

# Proposed Rules

Federal Register

Vol. 67, No. 65

Thursday, April 4, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF ENERGY

### 10 CFR Part 710

RIN 1992-AA30

#### Eligibility for Security Police Officer Positions in the Personnel Security Assurance Program

**AGENCY:** Department of Energy.

**ACTION:** Notice of proposed rulemaking and opportunity for public comment.

**SUMMARY:** The Department of Energy (DOE) proposes to amend its regulations to allow newly hired individuals in security police officer (SPO) positions who have received an interim Q access authorization through DOE's Accelerated Access Authorization Program (AAAP) to be eligible to hold a Personnel Security Assurance Program (PSAP) position. Currently, DOE's regulations require a Q access authorization based upon a full background investigation for all PSAP positions. The events of September 11, 2001, have made use of the AAAP to expedite SPO screening vitally important. Our activities will need to increase the size of their protective forces, and use of the AAAP will enable them to do so in a timely manner.

**DATES:** Written comments must be received on or before May 6, 2002.

**ADDRESSES:** Comments (3 copies) should be addressed to: Linda Repass, Personnel Security Assurance Program Manager, Security Policy Staff, Office of Security, Department of Energy, SO-112, 1000 Independence Ave., SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Linda Repass, Personnel Security Assurance Program Manager, Security Policy Staff, Office of Security, Department of Energy, SO-112, 1000 Independence Ave., SW., Washington, DC 20585, 301-903-4800.

**SUPPLEMENTARY INFORMATION:**

#### I. Background and Explanation of Proposal

The Personnel Security Assurance Program (PSAP) is a special access authorization program, established by DOE pursuant to the Atomic Energy Act of 1954, to assure the reliability of individuals whose positions: (1) Afford direct access to Category I quantities of special nuclear material (including guarding and transporting special nuclear material), (2) are identified as nuclear material production reactor operators, or (3) have the potential for causing unacceptable damage to national security. The PSAP regulations are at 10 CFR part 710, subpart B and currently require an employee or applicant for any PSAP position to have a Q access authorization based upon a full background investigation before being granted a PSAP access authorization. 10 CFR 710.60(c).

This proposed rule would amend 10 CFR 710.60 to permit security police officers (SPOs) to be eligible for a PSAP access authorization based on an interim access authorization obtained through the Department's Accelerated Access Authorization Program (AAAP). A definition of the term "Accelerated Access Authorization Program" is proposed to be added to section 710.54 of the PSAP regulations. The proposed rule would permit newly hired SPOs who obtain interim access authorization through the AAAP to assume their PSAP duties before completion of the ongoing full background investigation. If the proposed rule is adopted, newly hired SPOs who obtain an interim access authorization through the AAAP and successfully complete the PSAP requirements will be able to assume their PSAP duties immediately upon completing the 9-week basic SPO training course.

The AAAP was implemented to assist DOE managers and DOE contractors who request interim access authorization for individuals pursuant to DOE Order 472.1, DOE Order 5631.2C (Chapters I-IX), and related DOE directives. Entry into the AAAP is voluntary and written consent of the employee or applicant is required.

The events of September 11, 2001, have made use of the AAAP to expedite SPO screening vitally important. Our activities will need to increase the size of their protective forces, and use of the

AAAP will enable them to do so in a timely manner.

The AAAP includes the following screening elements:

(1) Testing for the use of illegal drugs in accordance with the provisions of DOE directives implementing Executive Order 12564 or, for contractor employees, the provisions of 10 CFR part 707, "Workplace Substance Abuse Programs at DOE Sites";

(2) Completion of a National Agency Check; for contractor employees, this includes checks of Office of Personnel Management security indices, Department of Defense clearance indices, Federal Bureau of Investigation name and fingerprint indices, and Credit Bureau files, and for Federal employees, the National Agency Check also includes written inquiries to past employers, references given by the individual, and any educational institutions attended recently;

(3) A psychological assessment using a standard psychological screening test to determine if the individual has any psychological/behavioral condition which might call into question the individual's reliability, judgment, and trustworthiness;

(4) A controlled counterintelligence-scope polygraph examination in accordance with 10 CFR part 709; and

(5) Review of the applicant's completed "Questionnaire for National Security Positions" (Standard Form 86).

With the exception of the AAAP-specific psychological/behavioral evaluation, the AAAP screening elements are required elements for anyone in a PSAP position. Thus, the proposed rule change would enhance the ability for SPOs who have completed their required training and received an interim access authorization to assume PSAP duties prior to completion of their background investigation. Due to the controlled nature and continuous oversight of SPO positions, there is no appreciable risk to allowing assumption of PSAP duties by SPOs prior to completion and adjudication of the background investigation.

#### II. 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) and 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. This proposed rule would not directly regulate small businesses or other small entities. It would apply only to individuals who apply for SPO positions at sites owned or operated by DOE or DOE contractors. DOE management and operating

contractors are not small businesses. Accordingly, DOE certifies that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. DOE has not prepared a regulatory flexibility analysis for this rulemaking.

#### D. Review Under the Paperwork Reduction Act

No new collection of information would be imposed by this proposed 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 proposed 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 proposed rule would amend DOE's regulations governing access to PSAP and would not change the environmental effect of the PSAP regulations. Therefore, this rulemaking is covered under the Categorical Exclusion in paragraph A5 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

#### F. Review Under Executive Order 13132

Executive Order 13132, "Federalism," (64 FR 43255, August 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 are 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." On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's proposed rule and determined that it 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 the Executive Order.

#### 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 proposed rule does not contain any federal mandate, so these requirements do not apply.

#### H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999, Public Law 105-277, requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. Today's proposal would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

#### I. Review Under 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 Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to the 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, or use.

Today's proposed rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

### III. Opportunity for Public Comment

Interested persons are invited to participate by submitting data, views or arguments with respect to the rule amendment proposed in this notice. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments received will be available for public inspection as part of the administrative record on file for this rulemaking in the Department of Energy Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-3142, between the hours 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by the date indicated in the **DATES** section of this notice and all other relevant information in the record will be carefully assessed and fully considered prior to the publication of a final rule. Any information of data that the submitter considers to be exempt from public disclosure by law must be so identified and submitted in writing (one copy), as well as one complete copy from which the information believed to be exempt from disclosure is deleted. DOE will determine if the information or data is exempt from disclosure.

DOE has not scheduled a public hearing to receive oral presentations of views, data and arguments because DOE does not believe the proposed rule presents a substantial issue of fact or law or that the proposed rule would likely have a substantial impact on the Nation's economy or large numbers of individuals or businesses. DOE will reconsider this matter if public comments show that such issues or potential impacts exist.

#### List of Subjects in 10 CFR Part 710

Administrative practice and procedure, Classified information, Government contracts, Government employees, Nuclear materials, Revocation, Security measures, Suspension.

Issued in Washington, on March 22, 2002.  
**Spencer Abraham,**  
*Secretary.*

For the reasons set forth in the preamble, Part 710 of Chapter III of Title 10, Code of Federal Regulations is proposed to be amended, as set forth below:

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

1. The authority citation for part 710 is revised to read as follows:

**Authority:** 42 U.S.C. 2165; 2201; 5815; 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; E.O. 10450, 3 CFR 1949-1953 Comp., p. 936, as amended; E.O. 10865, 3 CFR 1959-1963 Comp., p. 398, as amended, 3 CFR Chap. IV.

2. Section 710.54 of subpart B is amended by adding, in alphabetical order, the definition of "Accelerated Access Authorization Program" to read as follows:

#### § 710.54 Definitions.

\* \* \* \* \*

*Accelerated Access Authorization Program* means the DOE program for granting interim access to classified matter and special nuclear material based on a drug test, a National Agency Check, a psychological assessment, a counterintelligence-scope polygraph examination in accordance with 10 CFR part 709, and a review of the applicant's completed "Questionnaire for National Security Positions." (Standard Form 86).

\* \* \* \* \*

3. Section 710.60 of subpart B is amended by revising paragraph (c) to read as follows:

#### § 710.60 DOE security review and clearance determination.

\* \* \* \* \*

(c) *Review for initial PSAP access authorization.* An initial PSAP access authorization requires the applicant or employee to have a DOE Q access authorization based upon a background investigation, except for Security Police Officers who may be granted PSAP access authorization based on an interim Q access authorization obtained through the Accelerated Access Authorization Program. The adjudication and determination for a PSAP access authorization shall be based upon a review of security information, including the results of the background investigation (or Accelerated Access Authorization Program screening elements in the case of Security Police Officers) and the

information provided by management and medical sources.

\* \* \* \* \*

[FR Doc. 02-8134 Filed 4-3-02; 8:45 am]

BILLING CODE 6450-01-P

### SMALL BUSINESS ADMINISTRATION

#### 13 CFR Part 121

#### Small Business Size Standards; Waiver of the Nonmanufacturer Rule; Rule for Bearings, Plain, Unmounted and Bearings, Mounted; Notice of Intent

**AGENCY:** Small Business Administration.

**ACTION:** Notice of intent to waive.

**SUMMARY:** The Small Business Administration (SBA) is considering a waiver of the Nonmanufacturer Rule for bearings, plain, unmounted and bearings, mounted. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal Government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice of intent is to solicit comments and source information from interested parties.

**DATES:** Comments and sources must be submitted on or before April 15, 2002.

**ADDRESSES:** Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC, 20416, Tel: (202) 619-0422.

**FOR FURTHER INFORMATION CONTACT:** Edith Butler, Program Analyst, (202) 619-0422 FAX (202) 205-7280.

**SUPPLEMENTARY INFORMATION:** Public Law 100-656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market.