



Noncompliance Identification, Reporting, Tracking, and Closure

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Objectives



- ✓ **Why report?**
- ✓ **Noncompliance identification (screening)**
- ✓ **Evaluation for reportability**
- ✓ **Tracking and closure of noncompliances**
- ✓ **Coordinator responsibilities**



Importance of Reporting



- ✓ **Represents a significant portion of coordinator's responsibilities**
- ✓ **Reporting is a voluntary function**
- ✓ **Potential for exercise of enforcement discretion or mitigation of civil penalties**



Process Overview



- ✓ **Review information sources**
- ✓ **Screen for noncompliance**
- ✓ **Review for NTS reportability**
- ✓ **Investigation/causal analysis**
- ✓ **Corrective action development**
- ✓ **Formally track to closure**
- ✓ **Verification of closure**



Noncompliance Identification



- ✓ **Contractors review various information sources to identify potential noncompliances**
- ✓ **Typical sources include:**
 - Audits/Assessments
 - NCRs/RDRs/CARs
 - Events
 - Employee Concerns
 - External Reviews
 - Lessons Learned
 - Trending Information



Identification Through Events



- ✓ Investigations of events – major source of potential noncompliances
- ✓ Identified noncompliances generally not credited as self-identified
- ✓ Retrospective vs. prospective – Enforcement focus area



Noncompliance Screening



- ✓ **Identified issues are reviewed to see if they represent noncompliances**
 - Applicability of DOE regulatory requirements
 - Was there a noncompliance with those requirements?

- ✓ **Who performs the screening?**
 - DOE not prescriptive
 - Process determined by contractor
 - Centralized/decentralized approaches



Noncompliance Screening (*cont'd*)



- ✓ Screening forms or logs typically used
- ✓ Reference the Program Review Letters provided on the Enforcement web page for additional discussion of contractor processes

(<http://www.hss.energy.gov/enforce/>)



Noncompliance Screening Common Problems



- ✓ **Failure to evaluate all sources for potential noncompliances (including assessments)**
- ✓ **Inappropriate determination that a problem is not a regulatory noncompliance due to:**
 - Low safety significance
 - Immediate corrective actions
 - Self-imposed criteria to limit scope of rule



Noncompliance Screening Results



- ✓ **Problems determined to be noncompliances should be evaluated for reportability into the DOE Noncompliance Tracking System (NTS)**
- ✓ **Problems determined NOT to represent a regulatory noncompliance should be handled using established problem resolution processes**



Noncompliance Reporting Thresholds



- ✓ **NTS Thresholds (Nuclear Safety)**
 - *Table A-1 Noncompliances Associated with Occurrences
 - *Table A-2 Management Issue Noncompliances

- ✓ **NTS Thresholds (Worker Safety and Health)**
 - *Table B-1 Noncompliances Associated with Occurrences
 - *Table B-2 Other NTS Reportable Conditions

- ✓ **Meet or Exceed Thresholds**
 - Report to NTS

- ✓ **Below Thresholds**
 - “Report” to local issue tracking system (or centralized tracking system)

* Tables can be found in the *Enforcement Program Plan*



Reporting Thresholds Tables A-2 and B-2



Table A-2 and B-2 thresholds involve the following deficiencies:

- ✓ Programmatic Issues
- ✓ Repetitive Issues
- ✓ Intentional Violation or Misrepresentation
- ✓ Other Significant Conditions (WSH)



Reporting Thresholds Tables A-2 and B-2 (*cont'd*)



✓ **Programmatic**

- Occurrence of related (but not identical) noncompliances in a program area. Generally involves some weakness in administrative or management controls. Requires evaluation of deficiencies on a site wide basis.

✓ **Repetitive Issues**

- Same or closely similar noncompliance continues to occur, indicating corrective actions have not been effective.



Reporting Thresholds Tables A-2 and B-2 (*cont'd*)



- ✓ **Intentional**
 - Knowing and willful violation of regulatory requirements
 - Not memory loss

- ✓ **Misrepresentation**
 - Alteration, concealment or destruction of documentation related to a violation of regulatory requirements

- ✓ **Other Significant Conditions**
 - Severity Level I violations with “High” relative risk (WSH)



Reporting Thresholds Tables A-1 and B-1



Tables A-1 and B-1 thresholds based on ORPS categories



Reporting Discussion Scenario A



A nuclear facility at a DOE site identifies three instances during a two week period in which workers fail to comply with controls contained in a radiological work permit (RWP). In one instance, the failure results from ambiguity in the RWP controls. In the second instance, the work supervisor chose to deliberately ignore an RWP requirement due to the temporary unavailability of an RCT. In the third instance, the failure resulted from the use of an obsolete version of the RWP.



Reporting Discussion Scenario A (*cont'd*)



1. Would the above failures constitute regulatory noncompliances?
2. Would the above failures be considered for NTS reporting using the repetitive threshold?
3. Would the above failures be considered for NTS reporting due to any other reason?
4. What would be reasonable next actions by the contractor?



Reporting Discussion Scenario B



An electrician inadvertently fails to comply with the local LO/TO procedure when tagging out a ventilation fan prior to maintenance in a nuclear facility. The electrician had received annual re-training on the LO/TO procedure six weeks prior to the work. Did the LO/TO procedural violation represent an intentional violation, and should it consequently be reported to the NTS?



Reporting Discussion Scenario C



Contractor routine bioassay results indicate an exposure for worker A in excess of the DOE limit of 5 rem. The contractor initiates an exhaustive investigation, which includes a detailed review of all RWPs and work activities the worker has been involved in, and is unable to attribute the intake to any event, deficiency, or poor work practice.

Since the contractor is unable to identify a problem or deficiency, did a regulatory noncompliance occur? If so, should it be reported on NTS?



Timely Identification and Reporting



- ✓ **820 and 851 provide for up to 50% mitigation for prompt identification and timely self-reporting**
- ✓ **Prompt identification – case by case**
- ✓ **Timely reporting - generally done within 20 days after determination of the noncompliance**
- ✓ **Events – typically viewed as self-identifying**



Disagreements Over Reportability



What if contractor/local DOE disagree on reportability?

- ✓ **When in doubt, report (mitigation opportunity)**
- ✓ **Need for timely communication**
- ✓ **DOE can issue its own NTS report**



Expected Information



Information to be provided in NTS –

- ✓ **Clear, factual, objective description of noncompliance**
- ✓ **Brief summary of the root causes, corrective actions (CA), target and actual completion dates (if completed – ok to update)**
- ✓ **Acceptable to reference ORPS report**



Non-NTS Reportable



- ✓ **Existing contractor systems are used to record and track non-NTS reportable noncompliances**
- ✓ **Tracking system should be capable of retrieving noncompliances and be readily accessible by DOE**
- ✓ **Contractor trending of local issues for NTS reportability (centralized system improves capability)**



Noncompliance Closure *General*



- ✓ **CAs should address root causes**
- ✓ **CAs should be formally tracked (NTS or internal system)**
- ✓ **Closure is based on completion of CAs**
- ✓ **Effectiveness review should be performed to verify adequacy of significant CAs – can be tracked as a CA or separately**



Noncompliance Closure *NTS Reportable*



Contractor Coordinator responsible for:

- ✓ **Validating completion of CAs prior to closure**
 - Ensure actions complete, comprehensive
 - Ensures actions address root causes

- ✓ **Marking NTS report as complete**



Noncompliance Closure *NTS Reportable (cont'd)*



DOE Enforcement Coordinator is responsible for:

- ✓ **Verifying completion of CAs (typically work with Facility Representatives, SMEs)**
 - Review evidence/documentation that actions complete as stated
 - Performance supports closure

- ✓ **Entering verification results into NTS with clear recommendation for closure**



Noncompliance Closure *NTS Reportable (cont'd)*



Office of Enforcement personnel are responsible for:

- ✓ **Monitoring completion status of NTS reports**
- ✓ **Reviewing CA completion and closure recommendation from the local DOE Enforcement Coordinator**
- ✓ **Closing the NTS report**



Non-NTS Reportable



- ✓ **Contractor Enforcement Coordinator**
 - Closure validation (similar to NTS report)

- ✓ **Local DOE Enforcement Coordinator**
 - Periodically review status and trends of local noncompliances; no verification needed for closure

- ✓ **Office of Enforcement Personnel**
 - Review during Program Reviews