Headquarters Policy Flash

FLASH 2001-19

DATE: July 10, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: FINAL RULE - Administrative Amendment

SUMMARY: On July 2, 2001, the Department of Energy (DOE) published in the Federal Register a final rule [FR 34783] amending the Department of Energy Assistance Regulations. The rule eliminates the requirement for Secretarial approval of a determination that a noncompetitive award is in the public interest. The final rule is effective **August 1, 2001** and a copy is attached for your viewing.

Contact Trudy Wood of this office at (202) 586-5625, or via e-mail at Trudy.Wood@hq.doe.gov for questions related to this Flash.

Gwendolyn S. Cowan, Director

Attachment

cc: PPAG Members

Rules and Regulations

Federal Register
Vol. 66, No. 127
Monday, July 2, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF ENERGY

10 CFR Part 600

RIN 1991–AB58

Assistance Regulations; Administrative Amendment

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Assistance Regulations to make a change in the approval authority for a determination that a noncompetitive award is in the public interest.

EFFECTIVE DATE: This final rule is effective August 1, 2001.

FOR FURTHER INFORMATION CONTACT: Trudy Wood, Office of Procurement and Assistance Policy (MA–51), U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585; telephone: 202–586–5625.

SUPPLEMENTARY INFORMATION:

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II. Procedural Requirements
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I. Explanation of Change

On October 20, 1999, the DOE published several administrative and technical amendments to the Department of Energy Assistance Regulations (64 FR 56418), including an amendment to 10 CFR § 600.6 ("Eligibility") that required the approval of the Secretary of Energy for any determination that a noncompetitive award is in the public interest. DOE has since concluded that the requirement for Secretarial approval on such determinations is more appropriately addressed in internal agency management documents, which permit greater flexibility in particular situations. Today's rule eliminates the requirement for Secretarial approval from 10 CFR 600.6. DOE has also updated the list of authorities at the end of the table of contents for 10 CFR 600 by adding the provisions that authorize the National Nuclear Security Administration within DOE.

II. 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 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. Because DOE is not required by the Administrative Procedure Act (5 U.S.C. 553) or any other law to propose financial assistance rules for public comment, DOE did not prepare a regulatory flexibility analysis for this rule.

C. Review Under the Paperwork Reduction Act

No new collection of information is imposed by this 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.*).

D. 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 agency procedures, 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.

E. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the Federal 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. 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 final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 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 small governments. The rule published today 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, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. This rulemaking is not subject to a requirement to propose for public comment, and section 654 therefore does not apply.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure.

Issued in Washington, on June 20, 2001.

Spencer Abraham,

Secretary of Energy.

For the reasons set out in the preamble, part 600 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as follows:

PART 600—FINANCIAL ASSISTANCE RULES

1. The authority citation for part 600 is revised to read as follows:

Authority: 42 U.S.C. 7101 *et seq;* 31 U.S.C. 6301–6308; 50 U.S.C. 2401 *et seq.*, unless otherwise noted.

2. Section 600.6 is amended by revising paragraph (c)(8) to read as follows:

§ 600.6 Eligibility.

* * * * *

(c) * * *

(8) The responsible program Assistant Secretary, Deputy Administrator, or other official of equivalent authority determines that a noncompetitive award is in the public interest. This authority may not be delegated.

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[FR Doc. 01–16553 Filed 6–29–01; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 1, 7, and 23

[Docket No. 01–13]

RIN 1557–AB94

Investment Securities; Bank Activities and Operations; Leasing

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing this final rule to amend its rules governing investment securities, bank activities and operations, and leasing. The revisions to the investment securities regulations incorporate the authority to underwrite, deal in, and purchase certain municipal bonds that is provided to well capitalized national banks by the Gramm-Leach-Bliley Act (GLBA). The final rule also makes the following revisions to the bank activities and operations regulations: it establishes the conditions under which a school where a national bank participates in a financial literacy program is not considered a branch under the McFadden Act; it revises the OCC's regulation governing bank holidays so that the wording of the rule conforms with the statute that authorizes the Comptroller to declare mandatory bank closings; it clarifies the scope of the term "NSF fees" for purposes of 12 U.S.C. 85, the statute that governs the rate of interest that national banks may charge; it simplifies the OCC's current regulation governing national banks' non-interest charges and fees; and it provides that State law applies to a national bank operating subsidiary to the same extent as it applies to the parent national bank. Finally, the revisions to the leasing regulations authorize the OCC to vary the percentage limit on the extent to which a national bank may rely on estimated residual value to recover its costs in personal property leasing arrangements. The purpose of these changes is to update and revise the OCC's regulations to keep pace with developments in the law and in the national banking system.

EFFECTIVE DATE: August 1, 2001.

FOR FURTHER INFORMATION CONTACT: For questions concerning 12 CFR 1.2, contact Beth Kirby, Special Counsel, Securities and Corporate Practices Division, (202) 874–5210. For questions concerning 12 CFR 7.3000, contact Michele Meyer, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning 12 CFR 7.1021, 7.4001, 7.4002 and 7.4006, contact Michele Meyer, Counsel, or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning 12 CFR 23.21, contact Steven Key, Senior Attorney, Bank Activities and Structure Division, (202) 874–5300.

SUPPLEMENTARY INFORMATION:

Introduction and Overview of Comments Received

On January 30, 2001, the OCC published in the **Federal Register** a notice of proposed rulemaking (the NPRM, proposed rules, or the proposal) concerning its rules governing investment securities, bank activities and operations, and leasing. *See* 66 FR 8178. The proposed revisions to the investment securities regulations incorporated the authority to underwrite, deal in, and purchase certain municipal bonds that is provided to well capitalized national banks by the Gramm-Leach-Bliley Act (GLBA). The proposed rules also contained several revisions to the OCC's bank activities and operations regulations. First, it established the conditions under which a school where a national bank participates in a financial literacy program is not considered a branch under the McFadden Act. Second, it revised the OCC's regulation governing bank holidays so that the wording of the rule conforms with the statute that