

Department of Energy

§ 851.40

requirement of a standard that has no direct or immediate relationship to safety or health, and no enforcement action will be taken);

(2) When a variance is not necessary for the conditions, practice, means, methods, operations, or processes used or proposed to be used by contractor;

(3) Contractor does not demonstrate that the approval criteria are met.

[71 FR 6931, Feb. 9, 2006, as amended at 71 FR 68733, Nov. 28, 2006]

§ 851.33 Terms and conditions.

A variance may contain appropriate terms and conditions including, but not limited to, provisions that:

- (a) Limit its duration;
- (b) Require alternative action;
- (c) Require partial compliance; and
- (d) Establish a schedule for full or partial compliance.

§ 851.34 Requests for conferences.

(a) Within the time allotted by a notice of the filing of an application, any affected contractor or worker may file with the Chief Health, Safety and Security Officer a request for a conference on the application for a variance.

(b) A request for a conference filed pursuant to paragraph (a) of this section must include:

- (1) A concise statement explaining how the contractor or worker would be affected by the variance applied for, including relevant facts;
- (2) A specification of any statement or representation in the application which is denied, and a concise summary of the evidence that would be adduced in support of each denial; and
- (3) Any other views or arguments on any issue of fact or law presented.

(c) The Chief Health, Safety and Security Officer, or designee, must respond to a request within fifteen days and, if the request is granted, indicate the time and place of the conference and the DOE participants in the conference.

[71 FR 6931, Feb. 9, 2006, as amended at 71 FR 68733, Nov. 28, 2006]

Subpart E—Enforcement Process

§ 851.40 Investigations and inspections.

(a) The Director may initiate and conduct investigations and inspections relating to the scope, nature and extent of compliance by a contractor with the requirements of this part and take such action as the Director deems necessary and appropriate to the conduct of the investigation or inspection. DOE Enforcement Officers have the right to enter work areas without delay to the extent practicable, to conduct inspections under this subpart.

(b) Contractors must fully cooperate with the Director during all phases of the enforcement process and provide complete and accurate records and documentation as requested by the Director during investigation or inspection activities.

(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.

(d) The Director must inform any contractor that is the subject of an investigation or inspection in writing at the initiation of the investigation or inspection and must inform the contractor of the general purpose of the investigation or inspection.

(e) DOE shall not disclose information or documents that are obtained during any investigation or inspection unless the Director directs or authorizes the public disclosure of the investigation. Prior to such authorization, DOE must determine that disclosure is not precluded by the Freedom of Information Act, 5 U.S.C. 552 and part 1004 of this title. Once disclosed pursuant to the Director's authorization, the information or documents are a matter of public record.

(f) A request for confidential treatment of information for purposes of the Freedom of Information Act does not