

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

February 10, 2017

Mr. Donald F. McGahn
White House Counsel
The White House
1600 Pennsylvania Avenue N.W.
Washington, D.C. 20500

Dear Mr. McGahn:

I am writing to request additional information regarding a recently issued Department of Energy (DOE) rule titled "Procedural Rules for DOE Nuclear Activities."¹ I am deeply concerned that this regulation may send a chilling message to whistleblowers, and discourage the reporting of safety violations at our nation's nuclear facilities.

According to a recent article in the *Washington Post*, DOE has temporarily halted an Obama Administration regulation that allowed for civil penalties to be assessed against federal nuclear contractors that retaliate against whistleblowers who report waste, fraud, abuse, and dangerous conditions.² According to a summary published in the Federal Register, the new rule:

Stays DOE regulations for the assessment of civil penalties against certain contractors and subcontractors for violations of the prohibition against an employee who reports violations of law, mismanagement, waste, abuse or dangerous/unsafe workplace conditions, among other protected activities, concerning nuclear safety.³

Over the years, the House Committee on Energy and Commerce has relied upon important information obtained by whistleblowers to highlight both fraud and abuse related to federal spending and unsafe activities pertaining to the energy sector that could harm workers and the environment. According to the *Washington Post*, whistleblower advocates are concerned that this recent DOE rule could "discourage the reporting of violations" related to nuclear safety,

¹ Department of Energy, *Procedural Rules for DOE Nuclear Activities*, 82 Fed. Reg. 8807 (Jan. 31, 2017) (final rule; stay of regulations).

² *Trump Administration Halts Penalties against Firms that Punish Nuclear Whistleblowers*, *Washington Post* (Feb. 8, 2017).

³ See note 1.

violations of the law, and contractor mismanagement.⁴ Advocates are further concerned that this recent DOE rule “is an excellent example of why a total freeze on regulations could ultimately be harmful to taxpayers and undermine public safety.”⁵

Given this Committee’s longstanding interest in saving taxpayers from federal contractor fraud, waste, and abuse, and protecting whistleblowers rights generally, I remain concerned that this rule, even if temporarily enacted, could send a chilling message to future whistleblowers who may want to report wrongdoing. Therefore, I would appreciate if you could both clarify the basis for this rule and provide the Committee with additional information including the following:

1. What is the basis for the January 31, 2017 DOE rulemaking (82 FR 8807), and how do you believe that it will benefit DOE or the public from the perspective of contractor fraud, waste, and abuse or unsafe working conditions related to nuclear activities?
2. It would appear that the halting of levying civil penalties on federal contractors who retaliate against whistleblowers—even temporarily—could chill future whistleblowers from coming forward. Do you agree with that assessment, and if not, why not?
3. Did the Administration consult with any federal entities that regularly work with whistleblowers, such as DOE’s Office of Inspector General or the Office of Special Counsel, to assess whether the issuance of this rule could have possible “chilling” impacts on future whistleblower activity? If no, why not?

It is critical to the security of our energy resources and to the public interest that these whistleblower protections be maintained. I request that you provide answers to these inquiries by February 24, 2017. If you have any questions about this request, please have your staff contact the Committee at (202) 225-3641.

Sincerely,



Frank Pallone, Jr.
Ranking Member

⁴ See note 2.

⁵ Project on Government Oversight, *New Freeze on Regulations Leaves Nuclear Whistleblowers Out in the Cold* (Feb. 2017) (www.pogo.org/strauss/issues/nuclear-security/2017/new-freeze-on-regs-nuclear-whistleblowers.html).