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DEPARTMENT OF ENERGY

10 CFR Parts 708 and 710

RIN 1992–AA36

Hearing Officer and Administrative Judge

AGENCY: Office of Hearings and Appeals, Department of Energy (DOE).

ACTION: Final rule; technical amendments.

SUMMARY: DOE is amending its regulations which set forth the procedures for processing complaints by employees of DOE contractors alleging retaliation by the employers for disclosure of certain information, for participation in congressional proceedings, or for refusal to participate in dangerous activities, and which set forth the procedures for resolving questions concerning eligibility for DOE authorization to access classified matter or special nuclear material by replacing the term ''Hearing Officer'' with ''Administrative Judge.''

DATES: This rule is effective on August 23, 2013.

FOR FURTHER INFORMATION CONTACT: Poli A. Marmolejos, Director, Office of Hearings and Appeals, HG–1, 1000 Independence Avenue SW, Washington, DC 20585; *Poli.Marmolejos@hq.doe.gov;* 202–287–1566.

SUPPLEMENTARY INFORMATION:

I. Introduction

Regulations at 10 CFR part 708 set forth the procedures for processing complaints by employees of DOE contractors alleging retaliation by their employers for disclosure of information concerning danger to public or worker health or safety, substantial violations of law, or gross mismanagement; for participation in congressional proceedings; or for refusal to participate in dangerous activities. Various DOE personnel are assigned specific duties in this process. Currently, whenever the parties fail to resolve complaints informally and the complainant requests a hearing under § 708.21, a ''hearing officer'' presides over an evidentiary administrative hearing.

Regulations at 10 CFR part 710 set forth the criteria and procedures for resolving questions concerning eligibility for DOE access authorization (or security clearance). Various DOE personnel are assigned specific duties in this process. Currently, a ''hearing officer'' presides over an evidentiary administrative review hearing when an applicant for, or holder of, access authorization requests such a hearing under § 710.21.

Personnel in other agencies of the Federal Government who perform identical or similar duties, both in the specific contexts of adverse employment actions and security clearance and in other areas, are commonly referred to as ''Administrative Judges.''

To accurately recognize the adjudicative duties performed by DOE hearing officers under parts 708 and 710, and for greater consistency with the title employed by other Federal agencies for positions that carry the same or essentially identical duties and responsibilities, this final rule replaces all references to the term ''Hearing Officer,'' in both parts, with the term ''Administrative Judge.''

The regulatory amendments in this final rule do not alter substantive rights or obligations under current law.

II. Procedural Requirements

A. Review Under Executive Orders 12866 and 13563

It has been determined that this nomenclature change is not ''a significant regulatory action,'' as defined in Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action is not subject to review under Executive Order 12866 by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

DOE has also reviewed this regulation pursuant to Executive Order 13563 (76 FR 3281 (Jan. 21, 2011)). Executive Order 13563 is supplemental to, and explicitly reaffirms the principles, structures, and definitions governing, the regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. DOE believes that today's rule is consistent with the principles of Executive Order 13563.

B. Administrative Procedure Act

The regulatory amendments in this notice of final rulemaking reflect a nomenclature change that relates solely to internal agency organization, management, and personnel. As such, pursuant to 5 U.S.C. 553(a)(2), this rule is not subject to the rulemaking requirements of the Administrative Procedure Act, including the requirements to provide prior notice and an opportunity for public comment and a 30-day delay in effective date.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As this rule of agency organization, management, and personnel is not subject to the requirement to provide prior notice and an opportunity for public comment under 5 U.S.C. 553 or any other law, this rule is not subject to the analytical requirements of the Regulatory Flexibility Act.

D. Review Under the Paperwork Reduction Act

This final rule does not impose a collection of information requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule will not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule amends existing regulations without changing the environmental effect of the regulations being amended, and, therefore, is covered under the Categorical Exclusion in paragraph A5 of Appendix A to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has determined that this final rule does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of a Federal regulatory action on State, local, and tribal governments, and the private sector. DOE has determined that today's regulatory action does not impose a Federal mandate on State, local, or tribal governments or on the private sector.

I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3501, *et seq.*) requires that agencies review disseminations of information to the public under guidelines established by each agency pursuant to general guideline issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This final rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

M. Approval by the Office of the Secretary of Energy

The Office of the Secretary of Energy has approved the issuance of this final rule.

List of Subjects

10 CFR Part 708

Administrative practice and procedure, Government contracts, Whistleblowing.

10 CFR Part 710

Administrative practice and procedure, Classified information, Government contracts, Government employees, Nuclear materials.

Issued in Washington, DC, on August 19, 2013.

Poli A. Marmolejos,

Director, Office of Hearings and Appeals.

For the reasons stated in the preamble, DOE amends parts 708 and 710 of chapter III, title 10, Code of Federal Regulations, as set forth below:

PART 708—DOE CONTRACTOR EMPLOYEE PROTECTION PROGRAM

■ 1. The authority citation for part 708 continues to read as follows:

Authority: 42 U.S.C. 2201(b), 2201(c), 2201(l), and 2201(p); 42 U.S.C. 5814 and 5815; 42 U.S.C. 7251, 7254, 7255, and 7256; and 5 U.S.C. Appendix 3.

§§ 708.2, 708.24, 708.25, 708.26, 708.27, 708.28, 708.30, 708.31, and 708.32 [Amended]

■ 2. Sections 708.2 (definition); 708.24(b); 708.25; 708.26; 708.27; 708.28(b); 708.30; 708.31; and 708.32(a) and (c) are amended by removing the words ''Hearing Officer'' and adding in their place the words ''Administrative Judge''.

PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILTY FOR ACCESS TO CLASSIFIED MATTER OR SPECIAL NUCLEAR MATERIAL

■ 3. The authority citation for part 710 continues to read as follows:

Authority: 42 U.S.C. 2165, 2201, 5815, 7101, *et seq.,* 7383h–l; 50 U.S.C. 2401 *et seq.;* E.O. 10450, 3 CFR 1949–1953 comp., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 comp., p. 398, as amended, 3 CFR Chap. IV; E.O. 13526, 3 CFR 2010 Comp., pp. 298–327 (or successor orders); E.O. 12968, 3 CFR 1995 Comp., p. 391.

§§ 710.5, 710.21, 710.22, 710.25, 710.26, 710.27, 710.28, 710.29, 710.30, 710.32, 710.34, and 710.35 [Amended]

■ 4. Sections 710.5(a); 710.21(b)(3)(ii) and (6) through (8); 710.22(a)(1) through (3); 710.25 section heading and (b) through (f); 710.26(a) through (k), (l) introductory text, (l)(2)(ii), and (p); 710.27; 710.28 section heading, (a)(1) and (4), (b) introductory text, (b)(3), and (c) introductory text; 710.29(i); 710.30(b)(1) and (2); 710.32(a) and (b) introductory text; 710.34; and 710.35 are amended by removing the words ''Hearing Officer'' and adding, in their place, the words ''Administrative Judge''.

[FR Doc. 2013–20597 Filed 8–22–13; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 246

[Regulation TT; Docket No. R–1457]

RIN 7100–AD–95

Supervision and Regulation Assessments for Bank Holding Companies and Savings and Loan Holding Companies With Total Consolidated Assets of $50 Billion or More and Nonbank Financial Companies Supervised by the Federal Reserve

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a final rule to implement section 318 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Section 318 directs the Board to collect assessments, fees, or other charges equal to the total expenses the Board estimates are necessary or appropriate to carry out the supervisory and regulatory responsibilities of the Board for bank holding companies and savings and loan holding companies with total consolidated assets of $50 billion or more and nonbank financial companies designated for Board supervision by the Financial Stability Oversight Council.

DATES: *Effective date:* The final rule is effective October 25, 2013.

FOR FURTHER INFORMATION CONTACT: Mark Greiner, Senior Supervisory Financial Analyst (202–452–5290), Nancy Perkins, Assistant Director (202–973–5006), or William Spaniel, Senior Associate Director (202–452–3469), Division of Banking Supervision and Regulation; Laurie Schaffer, Associate General Counsel (202–452–2272), or Michelle Moss Kidd, Attorney (202–736–5554), Legal Division; Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. Users of Telecommunication Device for the Deaf (TTD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On April 18, 2013, the Board published in the **Federal Register** a notice of proposed rulemaking (the NPR or the proposal) seeking public comment on the Board's proposal to implement section 318 of the Dodd-Frank Act.[1] Section 318 directs the Board to collect assessments, fees, or other charges (assessments) from bank holding companies (BHCs) and savings and loan holding companies (SLHCs) with $50 billion or more in total consolidated assets, and from nonbank financial companies designated by the Financial Stability Oversight Council (Council) pursuant to section 113 of the Dodd-Frank Act for supervision by the Board (Board-supervised nonbank financial companies), (collectively, assessed companies), equal to the expenses the Board estimates are necessary or appropriate to carry out its supervision and regulation of those companies. The proposed rule outlined the Board's assessment program, including how the Board would: (a) Determine which companies are assessed companies for each calendar-year assessment period, (b) estimate the total expenses that are necessary or appropriate to carry out the supervisory and regulatory responsibilities to be

[1] 78 FR 23162 (April 18, 2013).