

## § 824.10

settlement is consistent with the objectives of the Act and DOE security requirements.

### § 824.10 Hearing Officer.

The Hearing Officer:

- (a) Is responsible for the administrative preparations for the hearing;
- (b) Convenes the hearing as soon as is reasonable;
- (c) Administers oaths and affirmations;
- (d) Issues subpoenas, at the request of either party or on the Hearing Officer's motion;
- (e) Rules on offers of proof and receives relevant evidence;
- (f) Takes depositions or has depositions taken when the ends of justice would be served;
- (g) Conducts the hearing in a manner which is fair and impartial;
- (h) Holds conferences for the settlement or simplification of the issues by consent of the parties;
- (i) Disposes of procedural requests or similar matters;
- (j) Requires production of documents; and
- (k) Makes an initial decision under § 824.13.

### § 824.11 Rights of the person at the hearing.

The person may:

- (a) Testify or present evidence through witnesses or by documents;
- (b) Cross-examine witnesses and rebut records or other physical evidence, except as provided in § 824.12(d);
- (c) Be present during the entire hearing, except as provided in § 824.12(d); and
- (d) Be accompanied, represented and advised by counsel of the person's choosing.

### § 824.12 Conduct of the hearing.

- (a) DOE shall make a transcript of the hearing;
- (b) Except as provided in paragraph (d) of this section, the Hearing Officer may receive any oral or documentary evidence, but shall exclude irrelevant, immaterial or unduly repetitious evidence;
- (c) Witnesses shall testify under oath and are subject to cross-examination,

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except as provided in paragraph (d) of this section;

(d) The Hearing Officer must use procedures appropriate to safeguard and prevent unauthorized disclosure of classified information or any other information protected from public disclosure by law or regulation, with minimum impairment of rights and obligations under this part. The classified or otherwise protected status of any information shall not, however, preclude its being introduced into evidence. The Hearing Officer may issue such orders as may be necessary to consider such evidence *in camera* including the preparation of a supplemental initial decision to address issues of law or fact that arise out of that portion of the evidence that is classified or otherwise protected.

(e) DOE has the burden of going forward with and of proving by a preponderance of the evidence that the violation occurred as set forth in the final notice of violation and that the proposed civil penalty is appropriate. The person to whom the final notice of violation has been addressed shall have the burden of presenting and of going forward with any defense to the allegations set forth in the final notice of violation. Each matter of controversy shall be determined by the Hearing Officer upon a preponderance of the evidence.

### § 824.13 Initial decision.

(a) The Hearing Officer shall issue an initial decision as soon as practicable after the hearing. The initial decision shall contain findings of fact and conclusions regarding all material issues of law, as well as reasons therefor. If the Hearing Officer determines that a violation has occurred and that a civil penalty is appropriate, the initial decision shall set forth the amount of the civil penalty based on:

- (1) The nature, circumstances, extent, and gravity of the violation or violations;
- (2) The violator's ability to pay;
- (3) The effect of the civil penalty on the person's ability to do business;
- (4) Any history of prior violations;
- (5) The degree of culpability; and
- (6) Such other matters as justice may require.

(b) The Hearing Officer shall serve all parties with the initial decision by certified mail, return receipt requested. The initial decision shall include notice that it constitutes a final order of DOE 30 days after the filing of the initial decision unless the Secretary files a Notice of Review. If the Secretary files a notice of Notice of Review, he shall file a final order as soon as practicable after completing his review. The Secretary, at his discretion, may order additional proceedings, remand the matter, or modify the amount of the civil penalty assessed in the initial decision. DOE shall notify the person of the Secretary's action under this paragraph in writing by certified mail, return receipt requested. The person against whom the civil penalty is assessed by the final order shall pay the full amount of the civil penalty assessed in the final order within thirty days (30) unless otherwise agreed by the Director.

#### § 824.14 Special procedures.

A person receiving a final notice of violation under § 824.7 may elect in writing, within 30 days of receipt of such notice, the application of special procedures regarding payment of the penalty set forth in section 234A.c.(3) of the Act, 42 U.S.C. 2282a(c)(3). The Director shall promptly assess a civil penalty, by order, after the date of such election. If the civil penalty has not been paid within sixty calendar days after the assessment has been issued, the DOE shall institute an action in the appropriate District Court of the United States for an order affirming the assessment of the civil penalty.

#### § 824.15 Collection of civil penalties.

If any person fails to pay an assessment of a civil penalty after it has become a final order or after the appropriate District Court has entered final judgment for DOE under § 824.14, DOE shall institute an action to recover the amount of such penalty in an appropriate District Court of the United States.

#### § 824.16 Direction to NNSA contractors.

(a) Notwithstanding any other provision of this part, the NNSA Administrator, rather than the Director, signs, issues, serves, or takes the following actions that direct NNSA contractors or subcontractors.

- (1) Subpoenas;
- (2) Orders to compel attendance;
- (3) Disclosures of information or documents obtained during an investigation or inspection;
- (4) Preliminary notices of violation; and
- (5) Final notices of violations.

(b) The Administrator shall act after consideration of the Director's recommendation. If the Administrator disagrees with the Director's recommendation, and the disagreement cannot be resolved by the two officials, the Director may refer the matter to the Deputy Secretary for resolution.

#### APPENDIX A TO PART 824—GENERAL STATEMENT OF ENFORCEMENT POLICY

##### I. INTRODUCTION

a. This policy statement sets forth the general framework through which DOE will seek to ensure compliance with its classified information security regulations and rules and classified information security-related compliance orders (hereafter collectively referred to as classified information security requirements).

The policy set forth herein is applicable to violations of classified information security requirements by DOE contractors and their subcontractors (hereafter collectively referred to as DOE contractors). This policy statement is not a regulation and is intended only to provide general guidance to those persons subject to the classified information security requirements. It is not intended to establish a formulaic approach to the initiation and resolution of situations involving noncompliance with these requirements. Rather, DOE intends to consider the particular facts of each noncompliance situation in determining whether enforcement penalties are appropriate and, if so, the appropriate magnitude of those penalties. DOE reserves the option to deviate from this policy statement when appropriate in the circumstances of particular cases.

b. Both the Department of Energy Organization Act, 42 U.S.C. 7101, and the Atomic Energy Act of 1954 (the Act), 42 U.S.C. 2011, require DOE to protect and provide for the common defense and security of the United States in conducting its nuclear activities,