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Congressional Committees

Contractor Oversight: Information on the National Nuclear Security Administration's Report on Burdensome Regulatory Requirements

In 2018, the National Nuclear Security Administration (NNSA)—a separately organized agency within the Department of Energy (DOE)—began work to conduct a congressionally directed survey of the contractors that manage and operate NNSA sites to identify requirements they viewed as burdensome. In June 2019, NNSA provided a report to Congress on its findings. NNSA's report listed 91 requirements that its management and operating (M&O) contractors identified as burdensome,¹ and NNSA prioritized 16 matters for further review.²

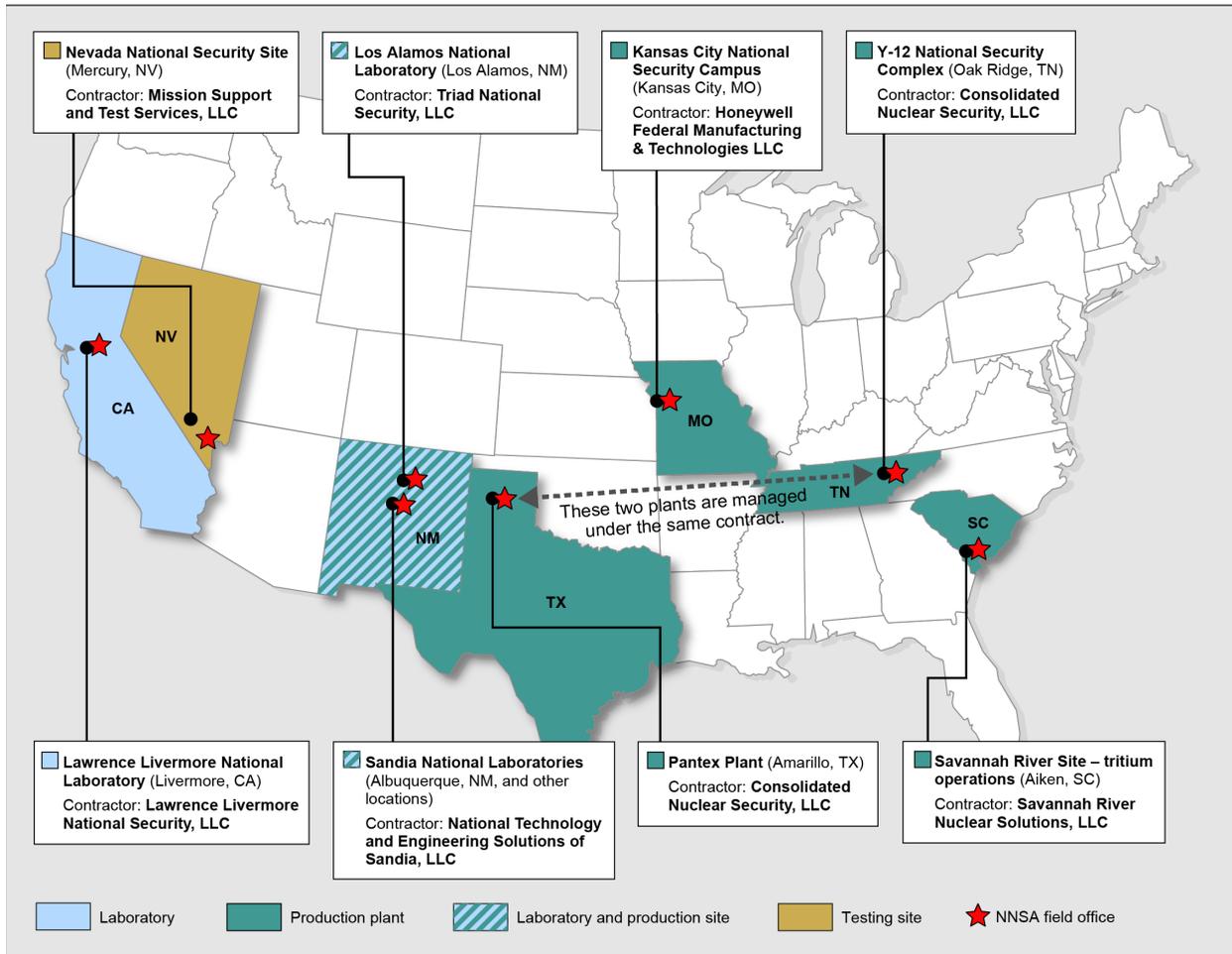
NNSA is responsible for maintaining a safe, secure, and reliable nuclear stockpile and relies on and oversees seven M&O contractors that execute the agency's missions across eight sites—collectively known as the nuclear security enterprise (see fig. 1).³ NNSA's federal field offices, which are generally co-located at the sites, provide direct oversight of and contract administration for the M&O contracts.

¹Management and operating contracts are agreements under which the government contracts for the operation, maintenance, or support, on its behalf, of a government-owned or -controlled research, development, special production, or testing establishment wholly or principally devoted to one or more of the major programs of the contracting agency.

²In its report, NNSA used the term "regulations" to refer to the following items: DOE and NNSA Orders and Policies; DOE Standards; federal regulations; Office of Management and Budget Guidance; M&O contract changes; and statutory requirements. We use the term "requirements" in this report to refer to these same items.

³The sites that compose the nuclear security enterprise are the Kansas City National Security Campus in Missouri, Lawrence Livermore National Laboratory in California, Los Alamos National Laboratory in New Mexico, Nevada National Security Site in Nevada, Pantex Plant in Texas, Sandia National Laboratories primarily in New Mexico, Savannah River Site in South Carolina, and Y-12 National Security Complex in Tennessee.

Figure 1: National Nuclear Security Administration (NNSA) National Security Laboratories, Production Plants, and Testing Site, and Each Site’s Management and Operating Contractor, as of 2019



Sources: GAO presentation of NNSA information; Map Resources (map). | GAO-21-496R

As part of its M&O contracts, NNSA requires the contractors to adhere to federal, state, and local laws; relevant regulations; and DOE and NNSA directives that are outlined in various policies, orders, and manuals.⁴ NNSA incorporates these requirements into M&O contracts and has processes to hold contractors accountable for meeting them. These requirements cover a variety of subjects, including cybersecurity and information technology, site safety and security, financial and accounting procedures, and quality assurance and human resource information.

Reports by congressionally mandated panels and commissions published in the past 10 years have found that the environment in which NNSA carried out its oversight of M&O contractors was strained due, in part, to requirements perceived by the M&O contractors as unnecessarily burdensome. For example, in 2014, a congressional advisory panel (commonly referred to as the Augustine-Mies Panel) issued a report describing a dysfunctional relationship between

⁴DOE defines directives as its primary means of establishing policies, requirements, responsibilities, and procedures for the department and its contractors. Guidance is defined as acceptable, but not mandatory, means for complying with requirements included in directives. NNSA may establish NNSA-specific policies unless disapproved by the Secretary of Energy.

NNSA and its contractors due, in part, to flawed processes in place for risk management.⁵ The panel concluded that DOE orders related to safety and security often lacked the precision, consistency, and clear implementing guidance necessary to translate the orders' intentions into practice. The panel reported that laboratory staff view the lack of clear processes as a key impediment in carrying out their work.

Referring to these reports' findings, Senate Report 115-262 directed NNSA to collect information from its M&O contractors on specific requirements they deem particularly burdensome and publish this information in a report.⁶ NNSA provided this report, *Burdensome Regulatory Requirements*, to Congress in June 2019.⁷

NNSA's report included the following information:

- NNSA's methodology for collecting the M&O contractors' views on the requirements and a summary of NNSA's analysis of the contractor-provided information, including M&O contractor rating data.⁸
- A prioritized list of 16 matters that NNSA committed to reviewing based in part on its assessment of M&O contractor rating data.
- An appendix containing information about the 91 total requirements M&O contractors identified as burdensome across several subjects—including safety, security, and personnel management—and the sources of the requirements identified, including DOE and NNSA directives and statutory requirements. Senate Report 115-262 directed NNSA to provide this information without edits.

Senate Report 115-262 also included a provision for us to review NNSA's 2019 report on burdensome requirements. Our report provides information on three areas related to NNSA's report on the requirements that M&O contractors identified as burdensome: (1) a comparison of NNSA's findings in its report with findings reported by external groups, (2) NNSA's approach to collecting and reporting the information on requirements M&O contractors identified as burdensome, and (3) NNSA's actions to address the requirements that the M&O contractors identified.

To compare the findings from NNSA's review, we identified three external groups that published reports with findings related to NNSA challenges with M&O contractor oversight. We reviewed

⁵The National Defense Authorization Act for Fiscal Year 2013 created the Congressional Advisory Panel on the Governance of the Nuclear Security Enterprise (Augustine-Mies Panel) to examine options and make recommendations for revising the governance structure, mission, and management of the nuclear security enterprise.

⁶S. Rep. No. 115-262, at 416-17 (2018), accompanying the John S. McCain National Defense Authorization Act for Fiscal Year 2019, S. 2987, 115th Cong. (2018).

⁷National Nuclear Security Administration, *Burdensome Regulatory Requirements*, DOE/NA-0088 (Washington, D.C.: June 2019).

⁸In its report, NNSA refers to M&O contractor "ranking data." Throughout this report, we refer to these data as "rating data" because NNSA directed M&O contractors to rate each burdensome regulation on a scale of low, medium, and high, based on the likelihood of changing the requirement and the effects such a change would have on cost savings, morale, recruitment and retention, and mission capability.

these reports to identify common themes and recommendations. We also conducted a literature search to identify any additional relevant reports completed in the last 10 years.

To address questions about NNSA's approach to collecting and reporting information on requirements that M&O contractors identified as burdensome, we examined the methodology described in the *Burdensome Regulatory Requirements* report and reviewed supplemental documents, including NNSA's survey template and instructions provided to M&O contractors for completion. We also conducted interviews with NNSA officials responsible for designing and implementing the methodology. We conducted an analysis of the information NNSA collected on 91 requirements to determine the number, subject, and source of requirements identified by each M&O contractor and to determine whether any requirements were identified by multiple M&O contractors. We also reviewed the rating information collected for the 91 requirements to identify any gaps in ratings that contractors provided. We interviewed M&O contractor representatives about their perspectives on NNSA's data collection process, including their interpretation of the term "burdensome" in the context of the data collection effort. To corroborate this information, we also conducted interviews with officials from the seven NNSA field offices.

Finally, to provide information about NNSA's efforts to address requirements that M&O contractors identified as burdensome, we collected information on the requirements listed in the *Burdensome Regulatory Requirements* report and interviewed knowledgeable NNSA officials about ongoing regulatory reform efforts.

We conducted this performance audit from June 2020 to June 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Comparison of NNSA's Findings with Related Reports

What findings have external groups reported related to contractor requirements perceived as potentially burdensome?

Three external groups carried out studies and assessments on the nuclear security enterprise, and each issued reports citing ways in which NNSA's oversight has contributed to the burden for M&O contractors and may have contributed to increased costs or reduced mission capabilities.

- **The Congressional Advisory Panel on the Governance of the Nuclear Security Enterprise (Augustine-Mies Panel).** In 2014, the Augustine-Mies Panel issued a report describing a dysfunctional relationship between NNSA and its contractors. The panel interviewed contractor representatives and, based in part on those interviews, reported that regulation of the DOE nuclear security enterprise had, over time, become increasingly beleaguered with competing authorities, conflicting guidance, and costly but

often ineffective oversight.⁹ The panel recommended that the Secretary of Energy and Director of NNSA eliminate wasteful and ineffective transactional oversight.¹⁰

- **The Commission to Review the Effectiveness of the National Energy Laboratories (CRENEL).** In 2015, CRENEL issued two reports describing the erosion of the relationship between DOE and many of its laboratories, three of which are part of the nuclear security enterprise—Lawrence Livermore National Laboratory, Los Alamos National Laboratory, and Sandia National Laboratories.¹¹ CRENEL reported, based on its interviews with M&O contractors and review of available information, that the multitude of oversight entities had led “to a highly burdensome operating environment” that severely diminished the effectiveness of the relationship between DOE and the M&O contractors. CRENEL recommended that DOE (1) give the laboratories and M&O contractors the authority to operate with more discretion whenever possible, and (2) for nonnuclear, non-high-hazard, unclassified activities, allow laboratories to use federal, state, and national standards instead of DOE requirements.
- **The Panel to Track and Assess Governance and Management Reform in the Nuclear Security Enterprise (NAPA/NAS Panel).** In 2016, the NAPA (National Academy of Public Administration)/NAS Panel started a 4 1/2-year assessment to track NNSA’s progress in addressing the concerns raised in the Augustine-Mies Panel report.¹² In its final assessment in 2020, the panel reported that it had witnessed improvements in both the governance and management of the nuclear security enterprise as well as in the relationships between NNSA and its M&O contractors. However, the NAPA/NAS panel concluded in its 2020 report that more work was needed to maintain this progress and to continue reforming the nuclear security enterprise. In particular, the NAPA/NAS panel concluded that NNSA should continue to work with its M&O contractors to improve operations and address burdensome practices, including

⁹Congressional Advisory Panel on the Governance of the Nuclear Security Enterprise, *A New Foundation for the Nuclear Enterprise* (November 2014).

¹⁰NNSA uses the term “transaction-based oversight” to describe the direct or hands-on approach to the agency’s oversight of M&O contractors’ performance through such mechanisms as on-site reviews, facility inspections, and other actions that involve direct evaluation of contractor activities. Another means of conducting oversight, known as contractor assurance, allows NNSA to assure the systems and processes used by M&O contractors who self-identify and correct potential problems.

¹¹Commission to Review the Effectiveness of the National Energy Laboratories, *Securing America’s Future: Realizing the Potential of the Department of Energy’s National Laboratories*, Vol. 1: Executive Report (October 2015); and *Securing America’s Future: Realizing the Potential of the Department of Energy’s National Laboratories*, Vol. 2: Technical Chapters and Appendices (October 2015). As required by law, the Secretary of Energy established this independent commission in 2014 to issue a report to the Secretary of Energy and congressional appropriations committees about DOE’s national laboratories.

¹²National Academies of Sciences, Engineering, and Medicine and the National Academy of Public Administration, *Report 1 on Tracking and Assessing Governance and Management Reform in the Nuclear Security Enterprise* (Washington, D.C.: National Academies Press, 2017); *Report 2 on Tracking and Assessing Governance and Management Reform in the Nuclear Security Enterprise* (Washington, D.C.: National Academies Press, 2018); *Report 3 on Tracking and Assessing Governance and Management Reform in the Nuclear Security Enterprise* (Washington, D.C.: National Academies Press, 2019); *Report 4 on Tracking and Assessing Governance and Management Reform in the Nuclear Security Enterprise* (Washington, D.C.: National Academies Press, 2020); and *Track and Assess Governance and Management Reform in the Nuclear Security Enterprise* (Washington, D.C.: National Academies Press, 2020).

excessive data calls.¹³ The panel recommended that NNSA and M&O contractor management expand their existing processes to identify and mitigate burdensome processes and requirements, instituting a process of continuous improvement.

How do the findings in the external groups' reports compare with those in NNSA's 2019 *Burdensome Regulatory Requirements* report?

The three groups' reports generally discussed how implementing certain requirements created burden for the M&O contractors. The reports do not identify specific requirements or sources of requirements that contributed to the burden M&O contractors reported experiencing.¹⁴ For example:

- The Augustine-Mies Panel report states that misguided contract requirements reinforced a focus on inefficient transactional oversight.
- CRENEL's report states that DOE had often established its own requirements across a wide variety of low-risk areas, such as human resources, business services, and other administrative functions. The report's conclusions state that such requirements added little value to laboratory operation and performance; wasted time and resources on unnecessary transactional details; and led to redundant layers of bureaucracy, also adding to laboratory overhead as well.
- The final NAPA/NAS Panel report states that staff at the three laboratories told the panel that the burden of so many requirements infringed on the amount of time staff have available to focus intently on their technical work.

In contrast, NNSA's *Burdensome Regulatory Requirements* report explicitly identifies 91 requirements or sources of requirements that M&O contractors found to be burdensome; these include DOE and NNSA directives, federal regulations, and statutory requirements. For example, a requirement within DOE Order 472.2 related to the Temporary Clearance Upgrade Process was cited by one contractor as burdensome because, in its view, the current requirement, which it stated is inconsistent with national standards limiting the use of temporary clearance upgrades, creates a clearance backlog. The contractor recommended that the requirement be modified to restate National Industrial Security Program Operating Manual guidance and standards.¹⁵

In its 2019 report, NNSA also described some of the actions the agency took from 2015 through 2019 to address requirements that its M&O contractors had, through prior efforts, identified as

¹³Generally, the purpose of data calls is to provide NNSA, DOE, and other entities with information to perform oversight of M&O contractors and support important programmatic work and management decisions, or to provide critical information to other parts of the department or the U.S. government. We previously reported on NNSA's management of data calls to contractors in GAO, *Nuclear Security Enterprise: NNSA's Management of Data Calls to Contractors*, GAO-19-286R (Washington, D.C.: Feb. 26, 2019) and found that NNSA had taken actions to address burdensome data calls to include ensuring data calls follow appropriate contract terms and conditions.

¹⁴One CRENEL report does discuss requirements that contributed to burden for M&O contractors but these findings apply to the three laboratories included in its scope and not to all NNSA sites.

¹⁵According to NNSA officials, this requirement is under revision by DOE. NNSA officials stated that DOE has conducted an analysis of the order and determined that two sections regarding Other Government Agency employees and Homeland Security Presidential Directive 12 eligibility needed to be added. The new sections are currently being created, and the order is expected to undergo DOE's formal review in 2021.

burdensome. For example, NNSA reported that it had participated in a working group that recommended that DOE eliminate certain requirements within DOE's Order on Program and Project Management for the Acquisition of Capital Assets (DOE Order 413.3B). NNSA reported that DOE had accepted the working group's recommendations and had revised the order in 2017.

NNSA's Approach to Collecting and Reporting Information on Requirements That M&O Contractors Identified as Burdensome

What was NNSA's approach to collecting information on requirements that the M&O contractors identified as burdensome?

NNSA used a two-step process to collect information from its seven M&O contractors. First, NNSA collected information on the requirements the contractors deemed burdensome. Second, NNSA collected rating information about these requirements.

- **Step 1: Information collection.** NNSA collected information from the M&O contractors by directing NNSA field offices to work with each contractor to identify a list of requirements that it viewed as "particularly burdensome."¹⁶ NNSA provided a template to the field offices to help ensure the information the offices collected for each requirement included similar information, such as the source and type of the requirement (e.g., DOE order or policy, M&O contract), the intent of the requirement, the reason the M&O contractor found the requirement to be burdensome, the impact of the requirement, and a recommended alternative. NNSA gave its field offices about 7 weeks to complete this step. In all, the seven M&O contractors identified 91 requirements as burdensome.¹⁷
- **Step 2: Rating.** NNSA provided the combined list of 91 requirements to all seven M&O contractors and asked them to rate each requirement based on the likelihood that the requirement could be changed and the effects such a change would have on cost savings, morale, recruitment and retention, and mission capability.¹⁸ NNSA also instructed the M&O contractors not to provide a rating for requirements that were not applicable to their site. In its communication to the M&O contractors, NNSA stated it would use the rating information to prioritize the requirements for potential review. NNSA provided 5 business days for the M&O contractors to complete this step.¹⁹

How did NNSA define "burdensome" in its request for information from its M&O contractors?

NNSA did not provide a definition to its field offices of what constituted a "burdensome" requirement, although it provided the language from Senate Report 115-262 to the field

¹⁶NNSA sent a letter to field offices that directed them to collect information on "data supporting the frequency with which negative consequences are observed, and a description of the specific impact of each practice in areas such as morale, recruiting, and retention; increased costs to the government; and damage to mission capability" and to "identify the intended purpose of the given practice and/or regulation and how these benefits could otherwise be achieved." The letter included the Senate committee report language as an attachment.

¹⁷NNSA sent this request for information on November 9, 2018, and accepted submissions through December 31, 2018.

¹⁸The M&O contractors rated requirements on a scale using "low," "medium," and "high."

¹⁹NNSA collected this information from January 15 through 22, 2019; however, Monday, January 21, was a federal holiday.

offices.²⁰ We interviewed M&O contractor representatives and found that their definitions of what constituted a “burdensome requirement” varied. One M&O contractor told us that it would have been helpful for NNSA to provide a definition for the term “burdensome” as the contractor established its approach to identifying requirements considered burdensome. Another M&O contractor representative, however, told us that the contractor understood the implied definition of “burdensome” because the issue had been discussed across the nuclear security enterprise and was a topic covered in external group reports that discussed NNSA’s management of its M&O contractors.

In contrast, in at least two other cases, without additional guidance from NNSA, M&O contractors developed their own definitions. For example, one M&O contractor defined burdensome requirements as those that are “overlapping, overly restrictive, and requirements that encourage haphazard enforcement or encourage extreme risk avoidance.” Another M&O contractor interpreted “burdensome” requirements as requirements that did not add value given the amount of work necessary to implement the requirement, according to representatives from that contractor. We found, based on our interviews with M&O contractor representatives, that while the definitions they used for identifying requirements they perceived as burdensome differed, it is unclear whether having a common definition would have led contractors to identify additional or different requirements as burdensome.

How did the M&O contractors identify and rate the requirements?

The seven M&O contractors used varying approaches to identify and rate requirements they considered burdensome.²¹ For example, in step 1, two M&O contractors queried functional managers at their sites to identify and report to NNSA a list of burdensome requirements. A third M&O contractor used a similar approach to create a list but then prioritized the list of requirements and reported only the top three to NNSA.²² The M&O contractor for Kansas City National Security Campus did not provide a new list of requirements in response to NNSA’s request. Instead, the Kansas City field office identified requirements as burdensome based on an ongoing regulatory reform effort started in 2007, according to M&O contractor representatives and field office officials.²³ These variations could impact the usefulness of the information collected, in that NNSA’s report may not include a comprehensive list of requirements that the M&O contractors considered burdensome.

²⁰The Senate report includes language stating that the committee was aware of complaints about “overlapping, overly restrictive, and inefficient regulation from NNSA and its laboratories and plants.”

²¹M&O contractor representatives from two of the sites did not provide us information on their approaches to collecting and reporting information on requirements they considered burdensome because the staff involved with the effort had retired or separated from the contractor.

²²In its guidance, NNSA did not instruct the M&O contractors to limit the number of requirements they found burdensome. Additionally, while representatives from this M&O contractor said they reported three requirements as burdensome, NNSA’s report included information on two requirements the contractor identified.

²³Beginning in 2005, DOE and NNSA exempted the Kansas City National Security Campus from DOE and NNSA orders in areas where there were relevant commercial or industrial standards, known as the “Kansas City model.” According to Kansas City M&O contractor representatives, the oversight plan for the site established an Operating Requirements Review Board that reviews newly published or updated DOE and NNSA directives to determine whether they should be added to the M&O contract. We previously reported on these reform efforts; see GAO, *National Nuclear Security Administration: Agency Expanded Use of Some Federal Oversight Reforms, but Is Still Determining Future Plans*, GAO-14-588 (Washington, D.C.: July 17, 2014).

In step 2, the rating information NNSA collected on requirements M&O contractors considered burdensome was incomplete. Specifically, we analyzed the M&O contractor input NNSA presented in its report and found that two M&O contractors provided incomplete rating information for one or more of the following areas: likelihood of success; cost savings; morale, recruitment, and retention; and mission capability. For example, one M&O contractor provided rating information for DOE Order 470.4B, Safeguards and Security, in only one of the four areas—implying that the requirement is applicable to their site—but provided incomplete rating information. In addition, three M&O contractors did not provide rating information for at least one of the requirements that applied to their site. In its report, NNSA did not explain this inconsistency in information from the M&O contractors or describe any steps the agency took to address the inconsistency by ensuring the agency had collected complete information. As it communicated to the contractors, NNSA used the rating data to prioritize requirements it planned to review.

What were the M&O contractors’ perspectives on NNSA’s approach for collecting the information?

Representatives from four M&O contractors said that NNSA’s approach was reasonable.²⁴ However, representatives from one of the four M&O contractors said that more time to rate the requirements identified in step 2 would have improved the information they provided to NNSA because they would have had more time to consider the effects of the requirements on their operations. Representatives from this M&O contractor told us their staff had 3 to 4 business days to review and rate the 91 requirements, due in part to NNSA’s time frame for this step spanning a weekend with a federal holiday.

What subject areas did the requirements M&O contractors identified as burdensome cover, and what were the sources of these requirements?

In its report, NNSA categorized the 91 requirements M&O contractors identified into nine subject areas:

- cyber and information technology;
- emergency management;
- environment and waste;
- personnel management and human resources;
- project management;
- real property;
- safety;
- security; and
- other.²⁵

The contractors most frequently identified security and safety requirements as burdensome, according to our analysis of the data that appear in the *Burdensome Regulatory Requirements* report. Specifically, three of the seven M&O contractors identified more security requirements as burdensome than other requirements. Additionally, five contractors identified at least one safety

²⁴For the other three M&O contractors, the representatives we interviewed did not provide a perspective on NNSA’s approach.

²⁵NNSA did not define what the subject “other” included, but according to its report, “other” encompassed subjects such as records management and contractor legal management requirements, among other things.

requirement as burdensome. Figure 2 summarizes the subjects of requirements that M&O contractors identified as burdensome in 2019, by site.

Figure 2: Subjects of Requirements That the National Nuclear Security Administration’s (NNSA) Management and Operating (M&O) Contractors Identified and Reported as Burdensome in 2019, by Site

| Kansas City National Security Campus | | Total: 8 | Pantex Plant and Y-12 National Security Complex | | Total: 57 |
|---|---|------------------|---|----|-----------------|
| Other ^a | 3 | | Security | 22 | |
| Cyber and information technology | 2 | | Safety | 10 | |
| Safety | 2 | | Emergency management | 5 | |
| Project management | 1 | | Environment and waste | 5 | |
| | | | Project management | 5 | |
| Los Alamos National Laboratory | | Total: 4 | Personnel management and human resources | 4 | |
| Security | 2 | | Cyber and information technology | 3 | |
| Personnel management and human resources | 1 | | Other ^a | 2 | |
| Real property | 1 | | Real property | 1 | |
| Lawrence Livermore National Laboratory | | Total: 13 | | | |
| Security | 8 | | Sandia National Laboratories | | Total: 2 |
| Personnel management and human resources | 3 | | Safety | 1 | |
| Project management | 1 | | Security | 1 | |
| Other ^a | 1 | | Savannah River Site | | Total: 2 |
| Nevada National Security Site | | Total: 5 | Personnel management and human resources | 1 | |
| Emergency management | 1 | | Safety | 1 | |
| Environment and waste | 1 | | Grand total: 91 | | |
| Personnel management and human resources | 1 | | | | |
| Safety | 1 | | | | |
| Other ^a | 1 | | | | |

Source: GAO analysis of NNSA report on *Burdensome Regulatory Requirements*. | GAO-21-496R

Note: M&O contractors identified requirements across the following subjects: cyber and information technology; emergency management; environment and waste; personnel management and human resources; project management; real property; safety; security; and other.

^aNNSA did not define what the subject “other” included, but in its 2019 report, *Burdensome Regulatory Requirements*, “other” encompassed subjects such as records management and contractor legal management requirements.

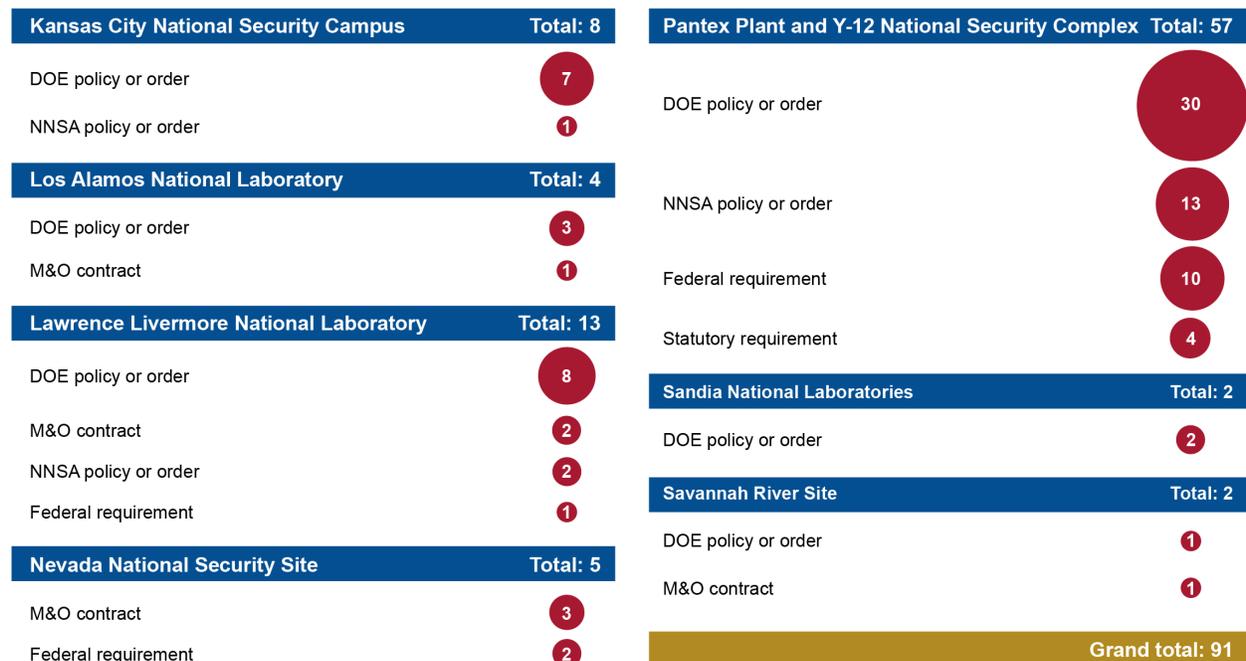
The requirements the contractors identified as burdensome came from one of the following five sources:

- DOE order or policy;²⁶
- NNSA order or policy;
- M&O contract;
- statutory requirement; or
- a federal requirement contained in the Code of Federal Regulations, Federal Acquisition Regulation, or Office of Management and Budget guidance.

²⁶In its report, NNSA refers to a variety of agency directives as policies, orders, or standards. In this report, we refer to these directives as orders or policies.

According to our analysis, six of the seven M&O contractors identified at least one DOE policy or order as the source of requirements they considered burdensome (see fig. 3). Four M&O contractors identified the M&O contract as a source, and three identified NNSA policies as a source. Contractors sometimes identified the entire source—for example, contract or policy—as burdensome; other times, they identified specific requirements within a source. Sometimes the contractors identified multiple requirements within the same source as burdensome. For example, one contractor identified the entire DOE Order for Program and Project Management of the Acquisition of Capital Assets (DOE Order 413.3B) as burdensome, while another contractor identified specific requirements within the order as burdensome.

Figure 3: Source of Requirements That the National Nuclear Security Administration’s (NNSA) Management and Operating (M&O) Contractors Identified and Reported as Burdensome in 2019, by Site



DOE = Department of Energy

Source: GAO analysis of NNSA report on *Burdensome Regulatory Requirements*. | GAO-21-496R

Note: M&O contractors identified requirements across the following sources: DOE order or policy; NNSA order or policy; M&O contract; statutory requirement; or a federal requirement contained in the Code of Federal Regulations, Federal Acquisition Regulation, or Office of Management and Budget guidance.

Some M&O contractors identified the same sources of burdensome requirements, according to our analysis. For example, multiple M&O contractors reported the same four sources of requirements, and one M&O contractor identified the same source twice (see table 1).

Table 1: Sources of Requirements That Multiple National Nuclear Security Administration (NNSA) Management and Operating (M&O) Contractors Identified and Reported as Burdensome in 2019

| Sources of requirements identified by multiple M&O contractors | Sites where the M&O contractor identified the source for the requirement |
|--|---|
| 10 C.F.R. pt. 851, Worker Safety and Health Program ^a | Nevada National Security Site; Pantex Plant and Y-12 National Security Complex |
| DOE Order 414.1D, Quality Assurance | Savannah River Site; Pantex Plant and Y-12 National Security Complex |
| DOE Order 470.6, Technical Security Program | Los Alamos National Laboratory; Lawrence Livermore National Laboratory |
| DOE Order 413.3B, Program and Project Management for Acquisition of Capital Assets | Kansas City National Security Campus; Pantex Plant and Y-12 National Security Complex |

Legend: DOE= Department of Energy

Source: GAO analysis of NNSA's 2019 *Burdensome Regulatory Requirements* report. | GAO-21-496R

^aOne M&O contractor identified this source twice, without identifying specific requirements contained within the source.

NNSA Actions to Address Matters That M&O Contractors Identified as Burdensome

In its 2019 report, what matters did NNSA commit to reviewing?

In its report, NNSA committed to reviewing a list of 16 matters identified as potentially burdensome to M&O contractors. In some cases, matters on the list were specific requirements that appear within a source, such as an agency directive. In other cases, matters on the list were entire sources, of requirements, such as a federal regulation. For example, NNSA committed to reviewing specific requirements within DOE's order related to Personnel Security (DOE Order 472.2). NNSA also committed to reviewing a whole section of the Code of Federal Regulations on Worker Safety and Health (10 C.F.R. pt. 851).

NNSA used two approaches to identify the list of 16 matters selected for review. First, NNSA used the rating data it collected from M&O contractors and selected 10 matters from the list of 91 requirements the contractors had identified as burdensome, according to agency officials. Second, the agency identified six additional matters based on input from members of the Operations and Efficiencies Board (OEB).²⁷

According to agency officials, NNSA chose to review the 16 matters because the agency did not have the resources to review all 91 requirements. The officials also told us that NNSA was not required to take action to address any of the matters that M&O contractors identified.

What actions has NNSA taken to address the matters it committed to reviewing?

We asked NNSA to provide us with updates on actions the agency had taken to address the 16 matters it committed to reviewing since it published its 2019 report. According to NNSA officials, 10 matters are under revision or have been changed; two matters were reviewed, but no changes were made; and four matters were reviewed, and M&O contractor input will be

²⁷The OEB was established in 2015 to improve coordination and collaboration across the nuclear security enterprise. Board membership includes one co-chair from NNSA's Office of Safety, Infrastructure, and Operations; one co-chair from NNSA's M&O contractors; and all NNSA deputy field office managers.

considered should the regulation undergo a revision in the future. Table 2 summarizes NNSA's responses to our request.

Table 2: National Nuclear Security Administration (NNSA) Actions to Address Matters Management and Operating (M&O) Contractors Identified as Burdensome, as of April 2021

| Matter NNSA selected for review | Subject area | Type of change | Status |
|--|---|-----------------------|---|
| Department of Energy (DOE) Order 205.1, <i>Department of Energy Cyber Security Program</i> , no wireless technologies | Cyber/Information Technology | DOE policy/order | DOE is revising this requirement. |
| DOE Order 151.1D, <i>Comprehensive Emergency Management</i> | Emergency Management | DOE policy/order | NNSA reviewed the DOE order and decided not to recommend any changes to the order. |
| DOE Order 243.1B, <i>Records Management</i> | Other | DOE policy/order | DOE is revising this requirement. |
| Contract Appendix G (Personnel Appendix) | Personnel Management/Human Resources (HR) | M&O contract change | NNSA reviewed the contract requirement and decided not to change the requirement. |
| DOE Acquisition Regulation 970.5222-2, <i>Overtime Management (a)</i> (December 2000) | Personnel Management/HR | Federal requirement | NNSA reviewed the DOE Acquisition Regulation and took action to address this issue. |
| DOE Order 426.2, <i>Personnel Selection, Training, Qualification, and Certification Requirements for DOE Nuclear Facilities</i> | Personnel Management/HR | DOE policy/order | NNSA reviewed the DOE order; the M&O input was recorded and will be considered during next revision of the DOE order. |
| 10 Code of Federal Regulations pt. 850, <i>Chronic Beryllium Disease Prevention Program (Beryllium (Be) requirements implementation)</i> | Safety | Federal requirement | DOE is revising this requirement. |
| 10 Code of Federal Regulations, pt. 851, <i>Worker Safety and Health Program</i> | Safety | Federal requirement | NNSA reviewed the federal regulation; The M&O input was recorded and will be considered during next revision of the federal regulation. |
| DOE Order 420.1 C, <i>Facility Safety</i> | Safety | DOE policy/order | NNSA reviewed the DOE order; the M&O input was recorded and will be considered during next revision of the DOE order. |
| DOE Standard 1066, <i>Fire Protection</i> , hourly fire patrols per Technical Safety Requirements, 2016 | Safety | DOE policy/order | NNSA reviewed the DOE standard; the M&O input was recorded and will be considered during next revision of the DOE standard. |
| DOE Order 472.2, <i>Personnel Security</i> , (chg. 1) Attachment 3, 2.a-c, Temporary Clearance Upgrade Process | Security | DOE policy/order | DOE is revising this requirement. |

| Matter NNSA selected for review | Subject area | Type of change | Status |
|--|---------------------|-----------------------|-----------------------------------|
| DOE Order 472.2, <i>Personnel Security</i> , (chg. 1) paragraph 4.I, and Attachment 3, 3.a-k, Interim Clearance Processing | Security | DOE policy/order | DOE is revising this requirement. |
| DOE Order 472.2, <i>Personnel Security</i> , (chg. 1) paragraph 4.b.4, Appendix B, and Attachment 3, Requirements, 2.b.4 | Security | DOE policy/order | DOE is revising this requirement. |
| DOE Order 473.3A, <i>Protection Program Operations</i> | Security | DOE policy/order | DOE is revising this requirement. |
| DOE Order 473.3A, <i>Protection Program Operations</i> (Attachment 2, Section J, Firearms Training, paragraph 1.d.) | Security | DOE policy/order | DOE is revising this requirement. |
| DOE Order 472.2, <i>Personnel Security</i> , Attachment 3, 2.b.(1) | Security | DOE policy/order | DOE is revising this requirement. |

Source: GAO analysis of NNSA information. | GAO-21-496R

Does NNSA have any mechanisms for collecting, on an ongoing basis, M&O contractor input on requirements and their impact on site operations?

NNSA collects M&O contractor input on requirements on an ongoing basis through the OEB, according to NNSA officials. The OEB meets regularly to share best practices for facility and site operations, and identifying and sharing best practices is one way that NNSA is working with its M&O contractors to reduce burden at the sites, according to NNSA officials. NNSA officials also told us that, in their view, M&O contractors may have misinterpreted some requirements over the years, which could create burden in implementing those requirements. A representative from one M&O contractor shared a similar observation. Specifically, while carrying out its own initiative looking into burdensome requirements, the contractor observed instances in which the burden of a requirement might have originated from the M&O contractor itself through its interpretation or implementation of the requirement.

Additionally, DOE Regulatory Reform Task Forces were another mechanism through which NNSA sought to collect information on potentially burdensome requirements, according to NNSA’s 2019 report. NNSA led or participated in these groups from 2017 through 2020, according to agency officials and its 2019 report. Specifically, these groups reviewed a number of additional requirements as potentially burdensome, including some the M&O contractors had identified.²⁸

Agency Comments

We provided NNSA with a draft of this report for review and comment. NNSA provided technical comments on a draft of this report, which were incorporated as appropriate.

²⁸DOE Regulatory Reform Task Forces were established pursuant to Executive Order 13777, *Enforcing the Regulatory Reform Agenda*, signed February 24, 2017. Executive Order 13777 was revoked on January 20, 2021.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Energy, and other interested parties. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at (202) 512-3841 or bawden@gao.gov. Contact points for our Office of Congressional Relations and Public Affairs may be found on the last page of this report. In addition to the contact named above, Wyatt R. Hundrup (Assistant Director), Emily Pinto (Analyst-in-Charge), Alisa Carrigan, Amanda Mullan, and Kevin Tarmann made key contributions to this report. Additionally, Colleen Candrl, Antoinette Capaccio, Tara Congdon, Cindy Gilbert, Danielle Novak, and Dan Royer made contributions.

A handwritten signature in black ink, appearing to read "Allison Bawden". The signature is fluid and cursive, with a long horizontal stroke at the end.

Allison Bawden
Director, Natural Resources and Environment

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