

\$500,000. The majority of the Georgia peach growers and handlers may be classified as small entities.

This proposed rule would terminate the order regulating the handling of peaches grown in Georgia. The order and its accompanying rules and regulations have been suspended since March 1, 1993. No regulations have been implemented since the 1990-91 season, and there is no indication that such regulations will again be needed.

The industry has been operating without a marketing order since its suspension. Reestablishing the order would mean additional cost to the industry stemming from assessments to maintain the order and any associated costs generated by regulation. By not reinstating the marketing order, the industry benefits from avoiding these costs. Because the industry has been operating without an order for four years, the termination of the order would have no noticeable effect on either small or large operations.

The Department attempted to solicit as much industry input on this decision as possible. The Department sent a letter to current industry members it was able to identify seeking comments on the need for reinstating the marketing order. There was a peach industry meeting held on February 6, 1997, in Byron, Georgia where the marketing order was a topic of discussion. In addition, this action provides the opportunity for all interested persons to comment on this proposal.

The Department believes that conducting a termination referendum would merely reaffirm the Georgia peach industry's continued lack of interest in reactivating the marketing order and that conducting such a referendum would be wasteful of Departmental and public resources.

Therefore, pursuant to section 608c(16)(A) of the Act and § 918.81 of the order, the Department is considering the termination of Marketing Order No. 918, covering peaches grown in Georgia. If the Secretary decides to terminate the order, trustees would be appointed to continue in the capacity of concluding and liquidating the affairs of the former committee.

Section 608c(16)(A) of the Act requires the Secretary to notify Congress 60 days in advance of the termination of a Federal marketing order. Congress was notified of this proposed termination on April 25, 1997.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 918

Marketing agreements, Peaches, Reporting and recordkeeping requirements.

PART 918—[REMOVED]

For the reasons set forth in the preamble, and under authority of 7 U.S.C. 601-674, 7 CFR part 918 is proposed to be removed.

Dated: May 29, 1997.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 97-14478 Filed 6-3-97; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF ENERGY

10 CFR Part 711

[Docket No. DP-RM-97-100]

RIN 1992-AA14

Personnel Assurance Program

AGENCY: Department of Energy.

ACTION: Notice of Proposed Rulemaking and Public Hearings.

SUMMARY: The Department of Energy (DOE or Department) today proposes Personnel Assurance Program (PAP) procedures and standards for DOE and DOE contractor employees who are assigned nuclear explosive duties at DOE facilities. The PAP is a systematic program, previously established by internal DOE directive, to prevent accidental or unauthorized detonation of nuclear explosives as a result of assignment of nuclear explosives duties to employees who have become emotionally, mentally, or physically incapacitated. The proposed rule includes medical standards for evaluating DOE and contractor employees in the PAP.

DATES: Written comments (7 copies) on the proposed rule must be received by the Department on or before August 4, 1997.

Oral views, data, and arguments may be presented at public hearings which are scheduled as follows:

1. July 8, 1997, 9 a.m.-12 noon and 5 p.m.-8 p.m., Amarillo, TX.
2. July 10, 1997, 10 a.m.-12 noon and 2 p.m.-5 p.m., North Las Vegas, NV.

Requests to speak at a hearing should be phoned in to the Department, (202) 586-3012, no later than 4 p.m. on July 3, 1997, for both hearings.

The length of each oral presentation is limited to 10 minutes.

ADDRESSES: Written comments (7 copies) should be mailed to: U.S.

Department of Energy, Office of Defense Programs, DP-21, Docket Number DP-RM-97-100, 1000 Independence Ave. SW., Washington, DC 20585. Requests to speak at a hearing may be phoned in to (202) 586-3012. The public hearings will be held at the following locations.

1. Amarillo, TX, Sunset Convention Center, 3701 Plains Blvd (at Western), Suite 135.
2. North Las Vegas, NV, USDOE, 232 Energy Way (off Losee Rd), room A-106/107 (first floor, "The Great Basin Room").

Copies of transcripts from hearings and written comments may be inspected and photocopied in the DOE Freedom of Information Reading Room, Room 1E-190, (202) 586-6020, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

For additional information concerning public participation in this rulemaking, see the "Opportunity for Public Comment" section in the Supplementary Information section of this proposed rule.

FOR FURTHER INFORMATION CONTACT:

For further information concerning the proposed rule: Mr. Randall Weidman, U.S. Department of Energy, Office of Defense Programs (DP-21), 1000 Independence Ave. SW., Washington, DC 20585, (301) 903-3154.

For further information concerning Subpart B, Medical Assessments for PAP Certification and Recertification: Mr. Kenneth O. Matthews, Office of Occupational Medicine and Medical Surveillance (EH-61), 1000 Independence Ave. SW., U.S. Department of Energy, Washington, DC 20585, (301) 903-6398.

For further information concerning the public hearings and submitting written comments: Ms. Andi Kasarsky, (202) 586-3012.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the Atomic Energy Act of 1954 (Act), DOE owns defense nuclear facilities in various locations in the United States which are operated by management and operating contractors under DOE supervision. These facilities are involved in researching, testing, producing, disassembling, and transporting of nuclear explosives which, when mated with Department of Defense provided delivery systems, become nuclear weapon systems.

Pursuant to section 161 of the Act, 42 U.S.C. 2201 (b), (i)(3), and (p), DOE and its predecessor agencies—the Atomic Energy Commission (AEC) and the Energy Research and Development Administration (ERDA)—have used

some version of the PAP to certify, actively monitor, and periodically recertify personnel as suitable to perform nuclear explosive duties in a safe and reliable manner. PAP provides for disqualification of persons from performance of nuclear explosive duties who fail to meet PAP requirements for emotional, mental, and physical capability. In DOE's internal administrative directives, DOE Order 452.2, formerly DOE Order 5610.11, "SAFETY OF NUCLEAR EXPLOSIVE OPERATIONS," the term "Nuclear Explosive Duties" has been defined to include DOE or contractor employees who have custody of or "access" to a nuclear explosive. "Access" has been defined to mean: "The proximity to a nuclear explosive that affords a person the opportunity to tamper with it or to cause a detonation."

All PAP-certified employees are subject to continuous review and evaluation. The certification of such employees is subject to immediate review in light of facts and circumstances about an employee or an employee's behavior indicating a reliability risk that warrants protective action to neutralize a nuclear explosive hazard by having an individual immediately removed from nuclear explosive duties. Immediate removal does not constitute a determination that the individual is unsuitable for nuclear explosive duties, but indicates that the individual's suitability is in question.

The PAP procedures and standards are legally binding on contractors under the terms and conditions of their contractual agreements which require them to comply with applicable DOE directives. They also apply to contractor personnel and could serve as the basis for the contractor to take action affecting an employee's employment rights.

In 1992, the Independent Guard Association of Nevada, Local No. 1, representing PAP-certifiable civilian security guards employed by Wackenhut Security, Inc., at DOE's Nevada Test Site, brought suit challenging DOE Order 5610.11, "NUCLEAR EXPLOSIVE SAFETY," which established the Department's nuclear explosive and weapons safety program, including the PAP. The DOE Order was challenged for failure to promulgate it through public notice and comment in compliance with the Administrative Procedure Act, 5 U.S.C. 553. In *Independent Guard Association of Nevada v. O'Leary*, No. CV-S-92-204-LDG-LRL (D. Nev. June 14, 1996), the District Court enjoined DOE from enforcing the requirements section (section 2) of DOE Order 5610.11, Chapter I, against contractor employees

pending notice and comment rulemaking under 5 U.S.C. 553. DOE is now publishing this notice of proposed rulemaking to codify the PAP employee certification procedures and standards and other PAP-related policies, including the responsibilities of the Site Occupational Medical Director (SOMD) and other medical personnel. Subject to consideration of comments that are submitted in response to this notice, DOE intends to issue a final rule establishing PAP procedures and standards, including medical assessment requirements applicable to the DOE and contractor employees performing nuclear explosive duties.

Today's notice of proposed rulemaking contains provisions that are similar to those in a notice of interim procedures and standards DOE published in the **Federal Register** on October 9, 1996 (61 FR 53018). DOE published the interim procedures and standards after finding good cause for making them immediately effective pending completion of notice and comment rulemaking. The proposal published today goes beyond the interim procedures and standards by proposing, in Subpart B, more detailed administrative procedures and standards for the conduct of medical assessments used for PAP certification and recertification.

II. Description and Basis for Proposed PAP Procedures and Standards

The program elements of certification, periodic recertification, and physical and psychological evaluation for cause are based on DOE's experience, as well as the experience of DOE's predecessor agencies for over 30 years. Both the AEC and ERDA had provisions in their manuals for the PAP, and DOE has had internal administrative directives setting forth PAP policies. Today's proposed rule contains several modifications of the PAP as set forth in DOE directives. This part of the Supplementary Information section discusses the meaning of, and the basis for, those modifications and other proposed provisions of the proposed rule that require explanation.

A. Discussion of Subpart A: Certification, Recertification, and Revocation of PAP Certification

Subpart A includes, with few substantive changes, the provisions of the interim procedures and standards published by DOE on October 9, 1996, except for section 11 of the interim procedures and standards dealing with medical assessments. The medical assessment provisions have now been incorporated in an expanded set of

medical assessment provisions in Subpart B of this proposed rule.

Proposed § 711.3 sets forth definitions that apply to this Part. The definitions of "access," "custody," "nuclear explosive," "nuclear explosive area," "nuclear explosive duties," and "pit" were developed in consultation with a variety of interested stakeholders and experts and have been included in internal DOE orders and directives. The term "alcohol use disorder" is included as a substitute for the term "alcohol abuse" that was used in the interim procedures and standards. The definition of "alcohol use disorder" is used in the occupational medical field to describe the condition referred to in the interim procedures and standards as alcohol abuse.

"Hallucinogen" is defined, for purposes of PAP, as any hallucinogenic drug or substance that causes flashbacks. A definition of "flashback" is included. The basis for these terms is discussed more fully in connection with § 711.5, "General requirements." The definition of "illegal drug" tracks the definitions of "illegal drug" in 10 CFR 707.4 ("Workplace Substance Abuse Programs at DOE Sites") and 10 CFR 710.54 (applicable to DOE's Personnel Security Assurance Program).

Proposed § 711.4 contains general provisions that describe and define the scope of the PAP. Paragraph (a) Would establish that PAP certification is in addition to any other qualification requirements that may apply to a particular job. Paragraph (b) would preserve the contractor's authority to establish stricter standards, including medical standards, for individuals the contractor nominates for PAP certification or recertification. Paragraph (c) would provide that the failure of an individual to be certified or recertified in the PAP shall not, by itself, be cause for questioning the individual's qualification for non-PAP duties or for loss of pay or other employment benefits. While an individual's failure to be recertified in the PAP would not automatically be cause for denial of non-PAP employment or loss of pay, conduct that leads to an individual's removal from the PAP (e.g., participation in illegal drug activity) may be the basis for an adverse personnel management action (e.g., participation in illegal drug activity). Paragraph (e) would grant broad authority to the operations office manager to delegate most PAP responsibilities to lower-level DOE officials. This delegation would provide necessary flexibility in implementing the PAP.

Proposed § 711.5(b)(3) would require each individual in the PAP to be tested for illegal drugs at least once each calendar year in an unannounced and unpredictable manner. In addition to this random testing, DOE may test an individual for cause or reasonable suspicion of illegal drug use, or after an accident or an unsafe practice involving the individual. Drug testing procedures are dealt with in § 711.42.

Proposed § 711.5(b)(4), and § 711.43 in Subpart B, set forth a special policy for disqualification from the PAP for hallucinogen use. "Hallucinogen" is defined in proposed § 711.3 so as to limit PAP-disqualifying hallucinogens to those hallucinogenic drugs or substances that cause flashbacks. The proposed rule provides that hallucinogen use more than 5 years earlier is not, in itself, an adequate basis for denying certification or recertification. The 5-year rule reflects a period of time that should elapse, as a protective practice, to minimize the likelihood of flashbacks. "Flashback" is the term used to describe a transient, spontaneous recurrence of certain aspects of a person's hallucinogen experience. Flashbacks typically have all of the qualities of the original experience, and they are strongly felt. Because flashbacks are sudden, often unpredictable, largely involuntary, dramatic alterations of emotional state, perception, sensation, and behavior, an accident would likely result if a flashback were to occur during the performance of a hazardous task. Flashbacks may occur within a few days after hallucinogen use, or they may occur a few weeks, months, or even years later. In developing the proposed 5-year rule, DOE has consulted with experts at the Alcohol, Drug Abuse and Mental Health Administration of the Department of Health and Human Services. DOE has placed the views, and a review of relevant studies, submitted by the National Institute on Drug Abuse, in the docket established for this rulemaking. Although an individual who used a hallucinogen more than 5 years earlier would be considered for nuclear explosive duties, proposed § 711.43 provides that an individual who has used a hallucinogen must undergo a medical evaluation to determine reliability. In addition, the individual must have an acceptable job record and observed behavior.

Proposed § 711.6 sets forth details of the PAP certification process. Paragraph (a) would assign the PAP certifying official the responsibility for making the initial decision to certify or recertify an individual in the PAP. The PAP certifying official may be the operations

office manager, but more typically it will be a lower-level official who has been delegated the certification authority by the operations office manager or, on occasion, by the Secretary of Energy. Paragraph (b) would direct each operations office manager who has jurisdiction over PAP certification to issue implementing instructions that accomplish specified objectives. Because of the varied nature of the workforce at DOE sites, the proposed rule does not dictate the implementation details, but rather sets forth performance standards for PAP implementation.

Proposed § 711.7 would require PAP administrators to maintain a list of individuals certified in the PAP. The required list would be used for DOE program administration purposes only, and would not be considered as an authorization for an individual to perform PAP duties.

Proposed § 711.9 would impose an obligation on supervisors to report any observed or reported condition or behavior of a PAP individual that gives rise to a reasonable belief that the individual may not be able to perform assigned tasks in a safe and reliable manner. Proposed § 711.10 would impose the same obligation on individuals in the PAP, including a duty of self-reporting. The non-exclusive list in § 711.9(b) includes a variety of conditions and behavior that may raise PAP concerns. It is emphasized the purpose of this reporting is only to determine whether an individual should be removed from nuclear explosive duties.

Proposed §§ 711.11 through 711.16 would prescribe the procedures that must be followed for resolving issues related to denial of certification or recertification and revocation of PAP certification. Proposed § 711.11 would provide for the immediate removal of any PAP-certified individual from nuclear explosive duties if a question is raised about that individual's suitability.

Proposed § 711.12 deals with the evaluation following temporary removal from nuclear explosive duties; the recommendation of the PAP certifying official; and the operations office manager's initial decision and decision following a request for reconsideration or a hearing before a certification review hearing officer.

Proposed § 711.13 concerns the appointment of a certification review hearing officer and DOE legal counsel. Paragraph (a)(2) would ensure the independence of the hearing officer by providing that the hearing officer may not have prior involvement with the

matter for which a hearing is requested, nor be directly supervised by any person who is involved in the matter. Subject to the restrictions in paragraph (a), the operations office manager would have discretion in selecting a hearing officer. Depending on the availability of personnel and the needs of a particular case, the manager may appoint a qualified field office attorney to serve as hearing officer or request the DOE Office of Hearings and Appeals to assign a hearing officer.

Proposed § 711.16 would provide an individual who has been denied certification or recertification the right to appeal the operations office manager's final decision to the Assistant Secretary for Defense Programs within 20 working days after receipt of the manager's decision.

B. Discussion of Subpart B: Medical Assessments for PAP Certification and Recertification

Subpart B includes the substance of the medical assessment provisions in section 11 of the interim procedures and standards, including the requirements for illegal drug and alcohol use disorder evaluation and testing. In addition, Subpart B contains definitions that apply to the medical assessment program; provisions on the responsibilities of PAP-designated physicians and psychologists, the SOMD, and other DOE officials; general medical standards for PAP certification; and administrative requirements for medical assessments, including provisions for the maintenance of medical records.

Proposed § 711.22 includes definitions that are used in Subpart B. The focus of a medical assessment under this subpart is on a PAP individual's fitness for duty. The term "fitness for duty" is defined to mean that the physical and mental health of a PAP individual is adequate for the performance of nuclear explosive duties in a safe and reliable manner. It is noted that "fitness for duty" is narrower than the concept of "PAP suitability" used throughout Subpart A. "PAP suitability" is a term of longstanding use in the PAP. It encompasses all of the conditions or behavior listed in § 711.9(b), some of which may not involve the physical or mental health of an individual.

Proposed § 711.30 sets forth the minimum qualifications of designated physicians and their responsibilities. The designated physician at a DOE site may serve multiple functions, including serving as the security designated physician, the Medical Review Officer, and firefighter designated physician. Proposed § 711.31 sets forth the

minimum qualifications and responsibilities of designated psychologists. The designated psychologist reports directly to the SOMD and has the principal responsibility for assessing the psychological fitness of individuals in the PAP. The SOMD's role in nominating designated physicians and psychologists and overseeing the PAP medical assessment program is covered in proposed § 711.32.

Proposed § 711.40 contains the general medical standards that must be met by individuals certified in the PAP. An individual must be free of any mental, emotional, physical or medical condition or behavior that is likely to result in impaired ability to perform assigned duties in a safe and reliable manner. Paragraphs (a) through (f) list conditions or behavior that may disqualify an individual from nuclear explosive duties. A medical assessment, conducted as provided in Subpart B, is required to determine whether an individual will be denied initial certification or recertification because of any of the listed conditions or behaviors.

Proposed § 711.41 establishes requirements for the PAP medical assessment process. Paragraph (a) would give the designated physician the overall responsibility, subject to supervision by the SOMD, for the medical assessment of PAP individuals for certification and recertification. Paragraph (b) would require DOE and contractor employers to provide a job task analysis, as defined in § 711.22, to the designated physician and designated psychologist as a prerequisite to each medical assessment and psychological evaluation. Paragraph (c) would require that medical assessments shall be conducted each time there is a "medical contact." Medical contacts include the medical assessments required for initial certification, annual recertification, and recertification that occurs following the revocation of an individual's removal from nuclear explosive duties. Medical contacts also occur if an individual is transferred to a different job, is self-referred or referred by his or her employer for evaluation, returns to work after an absence for which an evaluation is required by DOE directives, and if an individual's legal drug use is reviewed.

Paragraph (d) presents details about medical assessments that involve a psychological evaluation. It refers to the use of a "generally accepted, self-reporting psychological inventory tool" together with a "semi-structured interview", both of which are required initially. Also, the semi-structured

interview is part of the annual medical assessment for recertification, while the psychological inventory tool is required every third year as part of the medical assessment for recertification. The Minnesota Multi-phasic Personality Inventory is an example of a psychological inventory tool. A "semi-structured interview" means an interview by a designated psychologist who has the latitude to vary the focus and content of the questions depending upon the interviewee's responses.

Paragraph (f) concerns the handling of completed medical assessments. Paragraph (f)(1) applies in cases of initial certification and recertification in which the PAP individual is determined to meet the requirements for recertification. In such cases, the designated physician is directed to submit the completed medical assessment to the SOMD, who shall forward a recommendation based on the assessment to the individual's administrative organization and the PAP certifying official. Paragraph (f)(2) applies to cases in which a currently certified individual fails to meet the requirements for recertification. In such cases, the designated physician is directed to immediately inform the PAP certifying official and the PAP individual's administrative organization.

Proposed § 711.42 deals with policies applicable to detecting and acting with regard to positive indications of drug abuse. "Drug abuse" is defined in proposed § 711.22 to mean use of an illegal drug or misuse of a legal drug. Paragraph (b) cross-references 10 CFR part 707 which provides DOE's general policy to promote drug-free workplaces, and applies to DOE contractors performing work at DOE-owned or controlled sites. Paragraph (d) establishes conditions on reinstatement in the PAP following rehabilitation. Proposed § 711.43, "Evaluation of hallucinogen use," is discussed in connection with proposed § 711.5, "General requirements," in Subpart A.

Proposed § 711.44 concerns medical assessments for alcohol use disorder and specifies the blood alcohol concentration level that warrants enforcement action. Based on a review of the practices of the Federal Aviation Administration with regard to airplane pilots (14 CFR 91.17(a)(1); 49 CFR 382.505(b)), DOE has adopted the policy of prohibiting alcohol consumption within an 8-hour period preceding nuclear explosive duties and does not permit an individual to perform nuclear explosive duties for a minimum of 24 hours in the event a confirmatory breath alcohol test result is at or above 0.02

percent. Removal from nuclear explosive duties due to results of a confirmatory breath alcohol test could lead to revocation of PAP certification, but there is provision for reinstatement following completion of an approved alcohol treatment program.

Proposed § 711.45 sets forth requirements that apply to maintenance of medical records. Paragraph (c) would establish stringent protections for psychological records, which are to be maintained separately from other medical records of PAP individuals.

III. Opportunity for Public Comment

A. Written Comment Procedures

Written comments (7 copies) should be identified on the outside of the envelope, and on the comments themselves, with the designation: "Personnel Assurance Program NOPR, Docket Number DP-RM-97-100" and must be received by the date specified at the beginning of this notice. In the event any person wishing to submit a written comment cannot provide seven copies, alternative arrangements may be made in advance by calling Ms. Andi Kasarsky at (202) 586-3012.

All comments received on or before the date specified at the beginning of this notice and other relevant information will be considered by DOE before final action is taken on the proposed rule. All comments submitted will be available for examination in the Rule Docket File in DOE's Freedom of Information Reading Room. In addition, a transcript of the proceedings of the public hearings will be filed in the docket.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information claimed to be confidential has been deleted. The DOE will make its own determination of any such claim.

B. Public Hearing Procedures

The time and place of the public hearings are indicated at the beginning of this notice. The Department invites any person who has an interest in the proposed regulation, or who is a representative of a group or class of persons which 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 address or phone number indicated in the ADDRESSES section of this notice and be received by the time specified in the DATES section of this notice.

The person making the request should provide a phone number where they may be reached during the day. Each person selected to speak at a public hearing will be notified as to the approximate time that they will be speaking. They should bring seven (7) copies of their statement to the hearing. In the event any person wishing to testify cannot meet this requirement, alternative arrangements may be made in advance with Ms. Andi Kasarsky, (202) 586-3012.

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 ten minutes, unless modified 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. 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 order in which the initial statements were made.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the Presiding Officer at the hearing.

If DOE must cancel a hearing, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register**. Notice of cancellation will also 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.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866 (58 FR 51735, October 4, 1993). Accordingly, this rulemaking has not been reviewed by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12612

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations, rules, legislation, and other policy actions be reviewed for any substantial direct effect on States, on the

relationship between the National Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are substantial effects, then the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing policy action. The Department has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined there are no federalism implications that would warrant the preparation of a Federalism Assessment. The rule proposed today would apply to DOE and DOE contractor personnel employed at defense nuclear facilities. The proposed rule would not have a substantial direct effect on States, the relationship between the States and Federal Government, or the distribution of power and responsibilities among various levels of government.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires preparation of an initial regulatory flexibility analysis for every rule which 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. Today's proposed rule would affect a total of approximately 3,300 DOE and contractor employees working at Government-owned or leased facilities. Only a small number of the employees work for a small entity. In addition, the DOE is formalizing a program that has been in place at DOE nuclear explosive facilities for over 30 years, so the economic impact of this proposed rule would be negligible. DOE certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Public comment on this issue is invited.

D. Review Under the National Environmental Policy Act

The proposed rule would amend the PAP program which has been in existence, pursuant to DOE directives, for approximately 30 years. In addition, it relates to personnel qualifications and, if promulgated, would have no impact on the environment. Categorical exclusions A1 and A5 in Appendix A to Subpart D, 10 CFR part 1021 apply to this rulemaking. The Department has therefore determined that neither an

environmental assessment nor an environmental impact statement is required.

E. Review Under the Paperwork Reduction Act

The proposed rule does not contain a collection of information that requires the approval of the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* OMB has defined the term "information" to exclude certifications, consents, or acknowledgments that entail only minimal burden. 5 CFR 1320.3(h)(1).

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 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, the proposed rule meets the relevant standards of Executive Order 12988.

List of Subjects in 10 CFR Part 711

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

Issued in Washington, DC on May 23, 1997.

Victor H. Reis,

Assistant Secretary for Defense Programs.

Peter N. Brush,

Principal Deputy Assistant Secretary for Environment, Safety and Health.

For the reasons set forth in the preamble, Chapter III of title 10 of the Code of Federal Regulations is amended by adding new Part 711 to read as set forth below:

PART 711—PERSONNEL ASSURANCE PROGRAM

Subpart A—Certification, Recertification, and Revocation of PAP Certification

Sec.

- 711.1 Purpose.
- 711.2 Applicability.
- 711.3 Definitions.
- 711.4 General.
- 711.5 General requirements.
- 711.6 PAP certification process.
- 711.7 Maintenance of PAP personnel list.
- 711.8 PAP training requirements.
- 711.9 Supervisor reporting.
- 711.10 Individual reporting.
- 711.11 Immediate removal from nuclear explosive duties.
- 711.12 Action following removal from duties.
- 711.13 Appointment of certification review hearing officer and legal counsel.
- 711.14 Certification review hearing.
- 711.15 Hearing officer's submission.
- 711.16 Appeal of the operations office manager's final decision.

Subpart B—Medical Assessments for PAP Certification and Recertification

General Provisions

- 711.20 Applicability.
- 711.21 Purpose and scope.
- 711.22 Definitions.

Responsibilities and Authorities

- 711.30 Designated physician.
- 711.31 Designated psychologist.
- 711.32 Site Occupational Medical Director (SOMD).
- 711.33 Director, Office of Occupational Medicine and Medical Surveillance.
- 711.34 Operations office managers.

Medical Assessment Process and Standards

- 711.40 Medical standards for certification.
- 711.41 Medical assessment process.
- 711.42 Medical assessment for drug abuse.
- 711.43 Evaluation of hallucinogen use.
- 711.44 Medical assessment for alcohol use disorder.
- 711.45 Maintenance of medical records.

Authority: 42 U.S.C. § 2201, 7191.

Subpart A—Certification, Recertification, and Revocation of PAP Certification

§ 711.1 Purpose.

The purpose of this part is to establish a PAP in the DOE. The PAP is a human

reliability program designed to ensure that individuals assigned to nuclear explosive duties do not have emotional, mental, or physical incapacities that could result in a threat to nuclear explosive safety. The PAP establishes the requirements and responsibilities for screening, selecting, and continuously evaluating employees assigned to or being considered for assignment to nuclear explosive duties.

§ 711.2 Applicability.

(a) This part applies to DOE Headquarters and field elements and DOE contractors that manage, oversee, or conduct nuclear explosive operations and associated activities, and to DOE and contractor employees assigned to nuclear explosive duties.

(b) The provisions of this part do not apply to responses to unplanned events (e.g., Accident Response Group activities), which are addressed in DOE 5530-Series Orders and DOE Order 151.1, "Comprehensive Emergency Management System."

§ 711.3 Definitions.

Access means proximity to a nuclear explosive that affords a person the opportunity to tamper with it or to cause it to detonate.

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.

Contractor means the contractor and subcontractors at all tiers.

Custody means responsibility for control of and access to nuclear explosives.

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.

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

Nuclear explosive means an assembly containing fissionable and/or fusionable materials and main charge high explosive parts or propellants capable of producing a nuclear detonation (e.g., a nuclear weapon or test device).

Nuclear explosive area means any area that contains a nuclear explosive or collocated pit and main charge high explosive parts.

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

Occupational medical program means a DOE program that:

- (1) Assists in the maintenance, monitoring, protection, and promotion of employee health through the skills of occupational medicine, psychology, and nursing; and
- (2) Maintains a close interface with allied health disciplines, including industrial hygiene, health physics, and safety.

Operations office manager or manager means the manager of a DOE operations office.

PAP certifying official or certifying official means the operations office manager or the manager's delegate who certifies, recertifies, or reviews the circumstances of an individual's removal from nuclear explosive duties, or another individual who is delegated the certification function by the Secretary of Energy.

PAP individual means an individual being considered for assignment or assigned to perform nuclear explosive duties.

Pit means a fissile component, or a set of fissile components, designed to fit in the central cavity of an implosion system and which if placed therein will create a nuclear explosive.

Site Occupational Medical Director means the physician responsible for the overall direction and operation of the site occupational medical program.

§ 711.4 General.

(a) PAP certification is required of each individual assigned to nuclear explosive duties in addition to any other job qualification requirements that apply.

(b) Nothing in this part shall be construed as prohibiting contractors from establishing stricter suitability standards for selecting candidates for nomination to DOE for certification or recertification in the PAP.

(c) The failure of an individual to be certified or recertified in the PAP shall not, in itself, reflect on the individual's suitability for assignment to other duties or, in itself, be a cause for loss of pay or other benefits or other changes in employment status.

(d) Personnel management actions based on the consideration of technical competence and other job qualification requirements shall be considered only if they are based on behavior that also

affects an individual's suitability for the PAP.

(e) The use of any hallucinogen having the potential to cause flashbacks is incompatible with PAP duties and must be evaluated prior to certification or recertification.

(f) Except for the functions in § 711.12 (d), (e) and (h), an operations office manager may delegate PAP functions to a deputy manager, assistant manager, division director, and/or area office manager.

§ 711.5 General requirements.

(a) Each PAP individual shall be certified in the PAP before being assigned to nuclear explosive duties and shall be recertified annually, not to exceed 12 months between recertifications.

(b) To be certified or recertified in the PAP, an individual shall—

(1) Have an active final DOE Q access authorization;

(2) Sign an acknowledgment and agreement to participate in the PAP on a form provided by DOE;

(3) Be interviewed and briefed on the importance of the nuclear explosive duty assignment and PAP objectives and requirements;

(4) Complete a medical assessment for certification and recertification in accordance with subpart B of this part;

(5) Not have used any hallucinogen in the preceding 5 years, and shall not be susceptible to flashbacks resulting from use of any hallucinogen more than 5 years before applying for certification or recertification; and

(6) Be tested for illegal drugs at least once each calendar year in an unannounced and unpredictable manner; an individual may be tested for cause or reasonable suspicion or after an accident or an unsafe practice involving the individual.

(c) If an individual in the PAP refuses to submit a urine sample for illegal drug testing or attempts deception by substitution, adulteration, or other means, DOE immediately shall remove the individual from nuclear explosive duties.

(d) An individual's PAP certification shall be revoked if use of an illegal drug is confirmed through drug testing, as provided in § 711.42 of subpart B.

(e) An individual whose PAP certification is revoked may be reinstated in the PAP if the individual successfully completes an SOMD-approved drug rehabilitation program, as provided in § 711.42 of subpart B.

(f) If an individual chooses to not participate in the PAP, he or she shall sign a refusal of consent form provided by DOE.

§ 711.6 PAP certification process.

(a) The PAP certifying official shall determine each PAP individual's suitability for certification or recertification in the PAP and review the circumstances concerning an individual's removal from nuclear explosive duties and possible recertification.

(b) Each operations office manager who exercises jurisdiction over PAP certification shall issue instructions for implementing the PAP. At a minimum, the instructions shall provide for:

(1) Conducting a supervisory interview of each PAP individual, during which the supervisor shall determine the individual's willingness to accept the requirements and conditions of the PAP;

(2) Ensuring that each PAP individual undergoes a medical assessment under subpart B of this part;

(3) Ensuring that the personnel security file of each PAP individual is reviewed by a DOE employee trained to identify PAP concerns before the individual is certified or recertified;

(4) Ensuring that other available personnel data or information about each PAP individual is reviewed by an employee trained to identify PAP concerns before the individual is certified or recertified;

(5) Allowing the exchange of information about a PAP individual among responsible DOE officials during the certification, recertification, or certification revocation process;

(6) Requesting certification or recertification of a contractor employee when the contractor has determined, on the basis of all available information, that the individual is suitable for the PAP. The contractor requesting certification or recertification shall, in writing, assure the PAP certifying official that all PAP certification requirements have been met;

(7) Addressing any requirement not met during the recertification process, and requiring a contractor to provide any additional personal data or information in its possession that may have a bearing on recertification of an individual;

(8) Documenting certification and recertification of each PAP individual on a form provided by DOE;

(9) Developing a mechanism for co-workers, supervisors, and managers to communicate concerns about a PAP individual's suitability for nuclear explosive duties;

(10) Ensuring that PAP concerns are reported to an appropriate official, as specified in §§ 711.9 and 711.10, for timely resolution; and

(11) Providing that the processing of a request for certification or recertification of an individual is terminated if the individual is no longer being considered for assignment to nuclear explosive duties or is no longer assigned to such duties. If, subsequently, the individual is considered for assignment to nuclear explosive duties, the certification or recertification process must be completely redone.

§ 711.7 Maintenance of PAP personnel list.

Operations office managers who conduct PAP certification and recertification shall establish procedures for developing and maintaining a current list of DOE and contractor personnel certified in the PAP. The list is to be used for program administration and is not an authorization for personnel to perform nuclear explosive duties. The list shall be promptly updated and verified on a quarterly basis.

§ 711.8 PAP training requirements.

(a) Operations office managers shall ensure that each individual who is assigned to nuclear explosive duties receives special training in PAP objectives, policies, and requirements.

(b) Operations office managers shall ensure that DOE and contractor supervisory personnel and PAP certifying officials receive training that includes:

(1) A detailed explanation of nuclear explosive duties and nuclear explosive safety;

(2) Instruction on PAP objectives, policies, and requirements;

(3) Instruction on the early identification of behavior that may indicate a degradation in reliability or judgment; and

(4) Special emphasis on the importance of timely reporting of any PAP concern to appropriate personnel.

(c) Operations office managers shall ensure that medical personnel who perform medical assessments receive, before performing PAP responsibilities, training that includes:

(1) A detailed explanation of nuclear explosive duties and nuclear explosive safety;

(2) Instruction on PAP objectives, policies, and requirements;

(3) An orientation on nuclear explosive processing and the work environment in nuclear explosive areas;

(4) Annual professional training on current issues and concerns relative to psychological assessment; and

(5) Special emphasis on the importance of timely reporting of any PAP concern to appropriate personnel.

(d) Operations office managers shall establish and maintain a system for documenting the training received by PAP-certified individuals, supervisors of PAP personnel, and medical personnel with PAP-related duties.

§ 711.9 Supervisor reporting.

(a) Supervisors shall document and report to a PAP official and the SOMD, if appropriate, any observed or reported behavior or condition of an individual that causes the supervisor to have a reasonable belief that the individual's ability to perform assigned tasks in a safe and reliable manner may be impaired.

(b) Behavior and conditions that could indicate unsuitability for the PAP include, but are not limited to, the following:

- (1) Psychological or physical disorders that impair performance of assigned duties;
- (2) Conduct that is illegal 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 disorder;
- (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 understand 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.

§ 711.10 Individual reporting.

(a) An individual in the PAP shall report any observed or reported behavior or condition of another PAP individual that could indicate the individual's unsuitability for nuclear explosive duties, including the behaviors and conditions listed in § 711.9, to a supervisor, the SOMD, or a PAP official.

(b) An individual in the PAP shall report any behavior or condition, including any behavior or condition listed in § 711.9, that may affect his or her own suitability for nuclear explosive duties to a supervisor, the SOMD, or a PAP official.

§ 711.11 Immediate removal from nuclear explosive duties.

(a) A supervisor who has a reasonable belief that an individual in the PAP is not suitable for nuclear explosive duties shall immediately remove that individual from those duties pending a determination of the individual's suitability. The supervisor shall, at a minimum, require the individual to stop performing nuclear explosive duties and deny the individual access to nuclear explosive areas.

(b) A supervisor who removes an individual from nuclear explosive duties shall notify the PAP certifying official of the action and the reasons that led to the removal of the individual from nuclear explosive duties as soon as possible, and shall forward this information, in writing, to the PAP certifying official within 24 hours.

(c) Immediate removal of an individual from nuclear explosive duties is an interim, precautionary action and does not constitute a determination that the individual is not fit for nuclear explosive duties. Removal from nuclear explosive duties shall not, in itself, be cause for loss of pay or other benefits or other changes in employment status.

§ 711.12 Action following removal from duties.

(a) *Temporary removal.* If a PAP certifying official receives a supervisor's written notice of the immediate removal of an individual from nuclear explosive duties, the certifying official shall direct the removal of the individual from PAP duties pending an evaluation and determination regarding the individual's suitability for nuclear explosive duties.

(b) *Evaluation.* The PAP certifying official shall conduct an evaluation of the circumstances or information that led the supervisor to remove the individual from nuclear explosive duties. The PAP certifying official shall prepare a written report of the evaluation that includes the certifying official's determination regarding the individual's suitability for continuing PAP certification.

(c) *PAP certifying official's action.* (1) If the PAP certifying official determines that an individual who has been temporarily removed from nuclear explosive duties continues to meet the requirements for certification in the PAP, the certifying official shall:

- (i) Notify the operations office manager of the determination; and
- (ii) Notify the individual's supervisor of the determination and direct that the individual be allowed to return to nuclear explosive duties.

(2) If the PAP certifying official determines that an individual who has been temporarily removed from PAP duties does not meet the requirements for certification in the PAP, the certifying official shall refer the matter to the operations office manager for action. The certifying official shall submit the evaluation report to the operations office manager and a recommendation that the individual's PAP certification be revoked.

(d) *Operations office manager's initial decision.* After receipt of a PAP certifying official's evaluation report and recommendation for revoking an individual's PAP certification, the operations office manager shall take one of the following actions:

- (1) Direct that the individual be reinstated in the PAP and, in writing, explain the reasons and factual basis for the action;
- (2) Direct the revocation of the individual's PAP certification and, in writing, explain the reasons and factual basis for the decision; or
- (3) Direct continuation of the temporary removal pending completion of specified actions (e.g., medical assessment, security evaluation, treatment) to resolve the concerns about the individual's suitability for the PAP.

(e) *Reinstatement after completion of specified actions.* An individual directed by the operations office manager to take specified actions to resolve PAP concerns shall be reevaluated by the certifying official after those actions have been completed. After considering the PAP certifying official's evaluation report and recommendation, the operations office manager shall direct either:

- (1) Reinstatement of the individual in the PAP; or
- (2) Revocation of the individual's PAP certification.

(f) *Notification of operations office manager's initial decision.* The operations office manager shall send by certified mail, return receipt requested, a written decision to an individual who is denied certification or recertification. The operations office manager's decision shall be accompanied by notification to the individual, in writing, of the procedures in paragraph (g) of this section and §§ 711.14—711.16 pertaining to reconsideration or review of the manager's decision.

(g) *Request for reconsideration or certification review hearing.* An individual who receives notification of an operation office manager's decision to deny or revoke their PAP 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 shall include the individual's response to any information that gave rise to a concern about the individual's suitability for nuclear explosive duties. The statement shall be signed under oath or affirmation before a notary public, and must be received by the operations office manager within 20 working days after the individual received notice of the 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 received by the operations office manager within 20 working days after the individual receives notice of the office manager's decision.

(h) *Operations office manager's decision after reconsideration or hearing.* (1) If an individual requests reconsideration by the operations office manager but not a certification review hearing, the manager shall, within 20 working days, send by certified mail, return receipt requested, to the individual a final decision as to suitability based upon the individual's response and other relevant information available to the manager.

(2) If an individual requests a certification review hearing, the operations office manager shall decide the matter after receipt of the certification review hearing officer's submission, as provided in § 711.15. The operations office manager shall, within 20 working days, send by certified mail, return receipt requested, the manager's final decision to the individual, accompanied by a copy of the hearing officer's findings and recommendations, and the transcript of the certification review proceedings.

§ 711.13 Appointment of a certification review hearing officer and legal counsel.

(a) After receiving an individual's request for a certification review hearing, the operations office manager shall promptly appoint a certification review hearing officer. The hearing officer shall:

(1) Be a DOE attorney or a hearing official from the DOE Office of Hearings and Appeals and have a DOE Q access authorization; and

(2) Have no prior involvement in the matter or be directly supervised by any person who is involved in the matter.

(b) The operations office manager shall also appoint a DOE attorney as counsel for DOE, who shall assist the hearing officer by:

(1) Obtaining evidence;

(2) Arranging for the appearance of witnesses;

(3) Examining and cross-examining witnesses; and

(4) Notifying the individual in writing, at least 7 working days in advance, of the scheduled place, date, and hour where the hearing will take place.

§ 711.14 Certification review hearing.

(a) The certification review hearing officer shall conduct the proceedings in an orderly and impartial manner to protect the interests of both the Government and the individual.

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

(c) In conducting the proceedings, the certification review hearing officer shall:

(1) Receive all information relating to the individual's fitness for PAP certification 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, except as provided in paragraph (c)(3) of this section, and to present and examine documentary evidence;

(3) Have the option to receive and consider oral or written statements adverse to the individual without affording the individual the opportunity to cross-examine the person making the statement in either of the following circumstances:

(i) The substance of the statement was contained in the individual's personnel security file before the question as to the individual's fitness for PAP certification arose, and the head of the Federal agency supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government, and that the disclosure of that person's identity would substantially harm the national security; or

(ii) The substance of the statement was contained in the individual's personnel security file before the question as to the individual's fitness for PAP certification arose, and the Assistant Secretary for Defense Programs or designee for that particular

purpose has determined, after considering information furnished by the investigative agency concerning the reliability of the person and the accuracy of the statement, that —

(A) The statement appears to be reliable and material;

(B) Failure of the hearing officer to receive and consider such statement would substantially harm the national security; and

(C) The person who furnished the information cannot appear to testify due to death or severe illness, or due to some other good cause as determined only by the Assistant Secretary for Defense Programs;

(4) Ensure that if the procedures in paragraph (c)(3) of this section are used, the individual is given a description of the information, which shall be as comprehensive and detailed as the national security permits. In addition, if a statement is received under paragraph (c)(3)(ii), the identity of the person making the statement and the information to be considered shall be made available to the individual. The hearing officer shall give appropriate consideration to the fact that the individual did not have an opportunity to cross-examine such person;

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

(6) Request that the Assistant Secretary for Defense Programs issue subpoenas for witnesses to attend the hearing or for the production of specific documents or other physical evidence; and

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

§ 711.15 Hearing officer's submission.

Not later than 30 working days after the conclusion of the hearing, the certification review hearing officer shall forward written findings, a supporting statement of reasons, and recommendations regarding the individual's suitability for certification or recertification in the PAP to the operations office manager. The hearing officer's decision shall be accompanied by a copy of the record of the proceedings.

§ 711.16 Appeal of the operations office manager's final decision.

(a) An individual who has been denied PAP certification or recertification, or whose certification has been revoked, may appeal the operations office manager's decision to the Assistant Secretary for Defense Programs. The appeal must be received by the Assistant Secretary for Defense

Programs no later than 20 working days after the individual receives the operations office manager's decision.

(b) An individual who appeals an operations office manager's decision to the Assistant Secretary for Defense Programs must submit the appeal and a written supporting statement to the Assistant Secretary for Defense Programs through the operations office manager and the Deputy Assistant Secretary for Military Application and Stockpile Management. The individual must also submit:

(1) A copy of the operations office manager's final decision and any related documentation; and

(2) If a certification review hearing was conducted, a copy of the hearing officer's findings and recommendations and the transcript or record of the proceedings.

(c) Upon receipt of an individual's appeal and supporting documents, the Assistant Secretary for Defense Programs shall review all of the information and issue a written decision in the matter. The decision of the Assistant Secretary for Defense Programs shall be final.

(d) If an individual does not appeal to the Assistant Secretary for Defense Programs within the time specified in paragraph (a) of this section, the operations office manager's decision shall be final.

Subpart B—Medical Assessments for PAP Certification and Recertification

General Provisions

§ 711.20 Applicability.

This subpart establishes standards and procedures for conducting medical assessments of DOE and contractor employees in the PAP.

§ 711.21 Purpose and scope.

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

(a) Identify the presence of any mental, emotional, or behavioral characteristics or conditions that present or are likely to present an unacceptable impairment in judgment, reliability, or fitness of an individual to perform nuclear explosive duties safely;

(b) Facilitate the early diagnosis and treatment of disease or impairment and to foster accommodation and rehabilitation of a disabled individual with the intent of returning the individual to assigned nuclear explosive duties;

(c) Determine what functions an employee may be able to perform and to facilitate the proper placement of employees; and

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

§ 711.22 Definitions.

In addition to the definitions in subpart A of this part, the following definitions apply to this subpart:

Designated physician means a licensed doctor of medicine or osteopathy who has been nominated by the SOMD with the concurrence of the Director, Office of Occupational Medicine and Medical Surveillance, to provide professional expertise in the area of occupational medicine as it relates to the PAP.

Designated psychologist means a licensed Ph.D. or Psy.D. clinical psychologist who has been nominated by the SOMD with the concurrence of the Director, Office of Occupational Medicine and Medical Surveillance, to provide professional expertise in the area of psychological assessment as it relates to the PAP.

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

Director, Office of Occupational Medicine and Medical Surveillance, means the chief occupational medical officer of the DOE 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.

Fitness for duty means that the physical and mental health of a PAP individual is adequate for the performance of nuclear explosive duties in a safe and reliable manner.

Impairment means a decrease in functional capacity of a worker caused by a physical, mental, emotional, substance abuse, or behavioral disorder.

Job task analysis means a statement outlining the essential functions of a job and the potential exposures and hazards of an individual's specific job.

Medical assessment means an evaluation of a PAP individual's present health status and health risk factors by means of:

- (1) A historical review;
- (2) The job task analysis;
- (3) A physical examination;
- (4) Appropriate laboratory tests and measurements; and
- (5) Appropriate psychological and psychiatric evaluations.

Medical Review Officer (MRO) means a licensed doctor of medicine or osteopathy who has knowledge of

substance abuse disorders and appropriate medical training to interpret drug test results. The MRO may also be the designated physician and/or SOMD.

Semi-Structured Interview means an interview by a designated psychologist who has the latitude to vary the focus and content of the questions depending upon the interviewee's responses.

Responsibilities and Authorities

§ 711.30 Designated physician.

(a) The designated physician shall be qualified to provide professional expertise in the area of occupational medicine as it relates to the PAP. The designated physician may serve in other capacities, including Medical Review Officer.

(b) The designated physician shall:

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

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

(3) Have met the applicable PAP training requirements; and

(4) Be eligible for DOE access authorization to the worksite.

(c) The designated physician shall be responsible for the medical assessments of PAP 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 that disqualify an individual or that may in the future disqualify an individual from the PAP;

(4) Providing medical assessment information to the designated psychologist to assist in determining psychological fitness;

(5) Determining the location and date of the next required medical assessment, thereby establishing the period of certification; and

(6) Signing a recommendation for certification or recertification of an individual.

(d) The designated physician shall 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.

§ 711.31 Designated psychologist.

(a) The designated psychologist shall report to the SOMD and shall determine the psychological fitness of an individual to participate in the PAP. The results of this evaluation shall be provided only to the designated physician or the SOMD.

(b) The designated psychologist shall:

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

(2) Have accumulated a minimum of 3 years postdoctoral clinical experience with a major emphasis in psychological assessment;

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

(4) Have met the applicable PAP training requirements; and

(5) Be eligible for DOE access authorization to the worksite.

(c) The designated psychologist shall be responsible for the performance of all psychological evaluations of PAP individuals, and otherwise as directed by the SOMD. In addition, the designated psychologist shall:

(1) Designate which components of the psychological evaluation may be performed by other qualified personnel;

(2) Upon request of management, assess the psychological fitness of personnel for PAP duties in specific work settings and recommend referrals as indicated;

(3) Conduct and coordinate educational and training seminars, workshops, and meetings to enhance PAP individual and supervisor awareness of mental health issues;

(4) Establish regular personal workplace contact with supervisors and workers to help them identify psychologically distressed PAP individuals;

(5) Make referrals for psychiatric, psychological, substance abuse, personal or family problems, and

monitor the progress of individuals so referred; and

(6) Participate as a member of the hostage negotiations team as required by the emergency management center.

(d) The designated psychologist shall 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 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.

§ 711.32 Site Occupational Medical Director (SOMD).

(a) The SOMD shall nominate a physician to serve as the designated physician and a clinical psychologist to serve as the designated psychologist. The nominations shall be sent through the appropriate operations office to the Director, Office of Occupational Medicine and Medical Surveillance. Each nomination shall describe the nominee's relevant training, experience, and licensure, and shall include a curriculum vitae and a copy of the nominee's current state or district license.

(b) The SOMD shall submit a redesignation report biennially through the operations office to the Director, Office of Occupational Medicine and Medical Surveillance. This report shall be submitted at least 60 days before the second anniversary of the initial designation or of the last redesignation, whichever applies. The report shall include:

(1) A statement evaluating the performance of the designated physician and designated psychologist during the previous designation period;

(2) A summary of all PAP-relevant training, including postgraduate education, that the designated physician and designated psychologist has completed since the last designation; and

(3) A copy of the valid, unrestricted license of the designated physician and designated psychologist.

(c) The SOMD shall submit, annually, to the Director, Office of Occupational

Medicine and Medical Surveillance, through the operations office manager, a written report summarizing PAP medical activity during the previous year. The SOMD shall comply with any DOE directives specifying the form or contents of the annual report.

(d) The SOMD shall investigate any reports of problems regarding a designated physician or designated psychologist, and the SOMD may suspend either official from PAP-related duties. If the SOMD suspends either official, the SOMD shall notify the Director, Office of Occupational Medicine and Medical Surveillance, and provide supporting documentation and reasons for the action.

§ 711.33 Director, Office of Occupational Medicine and Medical Surveillance.

The Director, Office of Occupational Medicine and Medical Surveillance, shall:

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

(b) Review the qualifications of designated physicians and designated psychologists, and concur or nonconcur in their designations by sending a statement to the responsible program office and the operations office, with an informational copy to the SOMD;

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

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

§ 711.34 Operations office managers.

Operations office managers shall approve, upon the nomination of the SOMD and concurrence of the Director, Office of Occupational Medicine and Medical Surveillance, physicians and psychologists to serve as designated physicians and designated psychologists.

Medical Assessment Process and Standards

§ 711.40 Medical standards for certification.

To be certified in the PAP, an individual shall be free of any mental, emotional, or physical condition or behavior likely to result in impaired ability to perform assigned duties in a safe and reliable manner. The designated physician, with the assistance of the designated psychologist, shall determine whether any of the following disqualify an individual from performing nuclear explosive duties:

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

(b) Mental disorders or behavioral problems as defined in the Diagnostic and Statistical Manual of Mental Disorders;

(c) Past or present 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;

(d) Alcohol use disorder;

(e) Past or present threat of suicide, homicide, or physical harm; or

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

§ 711.41 Medical assessment process.

(a) The designated physician, under the supervision of the SOMD, shall be responsible for the medical assessment of PAP individuals. In carrying out this responsibility, the designated physician shall integrate the medical evaluations, drug testing results, psychological evaluations, any psychiatric evaluations, and any other relevant information to determine an individual's overall medical qualification for assigned duties.

(b) Employers shall provide a job task analysis for each PAP individual to both the designated physician and the designated psychologist before each medical assessment and psychological evaluation. PAP medical assessments and psychological evaluations shall not be performed if a job task analysis has not been provided.

(c) The designated physician shall consider a PAP individual's fitness for duty at the time of each medical contact, including:

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

(2) Intermediate evaluations, including job transfer evaluations, evaluations upon self-referral, and referral by management;

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

(4) A review of current, legal drug use.

(d) *Psychological evaluation.* (1) For the initial certification, the

psychological evaluation consists of a generally accepted, self-reporting psychological inventory tool approved by the Director, Office of Occupational Medicine and Medical Surveillance, and a semistructured interview.

(2) For recertification, the psychological evaluation consists of a semistructured interview.

(3) Every third year, the medical assessment for recertification shall include a generally accepted self-reporting psychological inventory tool approved by the Director, Office of Occupational Medicine and Medical Surveillance.

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

(e) Following absences requiring return-to-work evaluations under applicable DOE directives, the designated physician, with assistance from the designated psychologist, shall determine whether a psychological evaluation is necessary.

(f)(1) Except as provided in paragraph (f)(2) of this section, the designated physician shall forward the completed medical assessment of a PAP individual to the SOMD, who shall send a recommendation based on the assessment simultaneously to the individual's PAP administrative organization and to the PAP certifying official.

(2) If the designated physician determines that a currently certified individual no longer meets the PAP standards, the designated physician shall immediately inform the PAP certifying official and the PAP individual's administrative organization, following up in writing as appropriate.

(g) Only the designated physician, subject to informing the SOMD, shall make a medical recommendation for return to work and work accommodations for PAP individuals.

(h) The following documentation is required for routine use in the PAP program after treatment of a PAP 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 on whether the individual is able to return to work in either a PAP or non-PAP capacity; and

(3) Any periodic monitoring plan approved by the designated physician, the designated psychologist, and the

SOMD, that is used to evaluate the reliability of the employee.

§ 711.42 Medical assessment for drug abuse.

(a) Except as otherwise provided by this section, a medical assessment for illegal drug use by DOE employees shall be conducted under DOE Order 3792.3, "Drug-Free Federal Workplace Testing Implementation Program." Copies of DOE Orders are available for inspection in the DOE Freedom of Information Reading Room, Washington, DC.

(b) Except as otherwise provided by this section, a medical assessment for illegal drug use by contractor employees shall be conducted under 10 CFR part 707, "Workplace Substance Abuse Programs at DOE Sites."

(c) In each case of drug abuse, the SOMD, in consultation with the designated psychologist, shall evaluate the individual for evidence of psychological impairment and make a recommendation to the PAP certifying official as to the individual's reliability.

(d) After successfully completing an SOMD-approved drug rehabilitation program, and subject to SOMD-directed unannounced tests for illegal drugs and relevant counseling for 3 years, DOE may reinstate an individual in the PAP based on the SOMD's follow-up evaluation and recommendation.

§ 711.43 Evaluation of hallucinogen use.

If DOE determines that a PAP individual has used any hallucinogen, the individual shall not be eligible for certification or recertification unless:

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

(b) A medical evaluation is performed to determine that the individual is reliable; and

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

§ 711.44 Medical assessment for alcohol use disorder.

(a) If alcohol abuse is suspected, an individual shall be examined for evidence of alcohol use disorder. If the examination produces evidence of alcohol use disorder, additional evaluation shall be conducted, which may include psychological evaluation.

(b) Alcohol consumption is prohibited within an 8-hour period preceding and during the performance of nuclear explosive duties. DOE shall implement or require the contractor to implement procedures that will ensure that persons called in to perform uncheduled work are fit to perform the tasks assigned.

(c) Individuals in the PAP shall be tested at the work site if there is an

indication of alcohol use in violation of the requirements of paragraph (b) of this section.

(d) Tests for alcohol must be administered by a certified Breath Alcohol Technician using an evidential-grade breath analysis device that conforms to the Department of Transportation's (DOT) National Highway Traffic Safety Administration (NHTSA) model specifications, and the most recent "Conforming Products List" issued by NHTSA which are available from the Office of Traffic Safety Programs, Washington, DC.

(e) An individual whose confirmatory breath alcohol test result is at or above a blood alcohol concentration of 0.02 percent shall not be allowed to perform nuclear explosive duties for a minimum of 24 hours.

(f) Individuals refusing to submit to a breath alcohol test shall be immediately removed from nuclear explosive duties.

(g) The SOMD, in conjunction with the designated psychologist, shall evaluate each case of alcohol use disorder for evidence of psychological impairment and provide the PAP certifying official a recommendation as to the individual's reliability.

(h) After successfully completing an SOMD-approved alcohol treatment program, DOE may reinstate an individual in the PAP based on the SOMD's follow-up evaluation and recommendation.

§ 711.45 Maintenance of medical records.

(a) Medical records produced or used in the PAP certification process shall be maintained according to established professional standards.

(b) The medical records of PAP individuals shall 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 employee exposure and medical records, 29 CFR 1910.20; and applicable DOE orders and directives.

(c) The psychological record of a PAP individual shall be considered a component of the medical record. The psychological record shall —

(1) Contain any clinical reports, test protocols and data, notes of employee 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;

(3) Be kept separate from other medical record documents, with access limited to the SOMD, the designated physician, the designated psychologist,

or other persons who are authorized by law or regulation to have access; and

(4) Be retained indefinitely.
(d) The records of alcohol and drug testing shall 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."

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DEPARTMENT OF ENERGY

10 CFR Part 835

Occupational Radiation Protection; Availability of Draft Guides and Technical Standards

AGENCY: Department of Energy.

ACTION: Extension of notice of availability for draft guides.

SUMMARY: The Department of Energy (DOE) published a notice of availability (62 FR 19940) on April 24, 1997, announcing that drafts of guidance documents that may be used to implement proposed occupational radiation protection regulations were available for public comment. That notice provided the public with the opportunity to submit written comments on these documents on or before May 28, 1997. This notice extends the written comment period for the 13 implementation guides to June 30, 1997.

DATES: Written comments for the 13 draft implementation guides must be submitted by June 30, 1997.

ADDRESSES: A copy of each draft implementation guide is available at the DOE Freedom of Information Reading Room, 1E-190, 1000 Independence Avenue, SW, Washington D.C. 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Submit written comments to Dr. Joel Rabovsky, U.S. Department of Energy, EH-52/GTN/270CC, 19901 Germantown Road, Germantown, Maryland 20874-1290.

FOR FURTHER INFORMATION CONTACT: Dr. Joel Rabovsky, U.S. Department of Energy, EH-52/GTN/270CC, 19901 Germantown Road, Germantown, Maryland 20874-1290, 301-903-2135.

Issued in Washington, DC, on May 27, 1997.

Peter N. Brush,

Principal Deputy Assistant Secretary, Environment, Safety and Health.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-NM-271-AD]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model CL-600-2B19 (Regional Jet Series 100) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL-600-2B19 (Regional Jet Series 100) airplanes. This proposal would require a one-time inspection of the direct current (DC) power distribution system for reliability, and correction or repair, of any fuse holders and associated electrical wiring, if necessary. This proposal is prompted by a report indicating that a loose fuse holder caused the DC power distribution system to short circuit on one of the affected airplanes, which resulted in a burnt wire between circuit breaker panel CBP-2 and junction box JB7. The actions specified by the proposed AD are intended to prevent such short circuiting, which could result in a burnt wire, smoke entering the cockpit area, and consequent passenger injury due to smoke inhalation.

DATES: Comments must be received by July 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-271-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair Aerospace Group, P.O. Box 6087, Station Centre-ville, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Balram Rambrich, Aerospace Engineer,