

## Department of Energy

## § 708.38

decision becomes the final agency decision.

(b) If there is an appeal of an initial agency decision, the OHA Director will issue an appeal decision based on the record of proceedings by the 60th day after the record is closed.

(1) An appeal decision issued by the OHA Director will contain appropriate findings, conclusions, an order, and the factual basis for each finding, whether or not a hearing has been held on the complaint. In making such findings, the OHA Director may rely upon, but is not bound by, the report of investigation and the initial agency decision.

(2) If the OHA Director determines that an act of retaliation has occurred, the appeal decision will include an order for any form of relief permitted under § 708.36.

(3) If the OHA Director determines that the contractor charged has not committed an act of retaliation, the appeal decision will deny the complaint.

(c) The OHA Director will send an appeal decision to all parties and to the Head of Field Element or EC Director having jurisdiction over the contract under which you were employed when the alleged retaliation occurred.

(d) The appeal decision issued by the OHA Director is the final agency decision unless a party files a petition for Secretarial review by the 30th day after receiving the appeal decision.

### **§ 708.35 How can a party obtain review by the Secretary of Energy of an appeal decision?**

(a) By the 30th day after receiving an appeal decision from the OHA Director, any party may file a petition for Secretarial review with the Office of Hearings and Appeals.

(b) By the 15th day after filing a petition for Secretarial review, the petitioner must file a statement identifying the issues that it wishes the Secretary to consider. A copy of the statement must be served on the other parties, who may file a response by the 20th day after receipt of the statement. Any response must also be served on the other parties.

(c) All submissions permitted under this section must be filed with the Office of Hearings and Appeals.

(d) After a petition for Secretarial review is filed, the Secretary (or his or her delegatee) will issue the final agency decision on the complaint. The Secretary will reverse or revise an appeal decision by the OHA Director only under extraordinary circumstances. In the event the Secretary determines that a revision in the appeal decision is appropriate, the Secretary will direct the OHA Director to issue a revised decision which is the final agency action on the complaint.

### **§ 708.36 What remedies for retaliation may be ordered in initial and final agency decisions?**

(a) *General remedies.* If the initial or final agency decision determines that an act of retaliation has occurred, it may order:

- (1) Reinstatement;
- (2) Transfer preference;
- (3) Back pay;

(4) Reimbursement of your reasonable costs and expenses, including attorney and expert-witness fees reasonably incurred to prepare for and participate in proceedings leading to the initial or final agency decision; or

(5) Such other remedies as are deemed necessary to abate the violation and provide you with relief.

(b) *Interim relief.* If an initial agency decision contains a determination that an act of retaliation occurred, the decision may order the contractor to provide you with appropriate interim relief (including reinstatement) pending the outcome of any request for review of the decision by the OHA Director. Such interim relief will not include payment of any money.

### **§ 708.37 Will an employee whose complaint is denied by a final agency decision be reimbursed for costs and expenses incurred in pursuing the complaint?**

No. If your complaint is denied by a final agency decision, you may not be reimbursed for the costs and expenses you incurred in pursuing the complaint.

### **§ 708.38 How is a final agency decision implemented?**

(a) The Head of Field Element having jurisdiction over the contract under

## § 708.39

which you were employed when the alleged retaliation occurred, or EC Director, will implement a final agency decision by forwarding the decision and order to the contractor, or subcontractor, involved.

(b) A contractor's failure or refusal to comply with a final agency decision and order under this regulation may result in a contracting officer's decision to disallow certain costs or terminate the contract for default. In the event of a contracting officer's decision to disallow costs or terminate a contract for default, the contractor may file a claim under the disputes procedures of the contract.

### **§ 708.39 Is a decision and order implemented under this regulation considered a claim by the government against a contractor or a decision by the contracting officer under sections 6 and 7 of the Contract Disputes Act?**

No. A final agency decision and order issued pursuant to this regulation is not considered a claim by the government against a contractor or "a decision by the contracting officer" under sections 6 and 7 of the Contract Disputes Act (41 U.S.C. 605 and 606).

### **§ 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.

[64 FR 37397, July 12, 1999]

### **§ 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.

[64 FR 37397, July 12, 1999]

## 10 CFR Ch. III (1–1–12 Edition)

### **§ 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).

[64 FR 37397, July 12, 1999]

### **§ 708.43 Does this rule impose an affirmative duty on DOE contractors not to retaliate?**

Yes. DOE contractors may not retaliate against any employee because the employee (or any person acting at the request of the employee) has taken an action listed in §§ 708.5(a)–(c).

[65 FR 6319, Feb. 9, 2000; 65 FR 9201, Feb. 24, 2000]

## **PART 709—COUNTERINTELLIGENCE EVALUATION PROGRAM**

### **Subpart A—General Provisions**

Sec.

- 709.1 Purpose.
- 709.2 Definitions.
- 709.3 Covered persons subject to a CI evaluation and polygraph.
- 709.4 Notification of a CI evaluation.
- 709.5 Waiver of polygraph examination requirements.

### **Subpart B—CI Evaluation Protocols and Protection of National Security**

- 709.10 Scope of a counterintelligence evaluation.
- 709.11 Topics within the scope of a polygraph examination.
- 709.12 Defining polygraph examination questions.
- 709.13 Implications of refusal to take a polygraph examination.
- 709.14 Consequences of a refusal to complete a CI evaluation including a polygraph examination.
- 709.15 Processing counterintelligence evaluation results.
- 709.16 Application of Counterintelligence Evaluation Review Boards in reaching conclusions regarding CI evaluations.
- 709.17 Final disposition of CI evaluation findings and recommendations.