



NNSA Policy Letter:
Date:

BOP-006.002
August 29, 2006

TITLE: National Nuclear Security Administration's Employee Concerns Program

I. OBJECTIVE

This document establishes the responsibilities for implementation within the National Nuclear Security Administration (NNSA) of the Department of Energy's (DOE) Employee Concerns Program (ECP), supplements existing avenues for raising concerns, and is directed toward providing a safe and productive work environment for all employees. This policy is intended to accomplish prompt identification, reporting, and resolution of employee concerns (e.g., the environment, safety, health, security, fraud, waste, abuse, or mismanagement of NNSA and NNSA contractor managed programs and facilities). It describes the roles and responsibilities within NNSA to ensure the prompt identification, reporting evaluation, investigation, and response to NNSA employee and NNSA contractor employee concerns through implementation of the ECP. The ECP is designed to:

- Encourage open communication.
- Inform employees of the proper forum for consideration of their concerns.
- Ensure employees can raise issues without fearing reprisal.
- Address employee concerns in a timely and objective manner.
- Provide employees with an avenue for consideration of concerns that fall outside existing systems.

II. APPLICABILITY

- a. NNSA Elements. Except for the exclusion in paragraph IIc, this Policy Letter applies to all NNSA program elements and organizations.
- b. Contractors. Except for the exclusions in paragraph IIc, the Contractor Requirements Document, referenced in DOE Order 442.1A Attachment 1, sets forth requirements for management and operating and management and integration contractors of NNSA-owned or -leased facilities.
- c. Exclusions. Activities of the Naval Reactors Program conducted under Executive Order 12344 are excluded from this Policy Letter.

III. BACKGROUND

This Policy Letter describes NNSA's implementation of the Department's Employee Concerns Program.

IV. DEFINITIONS

Alternative Dispute Resolution. A variety of processes used to resolve disputes through use of a neutral third party in an attempt to avoid judicial or administrative litigation. Forms of alternative dispute resolution include mediation, partnering, ombudsmanship, neutral evaluation, nonbinding arbitration, mini-trial, and binding arbitration.

Concern Review Panel. A group that is brought together to evaluate the merits of a concern. It may be made up of representatives of employees, supervisors, managers, the cognizant ECP office, human resources, outside experts, consultants, or stakeholders. A panel may be used to provide program expertise, assist in fact-finding, or evaluate specific concerns for which there are unique circumstances or for which there are no previously established evaluation channels; and to recommend resolutions and propose corrective actions.

Confidential Concern. A concern from an employee who wishes to have his or her identity protected from all persons except the ECP staff and those with a need to know.

Confidential Source. A source that provides information to an ECP representative and requests that his or her identity not be revealed.

Contractor. Contractor refers to Prime and Subcontractor employees performing work under contract on DOE/NNSA projects or facilities.

Employee. Any person working for NNSA or a NNSA contractor or subcontractor on a NNSA project.

Employee Concern. A good faith expression by an employee that a policy or practice of NNSA or one of its contractors or subcontractors should be improved, modified, or terminated. Concerns can address issues such as environment, safety, health, security, fraud, waste, abuse, or management practices or reprisal for raising a concern.

Employer. NNSA, a contractor, or subcontractor working on a NNSA project.

Harassment. In the context of the ECP, an action taken or condoned by an employer against or toward an employee to bother, belittle, humiliate, or impede that employee in his or her work environment, relationship with others, or job performance because the employee reasonably and in good faith raised a concern. Harassing actions can include, but are not limited to, threatening, restraining, coercing, blacklisting, mocking, humiliating, or isolating an employee.

Intimidation. Any action taken by coworkers or supervisors against or toward an employee to cause that employee to cease engaging in protected activities; to be fearful of engaging in protected activities; or to otherwise be afraid for his or her safety, reputation, or job security as a result of having identified concerns about any aspect of NNSA activities or operations.

Investigations. An inquiry conducted by or on behalf of the cognizant ECP office, for the purpose of evaluating and resolving a concern, usually involving interviews, inspection of relevant documents, sites, or equipment, and an evaluation of practices being followed.

Protected Activities. Activities such as raising concerns or otherwise making disclosures protected under law, regulations, or legal precedent or information related to NNSA operations, which the individual reasonably and in good faith believes is evidence of unsafe, unlawful, fraudulent, or wasteful practices.

Referral of a Concern. Transmittal of an employee concern to another organization with subject matter expertise or process for investigation or resolution, with the results of the investigation or resolution attempts being reported to the cognizant ECP manager within a specified period with recommended resolution including corrective actions.

Resolution of a Concern. Actions taken and decisions made in response to an employee concern by verifying the concern, establishing plans to correct identified deficiencies, correcting the deficiencies, or determining that the concern is not substantiated and no corrective action is required.

Reprisal. Any action taken against an employee in response to, or in revenge for, the employee having raised in good faith, reasonable concerns about any aspect of DOE/NNSA-related operations.

Self-Assessment. A quantitative or qualitative method of collection and analyzing data by the cognizant ECP with the goal of detecting trends that are not readily apparent and that warrant corrective measures.

Transfer of a Concern. If the subject matter responsibility of the concern is outside the scope of the normally cognizant ECP, then the concern is transferred to another organization with jurisdiction over the subject matter. Transmittal of certain concerns may be based on their type or complexity, or where it may be best reviewed and resolution sought by an office other than the normally cognizant ECP. For example, allegations of criminal wrongdoing, claims of medical disability for which benefits are sought, concerns related to the application of provisions of collective bargaining agreements, or violations of employee rights under labor statutes.

Whistleblower. A Federal employee who meets the requirements specified in the “Whistleblower Protection Act of 1989,” or a contractor employee who meets the requirements specified in 10 CFR 708, “Criteria and Procedures for DOE Contractor Employee Protection Program.” This includes action taken or perceived against and

employee for disclosure of environmental, health, or safety problem, fraud, waste, or abuse of government funding or violation of law.

V. REQUIREMENTS

A. ECP Criteria. The ECP must meet the following criteria:

1. Possess interfaces, when appropriate, with the following organizations:
 - a. Non-NNSA and contractor ECPs.
 - b. External regulatory bodies.
 - c. Labor organizations.
2. Establish documented program plans describing methods and processes used to implement program requirements.
3. Require all NNSA employees be informed of the following:
 - a. The ECP process.
 - b. That employees are encouraged to first seek resolution with first-line supervisors or through existing complaint or dispute resolution systems, but that they have the right to report concerns through the ECP.
 - c. Management's intolerance for reprisals against or intimidation of employees who have reported concerns.
4. Provide and publicize a 24-hour hotline (e.g., voice mail or e-mail system).
5. A named ECP Manager and a Point of Contact at each NNSA Site or Site Office.

B. Concerns Processing.

1. Concerns must be processed in one of the following manners:
 - a. Reviewed or otherwise evaluated through the ECP, in coordination with DOE or external offices when required.
 - b. Referred to other NNSA offices or programs and tracked by the ECP until the concerns are resolved (referral of a concern).
 - c. Transferred to other NNSA offices with jurisdiction over an issue.

- d. Closed as prescribed in paragraph C below.
2. ECP personnel must document employee concerns in sufficient detail to permit investigation or other appropriate levels of review.
3. Concerns must be tracked until closure.
4. Unless otherwise agreed to by the employee, an organization other than that of the employee's immediate supervisor must conduct the investigation. Similarly, individuals or organizations outside the concerned employee's organization should not be selected to conduct the investigation where their involvement presents a conflict of interest.
5. If the concerned employee requests confidentiality, his or her identity must not be disclosed during the investigation or other process used to evaluate the concern. However, ECP personnel should advise employees of the limitations of its ability to protect confidentiality under certain circumstances.
6. ECP personnel must evaluate and attempt to resolve employee concerns in a manner that protects the health and safety of both employees and the public, ensures effective and efficient operation of programs, and uses alternative dispute resolution techniques whenever appropriate.
7. ECP personnel must immediately report to an appropriate line manager those concerns that involve an imminent danger or condition or a serious condition.
8. The cognizant offices must determine if actions taken minimize, correct, or prevent recurrence of program, process, or management weaknesses identified and substantiated through the ECP.
9. Reports of concerns must be reviewed for classified information and, if classified, sanitized by an authorized classifier.

C. Closure.

1. An employee concern case is designated as closed when one of the following occurs:
 - a. The concern has been investigated; necessary corrective actions have been identified (e.g., issuance of a non-conformance report); the office responsible for taking the corrective action has accepted jurisdiction over the matter; and the resolution has been documented in a formal tracking system.
 - b. The concern has been investigated and no corrective action is deemed necessary.

- c. The subject matter of the concern is outside the scope of the ECP and the concern has been transferred to another organization with jurisdiction over the subject matter.
 - d. ECP personnel have advised an employee raising a concern that is outside the scope of the ECP of available means to have the concern addressed, if direct transfer of the concern to another organization is not appropriate (e.g., allegations subject to the Equal Employment Opportunity complaint process, claims for workplace injuries).
 - e. The ECP determines that the issues are frivolous or too general to investigate.
 - f. The concerned employee has been notified that the concern has been closed.
2. If the ECP does not resolve a concern to the satisfaction of the concerned employee, the concerned employee must be advised if there are any offices that may have authority or responsibility for addressing the subject matter of the concerns.

D. Documents and Records.

- 1. At a minimum, each ECP Site Point of Contract must prepare and maintain the following records:
 - a. Concern log.
 - b. Concern reports.
 - c. Concern investigation and resolution summaries, including a description of the basis for closing the concern, consistent with paragraph C above.
 - d. Management assessment result.
 - e. Quarterly and annual reports.
- 2. Each ECP Site Point of Contact must meet the reporting requirements laid out by the ECP Manager and the Department's ECP Order.
- 3. In maintaining ECP records, steps must be taken to protect the identity of the concerned employee consistent with the employee's request for confidentiality and the provisions of the Privacy Act and the Freedom of Information Act.

E. Training and Qualification. Personnel responsible for implementing the ECP or investigating concerns must be trained to properly carry out their responsibilities (e.g., training on the identification and classification of health and safety issues,

how to investigate workplace and administrative issues, and dispute resolution techniques).

- F. Management Assessment. The ECP manager must assess, at least annually, the effectiveness of the ECP and processes used to implement NNSA's program.

VI. RESPONSIBILITIES

- A. Associate Administrator for Management and Administration

1. Is responsible for overall management of the ECP.
2. Directs the ECP and provides adequate resources and training for effective implementation.

- B. Director, NNSA Service Center.

1. Is the accountable manager for the general management, implementation, and oversight of the ECP.
2. Designates the management position or positions responsible for developing and implementing the ECP.
3. Provides oversight of the entire program.

- C. Human Resources Management. Processes and resolves employee concerns/complaints filed under administrative and negotiated grievance procedures.

- D. NNSA's ECP Program Manager. In addition to the responsibilities for the Service Center ECP:

1. Is the operational focal point for the NNSA ECP.
2. Provides coordination, assistance, communication, and training for other NNSA site ECP Programs as necessary.
3. Collects and consolidates required ECP report data and submits to the DOE ECP as required.
4. Advises the Associate Administrator for Management and Administration and/or the Director, Service Center of issues or concerns related to the NNSA ECP and provides recommendations as appropriate.

- E. ECP Site Points of Contact. Some employee concerns may involve issues that are subject to review under formal programs established by law, rule, or regulation;

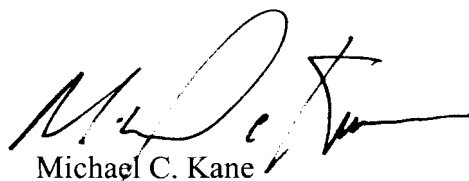
these programs may require employees to file their concerns, complaints, or allegations with a particular office within the established timeframe. To the extent practicable, ECP personnel should inform concern employees of the existence of other administrative systems available to review their concerns and of the time limits within which employees must file those concerns or allegations. Employees are ultimately responsible for pursuing their rights under existing programs.

1. Develop and submit ECP program implementation documentation to the Associate Administrator for Management and Administration through the Director, Service Center.
2. Implement the approved ECP and ensure concerns are processed as required.
3. Publicize ECP processes, employee rights and responsibilities to report concerns through these processes, and management's intolerance for reprisals against employees who have reported concerns.
4. Maintain an employee concerns tracking system and a secure filing system.
5. Decide which concerns that are brought to the attention of the ECP that should be attempted to be resolved, which warrant referral or transfer to another office for further review, or which warrant no further action.
6. Assist in evaluation and resolution of employee concerns.
7. Transfer concerns to other programs or processes if the concerns are deemed to be outside the scope of the ECP. Review and evaluate responses from other organizations to which concerns were referred, request further action when necessary, and provide feedback to those organizations that have a need to know about the outcome of the ECP process.
8. Document that an individual, office, or organization has accepted responsibility for minimizing, correcting, and preventing recurrence of concerns that have been substantiated through the ECP process.
9. Prepare quarterly and annual reports as required, and review them for lessons learned and possible adverse trends.
10. Use self-assessment or outside review to conduct management assessments of their ECPs. Assess the results with the headquarters or field element manager, and take any necessary actions to improve program operations.
11. Coordinate with NNSA contracting officers to determine the existence of contract requirements for the establishment of contractor ECPs and the means and criteria by which such contractor ECPs will be evaluated.

12. Advise appropriate levels of management when actions are either ineffective or not timely in resolving concerns or correcting identified deficiencies.
13. Advise the complainant and cognizant management of the policy of zero tolerance for retaliation and inform the complainant and supervisor that the employee may be afforded protection under the Contractor Employee Protection Program (10 CFR 708) or the Worker Protection Act of 1989 as appropriate.

VII. POINT OF CONTACT FOR EMPLOYEE CONCERNS POLICY LETTER

Director, NNSA Service Center, (505) 845-6050.



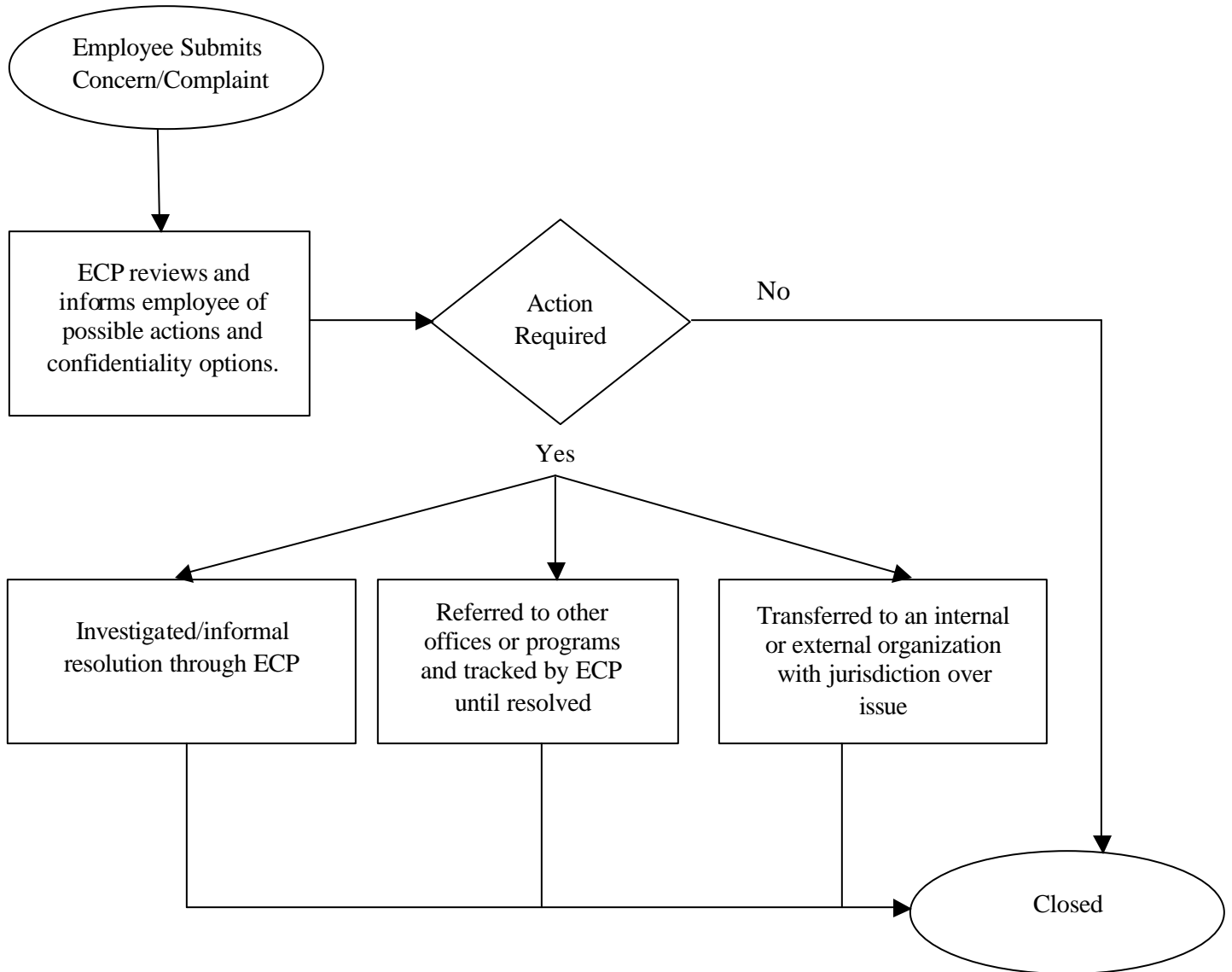
Michael C. Kane
Associate Administrator
for Management and Administration

Attachments:

1. Diagram of Process Overview
2. Process Stage Table
3. References

Process Diagram

The diagram below presents an overview of the process.



Process Table

The table below describes the stages of the process or work instruction.

Process Steps / Work Instructions (Maps to Process Diagram)			
Step	Who Does It	What Happens	
1	Employee	<p>Submits a “good faith” expression of concern/complaint that a policy or practice of DOE/NNSA or one of its contractors should be improved, modified, or terminated. The concern may be communicated to ECP by:</p> <ul style="list-style-type: none"> • ECP Hotline • ECP email address • Letter to ECP at appropriate mailing address 	
2	ECP	<ul style="list-style-type: none"> • Informs employee of his/her rights and responsibilities and importance of meeting time-frames. • Informs employee of other established avenues for consideration and resolution of concerns; asks if he/she is seeking resolution through the ECP 	
		If	Then
		Employee chooses to use another avenue	The concern is considered closed.
		Employee chooses to use the ECP	ECP works with the employee, managers, and program officials on an informal basis to resolve the conflict at lowest possible level.
	Employee chooses not to pursue any avenue	The concern is closed.	
3	ECP	<p>Determination is made to facilitate, refer, transfer, or close the concern/complaint.</p> <ul style="list-style-type: none"> • Ascertain whether the concerned employee is requesting confidentiality • Identify nature of concern • Address availability of employer processes to address the concern • Address previous attempts to have the concern addressed within the concerned employee’s organization <p>Enters concern/complaint into the ECP tracking system</p>	

		If	Then
		Employee requests confidentiality	<ul style="list-style-type: none"> • The ECP must provide confidentiality to the greatest extent possible. The concerned employee's identity must not be disclosed during the investigation or during any other process used to evaluate the concern. However, the ECP must inform the concerned employee that there may be certain confidentiality limitations in order to evaluate and attempt to resolve certain types of concerns. All known, applicable limitations should be explained to the concerned employee. Confidentiality cannot be protected if maintaining that confidentiality puts the health and safety of the workers or the public at risk.
		If	Then
		The concern involves a matter of environment, safety, or health	<ul style="list-style-type: none"> • The ECP must ensure that an initial determination of the environment, safety, or health significance is performed. Priorities for resolution must be established based on determination of the risk of concern: <ul style="list-style-type: none"> – <u>Imminent Danger</u> – Any condition or practice that creates a danger that could reasonably be expected to cause immediate death or serious physical harm, or before the onset of the danger could be eliminated through normal procedures, must be investigated within 24 hours. – <u>Serious</u> – Any hazard, violation, or condition that poses a substantial probability that death or serious physical harm, property loss, and/or negative environmental impact could occur, must be investigated within 3 working days. • <u>Other-than-Serious</u> – Any hazard, violation, or condition that, while not expected to result in death, may have a direct and immediate negative impact on worker safety and health or the environment, must be investigated within 20 working days.

		If	Then
		The concern involves a matter of security or involves classified information	<ul style="list-style-type: none"> • The ECP must refer the issue to the cognizant Security Office. The cognizant security Office will determine if actions, inactions, or events that have occurred that: <ol style="list-style-type: none"> a) pose threats to national security interests and/or critical DOE assets; b) create potentially serious or dangerous security situations; c) potentially endanger the health and safety of the workforce or public (excluding safety related items); d) degrade the effectiveness of the Safeguards and Security (S&S) program; or e) adversely impact the ability of organizations to protect DOE S&S interests. <p>In these cases, timeliness for reporting incidents of security concerns will be followed.</p> <p>If a concern requires access to classified information, the Cognizant Security Office will assist the ECP in ensuring the protection of such information.</p>
		The concerned employee wishes to seek informal resolution through the ECP	<ul style="list-style-type: none"> • If the concern involves issues ECP personnel are not precluded from addressing, ECP personnel may work with the employee, managers, and program officials on an informal basis to resolve the concern. ECP personnel must evaluate and attempt to resolve employee concerns in a manner that protects the health and safety of both employees and the public, ensures effective and efficient operation of programs, and uses alternative dispute resolution techniques whenever appropriate.
		The ECP refers the concern to another organization/ authority for analysis and identification of any possible required remedial action	<ul style="list-style-type: none"> • Unless otherwise agreed to by the employee, an organization other than that of the employee's immediate supervisor must conduct the investigation. In most cases, the ECP will request a brief report that details the scope and nature of any investigation/ evaluation conducted, and when appropriate, offer a recommended resolution and corrective actions. The ECP should request a response within 30 days of the referral.

		<p>The ECP transfers the concern to another organization inside/outside DOE/NNSA based on its type, complexity, jurisdiction of scope</p>	<ul style="list-style-type: none"> Whenever possible, the ECP will provide the concerned employee with a specific point of contact in the office/program to which the concern was transferred. Concerns are closed by the ECP when transferred.
4	ECP	<p>ECP closes out the concern with the employee. Basis for closure should include one of the following:</p> <ul style="list-style-type: none"> f) The concern has been investigated, necessary corrective actions have been identified, and the office responsible for taking the corrective action has accepted jurisdiction over the matter; g) The concern has been investigated and no corrective action is deemed necessary; h) The subject matter of the concern is outside the scope of the ECP and the concern has been transferred to another organization with jurisdiction; i) ECP personnel have advised the employee raising the concern that it is outside the scope of the ECP of available means to have the concern addressed, if direct transfer of the concern to another organization is not appropriate; or j) The ECP determines that the issues are frivolous or too general to investigate. 	
5	ECP	<p>ECP advises appropriate levels of management when actions are either ineffective or not timely in resolving concerns or correcting identified deficiencies.</p>	

Requirements and Supporting Information

References

- DOE O 221.1, “Reporting Fraud, Waste, and Abuse to the Office of Inspector general”
- Doe O 231.1A, Change 1, “Environment, Safety and Health Reporting.”
- DOE O 442.1A (06-06-01), DOE Employee Concerns Program, which establishes the DOE Employee Concerns Program
- DOE G 442.1-1 (02-01-99), DOE Employee Concerns Program Guide, which contains guidance on implementation of the ECP
- Executive Order 12344, Naval Propulsion Act (44 USC 552a), as amended, which establishes law to implement the Freedom of Information Act
- Freedom of Information Act of 1974, and Public Law 93-502 (5 USC 552 as amended) which establishes law to implement the Freedom of Information Act
- 10 CFR, Part 708, DOE Contractor Employee Protection Program
- 29 CFR, Part 1960, Basic Program Elements for federal Employee Occupational Safety and Health Programs and Related Matters
- 29 CFR Part 1960.28, Employee Reports of Unsafe or Unhealthful Working Conditions
- 29 CFR, Part 24, Procedures for Handling Discrimination Complaints Under Federal Protection Statutes, which established the DOL’s procedures for investigating and adjudicating allegations of whistleblower reprisal under certain Federal statutes
- Price-Anderson Amendments Act of 1988 (PL 100-49, 8/20/88), which was implemented by DOE under 10 CFR Part 820
- DOE O 440.1A, Worker Protection Management for DOE Federal and Contractor Employees, which establishes the framework for an effective worker protection program by providing Federal and contractor workers with a safe and healthful workplace
- PL 106-65. DOD Authorization Act of 2000, which statutorily established the NNSA
- PL 101-12, Whistleblower Protection Act of 1989