

§ 1903.10

shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act. In any such proceeding the Secretary, the Commission, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets." Section 15 of the Act is considered a statute within the meaning of section 552(b)(3) of title 5 of the United States Code, which exempts from the disclosure requirements matters that are "specifically exempted from disclosure by statute."

(b) Section 1905 of title 18 of the United States Code provides: "Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both; and shall be removed from office or employment."

(c) At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Compliance Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential—trade secret" and shall not be disclosed ex-

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cept in accordance with the provisions of section 15 of the Act.

(d) Upon the request of an employer, any authorized representative of employees under §1903.8 in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is no such representative or employee, the Compliance Safety and Health Officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

§ 1903.10 Consultation with employees.

Compliance Safety and Health Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Compliance Safety and Health Officer.

§ 1903.11 Complaints by employees.

(a) Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Area Director or to a Compliance Safety and Health Officer. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided the employer or his agent by the Area Director or Compliance Safety and Health Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Department of Labor.

(b) If upon receipt of such notification the Area Director determines that the complaint meets the requirements set forth in paragraph (a) of this section, and that there are reasonable

grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists. Inspections under this section shall not be limited to matters referred to in the complaint.

(c) Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Compliance Safety and Health Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with the requirements of paragraph (a) of this section.

(d) Section 11(c)(1) of the Act provides: "No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act."

(Approved by the Office of Management and Budget under control number 1218-0064)

[36 FR 17850, Sept. 4, 1973, as amended at 54 FR 24333, June 7, 1989]

§ 1903.12 Inspection not warranted; informal review.

(a) If the Area Director determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under § 1903.11, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Assistant Regional Director and, at the same time, providing the employer with a copy of such statement by certified mail. The employer may submit an opposing written statement of position with the Assistant Regional Director and, at the same time, provide the complaining party with a copy of such statement by certified mail. Upon the request of the complaining party or the employer, the Assistant Regional Director, at his discretion, may hold an informal con-

ference in which the complaining party and the employer may orally present their views. After considering all written and oral views presented, the Assistant Regional Director shall affirm, modify, or reverse the determination of the Area Director and furnish the complaining party and the employer and written notification of this decision and the reasons therefor. The decision of the Assistant Regional Director shall be final and not subject to further review.

(b) If the Area Director determines that an inspection is not warranted because the requirements of § 1903.11(a) have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of § 1903.11(a).

§ 1903.13 Imminent danger.

Whenever and as soon as a Compliance Safety and Health Officer concludes on the basis of an inspection that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by the Act, he shall inform the affected employees and employers of the danger and that he is recommending a civil action to restrain such conditions or practices and for other appropriate relief in accordance with the provisions of section 13(a) of the Act. Appropriate citations and notices of proposed penalties may be issued with respect to an imminent danger even though, after being informed of such danger by the Compliance Safety and Health Officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

§ 1903.14 Citations; notices of de minimis violations; policy regarding employee rescue activities.

(a) The Area Director shall review the inspection report of the Compliance Safety and Health Officer. If, on the basis of the report the Area Director believes that the employer has violated a requirement of section 5 of the