9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR chapter I as follows:

1. In subchapter C, a new part 74 is added to read as follows:

PART 74—PROHIBITION OF INTERSTATE MOVEMENT OF LAND TORTOISES

Sec.
74.1 General prohibition.

Authority: 21 U.S.C. 111–113, 114a, 115, 117, 120, 122–126, 134b, 134f; 7 CFR 2.22, 2.80, and 371.2(d).

§ 74.1 General prohibition.

The interstate movement of leopard tortoise (*Geochelone pardalis*), African spurred tortoise (*Geochelone sulcata*), and Bell's hingeback tortoise (*Kinixys belliana*) is prohibited.

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

2. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

3. In § 93.701, a new paragraph (c) is added to read as follows:

§ 93.701 Prohibitions.

* * * * *

(c) No person may import leopard tortoise (*Geochelone pardalis*), African spurred tortoise (*Geochelone sulcata*), or Bell's hingeback tortoise (*Kinixys belliana*) into the United States.

Done in Washington, DC, this 16th day of March 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–7014 Filed 3–21–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF ENERGY

10 CFR Part 820

Procedural Rules for DOE Nuclear Activities; General Statement of Enforcement Policy

AGENCY: Department of Energy.

ACTION: Final rule; amendment of enforcement policy statement and confirmation of interim rule.

SUMMARY: The Department of Energy (DOE) is amending its General Statement of Enforcement Policy, which is in an Appendix to the Procedural Rules for DOE Nuclear Activities, to state that DOE may use information collected by DOE and the Department of Labor (DOL) concerning whistleblower proceedings as a basis for enforcement actions and civil penalties under the Procedural Rules for DOE Nuclear Activities if the retaliation against DOE contractor employees relates to matters of nuclear safety in connection with a DOE nuclear activity. DOE also confirms the interim amendments to the enforcement policy statement published October 8, 1997.

DATES: This amended Policy and confirmation of the interim rule published October 8, 1997 as final takes effect on April 21, 2000.

FOR FURTHER INFORMATION CONTACT:
Keith Christopher, U. S. Department of Energy, Office of Investigation and Enforcement, EH–10, 19901 Germantown Road, Germantown, MD 20874 (301) 903–0100.
Ben McRae, U. S. Department of Energy, Office of General Counsel, GC–52, 1000 Independence Avenue, SW, Washington, DC 20585 (202) 586–6975.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Energy (DOE) has adopted procedural rules in 10 CFR part 820 (Part 820) to provide for the enforcement of violations of DOE Nuclear Safety Requirements for which civil and criminal penalties can be imposed under the Price-Anderson Amendments Act of 1988 (Pub. L. 100–408, August 20, 1988) (PAAA). 56 FR 64290 (proposed Dec. 9, 1991), 58 FR 43680 (final Aug. 17, 1993). Appended to the rule is a General Statement of Enforcement Policy (Enforcement Policy). The Enforcement Policy sets forth the general framework through which DOE would seek to enforce compliance with DOE's nuclear safety rules, regulations and orders by a DOE contractor, subcontractor, or a supplier (hereinafter referred to collectively as ''contractor''). Following that promulgation, DOE amended the Enforcement Policy with an opportunity for comment. 62 FR 52479 (Oct. 8, 1997). No comments were received and the amendments are made final today.

DOE's whistleblower regulations, 10 CFR part 708 (Department of Energy Contractor Employee Protection Program) (Part 708), establish requirements prohibiting retaliation against DOE contractor employees who have undertaken certain whistleblower actions. DOE's Office of Hearings and Appeals (OHA) has responsibility for resolution of whistleblower complaints under Part 708. The regulations provide criteria and procedures to protect employees of DOE contractors who believe they have suffered retaliation for disclosing information concerning danger to public health or safety, substantial violations of law, fraud or gross mismanagement; for participating in congressional proceedings; or for refusing to participate in dangerous activities. If an act of retaliation has occurred, OHA may order reinstatement, transfer preference, back pay, reimbursements of costs and expenses, or other remedies necessary to abate the violation. 10 CFR part 708, 57 FR 7533 (final March 3,1992), 61 FR 55230 (notice Oct. 25, 1996), 64 FR 12862 (interim final March 15, 1999), 64 FR 37396 (interim final rule and amendment July 12, 1999), 65 FR 6314 (final Feb. 9, 2000), 65 FR 9201 (correction Feb. 24, 2000).

In late 1992, Congress amended the Energy Reorganization Act, 42 U.S.C. 5801, *et seq.* (ERA), to prohibit any employer, including a DOE contractor indemnified under section 170.d. of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011, *et seq.* (AEA), from discriminating against any employee with respect to his or her compensation, terms, conditions or privileges of employment because the employee assisted or participated, or is about to assist or participate in any manner, in any action to carry out the purposes of the ERA or the AEA. 42 U.S.C. 5851 (ERA Sec. 211). The Department of Labor (DOL) has the responsibility under Sec. 211 to investigate employee complaints of discrimination and may, after an investigation and opportunity for hearing, order a violator to take affirmative action to abate the violation, reinstate the complainant to his or her

former position with back pay, and award compensatory damages, including attorney fees. 29 CFR part 24, 59 FR 12506 (proposed March 16, 1994), 63 FR 6614 (final Feb. 9, 1998).

Before Part 820 was finalized and before § 211 of the ERA was enacted, DOE published a Notice of Clarification (Clarification) of proposed Part 820 to clarify the intended scope of the proposed definition of ''DOE Nuclear Safety Requirements'' as a basis for civil penalties, and to clarify the relationship between proposed Part 820 and Part 708. 57 FR 20796 (May 15, 1992). This Clarification established that the regulations prohibiting contractor retaliation in Part 708 could constitute DOE Nuclear Safety Requirements if the retaliation resulted from the employee's involvement in matters of nuclear safety in connection with a DOE nuclear activity. Such retaliation against DOE contractor employees would, therefore, be subject to the investigatory and adjudicatory procedures of Part 820, and could lead to the imposition of civil penalties under Part 820.

II. Basis for Amendment of Enforcement Policy

DOE's 1992 Clarification indicated that the provisions of the DOE whistleblower rule in Part 708 could constitute DOE Nuclear Safety Requirements. DOE imposed an affirmative duty on DOE contractors to protect the public, workers, and the environment in matters of nuclear safety relating to DOE nuclear activities by subjecting the contractors to enforcement for retaliation against contractor employees. In particular, if DOE found that a contractor retaliated in response to a worker raising or disclosing legitimate nuclear safety-related information or concerns, the Clarification stated that a violation of Part 820 could exist. 57 FR at 20797, 58 FR at 43681.

Any deterrent to the flow of that information can potentially constitute a violation of DOE Nuclear Safety Requirements that are imposed through the DOE whistleblower protection provisions. This is consistent with the NRC enforcement policy, which subjects licensees to possible civil penalties if they discriminate against employees raising safety issues or otherwise engaging in protected whistleblower activities under the ERA or the AEA. See, *e.g.,* 10 CFR 50.7, 58 FR 52410 (Oct. 8, 1993), 60 FR 24551 (amended May 9, 1995), 61 FR 6765 (amended Feb. 22, 1996).

When DOE put its contractors on notice in 1992 that a violation of the whistleblower provisions of Part 708 could result in civil penalties, the DOL whistleblower proceedings were not an alternative to Part 708. Accordingly, the Clarification did not indicate that information collected by DOL in a whistleblower proceeding could be used as the basis for issuance of a Preliminary Notice of Violation (PNOV) by DOE. Based on experience with DOL proceedings since the Clarification, DOE believes that DOL proceedings serve the same function as a Part 708 proceeding in determining whether a contractor has retaliated against an employee.

DOE is therefore amending the General Statement of Enforcement Policy appended to Part 820 to provide that the Director of the Office of Investigation and Enforcement (Director) may use information that DOL collects in a § 211 proceeding as a basis for enforcement action under Part 820. Specifically, the Director may use this information as the basis for initiating enforcement action by issuing a PNOV. In determining whether to initiate action under Part 820 with respect to an alleged retaliation, the Director would review the report of the investigation, the adjudicative record, and any other relevant material associated with the proceeding to determine if an adequate basis exists to issue a PNOV.

The Director may also use DOL information to support the determination that a contractor has violated or is continuing to violate the nuclear safety requirements against contractor retaliation and to issue civil penalties or other appropriate remedy in a Final Notice of Violation (FNOV). 10 CFR 820.24–820.25.

The Director will have discretion to give appropriate weight to information collected in DOL and in OHA investigations and proceedings. In deciding whether additional investigation or information is needed, the Director will consider the extent to which the facts in the proceedings have been adjudicated as well as any information presented by the contractor.

DOE has a policy of encouraging its contractors to cooperate in resolving whistleblower complaints raised by contractor employees. Accordingly, in deciding whether to initiate an enforcement action, the Director will take into account the extent to which a contractor cooperated in a Part 708 or § 211 proceeding, and, in particular, whether the contractor resolved the matter promptly without the need for an adjudication proceeding.

In considering whether to initiate an enforcement action and, if so, what remedy is appropriate, the Director will also consider the egregiousness of the particular case including the level of management involved in the alleged retaliation and the specificity of the acts of retaliation.

Normally, the Director will await the completion of the DOL or OHA investigation and related deliberative processes before deciding whether to take any enforcement action in order to avoid duplication of investigative effort. A Part 708 or Sec. 211 proceeding would be considered completed when there is either a final decision or a settlement of the retaliation complaint, or no additional administrative action is available. In egregious cases outlined in the Clarification and included in paragraph 7 of Section XIII, DOE may initiate an investigation and bring an enforcement action before the other proceedings are completed.

It should be noted, however, that any enforcement action in which the Director cites a violation of the whistleblower regulations is separate and distinct from violations arising from the substantive nuclear safety rules in 10 CFR part 830 (nuclear safety management), 10 CFR part 835 (occupational radiation protection), and 10 CFR 820.11 (information accuracy requirements). The Director may begin investigations of noncompliances of these nuclear safety rules at any time based on the underlying nuclear safety concerns raised by the employee regardless of the status of any related whistleblower retaliation proceedings.

III. 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, Oct. 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.'' DOE is not required by the Administrative Procedures Act (5 U.S.C. 553) or any other law to propose this policy statement 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 policy statement. 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

The Department determined that this policy statement is not a major federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, and does not require preparation of an environmental impact statement or an environmental assessment. This policy statement amendment clarifies that DOE may use information generated in certain whistleblower proceedings involving DOE contractor employees as the basis for enforcement under procedures applicable to DOE Nuclear Safety Requirements. This action is covered under the Categorical Exclusion found at paragraph A.5. of Appendix A to Subpart D, 10 CFR part 1021, which applies to rulemakings that do not change the environmental effect of the rule being amended.

E. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, Aug. 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. ''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. This amendment of DOE's enforcement policy 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.

F. 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 policy statement meets the relevant standards of Executive Order 12988.

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 the Office of General Counsel on March 18, 1997 (62 FR 12820). The policy statement amendment published today 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 report to Congress promulgation of this policy statement amendment prior to its effective date. The report will state that it has been determined that the amendment is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects 10 CFR Part 820

Government contracts, Nuclear safety, Whistleblowing

Issued in Washington, DC, on March 14, 2000.

David Michaels,

Assistant Secretary for Environment, Safety and Health.

For the reason set forth in the preamble, Part 820 of Title 10 of the Code of Federal Regulations is amended as set forth below:

PART 820—PROCEDURAL RULES FOR DOE NUCLEAR ACTIVITIES

1. The authority citation for Part 820 continues to read as follows:

Authority: 42 U.S.C. 2201, 2282(a), 7191; 28 U.S.C. 2461 note.

2. Appendix A to Part 820 as amended on October 8, 1997 (62 FR 52479), is adopted as final without change.

3. Appendix A to Part 820 is amended by adding a new Section XIII to read as follows:

Appendix A to Part 820—General Statement of Enforcement Policy

* * * * *

XIII. Whistleblower Enforcement Policy

a. DOE contractors may not retaliate against any employee because the employee has disclosed information, participated in activities or refused to participate in activities listed in 10 CFR 708.5 (a)–(c) as provided by 10 CFR 708.43. DOE contractor employees may seek remedial relief for allegations of retaliation from the DOE Office of Hearings and Appeals (OHA) under 10 CFR part 708 (Part 708) or from the Department of Labor (DOL) under sec. 211 of the Energy Reorganization Act (sec. 211), implemented in 29 CFR part 24.

b. An act of retaliation by a DOE contractor, proscribed under 10 CFR 708.43, that results from a DOE contractor employee's involvement in an activity listed in 10 CFR 708.5(a)–(c) concerning nuclear safety in connection with a DOE nuclear activity, may constitute a violation of a DOE Nuclear Safety Requirement under 10 CFR part 820 (Part 820). The retaliation may be subject to the investigatory and adjudicatory procedures of both Part 820 and Part 708. The same facts that support remedial relief to employees under Part 708 may be used by the Director of the Office of Investigation and

Enforcement (Director) to support issuance of a Preliminary Notice of Violation (PNOV), a Final Notice of Violation (FNOV), and assessment of civil penalties. 10 CFR 820.24–820.25.

c. When an employee files a complaint with DOL under sec. 211 and DOL collects information relating to allegations of DOE contractor retaliation against a contractor employee for actions taken concerning nuclear safety, the Director may use this information as a basis for initiating enforcement action by issuing a PNOV. 10 CFR 820.24. DOE may consider information collected in the DOL proceedings to determine whether the retaliation may be related to a contractor employee's action concerning a DOE nuclear activity.

d. The Director may also use DOL information to support the determination that a contractor has violated or is continuing to violate the nuclear safety requirements against contractor retaliation and to issue civil penalties or other appropriate remedy in a FNOV. 10 CFR 820.25.

e. The Director will have discretion to give appropriate weight to information collected in DOL and OHA investigations and proceedings. In deciding whether additional investigation or information is needed, the Director will consider the extent to which the facts in the proceedings have been adjudicated as well as any information presented by the contractor. In general, the Director may initiate an enforcement action without additional investigation or information.

f. Normally, the Director will await the completion of a Part 708 proceeding before OHA or a sec. 211 proceeding at DOL before deciding whether to take any action, including an investigation under Part 820 with respect to alleged retaliation. A Part 708 or sec. 211 proceeding would be considered completed when there is either a final decision or a settlement of the retaliation complaint, or no additional administrative action is available.

g. DOE encourages its contractors to cooperate in resolving whistleblower complaints raised by contractor employees in a prompt and equitable manner. Accordingly, in deciding whether to initiate an enforcement action, the Director will take into account the extent to which a contractor cooperated in a Part 708 or sec. 211 proceeding, and, in particular, whether the contractor resolved the matter promptly without the need for an adjudication hearing.

h. In considering whether to initiate an enforcement action and, if so, what remedy is appropriate, the Director will also consider the egregiousness of the particular case including the level of management involved in the alleged retaliation and the specificity of the acts of retaliation.

i. In egregious cases, the Director has the discretion to proceed with an enforcement action, including an investigation with respect to alleged retaliation irrespective of the completion status of the Part 708 or sec. 211 proceeding. Egregious cases would include: (1) Cases involving credible allegations for willful or intentional violations of DOE rules, regulations, orders or Federal statutes which, if proven, would warrant criminal referrals to the U.S. Department of Justice for prosecutorial review; and (2) cases where an alleged retaliation suggests widespread, high-level managerial involvement and raises significant public health and safety concerns.

j. When the Director undertakes an investigation of an allegation of DOE contractor retaliation against an employee under Part 820, the Director will apprise persons interviewed and interested parties that the investigative activity is being taken pursuant to the nuclear safety procedures of Part 820 and not pursuant to the procedures of Part 708.

k. At any time, the Director may begin an investigation of a noncompliance of the substantive nuclear safety rules based on the underlying nuclear safety concerns raised by the employee regardless of the status of completion of any related whistleblower retaliation proceedings. The nuclear safety rules include: 10 CFR part 830 (nuclear safety management); 10 CFR part 835 (occupational radiation protection); and 10 CFR part 820.11 (information accuracy requirements).

[FR Doc. 00–6916 Filed 3–21–00; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 108

[Notice 2000–4]

Filing Copies of Campaign Finance Reports and Statements With State Officers

AGENCY: Federal Election Commission.

ACTION: Final rules; transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is revising its regulations that govern filing of campaign finance reports with State officers and the duties of State officers concerning the reports. The revisions implement amendments to the Federal Election Campaign Act that exempt States meeting certain criteria from these requirements.

DATES: Further action, including the announcement of 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). A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 694–1650 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act (''FECA'' or the ''Act''), 2 U.S.C. 431 *et seq.*, at 2 U.S.C. 439(a) requires all persons who file campaign finance reports and statements under the Act to file copies of these documents with the Secretary of State, or the officer charged by state law with maintaining state election campaign reports, in each State where contributions were received or expenditures made on behalf of a Federal candidate or candidates appearing on that State's ballot. Under 2 U.S.C. 439(b), these officers must receive and maintain the documents for two years after their date of receipt, and must make them available for public inspection and copying during regular business hours.

In 1995, Congress enacted 2 U.S.C. 439(c), which exempts from these receipt and maintenance requirements any State that the Commission determines to have in place a system that permits electronic access to and duplication of reports and statements that are filed with the Commission. Pub. L. 104–79, 109 Stat. 791, section 2. If the Commission does not make this determination, the State remains obligated to maintain copies of the statements and disclosure reports that have been filed with it. These new rules revise the Commission's regulations at 11 CFR Part 108 to reflect this statutory change.

In September 1997, the Commission published a Notice of Proposed Rulemaking (''NPRM'') that proposed a number of revisions to the Commission's recordkeeping and reporting requirements, including those addressed in this document, and corresponding changes to the relevant disclosure forms. 62 FR 50708 (Sept. 26, 1997). The Commission received three written comments in response to the NPRM, two of which addressed the state filing issues: one from the Secretary of State of South Dakota, and one from David S. Addington, Esq. In addition, the Internal Revenue Service submitted a comment in which it said that the proposed rules were not inconsistent with their regulations or the Internal Revenue Code. On February 11, 1998, the Commission held a public hearing on the NPRM at which one witness testified but did not discuss waivers of state filing requirements. One further comment was submitted in response to the announcement of the hearing.

The Commission has decided to proceed separately with this portion of the rulemaking, both because these issues are more straightforward than those addressed in other parts of the NPRM, and because the Commission is in the process of granting waivers pursuant to section 439(c) to States that meet certain requirements.