

Department of Energy

§ 820.23

the contractor, subcontractor, or supplier inures to the benefit of any natural person or for-profit artificial person.

[58 FR 43692, Aug. 17, 1993, as amended at 74 FR 11843, Mar. 20, 2009]

§ 820.21 Investigations.

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

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

(c) Any person who is requested to furnish documentary evidence, information or testimony in an investigation or during an inspection shall be informed, upon written request, of the general purpose of the investigation or inspection.

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

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

a matter or activity under investigation or inspection.

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

(g) The Director may issue enforcement letters that communicate DOE's expectations with respect to any aspect of the requirements of DOE's Nuclear Safety Requirements, including identification and reporting of issues, corrective actions, and implementation of DOE's Nuclear Safety Requirements, provided that an enforcement letter may not create the basis for any legally enforceable requirement pursuant to this part.

(h) The Director may sign, issue and serve subpoenas.

[58 FR 43692, Aug. 17, 1993, as amended at 72 FR 31921, June 8, 2007]

§ 820.22 Informal conference.

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

§ 820.23 Consent order.

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

(b) *Consent order.* Notwithstanding any other provision of this part, DOE may at any time resolve any or all issues in an outstanding enforcement proceeding with a Consent Order. A Consent Order must be signed by the

§ 820.24

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

(c) *Effect on enforcement adjudication.* If a Consent Order is signed after the commencement of an enforcement adjudication, the adjudication of the issues subject to the Consent Order shall be stayed until the completion of the Secretarial Review Process. If the Consent Order becomes a Final Order, the adjudication shall be terminated or modified as specified in the Order.

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

§ 820.24 Preliminary notice of violation.

(a) If the Director has reason to believe a person has violated or is continuing to violate a provision of the Act or a DOE Nuclear Safety Requirement, he may file a Preliminary Notice of Violation. The Notice and any transmittal documents shall contain sufficient information to fairly apprise the respondent of the facts and circumstances of the alleged violations and the basis of any proposed remedy, and to properly indicate what further actions are necessary by or available to respondent.

(b) Within 30 days after the filing of a Preliminary Notice of Violation, the respondent shall file a reply.

(c) The reply shall be in writing and signed by the person filing it. The reply shall contain a statement of all relevant facts pertaining to the situation that is the subject of the Notice. The

10 CFR Ch. III (1–1–14 Edition)

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

(d) The respondent may terminate an enforcement action if the reply agrees to comply with the proposed remedy and waives any right to contest the Notice or the remedy. If a respondent elects this option, the Preliminary Notice of Violation shall be deemed a Final Order upon the filing of the reply.

§ 820.25 Final notice of violation.

(a) *General rule.* If, after reviewing the reply submitted by the respondent, the Director determines that a person violated or is continuing to violate a provision of the Act or a DOE Nuclear Safety Requirement, he may file a Final Notice of Violation. The Final Notice shall concisely state the determined violation, any designated penalty, and further actions necessary by or available to respondent.

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

(2) If a Final Notice of Violation contains a civil penalty, the respondent must file within 30 days after the filing of the Final Notice:

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

(c) *Effect of waiver.* If a respondent waives further proceedings, the Final Notice of Violation shall be deemed a Final Order enforceable against the respondent. The respondent must pay