



OFFICE OF INSPECTOR GENERAL

U.S. Department of Energy

INSPECTION REPORT

OAI-M-17-10

July 2017

**ALLEGATIONS OF MISMANAGEMENT
OF THE HUMAN RELIABILITY
PROGRAM AT THE OAK RIDGE
NATIONAL LABORATORY**



Department of Energy
Washington, DC 20585

July 25, 2017

MEMORANDUM FOR THE ASSOCIATE UNDER SECRETARY FOR ENVIRONMENT,
HEALTH, SAFETY AND SECURITY

Michelle Anderson

FROM: Michelle Anderson
Deputy Inspector General
for Audits and Inspections
Office of Inspector General

SUBJECT: INFORMATION: Inspection Report on “Allegations of
Mismanagement of the Human Reliability Program at the Oak Ridge
National Laboratory”

BACKGROUND

The Department of Energy’s Human Reliability Program (HRP) was established to address the need for individuals involved in the nuclear weapons program to meet the highest standards of reliability including physical and mental suitability. Employees entering the program must possess a Q (which affords access up to the Top Secret level) clearance and submit to a multi-phase certification process that is designed to identify and evaluate behaviors and conditions that may disqualify employees from holding HRP positions. National Strategic Protective Services, LLC (NSPS) provides protective force services at the Department’s facilities in Oak Ridge, Tennessee, including the Oak Ridge National Laboratory. Security Police Officers guarding special nuclear material at the Oak Ridge National Laboratory are required to maintain HRP certification.

The Office of Inspector General received a complaint alleging NSPS management: (1) failed to provide employees timely written notifications when an employee’s HRP certification was removed; (2) used disparate application of discipline; and (3) did not follow proper HRP drug testing procedures by ordering drug tests without cause. We initiated this inspection to determine the facts and circumstances surrounding the allegations.

RESULTS OF INSPECTION

Although we substantiated the allegation that NSPS management did not provide employees timely written notifications when an employee’s HRP certification was removed, this occurred because there was no requirement for NSPS to do so in all instances. In addition, we were unable to substantiate the allegation regarding disparate discipline, nor did we substantiate the allegation that NSPS management did not follow proper HRP drug testing procedures.

We determined, and the Department's Office of General Counsel confirmed, that Title 10 Code of Federal Regulations (CFR) Part 712, *Human Reliability Program* does not require timely written notification for temporary removal of an employee's HRP certification. Specifically, CFR 712 discusses two types of HRP removal, immediate and temporary, but only immediate removals require timely written notification to the HRP holder. The removals we examined during our review were all temporary removals. While Office of Environment, Health, Safety and Security and Office of General Counsel officials informed us that CFR 712 is silent on temporary removals, the Office of Environment, Health, Safety and Security official also stated that it was the intention of the authors of CFR 712 to provide written notification to all employees when HRP certification is removed, regardless of the reason or classification (temporary or immediate). The same official stated that it is a best and common practice among the Department's HRP community to provide written notifications in all instances, and acknowledged that CFR 712 is in need of revision and that the Department is in the process of clarifying the requirements. Without formal written notification for the rationale behind the removal of an employee's HRP certification, the employee may not have the ability to question the basis of the HRP certification removal.

We were unable to substantiate the disparate disciplinary allegation because we did not identify any discernable trends that would allow us to make a determination on the equitableness of the disciplinary actions taken by NSPS management. Based on documentary evidence and verbal testimony, we noted that each incident we reviewed was treated separately and on its own merit. In addition, NSPS management told us that all facts and circumstances were considered prior to making each disciplinary decision. During our inspection, we were told that avenues to dispute disparate treatment such as the formal grievance process, contacting Oak Ridge Office's Employee Concerns Program, or the Department's Employee Concerns Program are not being fully utilized. However, NSPS and Oak Ridge Office management stated that the avenues are communicated to employees through posters/signs posted in prominent areas and through required readings such as mandatory training. Further, management stated that grievances and complaints through the Employee Concerns Program have been received from NSPS employees.

We did not substantiate the allegation that NSPS management improperly applied HRP drug testing procedures by requesting drug tests of certain employees without valid cause. We reviewed the 36 drug tests conducted at the request of NSPS management for calendar years 2014 and 2015 and found sufficient testimonial or documentary support for the tests performed.

Finally, we identified opportunities for improvement in HRP internal controls related to recordkeeping and access control procedures. Specifically, none of the parties involved in the NSPS HRP process maintained a complete list of all employees whose certifications had been temporarily or immediately removed, including such information as the dates of removal and any subsequent reinstatements. Furthermore, the individual employee records maintained in the official HRP files did not contain HRP information such as all instances of the employee's removal and the detailed reasons for each removal. Finally, NSPS did not always maintain detailed documentation on the rationale behind "for cause" drug testing. Without comprehensive recordkeeping, certification reviewers and management could be lacking vital information to easily trend an employee's personnel actions when making future certification and employment decisions.

Regarding access controls, we discovered that two employees worked HRP duties for as many as 6 days after the Certifying Official made a determination to temporarily remove the individuals from HRP. The delay occurred between the Certifying Official signing the temporary removal letter and its delivery to the HRP Administrative Contractor, who was then responsible for ensuring timely transmittal of access restriction notifications. We discussed the incidents with the Certifying Official upon discovery. The Certifying Official stated that since being notified of the incidents, the office has taken actions to expedite the preparation of the notice letters and delivery to the HRP Administrative Contractor.

We made a recommendation and suggestions designed to mitigate the risks associated with concerns noted in our inspection.

MANAGEMENT RESPONSE

Management concurred with the report's recommendation and provided a path forward to address the issues identified in the report. Management advised that the Department is considering a revision to CFR 712 and that any revisions would be intended to improve guidance for HRP certified individuals, ensure consistent HRP decision making, and make any necessary updates to definitions and references. Management's planned actions are responsive to our recommendation.

Management's formal comments are included in Appendix 3.

Attachments

cc: Deputy Secretary
Chief of Staff
General Counsel

ALLEGATIONS OF MISMANAGEMENT OF THE HUMAN RELIABILITY PROGRAM AT THE OAK RIDGE NATIONAL LABORATORY

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ALLEGATIONS OF MISMANAGEMENT OF THE HUMAN RELIABILITY PROGRAM AT THE OAK RIDGE NATIONAL LABORATORY

DETAILS OF FINDING

We received allegations that National Strategic Protective Services, LLC (NSPS) management: (1) failed to provide employees timely written notification when an employee's Human Reliability Program (HRP) certification was removed; (2) used disparate application of discipline; and (3) did not follow proper HRP drug testing procedures by ordering drug tests without cause. While we substantiated the allegation that NSPS management did not provide employees timely written notifications when an employee's HRP certification was removed, we also determined that there was no requirement to do so in all situations. We were unable to substantiate the allegation regarding disparate discipline nor did we substantiate the allegation that NSPS management did not follow proper HRP drug testing procedures. However, during our review of the allegations, we identified opportunities for improvement related to recordkeeping and access controls of HRP activities.

HRP Removal Notifications

NSPS provides protective force services at various Department of Energy facilities in Oak Ridge, Tennessee, including the East Tennessee Technology Park, Federal Office Building, a portion of the Oak Ridge Reservation proper, and the Oak Ridge National Laboratory. One of the Oak Ridge Office of Environmental Management missions at Oak Ridge National Laboratory is the de-inventorying of uranium-233 special nuclear materials. HRP certification is required for each person assigned to, or applying for, a position that, among other things, affords access to Category I special nuclear materials or has responsibility for transportation or protection of Category I quantities of special nuclear materials. Title 10 Code of Federal Regulations (CFR) Part 712, *Human Reliability Program*, establishes procedures and implementation requirements for HRP. Oak Ridge National Laboratory and NSPS each developed an HRP Implementation Plan to implement the requirements of CFR 712.

According to NSPS's HRP Implementation Plan, the Certifying Official, Management Official, and HRP Administrative Contractor have significant responsibilities in implementing the HRP utilized by NSPS at Oak Ridge National Laboratory. The Certifying Official is the Oak Ridge Office Assistant Manager for Safeguards, Security, and Emergency Management who has final authority as to whether an employee should be HRP certified or not. The Management Official, who is the NSPS General Manager, makes a determination as to whether employees should be HRP certified and recommends employee HRP certifications to the Certifying Official. The HRP Administrative Contractor, an HRP Specialist from Wyandotte Services, Inc. (prime contract awarded by Oak Ridge Office), collects and submits HRP approval packages to the Certifying Official; selects and tracks random drug tests; and sends out notifications of HRP temporary removals and reinstatements to the applicable facilities and officials.

We substantiated the allegation that employees were not being provided timely written notification when an employee's HRP certification had been removed; however, this occurred because CFR 712 does not require timely written notification of HRP removal in all situations. For example, unlike the immediate removal, CFR 712 does not explicitly state that the

Management Official or the Certifying Official must provide written notification to an individual whose HRP certification is temporarily removed. Additionally, CFR 712 does not define the differences between immediate and temporary removals, it does state that the supervisor and Management Official can take HRP removal actions. Specifically, the CFR states that an HRP certification is immediately removed when initiated by a supervisor and temporarily removed when initiated by a Management Official. For example, CFR 712 states that if a supervisor believes that an HRP certified employee poses a safety or security concern, the supervisor must immediately remove the employee's HRP certification. Further, the supervisor must provide written notice, including the reason for the action, within 24 hours to the individual and the HRP Management Official. Our review revealed that none of the removals that occurred during our scope period were classified as an immediate removal.

We found that CFR 712, the Department's HRP Handbook, and the Oak Ridge National Laboratory and NSPS HRP Implementation Plans, were all silent on the notification requirements to employees for temporary HRP removals. However, NSPS employees and union representatives told us that they interpreted CFR 712 to require written notifications for all types of HRP removals. According to Department officials with the Office of Environment, Health, Safety and Security and Office of General Counsel, the current version of CFR 712 does not require written notifications be issued in all situations when an employee's HRP certification is removed. The Office of Environment, Health, Safety and Security official also stated that it is a best practice and was the intention of the authors of CFR 712 to provide written notification to all employees when HRP certification is removed, regardless of the reason or classification. Further, it is common practice among the Department's HRP community to provide written notifications in all instances. The Office of Environment, Health, Safety and Security official acknowledged that CFR 712 is in need of revising and stated that the Department is in the process of updating CFR 712 to clarify the requirements, including roles and responsibilities. Without formal written notification for the rationale behind the removal of an employee's HRP certification, the employees may not have the ability to question the basis of the HRP certification removal.

Disparate Discipline Practices

We were unable to substantiate that NSPS applied disparate disciplinary actions because we did not identify any discernable trends that would allow us to make a determination on the equitableness of the disciplinary actions taken by NSPS management. Based on documentary evidence and verbal testimony, we noted that each incident we reviewed was treated separately and on its own merit. NSPS management told us that all facts and circumstances were considered prior to making each disciplinary decision. One specific concern expressed in the complaint was that union involvement resulted in harsher punishment. However, we were told that employees and union representatives were unaware of what the punishment would have been prior to union involvement. Employees and union representatives stated that avenues to dispute disparate treatment such as the formal grievance process, contacting Oak Ridge Office's Employee Concerns Program, or the Department's Employee Concerns Program were not being fully utilized. However, NSPS and Oak Ridge Office management stated that the avenues are

communicated to employees through posters/signs posted in prominent areas and through required readings such as mandatory training. Further, management stated that union grievances and complaints through the Employee Concerns Program have been received from NSPS employees.

Drug Testing

We did not substantiate that NSPS management improperly applied HRP drug testing procedures by requesting drug tests of certain employees without valid cause. CFR 712.15, *Management Evaluation*, and NSPS's Human Reliability Program grant management the discretion and authority to direct HRP certified employees to submit to testing if there is an incident; if the employee is removed from duty for unusual behavior; or if a reasonable suspicion exists. We obtained the semi-annual drug testing reports for calendar years 2014 and 2015, which reflected a total of 503 drug tests administered for applicable NSPS employees. Those tests included pre-employment, occurrence and post-accident, return to duty, and random drug testing. To identify tests conducted at the request of NSPS management, we obtained a list of all tests categorized as occurrence and post-accident conducted for calendar years 2014 and 2015 from both NSPS and NetGain, the drug test administrator. The list contained 36 occurrence and post-accident drug tests covering instances such as motor vehicle accidents and worker's compensation claims. We determined that only three "for cause"¹ tests were administered throughout the scope period. NSPS management provided verbal testimony that supported each of the three "for cause" tests along with documentary evidence to support one of the tests. Further, NSPS management stated that two or more Management Officials concurred prior to directing each of the "for cause" drug tests, as required by CFR 712.15.

Other Matters

During our review of the allegations, we identified opportunities for improvement related to overall internal control activities among the parties involved in the NSPS HRP process. Specifically, we found weaknesses in recordkeeping and access control procedures.

Recordkeeping

During our inspection, we noted that a complete list of HRP removals was not maintained by any of the parties involved in the NSPS HRP process. Further, individual employee HRP files did not contain sufficient details as to why removal actions were taken. Finally, NSPS did not maintain documentation on the rationale behind "for cause" drug testing for two of three "for cause" tests administered during our scope period. While CFR 712 and the HRP Handbook are silent to specific recordkeeping requirements for HRP removals, documentation is a best practice for internal control activities, such as the HRP. Government Accountability Office's *Standards for Internal Control in the Federal Government* states that documentation is a necessary part of an effective internal control system. Documentation of controls also provides evidence that the controls were performed and allows for monitoring and evaluation. Per the

¹ For cause incidents may include, but are not limited to, observed abnormal or erratic behavior, signs of impairment, and odor of drugs/alcohol.

Office of Environment, Health, Safety and Security HRP Program Manager, it is also a Department best practice to maintain documentation of all removals and the detailed reasons for each removal in employees' official HRP files.

Without comprehensive recordkeeping in HRP, certification reviewers and management are lacking vital information to easily trend an employee's personnel actions when making future certification and employment decisions. To address the opportunities for improvement in regards to HRP removal and drug testing documentation, we suggest that the Certifying Official and the HRP Administrative Contractor coordinate with NSPS management to establish a comprehensive system for documentation of HRP temporary and immediate removals and maintain additional detail within individual employees' HRP files.

Certifying Official Notification Delay

We discovered that two employees worked HRP duties for as many as 6 days after the Certifying Official made a determination to temporarily remove the individuals from HRP. The delay occurred between the Certifying Official signing the temporary removal letter and its delivery to the HRP Administrative Contractor, who was then responsible for ensuring timely transmittal of access restriction notifications. Currently, CFR 712, Oak Ridge National Laboratory's and NSPS's HRP Implementation Plans are silent regarding the actions required by the Certifying Official to notify the employee and restrict access to material access areas when an HRP removal action is initiated by the Certifying Official. HRP is an access control activity within the Department's internal control system. As stated in the Government Accountability Office's *Standards for Internal Control in the Federal Government*, "Management establishes physical control to secure and safeguard vulnerable assets. Examples include security for and limited access to assets ...that might be vulnerable to risk of loss or unauthorized use." The lack of specific written procedures in place increases the potential for employees to work HRP duties when there is a question as to the individual's reliability that requires further investigation or inquiry.

The incidents were discussed with the Certifying Official upon discovery. The Certifying Official stated that since being notified of the incidents, the office has taken actions to expedite the preparation of the notice letters and delivery to the HRP Administrative Contractor. Specifically, the Certifying Official stated that the Personnel Security Specialist making the recommendation for temporary removal now hand delivers the necessary information to the Certifying Official; once signed and approved, the letter is then hand delivered to the HRP Administrative Contractor to ensure timely transmittal of access restriction notifications. To prevent similar future occurrences, we suggest that the Certifying Official establish local written policies and procedures for ensuring timely communication of removals and access notifications when initiated by the Certifying Official.

RECOMMENDATION

To address the issues identified in this report, we recommend that the Associate Under Secretary for Environment, Health, Safety and Security:

1. Update Title 10 Code of Federal Regulations Part 712 and necessary resource materials to clearly set forth notification requirements including roles and responsibilities for temporary removal and immediate removal of HRP certification.

SUGGESTIONS

To address the opportunities for improvement identified in this report, we suggest that:

1. The Certifying Official and the HRP Administrative Contractor coordinate with NSPS management to establish a comprehensive system for documentation of HRP temporary and immediate removals and maintain additional detail within individual employees' HRP files.
2. The Certifying Official establish local written policies and procedures for ensuring timely communication of removals and access notifications when initiated by the Certifying Official.

MANAGEMENT RESPONSE

In its response provided to the Office of Inspector General on June 1, 2017, management concurred with our recommendation and identified actions that were planned to address our recommendation. Management advised that the Department is considering a revision to Title 10, Code of Federal Regulations, Part 712, *Human Reliability Program*. Management advised that any revisions would be intended to improve guidance for HRP certified individuals, ensure consistent HRP decision making, and make any necessary updates to definitions and references. Management further stated that key HRP headquarters and field personnel would be trained on the changes.

INSPECTOR COMMENTS

The Department's planned actions are responsive to our findings and recommendation. The estimated completion date for these actions is December 31, 2017. Management's comments and corrective actions are included in Appendix 3.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The Office of Inspector General received a complaint alleging National Strategic Protective Services, LLC management: (1) failed to provide employees timely written notifications when an employee's Human Reliability Program certification is removed; (2) used disparate application of discipline; and (3) did not follow proper Human Reliability Program drug testing procedures by ordering drug tests without cause. We initiated this inspection to determine the facts and circumstances surrounding the allegations.

Scope

We conducted our inspection fieldwork from March 2016 through July 2017 at the Department of Energy and contractor facilities in Oak Ridge, Tennessee. The inspection was focused on calendar years 2014 and 2015. This inspection was conducted under Office of Inspector General project number S16IS006.

Methodology

Inspection activities included:

- Reviewed applicable laws, regulations, orders, guidance, policies, and local procedures;
- Interviewed and conducted meetings with Federal officials, including Safeguards and Security personnel, Program Managers for the Human Reliability Program, and the Office of General Counsel;
- Interviewed and conducted meetings with contractor officials and employees including, NSPS managers, Security Police Officers, union representatives, and the Human Reliability Program Administrative Contractor;
- Obtained and reviewed documents and emails concerning various aspects of the inspection; and
- Reviewed related Government Accountability Office and Office of Inspector General prior reports.

We conducted this allegation-based inspection in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*. Those standards require that we plan and perform the inspection to obtain sufficient, appropriate evidence to provide a reasonable basis for our conclusions and observations based on our inspection objective. We believe the evidence obtained provided a reasonable basis for our conclusions and observations based on our inspection objective. Accordingly, the inspection included tests of controls and compliance with laws and regulations to the extent necessary to

satisfy the inspection objective. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our inspection. Additionally, we assessed the implementation of the *GPRRA Modernization Act of 2010* and found that the Department has not established performance measures pertinent to the inspection's objective due to the narrow scope of the allegation. Finally, we relied on computer-based data, to some extent, to satisfy our objective. We conducted a limited reliability assessment of computer-processed data relevant to our inspection objective and deemed the data to be sufficiently reliable.

The Office of Environment, Health, Safety and Security, the Office of General Counsel, and the Office of Science waived an exit conference on June 22, 2017.

PRIOR REPORT

- Inspection Report on [*Alleged Health and Wellness Benefit Irregularities by a Department Contractor*](#) (INS-L-12-03, May 2012). The inspection was initiated to review the facts and circumstances surrounding allegations concerning irregularities with health and wellness fringe benefits and retaliatory practices by Ahtna Facility Services, Inc., a support contractor responsible for providing security services at several National Energy Technology Laboratory sites. Regarding retaliatory practices, it was specifically alleged that Ahtna Facility Services, Inc. terminated an employee for complaining about issues related to fringe benefits administration. The Office of Inspector General's Hotline referred the employee to the Department of Energy's local Employee Concerns Program and the allegation was not further addressed in the report.

MANAGEMENT COMMENTS



Department of Energy
Washington, DC 20585

June 1, 2017

MEMORANDUM FOR APRIL STEPHENSON
ACTING INSPECTOR GENERAL

FROM: MATTHEW B. MOURY *M. Moury*
ASSOCIATE UNDER SECRETARY
FOR ENVIRONMENT, HEALTH, SAFETY AND SECURITY

SUBJECT: COMMENTS FOR IG DRAFT INSPECTION REPORT on
"Allegations of Mismanagement of the Human Reliability
Program at the Oak Ridge National Laboratory (S16IS006)

Thank you for the opportunity to respond to the Office of Inspector General's (IG) draft Inspection report entitled: "Allegations of Mismanagement of the Human Reliability Program at the Oak Ridge National Laboratory." Overall, the Office of Environment, Health, Safety and Security supports the general findings of the IG Draft Inspection Report and its recommendation.

Recommendation 1.1: To address the issues identified in this report, we recommend that the Associate Under Secretary for Environment, Health, Safety and Security: Update Title 10 Code of Federal Regulations Part 712 and necessary resource materials to clearly set forth notification requirements including roles and responsibilities for temporary removal and immediate removal of Human Reliability Program certification.

Action Plan: The Department of Energy is considering a revision of Title 10, Code of Federal Regulations, Part 712, Human Reliability Program (HRP) (10 CFR 712). Any revisions would be intended to improve guidance for HRP-certified individuals, ensure consistent HRP decision-making, and make any necessary updates to definitions and references. Key HRP headquarters and field personnel would be trained on the changes.

Estimated Completion Date: December 31, 2017



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