§§ 630.402 through 630.406 [Redesignated as §§ 630.404 through 630.408].

■ 3a. Redesignate §§ 630.402 through 630.406 as §§ 630.404 through 630.408, respectively.

■ 3b. Add new § 630.402 to read as follows:

§ 630.402 Advanced sick leave.

(a) At the beginning of a leave year or at any time thereafter when required by the exigencies of the situation, an agency may grant advanced sick leave in the amount of:

(1) Up to 240 hours to a full-time employee—

(i) Who is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy, or childbirth;

(ii) For a serious health condition of the employee or a family member;

(iii) When the employee would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease;

(iv) For purposes relating to the adoption of a child; or

(v) For the care of a covered servicemember with a serious injury or illness, provided the employee is exercising his or her entitlement under 5 U.S.C. 6382(a)(3).

(2) Up to 104 hours to a full-time employee—

(i) When he or she receives medical, dental or optical examination or treatment;

(ii) To provide care for a family member who is incapacitated by a medical or mental condition or to attend to a family member receiving medical, dental, or optical examination or treatment;

(iii) To provide care for a family member who would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease; or

(iv) To make arrangements necessitated by the death of a family member or to attend the funeral of a family member.

(b) Two hundred forty hours is the maximum amount of advanced sick leave an employee may have to his or her credit at any one time. For a part-time employee (or an employee on an uncommon tour of duty), the maximum amount of sick leave an agency may advance must be prorated according to the number of hours in the employee's regularly scheduled administrative workweek.

■ 3c. Add new § 630.403 to read as follows:

§ 630.403 Substitution of sick leave for unpaid family and medical leave to care for a covered servicemember.

The amount of accumulated and accrued sick leave an employee may substitute for unpaid family and medical leave under 5 U.S.C. 6382(a)(3) for leave to care for a covered servicemember may not exceed a total of 26 administrative workweeks in a single 12-month period (or, for a part-time employee or an employee with an uncommon tour of duty, an amount of sick leave equal to 26 times the average number of hours in his or her scheduled tour of duty each week).

■ 4. Revise paragraphs (b) and (c) of § 630.502 to read as follows:

§ 630.502 Sick leave recredit.

* * * * *

(b) Except as provided in § 630.407 and in paragraph (c) of this section, an employee who has had a break in service is entitled to a recredit of sick leave (without regard to the date of his or her separation), if he or she returns to Federal employment on or after December 2, 1994, unless the sick leave was forfeited upon reemployment in the Federal Government before December 2, 1994.

(c) Except as provided in § 630.407, an employee of the government of the District of Columbia who was first employed by the government of the District of Columbia before October 1, 1987, and who has had a break in service is entitled to a recredit of sick leave (without regard to the date of his or her separation) if he or she returns to Federal employment on or after December 2, 1994, unless the sick leave was forfeited upon reemployment in the Federal Government before December 2, 1994.

* * * * *

[FR Doc. 2010–30371 Filed 12–2–10; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF ENERGY

10 CFR Part 1010

RIN 1990–AA31

Conduct of Employees and Former Employees; Exemption From Post-Employment Restrictions for Communications Furnishing Scientific or Technological Information

AGENCY: Office of the General Counsel, U.S. Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today publishes a final rule to establish procedures under which a former employee of the executive branch may obtain approval from DOE to make communications to DOE solely for the purpose of furnishing scientific or technological information during the period the former employee is subject to post-employment restrictions set forth in 18 U.S.C. 207(a), (c), and (d). The final rule also provides a definition of the term "scientific or technological information" that is consistent with the definition provided by the Office of Government Ethics (OGE) in its regulations and for which an exemption is provided by 18 U.S.C. 207(j)(5).

DATES: This rule is effective *January 3, 2011.*

FOR FURTHER INFORMATION CONTACT: Sue E. Wadel, Deputy Assistant General Counsel for General Law, U.S. Department of Energy, Office of the General Counsel, Mailstop GC–77, Room 6A–211, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–1522 or *Sue.Wadel@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 1, 2008, the Department of Energy published for comment a proposed rule revising 10 CFR Part 1010 to establish in a new subpart B procedures under which a former employee of the executive branch may obtain approval to make communications to DOE solely for the purpose of furnishing scientific or technological information during the period the former employee is subject to post-employment restrictions set forth in 18 U.S.C. 207(a), (c), and (d). The proposed rule also defined the term "scientific or technological information" used in 18 U.S.C. 207(j)(5) to provide former employees with guidance on the types of communications that would qualify for the exemption from otherwise applicable post-employment restrictions. *See* 73 FR 72748–72751 (December 1, 2008).

Pursuant to 18 U.S.C. 207(j)(5), former employees of the executive branch of the United States may make communications with an executive branch agency "solely for the purpose of furnishing scientific or technological information," notwithstanding the post-employment restrictions at 18 U.S.C.

207(a), (c), and (d). Section 207(j)(5) provides that such communications must be made under procedures acceptable to the agency to which the communication is directed, or the head of such agency must consult with the Director of the Office of Government Ethics (OGE) and certify in the **Federal Register** that the former employee meets certain requirements to make such communications.

As explained in the preamble, the purpose of the proposed rule was to (1) establish the procedures acceptable to DOE for former executive branch employees making scientific or technological communications; and (2) provide, in a definition of the term "scientific or technological information," the criteria for the types of communications of scientific or technological information that former executive branch employees may make to DOE pursuant to 18 U.S.C. 207(j)(5). The proposed rule further defined scientific and technological information as that which is of a scientific or technological character, such as technical or engineering information relating to the natural sciences. The proposed definition did not extend to information associated solely with a nontechnical discipline such as law, economics, or political science.

The proposed rule provided a 30-day comment period. No comments were received during this period.

II. Summary of Rule and Changes to Proposed Rule

In today's final rule, section 10 CFR 1010.202, defines the statutory term "scientific or technological information" and provides criteria for program officials and the Designated Agency Ethics Official (DAEO) to use when evaluating requests from former employees for approval to communicate such information to DOE offices and officials. DOE consulted with OGE in developing this rule. As a result of that consultation, DOE adopted verbatim the definition of "scientific and technological information" contained in OGE's regulations (5 CFR 2641.301(e)(2)), in lieu of the definition in the proposed rule. DOE views this as a non-substantive change, and one that may avoid potential confusion by the public regarding the meaning of this term. The program office official and DAEO shall consider the former executive branch employee's qualifications, the information to be conveyed, the former executive branch employee's Federal position, the extent of the former executive branch employee's participation in the same particular matter, and whether DOE's interest would be served by allowing such communications. Section 1010.202 also defines the term "authorized communication" as the transmission of scientific or technological information that has been approved by DOE under the procedures that will be established by this rulemaking.

Final section 10 CFR 1010.203, sets forth the procedures under which a former employee of the executive branch may obtain approval for communicating scientific or technological information to DOE offices or officials. A former employee of the executive branch must contact the program office to which he or she wishes to make such communications. The agency designee in the program office, in consultation with the DAEO, shall advise the former executive branch employee in writing whether he or she may make such communications. The agency designee is an individual serving in the office with cognizance over the matter and in a position requiring appointment by the President of the United States with the advice and consent of the Senate. The final rule clarifies that the agency designee cannot delegate this authority, unless the authority is delegated to another individual serving in a position in DOE requiring appointment by the President of the United States with the advice and consent of the Senate.

The final rule does not apply to testimony as an expert in an adversarial proceeding in which the United States is a party or has an interest. Restrictions on testimony, and exceptions thereof, are prescribed in 18 U.S.C. 207(j)(6).

III. Regulatory Review

A. Executive Order 12866

This final rule 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 (OIRA) of the Office of Management and Budget (OMB).

B. National Environmental Policy Act

DOE has determined that this final rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A.5 of Appendix A to Subpart D, 10 CFR Part 1021, which applies to rulemakings interpreting or amending an existing rule that do not change the environmental effect thereof. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. 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 required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://www.gc.doe.gov.*

DOE has reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The final rule will only affect individuals who were formerly employed by the executive branch of the Federal government if they want to communicate with DOE on scientific or technological matters. On the basis of the foregoing, DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Paperwork Reduction Act

No new record keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.,* are imposed by this final rule.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, Public Law 104–4, generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a

voluntary federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or on the private sector, of $100 million or more in any one year (adjusted annually for inflation). 2 U.S.C. 1532(a) and (b). Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments.

This final rule will apply only to former executive branch employees who want to communicate with DOE on scientific or technological matters. The rule will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

F. 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 proposed rule that may affect family well being. The 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 unnecessary to prepare a Family Policymaking Assessment.

G. 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. DOE has examined this final rule and has determined that it will not preempt State law and will 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.

H. 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 Executive 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, the final rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines 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 applicable policies in those guidelines.

J. 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 OMB, 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. Today's regulatory action will not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. 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 prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

IV. Approval of the Office of the Secretary

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

List of Subjects in 10 CFR Part 1010

Conduct standards, Conflicts of interest, Ethical conduct, Government employees.

Issued in Washington, DC, on November 29, 2010.

Scott Blake Harris,

General Counsel.

■ For the reasons stated in the preamble, DOE is amending chapter X of Title 10 of the Code of Federal Regulations as set forth below:

PART 1010—CONDUCT OF EMPLOYEES AND FORMER EMPLOYEES

■ 1. The authority citation for part 1010 is revised to read as follows:

Authority: 5 U.S.C. 301, 303, 7301; 5 U.S.C. App. (Ethics in Government Act); 5 U.S.C. App. (Inspector General Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105; 18 U.S.C. 207, 208.

■ 2. The heading to Part 1010 is revised as set forth above.

■ 3. Sections 1010.101 through 1010.104 are designated as Subpart A and the heading is added to read as set forth below:

Subpart A—Conduct of Employees

* * * * *

§ 1010.101 [Amended]

■ 4. Section 1010.101 is amended by removing the word "part," and adding the word "subpart" in its place.

■ 5. A new Subpart B is added to Part 1010 to read as follows:

Subpart B—Procedures for Exemption of Scientific and Technological Information Communications From Post-Employment Restrictions

Sec.
1010.201 Purpose and scope.
1010.202 Definitions.
1010.203 Procedures for review and approval of requests.

§ 1010.201 Purpose and scope.

(a) This subpart sets forth criteria for the types of communications on scientific or technological matters permitted under 18 U.S.C. 207(j)(5) by defining the term "scientific or technological information." This subpart also establishes the procedures for receiving and approving requests from former employees of the executive branch to make such communications to DOE.

(b) This subpart applies to any former employee of the executive branch subject to the post-employment conflict of interest restrictions in 18 U.S.C. 207(a), (c), and (d), who wishes to communicate with DOE under the exemption in 18 U.S.C. 207(j)(5) for the purpose of furnishing scientific or technological information to DOE offices or officials.

(c) This subpart does not apply to a former DOE employee's testimony as an expert in an adversarial proceeding in which the United States is a party or has a direct and substantial interest.

§ 1010.202 Definitions.

For purposes of this subpart:

(a) *Agency designee* means an individual serving in a position in DOE requiring appointment by the President of the United States with the advice and consent of the Senate.

(b) *Authorized communication* means any transmission of scientific or technological information to any DOE office or official that is approved by DOE under § 1010.203 of this subpart.

(c) *DOE* means the U.S. Department of Energy.

(d) *Scientific or technological information* means: Information of a scientific or technological character, such as technical or engineering information relating to the natural sciences. The exception does not extend to information associated with a nontechnical discipline such as law, economics, or political science.

(e) *Incidental references or remarks.* Provided the former employee's communication primarily conveys information of a scientific or technological character, the entirety of the communication will be deemed made solely for the purpose of furnishing such information notwithstanding an incidental reference or remark:

(1) Unrelated to the matter to which the post-employment restriction applies;

(2) Concerning feasibility, risk, cost, speed of implementation, or other considerations when necessary to appreciate the practical significance of the basic scientific or technological information provided; or

(3) Intended to facilitate the furnishing of scientific or technological information, such as those references or remarks necessary to determine the kind and form of information required or the adequacy of information already supplied.

§ 1010.203 Procedures for review and approval of requests.

(a) Any former employee of the executive branch subject to the constraints of the post-employment restrictions of 18 U.S.C. 207(a), (c), and (d) who wishes to communicate scientific or technological information to DOE must contact the DOE office with which the former employee wishes to communicate and request authorization to make such communication. This request must be in writing and address, in detail, information regarding each of the factors set forth in paragraphs (c)(1) through (c)(6) and (c)(8) of this section.

(b) In consultation with the Designated Agency Ethics Official (DAEO), the agency designee in the office with cognizance over the matter must advise the former employee in writing whether the proposed communication is an authorized communication. This authority cannot be delegated, except to another individual serving in a position in DOE requiring appointment by the President of the United States with the advice and consent of the Senate.

(c) In deciding whether a proposed communication is an authorized communication, the agency designee receiving the request and the DAEO must consider the following factors:

(1) Whether the former employee has relevant scientific or technical qualifications;

(2) Whether the former employee has qualifications that are otherwise unavailable to both the former employee's current employer and DOE;

(3) The nature of the scientific or technological information to be conveyed;

(4) The former employee's position prior to termination;

(5) The extent of the former employee's involvement in the matter at issue during his or her employment, including:

(i) The former employee's involvement in the same particular matter involving specific parties;

(ii) The time elapsed since the former employee's participation in such matter; and

(iii) The offices within the Federal department or agency involved in the matter both during the former employee's period of employment in the executive branch and at the time the request is being made;

(6) The existence of pending or anticipated matters before the Federal government from which the former employee or his or her current employer may financially benefit, including contract modifications, grant applications, and proposals; and

(7) Whether DOE's interests would be served by allowing the proposed communication; and

(8) Any other relevant information.

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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Part 1807

RIN 1559–AA00

Capital Magnet Fund

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Interim rule with request for public comment.

SUMMARY: The Department of the Treasury is issuing this interim rule