



Department of Energy

Washington, DC 20585

May 7, 2007

MEMORANDUM FOR INGRID A. C. KOLB
DIRECTOR
OFFICE OF MANAGEMENT

THROUGH: WALTER S. HOWES
ACTING DIRECTOR
OFFICE OF INFORMATION RESOURCES

FROM: GLENN S. PODONSKY
CHIEF HEALTH, SAFETY AND SECURITY OFFICER
OFFICE OF HEALTH, SAFETY AND SECURITY

SUBJECT: Notice of Intent to Develop a New Department of Energy (DOE) Policy, "Confidentiality of Requests for Worker Safety and Health Investigations or Inspections"

PURPOSE: The purpose of this directive is to describe the Department's commitment and approach to maintaining the anonymity or confidentiality of an individual who requests that the DOE Office of Enforcement, within the Office of Health, Safety and Security (HSS), initiate an investigation or inspection of a potential noncompliance with title 10, Code of Federal Regulations, part 851 (10 CFR 851), "Worker Safety and Health Program," and requests such protection.

JUSTIFICATION: This directive will identify how the DOE Office of Enforcement will meet the requirements of 10 CFR 851.40(c) (attachment 1) and commitments made in the preamble to 10 CFR 851 (attachment 2) to maintain the anonymity of individuals who submit a request for investigation or inspection in accordance with the rule and ask to remain anonymous. The enforcement provisions of this new rule went into effect on February 9, 2007. This directive is new, does not contain complex issues, and is approximately two pages in length. Consistent with the proposed development schedule (attachment 3), a 30-day (Track 1) processing schedule is requested for this directive.



IMPACT: The cost to HSS to implement this program will be minimal, and the contents of the policy will have no impact on other directives, standards, contracts, or procedures. The policy will be of value to the Department in helping to ensure that workers at DOE sites feel free to report safety and health concerns without fear of reprisal or intimidation by coworkers or supervisors.

CONTACT: Point of contact for this policy is Bill R. McArthur, Director, Office of Worker Safety and Health Policy, at 3-9674.

DECISION:

Concur: _____

Nonconcur: _____

Timeframe: ___ 30 days ___ 60 days ___ 90 days ___ 120 days

Date: _____

3 Attachments

Excerpts from 10 CFR 851 Rule

Federal Register / Vol. 71, No. 27 / Thursday, February 9, 2006 / Rules and Regulations

Subpart E—Enforcement Process

§ 851.40 Investigations and Inspections.

(c) Any worker or worker representative may request that the Director initiate an investigation or inspection pursuant to paragraph (a) of this section. A request for an investigation or inspection must describe the subject matter or activity to be investigated or inspected as fully as possible and include supporting documentation and information. The worker or worker representative has the right to remain anonymous upon filing a request for an investigation or inspection.

Excerpts from 10 CFR 851 Preamble

Federal Register / Vol. 71, No. 27 / Thursday, February 9, 2006 / Rules and Regulations

DOE received several comments related to retribution and reprisal as a result of workers exercising their rights. Seven commenters (Exs. 11, 21, 30, 40, 44, 60, 62) expressed concern over retribution against workers who report violations, injuries, and unsafe work conditions and felt the regulation should preclude discrimination against any employee for notifying DOE or requesting an investigation. An eighth commenter (Ex. 15) qualified a similar concern by suggesting that security- and confidentiality-related issues be considered in granting worker rights. This commenter suggested that section 851.20(b) include language that allows the worker rights without reprisal, as long as their actions are "consistent with non-disclosure, confidentiality and security requirements." One commenter (Ex. 62) supported anonymous notifications and complaints by workers to DOE enforcement staff without fear of disclosure of identity to non-enforcement personnel. This commenter suggested that standardized forms to be created for this purpose with an explicit option for the complainant to select anonymity. Furthermore under the Privacy Act the commenter proposed that penalties should apply to individuals who breach the employee's right to confidentiality in making a complaint. This commenter argued that such breaches should be considered as civil violations. DOE addresses these concern related to retribution and reprisal in the final rule by including sections 851.20(a)(6), 851.20(b)(7), and 851.20(b)(9). The first of these three requires management to establish procedures for workers to report, without reprisal, job-related fatalities, injuries, illnesses, incidents, and hazards and make recommendations about appropriate ways to control those hazards. Sections 851.20(b)(7) and 851.20(b)(9) give workers the right, again without reprisal, to express concerns related to worker safety and health and to stop work if they discover employee exposures to imminently

dangerous conditions or other serious hazards. DOE notes that each of these provisions are enforceable under the rule and that contractors are subject to both civil and contract penalty for noncompliance with these provision. Further, provision 851.40(c) allows workers or worker representatives to remain anonymous upon filing requests for investigation or inspection. Notwithstanding a worker's right to remain anonymous, DOE notes that penalties could not be assessed under the Privacy Act. Such a complaint would not be a part of a system of records and would not be placed in any sort of file identifiable by name, employee number or other unique identifier. Without those two qualifications, such a complaint would not be covered by the Privacy Act.

The right of a worker or worker representative to request an investigation is included in final rule section 851.40(c). Although the worker may remain anonymous, the investigation request should identify the activity of concern as specifically as possible and include supporting documentation. Several commenters (Exs. 30, 54, 55, 60) suggested that persons requesting investigations or inspections be allowed to remain anonymous. DOE agrees, final rule section 851.40(c) now includes a provision establishing a worker's or worker representative's right to remain anonymous upon filing a request for an inspection or investigation.

A commenter (Ex. 47) suggested that DOE indicate in the rule that all information pertaining to the investigation or inspection that is in the possession of DOE will be provided to the contractor at the initiation of the investigation or inspection. Although DOE generally provides such information to contractors, the Office of Price-Anderson Enforcement must retain the right not to disclose certain information if it believes the information may interfere with the willingness of individuals to step forward on a confidential basis or if sharing the information will hinder the Office's enforcement activities. Therefore, DOE is not adopting this suggestion.

**Proposed Development Schedule
Confidentiality of Requests for Worker Safety and Health
Investigations or Inspections**

Milestone	Date
Send Justification Memorandum to Office of Information Resource Management, MA-44	May 1, 2007
Invite stakeholders (include MA-44 analyst, DNFSB, and/or CTA, as appropriate) to participate in developing proposed directive	May 4, 2007
Begin developing proposed directive	May 7, 2007
Send draft directive to management for review	May 18, 2007
Send draft directive to MA-44	May 25, 2007
Post to RevCom	May 30, 2007
Target approval date	June 30, 2007