

U.S. Department of Energy

Washington, D.C.

NOTICE

DOE N 472.3

Approved: 07-10-2013
Expires: 07-10-2014

SUBJECT: IMPLEMENTATION OF PRESIDENTIAL POLICY DIRECTIVE 19, PROTECTING WHISTLEBLOWERS WITH ACCESS TO CLASSIFIED INFORMATION

1. PURPOSE. This Notice implements Presidential Policy Directive 19, *Protecting Whistleblowers with Access to Classified Information* (the PPD), which was issued by President Obama on October 10, 2012. Implementation of the PPD will ensure that employees who are eligible for access to classified information can effectively report waste, fraud, and abuse while protecting classified information. Section A of the PPD is not covered by this Notice; it will be addressed separately by the Department of Energy's Office of Intelligence and Counterintelligence.
2. CANCELLATION. None.
3. APPLICABILITY.
 - a. Departmental Applicability. Except for the equivalency in paragraph 3.c., this Notice applies to all Departmental elements.

The Administrator of the National Nuclear Security Administration (NNSA) must assure that NNSA employees comply with their responsibilities under this Notice. Nothing in this Notice will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of Public Law (P.L.) 106-65 to establish Administration-specific policies, unless disapproved by the Secretary.
 - b. DOE Contractors. This Notice does not apply to contractors.
 - c. Equivalency. In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 U.S.C. sections 2406 and 2511, and to ensure consistency through the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this Notice for activities under the Director's cognizance, as deemed appropriate.
4. REQUIREMENTS.
 - a. Prohibition on Retaliation. Any officer or employee of the Department of Energy who has authority to take, direct others to take, recommend, or approve any action affecting an employee's eligibility for access to classified information shall not, with respect to such authority, take or fail to take, or threaten to take or fail to take, any action affecting an employee's eligibility for access to classified information as a reprisal for making a Protected Disclosure. A Protected Disclosure, as defined by the PPD, means:

- (1) a disclosure of information by the employee to a supervisor in the employee's direct chain of command up to and including the head of the employing agency, to the Inspector General of the employing agency or Intelligence Community Element, to the Director of National Intelligence, to the Inspector General of the Intelligence Community, or to an employee designated by any of the above officials for the purpose of receiving such disclosures, that the employee reasonably believes evidences (i) a violation of law, rule, or regulation; or (ii) gross management, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;
 - (2) any communication described by and that complies with subsection (a)(1), (d), or (h) of section 8H of the Inspector General Act of 1978 (5 U.S.C. App.); subsection (d)(5)(A) of section 17 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q); or subsection (k)(5)(A), (D), or (G), of section 103H of the National Security Act of 1947 (50 U.S.C. 403-3h);
 - (3) the exercise of any appeal, complaint, or grievance with regard to the violation of Section A or B of the PPD;
 - (4) lawfully participating in an investigation or proceeding regarding a violation of Section A or B of the PPD; or
 - (5) cooperating with or disclosing information to an Inspector General, in accordance with applicable provisions of law in connection with an audit, inspection, or investigation conducted by the Inspector General, if the actions described under subparagraphs (3) through (5) do not result in the employee disclosing classified information or other information contrary to law.
- b. Review process. There shall be a review process that:
- (1) Permits employees to appeal actions affecting their eligibility for access to classified information that they believe were taken in reprisal for making a protected disclosure, in violation of the PPD;
 - (2) Applies to actions that arise after the date on which the agency certifies the agency review process;
 - (3) Provides for the protection of classified information and intelligence sources and methods, consistent with applicable laws, executive orders and regulations;
 - (4) Ensures the Department of Energy Office of Inspector General will conduct a review to determine whether an action affecting eligibility for access to classified Information violated the PPD and may recommend that the agency reconsider the employee's eligibility for access to classified information consistent with the national security and with

Executive Order 12968 and recommend that the agency take other corrective action to return the employee, as nearly as practicable and reasonable, to the position such employee would have held had the reprisal not occurred;

- (5) Ensures the Secretary of Energy, or designee, has the opportunity to carefully consider the findings of and actions recommended by the Office of Inspector General; and
 - (6) Ensures that an employee alleging a reprisal, who has exhausted the applicable review process required by the PPD, is aware of the availability of an external review by a three-member Inspector General panel (External Review Panel) chaired by the Inspector General for the Intelligence Community.
- c. The contents of this Notice shall have no impact upon the policies and procedures for:
- (1) processing individuals in the Human Reliability Program, as set forth at 10 CFR Part 712, or
 - (2) the conduct of administrative review, as set forth at 10 CFR Part 710.

5. RESPONSIBILITIES.

- a. Secretary of Energy, or delegate, shall:
 - (1) Carefully consider the findings of and actions recommended by the DOE Office of Inspector General as part of the review process described herein; and
 - (2) Carefully consider the recommendation of the External Review Panel within 90 days and inform the panel and the Director of National Intelligence of the action he or she has taken.
- b. Managers, as defined at 10 CFR section 710.5(a) shall ensure that the following language is inserted into suspension letters sent in accordance with section 710.10(c), and notification letters sent in accordance with section 710.21, to federal employees that inform them of the specific security concerns that serve as the basis for suspension of their access authorization and their procedural rights to resolve their eligibility for an access authorization:

“If you believe these actions are occurring as retaliation against you for having made a protected disclosure, as defined in Presidential Policy Directive 19, *Protecting Whistleblowers with Access to Classified Information* (PPD), which includes reporting waste, fraud or abuse, you have the right to request that the Department of Energy’s Office of

Inspector General (OIG) review this allegation to determine whether an action affecting eligibility for access authorization violated the PPD. If the OIG substantiates this allegation, it may recommend to the Secretary of Energy that corrective action be taken. Should you choose to avail yourself of this right of review by the OIG, the processing of your security clearance, will continue as set forth in 10 CFR Part 710 and explained in this letter. Also, after exhausting the review process with the OIG, you may request an external review by a three-member Inspector General panel chaired by the Inspector General (IG) of the Intelligence Community (IC) by providing a written request for such a review directly to the IC IG office.”

- c. The Director, Office of Departmental Personnel Security, Office of Health, Safety and Security, shall provide guidance and training to managers and their staffs, as needed, to ensure successful implementation of this requirement.
- d. The Inspector General will, upon receipt of an allegation that an employee was retaliated against for making a Protected Disclosure, as defined in the PPD, commence a review of the allegation and may make recommendations that the agency take corrective action. The OIG shall ensure that the review process provides for the protection of classified information and intelligence sources and methods.

6. REFERENCES.

- a. Title 10, Code of Federal Regulations, Part 710, *Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material*.
- b. Presidential Policy Directive 19, *Protecting Whistleblowers with Access to Classified Information*, 10/10/12.

7. CONTACT. Office of Departmental Personnel Security, Office of Security, Office of Health, Safety and Security, (202) 586-3249; Counsel to the Inspector General, Office of Inspector General, (202) 586-4393.

BY ORDER OF THE SECRETARY OF ENERGY:



DANIEL B. PONEMAN
Deputy Secretary