

42 U.S.C. 290dd-3, 42 U.S.C. 290ee-3, and 42 CFR part 2). If such records are sought from the contractor for criminal investigations, or to resolve a question or concern relating to the Personnel Assurance Program certification or access authorization under 10 CFR part 710, any applicable procedures in statute or regulation for disclosure of such information shall be followed. Moreover, owing to DOE's express environmental, public health and safety, and national security interests, and the need to exercise proper contractor oversight, DOE must be kept fully apprised of all aspects of the contractor's program, including such information as incidents involving reasonable suspicion, occurrences, and confirmed test results, as well as information concerning test results in the aggregate.

(c) Unless otherwise approved by DOE, the contractors shall ensure that all laboratory records relating to positive drug test results, including initial test records and chromatographic tracings, shall be retained by the laboratory in such a manner as to allow retrieval of all information pertaining to the individual urine specimens for a minimum period of five years after completion of testing of any given specimen, or longer if so instructed by DOE or by the contractor. In addition, a frozen sample of all positive urine specimens shall be retained by the laboratory for at least six months, or longer if so instructed by DOE.

(d) The contractor shall maintain as part of its medical records copies of specimen chain of custody forms.

(e) The specimen chain of custody form will contain the following information:

- (1) Date of collection;
- (2) Tested person's name;
- (3) Tested employee/applicant's social security number or other identification number unique to the individual;
- (4) Specimen number;
- (5) Type of test (random, applicant, occurrence, reasonable suspicion, follow-up, or other);
- (6) Temperature range of specimen;
- (7) Remarks regarding unusual behavior or conditions;
- (8) Collector's signature; and
- (9) Certification signature of specimen provider certifying that specimen

identified is in fact the specimen the individual provided.

**§ 707.17 Permissible actions in the event of contractor noncompliance.**

Actions available to DOE in the event of contractor noncompliance with the provisions of this part or otherwise performing in a manner inconsistent with its approved program include, but are not limited to, suspension or debarment, contract termination, or reduction in fee in accordance with the contract terms.

**PART 708—DOE CONTRACTOR EMPLOYEE PROTECTION PROGRAM**

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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.

SOURCE: 57 FR 7541, Mar. 3, 1992, unless otherwise noted.

**Subpart A—General Provisions**

**§ 708.1 Purpose.**

This part establishes procedures for timely and effective processing of complaints by employees of contractors performing work at sites owned or leased by the Department of Energy (DOE), concerning alleged discriminatory actions taken by their employers in retaliation for the disclosure of information relative to health and safety, mismanagement, and other matters

as provided in § 708.5(a), for the participation in proceedings before Congress or pursuant to this part, or for the refusal to engage in illegal or dangerous activities.

**§ 708.2 Scope.**

(a) This part is applicable to complaints of reprisal filed after the effective date of this part that stem from disclosures, participations, or refusals involving health and safety matters, if the underlying procurement contract described in § 708.4 contains a clause requiring compliance with all applicable safety and health regulations and requirements of DOE (48 CFR 970.5204-2). For all other complaints, this part is applicable to acts of reprisal occurring after the effective date of this part if the underlying procurement contract described in § 708.4 contains a clause requiring compliance with this part.

(b) This part is applicable to employees (defined in § 708.4) of contractors (defined in § 708.4) performing work on-site at DOE-owned or -leased facilities, unless the procedures contained in 29 CFR part 24, “Procedures for the Handling of Discrimination Complaints under Federal Employee Protection Statutes,” are applicable. The procedures of this part 708 do not apply to contractor employees at government-owned, government-operated facilities, or to complaints of reprisal stemming from, or relating to, discrimination by contractors on a basis such as race, color, religion, sex, age, national origin, or other similar basis not specifically discussed herein. The protections afforded by this part are not applicable to any employee who, acting without direction from his or her employer, deliberately causes, or knowingly participates in the commission of, any misconduct set forth in § 708.5 that is the subject of the disclosure.

(c) For complaints not covered by § 708.5(a), the Director, at his discretion and for good cause shown, may accept a complaint for processing under this part. However, in no event will coverage under the rule be extended to employees of contractors over whom DOE does not exercise enforcement authority with respect to the requirements of this part. A determination by the Director not to accept a complaint pursu-

ant to this subsection may be appealed to the Secretary of designee.

**§ 708.3 Policy.**

It is the policy of DOE that employees of contractors at DOE facilities should be able to provide information to DOE, to Congress, or to their contractors concerning violations of law, danger to health and safety, or matters involving mismanagement, gross waste of funds, or abuse of authority, to participate in proceedings conducted before Congress or pursuant to this part, and to refuse to engage in illegal or dangerous activities without fear of employer reprisal. Contractor employees who believe they have been subject to such reprisal may submit their complaints to DOE for review and appropriate administrative remedy as provided in §§ 708.6 through 708.11 of this part.

**§ 708.4 Definitions.**

For purposes of this part—

*Contractor* means a seller of goods or services who is a party to a procurement contract as follows:

(1) A Management and Operating Contract;

(2) Other types of procurement contracts; but this part shall apply to such contracts only with respect to work performed on-site at a DOE-owned or -leased facility; or

(3) Subcontracts under paragraphs (1) or (2) of this definition; but this part shall apply to such subcontracts only with respect to work performed on-site at a DOE-owned or -leased facility.

*Day or days* mean(s) calendar day(s).

*Director* means, unless otherwise indicated, the Director, Office of Contractor for Employee Protection.

*Discrimination or discriminatory acts* mean(s) discharge, demotion, reduction in pay, coercion, restraint, threats, intimidation, or other similar negative action taken against a contractor employee by a contractor, as a result of the employee’s disclosure of information, participation in proceedings, or refusal to engage in illegal or dangerous activities, as set forth in § 708.5(a) of this part.

*Employee or employees* mean(s) any person(s) employed by a contractor, and any person(s) previously employed

by a contractor if such prior employee's complaint alleges that employment was terminated in violation of § 708.5. The determination of whether a person has standing as an employee shall be made without regard to the on- or off-site locale of the person's work performance.

*Field organization* means a DOE field-based office that is responsible for the management, coordination, and administration of operations under its purview.

*Head of Field Element* means an individual who is the manager or head of a DOE operations office, other field office, or field organization.

*Hearing Officer* means an individual appointed by the Director, Office of Hearings and Appeals, pursuant to § 708.9.

*Management and Operating Contract* means an agreement under which DOE contracts for the operation, maintenance, or support, on its behalf, of a Government-owned or -leased research, development, special production, or testing establishment wholly or principally devoted to one or more of the programs of DOE.

*Official of DOE* means any officer or employee of DOE whose duties include program management or the investigation or enforcement of any law, rule, or regulation relating to Government contractors or the subject matter of a contract.

*Party* or *parties* mean(s) any employee, contractor, or other party named in a proceeding under this part.

*Work performed on-site* means work performed within the boundaries of a DOE-owned or -leased facility. However, work will not be considered to be performed "on-site" when pursuant to the contract it is the only work performed within the boundaries of a DOE-owned or -leased facility, and it is ancillary to the primary purpose of the contract (e.g., on-site delivery of goods produced off-site).

### Subpart B—Procedures

#### § 708.5 Prohibition against reprisals.

(a) A DOE contractor covered by this part may not discharge or in any manner demote, reduce in pay, coerce, restrain, threaten, intimidate, or other-

wise discriminate against any employee because the employee (or any person acting pursuant to a request of the employee) has—

(1) Disclosed to an official of DOE, to a member of Congress, or to the contractor (including any higher tier contractor), information that the employee in good faith believes evidences—

(i) A violation of any law, rule, or regulation;

(ii) A substantial and specific danger to employees or public health or safety; or

(iii) Fraud, mismanagement, gross waste of funds, or abuse of authority;

(2) Participated in a Congressional proceeding or in a proceeding conducted pursuant to this part; or

(3) Refused to participate in an activity, policy, or practice when—

(i) Such participation—

(A) Constitutes a violation of a Federal health or safety law; or

(B) Causes the employee to have a reasonable apprehension of serious injury to the employee, other employees, or the public due to such participation, and the activity, policy, or practice causing the employee's apprehension of such injury—

(1) Is of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude there is a *bona fide* danger of an accident, injury, or serious impairment of health or safety resulting from participation in the activity, policy, or practice; and

(2) The employee is not required to participate in such dangerous activity, policy, or practice because of the nature of his or her employment responsibilities;

(ii) The employee, before refusing to participate in an activity, policy, or practice has sought from the contractor and has been unable to obtain a correction of the violation or dangerous activity, policy, or practice; and

(iii) The employee, within 30 days following such refusal, discloses to an official of DOE, a member of Congress, or the contractor, information regarding the violation or dangerous activity, policy, or practice, and explaining why he has refused to participate in the activity.

(b) An employee disclosure, participation, or refusal described in §708.5(a)(1), (2), or (3) shall be subject to this part only if it relates to activities alleged to have occurred under work performed by the contractor for DOE. This part is not intended to override any other provision or requirement of any regulation pertaining to Restricted Data, national security information, or any other classified or sensitive information, and the protections of this part shall not apply to any person who, in the course of making a disclosure described in §708.5(a)(1) or (3), or in the course of participating in a proceeding described in §708.5(a)(2), improperly discloses Restricted Data, national security information, or any other classified or sensitive information in violation of any Executive Order, statute, or regulation.

**§708.6 Filing a complaint.**

(a) An employee who believes that he or she has been discriminated against in violation of this part, and who has not, with respect to the same facts, pursued a remedy available under State or other applicable law, may file a complaint with DOE through the Head of Field Element at the field organization. For purposes of this part, a complaint shall be deemed to have been pursued under State or other applicable law if the employee has, pursuant to proceedings established or mandated by State or other applicable law, at any time prior to, or concurrently with, the filing of a complaint with DOE, or at any time during the processing of a complaint filed with DOE, filed or submitted any complaint, action, grievance, or other pleading with respect to that same matter. The pursuit of a remedy under a negotiated collective bargaining agreement will be considered the pursuit of a remedy through internal company grievance procedures and not the pursuit of a remedy under State or other applicable law. The limitations period specified in §708.6(d) shall be suspended upon the filing of a complaint pursuant to State or other applicable law, and the mere filing of a complaint pursuant to State or other applicable law shall not bar the employee from re-instituting or filing a complaint with DOE if the matter

cannot be resolved under State or other applicable law due to a lack of jurisdiction.

(b) The Head of Field Element may designate an individual to serve as point of contact for processing the complaint and for undertaking the responsibilities under §708.7.

(c) A complaint filed under paragraph (a) of this section need not be in any specific form provided it is signed by the complainant and contains the following: A statement setting forth specifically the nature of the alleged discriminatory act, and the disclosure, participation or refusal giving rise to such act; a statement that the complainant has not, as described in paragraph (a) of this section, pursued a remedy available under State or other applicable law; and an affirmation that all facts contained in the complaint are true and correct to the best of the complainant's knowledge and belief. Additionally, the complaint must contain a statement affirming that:

(1) All attempts at resolution through an internal company grievance procedure have been exhausted;

(2) The company grievance procedure is ineffectual or exposes the complainant to employer reprisals; or

(3) The company has no such procedure.

The complaint must state the factual basis for such affirmation; and, if applicable, the date on which internal company grievance procedures were terminated and the reasons for termination.

(d) A complaint filed pursuant to paragraph (a) of this section must be filed within 60 days after the alleged discriminatory act occurred or within 60 days after the complainant knew, or reasonably should have known, of the alleged discriminatory act, whichever is later. In cases where the employee has attempted resolution through internal company grievance procedures as set forth in paragraph (c) of this section, the 60-day period for filing a complaint shall be tolled during such resolution period and shall not again begin to run until the day following termination of such dispute-resolution efforts.

(e) Within 15 days of receipt of a complaint filed pursuant to paragraph (a)

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of this section, the Head of Field Element or designee shall notify:

(1) The contractor, person, or persons named in the complaint, and

(2) The Director, of the filing of the complaint.

A copy of the complaint shall be forwarded to the Director.

(f) Any person or party responsible for the conduct of any investigation or proceeding pursuant to this part shall ensure that appropriate safeguards are implemented to accommodate circumstances involving Restricted Data, national security information, or any other classified or sensitive information protected by Executive Order, statute, or regulation.

### **§ 708.7 Attempt at informal resolution.**

(a) The Head of Field Element or designee shall have 30 days from the date of receipt of a complaint in which to attempt an informal resolution of the complaint, prior to the initiation of a formal investigation. To this end, the Head of Field Element or designee may attempt to resolve the complaint through consultation and negotiation with the parties involved. If the Head of Field Element or designee has cause to believe the complaint might not meet the requirements of this part, within 5 days from the date of receipt of the complaint, the Head of Field Element or designee shall forward the complaint to the Director, without comment and without notice to any party, for a determination of whether attempts at informal resolution should be continued or the complaint should be dismissed summarily under any of the criteria set forth in § 708.8. If the Director determines to dismiss the complaint summarily, the complaint shall be dismissed and the parties notified pursuant to the procedures set forth in § 708.8. If the Director determines not to dismiss the complaint summarily, he shall, within 15 days from the date he received it, so advise the Head of Field Element or designee and return the complaint to the Head of Field Element or designee, who shall thereupon have 30 days to attempt informal resolution of the complaint.

(b) If informal resolution is reached, the Head of Field Element or designee shall enter into a settlement agree-

ment which terminates the complaint. The terms of such agreement shall be reduced to writing and made part of the complaint file, with a copy provided to all parties. Any such agreement shall be binding on the parties.

(c) If informal resolution cannot be reached, the Head of Field Element or designee shall immediately notify the Director and provide the file to the Director with a brief summary of the attempts at resolution.

### **§ 708.8 Acceptance of complaint and investigation.**

(a) Unless the Director determines that:

(1) The complaint has been settled under § 708.7,

(2) The complaint is untimely,

(3) The complaint or disclosure is frivolous or on its face without merit,

(4) The complainant has pursued a remedy available under State or other applicable law, or

(5) The complaint, for other good cause shown, should not be processed under this part, the Director, within 5 days of receipt of the file from the Head of Field Element or designee, shall notify the parties in writing that an investigation will be conducted under § 708.8 and of their right to a subsequent hearing under § 708.9.

Within 15 days of receipt of the file from the Head of Field Element or designee, the Director shall appoint an investigator and order an investigation of the complaint. If the Director declines to process a complaint for investigation, the Director shall notify the Secretary or designee within 15 days of receipt of the file from the Head of Field Element or designee. The notification shall be in writing and shall set forth the specific reasons for such refusal. A copy of such notice shall be sent to the Head of Field Element and shall be delivered by certified mail to the complainant and the contractor.

(b) If based upon information acquired during investigation of a complaint, the Director determines the existence of grounds for dismissal of the complaint, as set forth in § 708.8(a), the Director, within 15 days of receipt of the file from the investigator, shall dismiss the complaint and notify the Secretary or designee. The notification

shall be in writing and shall set forth the specific reasons for such dismissal. A copy of such notice shall be sent to the Head of Field Element, and shall be delivered by certified mail to the complainant and the contractor.

(c) If the Director dismisses a complaint pursuant to paragraph (a) or (b) of this section, the administrative process is terminated unless within 5 calendar days of receipt of the notice required under paragraph (a) or (b) of this section, the complainant files a written request with the Director for review by the Secretary or designee. Copies of any request for review shall be served by the complainant on all parties by certified mail, and the Director shall promptly send a copy to the Secretary. If the Secretary or designee determines that the complaint should be considered further, the Secretary or designee shall order the Director to reinstate the complaint and resume the administrative process. If, pursuant to either paragraph (a) or (b) of this section, a complaint has been dismissed because the complainant has pursued a remedy available under State or other applicable law, the complaint, upon written request by the complainant, will be subject to automatic reinstatement if the matter cannot be resolved under State or other applicable law due to a lack of jurisdiction.

(d) In conducting an investigation under this part, the investigator, for the purpose of determining whether a violation of § 708.5 has occurred, may enter and inspect places and records (and make copies thereof), may question persons alleged to have been involved in discriminatory acts and other employees of the charged contractor, and may require the production of any documentary or other evidence deemed necessary. The contractor shall cooperate fully with the investigator in making available employees and all pertinent evidence, including records.

(e) To the extent practicable, investigations under this part shall be conducted in a manner that protects the confidentiality of any person (other than the complainant) who requests leave to provide information on a confidential basis. Confidentiality shall not be extended to any persons who in

the course of their employment, or due to the nature of their position, are required to provide such information, and all grants of confidentiality shall be subject to waiver by the Hearing Officer if the Hearing Officer determines that waiver is necessary to achieve a fair adjudication of the case. The investigator shall advise all persons to whom confidentiality is granted that such grant of confidentiality is conditional, not absolute.

(f) The investigator, within 60 days of appointment, shall submit a Report of Investigation to the Director. The Report of Investigation shall become a part of the record and shall state specifically a finding, and the factual basis for such finding, with respect to each alleged discriminatory act. Within 10 days of receipt of the Report of Investigation, the Director shall serve it on the parties involved by certified mail.

#### **§ 708.9 Hearing.**

(a) Unless a complaint has been dismissed pursuant to § 708.8, within 15 days of receipt of the Report of Investigation, a party may, in writing, request a hearing on the complaint. Upon the request of one of the parties for a hearing, the Director shall transmit the complaint file to the Office of Hearings and Appeals.

(b) Upon receipt of the complaint file from the Director, the Director, Office of Hearings and Appeals shall appoint, as soon as practicable, a Hearing Officer to conduct a hearing and shall transmit to the Hearing Officer a copy of the file, including the Report of Investigation. The Hearing Office shall, within seven days following receipt of the complaint file, notify the parties of a day, time, and place for the hearing. Hearings will normally be held at or near the appropriate DOE field organization, within 60 days from the date the complaint file is received by the Hearing Officer unless the Hearing Officer determines that another location would be more appropriate, or unless the complaint is earlier settled by the parties.

(c) In all proceedings under this part, the parties shall have the right to be represented by a person of their own choosing. Formal rules of evidence

shall not apply, but shall be used as a guide for application of procedures and principles designed to assure production of the most probative evidence available. The Hearing Officer may exclude evidence which is immaterial, irrelevant, or unduly repetitious. The Hearing Officer is specifically prohibited from initiating or otherwise engaging in *ex parte* discussions on a complaint matter at any time during the pendency of the complaint proceeding under this part.

(d) The complainant shall have the burden of establishing by a preponderance of the evidence that there was a disclosure, participation, or refusal described under §708.5, and that such act was a contributing factor in a personnel action taken or intended to be taken against the complainant. Once the complainant has met this burden, the burden shall shift to the contractor to prove by clear and convincing evidence that it would have taken the same personnel action absent the complainant's disclosure, participation, or refusal.

(e) Testimony of witnesses shall be given under oath or affirmation, and the witnesses shall be subject to cross-examination. Witnesses shall be advised of the applicability of 18 U.S.C. 1001 and 1621, dealing with the criminal penalties associated with false statements and perjury.

(f) At his or her discretion, the Hearing Officer may arrange for the issuance of subpoenas for witnesses to attend the Hearing on behalf of either party, or for the production of specific documents or other physical evidence, provided a showing of the necessity for such witness or evidence has been made to the satisfaction of the Hearing Officer.

(g) All hearings shall be mechanically or stenographically reported. All evidence upon which the Hearing Officer relies for the recommended decision under §708.10(b) shall be contained in the transcript of testimony, either directly or by appropriate reference. All exhibits and other pertinent documents or records, either in whole or in material part, introduced as evidence, shall be marked for identification and incorporated into the record.

(h) Any party, upon request, may be allowed a reasonable time to file with the Hearing Officer a brief or statement of fact or law. A copy of any such brief or statement shall be filed with the Hearing Officer before or during the proceeding and shall be served by the submitting party upon each other party by certified mail. The parties may make oral closing arguments, but post-hearing briefs will only be permitted at the direction of the Hearing Officer. When permitted, any such brief shall be limited to the issue or issues specified by the Hearing Officer and shall be due within the time prescribed by the Hearing Officer.

(i) At the request of any party, the Hearing Officer may, at his or her discretion, extend the time for any hearing held pursuant to this §708.9. Additionally, the Hearing Officer may, at the request of any party, or on his or her own motion, dismiss a claim, defense, or party and make adverse findings—

(1) Upon the failure without good cause of any party or his or her representative to attend a hearing; or

(2) Upon the failure of any party to comply with a lawful order of the Hearing Officer.

(j) In any case where a dismissal of a claim, defense, or party is sought, the Hearing Officer shall issue an order to show cause why the dismissal should not be granted and afford all parties a reasonable time to respond to such order. After the time for response has expired, the Hearing Officer shall take such action as is appropriate to rule on the dismissal, which may include an order dismissing the claim, defense, or party. An order dismissing a claim, defense, or party may be appealed to the Director for reconsideration.

#### **§708.10 Initial agency decision.**

(a) If a hearing is not requested, the Director, within 30 days of expiration of the time set forth in §708.9(a) for request of a hearing, shall issue an initial agency decision based upon the record, which decision shall be served upon the parties by certified mail. The initial agency decision shall contain appropriate findings, conclusions, and an order, and shall set forth the factual basis for each and every finding with

respect to each alleged discriminatory act. In making such findings, the Director may rely upon, but shall not be bound by, the findings contained in the Report of Investigation.

(b) If a hearing has been held, the Hearing Officer shall issue an initial agency decision within 30 days after the receipt of the transcript from the proceeding at which evidence was submitted or within 30 days after receipt of any post-hearing briefs permitted under § 708.9(h), whichever is later. The initial agency decision shall contain appropriate findings, conclusions, and an order, and shall set forth the factual basis for each and every finding with respect to each alleged discriminatory act. In making such findings, the Hearing Officer may rely upon, but shall not be bound by, the findings contained in the Report of Investigation. The Hearing Officer shall send the initial agency decision, together with the entire record, to the Director who shall promptly serve the initial agency decision upon all parties to the proceeding by certified mail.

(c) The initial agency decision may include an award of reinstatement, transfer preference, back pay, and reimbursement to the complainant up to the aggregate amount of all reasonable costs and expenses (including attorney and expert-witness fees) reasonably incurred by the complainant in bringing the complaint upon which the decision was issued.

(1) If the initial agency decision contains a determination that the complaint is without merit, it shall also include a notice stating that the decision shall become the final decision of DOE denying the complaint unless, within five calendar days of its receipt, a written request is filed with the Director for review by the Secretary or designee. Copies of any request for review shall be served by the requesting party upon all parties by certified mail.

(2) If the initial agency decision contains a determination that a violation of § 708.5 has occurred, it shall also include an appropriate order to the contractor to abate the violation and to provide the complainant with relief, as well as notice to the parties that the decision shall become the final decision of DOE unless, within five calendar

days of its receipt, a written request is filed with the Director for review by the Secretary or designee. Copies of any request for review shall be served by the requesting party upon all parties by certified mail.

(3) Notwithstanding the provisions of paragraph (c)(2) of this section, if the agency decision contains a determination that a violation of § 708.5 has occurred, it may contain an order requiring the contractor to provide the complainant with interim relief, including but not limited to reinstatement, pending the outcome of any request for review. This paragraph shall not be construed to require the payment of any award of back pay or attorney fees before the DOE decision is final.

#### **§ 708.11 Final decision and order.**

(a) Upon receipt of a request for review of an initial agency decision by the Secretary or designee, the Director shall forward the request, along with the entire record, to the Secretary or designee.

(b) Within 60 days after the Director receives a request for Secretarial review of an initial agency decision, the Secretary or designee shall either direct further processing of the complaint or pursuant to paragraph (c) or (d) of this section, issue a final decision, based on the record, including the Report of Investigation. The final decision shall be forwarded by the Secretary or designee to the Director who shall serve it upon all parties by certified mail.

(1) If the Secretary or designee determines that further processing of the complaint is necessary, the Secretary or designee will return the case to the Director, who will forward it with specific instructions to the Office of Hearings and Appeals and/or the investigator as appropriate.

(2) Except to the extent prohibited by law, regulation, or Executive Order, all parties will be provided copies of any information compiled as a result of actions taken under paragraph (b)(1) of this section.

(c) If the Secretary or designee determines that a violation of § 708.5 has occurred, the Secretary or designee shall issue a final decision and shall instruct the Director to take appropriate action

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to implement that decision. Relief ordered by the Secretary or designee may include reinstatement, transfer preference, back pay, and reimbursement to the complainant up to the aggregate amount of all reasonable costs and expenses (including attorney and expert-witness fees) reasonably incurred by the complainant in bringing the complaint upon which the decision was issued or such other relief as is necessary to abate the violation and provide the complainant with relief.

(d) If the Secretary or designee determines that the party charged has not committed a discriminatory act in violation of § 708.5, the Secretary or designee shall so notify the Director and issue a final decision dismissing the complaint. If the Secretary or designee determines that there has been no discrimination, the complainant shall not receive reimbursement for the costs and expenses provided in paragraph (c) of this section.

### § 708.12 Implementation of decision.

(a) Upon receipt of the final decision of the Secretary or designee under § 708.11, or if the initial agency decision becomes the final decision pursuant to § 708.10(c) (1) or (2), the Director shall serve the final decision upon all parties by certified mail, and upon the Head of Field Element at the affected DOE field organization. The Head of Field Element shall take all necessary steps to implement the final decision.

(b) For purposes of sections 6 and 7 of the Contract Disputes Act (41 U.S.C. 605 and 606), a decision implemented by the Head of Field Element pursuant to this part shall not be considered a "claim by the government against a contractor" or "a decision by the contracting officer." However, a contractor's disagreement, and refusal to comply, with a final decision under this part could result in the contracting officer's decision to disallow certain costs or terminate the contract for default. In such case, the contractor could file a claim under the disputes procedures of the contract.

### § 708.13 Communication of program to contractor employees.

(a) All contractors covered by this part shall inform their employees of

the applicability of the DOE Contractor Employee Protection Program, including identification of the DOE offices to which a protected disclosure can be made and identification of appropriate points of contact for initiating employment-reprisal complaints.

(b) The information required in paragraph (a) of this section shall be prominently posted in conspicuous places at the contractor worksite, in all places where notices are customarily posted. Such notices shall not be altered, defaced, or covered by other material.

### § 708.14 Alternative means of resolution.

Notwithstanding the provisions of this part, the Secretary retains the right to request that complaints filed pursuant to this part be accepted by other Federal agencies for investigation and factual determinations, when the Secretary deems such referral to be in the public interest.

### § 708.15 Time frames.

The time frames set forth in this part may be extended with the approval of the Secretary or designee.

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

### Subpart A—General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material

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