 10 CFR851 requirements, roles and responsibilities, and updates from August 2012 DOE HSS Enforcement Guidance

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1.0 PURPOSE

This manual describes the Lawrence Berkeley National Laboratory (LBNL) Compliance Assurance Program for the worker safety and health, nuclear safety, and classified information security programs enforced by the U. S. Department of Energy (DOE) under the Price-Anderson Amendments Act (PAAA). The program applies to all LBNL organizations as well as its subcontractors and suppliers who provide services or items. This manual establishes the process for identifying, evaluating, reporting, tracking, trending and closing noncompliances with DOE worker safety and health, nuclear safety, and security requirements enforceable under PAAA and its primary implementing regulations, 10 CFR 824, *Procedural Rules for the Assessment of Civil Penalties for Classified Information Security Violations*, 10 CFR 830, *Nuclear Safety Management*, 10 CFR 835, *Occupational Radiation Protection*, and 10 CFR 851, *Worker Safety and Health Program*.

No classified work is performed at LBNL, and as such, no work performed is subject to the requirements of 10CFR824. Any classified information security issues that might arise would be managed using the general procedures described in this manual. The Office of Contractor Assurance (OCA) is responsible for compliance assurance for the nuclear safety Rules (10CFR 830 and 835) and the Environment / Health / Safety / Security Division (EHSS) is responsible for worker safety and health Rules (10CFR851).

Records generated as result of performance of this procedure are Quality Assurance records and are maintained in accordance with RPM requirements. These records include, but are not limited to, the following:

- Nuclear Safety Noncompliance Determination Screening Forms
- Noncompliance Tracking System (NTS) Nuclear Safety Reportability Determination Forms
- Worker Safety and Health Noncompliance Determination Screening Forms
- PAAA Log

2.0 REFERENCES

BASELINE REFERENCES

- 10 CFR 708, *DOE Contractor Employee Protection Program*
- 10 CFR 820, *Procedural Rules for DOE Nuclear Activities*
- 10 CFR 824, *Procedural Rules for the Assessment of Civil Penalties for Classified Information Security Violations*
- 10 CFR 830, *Nuclear Safety Management*
- 10 CFR 835, *Occupational Radiation Protection*
- 10 CFR 851, *Worker Safety and Health Program*
- DOE Office of Enforcement and Oversight, *Safety and Security Enforcement Process Overview*, August 2012

REFERENCE DOCUMENTS

- LBNL/PUB-5519 (1), *Issues Management Program Manual*
- LBNL/PUB-5519 (2), *Root Cause Analysis Program Manual*
- LBNL/PUB-5519 (4), *Lessons Learned and Best Practices Program Manual*

3.0 RESPONSIBILITIES

Role	Description of Responsibilities
Laboratory Director or Designee	Appoints Enforcement Coordinators and alternate(s)
General Counsel	Reviews Preliminary Notices of Violation (PNOVs) and their responses to make recommendations relative to any considerations to deny a PNOV, to appeal a PNOV, or to request that a Compliance Order be rescinded or modified and prepares appeals to Final Notices of Violation (FNOVs) and Compliance Orders, as appropriate.
Director, Office of Institutional Assurance (OIA)	Is responsible for and provides oversight of the PAAA Compliance Assurance Program
Manager, Office of Contractor Assurance	<ul style="list-style-type: none"> • Provides management support to and oversight of, the nuclear safety Enforcement Coordinator • Serves as alternate nuclear Enforcement Coordinator • Interfaces with EHSS Division Deputy Director and Laboratory Senior Management on the status of the PAAA Program and significant PAAA issues • Interfaces with the DOE Office of Price-Anderson Enforcement on the status of the PAAA Program and significant PAAA issues • Appoints the LBNL Interpretive Authority, as appropriate, to assist the Enforcement Coordinator for screening issues potentially related to 10 CFR 830, <i>Nuclear Safety Management</i>.
Deputy Director, EHSS Division Technical Program Management	<ul style="list-style-type: none"> • Provides management support to and oversight of, the worker safety and health Enforcement Coordinator and for any classified information issues that may arise • Serves as alternate worker safety and health Enforcement Coordinator • Interfaces with OCA Manager and Laboratory Senior Management on the status of the PAAA Program and significant PAAA issues • Appoints the LBNL Interpretive Authority, as appropriate, to assist

	<p>the worker safety and health Enforcement Coordinator for screening issues potentially related to 10 CFR 851</p>
Enforcement Coordinator	<ul style="list-style-type: none">• Oversees LBNL's compliance with PAAA 10 CFR 830, and 10 CFR 835; or 10 CFR 851 Rules• Independently ensures timely review and screening of sources of potential noncompliances for PAAA applicability and reportability• Distributes compliance-related communications to affected LBNL organizations• Serves as the principal lead for enforcement actions associated with nuclear safety or worker safety and health implementation and compliance• Notifies responsible organizations of reportable PAAA noncompliances• Enters and updates reportable PAAA noncompliances into the DOE Noncompliance Tracking System (NTS)• Maintains PAAA files• Generates follow-up communications to responsible organizations for closure of corrective actions associated with reportable PAAA noncompliances• Verifies that PAAA NTS corrective actions address the causes, are comprehensive and have been completed• Verifies that Effectiveness Reviews are conducted for NTS issues when corrective actions have been completed• Performs assessments periodically to evaluate implementation of the PAAA Compliance Assurance Program• Performs quarterly PAAA trending and analysis to identify potential trends and recurring issues• Interfaces with the DOE Berkeley Site Office (BSO) Enforcement Coordinator and the DOE Office of Price-Anderson Enforcement• Coordinates with the BSO Enforcement Coordinator and the DOE Office of Enforcement (OE) requests for information, onsite and offsite investigations and enforcement conferences• Convenes LBNL/BSO PAAA Meetings, as necessary

	<ul style="list-style-type: none">• Reviews potential reportable noncompliances with participants of the LBNL/BSO PAAA Meeting, as appropriate• Attends enforcement conferences• Provides periodic training to ensure that cognizant managers have a working knowledge of the DOE enforcement program
Cognizant Management	<ul style="list-style-type: none">• Provides support, as necessary, to respond to Enforcement inquiries, Enforcement Conferences and Enforcement Actions• Provides support, as necessary, to conduct causal analyses, to take prompt corrective actions and ensure effectiveness of corrective actions taken in response to noncompliance• Provides information, as requested, to the Enforcement Coordinators for issues that are considered potentially reportable noncompliances• Notifies the Radiological Control Manager (RCM) and the nuclear safety Enforcement Coordinator of potential 10 CFR 830 and 10 CFR 835 issues• Notifies the Employee Health and Safety Department Head and the worker safety and health Enforcement Coordinator of potential 10 CFR 851 issues• Provides assessment reports, ORPS reports, issues, and other pertinent data to the Enforcement Coordinators for review for potential 10 CFR 830, 10 CFR 835 and 10 CFR 851 issues• Initiates and ensures that a causal analysis is performed in accordance with the requirements of LBNL/PUB-5519 (2), <i>Causal Analysis Program Manual</i>, for PAAA NTS reportable incidents• Prepares a corrective action plan that identifies corrective actions to prevent recurrence of the noncompliance in accordance with the requirements LBNL/PUB-5519 (1), <i>Issues Management Program Manual</i>• Verifies corrective actions are entered in the Corrective Action Tracking System (CATS)• Monitors the status and times completion of corrective actions• Ensures adequate preparation and verification of closure documentation

	<ul style="list-style-type: none"> • Ensures objective evidence of corrective action completion is uploaded into the CATS database • Communicates potential lessons learned via the Laboratory Lessons Learned/Best Practices Database.
Radiological Control Manager (RCM)	<ul style="list-style-type: none"> • Notifies the nuclear Enforcement Coordinator of potential 10 CFR 830 and 10 CFR 835 issues • Appoints the LBNL Interpretive Authority, as appropriate, to assist the PAAA Coordinator in screening issues potentially related to 10 CFR 835 <i>Occupational Radiation Protection</i> issues • Reviews and approves corrective actions and/or corrective action plans submitted by Cognizant Management in response to PAAA internally-reportable incidents • Verifies corrective actions are completed, as appropriate
Interpretive Authority	Assists the Enforcement Coordinators, when requested, to provide interpretations of Rule requirements when performing noncompliance determinations
LBNL/BSO PAAA Meeting Participants	<ul style="list-style-type: none"> • Attend LBNL/BSO PAAA meetings • Discuss issues considered by the Enforcement Coordinator to be potentially reportable noncompliances • Provide status and or other pertinent information on PAAA noncompliances

4.0 PERFORMANCE

4.1 SCREENING OF POTENTIAL NONCOMPLIANCES

NOTE:

Source documents may include:

- Internal issues management or deficiency reporting systems
- Radiological event or radiological deficiency reports
- Occupational Safety and Health Administration 300 logs
- Operating logs (for issues involved in non-ORPS events)
- Protective force daily event logs
- Employee concerns
- Subcontractor deficiency resolution processes analogous to those listed above.
- Occurrence Reports
- Internal and External Management Assessment Reports and findings
- Surveillances
- Inspections
- Employee Concerns

- Nonconformance Reports
 - Injury reports, CAIRS system reports
-

Cognizant Manager

4.1.1. Submit source documents or issues statements to the Enforcement Coordinators.

Enforcement Coordinators

- 4.1.2. Screen source documents using the Noncompliance Determination Screening Criteria, in Attachment B for Nuclear Safety or Attachment F for Worker Safety and Health, upon receipt of the source documents or issues statements, but no later than five business days
- 4.1.3. Request additional information from the RCM or WHSDH, as needed, to support the screening activity.
- 4.1.4. Request additional information from line management, as needed, to support the screening activity.

Cognizant Manager

4.1.5. Provide requested information to the Enforcement Coordinator.

Enforcement Coordinator

Note:

The Enforcement Coordinator discusses the issue with the RCM or WSHDH prior to finalizing a determination to ensure adequacy and completeness of the determination.

4.1.6. Determine if the noncompliance is:

[A] Not PAAA reportable;

[B] PAAA Noncompliance: internally reportable; or

[C] PAAA Noncompliance: externally reportable (PAAA NTS database entry required).

4.1.7. If the issue is determined to be not reportable, GO TO Step 4.1.10.

4.1.8. If the issue is determined to be internally reportable, GO TO Step 4.1.10.

4.1.9. If the issue is determined to be externally reportable, GO TO Step 4.2.1.

4.1.10. Notify the cognizant manager of the determination.

Note:

The CATS database or other mechanism may be used as the PAAA log.

4.1.11. Enter the noncompliance determination into the PAAA Log.

Cognizant Manager

4.1.12. Develop corrective actions to prevent recurrence, in accordance with LBNL/PUB-5519 (1).

4.1.13. Notify the Enforcement Coordinator of corrective action completion.

4.2 EXTERNALLY REPORTABLE PAAA NONCOMPLIANCES

Enforcement Coordinator

4.2.1 Notify the Cognizant Manager(s), associated Division Director(s), OIA Director, Chief Operating Officer (COO), General Counsel, and other personnel, as appropriate, of the noncompliance determination (see Attachment H, *Sample Notification*).

4.2.2 Prepare the draft PAAA NTS report and obtain input from the Cognizant Manager and Division Director, as appropriate.

4.2.3 Prior to submission of the PAAA NTS report to DOE, review the report with the responsible Division Director(s).

Cognizant Manager

4.2.4 Provide input to and resolve comments with the Enforcement Coordinator.

4.2.5 In conjunction with the Enforcement Coordinator, determine what level of causal analysis is required to be performed by completing the Attachment I, *PAAA NTS Causal Analysis Level Decision Matrix*, of this document.

4.2.6 Initiate the appropriate level of Causal Analysis in accordance with LBNL/PUB-5519 (2).

4.2.7 GO TO Step 4.2.12.

Enforcement Coordinator

4.2.8 Transmit the PAAA NTS report to the BSO Enforcement Coordinator.

4.2.9 Distribute a copy of the PAAA NTS report to the applicable Cognizant Manager(s), Division Director(s), Director of OIA, COO, General Counsel, and other personnel, as appropriate.

4.2.10 Enter the noncompliance in the PAAA NTS database within 20 calendar days of determination of the noncompliance.

4.2.11 Enter the noncompliance on the PAAA Log

Cognizant Manager

4.2.12 Develop a Corrective Action Plan in accordance with LBNL/PUB-5519 (1) that addresses the causes identified in the Causal Analysis Report.

- 4.2.13 Enter corrective actions into CATS database.
- 4.2.14 Enter lessons learned from noncompliances into the LBNL Lessons Learned and Best Practices database, in accordance with LBNL/PUB-5519 (4), *Lessons Learned and Best Practices Program Manual*, as appropriate.
- 4.2.15 Submit objective evidence of corrective action completion to the Enforcement Coordinator.
- 4.2.16 Notify the Enforcement Coordinator of completion dates of each corrective action.
- 4.2.17 Initiate an effectiveness review of corrective actions, in accordance with LBNL/PUB-5519 (1), *Issues Management Program Manual*.

4.3 TRACKING PAAA NONCOMPLIANCES

Enforcement Coordinator

- 4.3.1 Enter corrective actions into the PAAA NTS database.
- 4.3.2 Verify, through objective evidence submitted, that all corrective actions associated with PAAA NTS-reportable noncompliances have been completed as specified.
- 4.3.3 Update the PAAA Log.
- 4.3.4 Update the PAAA NTS database, as applicable, as CATS corrective actions are completed.

4.4 LBNL/BSO PAAA MEETINGS

Enforcement Coordinators

- 4.4.1 Schedule LBNL/BSO PAAA Meetings on an as-needed basis to support prompt discussion of reportable noncompliances.
- 4.4.2 Prepare meeting agenda, minutes, and other materials, as necessary, and distribute to LBNL/BSO PAAA participants prior to the meeting.

4.5 TRENDING & ANALYSIS

Enforcement Coordinators

- 4.5.1 Review PAAA noncompliances for potential trends and recurring issues, at least annually.
- 4.5.2 Document the analysis.

- 4.5.3 If trends and/or recurring issues are identified, GO TO step 4.1.6 to determine if they are PAAA reportable or not.
- 4.5.4 Submit draft trend report to the Cognizant Manager, RCM and/or WSHDH for factual accuracy review.

RCM, WSHDH and/or Cognizant Manager

- 4.5.5 Resolve issues, as appropriate, with the Enforcement Coordinator.

Enforcement Coordinator

- 4.5.6 Distribute the analysis report to the affected LBNL management.
- 4.5.7 Discuss trends and recurring issues with the PAAA LBNL/BSO participants at the next available meeting.

ATTACHMENT A – DEFINITIONS

Corrective Action Tracking System (CATS): LBNL's electronic, centralized database used document, manage and track issues and corrective actions through resolution.

Civil Penalty: A monetary penalty that may be imposed for violations of applicable DOE Nuclear Safety Requirements or Worker Safety and Health Requirements, including Compliance Orders. Civil penalties are designed to emphasize the need for lasting remedial action, deter future violations and underscore the importance of DOE contractor self-identification, reporting and correction of violations of DOE nuclear and worker safety and health requirements.

Cognizant Manager: Manager or individual assigned responsibility for the performance of a causal analysis, the preparation of a corrective action plan, and tracking the timely completion of corrective actions to prevent the recurrence of nuclear safety or worker safety and health noncompliances.

Compliance Order: An order issued by the Secretary to contractor that mandates a remedy, work stoppage or other action to address a situation that violates, potentially violates or otherwise is inconsistent with a requirement of a PAAA Rule.

Consent Order: Any written document, signed by the Director and a contractor containing stipulations or conclusions of fact or law and a remedy acceptable to both DOE and the contractor.

Contractor: Any person or entity under a contract of indemnification with the DOE with the responsibility to perform activities in connection with any DOE facility, laboratory or program subject to nuclear safety or worker, safety and health requirements. As used in this program, reference to a contractor also includes its subcontractors and suppliers.

DOE Site: A DOE-owned or DOE-leased area or location or other area or location controlled by DOE where activities and operations are performed at one or more facilities or places by a contractor in furtherance of a DOE mission.

Effectiveness Reviews: A review of implemented corrective actions that is performed six to twelve months following an issue closure to determine the effectiveness of any actions taken to preclude recurrence of the issue. The review should confirm that the completed corrective actions to preclude recurrence are sustainable, have prevented occurrence of similar issue(s) due to similar cause(s) and have not produced unintended consequences.

Enforcement Action: The issuance of an Enforcement Letter, Consent Order or a Preliminary Notice of Violation (PNOV) or Final Notice of Violation (FNOV) with or without a civil penalty.

Enforcement Coordinator, BSO: A person in the DOE Berkeley Site Office who is the liaison between BSO and the LBNL Enforcement Coordinator for actions related to PAAA issues. The DOE BSO Enforcement Coordinator is informed when a noncompliance is identified that might be PAAA NTS reportable and is updated on the progress of PAAA NTS corrective action development and implementation. This person conducts independent verification of completed corrective action and makes recommendations to DOE OE regarding closure of the PAAA NTS issue.

Enforcement Coordinator, LBNL: The individuals appointed by the LBNL Laboratory Director or Designee, and accountable to the Director of the Office of Institutional Assurance, that reviews issues for and makes determinations of PAAA noncompliances with the 10 CFR 824, 10 CFR 830, 10 CFR 835 and 10 CFR 851 Rules. The Enforcement Coordinator ensures that PAAA noncompliances, internally or externally reportable, are managed through resolution, documented in the PAAA NTS database, maintains applicable documents and records, and provides technical guidance to line and cognizant management PAAA noncompliances.

Exemptions: The final order that sets forth the relief, waiver or release, either temporary or permanent, from a DOE nuclear safety requirement, as granted by the appropriate Secretarial Officer pursuant to the provisions of Subpart E of 10 CFR 820.

ATTACHMENT A – DEFINITIONS (CONTINUED)

Final Notice of Violation (FNOV): A document that determines a contractor has violated or is continuing to violate a requirement of the PAAA Rules. The FNOV includes a statement specifying the requirement to which the violation relates; a concise statement of the basis for the determination; any remedy, including the amount of any civil penalty; and a statement explaining the reasoning behind any remedy.

Final Order: 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.

Interpretive Authority, LBNL: Individual assigned responsibility to assist the LBNL Enforcement Coordinator, when requested, to conduct noncompliance determinations. This individual is considered a subject matter expert for nuclear safety or worker health and safety rules and regulations.

Issue: A program or performance deficiency that is a noncompliance with an established external or internal requirement. It is a generic term used to refer to programmatic or performance deficiencies, nonconformances, regulatory or procedural noncompliances, procedure inadequacies, assessment findings, external oversight findings, and associated actions that require formal corrective action.

LBNL/BSO PAAA Meeting: A meeting between local site office and LBNL personnel to discuss PAAA noncompliances, status of PAAA NTS Reports and associated corrective actions, and reviews objective evidence of corrective action completion and NTS Report closure. Participants include the LBNL Enforcement Coordinators, the DOE BSO Enforcement Coordinators and/or the LBNL RCM or LBNL WSHD.

Noncompliance: Failure to comply with an applicable DOE nuclear safety or worker safety and health requirement, the Contractor Assurance System Description, the LBNL Operating and Quality Management Plan or the Worker Safety and Health Program, or the LBNL Radiation Protection Plan.

Noncompliance Tracking System (NTS): A centralized database maintained by the DOE for reporting and tracking reportable PAAA noncompliances of nuclear safety requirements, allowing DOE contractors to take advantage of mitigation provisions in the enforcement policy.

Nuclear Safety Rules: Those rules specifically codified as 10CFR820, *Procedural Rules for DOE Nuclear Activities*; 10CFR835, *Occupational Radiation Protection*; 10CFR830, *Nuclear Safety Management*; 10CFR708, *DOE Contractor Employee Protection Program*; and any DOE-approved program (including any commitment therein), plan, or other provision required to implement any nuclear safety requirement or Compliance Order.

Preliminary Notice of Violation (PNOV): A document that sets forth the preliminary conclusions that a contractor has violated or is continuing to violate a requirement of the PAAA or WSH Rules. The PNOV includes a statement specifying the requirement to which the violation relates; a concise statement of the basis for alleging the violation; any remedy, including the amount of any proposed civil penalty; and a statement explaining the reasoning behind any proposed remedy.

Price-Anderson Amendment Act (PAAA): The Federal Law that authorizes DOE to establish an enforcement program subjecting DOE contractors, subcontractors and suppliers to potential civil and criminal penalties for violation of DOE nuclear safety, worker safety and health, and classified information security rules, regulations, and compliance orders.

Radiological Control Manager (RCM): The person appointed by the Laboratory Director and accountable to the Laboratory Director for managing, maintaining and overseeing effective and compliant implementation of the DOE-approved 10CFR835 Radiation Protection Program. The RCM is the cognizant manager for implementing radiological inventory controls for facility hazard categorization purposes as described in 10CFR830.

Remedy: Any action (including but not limited to, the assessment of civil penalties, the reduction of fees or other payments under a contract, the requirement of specific actions, or the modification, suspension or rescission of a contract) necessary or appropriate to rectify, prevent or penalize a violation of a requirement of a PAAA Rule, including a compliance order issued by the Secretary pursuant to these requirements.

ATTACHMENT B – NUCLEAR SAFETY NONCOMPLIANCE DETERMINATION SCREENING FORM

Screen #:	Screened by:	Date:
Source Document:		Date:
Discovered by:		Date:
Building, System, Equipment:		Date:
Cognizant Manager:		Date:
Issue Description:		
PLAUSIBLE	Yes	No
A. 10 CFR 708		
Is the issue related to the disclosure of a concern or noncompliance with a safety requirement and, as a result, a reprisal occurred against an employee in violation of the provisions of 10 CFR 708?		
	<input type="checkbox"/>	<input type="checkbox"/>
B. 10 CFR 820		
Is the issue related to information provided to DOE or maintained for DOE inspection which was known to be incomplete or inaccurate in some material respect or which was concealed or destroyed?		
	<input type="checkbox"/>	<input type="checkbox"/>
C. 10 CFR 830, Subpart A		
Is the issue related to a noncompliance with a nuclear safety requirement of 10 CFR 830, Subpart A, and/or commitments made in the Operating and Quality Management Plan?		
	<input type="checkbox"/>	<input type="checkbox"/>
D. 10 CFR 830, Subpart B		
Is the issue related to a noncompliance with a nuclear safety requirement of 10 CFR Part 830, Subpart B?		
	<input type="checkbox"/>	<input type="checkbox"/>
E. 10 CFR 835		
Is the issue related to a noncompliance with a nuclear safety requirement of 10 CFR 835 and/or commitments made in the Radiation Protection Program?		
	<input type="checkbox"/>	<input type="checkbox"/>
CONCLUSION		
Is the issue a noncompliance?		
(If yes, complete ATTACHMENT C –PAAA NTS Reportability Determination Screening Form)		
	<input type="checkbox"/>	<input type="checkbox"/>
Enforcement Coordinator (Printed Name & Signature)		Date
Justification:		
*Applicable CFR Requirements:		
*Applicable Program or Standard Requirements:		
* -- Required for noncompliances only		

ATTACHMENT C – NUCLEAR SAFETY NONCOMPLIANCE DETERMINATION SCREENING TOOL INSTRUCTIONS

FIELD	INSTRUCTION
Screen #	Enter the next sequential number used by the 10CFR830/ 10CFR835 PAAA Log
Screened by/Date	Enter the name of the person performing the noncompliance determination screen and the date that the screen is initiated
Source Document/Date	Enter the title, number and issuance date of the document being screened.
Discovered by/Date	Enter LBNL, BSO, DOE, or other organization and the method of discovery (e.g. assessments, worker identified, trending, employee concerns, events), and the date of the discovery.
Building, System, Equipment/Date	Enter the Building where the issue occurred; identify the system and/or equipment that was involved; and the date the Building, System and/or Equipment was identified.
Cognizant Manager/date	Enter the name of the person assigned responsibility for addressing the issue and the date they were notified.
Issue Description	Enter a brief description of the issue.
A. 10 CFR 708	Answer "Yes" if the issue involves a reprisal taken against an employee who discloses a concern related to a nuclear safety requirement.
B. 10 CFR 820	Answer "Yes" if the issue involves: <ul style="list-style-type: none"> • Incomplete or inaccurate information related to a nuclear requirement when made available to DOE OR • Concealing or destroying nuclear safety information
C. 10 CFR 830, Subpart A	Answer "Yes" if the answer to any of statements below are "Yes": <ol style="list-style-type: none"> 1. The issue indicates a failure of management to: <ol style="list-style-type: none"> a. Appropriately establish organizational structure, functional responsibilities, levels of authority and interfaces for those managing, performing and assessing nuclear safety-related work activities. b. Appropriately establish management processes, including planning, scheduling and providing resources for nuclear safety-related work. 2. The issue involves selection, qualification or training of personnel that indicates: <ol style="list-style-type: none"> a. Personnel were not knowledge able or did not understand the nuclear safety related work activity b. Failure to very qualification, training, or certification requirements prior to nuclear safety related work or task assignment c. Inadequate training plans, instructor qualifications, instructional materials, or training program content related to nuclear safety 3. The issue involves nuclear safety related quality improvement that indicates a failure to: <ol style="list-style-type: none"> a. Establish and implement processes to detect and prevent quality problems b. Identify, control and correct items, services, and processes that do not meet established requirements c. Identify the causes of problems and work to prevent recurrence as part of correcting the problem d. Review item characteristics, process implementation, and other quality related information to identify items, services and processes needing improvements 4. The issues involves controls related to nuclear safety documents and records that indicate a failure to: <ol style="list-style-type: none"> a. Prepare, review, approve, issue, use and revise documents to prescribe processes, specify requirement or establish design

**ATTACHMENT C – NUCLEAR SAFETY NONCOMPLIANCE DETERMINATION
 SCREENING FORM INSTRUCTIONS (CONTINUED)**

FIELD	INSTRUCTION
<p>C. 10 CFR 830, Subpart A (Continued)</p>	<p>b. Specify, prepare, review, approve and maintain records</p> <p>5. The issue involves nuclear safety related work or process controls that indicate a failure to:</p> <ul style="list-style-type: none"> a. Establish or control procedures, instructions, drawings or other instructions appropriate for the activity being performed b. Inform the workers regarding applicable work control documents c. Use or comply with applicable procedures, instructions, drawings or other instructions appropriate for the activity being performed d. Identify and control items to ensure proper use of conforming items and prevent use of nonconforming items e. Use calibrated equipment for process monitoring and data collection f. Control packaging, shipping, handling, and preservation of items to prevent damage, loss or deterioration <p>6. The issue involves nuclear safety related design control that indicates a failure to:</p> <ul style="list-style-type: none"> a. Identify design process requirements b. Perform independent design verification in accordance with the design specification and applicable design procedures prior to relying on the item to perform its safety function c. Ensure design output documents incorporate applicable design requirements d. Implement design configuration and design document change controls in accordance with the design specification and applicable design procedures e. Maintain drawings essential to the safe operation of a nuclear/radiological facility during normal and upset conditions in the "as-built" condition <p>7. The issue is related to procurement, receipt or acceptance of items or services that affect or may affect, nuclear safety and indicates a failure to:</p> <ul style="list-style-type: none"> a. Ensure that items and services met applicable requirements b. Evaluate, monitor and periodically re-evaluate suppliers c. Identify applicable requirements for receiving inspection or to perform the specified inspections and tests <p>8. The issue is related to the control of inspection and test of items that affect, or may affect, nuclear safety and indicates a failure to:</p> <ul style="list-style-type: none"> a. Identify appropriate inspection requirements in written procedures/plans or to perform specified inspections or tests b. Ensure that inspection and tests are performed by personnel who have not performed or supervised the work and who are qualified in accordance with applicable procedures c. Identify inspection status or to ensure that failed or untested items are properly controlled to prevent inadvertent use

**ATTACHMENT C – NUCLEAR SAFETY NONCOMPLIANCE DETERMINATION
 SCREENING FORM INSTRUCTIONS (CONTINUED)**

FIELD	INSTRUCTION
C. 10 CFR 830, Subpart A (Continued)	9. The issue is related to a failure to adequately plan or perform management or self-assessments related to nuclear safety. 10. The issue is related to a failure to adequately plan or perform independent assessment related to nuclear safety.
D. 10 CFR 830, Subpart B	Answer "Yes" if the issue is related to a failure to operate LBNL facilities in accordance with its DOE-approved documented safety analysis, technical safety requirements or equivalent, or commitments made within those documents.
E. 10 CFR 835	Answer "Yes" if the answer to any of the statements below are "Yes": 1. The issue resulted in an actual or potential unplanned exposure of personnel. 2. The issue resulted in an actual exposure above the administrative or regulatory limits. 3. The issue resulted in the spread of contamination from a radiological area to an area where contamination is neither controlled nor expected. 4. The issue indicates the failure to perform an adequate ALARA review. 5. The issue indicates the failure to prescribe and implement appropriate administrative or design controls to maintain exposure ALARA. 6. The issue indicates the failure to perform the surveys and monitoring necessary to control work in radiological areas and prevent the spread of contamination to an area where contamination is neither controlled nor expected. 7. The issue indicates the failure to properly post or otherwise control access to a radiological area. 8. The issue indicates the failure to properly calibrate, select, test or use the appropriate radiation monitoring and air sampling equipment. 9. The issue indicates the failure to prescribe and use appropriate personnel protective and monitoring equipment. 10. The issue indicates the failure to provide for rapid evacuation of personnel from radiological control zones and high radiation areas during normal and emergency conditions. 11. The issue indicates the failure to provide adequate training for radiological workers or radiological control technicians. 12. The issue indicates the failure to provide adequate control of sealed sources.
Is the issue a noncompliance?	If the answer to any of the PAAA Rule Criteria (A-E) above is "Yes", the issue should be answered "Yes" and the completion date of the screen entered.
Enforcement Coordinator/Date	If the issue is determined to be a noncompliance, the PAAA Coordinator signs and dates his/her concurrence.
Justification	If the PAAA Coordinator does not concur, justification is provided below.
Applicable CFR Requirements	If the issue is determined to be a noncompliance, enter the applicable CFR requirements that LBNL or its subcontractors is not in compliance with.
Applicable Program or Standard Requirements	If the issue is determined to be a noncompliance, enter the applicable Program or Standard requirements that LBNL or its subcontractors is not in compliance with.

ATTACHMENT D – NTS NUCLEAR SAFETY REPORTABILITY DETERMINATION SCREENING FORM

Screen #:	Screened by:	Date:		
CONCLUSION				
A. OCCURRENCE REPORT CRITERIA Have PAAA reporting criteria been met? If "Yes", identify Criteria:			Yes / No	
B. REPETITIVE Has the same noncompliance or a closely similar noncompliance continued to occur, indicating the corrective action, including the causal analysis, has not been effective?				
C. PROGRAMMATIC CRITERIA 1. Have several minor, related, but not identical noncompliances occurred, indicating a common breakdown in a program or area of a program that allowed or contributed to the noncompliances occurring?				
2. Have multiple control failures within the boundaries of a single event occurred indicating a common breakdown in a program or area of a program?				
D. INTENTIONAL VIOLATION OR MISREPRESENTATION 1. Did the noncompliance occur as a result of a willful intentional act?				
2. Did the noncompliance involve misrepresentation (e.g. intentional concealing of facts, falsification or records or reports, or intentional reporting of inaccurate or incomplete information)?				
E. MANAGEMENT DISCRETION Has LBNL management determined the noncompliance will be reported into PAAA NTS?				
CONCLUSION				
Is the PAAA noncompliance reportable into PAAA NTS?				
Justification:				
Potential/Actual Adverse Impact:				
Immediate/ Compensatory Measures:				
Chief Operating Officer/ Division Director Briefing (as necessary)				
_____ Chief Operating Officer (print/sign)		_____ Date	_____ Division Director (print/sign)	
_____ Enforcement Coordinator (Printed Name & Signature)		_____ Date		

**ATTACHMENT E – NTS NUCLEAR SAFETY REPORTABILITY DETERMINATION
 SCREENING FORM INSTRUCTIONS**

FIELD	INSTRUCTION
Screening #:	Enter the next sequential number in the 10 CFR 830/ 10 CFR 835 Screening Log.
Screened by/ Date:	Enter the name of the person performing the PAAA NTS reportability screen and the date the screen was initiated.
Criteria A – E:	Check criteria “Yes” or “No” as they apply to the noncompliance(s) on the PAAA NTS Reportability Determination Screening Form. The guidance for Criteria A-E in “Attachment E” is provided as an aid for determining if the noncompliance should be reported into the PAAA NTS.
Is the PAAA noncompliance reportable into NTS?	Check “Yes” if any of the answers to Criteria A - E are “Yes”. Check “No” if all the answers to Criteria A - E are “No”.
Justification	Enter a brief justification of why the noncompliance is or is not PAAA NTS reportable.
Potential/Actual Adverse Impact	Briefly describe the actual or potential adverse impact of the noncompliance.
Immediate/ Compensatory Measures	Briefly describe any immediate or compensatory measures taken to mitigate the hazard caused by the noncompliance. Describe any hazards that remain at the time of the screen.
Chief Operating Officer/ Division Director Briefing	Document by signature that the COO and owning Division Director has been briefed about the PAAA NTS reportable noncompliance.
Enforcement Coordinator signature block	Enforcement Coordinator, document that the noncompliance is a PAAA NTS and has been entered into the NTS database.

**ATTACHMENT E – NTS NUCLEAR SAFETY REPORTABILITY DETERMINATION
 SCREENING FORM INSTRUCTIONS: GUIDANCE FOR CRITERIA A-D**

A. Table E-1 Nuclear Safety Noncompliances Associated with Occurrences (DOE Order 232.2)

Occurrence Reportability for Safety Events (O-RPS) Categories Associated with Nuclear Safety Noncompliances		
REPORTING CRITERIA GROUP	SUBGROUP	OCCURENCE CATEGORY AND SUMMARY DESCRIPTION ¹
1. Operational Emergency ²	N/A	1) Operational Emergency 2) Alert 3) Site Area Emergency 4) General Emergency
2. Personnel Safety & Health	A. Fires	1) Fire within primary confinement/containment 2d) Self-extinguishing fires
	B. Explosions	1) Unplanned explosion within primary confinement/containment
3. Nuclear Safety Basis	A. TSR Violations	1) Violation of TSR/OSR Safety Limit 2) Violation of other TSR/OSR requirement 3) Violation of DSA Hazard Control
	B. DSA Inadequacies	1) Positive Unreviewed Safety Question
	C. Nuclear Criticality Safety	1) Criticality accident 2) Loss of all valid criticality controls
4. Facility Status	B. Operations	1) Stop Work order from DOE 4) Facility evacuation
5. Environmental	A. Releases	1) Radionuclide release
6. Contamination/Radiation Control	A. Loss of Control of Radioactive Materials	1) Offsite RAM exceeding DOE limits 2) Loss of RAM (.100X 835 App. E)
	B. Spread of Radioactive Contamination	1) Offsite radioactive contamination ³
	C. Radiation Exposure	1) Exceedance of DOE dose limits 2) Unmonitored exposure 3) Single exposure > thresholds
	D. Personnel Contamination	1) Offsite medical assistance 2) Offsite personnel/clothing contamination 3) Onsite personnel/clothing contamination ⁴
8. Transportation	N/A	1) Offsite hazmat incident requiring immediate notice pursuant to 49 CFR 171.15 2) Offsite hazmat quantity/nature different than intended 3) Onsite hazmat quantity/nature different than intended 4) Packaging or transportation incident involving release
10. Management Concern	N/A	1) Initiation of a Federal Accident Investigation 3) Near miss (Significance Categories 1-3)

**ATTACHMENT E – NTS NUCLEAR SAFETY REPORTABILITY DETERMINATION
 SCREENING FORM INSTRUCTIONS: GUIDANCE FOR CRITERIA A-D**

Table E.2 Other NTS Nuclear Safety Reportable Conditions

Reporting Threshold	Notes
Programmatic deficiencies involving noncompliances	A programmatic problem generally involves some weakness in administrative or management controls, or their implementation, to such a degree that a broader management or process control problem exists and requires broad corrective actions.
Repetitive noncompliances	Two or more different noncompliances associated with events/conditions that involve substantially similar work activities, locations, equipment, or individuals.
Intentional violation or misrepresentation	Also known as willful noncompliance; may involve record falsification.
Substantiated management reprisal(s) against worker(s) for raising safety issues involving 830/835 noncompliances	Customarily referred to as worker retaliation ⁸ .

Notes to Tables E.1 and E.2

1. The simple occurrence of an event or discovery of a condition in any of the listed categories is not by itself sufficient to warrant NTS reporting. NTS reporting requires the identification of a 10 C.F.R. Part 830 or 835 (or any other nuclear safety rule) noncompliance in conjunction with the event or discovery. Contractors identifying a significant nuclear safety noncompliance (i.e., one with the potential to cause radiological harm) in association with an event/discovery type or category not listed on the table should evaluate the event for NTS reportability.
2. These summary descriptions are a brief characterization of the related criteria. Use the full statement of the criteria contained in DOE Order 232.2 to determine NTS reportability of event-related nuclear safety noncompliances.
3. Report nuclear safety noncompliances associated with any of the DOE Order 232.2 Operational Emergency categories (Operational Emergency, Alert, Site Area Emergency, General Emergency).
4. Report noncompliances associated with a degradation of Safety Class Structure, System, or Component preventing satisfactory performance of its design function when required to be operable or in operation.
5. Report noncompliances associated with an offsite spread of contamination event where a contamination level exceeds 100 times the applicable value identified in 10 C.F.R. Part 835, Appendix D.
6. Report noncompliances associated with a personnel/personal clothing contamination where a contamination level exceeds 100 times the applicable total contamination value identified in 10 C.F.R. Part 835, Appendix D.
7. Refer to Chapter IV for more information about these types of noncompliances.
8. Worker retaliation as defined in 10 C.F.R. Part 708.

ATTACHMENT E – NTS NUCLEAR SAFETY REPORTABILITY DETERMINATION SCREENING FORM INSTRUCTIONS: GUIDANCE FOR CRITERIA A-D

B. Repetitive Criteria

DOE also is interested in the reporting of programmatic or repetitive noncompliances. Repetitive problems involve generally two different events that involve substantially similar conditions, locations, equipment, or individuals. These generally are narrower in scope than a programmatic problem, and reasonably should have been prevented by a contractor's corrective actions for a previous noncompliance condition involving similar circumstances and root causes. The relative time frames in which the events occurred sometimes dictate a conclusion with regard to whether repetitive issues are involved.

Consideration of programmatic or repetitive problems should not originate due to NTS reporting requirements. DOE expects that normal safety management and quality improvement processes would dictate that when a problem arises, consideration is given as to whether the problem is broader than or a repeat from a prior occurrence. Further, assessment and trending activities should be looking for potential programmatic and repetitive problems. Additionally, PAAA coordinator reviews may provide another avenue for identification of programmatic and repetitive noncompliance conditions through reviews of their noncompliance databases. Programmatic or repetitive deficiencies identified through such processes would normally be placed in a corrective action management process, and then go through the noncompliance screening process to identify any noncompliances. If the identified programmatic or repetitive deficiency involves a safety noncompliance, it should be reported in a conclusion regarding the safety significance of the particular noncompliance condition(s) on the part of the contractor making the report.

C. Programmatic Criteria

A programmatic problem is typically discovered through a review of multiple events or conditions with a common cause, but may also be found through casual analysis of a single event. A programmatic problem generally involves some weakness in administrative or management controls, or their implementation, to such a degree that a broader management or process control problem exists. When management determines that a problem or series of events or conditions dictate the need for broad corrective actions to improve management or process controls, management has concluded that the problem is programmatic.

D. Intentional Noncompliance or Misrepresentation

OE is also interested in the reporting into NTS of an intentional noncompliance with safety rules. An intentional noncompliance may involve a case in which records are falsified intentionally, such as indicating that a work activity or inspection occurred in circumstances in which the worker knows that such an activity did not occur. In these cases, in addition to any other noncompliance issues that may be present, noncompliance with Part 820.11 regarding accuracy of information may also be involved.

The determination of a false record, based on additional evidence that the work did not occur, provides the basis for classifying the condition as an Intentional Noncompliance or Misrepresentation, and, thus, should be reported into the NTS. That is because, irrespective of the significance of the activity involving a false record, the act of falsifying the record and providing inaccurate information is serious, and thus warrants DOE and contractor management attention, including the process of making an NTS report. An intentional noncompliance can also include a case in which a worker is warned by a co-worker that a certain contemplated action would violate requirements, and then the worker proceeds to take the action anyway. The co-worker's reporting of the incident becomes the evidence that the noncompliance was intentional. Such individual instances of intentional noncompliance should be reported into the NTS. OE must then determine whether the matter should result in an enforcement action. OE expects that, as in the above examples, where evidence is available that demonstrates that the noncompliance was intentional, the matter should be treated as an intentional noncompliance and reported into the NTS. On the other hand, care must be taken before a conclusion is reached that a noncompliance is intentional. For example, a situation in which a worker was trained to do a certain action and then subsequently failed to do so, may have been a lapse in recalling the training or, possibly, inadequate training, rather than an intentional disregard of the requirements. Without further evidence, there is no basis upon which to report the noncompliance as intentional.

ATTACHMENT F – WORKER SAFETY AND HEALTH NONCOMPLIANCE DETERMINATION SCREENING FORM

Use the criteria in ATTACHMENT G – Worker Safety and Health Noncompliance Reporting Criteria, and the information known about the issue in question to complete the following analysis template to determine and report NTS reportability.

LBNL 10CFR851 Noncompliance—PAAA NTS Reportability Assessment

Noncompliance, Issue, or ORPS Description:	<i>Insert Issue Title</i>	Date:	<i>Insert Date</i>
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Analysis Conclusion: The results of this analysis [*meet/do not meet*] the reporting criteria for NTS reporting under 10CFR851.

WSH Non-compliances Associated with ORPS Occurrences (DOE Order 232.2)

Event Type or Category
ORPS Reportability Analysis: <i>Insert: ORPS classification for the Occurrence.</i>
<i>Insert: Issue description from source document, eg 15. Description of Occurrence:</i>
<i>Identify and insert: 10CFR851 noncompliance associated with event or discovery. This event [is/is not] captured by the DOE-OE Enforcement table and [is/is not] a violation of [insert regulation citation]. It [is/is not] reportable by this criterion.</i>

Other NTS WSH Reportable Conditions.

Severity Level I (serious and high relative risk) noncompliance(s) with Part 851 or 850.

Reportability Analysis: The conditions identified in the report have [<i>insert severity</i>] potential for serious physical harm to workers (Severity [<i>insert level, e.g., III</i>]) and have a probability of [<i>insert probability, e.g., Occasional (Possible to occur in time)</i>]. This classification results in a Risk Assessment Code of [<i>insert Risk Assessment Code number, e.g., 4, Medium Relative Risk (1 high, 5 low)</i>], so [<i>is/is not</i>] reportable under this criteria

Management Issues: Programmatic Deficiency; Repetitive; Intentional Violation or Misrepresentation involving noncompliances.

Reportability Analysis: Conditions [<i>insert descriptor, e.g., do, do not, may</i>] involve weakness in program requirements, administrative controls and their implementation indicating that a broader management problem exists. <i>Insert brief justification narrative.</i>
This [<i>is/is not</i>] a Repetitive problem resulting from at least two different events leading to a conclusion. <i>Insert brief justification narrative.</i>
The observations [<i>are/are not</i>] an Intentional noncompliance or Misrepresentation. <i>Insert brief justification narrative.</i>

Analysis conducted by:	<i>Insert Name of Analyst.</i> <i>Insert Title of Analyst</i>	Date:	<i>Insert Date</i>
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ATTACHMENT G – WORKER SAFETY AND HEALTH NONCOMPLIANCE REPORTING CRITERIA

Table G-1 ORPS Report Criteria Associated with Worker Safety and Health Noncompliances
Consult the DOE Order for the full text of each occurrence criterion¹.

Worker Safety and Health Noncompliances Associated With Occurrences (10 CFR 83.22)		
REPORTING CRITERIA GROUP	SUBGROUP	OCCURENCE CATEGORY AND SUMMARY DESCRIPTION ²
1. Operational Emergency ³	N/A	1) Operational Emergency 2) Alert 3) Site Area Emergency 4) General Emergency
2. Personnel Safety & Health	A. Occupational Injuries	(1) Fatality/terminal injury (2) Inpatient hospitalization of > 3 personnel (3) Inpatient hospitalization > 5 days (4) > 3 personnel having Days Away, Restricted, or Transferred (DART) cases (5) Serious occupational injury
	B. Occupational Exposure	(1) Fatality/terminal illness or inpatient hospitalization of > 3 personnel (2) Inpatient hospitalization > 5 days or > 3 personnel having DART cases (3) Personnel exposure > 10X limits or > IDLH (4) Personnel exposure > limits but < IDLH requiring medical treatment (5) Exposure resulting in serious occupational injury (6) Personnel exposure > limits but < IDLH
	C. Fires	(1) Fire within primary confinement/containment (2) Fire in a nuclear facility (3) Fire in a non-nuclear facility
	D. Explosions	(1) Unplanned explosion within primary confinement/containment (2) Unplanned explosion in a nuclear facility (3) Unplanned explosion in a non-nuclear facility
	E. Hazardous Electrical Energy Control	(1) Unexpected/unintended personal contact (2) Unexpected discovery of uncontrolled energy source
	F. Hazardous Energy Control (other than electrical)	(1) Unexpected/unintended personal contact (2) Unexpected discovery of uncontrolled energy source
4. Facility Status	B. Operations	1) Stop Work order from DOE
10. Management Concern/Issues	N/A	1) Initiation of a Federal Accident Investigation 3) Near miss

ATTACHMENT G – WORKER SAFETY AND HEALTH NONCOMPLIANCE REPORTING CRITERIA

Table G-2 Other NTS Worker Safety and Health Reportable Conditions

Reporting Threshold	Notes ⁴
Severity Level I noncompliance(s) with Parts 851 or 850 (Refer to Part 851, Appendix B, Section VI(b)(1)) ⁵	Conditions of noncompliance identified by any method or means (e.g., assessments, inspections, observations, employee concerns, event evaluation) that represent a condition or hazard that has the potential to cause death or serious physical harm (injury or illness). These conditions include imminent danger situations.
Programmatic deficiencies involving noncompliances	A programmatic problem generally involves some weakness in administrative or management controls, or their implementation, to such a degree that a broader management or process control problem exists and requires broad corrective actions.
Repetitive noncompliances	Two or more different noncompliances associated with events/conditions that involve substantially similar work activities, locations, equipment, or individuals.
Intentional violation or misrepresentation	Also known as willful noncompliance; may involve record falsification.
Substantiated management reprisal(s) against worker(s) for raising safety issues associated with 851.20(a)(6) or (9)	Customarily referred to as worker retaliation.

Notes to Tables G-1 and G-2

- 1 The simple occurrence of an event or discovery of a condition in any of the listed categories is not by itself sufficient to warrant NTS reporting. NTS reporting requires the identification of a 10 C.F.R. Part 850 or 851 noncompliance in conjunction with the event or discovery. Contractors identifying a significant worker safety and health noncompliance in association with an event/discovery type or category not listed on the table should evaluate the event for NTS reportability, particularly under the “Severity Level I Noncompliances” category.
- 2 These summary descriptions are a brief characterization of the related criteria. Use the full statement of the criteria contained in DOE Order 232.2 to determine NTS reportability of event-related worker safety and health noncompliances.
- 3 Report worker safety and health noncompliances associated with any of the DOE Order 232.2 Operational Emergency categories (Operational Emergency, Alert, Site Area Emergency, General Emergency).
- 4 Refer to Chapter IV [of DOE Enforcement Coordinator Handbook] for more information about these types of noncompliances. See also Note 4 Reference information below.
- 5 Conditions of noncompliance identified by any method or means (e.g., assessments, inspections, observations, employee concerns, event evaluation) that would not otherwise be reported into NTS as either a Management Issue or Occurrence, but that represent a condition or hazard that has the potential to cause death or serious physical harm (injury or illness). These conditions include imminent danger situations. See also Note 4 Reference information below.

ATTACHMENT G – WORKER SAFETY AND HEALTH NONCOMPLIANCE REPORTING CRITERIA

Note 4 to Table G2 Summary Descriptions of Programmatic, Repetitive, Intentional Noncompliances or Worker Retaliation

Reporting a Programmatic or Repetitive Noncompliance

DOE incentivizes the reporting of programmatic or repetitive noncompliances. A programmatic problem is typically discovered through a review of multiple events or conditions with a common cause, but may also be found through causal analysis of a single event. A programmatic problem generally involves some weakness in administrative or management controls, or their implementation, to such a degree that a broader management or process control problem exists. When management determines that a problem or series of events or conditions dictates the need for broad corrective actions to improve management or process controls, management has concluded that the problem is programmatic. For example, the absence of required worker exposure assessments, or working outside the limits established by radiation work permits across multiple organizational divisions or facilities are indicative of programmatic deficiencies.

Repetitive problems are different events or conditions that involve substantially similar work activities, locations, equipment, or individuals. These problems tend to be narrower in scope than a programmatic problem, and it is reasonable to assume that they should have been prevented by a contractor's corrective actions for a previous noncompliant condition. Repetitive problems typically involve similar circumstances or root causes, separated by a period of time, that suggest the possibility of a common solution.

DOE's expectations for safety and security management and quality improvement dictate that when problems are identified, but are not reported in NTS or SSIMS, the potential scope of the problem should be considered. Further, assessment and trending activities should be in place to identify potential programmatic and repetitive problems in a timely manner. Enforcement coordinators' database reviews may provide an additional avenue for identifying programmatic and repetitive noncompliance conditions. Programmatic or repetitive deficiencies identified through such processes are normally placed in a corrective action management process, and should be subject to the screening process to identify any noncompliances.

Reporting a Willful Noncompliance or Misrepresentation

A willful violation refers to a DOE determination that a contractor intentionally violated or was aware of a violation of a safety or security requirement and attempted to conceal the violation or made no reasonable attempt to eliminate or abate the conditions that gave rise to the violation. DOE expects any willful noncompliance involving worker safety and health, nuclear safety, or classified information security rules to be reported. An intentional or willful noncompliance may involve records that are falsified intentionally, such as indicating that work or surveys occurred in circumstances in which the worker knows that such an activity did not occur. The determination that a record is false provides the basis for categorizing the condition as an intentional noncompliance or misrepresentation that should be reported into NTS or SSIMS, as appropriate. An NTS/SSIMS report is warranted, irrespective of the significance of the activity involving a false record; the act of falsifying the record and providing inaccurate information is serious and warrants significant DOE and contractor management attention.

As another example, an intentional noncompliance may involve a case in which a worker is warned by a co-worker that a certain contemplated action would violate requirements, and then proceeds to take the action anyway. The co-worker's admonition and observation of the action becomes the evidence that the noncompliance was willful. Similarly, it may be discovered during an event investigation that a worker intentionally deviated from or overrode a safety control or security requirement, thereby constituting a willful noncompliance.

HS-40 expects that a matter should be treated as a willful noncompliance and reported into NTS or SSIMS whenever there is evidence indicating that the noncompliance was intentional or willful. The determination of intention requires careful consideration. Failure of a worker to perform a required action for example, is not necessarily evidence of negligence or an intentional disregard of requirements. Such a failure could result for many reasons (e.g., a lapse in recalling the training or inadequate training) and does not necessarily indicate an

ATTACHMENT G – WORKER SAFETY AND HEALTH NONCOMPLIANCE REPORTING CRITERIA

intentional disregard of safety or security requirements. A noncompliance should be reported as intentional or willful only if there is supporting evidence that the individual intentionally or negligently falsely reported or otherwise disregarded requirements.

Reporting a Worker Retaliation

HS-40 has established an explicit NTS reporting noncompliance category that addresses reporting of retaliations against workers who raise worker safety and health or nuclear safety concerns.

HS-40 has received several inquiries about reporting a worker retaliation. Questions raised include the appropriate time to report; whether noncompliance reporting would serve as an admission and undermine a contractor's defense if the contractor challenges allegations of worker retaliation or an underlying noncompliance; and whether an allegation of reprisal must be filed in accordance with 10 C.F.R. Part 708 or 29 C.F.R. Part 24 procedures as a condition for asserting that a retaliation occurred. HS-40's general guidance for reporting worker retaliation is as follows:

- The standard NTS reporting requirement – reporting within 20 calendar days of the date of noncompliance determination – also applies to retaliation issues. In such cases, the nuclear safety or worker safety and health linkage is typically clear, and the issue is the point at which the retaliation is “determined.” For NTS reporting purposes, “determination” refers to the date when an authoritative body makes an initial decision that retaliation has occurred. The authoritative body can be either the contractor's employee concerns program or similar organization, or an outside organization, such as the DOE Office of Hearings and Appeals or the Department of Labor. Although a contractor may disagree with an initial determination, these decisions are authoritative in nature. Forgoing NTS reporting until the appellate process is complete is not considered timely and would preclude potential mitigation if a Notice of Violation is issued.
- HS-40 recognizes contractor concerns that reporting initial determinations of worker retaliation may undermine the contractor's defense in subsequent appeals. To resolve these concerns, the NTS report can simply acknowledge that such a decision was issued, and may also include details on the contractor's planned path forward.
- A worker need not file a claim under Part 708 or 29 C.F.R. Part 24 for retaliation to have occurred. If a worker raises a retaliation claim to the contractor employee concerns program, which subsequently decides in favor of the employee, then retaliation did occur and would be NTS reportable if a nuclear safety or worker safety and health regulatory noncompliance exists. Contractor corrective actions that provide an appropriate and satisfactory remedy to the worker (e.g., reinstatement) do not affect the existence of the noncompliance, but may be a consideration when evaluating mitigating factors.

ATTACHMENT G – WORKER SAFETY AND HEALTH NONCOMPLIANCE REPORTING CRITERIA

Note 5 to Table G2 **References: Noncompliances Associated with Other Significant Conditions, e.g., Severity Level I (serious) violations and high relative risk**

Background:

This methodology is based on a hard copy document obtained from DOE-EH on 5/12/06, titled "Risk Assessment Methodology", which was adapted from DOD Instruction, Number 6055.1 "DoD Safety and Occupational Health (SOH) Program", Enclosure 7 "Deriving RACs". The DOD document is available from the DTIC Website at: http://www.dtic.mil/whs/directives/corres/pdf/i60551_081998/i60551p.pdf.

The DOD-EH document has been adapted for use in conjunction with LBNL's hazard level determination process for CATS entries (PUB-5344 "ESH Self-Assessment Program" Section 10.3) as a risk assessment methodology for determining the relative risk of 851 noncompliances. PUB-5344 is available from the LBL website at: http://www.lbl.gov/ehs/oaa/02prog_docs/PUB5344.pdf.

Methodology:

The relative risk (risk category) of an 851 noncompliance is expressed as "High", "Medium", or "Low", based on the Risk Assessment Code (RAC) assigned to the noncompliance. The RAC is a function of the potential severity of injury or illness that could result from the exposure to the noncompliance and the probability that such an injury or illness would occur.

Relative Risk Determination Process:

The LBNL relative risk determination process is as follows:

Step 1: Determine the Severity Code. The severity code is associated with the most serious type of injury or illness that could potentially result from exposure to an 851 noncompliance. The following Severity Code Levels table provides a comparison of the terminology used to describe CATS Hazard Levels and 851 Severity Levels in order to provide a cross reference for determining DOE-EH Severity Codes.

Step 2: Determine the Probability Code. The probability code expresses the likelihood that a noncompliance will result in an injury or illness, based on an assessment of applicable safety or health factors. All relevant factors that may influence the likelihood of injury or illness should be considered, including the following:

Safety Factors:

- Number of employees potentially exposed, both concurrently and sequentially.
- Frequency of exposure, including the full range of possible frequencies, from one-time, short duration exposures to continuous daily exposure.
- Employee proximity to the hazard (e.g., from a location at the fringe of the danger zone up to the point of danger).
- Working conditions that may cause employee stress (e.g., complexity of the operation, proximity to other ongoing activities or workplace hazards, extended work hours and fatigue, heat, cold, work place lighting or noise levels, etc.) and thereby increase the likelihood of an accident.

Health Factors:

- Employee proximity to (frequency and duration) areas with potential hazardous agent exposures.
- Documented exposures above established action levels.
- Chemical or physical characteristics of hazardous materials (e.g., volatility).
- Nature of operations (e.g., storage, materials transfer).
- Reliability or redundancy of controls.
- Number of employees potentially exposed to the hazardous agent.

ATTACHMENT G – WORKER SAFETY AND HEALTH NONCOMPLIANCE REPORTING CRITERIA

Step 3: Determine the Risk Category. The Risk Category is a function of the Severity Code and Probability Code as determined in the Combined Relative Risk Determination Table below.

CATS			DOE-EH			10CFR 851		
Term	Description	Hazard Level	Term	Description		Term	Description	Sev. Level
High	<ul style="list-style-type: none"> • Significant Adverse Condition (SAC) • PAAA NTS-Reportable Incident • ORPS Category 1 or R Incident • Type A or B Accident • Other Issues as designated by management 	1	Catastrophic	Injuries/Illnesses involving permanent total disability, chronic or irreversible illnesses, or death.		Serious	Exists in a place of employment if there is a potential that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment.	I
			Critical	Injuries/Illnesses resulting in permanent partial disability or temporary total disability in excess of 3 months.				
Medium	<ul style="list-style-type: none"> • Adverse Condition identified through Formal Assessment • PAAA Internally-Reportable Incident, as determined by management • ORPS Category 2 or 3 Reportable Incident • Other Issues as designated by management 	2	Marginal	Injuries/Illnesses resulting in hospitalization, or temporary, reversible illnesses with a variable but limited period of disability of less than 3 months.				
Low	<ul style="list-style-type: none"> • ORPS Category 4 Reportable Incident • Worker Safety & Health Issues that do not fall into High or Medium Risk Levels • Adverse conditions not identified through Formal Assessment • Other issues that do not meet the thresholds identified in the High or Medium risk levels 	3	Minimal	Injuries/Illnesses not resulting in hospitalization, or temporary, reversible illnesses requiring only minor supportive treatment.	Other-Than-Serious	Occurs where the most serious injury or illness that would potentially result from a hazardous condition cannot reasonably be predicted to cause death or serious physical harm to employees but does have a direct relationship to their safety and health.	II	
						De minimis	Defined as a deviation from the requirement of a standard that has no direct or immediate relationship to safety or health.	

Probability Code for Safety Factors

Criteria	Description	
Frequent	Likely to occur	
Probable	Probably will occur in time	
Occasional	Possible to occur in time	
Remote	Unlikely to occur	

Probability Code for Health Factors

Description	
Monitoring (breathing zone, biological, noise, temperature, etc) results indicate an exposure above the DOE-prescribed exposure limits.	
Where no overexposures have been documented, the probability code shall be assigned based on the likelihood that an overexposure will occur. Use Safety Factors to assign likelihood code.	

ATTACHMENT G – WORKER SAFETY AND HEALTH NONCOMPLIANCE REPORTING CRITERIA

Combined Relative Risk Determination Table

Severity			Risk Assessment Code				
Term	Description	Code					
Catastrophic	Injuries/Illnesses involving permanent total disability, chronic or irreversible illnesses, or death.	I-1	3				
Critical	Injuries/Illnesses resulting in permanent partial disability or temporary total disability in excess of 3 months.	I-2	4	3			
Marginal	Injuries/Illnesses resulting in hospitalization, or temporary, reversible illnesses with a variable but limited period of disability of less than 3 months.	I-3	5	4	3		
Minimal	Injuries/Illnesses not resulting in hospitalization, or temporary, reversible illnesses requiring only minor supportive treatment.	II	5	5	4	3	
			D	C	B	A	Code
			Remote	Occasional	Probable	Frequent	Criteria
			Unlikely to occur	Possible to occur in time	Probably will occur in time	Likely to occur	Description
			Probability				

Risk Assessment Code (RAC)

Severity	Probability			
	A	B	C	D
I-1	1	1	2	3
I-2	1	2	3	4
I-3	2	3	4	5
II	3	4	5	5

Risk Category

RAC	Risk Category
3 & 4	Medium Relative Risk
5	Low Relative Risk

ATTACHMENT H – EXAMPLE NTS NOTIFICATION

Date: Day Month, Year

From: PAAA Enforcement Coordinator

To: Cognizant Manager (may also be the Division Director of the owning division)

CC: COO
LBNL General Counsel
Division Director, Owing Division
Director, OIA
Division Director, EHSS (as appropriate)
PAAA Enforcement Coordinator
ORPS Coordinator
BSO Counterpart
Division Safety Coordinator (as appropriate)

Good morning, _____.

The available information regarding the incident involving [*insert topic title here*] has been reviewed against PAAA reporting criteria.

This incident represents noncompliance against the following requirements:

- [*insert regulatory criteria here*]

It has been determined that these noncompliances meet the threshold for NTS reportability. This determination has been discussed with the following people, as appropriate: Radiological Control Manager (RCM), Division Director or designee; Cognizant Manager; the Berkeley Site Office (BSO) Enforcement Coordinator, and the BSO Quality Assurance (QA) Manager.

This issue has been entered into the NTS database (report number NTS--BSO-LBL-XXX-XXXX-XXXX) with initial corrective actions to perform an investigation, identify the root cause(s), and develop corrective actions to prevent recurrence. Once the investigation is completed and corrective actions are identified by X Division, they will be entered into the NTS database. The issue will be considered resolved upon receipt and validation of objective evidence for all corrective actions, and successful completion of an effectiveness review.

If you have any questions, please don't hesitate to contact me.

Regards,

10 CFR 830/835/851 Enforcement Coordinator

ATTACHMENT I – NTS CAUSAL ANALYSIS LEVEL DECISION MATRIX

All PAAA NTS-reportable issues are classified as High Risk level in accordance with the LBNL Issues Management Program (LBNL/PUB-5519 (1)). However, a graded approach of the application of issues management requirements may be used commensurate with the significance and complexity of the NTS-reportable issue in accordance with the August 2012 Office of Health, Safety and Security (HSS) "Safety and Security Enforcement Process Overview".

For example, if it is determined that an NTS-reportable issue requires a root cause analysis to be performed, the level of extent of condition, corrective action development, lessons learned development and effectiveness review performance is commensurate with root cause analysis. If it is determined that an NTS-reportable issue requires an apparent cause analysis to be performed, the balance of issues management requirements shall be commensurate with the level of apparent cause analysis.

The table below is provided to assist in determining the appropriate level of causal analysis for an NTS-reportable issue. The **highest Impact category** rating determines the Causal Analysis level required.

NTS Causal Analysis Level Decision Matrix

IMPACT CATEGORIES					
Injury	Financial	Reputational	Recurrence	Causal Analysis Required	ORPS Sig Cat
Death, Serious Injury, Permanent Disability	Financial Calamity, > \$4M	National Press, Significant Political Pressure	Recurrence	Root Cause Analysis	1 or R
Partial Disability/TTD >3 mos.	> \$1M < \$4M	Local or State-wide Press, Some Political Pressure	Recurrence	Root Cause Analysis	1 or R
Hospitalization <24Hrs, Restricted or Alternate Duty	< \$1M	DOE HQ Notification, Political Pressure	No recurrence	Apparent Cause Analysis	2 or 3
Non-hospitalization, Reversible	< \$25K	BSO Concerns, Lab Management Concerns, Political Pressure	No recurrence	Apparent Cause Analysis	2 or 3

Instructions for Completing the NTS Causal Analysis Level Decision Matrix:

- 1) Cognizant management or designee, in conjunction with the PAAA Enforcement Officer, use the best available information about the NTS-reportable issue or incident to determine the applicable classification within each **Impact** category.
- 2) Based on the classifications selected, correlate the highest box within any of the **Impact** categories to the **Causal Analysis** level required.
- 3) Perform the required level of **Causal Analysis** in accordance with the LBNL Causal Analysis Program Manual (LBNL/PUB-5519(2)).

Note: Management may opt to perform a Root Cause Analysis (RCA) for any NTS-reportable incident or issue, as deemed appropriate.

