Proposed Rules

Federal Register
Vol. 67, No. 137
Wednesday, July 17, 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 Parts 710, 711, and 712

[Docket No. SO–RM–00–HRP]

RIN 1992–AA29

Human Reliability Program

AGENCY: Office of Security, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: The Department of Energy (DOE) proposes to establish a Human Reliability Program that would consolidate its Personnel Security Assurance Program (PSAP) and Personnel Assurance Program (PAP). The PSAP is an access authorization program for individuals who apply for or occupy certain positions that are critical to the national security. The PSAP requires an initial and annual supervisory review, a medical assessment, management evaluation, and DOE personnel security review of all applicants or incumbents. The PAP is a nuclear explosive safety program using many of the same evaluations of the PSAP to ensure that employees assigned to nuclear explosive duties do not have emotional, mental, or physical conditions that could result in an accidental or unauthorized detonation of nuclear explosives. DOE has established many common elements for the administration of the PSAP and PAP. Accordingly, this proposed regulation would consolidate both programs into a single program, incorporating all the important facets of each into an understandable, comprehensive, and concise regulation.

DATES: The comment period for this proposed rule will end on October 15, 2002. Public hearings will be held on September 5, 2002, in Albuquerque, NM; September 10, 2002, in Livermore, CA; September 12, 2002, in Amarillo, TX; and September 17, 2002, in Oak Ridge, TN. All hearings will be held from 9 a.m. to 12 noon and 1 p.m. to 4 p.m.

Requests to speak at any of the hearings should be mailed to Linda Repass, Personnel Security Assurance Program Manager, Security Policy Staff, Office of Security, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; e-mailed to the following address: *linda.repass@hq.doe.gov,* or telephoned to (301) 903–4800 by August 22, 2002, for the Albuquerque, NM, hearing; by August 27, 2002, for the Livermore, CA, hearing; by August 29, 2002, for the Amarillo, TX, hearing; and by September 3, 2002, for the Oak Ridge, TN, hearing. Each presentation is limited to no more than 10 minutes to ensure that all persons have an opportunity to speak.

ADDRESSES: Written comments (7 copies) should be addressed to Linda Repass, Personnel Security Assurance Program Manager, Security Policy Staff, Office of Security, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Alternatively, comments may be e-mailed to the following address: *linda.repass@hq.doe.gov.* Where possible, commenters should identify the specific section(s) of the proposed rule to which they are responding.

Copies of the public hearing transcripts, written comments, references to technical material pertaining to this notice, and any other docket material may be reviewed and copied at the DOE Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 8:30 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays. The docket material for this rulemaking will be filed under ''SO–RM–00–HRP.''

The public hearings for this rulemaking will be held at the following addresses: Albuquerque, NM; Albuquerque Marriott, 2101 Louisiana Boulevard, NE; Livermore, CA: Press Room, Trailer 6575 (Greenville Road Entrance) at the Lawrence Livermore National Laboratory, 7000 East Avenue; Amarillo, TX: Ambassador Hotel, 3100 I–40 West; and Oak Ridge, TN: Oak Ridge Mall, Community Room, Rutgers Place Entrance.

For more information concerning public participation in this rulemaking proceeding, see Section IV of this notice of proposed rulemaking (Opportunity for Public Comment).

FOR FURTHER INFORMATION CONTACT: Ms. Linda Repass, Personnel Security Assurance Program Manager, Security Policy Staff, Office of Security, Department of Energy, 1000 Independence Avenue, SW, Washington, DC, 20585, (301) 903–4800, or Mr. Charles Westfall, Personnel Assurance Program Manager, Office of Nuclear Weapons Surety, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (301) 903–4051.

For information concerning Subpart B, Medical Standards: Mr. Kenneth O. Matthews, Office of Health Studies, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (301) 903–6398.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the Atomic Energy Act of 1954 (the AEA), the DOE owns, leases, operates or supervises activities at facilities in various locations in the United States. Many of these facilities are involved in researching, testing, producing, disassembling, or transporting nuclear explosives, which, when combined with Department of Defense delivery systems, become nuclear weapons systems. These facilities are often involved in other activities that affect the national security. DOE has long been aware that if certain DOE facilities are compromised, national security would be severely damaged. To guard against such compromise, DOE has taken the initiative to implement security and safety reliability programs designed to ensure that individuals occupying positions affording unescorted access to certain materials, facilities, and

programs meet the highest standards of reliability as well as physical and mental suitability.

In 1989, as part of its ongoing efforts to protect national security, DOE established regulations at 10 CFR part 710, subpart B, ''Criteria and Procedures for Establishment of the Personnel Security Assurance Program and Determinations of an Individual's Eligibility for Access to a Personnel Security Assurance Program Position.'' These Personnel Security Assurance Program (PSAP) regulations apply to individuals who occupy positions throughout the DOE complex that involve access to, or responsibility for, special nuclear material or otherwise have the potential to cause unacceptable damage to national security. In 1998, DOE established regulations at 10 CFR part 711, ''Personnel Assurance Program (PAP),'' which codified longstanding certification procedures pertaining to individuals who occupy positions that involve hands-on work with, or access to, nuclear explosives.

As the PSAP and PAP evolved, significant similarities developed between the two programs in their administration, requirements, and concerns. DOE has concluded that the monetary cost and time requirements of administering two very similar programs with similar goals, the protection of special nuclear material and nuclear explosives, cannot be justified as consistent with good business practices when contrasted with the benefits of consolidation. Accordingly, DOE has determined that a merger of the two programs is appropriate, which would result in more stringent medical assessments and training requirements for individuals in PSAP positions. DOE determined that a new rule, based on the many common elements of the PSAP and PAP, would establish a single unified management structure of both programs while incorporating all the important elements into one comprehensive regulation. By adopting a uniform set of requirements applicable to both categories of employees, DOE expects to have a stronger, more efficient, and effective human reliability program for personnel occupying these positions.

The proposed combined program, named the Human Reliability Program (HRP), is designed to meet the objective of protecting the national security through a system of continuous evaluation of individuals working in positions affording unescorted access to certain materials, facilities, and programs. The purpose of this continuous evaluation is to identify in a timely manner individuals whose judgment may be impaired by physical and/or emotional disorders, the use of illegal drugs or the abuse of legal drugs or other substances, the abuse of alcohol, or any other condition or circumstance that may represent a reliability, safety, and/or security concern.

The HRP will require that all individuals working in positions affording unescorted access to certain materials, facilities, and programs be certified to meet the highest standards of reliability and physical and mental suitability before such access may be granted. The certification of such individuals is subject to immediate review in the event an individual's behavior indicates a reliability or security risk to nuclear explosive operations or national security, during which time the individual will be immediately removed from assigned duties. Immediate removal is an interim, precautionary action and does not constitute a final determination regarding an individual's reliability or access authorization status. Individuals who are removed from HRP duties for non-security issues are entitled to resolve these issues through a formal procedure outlined in proposed sections 712.19 through 712.23. For removal based on a security concern, 10 CFR part 710 provides procedures for resolving issues concerning eligibility for an access authorization. These regulations provide the individual a written statement of the issues, an opportunity to respond, including an opportunity for a hearing before a DOE Hearing Officer, and an opportunity to have the opinion of the hearing officer reviewed at a higher level before a final determination is made.

Most of the provisions of the proposed HRP rule are taken directly from the PSAP and PAP regulations (*see* section-by-section description of the proposed HRP set forth below). However, the proposed HRP rule has several requirements that are new to all individuals and some that are new to certain HRP positions. These include:

1. *Random alcohol testing for all individuals in HRP positions.* DOE believes that the misuse or abuse of alcohol represents a risk that is incompatible with the nature of work performed by individuals in HRP positions. DOE has a compelling interest in ensuring that individuals who hold HRP positions are functioning at the highest level of reliability because they have unescorted access to certain materials, facilities, and programs. This interest outweighs the diminished privacy expectations in respect to intrusions occasioned by a carefully tailored alcohol testing program. The government must ensure the unimpaired judgment of persons who perform hands-on work with, or have access to, nuclear explosives or have access to, or responsibility for, special nuclear material, or who otherwise have the potential to cause unacceptable damage to national security. It also must ensure that the persons charged with the security of these research and production facilities do not pose a risk to the life of the citizenry as the result of impaired perception or judgment that might result from the use of deadly force.

This proposed regulation is consistent with regulations of other Federal agencies charged with overseeing critical activities. On February 15, 1994, the Department of Transportation (DOT) operating agencies promulgated alcohol testing regulations for the aviation, motor carrier, rail, transit, and pipeline transportation industries. In the common preamble for those regulations, the operating agencies discussed the research and recommendations by expert bodies, including the National Highway Transportation Safety Administration, the National Transportation Safety Board, the National Academy of Sciences, and the Transportation Research Board regarding the effects of blood alcohol (59 FR 7302, 7318–19). DOT concluded, based on this body of research, that while impairment of performance of safety-sensitive functions was clearly increased above 0.04 percent alcohol concentration, there was evidence of some impairment at levels as low as 0.02, the lowest level that can be reliably measured. Alcohol affects individuals differently; indeed, any blood alcohol impairs some individuals. Based on this evidence, DOT adopted a standard that requires removal of an employee from a safety-sensitive position at any alcohol concentration of 0.02 percent or greater. Some DOE employees at certain sites already are subject to random alcohol testing pursuant to DOT regulations.

The Nuclear Regulatory Commission (NRC) considers the misuse of alcohol to be a serious and pervasive workplace problem (Barnes, et al., *Fitness for Duty in the Nuclear Power Industry: A Review of Technical Issues*, 1988, NUREG/CR–5227, U.S. Nuclear Regulatory Commission, Washington, DC; Moore et al., *Fitness for Duty in the Nuclear Power Industry: A Review of Technical Issues*, 1989, NUREG/CR–5227, Supplement 1, U.S. Nuclear Regulatory Commission, Washington, DC). The NRC requires alcohol testing in its

fitness-for-duty program (10 CFR Part 26).

The proposed regulation is supported by scientific research that shows that cognitive and physical task performance decreases as a result of alcohol abuse (Hartwell, Steele, and Rodman, ''Workplace alcohol testing programs: prevalence and trends,'' *Monthly Labor Review*, V121, 1998; Mangione, et al., ''Employee drinking practices and work performance,'' *Journal of Studies on Alcohol*, V60, 1999; Ames, Grube, and Moore, ''The relationship of drinking and hangovers to workplace problems: An empirical study,'' *Journal of Studies on Alcohol* V58, 1997; Yesavage and Leirer, ''Hangover effects on aircraft pilots 14 hours after alcohol ingestion: A preliminary report,'' *American Journal of Psychiatry*, V143, 1986).

The job tasks performed by individuals in the HRP are clearly as, or more, safety-sensitive than those performed by workers in the transportation industry and the nuclear power industry and have the added security-sensitive requirements. The potential for (1) an accidental or unauthorized detonation of a nuclear explosive; (2) use of deadly force in guarding or transporting special nuclear materials or nuclear weapons; (3) a criticality incident involving special nuclear material; or (4) the misuse of classified information clearly demonstrates that alcohol abuse poses the same safety and security risks as does drug use. The proposed random alcohol testing is based on the DOT regulations that already are required for transportation workers at many DOE sites. DOE believes that random alcohol testing will enhance the safety and reliability aspects of the HRP and deter the use of alcohol on the job, as well as during a period prior to reporting for work. Individuals in HRP positions also will be subject to testing if they are involved in an incident, unsafe practice or occurrence, or if there is reasonable suspicion that they may be impaired.

2. *Eight-hour abstinence rule for alcohol*. In the past, individuals reporting for nuclear explosive duties have been prohibited from drinking alcohol during the eight hours before their work assignments. This eight-hour abstinence requirement is being retained in the HRP for those employees and is now made applicable to employees in specific positions designated by the Operations Office Manager, the National Nuclear Security Administration (NNSA) Administrator or his or her designee, or the appropriate Lead Program Secretarial Officer, or his or her designee. This abstinence requirement will be in addition to the random alcohol testing requirement.

3. *Annual Submission of Questionnaire for National Security Positions (QNSP), Part 2*. Previously this has been required only of participants in the PSAP, however; DOE proposes to make this a requirement for all individuals in the HRP. This requirement underscores DOE's continuous commitment to evaluate personnel security concerns that is fundamental to the success of the program. This annual requirement is designed to assist in assuring that HRP individuals and HRP-certified individuals are reliable and trustworthy.

4. *Psychological evaluations*. This requirement has been in effect for PAP individuals and is a new requirement for all other HRP participants. The psychological evaluation, as part of the overall medical assessment, addresses an individual's mental or behavioral state as it relates to security and safety concerns. This evaluation includes the completion of a psychological assessment (test) and a semi-structured interview with the Designated Psychologist, or a psychologist under his or her supervision, who has the latitude to vary the focus and content of questions based on the results of the psychological test and/or the interviewee's response to certain questions. Through this evaluation process, an assessment is made of whether the individual shows at-risk behavior or conditions that raise a security concern or may impact the ability to perform his or her job duties in a safe and reliable manner. Individuals will be subject to an initial psychological evaluation and annual evaluations thereafter. Every third year individuals in an HRP position will be required to have another psychological assessment (test). This process will assist medical personnel in their efforts to monitor participants and ensure that individuals in HRP positions are reliable and trustworthy.

5. *Counterintelligence polygraph examinations*. Individuals occupying either a PAP or PSAP position must submit to a counterintelligence-scope polygraph examination in accordance with the Polygraph Examination Regulation, 10 CFR Part 709. Both the PAP and PSAP regulations were amended to reflect this requirement when the Polygraph Examination Regulation was published on December 17, 1999 (64 FR 70962). This requirement is continued in the HRP rule. Refusal to submit to such a polygraph examination will result in rejection of the initial application for, or removal from, an HRP position, consistent with procedures in 10 CFR part 709.

II. Section-by-Section Discussion

The proposed HRP regulations are organized like the existing PAP regulations in 10 CFR part 711. Subpart A contains the provisions that establish the HRP and the HRP certification requirements; subpart B contains the provisions of the medical standards required for HRP certification. In drafting subpart A, the DOE carefully evaluated the existing provisions in both 10 CFR part 710, subpart B (the PSAP regulations) and part 711, subpart A (the PAP general regulations). Following are descriptions of selected proposed rule provisions:

Section 712.3, Definitions. The definition of ''access'' combines the PAP definition of ''access'' and the PSAP definition of ''direct access'' without substantive change.

The definition of ''alcohol use disorder'' is taken from PAP regulations. DOE proposes new definitions of ''alcohol'' and ''alcohol abuse.'' A definition of ''evidential-grade breath alcohol device'' is proposed, and is not currently found in either the PSAP or PAP regulations. A definition of ''random alcohol testing'' also is proposed.

The definitions of ''contractor'' in both the PSAP and PAP regulations would be replaced by the proposed definition of ''contractor.'' The proposed definition is more specific and is derived from the definition of ''contractor'' in 10 CFR part 1045, DOE's regulations on nuclear classification and declassification.

The term ''transfer'' is defined as the permanent move of an HRP-certified individual to another site having an HRP position.

Section 712.10, HRP positions. Proposed § 712.10 (a) lists the positions that will be included in the HRP and will require initial and annual certification. These include positions that afford access to Category I special nuclear material (SNM) or have responsibility for the transportation or protection of such material. Other positions included are those with the potential for causing unacceptable damage to national security that have been nominated for HRP designation by management officials and approved by the Administrator of the National Nuclear Security Administration (NNSA), or his or her designee, or by the appropriate Lead Program Secretarial Officer, or his or her designee. These are currently classified as PSAP positions, whereas the positions that afford direct access to the control areas of a nuclear

material production reactor have been eliminated from this rule (see 10 CFR 710.55). The HRP also will include all PAP positions (i.e., positions that involve nuclear explosive duties as defined in 10 CFR 711.3).

The proposed HRP also will include positions that afford access to information concerning vulnerabilities in protective systems when transporting nuclear explosives, nuclear devices, selected components or Category I quantities of SNM. The proposed category of positions includes many of the same ones currently in PSAP and PAP and may include others not previously in either program.

Section 712.11, General requirements for HRP certification. Proposed § 712.11 describes the certification requirements for all individuals in the HRP. The proposed psychological evaluation requirements, for example, have been in effect for PAP individuals and would be a new requirement for other HRP participants. Under this proposal, all HRP participants will be subject to a psychological evaluation, which consists of a psychological assessment (test) and a semi-structured interview with the designated psychologist or a psychologist under his or her supervision. Every third year, as part of the annual psychological evaluation, a psychological assessment (test) will be required. This process will enable medical personnel to monitor participants.

The proposed provision requiring HRP participants to submit annually the Questionnaire for National Security Position (QNSP), Part 2, currently applies only to participants in the PSAP. Application of this requirement to all HRP participants, including those currently in PAP, is considered an important element in the Department's ongoing process of ensuring that HRP individuals are reliable and trustworthy.

Random alcohol testing is proposed for all HRP positions. As discussed in the preamble, the DOE has a compelling interest in ensuring that individuals who hold an HRP position are functioning at the highest level of reliability. The DOE believes that misuse or abuse of alcohol presents a high level of risk at its research and production facilities. The risk of alcohol abuse or misuse by individuals in HRP positions warrants preventive action and intervention by the DOE to ensure protection of the environment, public health and safety, and national security.

Section 712.12, HRP implementation. Each DOE site or facility must prepare an HRP implementation plan that includes the same four annual components currently used in PSAP: supervisory review, medical assessment, management evaluation, and a DOE security review.

Many, but not all, of the PSAP and PAP positions are in the National Nuclear Security Administration. Section 3213 of the National Nuclear Security Administration Act (Pub. L. 106–65, Title XXXII) provides that no officer or employee of the NNSA, or contractor of the NNSA, may be ''subject to the authority, direction, or control of, any other officer, employee, or agent of the Department of Energy'' other than the Secretary of Energy (50 U.S.C. 2403). The proposed rule's section on implementation and other provisions has been drafted to satisfy this statutory limitation.

Section 712.13, Supervisory review. The proposed HRP supervisory review section consolidates current PSAP and PAP requirements found in 10 CFR 710.57 and 10 CFR 711.9, respectively.

Section 712.14, Medical assessment. The proposed medical assessment process is largely descriptive of the current process used in both PSAP and PAP. The main difference is the application of the annual PAP psychological evaluations to all individuals currently in PSAP. The psychological evaluation, as part of the overall medical assessment, addresses an individual's mental or behavioral state as it relates to security and safety concerns. This evaluation includes a semi-structured interview and completion of a psychological assessment. Through this evaluation process, an assessment is made as to whether the individual shows at-risk behavior or conditions, such as suicidal tendencies or attempted suicide, inability to deal with stress, hostility or aggression toward fellow workers or authority, uncontrolled anger, moodiness, depression, or other evidence of loss of emotional control. Individuals will be subject to an initial psychological evaluation and annual evaluations thereafter. Additionally, a psychological assessment (test) will be required every third year.

Section 712.15, Management evaluation. The management evaluation conducted for certification and recertification in the HRP will be conducted by the appropriate HRP management official. The management official will review the results of the supervisory review, medical assessment, and drug and alcohol testing, and will forward his or her recommendation to the HRP certifying official. If the evaluation reveals a security concern, the HRP management official must notify the applicable DOE personnel security office. Drug-testing requirements have not changed and are in accordance with 10 CFR part 707, for DOE contractor employees and DOE Order 3792.3 for DOE employees. Random, unannounced alcohol testing is a new requirement and will conform to the DOT procedures (49 CFR part 40, subpart C) already required at many DOE sites.

Section 712.16, DOE security review. As under the PAP and PSAP, security concerns identified at any stage of the certification process will be evaluated and resolved in accordance with DOE's regulations for determining eligibility for access to classified matter or special nuclear material in 10 CFR part 710, subpart A. This proposed rule will make no change to current policies and procedures.

Section 712.17, Instructional requirements. Proposed § 712.17 will require an initial and annual HRP instructional and educational program. The areas of instruction must include the objectives of the HRP, role and responsibilities of each individual in the HRP, procedures for recognizing and reporting security concerns, nuclear explosive duties and safety requirements for individuals in nuclear explosive positions, and procedures for recognizing and responding to behavioral changes and aberrant behavior in the workplace.

Section 712.18, Transferring HRP certification. Proposed § 712.18 describes the process for transferring an individual's HRP certification from one site to another. An individual must be currently certified in the HRP to request such a transfer.

Sections 712.19 through 712.23. The proposed rule's provisions for removing individuals from their HRP duties and resolving reliability concerns, which are not of a security concern, are similar to provisions in the current PAP regulations, 10 CFR 711.11 through 711.16. Under the proposed rule, however, final appeals of decisions to deny or revoke certification will be made by the DOE Deputy Secretary based on a recommendation of the Director, Office of Security. If removal is based on a security concern, the procedure described in 10 CFR part 710, will apply.

Subpart B—Medical standards. Subpart B contains the standards and procedures used to conduct medical assessments of HRP individuals. These standards and procedures were developed through the PAP rulemaking, completed on September 8, 1998 (63 FR 48060), and codified in subpart B to part 711. These provisions will be revised to reflect current DOE organization and

requirements of the National Nuclear Security Administration Act.

III. Regulatory Review

A. Executive Order 12866

Executive Order 12866, 58 FR 51735 (October 4, 1993) provides for a review by the Office of Information and Regulatory Affairs in the Office of Management and Budget of a ''significant regulatory action,'' which is defined as an action that may have an affect on the economy of $100 million or more or adversely affect the economy, competition, jobs, productivity, environment, public health or safety, or state, local or tribal governments. DOE has concluded that this proposed rule (10 CFR part 712) is not a significant regulatory action. Accordingly, this rulemaking has not been reviewed by the Office of Information and Regulatory Affairs.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires preparation of an initial regulatory flexibility analysis for every rule that 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 rulemaking will not directly regulate small businesses or small governmental entities. It will apply principally to individuals who are employees of, or applicants for employment by, some of DOE's prime contractors, which are large businesses. There may be some affected small businesses that are subcontractors, but the rule will not impose unallowable costs. Accordingly, DOE certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

The proposed rule, which consolidates the PAP and PSAP, relates to personnel qualifications that will have no impact on the environment. DOE has determined that this rule is covered under the Categorical Exclusion in DOE's National Environmental Policy Act regulations in paragraph A.6 of appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

D. Paperwork Reduction Act

DOE has determined that this proposed rule does not contain any new or amended recordkeeping, reporting or application requirements, or any other type of information collection requirements that require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The OMB has defined the term ''information'' to exclude certifications, consents, and acknowledgments that entail only minimal burden [5 CFR 1320.3(h)(1)].

E. Executive Order 13132

Executive Order 13132, 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 this 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.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 *et seq.*, requires a Federal agency to perform a detailed assessment of the costs and benefits of any rule imposing a Federal mandate with costs to state, local, or tribal governments, or to the private sector of $100 million or more. The proposed rule does not impose a Federal mandate requiring preparation of an assessment under the Unfunded Mandates Reform Act of 1995.

G. Executive Order 12988

Section 3(a) of Executive Order 12988, 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. 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.

H. Executive Order 13084

Under Executive Order 13084, 63 FR 27655 (May 19, 1998), DOE may not issue a discretionary rule that significantly or uniquely affects Indian tribal governments and imposes substantial direct compliance costs. This proposed rulemaking would not have such effects. Accordingly, Executive Order 13084 does not apply to this rulemaking.

I. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999, (Pub. L. No. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. This proposed rule will 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.

IV. Opportunity for Public Comment

A. Written Comments

Interested individuals are invited to participate in this proceeding by submitting data, views, or comments on this proposed rule. To help DOE review the submitted comments, commenters are requested to reference the paragraphs [e.g., § 712.13 (c)] to which they refer. Seven copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. Comments should

be identified on the outside of the envelope and on the comments themselves with the designated ''Human Reliability Program Rule, Docket No. SO–RM–00–HRP.'' If anyone wishing to provide written comments is unable to provide seven copies, alternative arrangements can be made in advance with the DOE. All comments received on or before the date specified at the beginning of this notice, and other relevant information before final action is taken on the proposed rule, will be considered.

All submitted comments will be available for public inspection as part of the administrative record on file for this rulemaking in the DOE Freedom of Information Reading Room at the address indicated in the **ADDRESSES** section of this notice.

Pursuant to the provisions of 10 CFR 1004.11, anyone submitting information or data that he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document, as well as two copies, if possible, from which the information has been deleted. The DOE will make its determination as to the confidentiality of the information and treat it accordingly.

B. Public Hearings

Public hearings will be held at the times, dates, and locations indicated in the **DATES** and **ADDRESSES** section of this notice. DOE invites any person who has an interest in the proposed regulation, or who is a representative of a group or class of persons that has an interest, to make a request for an opportunity to make an oral presentation at the hearing. Requests to speak should be sent to the mailing address or e-mail address or made by calling the telephone number indicated in the **DATES** section of this notice. Requests must be received by the time specified in the **DATES** section of this notice. The person making the request should provide a daytime telephone number. Each person selected to speak at a public hearing will be notified as to his or her approximate speaking time. Seven copies of the statement should be brought to the hearing. If any person wishing to testify cannot meet this requirement, alternative arrangements may be made in advance with Linda Repass, at the address and telephone number indicated in the **DATES** section of this notice. The DOE reserves the right to select persons to be heard at each hearing, to schedule their presentations, and to establish procedures governing the conduct of the hearing. The length of each presentation will be limited to 10 minutes or less, based on the number of persons requesting to speak.

A Departmental official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing but will be conducted in accordance with 5 U.S.C. 553 and section 501 of the Department of Energy Organization Act, 42 U.S.C. 7191. Only those persons conducting the hearing may ask questions. At the conclusion of all initial oral statements, each person will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the same order as the initial statements. Any further procedural rules needed for the proper conduct of the hearing will be announced by the Presiding Officer at the hearing.

The DOE will retain the record of the full hearing, including the transcript, and make it available for inspection and copying in the DOE Freedom of Information Reading Room at the address provided in the **ADDRESSES** section of this notice of proposed rulemaking. Transcripts may be purchased from the court reporter.

If the DOE must cancel a hearing, every effort will be made to publish an advance notice of such cancellation in the **Federal Register**. Notice of cancellation also will be given to all persons scheduled to speak at the hearing. Hearing dates may be canceled in the event no public testimony has been scheduled in advance.

List of Subjects

10 CFR Part 710

Administrative practice and procedures, Classified information, Government contracts, Government employees, and Nuclear materials.

10 CFR Part 711

Administrative practice and procedure, Alcohol abuse, Drug abuse, Government contracts, Government employees, Nuclear safety, Occupational safety and health.

10 CFR Part 712

Administrative practice and procedure, Alcohol abuse, Drug abuse, Government contracts, Government employees, Health, National security, Nuclear safety, Occupational safety and health, Personnel security, and Security concerns.

Issued in Washington, DC, on June 21, 2002.

Spencer Abraham,

Secretary of Energy.

For reasons stated in the preamble, the DOE hereby proposes to amend Chapter III of Title 10 of the Code of Federal Regulations as set forth below:

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

1. The authority citation continues to read as follows:

Authority: Sec. 145, 68 Stat. 942, as amended (42 U.S.C. 2165); sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); 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, sec. 104(c); 38 Stat. 1237 (42 U.S.C. 5814), sec. 105 (a); 88 Stat. 1238 (42 U.S.C. 5815).

Subpart B—[Removed]

2. Subpart B of 10 CFR part 710, is removed.

PART 711—PERSONNEL ASSURANCE PROGRAM

3. The authority citation continues to read as follows:

Authority: 42 U.S.C. 2201 (p), 7191.

4. Part 711 is removed.

5. Part 712, Human Reliability Program is added to read as follows:

PART 712—HUMAN RELIABILITY PROGRAM

Subpart A—Establishment of and Procedures for the Human Reliability Program

General Provisions

Sec.
712.1 Purpose.
712.2 Applicability.
712.3 Definitions.

Procedures

712.10 Designation of HRP positions.
712.11 General requirements for HRP certification.
712.12 HRP implementation.
712.13 Supervisory review.
712.14 Medical assessment.
712.15 Management evaluation.
712.16 DOE security review.
712.17 Instructional requirements.
712.18 Transferring HRP certification.
712.19 Removal from HRP.
712.20 Request for reconsideration or certification review hearing.
712.21 Office of Hearings and Appeals.
712.22 Hearing officer's report and recommendation.
712.23 Final decision by DOE Deputy Secretary

Subpart B—Medical Standards

712.30 Applicability.
712.31 Purpose.
712.32 Designated Physician.
712.33 Designated Psychologist.

Authority: 42 U.S.C. 2165; 42 U.S.C. 2201; 42 U.S.C. 5814–5815; 42 U.S.C. 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.

Subpart A—Establishment of and Procedures for the Human Reliability Program

General Provisions

§ 712.1 Purpose.

This part establishes the policies and procedures for a Human Reliability Program (HRP) in the Department of Energy (DOE), including the National Nuclear Security Administration (NNSA). The HRP is a security and safety reliability program designed to ensure that individuals who occupy positions affording access to certain materials, nuclear explosive devices, facilities, and programs meet the highest standards of reliability and physical and mental suitability. This objective is accomplished under this part through a system of continuous evaluation that identifies individuals whose judgment and reliability may be impaired by physical or emotional disorders, alcohol abuse, use of illegal drugs or the abuse of legal drugs or other substances, or any other condition or circumstance that may be of a security or safety concern.

§ 712.2 Applicability.

The HRP applies to all applicants for, or current employees of DOE or a DOE contractor or subcontractor in a position defined or designated under § 712.10 of this subpart as an HRP position.

§ 712.3 Definitions.

The following definitions are used in this part:

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).

Access means:

(1) A situation that may provide an individual proximity to or control over Category I special nuclear material (SNM); or

(2) The proximity to a nuclear explosive and/or Category I SNM that allows the opportunity to divert, steal, tamper with, and/or damage the nuclear explosive or material in spite of any controls that have been established to prevent such unauthorized actions.

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol.

Alcohol abuse means consumption of any beverage, mixture, or preparation, including any medication containing alcohol that results in impaired social or occupational functioning.

Alcohol use disorder means a maladaptive pattern in which a person's intake of alcohol is great enough to damage or adversely affect physical or mental health or personal, social, or occupational function; or when alcohol has become a prerequisite to normal function.

Blood Alcohol Concentration means the measure, expressed as a decimal fraction, of the mass of alcohol in a volume of blood, which can be measured directly from blood or derived from the concentration of alcohol in a breath specimen.

Certification means the formal action the HRP certifying official takes that permits an individual to perform HRP duties after it is determined that the individual meets the requirements for certification under this part.

Contractor means subcontractors at all tiers and any industrial, educational, commercial, or other entity, grantee, or licensee, including an employee, that has executed an agreement with the Federal Government for the purpose of performing under a contract, license, or other arrangement.

Designated Physician means a licensed doctor of medicine or osteopathy who has been nominated by the Site Occupational Medical Director (SOMD) and approved by the Operations Office Manager or designee, with the concurrence of the Deputy Assistant Secretary for Health Studies, to provide professional expertise in occupational medicine for the HRP.

Designated Psychologist means a licensed Ph.D., or Psy.D., or clinical psychologist who has been nominated by the SOMD and approved by the Operations Office Manager or designee, with the concurrence of the Deputy Assistant Secretary for Health Studies, to provide professional expertise in the area of psychological assessment for the HRP.

Diagnostic and Statistical Manual of Mental Disorders means the current version of the American Psychiatric Association's manual containing definitions of psychiatric terms and diagnostic criteria of mental disorders.

Deputy Assistant Secretary for Health Studies means the DOE individual with responsibility for policy and quality assurance for DOE occupational medical programs.

Drug abuse means use of an illegal drug or misuse of legal drugs.

Evidential-grade breath alcohol device means a device that conforms to the model standards for an evidential breath-testing device as listed on the Conforming Products List of Evidential Breath Measurement Devices published by the National Highway Traffic Safety Administration.

Flashback means a transient, spontaneous, and often unpredictable recurrence of aspects of a person's use of a hallucinogen that involves dramatic alteration of emotional state, perception, sensation, and behavior.

Hallucinogen means any hallucinogenic drug or substance that has the potential to cause flashbacks.

HRP-certified individual means an individual who has successfully completed the HRP requirements.

HRP certifying official means the DOE Operations Office Manager or the manager's designee who certifies, recertifies, temporarily removes, or reviews the circumstances of an individual's removal from an HRP position.

HRP individual means an individual being considered for assignment to an HRP position.

HRP management official means an individual designated by the DOE or a DOE contractor, as appropriate, who has programmatic responsibility for HRP positions.

Illegal drug means a controlled substance, as specified in Schedules I through V of the Controlled Substances Act, 21 U.S.C. 811, and 812, but the term does not apply to the use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by Federal law.

Impaired or impairment means a decrease in functional capacity of a person caused by a physical, mental, emotional, substance abuse, or behavioral disorder.

Incident means an unplanned, undesired event that interrupts the completion of an activity and that may include property damage or injury.

Job task analysis means a process that describes systematically the performance requirements of a job and identifies and defines the valid tasks and elements needed to satisfactorily perform the analyzed job.

Medical assessment means an evaluation of an HRP and HRP-certified

individual's present health status and health risk factors by means of:

(1) Medical history review;

(2) Job task analysis;

(3) Physical examination;

(4) Appropriate laboratory tests and measurements; and

(5) Appropriate psychological and psychiatric evaluations.

Nuclear explosive means an assembly of fissionable and/or fusionable materials and main charge high explosive parts or propellants capable of producing a nuclear detonation.

Nuclear explosive duties means work assignments that allow custody of a nuclear explosive or access to a nuclear explosive device or area.

Occurrence means any event or incident that is a deviation from the planned or expected behavior or course of events in connection with any DOE or DOE-controlled operation if the deviation has environmental, public health and safety, or national security protection significance, including (but not limited to) incidents involving:

(1) Injury or fatality to any person involving actions of a DOE employee or contractor employee;

(2) An explosion, fire, spread of radioactive material, personal injury or death, or damage to property that involves nuclear explosives under DOE jurisdiction;

(3) Accidental release of pollutants that results from, or could result in, a significant effect on the public or environment; or

(4) Accidental release of radioactive material above regulatory limits.

Operations Office Manager means the manager of any DOE operations office as well as the Manager of the Rocky Flats Office, Manager of the Pittsburgh Naval Reactors Office, Manager of the Schenectady Naval Reactors Office, and, for the Washington, DC area, the Director, Office of Headquarters Security Operations.

Random alcohol testing means the unscheduled, unannounced alcohol testing of randomly selected employees by a process designed to ensure that selections are made in a nondiscriminatory manner.

Reasonable suspicion means a suspicion based on an articulable belief that an individual uses illegal drugs or is under the influence of alcohol, drawn from reasonable inferences from particular facts, as detailed further in Part 707 of this title.

Recertification means the formal action the HRP certifying official takes annually, not to exceed 12 months, that permits an employee to remain in the HRP and perform HRP duties.

Reinstatement means the action the HRP certifying official takes after it has been determined that an employee who has been temporarily removed from the HRP meets the certification requirements of this part and can be returned to HRP duties.

Reliability means an individual's ability to adhere to security and safety rules and regulations.

Safety concern means any condition, practice, or violation that causes a substantial probability from which physical harm, property loss, and/or environmental impact could result.

Security concern means the presence of information regarding an individual applying for or holding an HRP position that may be considered derogatory under the criteria listed in 10 CFR Part 710, Subpart A.

Semi-structured interview means an interview by a Designated Psychologist, or a psychologist under his or her supervision, who has the latitude to vary the focus and content of the questions depending on the interviewee's responses.

Site Occupational Medical Director (SOMD) means the physician responsible for the overall direction and operation of the occupational medical program at a particular site.

Supervisor means an individual who has oversight and responsibility for a person holding an HRP position.

Transfer means an HRP-certified individual moving from one site to another site.

Unacceptable damage means an incident that could result in a nuclear detonation; high-explosive detonation or deflagration from a nuclear explosive; the diversion, misuse, or removal of Category I special nuclear material; or an interruption of nuclear explosive operations with a significant impact on national security.

Unsafe practice means either a human action departing from prescribed hazard controls or job procedures or practices, or an action causing a person unnecessary exposure to a hazard.

Procedures

§ 712.10 Designation of HRP positions.

(a) HRP certification is required for each individual assigned to, or applying for, a position that:

(1) Affords access to Category I SNM or has responsibility for transportation or protection of Category I quantities of SNM;

(2) Involves nuclear explosive duties or has responsibility for working with, protecting, or transporting nuclear explosives, nuclear devices, or selected components;

(3) Affords access to information concerning vulnerabilities in protective systems when transporting nuclear explosives, nuclear devices, selected components or Category I quantities of SNM; or

(4) Is not included in paragraphs (a)(1) through (3) of this section but affords the potential to significantly impact national security or cause unacceptable damage and is approved pursuant to paragraph (b) of this section.

(b) The Operations Office Manager and the HRP management official for NNSA and non-NNSA headquarters offices may nominate positions for the HRP that are not specified in paragraphs (a) (1) through (3) of this section or that have not previously been designated HRP positions. All such nominations must be submitted and approved by either the NNSA Administrator, his or her designee, or the appropriate Lead Program Secretarial Officer, or his or her designee.

(c) Before nominating a position for designation as an HRP position, the Operations Office Manager or the HRP management official for NNSA and non-NNSA headquarters offices must analyze the risks the position poses for the particular operational program. If the analysis shows that more restrictive physical, administrative, or other controls could be implemented that would prevent the position from being designated an HRP position, those controls will be implemented, if practicable.

(d) Nothing in this part prohibits contractors from establishing stricter employment standards for individuals who are nominated to DOE for certification or recertification in the HRP.

§ 712.11 General requirements for HRP certification.

(a) The following certification requirements apply to each individual applying for or in an HRP position:

(1) A DOE ''Q'' access authorization based on a background investigation, except for security police officers who have been granted an interim ''Q'' through the Accelerated Access Authorization Program;

(2) The annual submission of SF–86, OMB Control No. 3206–0007, Questionnaire for National Security Positions, Part 2, and an annual review of the personnel security file;

(3) Signed releases, acknowledgments, and waivers to participate in the HRP on forms provided by DOE;

(4) Completion of initial and annual HRP instruction as provided in § 712.17;

(5) Successful completion of an initial and annual supervisory review, medical assessment, management evaluation, and a DOE personnel security review for

certification and recertification in accordance with this part;

(6) No use of any hallucinogen in the preceding five years and no experience of flashback resulting from the use of any hallucinogen more than five years before applying for certification or recertification;

(7) A psychological evaluation consisting of a generally accepted psychological assessment (test) and a semi-structured interview;

(8) An initial and random, unannounced drug test for the use of illegal drugs at least once each 12 months in accordance with DOE policies implementing Executive Order 12564 or the relevant provisions of 10 CFR Part 707 for DOE contractors, and DOE Order 3792.3 ''Drug-Free Federal Workplace Testing Implementation Program'' for DOE employees;

(9) An initial and random unannounced alcohol test at least once each 12 months using an evidential-grade breath alcohol device, as listed on the Conforming Products List of Evidential Breath Measurement Devices published by the National Highway Traffic Safety Administration (49 CFR Part 40); and

(10) Successful completion, if conducted, of a counterintelligence polygraph examination.

(b) Each HRP individual must be certified in the HRP before being assigned to HRP duties and must be recertified annually, not to exceed 12 months between recertifications. For certification:

(1) Individuals in newly identified HRP positions must immediately sign the releases, acknowledgments, and waivers to participate in the HRP and complete initial instruction on the importance of security, reliability, and suitability. If these requirements are not met, the individual must be removed from the HRP position.

(2) All remaining HRP requirements listed in paragraph (a) of this section must be completed in an expedited manner.

(c) Alcohol consumption is prohibited within an eight-hour period preceding scheduled work for individuals performing nuclear explosive duties and for individuals in specific positions designated by either the Operations Office Manager, the NNSA Administrator, his or her designee, or the appropriate Lead Program Secretarial Officer, or his or her designee.

(d) Individuals reporting for unscheduled nuclear explosive duties and those specific positions designated by either the Operations Office Manager, the NNSA Administrator or his or her designee, or the appropriate Lead Program Secretarial Officer, or his or her designee, will be asked prior to performing any type of work if they have consumed alcohol within the preceding eight-hour period. If they answer ''no,'' they may perform their assigned duties but still may be tested.

(e) An individual whose confirmatory breath alcohol test result is at or above an alcohol concentration of 0.02 percent is not permitted to perform scheduled or unscheduled duties until the individual's alcohol concentration is below 0.02 percent using an evidential-grade breath analysis device.

(f) HRP-certified individuals must be tested for alcohol and/or drugs in accordance with section 712.15(b), (c), (d), and (e) if they are involved in an incident, unsafe practice, or an occurrence, or if there is reasonable suspicion that they may be impaired.

§ 712.12 HRP implementation.

(a) The implementation of the HRP at NNSA sites is the responsibility of the NNSA Administrator or his or her designee and the implementation at non-NNSA sites is the responsibility of the Lead Program Secretarial Officer or his or her designee.

(b) Management officials for each site or facility with HRP positions must prepare an initial HRP implementation plan and submit it by [DATE 90 DAYS AFTER PUBLICATION OF FINAL RULE] to the applicable Operations Office Manager for review and site approval. The implementation plan must:

(1) Be reviewed and updated every two years;

(2) Include the four annual components of the HRP process: supervisory review, medical assessment, management evaluation (which includes random drug and alcohol testing), and a DOE personnel security determination; and

(3) Include the HRP instruction and education component under § 712.17 of this part.

(c) The Deputy Administrator for Defense Programs, NNSA must:

(1) Provide advice and assistance to the Director, Office of Security, regarding policies, standards, and guidance for all nuclear explosive duty requirements; and

(2) Be responsible for implementation of all nuclear explosive duty safety requirements.

(d) The DOE Deputy Secretary, based on a recommendation of the Director, Office of Security, makes the final decision for any appeal of denial or revocation of certification or recertification from HRP.

(e) The Director, Security Policy Staff, within the Office of Security, is responsible for HRP policy and must:

(1) Ensure consistency of the HRP throughout the DOE and NNSA;

(2) Review and comment on all HRP implementation plans to ensure consistency with policy; and

(3) Provide policies and guidance, including instructional materials, to NNSA and non-NNSA field elements concerning the HRP, as appropriate.

(f) The Operations Office Managers must:

(1) Review and approve the HRP implementation plan for NNSA and non-NNSA sites/facilities under their cognizance and forward the plan to the Director, Security Policy Staff; and

(2) Ensure that the HRP is implemented at the NNSA and non-NNSA sites/facilities under their cognizance.

(g) The HRP Certifying Official must:

(1) Approve placement, certification, recertification, temporary removal, and reinstatement of individuals into HRP positions;

(2) Ensure that instructional requirements are implemented;

(3) Immediately notify (for the purpose of limiting access) the appropriate HRP management official of a personnel security action that results in the suspension of access authorization; and

(4) Ensure that the supervisory review, medical assessment, and management evaluation, including drug and alcohol testing, are conducted on an annual basis (not to exceed 12 months).

(h) Individuals assigned to HRP duties must:

(1) Execute HRP releases, acknowledgments, and waivers to facilitate the collection and dissemination of information, the performance of drug and alcohol testing, and medical examinations;

(2) Notify the Site Occupational Medical Director immediately of a physical or mental condition requiring medication or treatment; and

(3) Provide full, frank, and truthful answers to relevant and material questions, and when requested, furnish, or authorize others to furnish, information that DOE deems pertinent to reach a decision regarding HRP certification or recertification.

(4) Report any observed or reported behavior or condition of another HRP-certified individual that could indicate a reliability concern, including those behaviors and conditions listed in § 712.13 (c), to a supervisor, the SOMD, or the HRP-certifying official.

§ 712.13 Supervisory review.

(a) The supervisor must ensure that each individual tentatively selected for, and each individual occupying an HRP position but not yet HRP certified, executes the appropriate HRP releases, acknowledgments, and waivers. If these documents are not executed:

(1) The request for HRP certification of tentatively selected individuals may not be further processed until these requirements are completed; and

(2) The individual is immediately removed from the position.

(b) Each supervisor of HRP-certified personnel must conduct an annual review of each HRP-certified individual during which the supervisor must evaluate information (including security concerns) relevant to the individual's suitability to perform HRP tasks in a reliable and safe manner.

(c) The supervisor must report any concerns resulting from his or her review to the appropriate HRP management official. Types of behavior and conditions that would indicate a concern include, but are not limited to:

(1) Psychological or physical disorders that impair performance of assigned duties;

(2) Conduct that warrants referral for a criminal investigation or results in arrest or conviction;

(3) Indications of deceitful or delinquent behavior;

(4) Attempted or threatened destruction of property or life;

(5) Suicidal tendencies or attempted suicide;

(6) Use of illegal drugs or the abuse of legal drugs or other substances;

(7) Alcohol use disorders;

(8) Recurring financial irresponsibility;

(9) Irresponsibility in performing assigned duties;

(10) Inability to deal with stress, or the appearance of being under unusual stress;

(11) Failure to comply with work directives, hostility or aggression toward fellow workers or authority, uncontrolled anger, violation of safety or security procedures, or repeated absenteeism; and

(12) Significant behavioral changes, moodiness, depression, or other evidence of loss of emotional control.

(d) The supervisor must immediately remove an HRP-certified individual from HRP duties, pursuant to § 712.19, and temporarily reassign the individual to a non-HRP position if the supervisor believes the individual has demonstrated a security or safety concern that warrants such removal. If temporary removal is based on a security concern, the HRP management official must immediately notify the applicable DOE personnel security office and the HRP certifying official.

(e) Based on the DOE personnel security office recommendation, the HRP certifying official will make the final decision about whether to reinstate an individual into an HRP position.

(f) If temporary removal is based on a medical concern, the SOMD must report these restrictions in writing to the appropriate HRP management official, who will immediately notify the appropriate HRP certifying official, who will make the final determination in temporary removal actions.

(g) The supervisor must immediately remove from HRP duties any Federal employee who does not obtain HRP recertification. The supervisor may reassign the individual or realign the individual's current duties.

§ 712.14 Medical assessment.

(a) Purpose. The HRP medical assessment is performed to evaluate whether an individual tentatively selected for, or an incumbent in, an HRP position:

(1) Represents a security concern; or

(2) Has a condition that may prevent the individual from performing HRP duties in a reliable and safe manner.

(b) When performed. (1) The medical assessment is performed initially on individuals tentatively selected for HRP certification and individuals occupying HRP positions who have not yet received HRP certification. The medical assessment is performed annually for HRP-certified individuals, or more often as required by the SOMD.

(2) The Designated Physician will conduct an intermediate evaluation:

(i) If an HRP-certified individual requests an evaluation (i.e., self-referral);

(ii) If an HRP-certified individual is referred by management for an evaluation; or

(iii) As a routine return-to-work evaluation for an HRP-certified individual.

(c) Process. The Designated Physician, under the supervision of the SOMD, is responsible for the medical assessment of HRP and HRP-certified individuals. In performing this responsibility, the Designated Physician or the SOMD must integrate the medical evaluations, available testing results, psychological evaluations, any psychiatric evaluations, a review of current legal drug use, and any other relevant information. This information is used to determine if a reliability, safety, or security concern exists and if the individual is medically qualified for his or her assigned duties. If a security concern is identified, the Designated Physician or SOMD must immediately notify the HRP management official, who notifies the applicable DOE personnel security office and appropriate HRP certifying official.

(d) Evaluation. The Designated Physician, with the assistance of the Designated Psychologist, must determine the existence or nature of any of the following:

(1) Physical or medical disabilities, such as a lack of visual acuity, defective color vision, impaired hearing, musculoskeletal deformities, and neuromuscular impairment;

(2) Mental disorders or behavioral problems, including alcohol and other substance use disorders, as described in the Diagnostic and Statistical Manual of Mental Disorders;

(3) Use of illegal drugs or the abuse of legal drugs or other substances, as identified by self-reporting or by medical or psychological evaluation or testing;

(4) Threat of suicide, homicide, or physical harm; or

(5) Medical conditions such as cardiovascular disease, endocrine disease, cerebrovascular or other neurologic disease, or the use of drugs for the treatment of conditions that may adversely affect the judgment or ability of an individual to perform assigned duties in a reliable and safe manner.

(e) Job task analysis/statement of duties. Employers must provide a job task analysis or statement of duties for each HRP individual or HRP-certified individual to both the Designated Physician and Designated Psychologist before the initial or annual medical assessment and psychological evaluation. Medical assessments and psychological evaluations may not be performed if a job task analysis or statement of duties has not been provided.

(f) Psychological evaluations. Psychological evaluations must be conducted:

(1) For initial HRP certification. This psychological evaluation consists of a psychological assessment (test) approved by the Deputy Assistant Secretary for Health Studies and a semi-structured interview.

(2) For recertification. This psychological evaluation consists of a semi-structured interview. A psychological assessment (test) may also be conducted as warranted.

(3) Every third year. The medical assessment for recertification must include a psychological assessment (test) approved by the Deputy Assistant Secretary for Health Studies.

(4) When additional psychological or psychiatric evaluations are required by the SOMD to resolve any concerns.

(g) Return to work after sick leave. HRP-certified individuals who have been on sick leave for five or more consecutive days, or an equivalent time period for those individuals on an alternative work schedule, must report in person to the SOMD before being allowed to return to normal duties. The SOMD must provide a written recommendation to the appropriate HRP supervisor regarding the individual's return to work. An HRP-certified individual in certain circumstances also may be required to report to the SOMD for written recommendation to return to normal duties after any period of sick leave.

(h) Temporary removal or restrictions. The SOMD may recommend temporary removal of an individual from an HRP position or restrictions on an individual's work in an HRP position if a medical condition or circumstance develops that affects the individual's ability to perform assigned job duties. The SOMD must recommend medical removal or medical restrictions immediately, in writing, to the appropriate HRP management official who will immediately notify the appropriate HRP certifying official. To reinstate or remove such restrictions, the SOMD must make this recommendation, in writing, to the HRP management official who will notify the appropriate HRP certifying official.

(i) Medical evaluation after rehabilitation. (1) Individuals who request reinstatement in the HRP following treatment leading to rehabilitation from alcohol use disorder, use of illegal drugs, or the abuse of legal drugs or other substances must undergo an evaluation, as prescribed by the SOMD, to ensure continued rehabilitation and adequate capability to perform their job duties.

(2) The HRP certifying official may reinstate an individual in the HRP who successfully completes an SOMD-approved drug or alcohol rehabilitation program. Recertification is based on the SOMD's follow-up evaluation and recommendation. The individual is also subjected to unannounced follow-up tests for illegal drugs or alcohol and relevant counseling for three years.

(j) Medication and treatment. HRP-certified individuals are required to immediately report to the SOMD any physical or mental condition requiring medication or treatment. The SOMD determines if temporary removal of the individual from HRP duties is required and, if the individual is temporarily removed, informs the appropriate HRP management official of the action.

§ 712.15 Management evaluation.

(a) Evaluation components. A management evaluation is required before an individual can be considered for initial certification or recertification in the HRP. This evaluation must be based on a careful review of the results of the supervisory review, medical assessment, and drug and alcohol testing. The appropriate HRP management official must evaluate the information and forward his or her recommendation, including any safety concern, to the HRP certifying official. If the management evaluation reveals a security concern, the HRP management official must notify the applicable DOE personnel security office.

(b) Drug testing. All HRP and HRP-certified individuals are subject to testing for the use of illegal drugs, as required by this part. Testing must be conducted in accordance with 10 CFR Part 707, the workplace substance abuse program for DOE contractor employees, and DOE Order 3792.3, ''Drug-Free Federal Workplace Testing Implementation Program,'' for DOE employees. The program must include an initial and random, unannounced drug testing at least once every 12 months and testing of individuals in the HRP if involved in an incident, unsafe practice or occurrence, or based on reasonable suspicion. Failure to appear for unannounced testing within two hours of notification constitutes a refusal to submit to a test. An HRP-certified individual who has been determined to use illegal drugs based on a drug test must be immediately removed from HRP duties, and DOE personnel security must be notified immediately.

(c) Alcohol testing. All HRP and HRP-certified individuals are subject to testing for the use of alcohol, as required by this part. The alcohol testing program must include, as a minimum, an initial and random unannounced alcohol testing at least once every 12 months and testing of individuals in the HRP if involved in an incident, unsafe practice, or occurrence, or based on reasonable suspicion. An HRP-certified individual who has been determined to have a blood alcohol concentration (BAC) of 0.02 percent or greater must be immediately removed from the HRP position, and the HRP management official must be notified.

(1) Breath alcohol testing must be conducted by a certified breath alcohol technician and conform to the DOT procedures (49 CFR Part 40, Alcohol Testing) for use of an evidential-grade breath analysis device approved for 0.02/0.04 cutoff levels that conforms to the DOT National Highway Traffic Safety Administration (NHTSA) model specifications and the most recent ''Conforming Products List'' issued by NHTSA.

(2) An individual required to undergo DOT alcohol testing is subject to the regulations of the NHTSA, and, if such individual's blood alcohol level exceeds DOT standards, the individual's employer may take appropriate disciplinary action.

(3) The supervisor must immediately remove an HRP-certified individual from his or her HRP position if the individual refuses to submit to a breath alcohol test and immediately notify the HRP management official of the removal. The following constitutes a refusal to submit to a test:

(i) Failure to appear for unannounced testing within two hours of notification;

(ii) Failure to provide an adequate volume of breath in two attempts, without a valid medical excuse; and

(iii) Engaging in conduct that clearly obstructs the testing process, including failure to cooperate with reasonable instructions provided by the testing technician.

(d) Occurrence testing. (1) When an HRP-certified individual is involved in, or associated with, an occurrence requiring immediate reporting to the DOE or the individual's behavior creates the basis for reasonable suspicion, the following procedures must be implemented:

(i) Testing for the use of illegal drugs in accordance with the provisions of the DOE policies implementing Executive Order 12564, and 10 CFR Part 707 or DOE Order 3792.3, which establish workplace substance abuse programs for contractor and DOE employees, respectively.

(ii) Testing for use of alcohol in accordance with this section.

(2) Testing must be performed as soon as possible after an occurrence that requires immediate notification or reporting.

(3) The supervisor must remove an HRP-certified individual from HRP duties if the individual refuses to undergo the testing required by this section.

(e) Testing for reasonable suspicion. (1) If the behavior of an individual in an HRP position creates the basis for reasonable suspicion of the use of an illegal drug or alcohol, that individual must be tested if two or more supervisory or management officials, at least one of whom is in the direct chain of supervision of the individual or is the

SOMD, agree that such testing is appropriate.

(2) Reasonable suspicion must be based on an articulable belief that an HRP-certified individual is in possession of, or under the influence of, an illegal drug or alcohol, drawn from facts and reasonable inferences from those particular facts. Such a belief may be based on, among other things:

(i) Observable phenomena, such as direct observation of the use or possession of illegal drugs or alcohol, or the physical symptoms of being under the influence of drugs or alcohol;

(ii) A pattern of abnormal conduct or erratic behavior; or

(iii) Information provided by a reliable and credible source that is independently corroborated.

(f) Counterintelligence Polygraph Examination. All HRP individuals and, when selected, all HRP-certified individuals, must submit to and successfully complete a counterintelligence polygraph examination in accordance with 10 CFR Part 709, Polygraph Examination Regulations.

§ 712.16 DOE security review.

(a) A personnel security specialist will perform a personnel security file review of an HRP and HRP-certified individual upon receiving the supervisory review, medical assessment, and management evaluation and recommendation.

(b) If the personnel security file review is favorable, this information must be forwarded to the HRP certifying official. If the review reveals a security concern, or if a security concern is identified during another component of the HRP process, the HRP certifying official must be notified and the security concern evaluated in accordance with the criteria in 10 CFR Part 710. All security concerns must be resolved according to procedures outlined in 10 CFR Part 710, rather than through the procedures in this part.

(c) Any mental or behavioral issues found in a personnel security file that could impact an HRP or HRP-certified individual's ability to perform HRP duties may be provided in writing to the SOMD, Designated Physician, and Designated Psychologist previously identified for receipt of this information. Medical personnel may not share any information obtained from the personnel security file with anyone who is not an HRP certifying official.

§ 712.17 Instructional requirements.

(a) Management officials at each DOE site or facility with HRP positions must establish an initial and annual HRP instruction and education program. The program must provide:

(1) Individuals, supervisors, and managers in HRP positions with the knowledge required to recognize and respond to behavioral change and aberrant behavior that may result in a risk to national security or nuclear explosive safety; and

(2) For all HRP medical personnel, detailed explanation of HRP duties and responsibilities.

(b) The following program elements must be included in initial and annual instruction:

(1) The objectives of the HRP and the role and responsibilities of each individual in the HRP to include recognizing and reporting security concerns, prescription drug usage, return to work requirements, and continuous evaluation of HRP participants;

(2) Instruction regarding the potential security and safety concerns from behavioral changes and aberrant behavior; and

(3) For nuclear explosive responsibilities, detailed explanation of duties and safety requirements.

§ 712.18 Transferring HRP Certification.

(a) An individual must be currently certified in the HRP to request transfer of HRP certification.

(b) Transferring the HRP certification from one site to another requires completion of the following actions before the individual is allowed to perform HRP duties at the new site:

(1) Verify that the individual is currently enrolled in the HRP and is transferring into a designated HRP position;

(2) Transfer the personnel security file to the applicable DOE personnel security office;

(3) Incorporate the individual into the new site's alcohol and drug-testing program;

(4) Incorporate the initial approval dates into the annual HRP requirements; and

(5) Receive site-specific instruction.

(c) HRP-certified individuals on temporary assignment or being detailed to HRP positions at other sites require verification that the individual:

(1) Is currently enrolled in the HRP;

(2) Has met all site-specific instruction; and

(3) Is required to return to the site that maintains the HRP certification for recertification.

§ 712.19 Removal from HRP.

(a) Supervisory responsibilities. A supervisor who has a reasonable belief that an HRP-certified individual is not reliable, based on either a safety or security concern, must immediately remove that individual from those duties pending a determination of the individual's reliability. The supervisor must, at a minimum:

(1) Require the individual to stop performing HRP duties;

(2) Take action to ensure the individual is denied both escorted and unescorted access to the HRP work areas; and

(3) Notify the individual and the HRP management official in writing of the reason for these actions within 24 hours.

(b) Immediate removal of an HRP-certified individual from HRP duties is an interim, precautionary action and does not constitute a determination that the individual is not fit to perform his or her required duties. Removal is not, in itself, cause for loss of pay, benefits, or other changes in employment status.

(c) Temporary removal. (1) If an HRP management official receives a supervisor's written notice of the immediate removal of an HRP-certified individual, that official must direct the temporary removal of the individual pending an evaluation and determination regarding the individual's reliability.

(2) If removal is based on a security concern, the HRP management official must notify the HRP certifying official and the applicable DOE personnel security office for resolution of the security concern under the criteria and procedures in 10 CFR Part 710.

(3) The HRP management official must conduct an evaluation of the circumstances or information that led the supervisor to remove the individual from HRP duties. The HRP management official must prepare a written report of the evaluation that includes the HRP management official's determination of the individual's reliability for continuing HRP certification.

(4) If the HRP management official determines that an individual who has been removed temporarily continues to meet the requirements for certification, the HRP management official must:

(i) Notify the individual's supervisor of the determination and direct that the individual be allowed to return to HRP duties;

(ii) Notify the individual; and

(iii) Notify the HRP certifying official.

(5) If the HRP management official determines that an individual who has been temporarily removed does not meet the requirements for certification, the HRP management official must forward the written report to the HRP certifying official. If the HRP certifying official is not the Operations Office Manager, the HRP certifying official

must review the written report and take one of the following actions:

(i) Direct that the individual be reinstated and provide written explanation of the reasons and factual bases for the action;

(ii) Direct continuation of the temporary removal pending completion of specified actions (e.g., medical assessment, treatment) to resolve the concerns about the individual's reliability; or

(iii) Recommend to the Operations Office Manager the revocation of the individual's certification and, provide written explanation of the reasons and factual bases for the decision.

(d) The Operations Office Manager, on receiving the HRP management official's written report and the HRP certifying official's recommendation (if any), must take one of the following actions:

(1) Direct that the individual be reinstated and, provide written explanation of the reasons and factual bases for the action;

(2) Direct the revocation of the individual's HRP certification; or

(3) Direct continuation of the temporary removal pending completion of specified actions (e.g., medical assessment, treatment) to resolve the concerns about the individual's reliability.

(e) If the action is revocation, the Operations Office Manager must provide the individual a copy of the HRP management official's report. The Manager may withhold such a report, or portions thereof, to the extent that he or she determines that the report, or portions thereof, may be exempt from access by the employee under the Privacy Act or the Freedom of Information Act.

(f) If an individual is directed by the Operations Office Manager to take specified actions to resolve HRP concerns, he or she must be reevaluated by the HRP management and HRP certifying officials after those actions have been completed. After considering the HRP management and HRP certifying officials' report and recommendation, the Operations Office Manager must direct either:

(1) Reinstatement of the individual; or

(2) Revocation of the individual's HRP certification.

(g) Notification of Operations Office Manager's initial decision. The Operations Office Manager must send by certified mail (return receipt requested) a written decision, including rationale, to an HRP individual or HRP-certified individual who is denied certification or whose certification is revoked. The Operations Office Manager's decision must be accompanied by notification to the individual, in writing, of the procedures pertaining to reconsideration or a hearing on the Operation Office Manager's decision.

§ 712.20 Request for reconsideration or certification review hearing.

(a) An HRP individual or HRP-certified individual who receives notification of an Operation Office Manager's decision to deny or revoke his or her HRP certification may choose one of the following options:

(1) Take no action;

(2) Submit a written request to the Operations Office Manager for reconsideration of the decision to deny or revoke certification. The request must include the individual's response to any information that gave rise to the concern. The request must be sent by certified mail to the Operations Office Manager within 20 working days after the individual received notice of the Operations Office Manager's decision; or

(3) Submit a written request to the Operations Office Manager for a certification review hearing. The request for a hearing must be sent by certified mail to the Operations Office Manager within 20 working days after the individual receives notice of the Operations Office Manager's decision.

(b) If an individual requests reconsideration by the Operations Office Manager but not a certification review hearing, the Operations Office Manager must, within 20 working days after receipt of the individual's request, send by certified mail (return receipt requested) a final decision to the individual. This final decision about certification is based on the individual's response and other relevant information available to the Operations Office Manager.

(c) If an individual requests a certification review hearing, the Operations Office Manager must forward the request to the Office of Hearings and Appeals.

§ 712.21 Office of Hearings and Appeals.

(a) The certification review hearing is conducted by the Office of Hearings and Appeals.

(b) The hearing officer must have a DOE ''Q'' access authorization when hearing cases involving HRP duties.

(c) An individual who requests a certification review hearing has the right to appear personally before the hearing officer; to present evidence in his or her own behalf, through witnesses or by documents, or by both; and to be accompanied and represented at the hearing by counsel or any other person of the individual's choosing and at the individual's own expense.

(d) In conducting the proceedings, the hearing officer must:

(1) Receive all relevant and material information relating to the individual's fitness for HRP duties through witnesses or documentation;

(2) Ensure that the individual is permitted to offer information in his or her behalf; to call, examine, and cross-examine witnesses and other persons who have made written or oral statements, and to present and examine documentary evidence;

(3) Require the testimony of the individual and all witnesses be given under oath or affirmation; and

(4) Ensure that a transcript of the certification review proceedings is made.

§ 712.22 Hearing officer's report and recommendation.

Within 30 calendar days of the receipt of the hearing transcript by the hearing officer or the closing of the record, whichever is later, the hearing officer must forward written findings, a supporting statement of reasons, and recommendation regarding the individual's eligibility for certification or recertification in the HRP position to the Director, Office of Security. The hearing officer's report and recommendation must be accompanied by a copy of the record of the proceedings. The Director, Office of Security shall forward to the DOE Deputy Secretary a recommendation to either revoke, deny, certify, or recertify an individual in the HRP.

§ 712.23 Final decision by DOE Deputy Secretary.

Within 20 working days of the receipt of the Director, Office of Security's recommendation, the Deputy Secretary should issue a final written decision. A copy of this decision must be sent by certified mail (return receipt requested) to the Operations Office Manager and to the individual accompanied by a copy of the hearing officer's report and the transcript of the certification review proceedings.

Subpart B—Medical Standards

§ 712.30 Applicability.

This subpart establishes standards and procedures for conducting medical assessments of DOE and DOE contractor individuals in HRP positions.

§ 712.31 Purpose.

The standards and procedures set forth in this subpart are necessary for DOE to:

(a) Identify the presence of any mental, emotional, physical, or behavioral characteristics or conditions that present or are likely to present an unacceptable impairment in reliability;

(b) Facilitate the early diagnosis and treatment of disease or impairment and foster accommodation and rehabilitation;

(c) Determine what functions an HRP-certified individual may be able to perform and to facilitate the proper placement of individuals; and

(d) Provide for continuing monitoring of the health status of individuals to facilitate early detection and correction of adverse health effects, trends, or patterns.

§ 712.32 Designated Physician.

(a) The Designated Physician must be qualified to provide professional expertise in the area of occupational medicine as it relates to the HRP.

(b) The Designated Physician must:

(1) Be a graduate of an accredited school of medicine or osteopathy;

(2) Have a valid, unrestricted state license to practice medicine in the state where HRP medical assessments occur;

(3) Have met the applicable HRP instruction requirements; and

(4) Be eligible for the appropriate DOE access authorization.

(c) The Designated Physician is responsible for the medical assessments of HRP and HRP-certified individuals, including determining which components of the medical assessments may be performed by other qualified personnel. Although a portion of the assessment may be performed by another physician, physician's assistant, or nurse practitioner, the Designated Physician remains responsible for:

(1) Supervising the evaluation process;

(2) Interpreting the results of evaluations;

(3) Documenting medical conditions or issues that may disqualify an individual from the HRP;

(4) Providing medical assessment information to the Designated Psychologist to assist in determining psychological fitness;

(5) Determining, in conjunction with DOE if appropriate, the location and date of the next required medical assessment; and

(6) Signing a recommendation about the medical fitness of an individual for certification or recertification.

(d) The Designated Physician must immediately report to the SOMD any of the following about himself or herself:

(1) Initiation of an adverse action by any state medical licensing board or any other professional licensing board;

(2) Initiation of an adverse action by any Federal regulatory board since the last designation;

(3) The withdrawal of the privilege to practice by any institution;

(4) Being named a defendant in any criminal proceedings (felony or misdemeanor) since the last designation;

(5) Being evaluated or treated for alcohol use disorder or drug dependency or abuse since the last designation; or

(6) Occurrence of a physical or mental health condition since the last designation that might affect his or her ability to perform professional duties.

§ 712.33 Designated Psychologist.

(a) The Designated Psychologist reports to the SOMD and determines the psychological fitness of an individual to participate in the HRP. The results of this evaluation may be provided only to the Designated Physician or the SOMD.

The Designated Psychologist must:

(1) Hold a doctoral degree from a clinical psychology program that includes a one-year clinical internship approved by the American Psychological Association or an equivalent program;

(2) Have accumulated a minimum of three years postdoctoral clinical experience with a major emphasis in psychological assessment (test);

(3) Have a valid, unrestricted state license to practice clinical psychology in the state where HRP medical assessments occur;

(4) Have met the applicable HRP instruction requirements; and

(5) Be eligible for the appropriate DOE access authorization.

(b) The Designated Psychologist is responsible for all psychological evaluations of HRP and HRP-certified individuals, and otherwise as directed by the SOMD. Although a portion of the psychological evaluation may be performed by another psychologist, the Designated Psychologist must:

(1) Supervise the psychological evaluation process and designate which components may be performed by other qualified personnel;

(2) Upon request of management, assess the psychological fitness of HRP individuals and HRP-certified individuals for HRP duties including specific work settings and recommend referrals as indicated; and

(3) Make referrals for psychiatric, psychological, substance abuse, personal or family problems, and monitor the progress of individuals so referred.

(c) The Designated Psychologist must immediately report to the SOMD any of the following about himself or herself:

(1) Initiation of an adverse action by any state medical licensing board or any other professional licensing board;

(2) Initiation of an adverse action by any Federal regulatory board since the last designation;

(3) The withdrawal of the privilege to practice by any institution;

(4) Being named a defendant in any criminal proceeding (felony or misdemeanor) since the last designation;

(5) Being evaluated or treated for alcohol use disorder or drug dependency or abuse since the last designation; or

(6) Occurrence of a physical or mental health condition that might affect his or her ability to perform professional duties since the last designation.

§ 712.34 Site Occupational Medical Director.

(a) The SOMD must nominate a physician to serve as the Designated Physician and a clinical psychologist to serve as the Designated Psychologist. The nominations must be sent through the operations office to the Deputy Assistant Secretary for Health Studies. Each nomination must describe the nominee's relevant training, experience, and licensure, and include a curriculum vitae and a copy of the nominee's current state or district license.

(b) The SOMD must submit a renomination report biennially through the Operations Office Manager to the Deputy Assistant Secretary for Health Studies. This report must be submitted at least 60 days before the second anniversary of the initial designation or of the last redesignation, whichever applies. The report must include:

(1) A statement evaluating the performance of the Designated Physician and Designated Psychologist during the previous designation period; and

(2) A copy of the valid, unrestricted state or district license of the Designated Physician and Designated Psychologist.

(c) The SOMD must submit, annually, to the Deputy Assistant Secretary for Health Studies through the Operations Office Manager, a written report summarizing HRP medical activity during the previous year. The SOMD must comply with any DOE directives specifying the form or contents of the annual report.

(d) The SOMD must investigate any reports of performance issues regarding a Designated Physician or Designated Psychologist, and the SOMD may suspend either official from HRP-related duties. If the SOMD suspends either official, the SOMD must notify the Deputy Assistant Secretary for Health

Studies and provide supporting documentation and reasons for the action.

§ 712.35 Deputy Assistant Secretary for Health Studies.

The Deputy Assistant Secretary for Health Studies or his or her designee must:

(a) Develop policies, standards, and guidance for the medical aspects of the HRP, including the psychological testing inventory to be used;

(b) Review the qualifications of Designated Physicians and Designated Psychologists, and concur or nonconcur with their designations by sending a statement to the operations office and an informational copy to the SOMD;

(c) Provide technical assistance on medical aspects of the HRP to all DOE elements and DOE contractors; and

(d) Concur or nonconcur with the medical bases of decisions rendered on appeals of HRP certification decisions.

§ 712.36 Medical assessment process.

(a) The Designated Physician, under the supervision of the SOMD, is responsible for the medical assessment of HRP and HRP-certified individuals. In carrying out this responsibility, the Designated Physician or the SOMD must integrate the medical evaluations, psychological evaluations, any psychiatric evaluations, and any other relevant information to determine an individual's overall medical qualification for assigned duties.

(b) Employers must provide a job task analysis or detailed statement of duties for those individuals involved in HRP duties to both the Designated Physician and the Designated Psychologist before each medical assessment and psychological evaluation. HRP medical assessments and psychological evaluations may not be performed if a job task analysis or detailed statement of duties has not been provided.

(c) The medical process by the Designated Physician includes:

(1) Medical assessments for initial certification, annual recertification, and evaluations for reinstatement following temporary removal from the HRP;

(2) Evaluations from self-referrals and referrals by management;

(3) Routine medical contacts, including routine return-to-work evaluations and occupational and nonoccupational health counseling sessions; and

(4) Review of current, legal drug use.

(d) Psychological evaluations must be conducted:

(1) For initial certification. This psychological evaluation consists of a generally accepted, psychological assessment (test) approved by the Deputy Assistant Secretary for Health Studies and a semi-structured interview.

(2) For recertification. This psychological evaluation consists of a semi-structured interview, which is conducted annually at the time of the medical examination.

(3) Every third year. The medical assessment for recertification must include a generally accepted psychological assessment (test) approved by the Deputy Assistant Secretary for Health Studies.

(4) Additional psychological or psychiatric evaluations may be required by the SOMD when needed to resolve HRP concerns.

(e) Following absences requiring return-to-work evaluations under applicable DOE directives, the Designated Physician, with assistance from the Designated Psychologist as necessary, must determine whether a psychological evaluation is necessary.

(f) Except as provided in paragraph (g) of this section, the Designated Physician must forward the completed medical assessment of an HRP and HRP-certified individual to the SOMD, who must make a recommendation based on the assessment to the individual's HRP management official. If the Designated Physician determines that a currently certified individual no longer meets the HRP requirements, the Designated Physician must immediately, orally, inform the HRP management official, with a written explanation to follow within 24 hours.

(g) Only the Designated Physician, subject to informing the SOMD, may make a medical recommendation for return to work and work accommodations for HRP-certified individuals.

(h) The following documentation is required after treatment of an individual for any disqualifying condition:

(1) A summary of the diagnosis, treatment, current status, and prognosis to be furnished to the Designated Physician;

(2) The medical opinion of the Designated Physician advising the individual's supervisor whether the individual is able to return to work in either an HRP or non-HRP capacity; and

(3) Any periodic monitoring plan approved by the Designated Physician, the Designated Psychologist, and the SOMD used to evaluate the reliability of the individual.

(i) If the disqualifying condition was of a security concern, the appropriate procedure described in 10 CFR Part 710 will apply.

§ 712.37 Evaluation for hallucinogen use.

If DOE determines that an HRP or HRP-certified individual has used any hallucinogen, the individual is not eligible for certification or recertification unless:

(a) Five years have passed since the last use of the hallucinogen; and

(b) The individual has a record of acceptable job performance and observed behavior.

§ 712.38 Maintenance of medical records.

(a) The medical records of HRP and HRP-certified individuals must be maintained in accordance with the Privacy Act, 5 U.S.C. 552a and DOE implementing regulations in 10 CFR Part 1008; the Department of Labor's regulations on access to individual exposure and medical records, 29 CFR 1910.1020; and applicable DOE directives. DOE contractors also may be subject to § 503 of the Rehabilitation Act, 29 U.S.C. 793, and its implementing rules, including confidentiality provisions in 29 CFR 60–741.23(d).

(b) The psychological record of an HRP and HRP-certified individual is a component of the medical record. The psychological record must:

(1) Contain any clinical reports, test protocols and data, notes of individual contacts and correspondence, and other information pertaining to an individual's contact with a psychologist;

(2) Be stored in a secure location in the custody of the Designated Psychologist; and

(3) Be kept separate from other medical record documents, with access limited to the SOMD and the Designated Physician.

(c) The records of alcohol and drug testing must be maintained in accordance with 42 CFR Part 2, ''Confidentiality of Alcohol and Drug Abuse Patient Records,'' and 10 CFR Part 707, ''Workplace Substance Abuse Programs at DOE Sites.''

[FR Doc. 02–17803 Filed 7–16–02; 8:45 am]

BILLING CODE 6450–01–P