

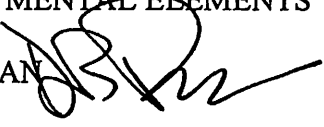


The Deputy Secretary of Energy

Washington, DC 20585

June 24, 2011

MEMORANDUM FOR HEADS OF DEPARTMENTAL ELEMENTS

FROM: DANIEL B. PONEMAN 

SUBJECT: Security Incident (Including Cyber) Congressional Notification Protocol

The Department of Energy (DOE) is required to report to Congress select security or intelligence/counterintelligence incidents. For purposes of notification, "Congress" will include the staffs of the Armed Services and Energy Committees, the Appropriations Subcommittees on Energy and Water Development, and (for Counterintelligence issues only) the House and Senate Intelligence Committees.

The Department of Energy's Office of Congressional and Intergovernmental Affairs (after appropriate consultation with DOE's Office of General Counsel) will inform these committees as soon as practicable. For incidents involving only the National Nuclear Security Administration (NNSA), the notification may be made by the NNSA Associate Administrator for External Affairs after consultation with NNSA's Office of General Counsel and DOE's Assistant Secretary for Congressional and Intergovernmental Affairs.

Each office that has cognizant security authority for an asset is responsible for coordinating with the appropriate DOE or NNSA Congressional Office. Additionally, each office must also coordinate incident notification with other programmatic elements that have programmatic responsibility for the asset (i.e., the owner of the information or asset). To ensure Department-wide consistency, however, the notification process will be overseen by DOE's Assistant Secretary for Congressional and Intergovernmental Affairs.

This memorandum provides direction for Departmental Elements in carrying out their reporting responsibilities with respect to four types of incidents:

- 1) Loss of personally identifiable information (PII);
- 2) Theft, loss, compromise, or suspected compromise of classified matter (information or material);
- 3) Penetration of a classified network; and,
- 4) Select intelligence and counterintelligence incidents.

Requirements specific to the first three categories are predicated on evidence that there are no indications of foreign intelligence involvement. If there are indications of foreign intelligence involvement, or if the matter is under active investigation by the Federal



Bureau of Investigation (FBI), reporting will be handled by DOE's Office of Intelligence and Counterintelligence, consistent with category 4, above, in consultation with the FBI and Department of Justice.

Loss of personally identifiable information (PII) in electronic form or hardcopy for 100 or more individuals. "Loss" will mean disclosure outside of the Federal Government or its contractors. Inadvertent access by a Federal or contractor employee to PII to which he or she would not normally be authorized access, or the unencrypted emailing of PII that does not suggest any possibility of compromise, will not be considered "loss" for purposes of this protocol and need not be reported. For PII incidents within DOE, the "incident" office shall notify the DOE Chief Information Officer, who will notify the DOE Office of Congressional and Intergovernmental Affairs. For PII incidents within NNSA, the "incident" office shall notify the NNSA Chief Information Officer, who will then notify the Chief of Defense Nuclear Security, the Principal Deputy Administrator, the Administrator, and the NNSA Associate Administrator for External Affairs. The NNSA Associate Administrator for External Affairs will have the responsibility to notify Congress and other appropriate parties.

Theft, loss, compromise, or suspected compromise of classified matter (information or material). Incidents involving the theft, loss, compromise, or suspected compromise of Top Secret, Sensitive Compartmented Information, Special Access Program, or Restricted Data Weapons Data information must be reviewed by the office with programmatic responsibility for the information. This review is to determine if it constitutes a "significant nuclear defense intelligence loss" (i.e., likely to cause serious harm or damage to the national security interest of the United States as defined in Executive Order 13526, *Classified National Security Information*).

Incidents requiring the notification of Federal line management that involve the theft or loss of physical assets (e.g., special nuclear material, classified weapons components/parts, etc.) must be assessed by the cognizant program office to determine if the details of the incident constitute a risk or threat to national security.

As specified in 50 U.S.C. 2656, *Notice to Congressional Committees of Certain Security and Counterintelligence Failures within Nuclear Energy Defense Programs*, the Department must, after consultation with the Director, Central Intelligence Agency, and the FBI Director, as appropriate, provide notification to Congress within 30 days after the date on which the Department determines that the loss has taken place. For NNSA-specific issues, the Chief of Defense Nuclear Security will report through the NNSA Associate Administrator for External Affairs. For non-NNSA issues, the Cognizant Program Office will report after consultation with the DOE Office of Congressional and Intergovernmental Affairs.

Penetration of a classified network. For actual or suspected penetration of DOE classified networks, the DOE Chief Information Officer will notify the Office of Congressional and Intergovernmental Affairs and the Department's Chief Health, Safety and Security Officer. For actual or suspected penetration of NNSA classified networks, the NNSA Chief Information Officer will notify NNSA's Associate Administrator for

External Affairs, the Chief of Defense Nuclear Security, and both the Principal Deputy Administrator and Administrator.

Certain Intelligence and Counterintelligence incidents. For significant incidents as described by categories 1 through 3 and for which there is also a foreign intelligence nexus, reporting responsibility resides with DOE's Office of Intelligence and Counterintelligence, under Director of National Intelligence guidelines.

In each instance where there is doubt as to whether an issue should be reported, the issue will be resolved in favor of reporting. Concurrent with notifications to DOE's Office of Congressional and Intergovernmental Affairs, all Departmental Elements should simultaneously notify NNSA Office of Public Affairs (for NNSA-specific issues) and the DOE Office of Public Affairs (for both DOE and NNSA issues) for the appropriate determination of media applicability.

This policy shall be reviewed annually in June for continued relevance.

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