DEPARTMENT OF ENERGY

10 CFR Part 708

RIN 1901–AA78

Criteria and Procedures for DOE Contractor Employee Protection Program

AGENCY: Office of Hearings and Appeals, Department of Energy

ACTION: Interim final rule; amendment.

SUMMARY: The Department of Energy (DOE) amends its DOE contractor employee protection program regulations to include three provisions inadvertently omitted in an interim final rule published on March 15, 1999.

DATES: This interim final rule is effective August 11, 1999.

FOR FURTHER INFORMATION CONTACT: Roger Klurfeld, Assistant Director, or Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585–0107; telephone: 202–426–1449; e-mail: *roger.klurfeld@hq.doe.gov*, *thomas.mann@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 15, 1999, DOE published an interim final rule in the **Federal Register** (64 FR 12862) that comprehensively revised the regulations for the DOE contractor employee protection program, which are codified at 10 CFR Part 708. DOE became aware during the comment period on the interim final rule that three provisions in the original Part 708 had been inadvertently omitted from the interim final rule. These provisions (10 CFR 708.13, 708.14, and 708.15) were not within the scope of the Notice of Proposed Rulemaking published on January 5, 1998. See 63 FR 374, 375 (statement that those provisions would not be affected by the rulemaking). This interim final rule amendment restores these provisions. It also renumbers them and makes non-substantive language changes to conform the provisions to the ''plain language'' format used in the interim final rule published on March 15, 1999. In addition, § 708.42 (formerly § 708.15) permits the Secretary of Energy or Secretary's designee, to extend any deadlines established by Part 708, and permits the Director of the Office of Hearings and Appeals (OHA Director) to approve the extension of any deadline under § 708.22 through § 708.34 of this subpart (relating to the investigation, hearing, and OHA appeal process).

II. Public Comment

DOE ordinarily invites public participation in rulemaking through submission of written comments and attendance at a public hearing. However, DOE has concluded that an opportunity for public comment on this interim final rule is unnecessary and would not be in the public interest. DOE received no public comment on the statement in the January 5, 1998, NOPR announcing that no changes were proposed for the three provisions that are the subject of this rulemaking. Except for one change, this rule corrects the inadvertent omission of the provisions in the program regulations published on March 15, 1999. The new feature added by this rule is the grant of authority to the OHA Director to extend any deadlines applicable to the investigation, hearing and OHA appeal process. This change is procedural and, thus, exempt from notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b)). In any event, the change expands the procedural opportunities available to affected parties. Because the rule does not adversely affect the rights of members of the public, no purpose would be served by a public comment opportunity.

III. Regulatory and 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 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, this proposed rule meets the relevant standards of Executive Order 12988.

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 discussed in the Public Comment section of this notice, neither the Administrative Procedure Act (5 U.S.C. 553) nor any other law requires DOE to propose this rule for public comment. Accordingly, DOE did not prepare a regulatory flexibility analysis for this rule.

D. Review Under the Paperwork Reduction Act

No new collection of information is imposed by this interim final rule. Accordingly, no clearance by the Office of Management and Budget is required under 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 falls into a class of actions that would 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 deals only with administrative procedures regarding retaliation protection for employees of DOE contractors and subcontractors, and, therefore, is covered under the Categorical Exclusion in paragraph A6

to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 12612

Executive Order 12612, ''Federalism'' (52 FR 41685, October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on states, on the relationship between the federal government and the states, or in the distribution of power and responsibilities among the various levels of government. If there are substantial effects, the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing the policy action. DOE has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined there are no federalism implications that would warrant the preparation of a federalism assessment. Today's interim final rule deals with administrative procedures regarding retaliation protection for employees of DOE contractors and subcontractors. This rule will not have a substantial direct effect on states, the relationship between the states and federal government, or the distribution of power and responsibilities among various levels of government.

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 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 it requires an agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect them. This interim final rule does not contain any federal mandate, so these requirements do not apply.

H. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's interim 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).

List of Subjects in 10 CFR Part 708

Administrative practice and procedure, Energy, Fraud, Government contracts, Occupational Safety and Health, Whistleblowing.

Issued in Washington, on July 6, 1999.

George B. Breznay,

Director, Office of Hearings and Appeals.

For the reasons set forth in the preamble, Chapter III of title 10 of the Code of Federal Regulations is amended as set forth below:

PART 708—[AMENDED]

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

Authority: 42 U.S.C. 2201(b), 2201(c), 2201(i) 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.

2. Part 708 is amended by adding § 708.40 to subpart C to read as follows:

§ 708.40 Are contractors required to inform their employees about this program?

Yes. Contractors who are covered by this part must inform their employees about these regulations by posting notices in conspicuous places at the work site. These notices must include the name and address of the DOE office where you can file a complaint under this part.

3. Part 708 is amended by adding § 708.41 to subpart C to read as follows:

§ 708.41 Will DOE ever refer a complaint filed under this part to another agency for investigation and a decision?

Notwithstanding the provisions of this part, the Secretary of Energy retains the right to request that a complaint filed under this part be accepted by another Federal agency for investigation and factual determinations.

4. Part 708 is amended by adding § 708.42 to subpart C to read as follows:

§ 708.42 May the deadlines established by this part be extended by any DOE official?

Yes. The Secretary of Energy (or the Secretary's designee) may approve the extension of any deadline established by this part, and the OHA Director may approve the extension of any deadline under § 708.22 through § 708.34 of this subpart (relating to the investigation, hearing, and OHA appeal process).

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FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 1999–10]

Treatment of Limited Liability Companies Under the Federal Election Campaign Act

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Commission has adopted new regulations that address the treatment of limited liability companies (''LLC'') for purposes of the Federal Election Campaign Act (''FECA'' or the ''Act''). The new rules provide that LLCs will be treated as either partnerships or corporations for FECA purposes, consistent with the tax treatment they select under the Internal Revenue Code.

DATES: Further action, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d).

FOR FURTHER INFORMATION CONTACT: N. Bradley Litchfield, Associate General Counsel, or Rita A. Reimer, Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or (800) 424–9530 (toll free).

SUPPLEMENTARY INFORMATION: The Commission is publishing today new regulations at 11 CFR 110.1(g) governing the treatment of Limited Liability Companies under the Federal Election Campaign Act, 2 U.S.C. 431 *et seq.* LLCs are non-corporate business entities, created under State law, that have characteristics of both partnerships and corporations. These entities did not exist when the FECA was originally enacted in 1971, and were in their infancy when the pertinent provisions of the FECA were last amended in 1979.

On December 18, 1998, the Commission published a Notice of Proposed rulemaking (''NPRM'') in which it sought comments on this issue. 63 FR 70065 (Dec. 18, 1998). Written comments were received from the American Medical Association, the Internal Revenue Service, and Nicholas G. Karambelas.

Since these rules are not major rules within the meaning of 5 U.S.C. 804(2), the FECA controls the legislative review process. *See* 5 U.S.C. 801(a)(4), Small Business Enforcement Fairness Act, Pubic Law 104–121, section 251, 110 Stat. 857, 869 (1996). Section 438(d) of Title 2, United States Code, requires that any rules or regulations prescribed by