



6450-01-P

DEPARTMENT OF ENERGY

10 CFR Part 1046

RIN: 1992-AA40

Medical, Physical Readiness, Training, and Access Authorization Standards for Protective Force Personnel

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

ACTION: Final rule.

SUMMARY: On September 10, 2013, the Department of Energy (DOE or Department) issued in the Federal Register a revision to its regulations governing the standards for medical, physical performance, training, and access authorizations for protective force (PF) personnel employed by contractors providing security services to the Department. Subsequently, the DOE created a new Office of Environment, Health, Safety and Security (AU) to improve the effectiveness and efficiency of its environmental, health, safety and security policy. Certain functions that previously were carried out by the Office of Health, Safety and Security have been transferred to the new office. 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. Today's regulatory amendments do not alter substantive rights or obligations under current law.

DATES: The effective date of this rule is **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION

I. Background

II. Section by Section Analysis

III. Regulatory Review and Procedural Requirements

A. Review Under the Administrative Procedure Act

B. Review Under Executive Order 12866

C. Review Under the Regulatory Flexibility Act

D. Review Under Paperwork Reduction Act

E. Review Under the National Environmental Policy Act

F. Review Under Executive Order 13132

G. Review Under Executive Order 12988

H. Review Under the Unfunded Mandates Reform Act of 1995

I. Review Under Executive Order 13211

J. Review Under the Treasury and General Government Appropriations Act of 1999

K. Congressional Notification

L. Approval by the Office of the Secretary of Energy

I. Background

Pursuant to the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*) and the DOE Organization Act of 1977 (42 U.S.C. 7101 *et seq.*), DOE owns and leases defense nuclear and other facilities in various locations in the United States. These facilities are operated by DOE or by contractors (including subcontractors at all tiers) with DOE oversight. Protection of the DOE facilities is provided by armed and unarmed PF personnel employed by Federal Government contractors. These PF personnel are required to perform both routine and emergency duties, which include patrolling DOE sites, manning security posts, protecting government and contractor employees, property, and sensitive and classified information, training for potential crisis or emergency situations, and responding to security incidents. PF personnel are required to meet various job-related minimum medical and physical readiness qualification standards designed to ensure they are capable of performing all essential functions of normal and emergency PF duties without posing a direct threat to themselves or others. DOE's regulations in 10 CFR part 1046 establish the medical, physical readiness, training and performance standards for contractor PF personnel.

On September 10, 2013, DOE issued in the Federal Register a revision to its regulations at 10 CFR part 1046 (78 FR 55174). Subsequently, on May 4, 2014, DOE created a new office, AU, to improve the effectiveness and efficiency of its environment, health, safety and security policy. DOE transferred certain health, safety and security functions to the new office that previously were carried out by the Office of Health, Safety and Security. This final rule amends 10 CFR part 1046 to reflect DOE's new organizational structure. None of the regulatory amendments in this final rule alter substantive rights or obligations under current law. The modifications to 10 CFR part 1046 are described in the Section by Section Analysis in section II.

II. Section by Section Analysis

In this final rule, the Office of Health, Safety and Security organization has been renamed to the Office of Environment, Health, Safety and Security. The position title of Chief Health, Safety and Security Officer has been renamed to the Associate Under Secretary for the Office of Environment, Health, Safety and Security. DOE has removed reference(s) to the Chief Medical Officer and, where appropriate, added position title of Associate Under Secretary for the Office of Environment, Health, Safety and Security in its place. Sections that have been revised pursuant to the reorganization described above are listed below. Sections not discussed below have not changed as a result of this final rule.

Subpart A—General

1. Changes for § 1046.2, Scope, revises the language of this section to identify new organizational names and position titles.
2. Changes for § 1046.3, Definitions, revises the language of this section only to identify new organizational names and position titles.
3. Changes for § 1046.4, Physical Protection Medical Director, revises the language of this section only to identify new organizational names and position titles.
4. Changes for § 1046.5, Designated Physician, revises the language of this section only to identify new organizational names and position titles.

Subpart B—PF Personnel

5. Changes for § 1046.13, Medical certification standards and procedures, revises the language of this section only to identify new organizational names and position titles.
6. Changes for § 1046.15, Review of medical certification disqualification, revises the language of this section only to identify new organizational names and position titles.

7. Changes for § 1046.17, Training standards and procedures, revises the language of this section only to identify new organizational names and position titles.

III. Rulemaking Requirements

A. Review Under the Administrative Procedure Act

This action amends the PF regulations at 10 CFR part 1046 only to identify new organizational names and position titles resulting from a reorganization of DOE's Office of Health, Safety and Security, which is now known as AU. The rule has no substantive effect on the standards for medical, physical performance, training and access authorizations for PF personnel employed by contractors providing security services to the Department. Therefore, DOE has determined that prior opportunity for public notice and comment is unnecessary and contrary to the public interest pursuant to 5 U.S.C. 553(b)(B). For these same reasons, DOE has determined that it is appropriate to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553(d).

B. Review Under Executive Order 12866

This action does not constitute a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735).

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a 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, Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of

its rules on small entities are properly considered during the rulemaking process. DOE has made its procedures and policies available on the Office of the General Counsel's website (<http://www.energy.gov/gc/office-general-counsel>).

Because this rule is not required by law to be proposed for public comment, the analytical requirements of the Regulatory Flexibility Act do not apply. DOE has, however, reviewed today's rule under the Regulatory Flexibility Act and determined that the rule would not have a significant impact on a substantial number of small entities. This action would amend an existing rule which establishes medical and physical training requirements and standards for DOE PF personnel. The medical and physical training requirements and standards affect approximately twenty private firms (e.g., integrated Management and Operating contractors, security services contractors, and subcontractors) at the Department's facilities around the United States. Some of those firms which provide protective services are classified under NAICS Code 561612, Security Guards and Patrol Services. To be classified as a small business, they must have average annual receipts of \$18.5 million or less. Some of the private firms affected by these standards and requirements would be classified as small businesses.

Because today's action identifies only organizational changes, the impact on these firms will not be significant. For this reason, DOE determines the rule will not have a significant economic impact on a substantial number of small entities.

D. Review Under Paperwork Reduction Act

No new information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, are imposed by this regulatory action.

E. Review Under the National Environmental Policy Act

This rule amends existing policies and procedures establishing medical and physical readiness standards for DOE PF personnel and has no significant environmental impact. Consequently, the Department has determined that this rule is covered under Categorical Exclusion A-5, of Appendix A to Subpart D, 10 CFR part 1021, which applies to a rulemaking that addresses amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 13132

Executive Order 13132, “Federalism,” (64 FR 43255, August 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 develop a formal 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 7, 2011, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735, March 14, 2000).

DOE has examined this rule and has determined that it 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.

G. Review Under Executive Order 12988

Section 3 of Executive Order 12988, (61 FR 4729, February 7, 1996), instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in section 3(a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation describes any administrative proceeding to be available prior to judicial review and any provisions for the exhaustion of administrative remedies. The Department has determined that this regulatory action meets the requirements of section 3(a) and (b) of Executive Order 12988.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory action on state, local and tribal governments, and the private sector. For proposed regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. UMRA also requires Federal agencies to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed “significant intergovernmental mandate.” In addition, UMRA requires an agency plan for giving notice and opportunity for timely input to small governments that may be affected before establishing a requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under

UMRA (62 FR 12820, March 18, 1997). (This policy is also available at <http://www.energy.gov/gc/office-general-counsel>.) Today's rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of \$100 million or more in any year, so these requirements do not apply. The rule would identify only organizational changes resulting from a reorganization of DOE's Office of Health, Safety and Security, which is now AU. The impact is not likely to result in the expenditure of \$100 million or more in any one year.

I. Review Under Executive Order 13211

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

This rule is not a significant energy action, nor has it been designated as such by the Administrator of OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

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

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's 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.

K. 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).

L. Approval by the Office of the Secretary of Energy.

The Office of the Secretary of Energy has approved issuance of this final rule.

List of Subjects in 10 CFR Part 1046

Government contracts, Reporting and recordkeeping requirements, Security measures.

Issued in Washington, DC, on September 1, 2015.

Dr. Elizabeth Sherwood-Randall,
Deputy Secretary of Energy.

For the reasons set out in the preamble, DOE amends part 1046 of title 10 of the Code of Federal Regulations as set forth below:

**PART 1046—MEDICAL, PHYSICAL READINESS, TRAINING, AND ACCESS
AUTHORIZATION STANDARDS FOR PROTECTIVE FORCE PERSONNEL**

1. The authority citation for part 1046 continues to read as follows:

Authority: 42 U.S.C. 2011, *et seq.*; 42 U.S.C. 7101, *et seq.*; 50 U.S.C. 2401, *et seq.*

§ 1046.2 [Amended]

2. Section 1046.2 is amended:

a. In paragraph (c) by removing “Chief Health, Safety and Security Officer” and adding in its place “Associate Under Secretary for the Office of Environment, Health, Safety and Security (AU-1)”;

b. In paragraph (d), second sentence, by removing “the Office of Health, Safety and Security” and adding in its place “AU”; and in the third sentence, by removing “The Office of Health, Safety and Security” and adding in its place “AU-1”; and

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

§ 1046.3 [Amended]

3. In §1046.3, the definition of “*Designated Physician*” is amended by removing “The Office of Health, Safety and Security” and adding in its place “AU-1”, and the definition of “*Weapons*”

proficiency demonstration” is amended by removing “the Office of Health, Safety and Security” and adding in its place “AU-1”.

§ 1046.4 [Amended]

4. Section 1046.4 is amended in:

a. Paragraphs (a)(1) introductory text, (a)(1)(iv), (a)(2), (a)(3), (b) introductory text, (d)(1) introductory text, and (d)(2) by removing “the Office of Health, Safety and Security” and adding in its place “AU-1”;

b. Paragraph (e), by removing “The Office of Health, Safety and Security” and adding in its place “AU-1”;

c. Paragraph (f), by removing “the Office of Health, Safety and Security”, four occurrences, and adding in its place “AU-1”; and

d. Paragraph (g), by removing, “the Chief Health, Safety and Security Officer”, and adding in its place “AU-1”; and by removing “the Office of Health, Safety and Security” and adding in its place “AU-1”.

§ 1046.5 [Amended]

5. Section 1046.5(c) is amended by removing “the Office of Health, Safety and Security”, two occurrences, and adding in both places, “AU-1”.

§ 1046.13 [Amended]

6. Section 1046.13(b)(3) is amended by removing “the Chief Medical Officer” and adding in its place “AU-1”.

§ 1046.15 [Amended]

7. Section 1046.15 is amended in:

a. Paragraph (c) introductory text, by removing “the Office of Health, Safety and Security” and adding in its place “AU-1”; and in paragraph (c)(1) by removing “The Office of Health, Safety and Security” and adding in its place “AU-1”; and

b. Paragraphs (c)(2), (c)(3), (c)(4) introductory text, (c)(4)(iii), (c)(5), (c)(6) introductory text, (c)(7) four occurrences, (c)(8) and (d) two occurrences, by removing “the Office of Health, Safety and Security” and adding in its place “AU-1”.

§ 1046.17 [Amended]

8. Section 1046.17 is amended in paragraph (k)(6) by removing “the Office of Health, Safety and Security” and adding in its place “AU-1”.

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