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[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Parts 602, 707, 835, 850 and 851

RIN 1992-AA47

Technical Amendments: Transfer of Office Functions

AGENCY: Office of Environment, Health, Safety and Security, U.S. Department of Energy.

ACTION: Final rule; technical amendment.

SUMMARY: The Department of Energy (DOE) has reorganized its Office of Health, Safety and Security by dividing the office into two separate organizations: The Office of Environment, Health, Safety and Security and the Office of Enterprise Assessments. The Office of Environment, Health, Safety and Security's mission is to provide corporate leadership and strategic approaches for protecting DOE's workers, the public, the environment and national security assets. This objective is accomplished through developing corporate policies and standards and providing guidance on their implementation; sharing operating experience, lessons learned, and best practices; and providing assistance and supporting services to line management with the goal of mission success as DOE's environment, health, safety and security advocate. The Office of Enterprise Assessments administers the Department's Congressionally-mandated enforcement functions in the areas of worker safety and health, nuclear safety, and security, and provides independent assessments of Departmental performance in the areas of security, worker safety and health, nuclear safety and the environment. This final rule makes technical amendments to DOE's regulations to substitute the officials to whom or offices to which functions have been transferred pursuant to the reorganization of offices and functions. This regulation does not alter substantive rights or obligations under current law.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jacqueline D. Rogers, U.S. Department of Energy, Office of Environment, Health, Safety and Security, Mailstop AU-11, 1000 Independence Ave., S.W., Washington, D.C. 20585, (202) 586-4714, or jackie.rogers@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

DOE has reorganized its Office of Health, Safety and Security (HSS) by dividing the office into two separate organizations: The Office of Environment, Health, Safety and Security (AU) and the Office of Enterprise Assessments (EA). HSS's responsibilities were divided between the organizations as described below.

AU's mission is to provide corporate leadership and strategic approaches for protecting DOE's workers, the public, the environment and national security assets. This objective is accomplished through developing corporate policies and standards and providing guidance on their implementation; sharing operating experience, lessons learned, and best practices; and providing assistance and supporting services to line management with the goal of mission success as DOE's environment, health, safety and security advocate. AU is led by the Associate Under Secretary for Environment, Health, Safety and Security who reports directly to the Under Secretary for Management and Performance.

EA is responsible for performing independent assessments in the areas of nuclear safety, worker safety and health, environment, cyber and physical security, and other critical functions; implementing Congressionally-mandated investigations in the areas of worker safety and health,

nuclear safety, and security and as appropriate, assessing civil penalties or pursuing other enforcement measures for any resulting violations; incorporating the lessons learned from assessments and enforcement activities into DOE safety and security training courses through its management of the National Training Center; and providing an open and effective means of communicating and creating collaborative relationships within and outside the Department through its stakeholder outreach program. EA is led by a Director who reports directly to the Secretary of Energy.

Certain of the functions that were transferred to AU are subject to regulations in title 10 of the Code of Federal Regulations. As a result of the transfer, title 10 of the Code of Federal Regulations contains references to DOE program offices and positions that are no longer extant. This final rule amends title 10 of the Code of Federal Regulations to reflect new organizational structures and titles, and update addresses that are no longer correct. None of the regulatory amendments in this notice of final rulemaking alter substantive rights or obligations under current law.

This final rule has been approved by the Secretary of Energy.

II. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action has been determined not to be “a significant regulatory action” under Executive Order 12866, “Regulatory Planning and Review,” 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOE published procedures and policies to ensure that the potential impacts of its draft rules on small entities are properly considered during the rulemaking process (68 FR 7990, February 19, 2003), and has made them available on the Office of General Counsel’s Web site: <http://energy.gov/gc/office-general-counsel>.

The regulatory amendments in this notice of final rulemaking reflecting transfers of functions and address changes relate solely to internal agency organization, management or personnel, and as such, are not subject to the requirement for a general notice of proposed rulemaking under the Administrative Procedure Act (5 U.S.C. 553(a)(2)) (APA). There is no requirement under the APA or any other law that this rule be proposed for public comment. Consequently, this rulemaking is exempt from the requirements of the Regulatory Flexibility Act.

C. Review Under the Paperwork Reduction Act

This final rule does not impose a collection of information requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined

by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule amends existing regulations without changing the environmental effect of the regulations being amended, and, therefore, is covered under the Categorical Exclusion in paragraph A5 of Appendix A to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. 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 rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the 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 Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996),

imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of a Federal regulatory action on State, local, and tribal governments, and the private sector. DOE has determined that this regulatory action does not impose a Federal mandate on State, local or tribal governments or on the private sector.

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

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that

may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the

action and their expected benefits on energy supply, distribution, and use. This regulatory action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Administrative Procedure Act

The regulatory amendments in this notice of final rulemaking reflecting transfers of functions and address changes relate solely to internal agency organization, management or personnel, and as such, are not subject to the requirement for a general notice of proposed rulemaking under the Administrative Procedure Act (5 U.S.C. 553(a)(2)) (APA). There is no requirement under the APA or any other law that this rule be proposed for public comment.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of this final rule prior to the effective date set forth at the outset of this rulemaking. The report will state that it has been determined that the rule is not a “major rule” as defined by 5 U.S.C. 801(2).

List of Subjects

10 CFR Part 602

Grant programs-health, Medical research, Occupational safety and health, Reporting and recordkeeping requirements.

10 CFR Part 707

Classified information, Drug testing, Government contracts, Employee assistance programs, Energy, Government contracts, Health and safety, National security, Reasonable suspicion, Special nuclear material, Substance abuse.

10 CFR Part 835

Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 850

Beryllium, Chronic beryllium disease, Hazardous substances, Lung diseases, Occupational safety and health, Reporting and recordkeeping requirements.

10 CFR Part 851

Civil penalties, Federal buildings and facilities, Occupational safety and health, Reporting and recordkeeping requirements.

Issued in Washington, DC on January 26, 2015.

Matthew B. Moury
Associate Under Secretary for
Environment, Health, Safety and Security

For the reasons set forth in the preamble, DOE amends chapters II and III of title 10 of the Code of Federal Regulations as follows:

PART 602—EPIDEMIOLOGY AND OTHER HEALTH STUDIES FINANCIAL ASSISTANCE PROGRAM

1. The authority citation for part 602 continues to read as follows:

Authority: 42 U.S.C. 2051; 42 U.S.C. 5817; 42 U.S.C. 5901–5920; 42 U.S.C. 7254 and 7256; 31 U.S.C. 6301–6308.

§ 602.1 [Amended]

2. Section 602.1 is amended by removing “Office of Health, Safety and Security” and adding in its place “Office of Environment, Health Safety and Security”.

§ 602.4 [Amended]

3. Section 602.4 is amended by removing “DOE Chief Health, Safety and Security Officer” and adding in its place “Associate Under Secretary for Environment, Health, Safety and Security”.

§ 602.5 [Amended]

4. Section 602.5(a) is amended by removing “Office of Health, Safety and Security” and adding in its place “Office of Environment, Health, Safety and Security”.

§ 602.7 [Amended]

5. Section 602.7(c) is amended by removing “Office of Illness and Injury Prevention Programs, HS-13/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC-20585-1290, 301-903-4501” and adding in its place “Office of Domestic and International Health Studies, AU-13, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 301-903-2340”.

§ 602.9 [Amended]

6. Section 602.9 is amended:

- In paragraph (b), by removing “Office of Health, Safety and Security” and adding in its place “Office of Environment, Health, Safety, and Security”; and

b. In paragraph (g) by removing “Office of Health, Safety and Security” and adding in its place “Office of Environment, Health, Safety and Security”, and by removing “Office of Health, Safety and Security’s” and adding in its place “Office of Environment, Health, Safety and Security’s”.

§ 602.10 [Amended]

7. Section 602.10 is amended in paragraphs (b) and (c) by removing “Office of Illness and Injury Prevention Programs, HS-13/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-1290” and adding in its place “Office of Domestic and International Health Studies, AU-13, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585”.

§ 602.16 [Amended]

8. Section 602.16 is amended by removing “U.S. Department of Energy, Attn: Director of Classification, HS-90, P.O. Box A, Germantown, MD 20875” and adding in its place “U.S. Department of Energy, Attn: Director, Office of Classification, AU-60, P.O. Box A, Germantown, MD 20875”; by removing “Office of Security Operations for Headquarters” and adding in its place “Office of Headquarters Security Operations”.

§ 602.17 [Amended]

9. Section 602.17(a)(1) is amended by removing “Office of Health, Safety and Security” and adding in its place “Office of Environment, Health, Safety and Security”.

PART 707—WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES

10. The authority citation for part 707 continues to read as follows:

Authority: 41 U.S.C. 701 *et seq.*; 42 U.S.C. 2012, 2013, 2051, 2061, 2165, 2201b, 2201i, and 2201p; 42 U.S.C. 5814 and 5815; 42 U.S.C. 7151, 7251, 7254, and 7256; 42 U.S.C. 2401 *et seq.*

11. Section 707.4 is amended by adding the definition of “Head of DOE Field Element” in alphabetical order to read as follows:

§ 707.4 Definitions.

* * * *

Head of DOE Field Element means an individual who is the manager or head of the DOE operations office or field office.

* * * *

§ 707.5 [Amended]

12. Section 707.5 is amended:

- a. In paragraph (d) by removing “DOE” and adding in its place “the Head of DOE Field Element”;
- b. In paragraph (e):
 - i. By removing “DOE” in the first sentence, and adding in its place “the Head of DOE Field Element”;
 - ii. By removing “DOE official” in the second sentence, and adding in its place “Head of DOE Field Element”;
 - iii. By removing “DOE” in the third sentence, and adding in its place “The Head of DOE Field Element”; and
 - iv. By removing “DOE” in the fifth sentence, and adding in its place “Head of DOE Field Element”.

- c. In paragraph (g):
 - i. By removing “DOE” in the first sentence, and adding in its place “the appropriate Head of DOE Field Element”;
 - ii. By removing “DOE” in the second sentence, and adding in its place “the Head of DOE Field Element”; and
 - iii. By removing “DOE” in the third sentence, and adding in its place “The Head of DOE Field Element”.
 - d. In paragraph (h):
 - i. By removing “DOE”, two occurrences in the first sentence, and adding in their places “The Head of DOE Field Element”; and
 - ii. By removing “DOE” in the second sentence, and adding in its place “the Head of DOE Field Element”; and
 - iii. By removing “throughout DOE” at the end of the second sentence.
13. Section 707.7 is amended in paragraph (c):
- a. By revising the first sentence; and
 - b. By removing “DOE” in the fifth sentence, and adding in its place “the Head of DOE Field Element”.

The revision read as follows:

§ 707.7 Random drug testing requirements and identification of testing designated positions.

* * * *

- (c) Each contractor shall require random testing of any individual, whether or not an employee, who is allowed unescorted access to the control areas of the following DOE reactors: Advanced Test Reactor (ATR) and High Flux Isotope Reactor (HFIR). ***

* * * *

§ 707.10 [Amended]

14. Section 707.10 is amended in paragraph (a)(2)(vi), by removing “32.5-37.7 degrees centigrade or 90.5-99.8 degrees Fahrenheit” and adding in its place “32-38 degrees centigrade or 90-100 degrees Fahrenheit”.

§ 707.12 [Amended]

15. Section 707.12(a) is amended by removing “under subpart C of the HHS Mandatory Guidelines”.

§ 707.13 [Amended]

16. Section 707.13 amended:

- a. In paragraph (a), by removing “paragraphs 2.4 (e) and (f) of”;
- b. In paragraph (b), by removing “[DHSS Publication No. (ADM) 88-1526]”.

PART 835—OCCUPATIONAL RADIATION PROTECTION

17. The authority citation for part 835 continues to read as follows:

Authority: 42 U.S.C. 2201, 7191, 50 U.S.C. 2410.

§ 835.1 [Amended]

18. Section 835.1(b)(6) is amended by removing “Chief Health, Safety and Security Officer” and adding in its place “Associate Under Secretary for Environment, Health, Safety and Security”.

PART 850—CHRONIC BERYLLIUM DISEASE PREVENTION PROGRAM

19. The authority citation for part 850 continues to read as follows:

Authority: 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 29 U.S.C. 668; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*, E.O. 12196, 3 CFR 1981 comp., at 145 as amended.

§ 850.10 [Amended]

20. Section 850.10(b)(2) is amended by removing “Chief Health, Safety and Security Officer” and adding in its place “Associate Under Secretary for Environment, Health, Safety and Security”.

§ 850.39 [Amended]

21. Section 850.39 is amended in paragraph (a) by removing “Chief Health, Safety and Security Officer” and adding in its place “Associate Under Secretary for Environment, Health, Safety and Security”, and in paragraph (h), by removing “Office of Illness and Injury Prevention Programs, Office of Health, Safety and Security” and adding in its place “Office of Domestic and International Health Studies, Office of Environment, Health, Safety and Security”.

PART 851—WORKER SAFETY AND HEALTH PROGRAM

22. The authority citation for part 851 continues to read as follows:

Authority: 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 42 U.S.C. 5801 *et seq.*; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*.

§ 851.3 [Amended]

23. The definition of “Under Secretary” is amended by removing “Under Secretary for Energy and Environment, or the Under Secretary for Science” and adding in its place “Under Secretary for Science and Energy, or Under Secretary for Management and Performance”.

§ 851.8 [Amended]

24. Section 851.8 is amended in paragraph (b) by removing “Office of Health, Safety and Security” and adding in its place “Office of Environment, Health, Safety and Security”, and in paragraph (c), by removing “Office of Health, Safety and Security, Office of Enforcement, HS-40”, and adding in its place “Office of Enterprise Assessments, Office of Enforcement”.

§ 851.10 [Amended]

25. Section 851.10(a)(2)(ii) is amended by removing “With”.

§ 851.11 [Amended]

26. Section 851.11(b)(2) is amended by removing “Chief Health, Safety and Security Officer” and adding in its place “Associate Under Secretary for Environment, Health, Safety and Security”.

§ 851.27 [Amended]

27. Section 851.27(a)(2)(ii) is amended by removing “Office of Health, Safety and Security” and adding in its place “Office of Environment, Health, Safety and Security”.

§ 851.30 [Amended]

28. Section 851.30(a) is amended by removing “Chief Health, Safety and Security Officer” and adding in its place “Associate Under Secretary for Environment, Health, Safety and Security”.

§ 851.31 [Amended]

29. Section 851.31 is amended:

a. In paragraphs (a)(1), (a)(2), and (a)(3), by removing “Chief Health, Safety and Security Officer” and adding in its place “Associate Under Secretary for Environment, Health, Safety and Security”;

- b. In paragraph (b) introductory text:
 - i. By removing “Chief Health, Safety and Security Officer” and adding in its place “the Associate Under Secretary for Environment, Health, Safety and Security”; and
 - ii. By removing the Chief, Health, Safety and Security Officer and adding in its place “the Associate Under Secretary”, and
- c. In paragraph (c)(5) by removing “Chief Health, Safety and Security Officer” and adding in its place “Associate Under Secretary for Environment, Health, Safety and Security”.

§ 851.32 [Amended]

- 30. Section 851.32 is amended:
 - a. In paragraph (a)(1), by removing “Chief Health, Safety and Security Officer recommends approval of a variance application, the Chief Health, Safety and Security Officer”, and adding in its place “Associate Under Secretary for Environment, Health, Safety and Security recommends approval of a variance application, the Associate Under Secretary”.
 - b. In paragraph (a)(2), by removing “Chief Health, Safety and Security Officer” and adding in its place “Associate Under Secretary for Environment, Health, Safety and Security”.
 - c. In paragraph (a)(4), by removing “Chief Health, Safety and Security Officer” and adding in its place “Associate Under Secretary for Environment, Health, Safety and Security”.
 - d. In paragraph (c)(1), by removing “Chief Health, Safety and Security Officer recommends denial of a variance application, the Chief Health, Safety and Security Officer” and adding in its place “Associate Under Secretary for Environment, Health, Safety and Security recommends denial of a variance application, the Associate Under Secretary”.

e. In paragraphs (c)(2)(i) and (ii), by removing “Chief Health, Safety and Security Officer” and adding in its place “Associate Under Secretary for Environment, Health, Safety and Security”.

§ 851.34 [Amended]

31. In § 851.34, paragraphs (a) and (c) are amended by removing “Chief Health, Safety and Security Officer” and adding in its place “Associate Under Secretary for Environment, Health, Safety and Security”.

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