

employee or applicant for employment that treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy*. A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability*. Subject to § 1042.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, recovery therefrom, and any temporary disability resulting therefrom as any other temporary disability for all job-related purposes, including commencement, duration, and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave*. In the case of a recipient that does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status that she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

**§ 1042.535 Effect of state or local law or other requirements.**

(a) *Prohibitory requirements*. The obligation to comply with §§ 1042.500 through 1042.550 is not obviated or alleviated by the existence of any State or local law or other requirement that imposes prohibitions or limits upon employment of members of one sex that are not imposed upon members of the other sex.

(b) *Benefits*. A recipient that provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

**§ 1042.540 Advertising.**

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job in question.

**§ 1042.545 Pre-employment inquiries.**

(a) *Marital status*. A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss" or "Mrs."

(b) *Sex*. A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

**§ 1042.550 Sex as a bona fide occupational qualification.**

A recipient may take action otherwise prohibited by §§ 1042.500 through 1042.550 provided it is shown that sex is a bona fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section that is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

**Subpart F—Other Provisions**

**§ 1042.600 Covered programs.**

The financial assistance programs to which this part applies are listed in Appendix A to 10 CFR part 1040.

**§ 1042.605 Enforcement procedures.**

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 10 CFR part 1040, subparts G and H.

[FR Doc. 01-583 Filed 1-17-01; 8:45 am]

BILLING CODE 6450-01-P

**DEPARTMENT OF ENERGY**

**10 CFR Part 1044**

[Docket No. SO-RM-00-3164]

RIN 1992-AA26

**Office of Security and Emergency Operations; Security Requirements for Protected Disclosures Under Section 3164 of the National Defense Authorization Act for Fiscal Year 2000**

**AGENCY:** Department of Energy.

**ACTION:** Interim final rule and opportunity for public comment.

**SUMMARY:** The Department of Energy (DOE) is publishing an interim final rule to prescribe the security procedures that a DOE employee or DOE contractor employee, including an employee or contractor employee of the National Nuclear Security Administration, who is engaged in defense activities must follow to make a protected disclosure of classified or other controlled information under the whistleblower protection provisions in section 3164 of the National Defense Authorization Act for Fiscal Year 2000. Anyone who follows these procedures when making a disclosure of classified or other controlled information may not be discharged, demoted, or otherwise discriminated against as a reprisal for making the disclosure.

**EFFECTIVE DATE:** The interim final rule is effective February 20, 2001. Interested persons may submit written comments on this interim rule by February 20, 2001. Comments received after this date will be considered to the extent practicable.

**ADDRESSES:** Written comments (3 copies) should be addressed to: U.S. Department of Energy, Docket No. SO-RM-00-3164, Attn: Richard Farman, Office of General Counsel, GC-74, 1000 Independence Ave., SW., Washington, DC 20585.

All comments received will be available for public inspection as part of the administrative record on file for this rulemaking in the Department of Energy Freedom of Information Office Reading Room, Room 1E-090, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 10585, (202) 586-6020, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The docket material for this rulemaking will be filed under Docket No. SO-RM-00-3164.

**FOR FURTHER INFORMATION CONTACT:** Cathy Tullis, Office of Security and Emergency Operations (SO-211), U.S. Department of Energy, 19901

Germantown Road, Germantown, MD 20874-1290, (301) 903-4805.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

Today's notice adds a new Part 1044 to Title 10 of the Code of Federal Regulations to establish security requirements for the disclosure of classified and other controlled information under section 3164 of the National Defense Authorization Act for Fiscal Year 2000 (NDAA for FY 2000) (42 U.S.C. 7239). Section 3164 directs the Secretary of Energy to establish a program to ensure that DOE employees or DOE contractor employees engaged in defense activities may not be discharged, demoted, or otherwise discriminated against as a reprisal for making protected disclosures. The Secretary is required by section 3164(g) to prescribe regulations to ensure the security of any information disclosed under the program (42 U.S.C. 7239(g)). To qualify as a "protected disclosure" of classified or other controlled information, a covered employee must take appropriate steps to protect the security of the information in accordance with guidance provided by the DOE Inspector General, and reveal the information only to a person or entity specified in the statute (42 U.S.C. 7239(c)).

Section 3164(j) of the NDAA for FY 2000 provides that complaints of discriminatory acts taken in reprisal for making a protected disclosure may be submitted to the DOE Office of Hearings and Appeals for investigation (42 U.S.C. 7239(j)). Section 3164(k) directs the Secretary of Energy to take appropriate actions to abate acts of reprisal (42 U.S.C. 7239(k)).

##### II. Discussion of Rule Provisions

Part 1044 informs DOE and DOE contractor employees engaged in defense activities how to make a protected disclosure of classified and other controlled information. The definitions in section 1044.03 of "classified information" and "contractor" are drawn from 10 CFR Part 1045, "Nuclear Classification and Declassification." The same definitions apply to this rule because of the similar subject matter. DOE defines "defense activities" to cover the range of its defense activities carried out under the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*). The definition of "defense activities" in section 1044.03 is consistent with the definition of "Atomic Energy Defense Programs" in DOE's regulations concerning protection of unclassified controlled nuclear information (see 10 CFR 1017.3). All

Departmental-related activities involving classified information and Unclassified Controlled Nuclear Information are considered to be "defense activities" covered by this rule.

The term "unclassified controlled nuclear information" is defined in section 1044.03, and used in conjunction with "classified information" throughout the rule to identify the types of information that are covered by the protected disclosure provisions of section 3164 of the NDAA for FY2000. For reasons that follow, DOE has concluded that unclassified controlled nuclear information under section 148 of the Atomic Energy Act (42 U.S.C. 2168) is the only type of information that falls within the meaning of "other information" in the phrase "classified or other information" used in section 3164(c)(3) to define "protected disclosures."

DOE's interpretation of "other information" in section 3164 is consistent with the apparent intent of Congress to cover the disclosure of controlled information. Under section 3164(g), DOE is required to prescribe regulations to ensure the security of any information disclosed under the statute. Other provisions impose an obligation on a whistleblower to take appropriate steps to protect the security of the information to be disclosed (section 3164(c)(1)), and restrict who may receive a disclosure of classified or other information (section 3164(d)). These provisions would not make sense if "other information" encompassed uncontrolled information. The legislative history also shows that Congress intended to address in section 3164 the disclosure of national security sensitive information. See Conference Report on the National Defense Authorization Act for Fiscal Year 2000, H.R. Conf. Rep. No. 106-301, at p. 920.

Section 1044.06 lists the persons and entities that may receive a protected disclosure (42 U.S.C. 7239(d)). Section 1044.07 provides that the Inspector General will assist the whistleblower by obtaining from the Office of Safeguards and Security a determination whether a particular person has the appropriate security access authorization to receive the classified or other controlled information.

Sections 1044.08 and 1044.09 provide that a person who wishes to make a protected disclosure must submit the information to the Inspector General, who in turn will obtain a determination from the Office of Nuclear and National Security Information on the security classification, if any, of the information. If the information is classified or

controlled, section 1044.11 provides that the whistleblower must follow applicable security requirements concerning how to generate, mark, reproduce, store, destroy, and transmit classified and other controlled information. These security requirements derive from Executive Orders, DOE regulations, and current security directives issued by the Office of Safeguards and Security. The Inspector General will provide the whistleblower with guidance on how to comply with these requirements. The individual has a responsibility to obtain assistance and guidance before seeking to make a protected disclosure.

As required by the NDAA for FY 2000, DOE provides in section 1044.09 that the identity of a whistleblower under this program will be protected (42 U.S.C. 7239(f)(3)). Section 1044.12 describes the procedures provided in the statute (42 U.S.C. 7239(i)-(k)) for acting on complaints of alleged discrimination against employees as reprisal for making protected disclosures.

##### III. Public Comment

The interim final rule published today prescribes security procedures that DOE and DOE contractor employees must follow to make a protected disclosure of classified or other controlled information under section 3164(g) of the NDAA for FY 2000. As a rule of agency procedure, this rulemaking is exempt from the notice and comment requirements in the Administrative Procedure Act, 5 U.S.C. 553. DOE, nevertheless, is providing an opportunity for interested persons to submit written data and views on the interim rule. Interested persons should submit their comments to the address indicated in the **ADDRESSES** section of this notice. The outside of the envelope and the comments should be labeled as follows: "Protected Disclosure Rulemaking, Docket No. SO-RM-00-3164." If you believe that any information or data you submit may be exempt from public disclosure by law, you should submit one complete copy as well as one copy from which you have deleted the information you believe to be exempt from disclosure. The Department will determine if the information or data is exempt from disclosure.

All comments received will be available for public inspection as part of the administrative record on file for this rulemaking in the Department of Energy Freedom of Information Office Reading Room, Room 1E-090, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-

6020, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

#### IV. Procedural Requirements

##### A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be "a significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

##### B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (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 will not have a "significant economic impact on a substantial number of small entities." Today's interim final rule prescribes the security procedures that a DOE or DOE contractor employee engaged in defense activities must follow when making a protected disclosure of classified or other controlled information under section 3164 of the NDAA for FY 2000. DOE is not required by the Administrative Procedure Act (5 U.S.C. 553) or any other law to propose this rule for public comment. Accordingly, the Regulatory Flexibility Act requirements do not apply to this rulemaking, and no regulatory flexibility analysis has been prepared.

##### C. Review Under the Paperwork Reduction Act

No additional information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

##### D. Review Under the National Environmental Policy Act

Today's rule describes the security requirements a DOE or DOE contractor employee engaged in defense activities must follow when making a protected disclosure of classified or other controlled information under section 3164 of the NDAA for FY 2000. Implementation of this rule will not affect whether such information might cause or otherwise be associated with an environmental impact. The Department has, therefore, determined that this rule is covered under the Categorical Exclusion found at paragraph A.6. of

Appendix A to Subpart D, 10 CFR Part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

##### E. 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. With regard to the review required by section 3(a), 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 interim final rule meets the relevant standards of Executive Order 12988.

##### F. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 10, 1999) requires agencies to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. DOE published its intergovernmental consultation policy and procedures on March 14, 2000 (65 FR 13735). "Policies that have federalism implications" is defined in the Executive Order to include regulations that have substantial direct effects 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. DOE has examined this interim final rule and has determined that it would 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 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 prepare a written assessment of the effects of any federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million in any one year. The Act also requires a federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity to timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. DOE's intergovernmental consultation process under the Unfunded Mandates Reform Act of 1995 is described in a statement of policy published by DOE on March 18, 1997 (62 FR 12820). The interim final rule published today does not contain any federal mandate, so these requirements do not apply.

##### H. Review Under Plain Language Initiative

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. We invite your comments on how to make this rule easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format make the rule easier to understand?
- What else could we do to make the rule easier to understand?

##### I. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the interim final rule prior to its effective date. 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).

#### List of Subjects in 10 CFR Part 1044

Administrative practice and procedure, Classified information, Energy, Government contracts, National security information, Security information, Whistleblowing

Issued in Washington, DC, on November 30, 2000.

**T.J. Glauthier,**

*Deputy Secretary.*

For the reasons set forth in the preamble, DOE hereby amends Chapter X of title 10 of the Code of Federal Regulations as set forth below:

1. New Part 1044 is added to read as follows:

#### **PART 1044—SECURITY REQUIREMENTS FOR PROTECTED DISCLOSURES UNDER SECTION 3164 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2000**

Sec.

- 1044.01 What is the purpose of this part?
- 1044.02 Who must follow the requirements contained in this part?
- 1044.03 What definitions apply to this part?
- 1044.04 What is a protected disclosure?
- 1044.05 What is the effect of a disclosure qualifying as a “protected disclosure”?
- 1044.06 Who may receive a protected disclosure?
- 1044.07 How can you find out if a particular person is authorized to receive a protected disclosure?
- 1044.08 Do you have to submit the documents for classification review before you give them to someone?
- 1044.09 What do you do if you plan to disclose classified or unclassified controlled nuclear information orally rather than by providing copies of documents?
- 1044.10 Will your identity be protected?
- 1044.11 How do you protect the documents and information that you want to disclose?
- 1044.12 What procedures can you invoke if you believe you have been discharged, demoted, or otherwise discriminated against as a reprisal for making a protected disclosure?

**Authority:** 42 U.S.C. 7101 et seq., 7239, and 50 U.S.C. 2401 et seq.

#### **§ 1044.01 What is the purpose of this part?**

This part prescribes the security requirements for making protected disclosures of classified or unclassified controlled nuclear information under the whistleblower protection provisions of section 3164 of the National Defense Authorization Act for Fiscal Year 2000.

#### **§ 1044.02 Who must follow the requirements contained in this part?**

The requirements apply to you if you are:

- (a) An employee of DOE, including the National Nuclear Security Administration, or one of its contractors;
- (b) Engaged in DOE defense activities; and
- (c) Wish to make a protected disclosure as described in § 1044.04 of this part.

#### **§ 1044.03 What definitions apply to this part?**

The following definitions apply to this subpart:

*Atomic Energy Act* means the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.).

*Classified information* means:

- (1) Information classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act; or
- (2) Information that has been determined pursuant to Executive Order 12958 or prior Executive Orders to require protection against unauthorized disclosure and is marked to indicate its classification status when in document form (also referred to as “National Security Information” in 10 CFR Part 1045 or “defense information” in the Atomic Energy Act).

*Contractor* means any industrial, educational, commercial or other entity, grantee or licensee at any tier, including an individual, that has executed an agreement with the Federal Government for the purpose of performing under a contract, license or other agreement.

*Defense activities* means activities of DOE engaged in support of:

- (1) The production, testing, sampling, maintenance, repair, modification, assembly, disassembly, utilization, transportation, or retirement of nuclear weapons or components of nuclear weapons;
- (2) The production, utilization, or transportation of nuclear material for military applications; or
- (3) The safeguarding of activities, equipment, or facilities which support the production of nuclear weapons or nuclear material for nuclear weapons.

*DOE* means the Department of Energy, including the National Nuclear Security Administration.

*Unclassified controlled nuclear information* means unclassified government information prohibited from unauthorized dissemination under section 148 of the Atomic Energy Act and DOE implementing regulations in 10 CFR part 1017.

#### **§ 1044.04 What is a protected disclosure?**

A protected disclosure is:

(a) A disclosure of classified or unclassified controlled nuclear information that you reasonably believe provides direct and specific evidence of—

- (1) A violation of law or Federal regulation;
- (2) Gross mismanagement, a gross waste of funds, or an abuse of authority; or
- (3) A false statement to Congress on pursuant to an issue of material fact; and

(b) Protected pursuant to the procedures in this part, including the security procedures referenced in § 1044.11; and

(c) Revealed only to a person or organization described in § 1044.06.

#### **§ 1044.05 What is the effect of a disclosure qualifying as a “protected disclosure”?**

If a DOE or DOE contractor employee follows the procedures of this part when making a disclosure of classified or unclassified controlled nuclear information, then the employer (DOE or DOE contractor as applicable) may not discharge, demote, or otherwise discriminate against the employee as a reprisal for making the disclosure.

#### **§ 1044.06 Who may receive a protected disclosure?**

The following persons or organizations may receive a protected disclosure:

(a) A member of a committee of Congress having primary responsibility for oversight of the department, agency, or element of the Government to which the disclosed information relates;

(b) An employee of Congress who is a staff member of such a committee and has an appropriate security access authorization for the information being disclosed;

(c) The Inspector General of the Department of Energy;

(d) The Federal Bureau of Investigation; or

(e) Any other element of the Government designated by the Secretary of Energy as authorized to receive the information being disclosed.

#### **§ 1044.07 How can you find out if a particular person is authorized to receive a protected disclosure?**

You must contact the Department of Energy Inspector General for help in determining whether a particular person is authorized to receive the classified or unclassified controlled nuclear information you wish to disclose. The Inspector General will contact the Office of Safeguards and Security as necessary to determine the security access authorization of the person to receive the protected disclosure.

**§ 1044.08 Do you have to submit the documents for classification review before you give them to someone?**

Yes, you must submit each document with a classification or control marking and any unmarked document generated in a classified or controlled subject area to the Inspector General. The Inspector General forwards each document to the Office of Nuclear and National Security Information for a determination as to whether the information in the document is properly classified, controlled, or may be released to the public.

**§ 1044.09 What do you do if you plan to disclose classified or unclassified controlled nuclear information orally rather than by providing copies of documents?**

You must describe in detail to the Inspector General what information you wish to disclose. The Inspector General may require that the information to be disclosed be put in writing in order to ensure the Inspector General obtains and provides accurate advice. The Inspector General will consult with the Office of Nuclear and National Security Information who will provide you with advice, through the Inspector General, as to whether the information is classified or controlled and any steps needed to protect the information.

**§ 1044.10 Will your identity be protected?**

Yes, both the Inspector General and the Office of Nuclear and National Security Information must protect, consistent with legal requirements, your identity and any information about your disclosure.

**§ 1044.11 How do you protect the information that you want to disclose?**

To protect classified information and unclassified controlled nuclear information you plan to disclose, you must:

(a) Only disclose the information to personnel who possess the appropriate clearance and need-to-know for the information disclosed as required in 10 CFR part 710, after verifying any special authorizations or accesses, such as Sensitive Compartmented Information, Special Access Program, and Weapon Data information;

(b) Use only equipment (such as computers or typewriters) that is approved for classified processing for the generation of classified documents;

(c) Mark documents as required by 10 CFR part 1045 (classified information), 10 CFR Part 1017 (unclassified controlled nuclear information), or as required by the Office of Nuclear and National Security Information.

(d) Use only approved copiers to reproduce documents;

(e) Store classified documents in facilities approved by the U.S. Government for the storage of classified material;

(f) Use only approved destruction devices to destroy classified documents;

(g) Use only appropriate secure means, such as secure facsimile or secure telephone, to provide classified information orally or electronically when transmitting or communicating that information (e.g. the applicable classified mailing address); and

(h) Follow any additional specific instructions from the Office of Safeguards and Security on how to protect the information.

**§ 1044.12 What procedures can you invoke if you believe you have been discharged, demoted, or otherwise discriminated against as a reprisal for making a protected disclosure?**

If you believe you have been discriminated against as a reprisal for making a protected disclosure, you may submit a complaint to the Director of the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0107, or you may send your complaint to the Director, Office of Hearings and Appeals, by facsimile to FAX number (202) 426-1415. In your complaint, you should give your reasons for believing that you have been discriminated against as a reprisal for making a protected disclosure, and include any information you think is relevant to your complaint. The Office of Hearings and Appeals will conduct an investigation of your complaint unless the Director determines your complaint is frivolous. The Director will notify you in writing if your complaint is found to be frivolous. If an investigation is conducted, the Director will submit a report of the investigation to you, to the employer named in your complaint, and to the Secretary of Energy, or the Secretary's designee. The Secretary, or the Secretary's designee, will take appropriate action, pursuant to 42 U.S.C. 7239(k), to abate any discriminatory actions taken as reprisal for making a protected disclosure.

[FR Doc. 01-1328 Filed 1-17-01; 8:45 am]

BILLING CODE 6450-01-P

**SMALL BUSINESS ADMINISTRATION**

**13 CFR Part 126**

**HUBZone Program**

**AGENCY:** Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations governing the HUBZone Empowerment Contracting Program (HUBZone program). In particular, this rule clarifies the application of the HUBZone program to state and local governments, revises the definition of the term "principal office," eliminates the program eligibility restrictions on allowable affiliations of HUBZone small business concerns, and eases the program eligibility requirements and procurement restrictions concerning qualified HUBZone small business concerns that operate as non-manufacturers.

**DATES:** This rule is effective on February 20, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Michael McHale, Associate Administrator for the HUBZone Program, (202) 205-6731 or hubzone@sba.gov.

**SUPPLEMENTARY INFORMATION:** On October 3, 2000, the Small Business Administration (SBA) published in the **Federal Register**, 65 FR 58963, a proposed rule to amend its regulations governing the HUBZone program. The rule proposed to update the list of Federal agencies covered by the HUBZone program and clarify that the program does not apply to contracts awarded by state and local governments. In addition, the rule proposed to amend the definition of the term principal office to accommodate service and construction concerns, and to eliminate the program eligibility restrictions on allowable affiliations of HUBZone small business concerns (SBCs). Finally, the rule proposed to ease the program eligibility requirements and procurement restrictions concerning qualified HUBZone small business concerns that operate as non-manufacturers. The proposed regulatory amendments were intended to improve the efficiency and effectiveness of the program in light of SBA's experience since the effective date of the final regulations implementing the HUBZone Act of 1997, Title VI of the Small Business Reauthorization Act of 1997, Public Law 105-135.

**Discussion of Comments on the Proposed Rule**

SBA received 22 timely comments concerning the proposed amendments. The vast majority of the comments supported the proposed regulatory amendments and applauded SBA's efforts to improve and clarify the HUBZone regulations. In addition to expressing support for the amendments, a few commenters also recommended some modifications to two of the