

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

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(a) You may select only one price election percentage for all the processing sweet corn in the county insured under this policy. The percentage of the maximum price election you choose for one type will be applicable to all other types insured under this policy.

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Signed in Washington, DC, on August 29, 2013.

**Brandon Willis,**

*Manager, Federal Crop Insurance Corporation.*

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## DEPARTMENT OF ENERGY

### 10 CFR Part 1046

[Docket No. DOE-HQ-2012-0002]

RIN 1992-AA40

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

**AGENCY:** Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE or Department) is amending 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.

Since the publication of the existing regulations in 1984, and particularly since 9/11, the DOE has totally transformed its approach to dealing with a much-evolved terrorist threat. This transformation has been informed by repeated analysis and testing since 9/11. The primary changes are: a move to more sophisticated weapons and detection and targeting systems, an increased reliance on hardened positions and armored response vehicles, and increased use of barriers to channel adversaries. The result is a defensive strategy designed to take full advantage of the fact that the terrorist must fight through the protective force to reach our SNM and other targets. This contrasts directly with the posture in the 1980s and 1990s. Today we expect the terrorist to fight his way through a pre-positioned, layered defense, which places a premium on operating sophisticated weapons and detection

and tracking systems. The proposed revisions bring DOE protective force firearms qualification, training, medical and physical readiness requirements in line with these tactical and organizational priorities of 2013. It removes barriers to maintaining the desired experience levels of our protective forces while maintaining established qualification standards.

The revised regulations: emphasize firearms training and proficiency testing that reflect current military practice and simulations technology, maximizing training time and decreasing cost; implements the Mission Essential Task List (METL) training framework adapted from the military, which allows for more effective use of training resources by aligning them with validated mission performance priorities, eliminate medical disqualifications for conditions which have become completely treatable since the 1980s, refines a physical readiness testing regimen that currently diverts time and training emphasis from tasks more directly supportive of mission success; and above all, encourage protective force personnel to stay sharp and mission-focused. Furthermore, this shift in emphasis has placed a greater premium upon the retention of mature, tactically experienced, and technically sophisticated personnel, particularly since these personnel represent a considerable investment by DOE in security background investigations and training. The revisions bring DOE PF medical and physical readiness requirements in line with these tactical and organizational priorities. The revisions reduce the exposure of the PF population to injuries related to physical readiness testing. The revisions further ensure that PF personnel are evaluated on a case-by-case basis on their ability to perform the essential functions of their positions without posing a direct threat to themselves or site personnel, the facility, or the general public. The revisions further ensure that reasonable accommodations are considered before a determination is made that an individual cannot perform the essential functions of a particular position. The rule also provides for new medical review processes for PF personnel disqualified from medical certification. The rule ensures that DOE PF medical and physical readiness requirements are compliant with the Americans with Disabilities Act (ADA) of 1990, as amended by the Americans with Disabilities Act Amendments Act of 2009 (ADAAA), the Privacy Act and DOE implementing regulations, and changes in DOE policy regarding PF

operations made since the publication of the last version of this rule. Finally, the revision updates the regulation to reflect organizational changes in the Office of Health, Safety and Security and the creation of the National Nuclear Security Administration (NNSA) as a semi-autonomous agency within the Department of Energy.

**DATES:** This rule is effective March 10, 2014. Compliance with the provisions of this rule is required March 10, 2014 consistent with the conditions set forth in § 1046.2(e).

**ADDRESSES:** *Docket:* For access to the docket to read background documents, comments received or transcript of the public hearing, go to <http://www.regulations.gov> or contact John Cronin at (301) 903-6209 prior to visiting Department of Energy, Office of Security Policy, (HS-51), 19901 Germantown Rd., Germantown, MD 20874.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Cronin, Office of Security Policy at (301) 903-6209; [John.Cronin@hq.doe.gov](mailto:John.Cronin@hq.doe.gov).

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#### I. Background

Pursuant to the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*) and 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 contractors (including subcontractors at all tiers) with DOE oversight or are operated by DOE. 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 proposed modifications to 10 CFR part 1046 on March 6, 2012 (77 FR 13206). DOE proposed these modifications to update training and qualification criteria, clarify remediation requirements, ensure compliance with the Privacy Act (5 U.S.C. 552a) and DOE regulations implementing the Privacy Act (10 CFR part 1008), and ensure that medical and readiness qualifications for DOE PF personnel established in these regulations are in compliance with the ADA as amended by the ADAAA. The ADA, as amended by the ADAAA, and its implementing regulations provide that an individual with a disability is qualified for a position if he or she satisfies the skill, experience, education and other job-related requirements of the position and can perform the essential functions of the position with or without reasonable accommodation. An employer must make reasonable accommodation for the known physical or mental limitations of a qualified individual with a disability, unless the employer can demonstrate that a particular accommodation would impose undue hardship on the operation of its business. Further, an employer may require, as a qualification standard, that an individual not pose a direct threat to that individual or others. DOE set forth in the proposal the minimum medical and physical readiness performance standards for PF personnel, and the criteria required to develop, record, and communicate a medical opinion of each individual's ability to perform, with or without accommodation, all essential functions of normal and emergency PF duties without posing a direct threat to that individual or to others.

After considering comments on the proposed rule, DOE issues today's final rule to amend the physical readiness requirements at 10 CFR part 1046. The modifications are described below in the Section by Section Analysis in section II.

## II. Section by Section Analysis Including the Disposition of Public Comments

The heading for this part has been revised to be *Medical, Physical Readiness, Training, and Access Authorization Standards for Protective Force Personnel*. The revision more accurately reflects the contents of the regulation. Note that references to other DOE processes and procedures are intended to recognize the existence of these processes and procedures rather than to incorporate them into these regulations.

### Subpart A—General

1. Changes to § 1046.1, Purpose. DOE revised the language of this section for clarity, but did not change it substantively.

No comments were received during the public comment period on this section. DOE did not make any changes to the text of this section as set out in the proposed rule. (77 FR 13206, Mar. 6, 2012)

2. Changes to § 1046.2, Scope. DOE revised the text for clarity, but did not change it substantively except to provide the process for Department-approved exemptions from the requirements of these regulations. Language has been added to indicate that part 1046 would encourage the use of a single physician to fill multiple roles as required by this part and title. In addition, the requirements of part 1046 could be fulfilled in the course of compliance with other DOE regulations. This is intended to facilitate efficiency, avoid duplicative examinations, reports, and testing, and to facilitate the appropriate sharing of medical information related to PF personnel.

Commenters expressed concern that the rule could require duplicative reporting. DOE modified the language in section 1046.2 to clarify that duplicative reporting is not required for this part as long as all required elements for this part are included in a comprehensive report.

Commenters also requested further clarification on the compliance date for these amended regulations. DOE modified the language by adding 1046.2(e) to clarify that compliance with the provisions of these regulations is required by March 10, 2014. DOE also provides for requests for extension of the compliance date if contractual conflicts or resource issues may prevent compliance by this date.

The National Nuclear Security Administration added the following text during the final period of internal Departmental concurrence and

approval. "Nothing in this part shall prohibit NNSA from enhancing the requirements set forth in 1046.16, SPO Physical Readiness Qualification Standards and Procedures, as necessary to further the interests of national security."

3. Changes for § 1046.3, Definitions, added the following.

The terms "direct threat" and "essential functions of the job" have been defined consistent with the definitions of these terms in the ADAAA.

The terms "defensive combative standard" and "offensive combative standard" have been replaced with "basic readiness standard" (BRS) and "advanced readiness standard" (ARS) to better identify the requirements of these standards. Additionally, a new physical readiness standard which identifies requirements for personnel staffing stationary posts, the "fixed post readiness standard" (FPRS) has been added.

The terms "guard" and "security inspector" have been replaced with "security officer (SO)" and "security police officer (SPO)" respectively to conform to current usage for the names of these positions. The term "PF personnel" has also been added to encompass SOs, SPOs and special response team (SRT)-qualified personnel.

The term "Designated Physician" and its definition have been updated.

The term "field organization" has been replaced with "field element" to conform to current usage.

The term "applicant" as pertains to PF personnel has been added as a result of the use of this term in § 1046.2 and § 1046.13.

The term "corrective device" as pertains to reasonable accommodation has been added as a result of the use of this term in § 1046.13.

The term "emergency conditions" as an aspect of PF personnel performance requirements has been added due to the use of this term in § 1046.17.

The terms "medical certification" and "medical certification disqualification" have been added as a result of the use of these terms in § 1046.13, 1046.14, and 1046.15.

The term "medical examination" is added and its related requirements are described in § 1046.13.

The terms "Chief Medical Officer" and "Physical Protection Medical Director" (PPMD) have been added to § 1046.3 and related requirements are described in the new § 1046.4.

The term "semi-structured interview" associated with examining PF personnel

has been added to § 1046.3 and related provisions provided in § 1046.13.

The terms “Independent review” and “Final review” have been added to § 1046.3 and the process associated with medical certification has also been added to § 1046.15 in this update of the regulations.

The term “medical condition” is outdated and therefore no longer used in the regulations.

Several comments expressed concern regarding a site’s authority to add site-specific measures of physical readiness. Therefore, the definitions for “Advanced Readiness Standard,” “Basic Readiness Standard,” and “Fixed Post Readiness Standard” were modified to emphasize that such additional tests are required to be applicable measures of site-specific essential functions.

Commenters also requested clarification in the definition of “corrective device” to specify who has authority to make the determination of reasonable accommodation. The revised definition clarifies that the front-line supervisor does not have the authority to determine whether a reasonable accommodation is appropriate. Instead, the contractor makes the determination that the use of the device is compatible with all actions associated with emergency and protective equipment without creating a hardship for the contractor. The Designated Physician and PPMD must determine that the reasonable accommodation is consistent with the medical certification standards without creating a direct threat to the individual or to others. Additionally, the definition of “reasonable accommodation” was revised to emphasize the link to the ADAAA.

Commenters also requested that DOE include a definition of the term “work hardening.” This term is used in section 1046.16. In response, DOE defines “work hardening” in this final rule as that term is used by the Department of Labor.

4. Changes for § 1046.4, renamed Physical Protection Medical Director, include addressing the PPMD.

DOE deleted the previous § 1046.4, Use of Number and Gender, as unnecessary. Standard rules of construction acknowledge that words in the singular also include the plural and words in the masculine also include the feminine, and vice versa, as the use may require. The new § 1046.4 establishes the required qualifications of the PPMD, and outlines the responsibilities of the PPMD to oversee site physical protection medical activities, to nominate individuals for the position of Designated Physician, and to evaluate the performance of these individuals.

The qualifications for Designated Physicians, which are required for nomination, are also established in this section. This section also enhances DOE oversight of the PPMD and Designated Physicians at DOE facilities. The current “NNSA organization responsible for occupational health and safety” referenced in this section is NNSA’s Office of Safety and Health, though this designation is subject to any reorganizational changes within NNSA.

One comment was received requesting specificity of required reporting requirements under this section. DOE intends to provide additional specificity in the appropriate DOE Order, DOE Order 473.3, *Protection Program Operations*. As a result, no change was made to the text in this section.

A suggestion was made to allow accreditation for physicians covered under this part to be provided by the Accreditation Association for Ambulatory Health Care. The DOE has not incorporated this suggestion because this accreditation is voluntary, and the opportunity to participate is provided only every two years. This could mean that a physician could be hired and work for two years prior to accreditation review.

Another suggestion was to verify information about physicians by using state licensing agencies. The DOE has not adopted this suggestion because applicable requirements for history of acceptable performance and/or conduct vary from state to state.

Commenters requested clarification on whether a site could have more than one PPMD. In response, DOE clarifies that there is to be only one PPMD per site. DOE also included additional language to emphasize the Department’s intent that the PPMD is to provide oversight of all associated Designated Physicians who provide protective force related services pursuant to this part.

Commenters also requested clarification regarding the certification process associated with nomination and approval of PPMDs. DOE included a specific requirement that nominees provide documentation of their standing with licensing and specialty boards. As the oversight authority for Designated Physicians, the PPMD is responsible for nominating Designated Physicians, so similar language clarifying the Designated Physicians’ nomination process was also provided in this section (and referenced in § 1046.5).

Commenters also questioned whether the PPMD could fulfill multiple roles at a particular site. The regulation allows for the PPMD to fulfill multiple roles at a particular site, but DOE provides

clarification to ensure the Office of Health, Safety and Security is notified if a PPMD is fulfilling multiple roles (e.g., is also the Designated Physician for this part and/or is fulfilling a role under another part, e.g., 712 or 851).

Commenters requested clarification on whether the PPMD is required to review the current credentials of the Designated Physician(s) and recommend either retention or replacement to the employer. DOE clarified in section 1046.4(e), Annual Activity Report, that the PPMD is required to perform these functions. In addition, the employer is required to report any changes to the Office of Health, Safety and Security.

5. Changes for § 1046.5 Designated Physician.

This new section establishes the roles and responsibilities for the position of Designated Physician. Among other duties, the Designated Physician is responsible for the medical examination of SOs and SPOs and determines whether portions of each certification examination could be performed by other qualified personnel. As in section 1046.4, the current “NNSA organization responsible for occupational health and safety” referenced in this section is NNSA’s Office of Safety and Health, though this designation is subject to any reorganizational changes within NNSA.

Several commenters requested clarification that the Designated Physician would be responsible for the supervision of physician extenders, e.g., physician assistants, certified occupational health nurses, or nurse practitioners. DOE has included language making it clear that Designated Physicians are responsible for the supervision of physician extenders, as required by state and local law.

Commenters also requested clarification regarding the certification process associated with nomination and approval of Designated Physicians as required in § 1046.4. In response, DOE added clarifying language that the requirements of section 1046.4(b) must be satisfied when a PPMD nominates a Designated Physician.

Commenters also questioned whether the Designated Physician could fulfill multiple roles (e.g., also the Designated Physician for this part and/or is fulfilling a role under another part, e.g., 712 or 851). In response, DOE clarifies that the Designated Physician may fulfill more than one role and requires that the Office of Health, Safety and Security must be notified in such circumstances.

A commenter questioned why the Designated Physician is not required to self-report adverse actions taken by state medical licensing entities, being named

as a defendant in criminal proceedings or other events detailed in 1046.4, in the same way the PPMO is required to self-report such events. As a result, DOE added language requiring Designated Physicians to self-report when an event set forth in § 1046.4 takes place. This change now ensures programmatic consistency.

#### *Subpart B—PF Personnel*

##### 1. Changes for § 1046.11 Essential functions of PF personnel.

This new section establishes the essential functions for SOs, SPOs and SRT-qualified PF personnel. Specific requirements for FPRS, BRS, and ARS SPO personnel are established.

Commenters stated that the expression “in conditions of darkness” in 1046.11(e)(1) was unclear. As a result, DOE revised the language associated with essential functions of BRS personnel to require BRS SPOs to be able to read placards and street signs while driving or to see and respond to imminently hazardous situations, including during low light conditions.

Additionally, DOE made editorial changes to this section for clarity.

##### 2. Changes for § 1046.12 Medical, physical readiness, and training requirements for PF personnel.

This section establishes the medical certification requirements for PF personnel to support their meeting the physical readiness qualification requirements in § 1046.16; to have the required knowledge, skills and abilities; and to meet the requirements of a physical training program as identified in § 1046.16.

No comments were received expressing concern with the substance of this section. DOE made minor editorial changes for greater clarity in this section.

##### 3. Changes for § 1046.13 Medical certification standards and procedures.

This section updates language in the existing Appendix A to Subpart B and requires all applicant and incumbent PF personnel to satisfy the applicable medical certification standards; establishes the medical standards for SOs and SPOs; and establishes that Field Elements may develop more stringent medical qualification requirements or additional medical or physical tests, in consultation with the PPMO, where special assignment duties may require such additional testing.

The required frequency of medical certification remains unchanged. Incumbent SOs will be reexamined by the Designated Physician every two years (24 months) after beginning work. Incumbent SPOs will be reexamined by the Designated Physician every 12

months. The recertification requirement for both SOs and SPOs has been clarified to require recertification within thirty days of the 24-month or 12-month anniversary, respectively, of the previous qualification. In addition, this section establishes a requirement that the medical examination include a review by the Designated Physician of essential functions of the position, as provided by PF management, and a requirement that a semi-structured interview with a psychologist who meets standards established by DOE be conducted for SOs and SPOs, as part of the initial medical evaluation and periodically thereafter. The changes in this section also will allow the Designated Physician to require any other medical examination, test, consultation or evaluation he/she deems necessary.

To comply with the ADA, as amended by the ADAAA, DOE made several changes to this section. The ADA, as amended by the ADAAA, does not permit blanket medical disqualification standards based on the presence of a particular medical condition. Individuals must be evaluated on a case-by-case basis to determine their ability to perform the essential functions of the job without posing a direct threat to themselves or others. Moreover, the ADAAA requires employers to make “reasonable accommodations” for individuals with disabilities unless it would create an undue hardship for the employer. Language has been added to paragraph (a) referring to “essential functions” as set forth in § 1046.11 and “direct threat.” The section also requires, consistent with ADAAA, that each member of the PF be medically certified as able to perform the essential functions of that individual’s job. Finally, as a result of the changes in § 1046.13, the reference to waivers of medical qualification standards has been deleted from the existing § 1046.11, because each individual will be evaluated on a case-by-case basis to determine the individual’s ability to perform the essential functions of the individual’s specific position. This section also adds a requirement that a health status exit review be offered to all employees leaving PF service.

This section also amends the language regarding the use of corrective devices and reasonable accommodations that must be made to modify emergency and protective equipment to be compatible with these devices. Paragraph (g)(3) establishes that a determination regarding the compatibility of such devices with emergency and protective equipment be made by the contractor, with determination by the Designated

Physician that the accommodation is consistent with the medical standard without creating a direct threat to the individual or to others. Paragraph (g)(4) requires that management personnel take reasonable steps to accommodate protective equipment for individuals with corrective devices.

The ability of PF personnel to engage in physical training and testing without undue risk, and to safely and efficiently perform essential job functions, with or without reasonable accommodation, and without posing a direct threat to their own or others’ safety, depends on the ability of those individuals to meet physical and medical standards (medical certification). Failure to comply with these medical standards will result in denial of medical certification for employment.

A commenter challenged the Department’s reliance on electrocardiogram and stress electrocardiogram tests and suggested that the Computed Tomography Angiogram would be a better suited tool. DOE determined, however, that Computed Tomography Angiogram technology looks at the heart only while it is not under stress, and that given the nature of the essential functions set forth in section 1046.11, the medical certification of PF personnel should include information about the heart while it is under stress. Additionally, the studies which support use of the commenter’s proposed technology were based upon looking at individuals with preexisting conditions, which is not necessarily representative of the DOE PF population. Therefore, the Department did not adopt this suggested change.

A comment suggested using the medical standards for commercial driver’s licensure (CDL) for medical certification under this part. The Department determined, however, that the CDL standards do not adequately address the unique protective force mission within the DOE because the CDL standards address only one small element (driving) of the PF mission of: Normal duties, emergency response during all lighting and weather conditions, and the physical and mental readiness to employ deadly force if necessary. Therefore, DOE did not adopt this suggested change.

Several commenters indicated that strengthening the language associated with reasonable accommodation pursuant to the ADAAA was needed based upon unnecessary work restrictions being placed on PF members. In response to these comments, DOE added a statement in this section requiring reasonable

accommodation to be made pursuant to ADAAA requirements.

Commenters also expressed lack of understanding regarding the hearing standards and the reasons for having an identified decibel loss limit as measured between ears. In response to these comments, DOE provided clarification regarding the hearing standard of a maximum difference of 15db between ears which is associated with the ability to localize sounds. This ability to localize sounds is viewed by DOE as a critically important capability for emergency responders. It is an appropriate measure of capability, because of the need to locate the source of sounds as part of timely and effective resolutions of emergency situations.

Commenters also requested clarification regarding evaluations of cardio respiratory function. In response to these comments, DOE added “with an established index of suspicion” when referring to a past history of sleep apnea to clarify when review and approval of the PPMD is required. DOE also replaced “continuous or continual” with “ongoing” regarding use of medications to support cardio respiratory function. DOE made the revision for clarity; no change in meaning is intended. Also in response to these comments, DOE clarified that appropriate evaluation by the Designated Physician of the cardiovascular system includes consideration of the results of the two semiannual assessments of the SPO’s physical readiness as required in section 1046.16. DOE also clarified that the Framingham Point System can be used to determine evidence of cardiovascular abnormality or significantly increased risk for coronary artery disease. This system is a recognized method for making such determinations.

Commenters also objected to required use of tuning forks to evaluate peripheral neuropathy. In response to these comments, DOE removed specificity regarding the method of evaluation for peripheral neuropathy to provide future flexibility in testing methods.

Commenters also expressed concern that sites could establish unreasonable physical readiness testing requirements. DOE determined that it was necessary to allow sites to establish additional medical standards when site-specific essential functions are established. As a result of these comments, DOE added language linking any site-specific testing to ability to perform essential protective force functions.

Commenters also requested clarification regarding the intended and authorized durations of qualification

and testing periods. As a result of these comments, DOE modified text in this section and throughout the document to better identify the windows when qualification or testing has to be completed.

Commenters also requested clarification requiring the mandatory exit health reviews. They wanted to know if the review was mandatory or voluntary, what actions needed to be taken if one was refused, and if duplicative reviews were intended to be required. As a result of these comments, DOE clarified the requirement for contractors to offer exit health reviews to protective force members. DOE noted that this review could be conducted in conjunction with the requirements of other DOE regulations but must include all of the medical standards for the PF position being vacated, to avoid the need for duplicative reviews. The fact that a PF member declines an exit health review must be documented.

In response to comments requesting clarification on whether the first-line supervisor has the ability to determine whether a corrective device is a reasonable accommodation, and for consistency with the change to the definition of “corrective device” in 1046.3, DOE clarifies in 1046.13(g)(3) that the front-line supervisor does not have the authority to determine whether a reasonable accommodation is compatible with all required actions associated with emergency and protective equipment. Instead, the contractor makes the determination that the use of the device is compatible with all actions associated with emergency and protective equipment without creating a hardship for the contractor. The Designated Physician and PPMD must determine that the reasonable accommodation is consistent with the medical standard without creating a direct threat to the individual or to others. DOE made editorial changes in other sections of the rule to clarify this intent.

#### 4. Changes to § 1046.14 Medical certification disqualification.

This new section establishes the process for medical certification disqualification. Such disqualification is the determination by the PPMD that an individual, with or without reasonable accommodation, is unable to perform the essential functions of an SO or SPO job position, including the required physical fitness training and physical readiness qualifications (for SPOs), without creating a direct threat to that individual or others.

A new provision has been added that would require responsible employers to offer an SPO medical removal

protection if the Designated Physician determines in a written medical opinion that it is medically appropriate to remove the SPO from PF duties as a result of injuries sustained while engaging in required physical fitness or training activities. The provision would require that the Designated Physician’s determination, approved by the PPMD, be based on an examining physician’s recommendation or any other signs or symptoms that the PPMD deems medically sufficient to remove an SPO.

Several commenters indicated that greater specificity should be provided regarding which physical readiness activities are covered from the perspective of providing for medical removal protection benefits if an SPO is injured. Therefore text, in this section and throughout the document, has been revised to reflect that only those activities identified under the provisions of this part and those which have been specified by the site as being covered by medical removal protection benefits are covered. Covered activities must also be associated with training for or attempting to meet a physical readiness standard qualification, or training for security and emergency response (e.g., participating in force-on-force exercises for training, inspection, or validation purposes).

Commenters also asked whether the contractor is mandated to provide alternative duties for temporary removal from duties associated with a physical readiness standard. Text was modified to clarify DOE’s intent that the employer is not obligated to create a new position for an employee who qualifies for medical removal protection. However, the employer may assign temporary alternative duties or place the individual on administrative leave. The employer may not remove the employee from active payroll (e.g., in lieu of removing the employee from the payroll an alternative would be to place the employee on administrative leave) unless available alternative duties for which the worker is qualified are refused or performed unsatisfactorily.

Commenters raised additional questions regarding the intent behind maintenance of pay and benefits during periods of removal. In response, DOE added language to 1046.14(b)(1) to indicate that site-specific worker rights and benefits are to be maintained for up to the maximum of one year. This new language reiterates the one-year limitation stated in section 1046.14(b) in the proposed rule (77 FR 13206, Mar. 6, 2012).

Commenters questioned to what extent the PPMD was responsible for discussing medical removal provisions.

In response, DOE modified text at 1046.14(b)(3)(ii) to clarify that the PPMD is responsible for discussing with the SPO only the medically-related issues associated with medical removal provisions.

Commenters raised questions regarding the limits of medical removal benefits as expressed in the rule. DOE modified the text in section 1046.4(c)(3) to clarify that pay benefits provided by medical removal must be reduced in like amount by those funds received from any other benefit sources, to include workers' compensation programs and those negotiated through collective bargaining agreements. This new language reiterates the limitation stated in section 1046.14(c)(3) in the proposed rule (77 FR 13206, Mar. 6, 2012).

Commenters also raised questions regarding whether it was the intent for employers to be responsible for providing payments for related medical treatments. DOE added clarifying language to 1046.14(c)(2) to indicate that any such payments are excluded from the provisions of this part.

5. Changes to § 1046.15 Review of medical certification disqualification.

This new section permits an individual denied medical certification for employment in a particular position to request in writing that the DOE Office of Health, Safety, and Security conduct an Independent Review of the individual's case. If the Independent Review of an individual's case results in an unfavorable decision, the individual may petition the DOE Office of Hearings and Appeals for a Final Review. Procedures for the review process are described in detail in this section.

Commenters expressed concern about the role of the independent review process. As a result of these concerns, DOE added language to clarify that even if an independent review were to result in the reinstatement of an SPO, subsequent annual medical and physical readiness standards still must be met.

DOE also made several editorial changes to this section for clarity.

6. Changes to § 1046.16 SPO physical readiness qualification program requirements.

This section establishes the program requirements (FPRS, BRS, and ARS) for individual SPO fitness assessments, physical readiness maintenance, remedial physical fitness training, and safety. The FPRS level has been added. Qualification for the FPRS level must be physically demonstrated every year by all SPOs, but it does not include a running standard. Having the Designated Physician make a

determination of reasonable expectation regarding an SPO's ability to meet a given standard will result in an overall 90 percent reduction in exposure to potential injuries associated with physical readiness qualification running tests for the population of BRS and ARS SPOs. While the previous physical readiness running standards will be retained for the BRS and ARS levels, the number of officers annually required to demonstrate that readiness is reduced. Greater reliance will be placed on evaluation to determine physical readiness of BRS and ARS SPOs. In addition to the evaluation process, which is analogous to that used as the physical readiness evaluation by law enforcement agencies, the DOE evaluation program will be validated by testing of randomly selected BRS and ARS SPOs.

Several commenters requested that DOE change the running requirements associated with physical readiness standards for BRS and ARS SPOs. DOE has determined that it is necessary to maintain the running requirements associated with the physical readiness standards for BRS and ARS SPOs in today's final rule. Demonstrating the ability to rise from a prone position and run the specified distance within a certain time frame is still needed to ascertain the physical readiness of these PF personnel. DOE continues to welcome information on existing physical readiness standards in use by another agency or standards that DOE could develop as requirements for BRS and ARS SPOs.

A commenter suggested that it would be more cost effective and better for the environment to ensure SPOs are provided access to their physical readiness standards and this regulation rather than to require each SPO have a copy of the information. DOE edited the text to support this approach because SPOs will still be able to access the requirements of the regulation, and a paper copy is not necessary.

Second, as identified earlier, several commenters asked for clarification regarding the window of opportunity available for conducting annual physicals and physical readiness evaluations. Text was modified to allow these activities to be conducted within a window starting 30 days prior to and extending 30 days beyond the SPO's anniversary date to allow necessary flexibility for scheduling the physicals and evaluations.

Commenters expressed concern that selecting a sample of SPOs to run each year instead of requiring 100 percent of the SPOs to physically demonstrate running standards might result in a

tendency for some SPOs to neglect maintaining their physical readiness. DOE added language to emphasize the requirement that SPOs are required to maintain their ability to meet the physical readiness standard on a year round basis.

Commenters questioned the need for PPMDs to approve physical readiness training and maintenance programs. In response to these comments, DOE believes that while PPMD approval of physical readiness training and maintenance programs is not required, the PPMD should ensure such programs are consistent with associated medical standards. Therefore, DOE modified the text to require that the PPMD be consulted regarding site physical readiness training and maintenance programs instead of approving those programs.

Commenters asked whether all training associated with this part has to be accomplished on site. In response to these comments, DOE added language clarifying that training can be conducted off-site.

Commenters asked about the timing and content of the required semiannual assessments of SPOs. In response, DOE modified language to require that the assessment be conducted semiannually instead of every six months. This modification is intended to provide sites greater scheduling flexibility. DOE also added the requirement that aerobic capacity be assessed against standard values as a part of the assessment. While other assessment values may be used, metabolic equivalents (METs) levels (which would be positive indicators of reasonable expectancy for meeting the BRS and ARS physical readiness categories) were provided. It is the Department's intent that these assessments provide feedback to the individual SPOs. The assessments are not to be viewed as a qualification. Additionally, the assessments are not required to include any running. The assessments are meant to provide an indication that either the SPO's physical condition is commensurate with being able to meet the required physical readiness standard, or that the SPO needs to take corrective action in order to have a reasonable expectation of being able to demonstrate the applicable standard.

Commenters also expressed concern that the rule seemed to allow an SPO who failed to meet a physical readiness standard to remain armed for some additional period of time. As a result of these concerns, DOE revised language in several places to provide clarity. When an SPO is called upon to demonstrate the ability to meet a physical readiness

standard and fails to do so, the regulations require the SPO to be removed from duties associated with that physical readiness standard. This removal will remain in place until the SPO satisfactorily demonstrates the ability to meet the standard. These changes are intended to make it clear that whenever and for whatever reason an SPO fails to physically demonstrate the required physical readiness standard, the SPO must be removed from duties which require the ability to meet that standard.

Commenters indicated that additional clarity was needed for several elements associated with meeting the requirements for the fixed post readiness standard. In response, DOE modified language regarding the fixed post readiness standard. All SPOs, whether FPRS, BRS, or ARS, must physically demonstrate the FPRS every year (and additionally, if called upon to do so during surveys and inspections). Additional language was added to require that while a standalone FPRS qualification test has to be developed at each site (incorporating any site-specific requirements), demonstration of all elements of the FPRS standard does not have to be accomplished on the same day. Meeting the individual elements of the standard can be aggregated. For example, ability to place a suspect under restraint can be documented during annual refresher training. The ability to take required positions of cover can be demonstrated during semiannual weapons qualification activities conducted at a different time.

As a result of the clarification regarding meeting the FPRS, DOE also modified the BRS and ARS sections to require that the running elements and other site-specific requirements of these standards have to be attempted on the same day during anniversary qualifications. Ability to meet both elements on the same day is viewed as an indicator of overall conditioning. It is not DOE's intent, however, that should an SPO pass the mile and fail the 40-yard dash, that the SPO then would have to redo the mile run when making subsequent attempts to pass the 40-yard dash.

Commenters also expressed confusion regarding future revision of the physical readiness standards according to the requirements of the Administrative Procedure Act and other applicable law. DOE emphasizes that it is required to follow all legal requirements in revising these regulations; DOE determined that no changes were needed for this provision.

Several commenters expressed concerns regarding the Designated

Physician's new responsibility under this rule for making a determination of whether or not an SPO has a reasonable expectation of being able to meet the applicable BRS or ARS standard. Some stated that this evaluation should not fall under the purview of the Designated Physician. In this rule, Designated Physicians fulfill an occupational medicine role. Making determinations of ability to perform work-related functions is an occupational medicine function. Also, some stated that this would result in an additional medical malpractice exposure for the Designated Physicians. In response, DOE added language to clarify that two distinct evaluations are required by the Designated Physician for each SPO. The first evaluation is no different from the type of medical evaluation being performed under previous regulatory requirements. In this evaluation the Designated Physician must determine from a medical perspective if the SPO can fulfill the mission essential requirements of the applicable physical readiness category without being a risk to self or others. In other words, is the SPO healthy enough to perform mission essential requirements which include ability to physically demonstrate the appropriate physical readiness standard? If the Designated Physician determines the SPO is not healthy enough, the SPO is removed from status unless and until intervention is successful. Once the Designated Physician has determined the SPO is healthy enough to attempt to demonstrate the standard, the next step in the process is for the Designated Physician to make a second occupational medicine evaluation. In this new, second determination, the Designated Physician must determine whether the SPO has a reasonable expectation of being able to physically demonstrate the standard. In other words, is the SPO in good enough physical condition to physically demonstrate the standard? When conducting this second evaluation, the Designated Physician has already determined that the SPO is healthy enough to attempt to demonstrate the standard. If the answer to the second evaluation is yes, then the SPO is allowed to return immediately for duty without being required to physically demonstrate the standard unless the SPO has been selected as part of the random selection process. If the answer is no, then the SPO may request to demonstrate the physical readiness standard.

Some commenters expressed concern that the rule's language precludes the

use of physician extenders and exercise physiologists during the SPO's annual physical and determination of reasonable expectation that the SPO would be able to physically demonstrate the standard. DOE added language to specifically authorize their use. It is the Designated Physician's responsibility, however, to make the formal evaluation of the SPO's expectation of being able to meet the applicable standard.

Commenters also suggested that acceptable values for aerobic capacities associated with the BRS and ARS standards should be provided to assist the Designated Physician in making determinations regarding an SPO's ability to physically demonstrate the readiness standard. In response, DOE added text to this section identifying METS values. It should be noted that DOE is not mandating the use of METS data, nor does it intend that METS data be used as the single pass/fail criteria. The Department intends that all related elements of the SPO's condition be considered by the Designated Physician while making the reasonable expectation determination.

Several commenters expressed concern regarding which physical readiness standard would have to be met should an incumbent SPO fail to demonstrate a standard and then go through remedial training. DOE clarifies that the incumbent would have to meet the standard which had not been demonstrated successfully.

A number of comments also indicated confusion about the process for random testing of SPOs. As a result of these comments, DOE made several changes to this section regarding testing of 10 percent of the physical readiness standard SPO populations. These changes were made to ensure a consistent process is used throughout the DOE. Clarification includes the timing of the selection process, the result should an insufficient number of SPOs fail to meet their required standard, and the process and timing for return to sampling.

Commenters requested clarification regarding the requirements associated with SPOs who are returning from absence (e.g., due to illness/injury or military service) on their anniversary date. In response, DOE clarifies that should an SPO be absent during the period of their anniversary date, the SPO will be required to physically demonstrate the applicable physical readiness standard prior to return to SPO duties. A physical demonstration is required since there would be no obligation for the SPO to maintain ability to meet the applicable physical

readiness standard during such an absence.

A commenter noted potential scheduling difficulties because of the requirement to have a physical readiness assessment completed within 30 days of the SPO attempting the physical readiness standard. DOE revised the regulation to require the assessment be completed no more than 30 days prior to or after the annual physical examination with the Designated Physician. This change creates a maximum 60-day window during which the physical readiness assessment, the annual physical, and an attempt to demonstrate the applicable physical readiness standard could be scheduled.

Commenters requested clarification in section 1046.17 regarding the acceptable number of consecutive weapons qualification remediations. DOE also has examined similar requirements in section 1046.16 for ability to meet applicable physical readiness standards and added text to provide consistency for allowable remediations to demonstrate the appropriate physical readiness standard to be consistent with those regarding ability to qualify with firearms. Only three successive remedial trainings will be provided for failure to meet either an applicable physical readiness standard or weapons qualification. The fourth successive failure will result in loss of status. Some commenters questioned how rescheduling of an attempt would be authorized. As a result, DOE added clarifying language to emphasize that when rescheduling occurs, it will be at the discretion of the employer. The intent of making the change is to ensure that pursuant to the other requirements of this section, the employer is not placed under an undue burden to accommodate conducting an additional attempt.

DOE added text in paragraph (c)(5) to clarify that additional time to meet the physical readiness standard may be granted only in unusual circumstances based on temporary medical conditions or physical injuries as certified by the Designated Physician. DOE determined that this clarification is appropriate because lack of proper physical conditioning is not a reason to grant additional time to meet the standard. DOE also edited the text in paragraph (g)(10) to ensure consistency with the previous paragraph.

DOE also made a number of editorial changes to provide greater clarity as to the requirements in this section.

7. Changes to § 1046.17 Training standards and procedures.

DOE modified the language of this section from the previous § 1046.15, incorporating standards currently set forth in Appendix B to Subpart B, and DOE Order 473.3, *Protection Program Operations*, <https://www.directives.doe.gov/directives/current-directives/473.3-BOrder/view>. Specific training requirements and knowledge, skills, and abilities have been replaced with the requirement that PF personnel and their supervisors possess the knowledge, skills and abilities necessary to protect DOE security interests. The knowledge, skills and abilities required will be developed based on the applicable Job Analysis (JA) or Mission Essential Task List (METL). This ensures training requirements comport readily to existing conditions and essential job functions as dictated by the site-specific JA or METL.

Firearms qualification requirements were modified to address SPO qualification with individually-issued and primary weapons required by their duty assignment (i.e., specialty weapon, long gun and/or handgun). These requirements also stipulate that to operate post-assigned site-specific specialized or crew-served weapons, the SPO must be trained and demonstrate proficiency in the safe use of such weapons in a tactical environment.

DOE also clarified the procedure for developing site-specific and/or specialized courses of fire.

Commenters requested clarification that the Officially Designated Federal Security Authority (ODFSA) approves only the site-specific criteria for training programs. In response, DOE affirms the commenters' statement and adds the term "site-specific" in 1046.17(a).

A commenter also suggested that DOE use the broader term "instructional guidelines" instead of the more specific term "lesson plans." DOE adopted this change in today's final rule to provide DOE field sites greater flexibility in their approach to provide required PF training.

Commenters questioned whether or not a previous DOE SPO basic course of instruction is not sufficient for rehired SPOs. In response to these comments, DOE clarifies that the full retraining of former SPOs may be required if a site-specific assessment of the individual indicates the need for retaking the full course. Language addressing SO initial training requirements also was adjusted to clarify that SOs must take the initial training requirement unless they were previously employed at the same facility. DOE determined that previous employment at the facility means that the individual would have already

satisfied the initial training requirements.

Several commenters requested that clarification be provided regarding the required number of training sessions to be provided for SRT maintenance training. In response to these comments, and to ensure that all elements of training are conducted during appropriate timeframes, DOE revised language addressing SRT maintenance or refresher training. Annual training requirements must be completed over a minimum of two training sessions and all elements of the site-specific JA or METL must be covered annually.

Commenters expressed concern that earlier proposed language could be interpreted to allow durations of excessive length between required requalifications. Additionally, DOE determined clarification should be provided that the intent is to require both daylight and reduced light demonstrations of proficiency or qualifications. Today's final rule requires that semiannual firearms proficiency or qualifications be conducted under both daylight and reduced light conditions, and that such qualifications may occur within 30 days (either before or after) of six months from the previous semiannual qualification or proficiency demonstration date. Additionally, language was added to allow employers to change the semiannual qualification dates as long as no more than seven months pass between the last qualification and the new date to be established.

Commenters requested clarification regarding the acceptable number of consecutive weapons qualification remediations. DOE also has examined the requirements for ability to meet applicable physical readiness standards and ensures consistency for allowable remediations to demonstrate the appropriate physical readiness standard and to qualify with firearms. Only three successive remedial trainings will be provided for failure to meet either an applicable physical readiness standard or weapons qualification. The fourth successive failure will result in loss of status.

DOE also made editorial changes to provide greater clarity as to the requirements in this section.

8. Changes to § 1046.18 Access authorization.

The language of this section modifies the previous 1046.14 rule for clarity and to eliminate the requirement for all armed PF members to have a minimum "L" access authorization. The revised provision instead requires that, at a minimum, a favorably adjudicated



background investigation including national agency check with local agency and credit check (NACLC) be conducted to ensure the individual's suitability for arming. A "Q" access authorization continues to be required under certain circumstances.

Several comments were received on this section. Some of the commenters made statements without specific requests for change; no changes were made as a result of these statements. Other commenters suggested adding language already included in this section of the proposal. For instance, one commenter requested language in the final rule to establish that, at a minimum, a favorably adjudicated background check must be conducted prior to arming. Such a requirement is already set forth in this section. The text also requires that appropriate access authorization may be required under other circumstances. Therefore DOE made only editorial changes to enhance clarity to this section.

#### 9. Changes to § 1046.19 Medical/fitness for duty status reporting requirements.

This new section restates the reporting requirements for PF personnel but has not changed substantially from the requirements in Appendix A of the previous rule. The section clarifies the requirement that PF personnel advise their supervisors when they have an unspecified change in their health status that might impair their ability to perform PF duties. PF personnel are also required to provide a detailed report identifying the change to the Designated Physician. This section also requires PF personnel to advise their supervisors when a corrective device associated with a reasonable accommodation is not functioning properly.

In addition, this section restates the requirement that the contractor report to the Designated Physician any physical, behavioral, or health changes or deterioration in work performance in PF personnel under their jurisdiction. The section contains new language requiring the Designated Physician to be informed of all anticipated job transfers involving either upward or downward recategorization (e.g., from SO to armed status, from armed status to SO, or from PF to other assignments).

DOE did not receive comments requesting changes to this section. No substantive changes were made to this section.

#### 10. Changes to § 1046.20 Medical record maintenance requirements.

This section clarifies record retention and confidentiality requirements contained in Appendix A, section C, of the previous version of the rule. This

rule substitutes language on the inability to perform the essential functions of the job for the term "disqualifying defects." Language has been added to make it clear that access to medical information developed pursuant to the requirements of this part can be appropriately shared to satisfy the requirements of other parts of this or other titles. Thus, duplicative testing or examinations can be avoided. Additionally, a more explicit discussion of medical records confidentiality has been added for consistency with the requirements of the Privacy Act and DOE's implementing regulations.

One commenter made a comment on separate storage of psychological records based upon their current site-specific implementation of medical record maintenance and apparent use of an external psychologist. DOE recognizes that medical records are modular. Therefore, no substantive changes were made to this section.

#### 11. Changes to § 1046.21 Materials incorporated by reference.

This section addressed industry standards to be incorporated by reference in DOE's PF regulations.

This section has been deleted because DOE did not incorporate any materials by reference in today's final rule.

### III. Rulemaking Requirements

#### A. 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).

#### B. 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 Web site ([www.gc.doe.gov](http://www.gc.doe.gov)).

DOE has reviewed today's rule under the Regulatory Flexibility Act and certifies that the rule does not have a significant impact on a substantial

number of small entities. This action amends an existing rule which establishes medical and physical training requirements and standards for DOE PF personnel. The rule affects 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.

The rule updates the medical certification and physical readiness requirements for PF personnel and requires PF contractors to make reasonable accommodations to modify emergency and protective equipment for qualified individuals. The rule also sets forth the essential functions that PF personnel would be required to meet, with or without such reasonable accommodation. Medical certification and physical readiness requirements are currently set forth in Appendix A to Subpart B of 10 CFR part 1046. The updates, which are applicable to individual PF personnel rather than their employer, are not expected to impose a significant cost impact. While these essential functions for PF personnel have not previously been specified by regulation, DOE has determined that PF personnel must already be able to perform these functions to adequately perform their job responsibilities. In addition, while the reasonable accommodation provisions are not currently specified by the current regulation, such accommodations are already required by the ADA, as amended by the ADAAA.

The rule also establishes a process for review of a medical certification disqualification and for medical removal protection benefits in certain circumstances. The review process will be conducted by the DOE Office of Health, Safety and Security (independent review) and the DOE Office of Hearings and Appeals (final review), and as such are therefore not expected to result in a significant impact on affected small businesses. Any medical removal protection benefits would be reduced to the extent worker's compensation is provided and other collectively bargained benefits are paid for the same purposes, and will be reimbursable to the contractor under the applicable contract with DOE.

The rule also updates the training standards and procedures for PF officers, and makes minor updates to existing reporting and records maintenance requirements. The training standards and procedures are currently set forth at Appendix B to Subpart B of 10 CFR part 1046. The updates, intended to tailor training requirements to existing conditions and essential job functions specified in a site-specific JA or METL, are not expected to result in significant increases in costs to meet these requirements. Medical records are maintained by the Designated Physician and the evaluating psychologist, and the updates require PF personnel management to develop plans to ensure the confidentiality of medical information. Such confidentiality is already required by other existing regulations.<sup>1</sup>

Because these standards and requirements are primarily clarifications and updates to existing standards and requirements, DOE does not believe that the impact on these firms is significant. DOE emphasizes that these firms are under contract to DOE either directly or indirectly, so any costs incurred while meeting the standards and requirements in this rule would be invoiced and may be reimbursable in accordance with the terms of the contract and applicable law.

DOE received no comments on this certification in response to the proposed rule (77 FR 13206, Mar. 6, 2012). DOE addresses comments related to the economic impact of the proposed rule elsewhere in the preamble. Those comments did not result in changes to the certification.

For the above reasons, DOE certifies that the rule will not have a significant economic impact on a substantial number of small entities. DOE transmitted the certification to the Small Business Administration as required by 5 U.S.C. 605.

<sup>1</sup> DOE notes that the rule would also set forth qualification requirements for the PPM and designated physicians. While many Management and Operations contractors may have medical professionals on staff, subcontractor firms that employ physicians, psychologists, and psychiatrists may be classified under NAICS Codes 621111, Offices of Physicians (except Mental Health Specialists), 621112, Offices of Physicians, Mental Health Specialists, and 621330, Offices of Mental Health Practitioners (except Physicians). To be classified as small businesses, these firms must have average annual receipts of \$10 million, \$10 million, and \$7 million, respectively. Because individuals employed by these firms likely meet the proposed qualification requirements already in order to practice in the field, DOE does not believe that these requirements would result in a significant impact on any small firms employing these individuals.

### C. 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.

### D. 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 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.

### E. Review Under Executive Order 13132

Executive Order 13132, “Federalism” (64 FR 43255, August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to 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 the 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.

### F. 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.

### G. 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.gc.doe.gov>). 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. While the rule requires certain private sector employers and employees (i.e., DOE security contractors and certain PF personnel employed by them) to meet certain job-related medical and physical training standards and requirements, the impact is not likely to result in the expenditure of \$100 million or more in any year. In addition, any costs incurred by employers in meeting these requirements would be

invoiced and may be reimbursable in accordance with the terms of the contract and applicable law.

#### H. 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.

#### I. 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 does 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.

#### J. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule before its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

### List of Subjects in 10 CFR Part 1046

Government contract, Reporting and recordkeeping requirements, Security measures.

Issued in Washington, DC, on August 29, 2013.

**Daniel B. Poneman,**

*Deputy Secretary of Energy.*

For the reasons set out in the preamble, the Department of Energy (DOE) amends Chapter X of Title 10 of the Code of Federal Regulations by revising part 1046 to read as follows:

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

#### Subpart A—General

Sec.

1046.1 Purpose.

1046.2 Scope.

1046.3 Definitions.

1046.4 Physical Protection Medical Director (PPMD).

1046.5 Designated Physician.

#### Subpart B—Protective Force (PF) Personnel

1046.11 Essential functions of PF positions.

1046.12 Medical, physical readiness, and training requirements for PF personnel.

1046.13 Medical certification standards and procedures.

1046.14 Medical certification disqualification.

1046.15 Review of medical certification disqualification.

1046.16 SPO physical readiness qualification standards and procedures.

1046.17 Training standards and procedures.

1046.18 Access authorization.

1046.19 Medical and fitness for duty status reporting requirements.

1046.20 Medical records maintenance requirements.

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

#### Subpart A—General

##### § 1046.1 Purpose.

This part establishes the medical, physical readiness, training and performance standards for contractor protective force (PF) personnel who provide security services at Department of Energy (DOE or Department) facilities including the National Nuclear Security Administration (NNSA). DOE and NNSA may choose to incorporate elements of these standards into Federal protective force programs.

##### § 1046.2 Scope.

(a) This part applies to DOE, including NNSA, contractor employees and applicants for contractor protective force positions at government-owned or government leased facilities, regardless of whether the facility is privately

operated. This part provides for the establishment of physical security programs based on uniform standards for medical, physical performance, training, and access authorizations for PF personnel providing physical security services to the Department.

(b) Use of a single, suitably qualified individual is encouraged when it is operationally, fiscally, or otherwise appropriate to perform multiple roles as required in this part (e.g., Designated Physician and Physical Protection Medical Director (PPMD)). Similarly, when appropriate medical, psychological, or other examinations, evaluations, testing, or reports required by other DOE regulations can be used to satisfy the requirements of multiple parts of this title, nothing in this part is intended to require duplicative examinations, evaluations, testing, or reports as long as the requirements of this part are met.

(c) The Department is authorized to grant such exemptions from the requirements of this part as it determines are authorized by law. Exemptions may not be granted from the requirement to meet any essential function of a position notwithstanding that reasonable accommodation must be granted as required by this part and the Americans with Disabilities Act of 1990 (ADA), as amended by the Americans with Disabilities Act Amendment Act of 2009 (ADAAA), and its implementing regulations. Exemptions from requirements other than the medical certification standards are allowed only on a case-by-case basis for a specific requirement covered under this part. The Department must document that the exemption will not endanger life or property or the common defense and security, and is otherwise in the public interest. Consistent with the exemption process specified by DOE, exemptions must be made from this part in consultation with the Chief Health, Safety and Security Officer and approved by the Secretary, Deputy Secretary, or for the National Nuclear Security Administration, the Administrator. Granting of equivalencies is not authorized. Nothing in this part shall prohibit NNSA from enhancing the requirements set forth in § 1046.16, SPO Physical Readiness Qualification Standards and Procedures, as necessary to further the interests of national security.

(d) Requests for technical clarification of the requirements of this part by organizations or individuals affected by its requirements must be made in writing through the appropriate program or staff offices of the Department. Such requests must be coordinated with the

Office of Health, Safety and Security or its successor organization. The Office of Health, Safety and Security is responsible for providing a written response to such requests. Requests for interpretations of the requirements of this part may be made to the General Counsel. The General Counsel is responsible for providing responses to such requests.

(e) This part is effective March 10, 2014. Requirements of this rule that cannot be implemented by March 10, 2014 due to contractual conflicts or within existing resources must be documented by the officially designated federal security authority (ODFSA) and submitted to the relevant program officers: the Under Secretary; the Under Secretary for Science or the Under Secretary for Nuclear Security, NNSA; and the Chief Health, Safety and Security Officer. The documentation must include timelines and resources needed to fully implement this part.

#### § 1046.3 Definitions.

The following definitions apply to this part:

*Active shooter* means an individual actively engaged in the unauthorized killing or attempting to kill a person or persons in a confined and populated area.

*Advanced Readiness Standard (ARS)* means a qualification standard that includes the requirements of the Fixed Post Readiness Standard (FPRS), but also requires the completion of a one mile run with a maximum qualifying time of 8 minutes 30 seconds, a 40-yard dash from the prone position in 8.0 seconds or less, and any other measure of physical readiness necessary to perform site-specific essential functions as prescribed by site management and approved by the respective program office. This standard applies to SPOs who staff security posts that normally require extensive tactical movement on foot or are assigned Special Response Team duties.

*Applicant* means a person who has applied for and been conditionally offered a position as a Security Officer (SO) or a Security Police Officer (SPO), but who has not yet begun the active SO or SPO duties for which the person has applied.

*Basic Readiness Standard (BRS)* means a qualification standard that includes the requirements of the FPRS, but also requires the completion of a one-half mile run with a maximum qualifying time of 4 minutes, 40 seconds, a 40-yard dash from the prone position in 8.5 seconds or less, and any other measure of physical readiness necessary to perform site-specific

essential functions as prescribed by site management and approved by the respective program office. This standard applies to SPOs with mobile defensive duties in support of facility protection strategies.

*Chief Medical Officer* means a Federal employee who is a doctor of medicine (MD) or doctor of osteopathic medicine (DO) who is licensed without restriction and qualified in the full range of occupational medicine services employed by the Department's health, safety, and security programs. This individual provides technical support for these programs and must be identified in writing.

*Contractor* means a contractor for the Department and includes subcontractors at all tiers.

*Corrective device* means a device, such as eyeglasses or hearing aid, necessary to enable an examinee to meet medical qualification standards and have been determined to be a reasonable accommodation compatible with the performance of the essential functions of the position. The contractor responsible for the performance of the examinee must determine that the use of the device is compatible with all actions associated with emergency and protective equipment without creating a hardship for the contractor. The Designated Physician and PPMD must determine that the reasonable accommodation is consistent with the medical certification standards without creating a direct threat to the individual or to others.

*Designated Physician* means an MD or DO, licensed without restriction in the state of practice, who has been approved by the PPMD. The Office of Health, Safety and Security must be consulted regarding an individual's suitability prior to appointment as a Designated Physician.

*Direct threat* means a significant risk of substantial harm to the health or safety of the individual or others. The risk must be based on an assessment of the individual's present ability to perform safely the essential functions of the job, and it must be determined that the risk cannot be eliminated or reduced by reasonable accommodation.

*DOE facility* means any facility required by DOE to employ PF personnel and used by DOE, including NNSA, and its contractors for the performance of work under DOE jurisdiction.

*Emergency conditions* are those conditions that could arise at a DOE facility as a result of a breach of security (e.g., sabotage or terrorism), accident (e.g., fire or explosion), or naturally occurring event (e.g., storm or

earthquake) and threaten the security or integrity of DOE facilities, assets, personnel, the environment or the general public. For the purposes of this rule, emergency conditions include PF drills and exercises relating to search, rescue, crowd control, fire suppression and special operations, including response to the scene of the incident, and all applicable PF functions performed at the scene.

*Essential functions of the job* are the fundamental job duties of PF members as set out in § 1046.11.

*Field element* means the management and staff elements of DOE, including NNSA, with delegated responsibility for oversight and program management of major facilities, programs, and site operations.

*Final review* means the process for an individual disqualified from medical certification to have a second and ultimate review of the individual's case conducted by the DOE Office of Hearings and Appeals.

*Fixed Post Readiness Standard (FPRS)* means a standard that requires an SPO to demonstrate the ability to assume and maintain the variety of cover positions associated with effective use of firearms at entry portals and similar static environments to include prone, standing, kneeling, and barricade positions; to use site-specific intermediate force weapons and weaponless self-defense techniques; to effect arrest of suspects and place them under restraint, e.g., with handcuffs or other temporary restraint devices; and any other measure of physical readiness necessary to perform site-specific essential functions as prescribed by site management and approved by the respective program office.

*Independent Physician* means a physician who possesses an MD or DO degree, is licensed without restriction and board certified, and has experience in a relevant field of medicine. The Independent Physician must not have served as the requestor's personal physician in any capacity or have been previously involved in the requestor's case on behalf of the Department or a Department contractor.

*Independent review* means the process through which a medically disqualified individual may appeal to have an independent review of the individual's case conducted by an Independent Physician.

*Job analysis (JA)* is a systematic method used to obtain a detailed listing of the tasks of a specific job. JAs must be derived from criteria determined and published by the DOE National Training Center or identified and documented through a site-specific Mission Essential

Task List (METL)-based process based on a set of Departmental Nuclear Security Enterprise-wide standards. A METL-based process that identifies and formally documents duties, tasks, and sub-tasks to be trained is commensurate with the process to develop JAs.

*Medical approval* means a determination by a Designated Physician that an individual is medically cleared to attempt the physical readiness standard qualification test and perform SO or SPO duties.

*Medical certification* means a determination by a Designated Physician approved by the PPMD that an individual is medically qualified for a particular category of PF positions, including the performance of the essential functions of an SO or SPO, and the required ongoing physical readiness training.

*Medical certification disqualification* means a determination by a Designated Physician and approved by the PPMD that an individual, with or without reasonable accommodation, is unable to perform the essential functions of an SO or SPO job position, including the required physical readiness training, without creating a direct threat to that individual or others.

*Medical evaluation* means the analysis of information generated by medical examinations and psychological evaluations and assessments of an individual to determine medical certification.

*Medical examination* means an examination performed or directed by the Designated Physician that incorporates the components described in § 1046.13.

*Mission Essential Task List (METL)* means a list of common tasks required for PF assignments based on site-specific protection plans to defend against adversary capabilities as defined by DOE.

*Officially Designated Federal Security Authority (ODFSA)* means the Departmental Federal authority at the Field or Headquarters (HQ) Element with the primary and delegated responsibility for oversight of a site PF. Also may be referred to as the Department or Federal cognizant security authority.

*Pertinent negative* means the absence of a sign or symptom that helps substantiate or identify a patient's condition.

*Physical Protection Medical Director (PPMD)* means the physician programmatically responsible for the overall direction and operation of the site medical program supporting the requirements of this part.

*Primary weapon* as used in this part means any weapon individually assigned or available at the majority of posts/patrols to which the SPO may be assigned.

*Protective Force (PF) personnel* means Special Response Team members, SPOs, and SOs employed to protect Department security interests.

*Qualification* means the documented determination that an individual meets the applicable medical, physical, and as appropriate, firearms training standards, and possesses the knowledge, skills, abilities and access authorizations required for a particular SO or SPO position.

*Randomly selected* means any process approved by the ODFSA, which ensures each member of the SPO population has an equal chance to be chosen every time the selection process is used.

*Reasonable accommodation* means an accommodation consistent with the Americans with Disabilities Act Amendment Act (ADAAA) that is documented in writing.

*Re-qualification date* means the date of expiration of current qualification at which demonstration of knowledge, skills and/or abilities is required to maintain specific job status.

*Security interests* include any Department asset, resource or property which requires protection from malevolent acts and/or unpermitted access. These interests may include (but are not limited to) Department and contractor personnel; sensitive technology; classified matter; nuclear weapons, components, and assemblies; special nuclear material (SNM) as defined by the Atomic Energy Act of 1954 (as amended) and the Department; other nuclear materials; secure communications centers; sensitive compartmented information facilities; automated data processing centers or facilities storing and transmitting classified information; vital equipment; or other Department property.

*Security Officer (SO)* means an unarmed uniformed PF member who has no Departmental arrest or detention authority, used to support SPOs and/or to perform duties (e.g., administrative, access control, facility patrol, escort, assessment and reporting of alarms) where an armed presence is not required.

*Security Police Officer (SPO)* means a uniformed PF member who is authorized under section 161(k) of the Atomic Energy Act of 1954, as amended, section 661 of the DOE Organization Act, or other statutory authority, to carry firearms and to make arrests without warrant for specifically enumerated offenses and who is employed for, and

charged with, the protection of Department security interests.

*Semi-structured interview* means, for the purpose of this part, an interview by a Psychologist who meets standards established by DOE and who has the latitude to vary the focus and content of the questions depending upon the interviewee's responses.

*Special Response Team*, commonly referred to as SRT, means a PF special operations unit comprised of SPOs whose primary mission is to resolve incidents that require activities and force options that exceed the capability of existing physical security systems (e.g., performance of recapture/recovery operations and augmentation of denial missions).

*Special Response Team (SRT) Member* means SPOs who meet the ARS, with additional training and qualification requirements as necessary, and who are assigned to an SRT that trains and responds as a team to perform recapture and recovery and to augment denial missions, e.g., those missions that require adversaries be denied proximity to the protected property.

*Weapons proficiency demonstration* means a process based on a predetermined, objective set of criteria approved by the respective program office in consultation with the Office of Health, Safety and Security that results in a grade (e.g., pass/fail). The process must ensure that an individual (or team, for crew-served weapons) demonstrates the ability to perform all weapons-handling and operational manipulations necessary to load, operate, and discharge a weapon system accurately and safely (to include clearing/returning to safe mode the weapons system at the conclusion of firing), without the necessity for scoring targets during the course of fire. Proficiency courses of fire must include tactically-relevant time constraints. Demonstrations of proficiency are allowed with the actual weapon and assigned duty load, with alternate loads (e.g., frangible or dye-marking rounds), or with authorized weapons system simulators, as defined in this section. Proficiency courses of fire must be tactically relevant.

*Weapons qualification* is a formal test of weapons proficiency that includes, in addition to all specified elements of proficiency demonstration, the achievement of a prescribed qualification score according to a Departmentally-approved course of fire. Weapons qualification courses of fire must be constrained by time.

*Weapons system simulator* means a device that closely simulates all major aspects of employing the corresponding actual firearm/weapons system, without

firing live ammunition. The simulator should permit all weapons-handling and operational actions required by the actual weapon, and should allow the use of sight settings similar to the corresponding actual weapon with assigned duty loads. Additionally, when weapons or weapons system simulators are used for qualification testing of protective force officers, the operation of the simulated weapon must closely approximate all weapons handling and operational manipulation actions required by the actual weapon. The simulation system must precisely register on-target hits and misses with accuracy comparable to the actual weapon at the same shooting distances. The weight, balance, and sighting systems should closely replicate those of the corresponding actual weapon with assigned duty loads, and noise signatures and felt recoil should be simulated to the extent technically feasible.

*Work hardening* is discussed by the Department of Labor in their Division of Federal Employees' Compensation Procedure Manual, 2-813-12 (available at <http://www.dol.gov/owcp/dfec/procedure-manual.htm>), as a physical therapy program which will facilitate return-to-work. Work hardening is also known as an Occupational Rehabilitation Program.

#### **§ 1046.4 Physical Protection Medical Director (PPMD).**

(a) *General.* The PPMD is the contractor physician programmatically responsible for the overall direction and operation of site medical programs supporting the PF requirements of this part. The PPMD is responsible for the programmatic oversight of all site Designated Physicians, including those who may operate physically separate clinics. Appropriate contractual arrangements must ensure that the PPMD's authority applies to all site contractors.

(1) *Nomination.* The name of each PPMD candidate must be submitted by the contractor to the ODFSA who in turn must consult with the Office of Health, Safety and Security prior to approving the PPMD. For NNSA, PPMD nominations must be made to the NNSA organization responsible for occupational health and safety. At the time of initial nomination for the PPMD designation the nominee shall submit, through the nominee's employer and the ODFSA, the following documents or copies thereof, translated into English if written in another language:

(i) Applicable diplomas;

(ii) Certificate of any postgraduate professional training (e.g., internship, residency, fellowship);

(iii) Current medical license in the state in which duties will be performed;

(iv) Certification of good standing by all medical licensing bodies from which the applicant has held medical licenses, as well as documentation of any restrictions or limitations to practice medicine, past or present (such documentation may be obtained in written form or electronically). The nominee may be requested to instruct the licensing body to send such certifications to the Office of Health, Safety and Security and as applicable to the NNSA organization responsible for occupational health and safety. Under no circumstances will such certifications of good standing be accepted directly from the applicant. Additionally, notice of certification by any additional American specialty board, if applicable, and/or current curriculum vitae may be requested; and

(v) A curriculum vitae, if requested, must include a discussion of any gaps in employment.

(2) *Updates.* If determined necessary at any time and requested by the Office of Health, Safety and Security, the NNSA organization responsible for occupational health and safety, the ODFSA, or the PPMD's employer, updated information as identified in paragraphs (a)(1)(i) through (v) of this section must be provided.

(3) *Other roles and responsibilities.* Nothing in this part is intended to preclude the PPMD from fulfilling similar or related roles under other parts or this title, including providing occupational medical services under 10 CFR part 851, "Worker Safety and Health Program." Additionally, the PPMD may fulfill the role of Designated Physician. The PPMD's employer must notify the Office of Health, Safety and Security, and if appropriate the NNSA organization responsible for occupational health and safety, through the ODFSA if the PPMD will also be fulfilling the role of the Designated Physician.

(4) *Qualifications.* The PPMD shall possess an MD or DO degree; be board certified or board eligible in occupational medicine; be a professionally qualified physician in good standing in the professional community, to include all medical licensing bodies from which the applicant has held medical licenses; demonstrate past professional performance and personal conduct suitable for a position of responsibility and trust; read, write, speak, and understand the English language

proficiently; and possess an unrestricted license to practice medicine in the state in which the designation is sought, or meet the medical licensing requirements of the applicable military or Federal service to which the applicant belongs.

(b) *Nominations.* Except as provided in § 1046.5(c), prior to approval of a Designated Physician by the PPMD's employer, the PPMD must nominate in writing, through the local ODFSA, to the Office of Health, Safety and Security, one or more nominees for Designated Physician positions. For NNSA, Designated Physician nominations must be made through the NNSA organization responsible for occupational health and safety.

(1) Each nomination must describe the relevant training and experience of the nominee.

(2) Each nominee must be professionally qualified in good standing in the professional community, to include all medical licensing bodies from which the applicant has held medical licenses; demonstrate past professional performance and personal conduct suitable for a position of responsibility and trust; read, write, speak, and understand the English language proficiently; and possess the applicable unrestricted license to practice in the state in which the designation is sought or meet the medical licensing requirements of the applicable military or Federal service to which the applicant belongs.

(3) To be nominated, a Designated Physician shall possess an MD or DO degree and be board certified or board eligible in occupational medicine.

(c) *Documentation.* At the time of initial nomination, the nominee shall submit to the PPMD the following documents or copies thereof, translated into English if written in another language:

(1) Applicable diplomas;

(2) Certificate of any postgraduate professional training (e.g., internship, residency, fellowship);

(3) Current medical license in the state in which duties will be performed; and

(4) Certification of good standing by all medical licensing bodies from which the applicant has held medical licenses, as well as documentation of any restrictions or limitations to practice medicine, past or present (such documentation may be obtained in written form or electronically). The PPMD may request the nominee to instruct the licensing body to send such certifications to the PPMD. Under no circumstances will such certifications of good standing be accepted directly from the applicant. Additionally, the PPMD

may request notice of certification by any additional American specialty board, if applicable; and

(5) A current curriculum vitae may be requested. The curriculum vitae, if requested, must include a discussion of any gaps in employment.

(6) If determined necessary by the PPMD, updated information, as identified in paragraphs (c)(1) through (5) of this section, may be requested at any time.

(d) *Self reporting.* (1) Each incumbent individual covered under paragraphs (a) or (b) of this section must agree to self-report the following information as a condition of the designation. PPMDs must report to their employer, who must forward the information to the Office of Health, Safety and Security or as appropriate to the NNSA organization responsible for occupational health and safety through the ODFSA.

Additionally, Designated Physicians must report to the PPMD the following:

(i) Any change in status or initiation or taking of an adverse action, past or present, by any state medical licensing board or any other professional licensing board against the licenses of the individual (these may be provided in written or electronic form). The incumbent or nominee may be required to request the licensing body to provide such information to the ODFSA or PDMD, as appropriate. Under no circumstances will such information be accepted directly from the incumbent or nominee;

(ii) Initiation of an adverse action by any Federal or state regulatory board;

(iii) Being named a defendant in any criminal proceedings (felony or misdemeanor);

(iv) Being named in a civil suit alleging professional malpractice;

(v) Being evaluated or treated for alcohol use disorder or drug dependency or abuse; and

(vi) Occurrence of a physical disorder, a mental disorder, or any other health condition that might affect the physician's ability to perform professional duties.

(2) All information in paragraphs (d)(1)(i) through (vi) of this section must be submitted to DOE for consideration and possible action and may result in rejection or termination of the applicable designation. Failure to provide such information may also result in the rejection or termination of the applicable designation. For NNSA contractors, in consultation with the Office of Health, Safety and Security, the NNSA organization responsible for occupational health and safety will make the final decision on the

appropriate action in light of the information received.

(e) *Annual activity report.* The PPMD must review the current credentials of each Designated Physician annually and make a recommendation to the employer to either retain or replace each incumbent. The Office of Health, Safety and Security and as appropriate, the NNSA organization responsible for occupational health and safety must be notified by the employer through the appropriate field element of any changes.

(f) *Retention or replacement.* For DOE, the PPMD's supervisor of record must send an annual letter to the Office of Health, Safety and Security reporting on the current credentials of the PPMD recommending retention or replacement. Immediate notification must be made to the Office of Health, Safety and Security if a PPMD is relieved of duties or replaced. For NNSA, the PPMD's supervisor of record must send an annual letter to the NNSA organization responsible for occupational health and safety with a courtesy copy to the Office of Health, Safety and Security reporting on the current credentials of the PPMD recommending retention or replacement. For NNSA, immediate notification must be made to the NNSA organization responsible for occupational health and safety with a courtesy copy to the Office of Health, Safety and Security if a PPMD is relieved of duties or replaced.

(g) *Medical activity summary.* The PPMD must submit an annual letter summarizing the medical activity during the previous year conducted under this part to the Chief Health, Safety and Security Officer or designee through the manager of the Field Element. For NNSA the summary must be sent to the NNSA organization responsible for occupational health and safety with a courtesy copy to the Office of Health, Safety and Security. The PPMD must comply with applicable DOE requirements specifying report content.

#### **§ 1046.5 Designated Physician.**

(a) *Responsibilities.* Designated Physicians are responsible for the conduct of medical examinations, evaluations, and medical certification of SOs and SPOs. Additionally, Designated Physicians are responsible for the supervision of physician extenders (e.g., physician's assistants, certified occupational health nurses, or nurse practitioners), as required by applicable state or local law. The Designated Physician must:

(1) Annually determine whether to approve an individual's participation in programmed physical readiness training programs required under this rule and determine the individual's ability to perform the physical readiness and PF qualification tests without undue risk. Medical approval must be obtained within thirty days prior to the individual's beginning such training or attempting the qualifying tests;

(2) With the assistance of a psychologist or psychiatrist meeting standards established by DOE, determine:

(i) An individual's medical capability, with or without reasonable accommodation, to perform the essential functions of PF job duties without creating a direct threat to the individual or others; and

(ii) Whether to certify that the individual meets the applicable medical and physical readiness standards as set forth herein for their position.

(3) Determine whether any portion of any medical examination may be performed by other qualified personnel, such as another physician or physician extenders;

(4) Be responsible for case management, including supervising, interpreting, and documenting PF personnel medical conditions; and

(5) Be familiar with the required essential functions of the job duties for PF personnel, as set forth in § 1046.11, and the physical readiness requirements as identified in § 1046.16.

(b) *Nominations.* The requirements of § 1046.4(b) and (c) must be followed by the individuals nominated for Designated Physician positions.

(c) *Approval in lieu of nomination.* Designated Physicians approved under the provisions of 10 CFR part 712, "Human Reliability Program," will also satisfy the requirement for nomination to, and approval by, DOE/NNSA under this part. The employer must notify the Office of Health, Safety and Security through the ODFSA if the physician will be fulfilling the role of Designated Physician for this part in addition to fulfilling a role for another part (e.g., 10 CFR part 712). For NNSA the notification must be sent to the NNSA organization responsible for occupational health and safety with a courtesy copy to the Office of Health, Safety and Security.

(d) *Self reporting.* The self-reporting requirements of § 1046.4(d) must be followed by incumbent Designated Physicians.

## Subpart B—Protective Force (PF) Personnel

### § 1046.11 Essential functions of PF positions.

Nothing in this part is intended to preclude emergency use of any available protective force personnel by an on-scene commander to successfully resolve a national security emergency.

(a) *Essential functions.* The essential functions described in paragraphs (b) through (g) of this section and other site-specific essential functions must be communicated in writing by the manager of the Field Element to the PPM and the Designated Physician. The Designated Physician is required to ensure applicant and incumbent PF members are aware that these essential physical and mental functions in paragraphs (b) through (g) of this section and other site-specific essential functions, as appropriate, and the medical certification standards provided in section 1046.13 if this part are the elements against which the initial and annual evaluations for PF personnel will be conducted.

(b) *SO essential functions.* (1) The control of voluntary motor functions, strength, range of motion, neuromuscular coordination, stamina, and dexterity needed to meet physical demands associated with routine and emergency situations of the job;

(2) The ability to maintain the mental alertness necessary to perform all essential functions without posing a direct threat to self or others; and

(3) The ability to understand and share essential, accurate communication by written, spoken, audible, visible, or other signals while using required protective equipment.

(c) *Additional SO essential functions.* SOs may be required to support SPOs and assist in the routine physical protection of DOE facilities, personnel, classified information, and property, as warranted by DOE facility operations, staff security posts used in controlling access to DOE facilities, conduct routine foot and vehicular patrols, escort visitors, check rooms and facilities, assess and report alarms, and perform basic first aid. Therefore, all SOs must also be able to:

(1) Understand and implement departmental and site policies and procedures governing post and patrol operations and access control systems;

(2) Understand and implement departmental and site policies and procedures governing the SO's role in site protection;

(3) Understand and implement inspection techniques for persons, packages and vehicles, as well as detect

and identify prohibited articles and site-specific security interests;

(4) Work in locations where assistance may not be available;

(5) Spend extensive time outside exposed to the elements and working in wet, icy, hot, or muddy areas;

(6) Make frequent transitions from hot to cold, cold to hot, dry to humid, and from humid to dry atmospheres;

(7) Walk, climb stairs and ladders, and stand for prolonged periods of time;

(8) Safely operate motor vehicles when their use is required by local missions and duty assignments;

(9) Use clear and audible speech and radio communications in other than quiet environments;

(10) Read and understand policies, procedures, posted notices, and badges;

(11) Rely on the senses of smell, sight, hearing and touch to: detect the odor of products of combustion and of tracer and marker gases to detect prohibited articles; inspect persons, packages and vehicles; and in general determine the nature of emergencies; maintain personal safety; and report the nature of emergencies;

(12) Employ weaponless self-defense; and

(13) Be fitted with and use respirators other than self-contained breathing apparatus when the use of such equipment is required by local assignment.

(d) *FPRS SPO essential functions.* FPRS SPO personnel may be assigned only to fixed posts where there is no planned requirement for response away from that post. In addition to the SO essential functions listed in paragraphs (b) and (c) of this section, FPRS SPOs must be able to:

(1) Apply basic tactics (to include use of intermediate force weapons) necessary to engage and neutralize armed adversaries and determine probable capabilities and motivations of potential adversaries;

(2) Use site-specific hand tools and weapons required for the performance of duties;

(3) While armed and authorized to use deadly force, perform complex tasks, make life or death and other critical decisions, and take appropriate actions under confusing, stressful conditions including potentially life-threatening environments throughout the duration of emergency situations, e.g., active shooter scenarios;

(4) Perform physically demanding work under adverse weather and temperature conditions (extreme heat and extreme cold) on slippery or hazardous surfaces with the prolonged use of protective equipment and garments such as respirators, air supply

hoods, or bullet-resistant garments, as required by site protection strategies;

(5) Be fitted for and properly utilize personal duty equipment;

(6) Work for long periods of time in conditions requiring sustained physical activity and intense concentration in environments of high noise, poor visibility, limited mobility, at heights, and in enclosed or confined spaces;

(7) Accommodate to changing work and meal schedules or to a delay in meals without potential or actual incapacity; and

(8) Have no known significant abnormal intolerance to chemical, mechanical (e.g., heat, light or water), and other physical agent exposures to the skin that may be encountered during routine and emergency duties, as specified at the site.

(e) *BRS SPO essential functions.* In addition to the FPRS SPO essential functions listed above, BRS SPOs must be able to:

(1) Read placards and street signs while driving or to see and respond to imminently hazardous situations in both daylight and reduced light conditions;

(2) Be capable of operating armored vehicles with an expectation of employing the capabilities of the vehicle;

(3) Staff security posts which normally require movement on foot, by vehicle, watercraft, or aircraft in response to alarms and any breach of security; and to support site protection strategies;

(4) Provide interdiction, interruption, neutralization, and support the recapture, pursuit and/or recovery of a DOE asset/site/facility/location;

(5) Make rapid transitions from rest to near maximal exertion without warm-up; and

(6) Otherwise act as needed to protect Department sites, personnel, classified information, and nuclear weapons, nuclear weapons components, and SNM, to apprehend suspects, and to participate in the armed defense of a Department site against a violent assault by adversaries.

(f) *ARS SPO essential functions.* The essential functions of an ARS SPO include those of a BRS SPO. Security posts which normally, or are expected to, require extensive tactical movement on foot must be staffed by ARS SPOs. In addition, an ARS SPO must be able to support the pursuit/recovery of a Department security interest.

(g) *SRT member essential functions.* The essential functions of an SRT member include those of an ARS SPO. The primary role of SRTs is the recapture, pursuit, and/or recovery of



Department security interests. In addition, an SRT member must be trained to resolve incidents that require activities and force options that exceed the capabilities of other site PF members, as determined by site-specific analysis. An SRT SPO also must:

(1) Successfully complete a Departmental advanced tactical qualification course designed to provide the minimum level of skills and knowledge needed to completely perform all tasks associated with SRT job responsibilities;

(2) Have knowledge and skills to provide additional protection capability as demanded by the particular targets, threats, and vulnerabilities existing at their assigned Departmental facility;

(3) Be able to operate special weapons, tactical vehicles, and other equipment necessary to protect a particular facility or to effectively engage an adversary with advanced capabilities; and

(4) Possess the ability to act successfully as a member of an aggressive and readily mobile response team as dictated by site-specific vulnerability assessments, using force options and tactical response team techniques necessary for recapture and recovery operations directed against an adversary and to support site-specific protection strategies.

**§ 1046.12 Medical, physical readiness, and training requirements for PF personnel.**

Department PF personnel must be individuals who:

(a) Are medically certified by the PPMD pursuant to the procedures set out in § 1046.13 to perform all of the applicable essential functions of the job, as set forth in § 1046.11;

(b) Meet the physical readiness qualification standards set forth in § 1046.16; and

(c) Are determined to be qualified as having the knowledge, skills, abilities and completed the requirements of a formal training program as set out in § 1046.16.

**§ 1046.13 Medical certification standards and procedures.**

(a) *PF medical certification standards.* All applicant and incumbent PF personnel must satisfy the applicable Medical Certification Standards set forth in this section.

(b) *Requirements of the medical evaluation to determine medical certification.* (1) The medical evaluation must be made by the Designated Physician without delegation (e.g., to a physician's assistant or nurse practitioner).

(2) Evaluations of incumbent security police officers must include a medical

history, the results of the examination, and a formal written determination.

(3) A site standard form approved by the Chief Medical Officer must be used, and pertinent negatives must be documented on the form.

(4) The Medical Certification Standards are the minimum medical standards to be used in determining whether applicants and incumbent PF personnel can effectively perform, with or without reasonable accommodation, all essential functions of normal and emergency duties without imposing an undue hardship on the employer or posing a direct threat to the PF member or others, the facility, or the general public. All reasonable accommodations as defined in this part must be approved in writing by the PF contractor with a determination that the use of the device is compatible with all actions associated with emergency and protective equipment without creating a hardship for the contractor. The Designated Physician and PPMD must determine that the reasonable accommodation is consistent with the medical standard without creating a direct threat to the individual or to others.

(c) *General medical standards for PF personnel.* The examinee must possess the mental, sensorial, and motor skills to perform, safely and efficiently, all applicable essential job functions described in § 1046.11 and those designated in the current job analysis submitted by PF management to the Designated Physician/PPMD. Specific qualifications for SOs and SPOs are set forth in paragraphs (d) and (e), respectively, of this section. Reasonable accommodations shall be provided pursuant to the requirements of the ADA.

(d) *Specific medical standards for SOs—(1) Head, face, neck, and scalp.* Configuration suitable for fitting and effective use of personal protective equipment when the use of such equipment is required by assigned normal or emergency job duties.

(2) *Sense of smell.* Ability to detect the odor of combustion products and of tracer or marker gases.

(3) *Speech.* Capacity for clear and audible speech as required for effective communications of the job.

(4) *Hearing.* Hearing loss with or without aids not to exceed 30 decibels (db) average at 500, 1000, and 2000 Hertz (Hz), with no loss greater than 40 db at any one of these frequencies and the ability to localize sounds with a difference of not more than 15 db average loss between the two ears. If hearing aids are necessary, suitable testing procedures shall be used to

ensure auditory acuity equivalent to the above requirement.

(5) *Vision.* Near and distant visual acuity, with or without correction, of at least 20/25 in one eye and no worse than 20/40 in the other eye.

(6) *Color vision.* Ability to distinguish red, green, and yellow. Acceptable measures of color discrimination include the Ishihara; Hardy, Rand, & Rittler; and Dvorine pseudoisochromatic plates (PIP) when administered and scored according to the manufacturer's instructions. Tinted lenses such as the X-Chrom contact lenses or tinted spectacle lenses effectively alter the standard illumination required for all color vision tests, thereby invalidating the results and are not permitted during color vision testing.

(7) *Cardiorespiratory.* Capacity to use a respirator other than self-contained breathing apparatus (SCBA) when required by local assignment.

(8) *Nutritional/metabolic.* Ability to accommodate to changing work and meal schedules without potential or actual incapacity. Status adequate to meet the stresses and demands of assigned normal and emergency job duties.

(e) *Specific medical standards for SPOs.* In addition to the criteria identified in § 1046.16(f), the following standards must be applied.

(1) *Head, face, neck and scalp.* Configuration suitable for fitting and effective use of personal protective equipment when the use of such equipment is required by assigned normal or emergency job duties.

(2) *Sense of Smell.* The ability to detect the odor of combustion products and of tracer or marker gases.

(3) *Speech.* Capacity for clear and audible speech as required for effective communications on the job.

(4) *Hearing.* Hearing loss without aids not to exceed 30 db average at 500, 1000, 2000 Hz, with no loss greater than 40 db at any of these frequencies and the ability to localize sounds with a difference of not more than 15 db average loss between the two ears. Hearing loss beyond indicated level would interfere with ability to function and respond to commands in emergency situations. Use of a hearing aid is allowed for one ear only with the remaining ear qualifying for no more than an average of 30 db loss at frequencies of 500, 1000 and 2000 Hz. If a hearing aid is necessary, suitable testing procedures must be used to assure auditory acuity equivalent to the above requirement for the difference between two ears.

(5) *Vision.* (i) Near and distant vision. Near and distant visual acuity sufficient

to effectively perform emergency-related essential functions:

(A) With or without correction, vision of 20/25 or better in the better eye and 20/40 or better in the other eye.

(B) If uncorrected, distant vision in the better eye is at least 20/25, and if the SPO wears corrective lenses, the SPO must carry an extra pair of corrective lenses.

(ii) *Color vision.* Ability to distinguish red, green, and yellow. Acceptable measures of color discrimination include the Ishihara; Hardy, Rand, & Rittler; and Dvorine pseudoisochromatic plates (PIP) when administered and scored according to the manufacturer's instructions. Tinted lenses such as the X-Chrom contact lenses or tinted spectacle lenses effectively alter the standard illumination required for all color vision tests, thereby invalidating the results and are not permitted during color vision testing.

(iii) *Field of vision.* Field of vision in the horizontal meridian at least a total of 140 degrees, contributed to by at least 70 degrees from each eye.

(iv) *Depth perception.* Ability to judge the distance of objects and the spatial relationship of objects at different distances.

(6) *Cardiorespiratory.* (i) *Respiratory.* Capacity and reserve to perform physical exertion in emergencies at least equal to the demands of the job assignment. This must be measured by annual pulmonary function test, with no less than a 90 percent predicted forced vital capacity and forced expiratory volume. There must be no diagnosis of respiratory impairment requiring ongoing use of medications such as bronchodilators or beta agonists. A full review and approval by the PPMD is required whenever there is a past history of sleep apnea (with an established index of suspicion), with or without treatment.

(ii) *Cardiovascular.* (A) Capacity for tolerating physical exertion during emergencies. The results of the two semiannual assessments as identified in § 1046.16(b)(4) must be considered. Normal configuration and function, normal resting pulse, regular pulse without arrhythmia, full symmetrical pulses in extremities, and normotensive, with tolerance for rapid postural changes on rapid change from lying to standing position. The use of hypertensive medications is acceptable if there are no side effects present that would preclude adequate functions as herein specified.

(B) If an examination reveals significant evidence of cardiovascular abnormality or significantly increased risk for coronary artery disease (CAD) as

determined by the examining physician (e.g., by using the Framingham Point System), an evaluation by a specialist in internal medicine or cardiology may be required and evaluated by the Designated Physician. An electrocardiogram is required at entry, at age 40, and annually thereafter, which must be free from significant abnormality. If such abnormalities are detected, then a stress electrocardiogram with non-ischemic results must be provided, or the individual must be referred to a cardiologist for a fitness for duty examination. A stress electrocardiogram must be performed every other year beginning at age 50 with the results reviewed by the Designated Physician.

(7) *Neurological, mental, and emotional.* Absence of central and peripheral nervous system conditions that could adversely affect ability to perform normal and emergency duties or to handle firearms safely. A test for peripheral neuropathy at fingers and toes is required annually. Absence of neurotic or psychotic conditions which would adversely affect the ability to handle firearms safely or to act safely and efficiently under normal and emergency conditions. Psychologists and psychiatrists identified to conduct evaluations, assessments, testing, and/or diagnoses associated with medical qualifications of this part must meet standards established by DOE.

(8) *Musculoskeletal.* Absence of conditions that could reasonably be expected to interfere with the safe and effective performance of essential physical activities such as running, walking, crawling, climbing stairs, and standing for prolonged periods of time. All major joint range of motion limits must have no significant impairments in the performance of essential functions. This includes full range of motion to include overhead reaching and squatting. No history of spine surgery, a documented diagnosis of herniated disc, or mechanical back pain that has not been certified to have normal functional recovery with no activity limitations precluding the ability to perform SPO essential functions.

(9) *Skin.* Have no known significant abnormal intolerance to chemical, mechanical, and other physical agent exposures to the skin that may be encountered during routine and emergency duties, as specified at the site. Capability to tolerate use of personal protective covering and decontamination procedures when required by assigned job duties. Facial hair cannot be allowed to interfere with respirator fitting, and any such growth or a skin condition which could

preclude respirator fit is not acceptable and must be documented.

(10) *Endocrine/nutritional/metabolic.* Ability to accommodate to changing work and meal schedules without potential or actual incapacity. Status adequate to meet the stresses and demands of assigned normal and emergency job duties. A full evaluation and approval of reasonable accommodation by the PPMD is required for hiring and retention when metabolic syndrome is identified and/or when diabetes is controlled by other than diet.

(f) *Additional medical or physical tests.* For those facilities where it is necessary to determine the medical qualification of SPOs or SPO applicants to perform special assignment duties which might require exposure to unusually high levels of stress or physical exertion, Field Elements may develop more stringent medical qualification requirements or additional medical or physical tests, in collaboration with the PPMD, as necessary for such determinations. All such additional qualification requirements must be coordinated with the Office of Health, Safety and Security prior to application.

(g) *Medical examination procedures and requirements.* (1) The medical examinations required for certification must be performed at the following intervals:

(i) Applicants for PF member positions must undergo a comprehensive medical examination, as specified herein. The Chief Health, Safety and Security Officer or designee, the Chief, Defense Nuclear Security in the case of NNSA, and/or the PPMD may require additional evaluations.

(ii) After initial certification, each SO must be medically examined and recertified at least every two years or more often if the PPMD so requires. This initial certification date becomes the SO's anniversary date. Medical certification remains valid through 30 days beyond the anniversary date or for the period indicated by the PPMD if less than twenty-four months.

(iii) After initial certification, each SPO must be medically examined and recertified every twelve months or more often (pursuant to § 1046.14 or otherwise if the PPMD so requires). This initial certification date becomes the SPO's anniversary date. Medical certification remains valid through 30 days from the anniversary date or for the time indicated by the PPMD if less than twelve months.

(2) The medical examination must include a review of the essential functions of the job to which the

individual is assigned. Medical examinations of SPO and SO applicants and incumbents must include the following evaluations to determine whether the individual meets the Medical Certification Standards for the applicable position:

(i) An up to date medical and occupational history, complete physical examination, vision testing, audiometry, and spirometry. In addition, laboratory testing must be performed, including a complete blood count (CBC), basic blood chemistry, a fasting blood glucose, and a fasting lipid panel (the examination and testing is to identify baseline abnormalities, as well as trends); and

(ii)(A) A psychologist or, as appropriate, a psychiatrist who meets standards established by DOE must be used to fulfill the requirements of this part. A personal, semi-structured interview at the time of the pre-placement medical evaluation and during the biennial (for SOs) or annual (for SPOs) examination must be conducted by a psychologist or, as appropriate, a psychiatrist. At the pre-placement medical examination and every third year for SPOs and every fourth year for SOs thereafter, a Minnesota Multi-Phasic Personality Inventory (MMPI) (available only to appropriate medical professionals at, e.g., <http://psychcorp.pearsonassessments.com>) or its revised form must be administered in order to:

(1) Establish a baseline psychological profile;

(2) Monitor for the development of abnormalities; and

(3) Qualify and quantify abnormalities.

(B) The information gathered from paragraph (g)(2)(i) of this section, together with the results of the semi-structured interview of this paragraph, psychiatric evaluations (if required), and reviews of job performance may indicate disqualifying medical or psychological conditions. Additional generally-accepted psychological testing may be performed as required to substantiate findings of the MMPI. If medically indicated and approved by the PPMD, an additional evaluation by a psychiatrist who meets standards established by DOE may be conducted. Additional or more frequent psychological evaluations as determined by the psychologist, psychiatrist, Designated Physician, or the PPMD may be required. Unless otherwise indicated, a psychological evaluation performed in accordance with the other DOE requirements (e.g., pursuant to 10 CFR

part 712) may satisfy the requirements of this part.

(C) The Designated Physician may request any additional medical examination, test, consultation or evaluation deemed necessary to evaluate a candidate or an incumbent SO's or SPO's ability to perform essential job duties or for incumbents, the need for temporary work restrictions.

(3) When an examinee needs the use of corrective devices, such as eyeglasses or hearing aids, to enable the examinee to successfully meet medical qualification requirements, the contractor responsible for the examinee's performance must make a determination that the use of any such device is compatible with all required emergency and protective equipment that the examinee may be required to wear or use while performing assigned job duties. The Designated Physician and the PPMD must determine that the reasonable accommodation is consistent with the medical standard and will not result in a direct threat to the individual or to others. This determination must be made before such corrective devices may be used by the examinee to meet the medical, physical readiness, or training requirements for a particular position.

(4) Contractor management must provide reasonable accommodations to a qualified individual by taking reasonable steps to modify required emergency and protective equipment to be compatible with corrective devices or by providing equally effective, alternate equipment, if available.

(5) The Designated Physician must discuss the results of the medical and physical readiness examinations with the individual. The results of the medical examinations also must be communicated in writing to PF management and to the individual and must include:

(i) A statement of the certification status of the individual, including any essential functions for which the individual is not qualified, with or without reasonable accommodations, and an assessment of whether the individual would present a direct threat to self or others in the position at issue;

(ii) If another medical appointment is required, the date of the next medical appointment; and

(iii) Recommended remedial programs or other measures that may restore the individual's ability to perform the essential functions or may negate the direct threat concern, if the individual is not approved for physical training, testing, or the relevant position.

(6) The PF contractor must offer a health status exit review for all employees leaving PF service. If the employee desires the review, it must be conducted by the PPMD or Designated Physician. The review, which may be conducted in conjunction with the requirements of other parts, must include all of the medical standards for the PF position being vacated. The reason(s) for any health status exit review not being performed must be documented (e.g., employee declined to have the review conducted).

#### **§ 1046.14 Medical certification disqualification.**

(a) *Removal.* An incumbent SO or SPO is disqualified from medical certification by the PPMD if one or more of the medical certification standards contained in § 1046.13 are not met. An incumbent SO or SPO temporarily or permanently disqualified from medical certification by the PPMD must be removed from those protective force duties by the employer when the employer is notified by the PPMD of such a determination.

(b) *Medical removal protection.* The employer of a disqualified SPO must offer the SPO medical removal protection if the PPMD determines in a written medical opinion that the disqualifying condition occurred as a result of site-approved training for or attempting to meet a physical readiness standard qualification, or site-approved training for security and emergency response (e.g., participating in force-on-force exercises for training, inspection, or validation purposes). The PPMD's determination must be based on an examining physician's recommendation or any other signs or symptoms that the Designated Physician deems medically sufficient to medically disqualify an SPO. The employee pay benefits specified in this section for combined temporary and permanent medical removal shall not be provided for more than one year from the date of the initial PPMD written determination regarding the same basis for disqualification.

(1) *Temporary removal pending final medical determination.* (i) The employer of a disqualified SPO must offer the SPO temporary medical removal from PF duties on each occasion that the PPMD determines in a written medical opinion that the worker should be temporarily removed from such duties pending a final medical determination of whether the SPO should be removed permanently, if appropriate. "Final medical determination" means the outcome of the Independent Review provided for in

§ 1046.15(c) or, if one is held, the Final Review provided for in § 1046.15(d).

(ii) If an SPO is temporarily removed from PF duties pursuant to this section, the SPO's employer must not remove the employee from the payroll unless available alternative duties for which the worker is qualified or can be trained in a short period of time are refused or performed unsatisfactorily.

(iii) While the SPO remains on the payroll pursuant to paragraph (b)(1)(i) of this section, the SPO's employer must maintain the SPO's total base pay (overtime not included), seniority, and other site-specific worker rights and benefits (e.g., corporate benefit package and collective bargaining agreement benefits) as if the worker had not been removed. Funds reimbursable by the DOE which are provided to a SPO under medical removal protection must be reduced dollar for dollar for any other PF related pay or monetary benefit for associated lost earnings, including those negotiated through collective bargaining and from workers compensation. Medical removal protection in conjunction with these other benefits must not exceed the SPO's total base pay.

(iv) If there are no suitable alternative duties available as described in paragraph (b)(1)(ii) of this section, the SPO's employer must provide to the SPO the medical removal protection benefits specified in paragraph (c)(1) of this section until alternative duties become available, the SPO has recovered, or one year has elapsed from the date of the PPMD's determination that the SPO should be temporarily removed from duties, whichever comes first. During this period the SPO may be placed on administrative leave when alternative duties are not available.

(2) *Permanent medical removal resulting from injuries.* (i) If the PPMD determines in a written medical opinion that the worker should be permanently removed from PF duties as a result of injuries sustained while engaging in required physical readiness activities (i.e., site approved training for or attempting to meet a physical readiness standard qualification or site approved training for security or emergency response), employer Human Resources policies, disability insurance, and/or collective bargaining agreements will dictate employment status and compensation beyond the requirements of paragraphs (b) and (c) of this section.

(ii) If an SPO has been permanently removed from duty pursuant to paragraph (b)(2)(i) of this section, the SPO's employer must provide the SPO the opportunity to transfer to another available position, or one which later

becomes available, for which the SPO is qualified (or for which the SPO can be trained in a short period), subject to collective bargaining agreements, as applicable.

(3) *Worker consultation before temporary or permanent medical removal.* If the PPMD determines that an SPO should be temporarily or permanently removed from PF duties, the PPMD must:

(i) Advise the SPO of the determination that medical removal is necessary to protect the SPO's health and well-being or prevent the SPO from being a hazard to self or others;

(ii) Provide the SPO the opportunity to have any medical questions concerning medical removal answered; and

(iii) Obtain the SPO's signature or document that the SPO has been advised on the provisions of medical removal as provided in this section and the risks of continued participation in physically demanding positions.

(4) *Return to work after medical removal.* (i) Except as provided in paragraph (b)(4)(ii) of this section, the SPO's employer must not return an SPO, who has been granted medical removal protection under this section, to the SPO's former job status.

(ii) If, in the PPMD's opinion, continued participation in PF duties will not pose an increased risk to the SPO's health and well-being or an increased risk (beyond those normally associated with SPO duties) of the SPO being a direct threat to self or others, the PPMD must fully discuss these matters with the SPO and then, in a written determination, may authorize the SPO's employer to return the SPO to former job status. Within one year from the PPMD's original decision to remove the individual from SPO status and subject to the SPO's ability to meet all other position related requirements (e.g., weapons qualifications, physical readiness standard, human reliability program, and refresher training), the employer must return the SPO to duty status given PPMD authorization to return to work. For durations beyond one year from the original decision given PPMD authorization to return to work, return to SPO status will be at the employer's discretion.

(c) *Medical removal protection benefits.* (1) If required by this section to provide medical removal protection benefits, the SPO's employer must maintain for not more than one year, as specified in paragraphs (b)(1) and (b)(2) of this section, the removed worker's total base pay, and seniority, as though the SPO had not been removed. The total base pay provision in this section

must be reduced by any compensation for lost earnings provided by any other benefit or those negotiated through collective bargaining for both temporary and permanent removal protection as provided by this section.

(2) If a removed SPO files a claim for workers' compensation payments for a physical disability, then the SPO's employer must continue to provide medical removal protection benefits until disposition of the claim, recovery of the claimant, or one year from the date the removal protection began, whichever comes first. If workers' compensation benefits are provided retroactively then the SPO must reimburse the employer to the extent the SPO is compensated for lost earnings for the same period that the medical removal protection benefits are received for both temporary and permanent removal protection as provided by this section. Expenses for medical/rehabilitation treatments related to the basis for medical removal protection are not covered under this part.

(3) The SPO's employer's obligation to provide medical removal protection benefits to an SPO is reduced to the extent that the worker receives compensation for earnings lost during the period of removal either from a publicly or site employer-funded compensation program.

(d) *Collective bargaining agreements.* For the purposes of this section, the requirement that the SPO's employer provide medical removal protection benefits is not intended to expand upon, restrict, or change any rights to a specific job classification or position under the terms of an applicable existing collective bargaining agreement.

#### § 1046.15 Review of medical certification disqualification.

(a) *Temporary medical and physical conditions.* Should the PPMD determine that an individual is disqualified from medical certification because of a temporary medical or physical condition which results in the individual not being able to perform any of the essential functions of the job classification, the employer may assign the individual to alternate, limited duty, if available, until the individual is again medically certified by the PPMD. However, this limited duty may only include assignment to duties in a job classification where all essential functions for that job classification can be safely and efficiently performed. Medical certification is required to remain in armed status. A temporary medical certification disqualification may not exceed a period of twelve

months regardless of whether medical removal protection is authorized. Before the end of the twelve-month period, the PPMD must determine whether the individual is permanently disqualified from medical certification because of a continuing medical or physical condition which results in the individual not being able to perform all essential functions of the job classification. The individual may request an Independent Review of the disqualification at any time the twelve-month period.

(b) *Permanent medical and physical conditions.* If the PPMD determines that an individual is disqualified from medical certification because of a permanent medical or physical condition which results in the individual not being able to perform all essential functions of the job classification, and the individual requests an Independent Review, the employer may assign the individual to alternate, limited duty, if available. This limited duty may include assignment to duties in any job classification where all essential functions can be safely and efficiently performed. Subject to the one year limit as identified in § 1046.14, assignment to alternate, limited duty, may remain in effect until an Independent Review determination, and if applicable, the Final Review determination by the DOE Office of Hearings and Appeals.

(c) *Independent review.* An individual PF member disqualified from medical certification, temporarily or permanently, by the PPMD may request an Independent Review of the case. The individual initiating such a review must submit the request for an Independent Review in writing to the Office of Health, Safety and Security within ten working days of the date of notification (date of written correspondence) of disqualification. A copy of the request must be sent to the individual's employer and to the local ODFSA: for DOE HQ sites, to the Director, Office of Security Operations; for NNSA sites, to the cognizant NNSA Security Director; and for any other DOE sites, to the cognizant DOE Security Director.

(1) The Office of Health, Safety and Security, in coordination with the respective PPMD, must provide for the Independent Review. The Independent Review must be conducted within sixty calendar days of the receipt of the request for an Independent Review. The Independent Review must include a complete review of the record of the case.

(2) The disqualified individual may select a representative during the Independent Review process. The

individual or representative may provide additional evidence relating solely to the medical or physical readiness of the individual. The individual must execute a consent document authorizing the release of relevant medical information to the Office of Health, Safety and Security.

(3) The disqualified individual must provide a copy of the request for Independent Review and the signed consent document for the release of medical information to the respective PPMD and the individual's employer within ten working days of the submission of the request to the Office of Health, Safety and Security.

(4) Within ten working days of receipt of a copy of the request for an Independent Review, the disqualified individual's employer must provide the Office of Health, Safety and Security with the following:

(i) A copy of the job analysis (JA)/mission essential task list (METL) available to the respective Designated Physician at the time of the individual's medical evaluation;

(ii) A listing of the essential functions for the individual's PF job classification; and

(iii) Any additional information relating to the medical or physical readiness of the requestor that the Office of Health, Safety and Security may request.

(5) The Office of Health, Safety and Security must provide the information in paragraph (c)(4) of this section to the Independent Physician for use in the independent review.

(6) A medical examination of the disqualified individual must be conducted by an Independent Physician approved by the Office of Health, Safety and Security. The Independent Physician must not have served as the requestor's personal physician in any capacity or have been previously involved in the requestor's case on behalf of the Department or a Department contractor. The Independent Review must confirm or disagree with the medical certification disqualification and must consider:

(i) The validity of the stated physical requirements and essential function(s) for the applicable job classification;

(ii) The PPMD's medical determination of the individual's inability to perform essential functions or to undertake training or the physical readiness qualification test without undue medical risk to the health and safety of the individual;

(iii) The completeness of the medical information available to the PPMD; and

(iv) If applicable, the determination by the PPMD that the performance of

the individual poses a direct threat to self or others.

(7) The results of the Independent Physician's medical examination of the individual must be provided to the Office of Health, Safety and Security for review. The Office of Health, Safety and Security must then recommend a final determination confirming or reversing the medical certification disqualification. The recommendation of the Office of Health, Safety and Security must be forwarded to the applicable local ODFSA (for DOE HQ sites, the Director, Office of Security Operations; for NNSA sites, the cognizant local NNSA Security Director; and for any other DOE sites, the cognizant local DOE Security Director) and the respective PPMD. This individual will either adopt or reject the recommendation of the Office of Health, Safety and Security.

(8) The Office of Health, Safety and Security must provide the results of the Independent Review and the final determination regarding the individual's medical disqualification to the requestor, the respective PPMD, the respective local ODFSA, and the requestor's employer.

(9) If the Independent Review determination confirms the individual is disqualified from medical certification, the individual must be removed from the PF job classification by the individual's employer. If the Independent Review disagrees with the medical certification disqualification, the individual must be reinstated to the PF job classification by the individual's employer, subject to successful completion of any required qualifications or training requirements that were due during the temporary disqualification, and subject to subsequent annual medical examinations and the ability to meet applicable physical readiness requirements.

(d) *Final review.* An individual receiving an unfavorable Independent Review Determination may request a Final Review of the Independent Review Determination by the Office of Hearings and Appeals. The individual must submit a request for a Final Review to the Office of Hearings and Appeals, in writing, within 30 days of receiving an unfavorable determination, and notify the Office of Health, Safety and Security of the request for appeal. In the request for a Final Review, the individual must state with specificity the basis for disagreement with the Independent Review confirming the medical certification disqualification. The Office of Health, Safety and Security must transmit the complete

record in the case to the Office of Hearings and Appeals within five business days of receiving notice from the individual that the SPO has filed an appeal of the Independent Review Determination. The Office of Hearings and Appeals may request additional information, if necessary, to clarify any issue on appeal. Within 45 days of the closing of the record, the Office of Hearings and Appeals must issue a Decision and Order setting forth its findings on appeal and its conclusions based on the record before it. Upon receipt of an unfavorable Final Review decision by the Office of Hearings and Appeals, the individual must be permanently removed from that PF job classification, SO or SPO (FPRS, BRS, ARS, or SRT member) by the employer. However, nothing in the Final Review decision shall prevent the employee from being allowed to qualify for a less strenuous physical readiness job classification given the availability of said position, subject to successful completion of any other required qualifications or training requirements. Upon receipt of a favorable Final Review decision from the Office of Hearings and Appeals, the individual must be reinstated to the PF job classification by the employer, subject to successful completion of any required qualifications or training requirements due during the temporary disqualification, and future ability to be medically certified for the PF job classification and to meet applicable physical readiness standards.

**§ 1046.16 SPO physical readiness qualification standards and procedures.**

(a) *General.* Employers must ensure SPOs have access to their applicable physical readiness standard and the provisions of this part. Employers must also inform SPOs of their rights associated with the physical readiness requirements.

(1) All SPO applicants must satisfy the applicable physical readiness standard for their assigned position and must physically demonstrate the physical training and knowledge, skills, and abilities set out in paragraph (g) of this section, as required for their assigned position before beginning active duty in that position.

(2) All incumbent SPOs must re-qualify every year according to their applicable readiness standard, pursuant to paragraphs (d)(1), (f), or (g) of this section. Re-qualification must occur no earlier than 30 days prior to and no later than 30 days following the SPOs anniversary date. The actual date of re-qualification does not affect the anniversary date under this section.

(3) All qualification and re-qualification activities must be conducted under the supervision of personnel knowledgeable of DOE physical readiness program requirements as approved by the local ODFSA.

(b) *Physical readiness training program.* SPOs must maintain physical readiness standards on a continuing basis. Each SPO must engage in a year-round physical readiness training program consistent with paragraph (c)(2) and (3) of this section to:

(1) Achieve and maintain the cardio-respiratory and musculoskeletal fitness necessary to safely perform, without posing a direct threat to self or others, all essential functions of normal and emergency PF duties at any time; and

(2) Enable the individual SPO to pass (on an annual basis) the applicable SPO physical readiness standard without any undue risk of physical injury.

(c) *Training program requirements.* (1) The training program must include the following elements:

(i) Activities with appropriate durations specific to the physical readiness standard, which appropriately address aerobic, agility, flexibility, and strength conditioning.

(ii) Instruction on techniques and exercises designed to ensure SPOs can safely rise quickly from the prone position, and if required by qualification standard, transition into a run.

(iii) Appropriate warm-up and cool down activities designed by exercise physiologists to support injury free workouts and physical readiness testing.

(2) An SPO physical readiness training and maintenance program must be developed by the employing organization in consultation with the PPMD and the local ODFSA.

(3) After initial training and qualification, each SPO must participate in the physical readiness training and maintenance program on a continuing basis. The physical readiness maintenance program must be based on assessment of the individual SPO's physical readiness levels and be tailored to the individual SPO's physical readiness maintenance requirements and improvement needs. Whether training is conducted on or off site, the SPO's participation must be documented.

(4) Assessments of an SPO's level of physical readiness must be conducted at least semiannually by personnel knowledgeable of DOE requirements. The results of the assessments must be provided to the Designated Physician. The assessments must include recognized assessment standard values for aerobic capacity (e.g., American

College of Sports Medicine [<http://www.acsm.org/>], Cooper Fitness Institute [<http://www.cooperinstitute.org/>], or Rockport Walk Protocol [available online from a variety of Web sites]). Though not a qualification, the assessment report must include an evaluation of the SPO's level of physical readiness and provide recommendations for maintenance requirements and improvement needs, if any. Ability to summon appropriate medical emergency response with the capability of responding within a reasonable time must be available at the assessment site. An individual trained in cardio-pulmonary resuscitation and automatic external defibrillator equipment must be present.

(5) No additional training or time extension to meet the standards is permitted except for unusual circumstances based on a temporary medical or physical condition as certified by the PPMD that causes the SPO to be unable to satisfy the physical readiness standards within the required time period without suffering undue physical harm. An SPO who fails to re-qualify must be removed from armed SPO status and must participate in a remedial physical readiness training program, as specified in paragraphs (g)(8) and (9) of this section.

(6) An SPO may be required to demonstrate the ability to meet the applicable physical readiness qualification standard during a Headquarters or field audit/inspection/survey or other similar activity, as directed by the local ODFSA. Failure to meet the physical readiness standard must be treated as if the SPO failed the first attempt during routine qualification, and the procedures of paragraphs (g)(5) and (8) of this section apply. An SPO who fails to demonstrate the standard must be removed from armed status.

(7) Employees must notify the employer when the requirements of the training program cannot be successfully completed on a recurring basis (e.g., exercises cannot be completed and/or completed within time limits several times in a row due to injury and/or conditioning issues).

(8) When a physical readiness deficiency is first identified, the employer must provide the SPO access to remedial training or, based upon PPMD evaluation validating the medical need, to a work hardening or rehabilitation program.

(d) *Physical readiness standards for SPOs.* Any failure, at any time, by an SPO to physically demonstrate ability to meet the required physical readiness standard, must result in temporary

removal from being authorized to perform the functions of that standard. The physical readiness standards for SPOs are as follows:

(1) *Fixed Post Readiness Standard (FPRS)*. This qualification standard applies to all SPOs. Regardless of an SPO's physical readiness category, the FPRS must be physically demonstrated every year by all SPOs.

(i) The standard requires sufficient agility and range of motion to: Assume, maintain, and recover from the variety of cover positions associated with effective use of firearms at entry portals and similar static environments to include prone, standing, kneeling, and barricade positions; use site-specific deadly and intermediate force weapons and employ weaponless self-defense techniques; effect arrests of suspects and place them under restraint, e.g., with handcuffs or other physical restraint devices; and meet any other measure of physical readiness necessary to perform site-specific essential functions as prescribed by site management and approved by the respective program office.

(ii) A stand-alone qualification test which requires the demonstration of all of the required elements (both general and site-specific, if applicable) must be developed and maintained by each site and approved by the ODFSA. This qualification test can be used for annual qualification, or sites may choose to document an SPO's ability to meet specific elements of the standard during annual refresher training sessions and/or during weapons qualification activities. All elements of this standard must be demonstrated annually in the aggregate.

(iii) The results must be provided to the Designated Physician prior to the annual medical examination. Inability to physically demonstrate the FPRS requirements must result in temporary loss of SPO status. Remedial training must be provided pursuant to the requirements of paragraph (g)(8) of this section.

(2) *Basic Readiness Standard (BRS)*. In addition to demonstrating the FPRS requirements as stated in paragraph (d)(1) of this section, the BRS qualification consists of a one-half mile run with a maximum qualifying time of 4 minutes 40 seconds and a 40-yard dash from the prone position in 8.5 seconds or less, and any other site-specific measure of physical readiness necessary to perform essential functions as prescribed by site management and approved by the respective program office. The running elements and other site-specific measures of the BRS must be demonstrated on the same day.

(3) *Advanced Readiness Standard (ARS)*. In addition to demonstrating the FPRS requirements as stated in paragraph (d)(1) of this section, the ARS qualification consists of a one mile run with a maximum qualifying time of 8 minutes 30 seconds, and a 40-yard dash from the prone position in 8.0 seconds or less, and any other site-specific measure of physical readiness necessary to perform site-specific essential functions as prescribed by site management and approved by the respective program office. The running elements and other site-specific measures of the ARS must be demonstrated on the same day.

(e) *Revisions to Physical Readiness Standards*. The Department may revise the physical readiness standards or establish new standards consistent with the Administrative Procedure Act and other applicable law.

(f) *Evaluation and documentation for BRS and ARS SPOs*. Two distinct determinations must be made by the Designated Physician for BRS and ARS SPOs. First, a medical examination that meets the requirements of § 1046.13(g) must be conducted. A written determination must be made whether the SPO is medically certified for SPO duties without being a danger to self or others. This includes being able to attempt to physically demonstrate the applicable physical readiness standard. Given a favorable medical clearance determination, the second determination assesses the SPO's physical readiness capability by comparing the SPO's current examination results, medical history, normative data, past qualifying times, and the results of physical assessments. The Designated Physician's evaluation and documentation that an incumbent BRS or ARS SPO has reasonable expectation of meeting the appropriate physical readiness standard is deemed to have met the annual physical readiness qualification requirement without having to take the appropriate BRS or ARS test unless the SPO is randomly selected pursuant to paragraph (f)(7) of this section. Physician extenders (e.g., physician's assistants, certified occupational health nurses, or nurse practitioners) and exercise physiologists may perform appropriate elements of the physical examination and the physical assessments required in paragraph (b)(4) of this section. However, both the medical clearance determination and the formal physical readiness capability evaluation must be made by the Designated Physician without delegation. A site standard form must be used, and pertinent negatives must be

documented on the form. The following procedures apply regarding the Designated Physician's evaluation and documentation that an incumbent BRS or ARS SPO has a reasonable expectation of meeting the appropriate physical readiness standard.

(1) Evaluation of BRS and ARS SPOs must include consideration of past medical history and normative data when available for individuals deemed to be physically capable. The following criteria must be evaluated: Cardiac function to include resting pulse rate and pulse recovery after exertion; neuromuscular function to include assessments of strength, range/freedom of motion, and movement without pain. While they are not required to be used or intended to be the sole determining criterion, for Designated Physicians using metabolic equivalents (METs) data the following values may be included in the overall process to determine if an individual SPO has a reasonable expectation of being able to physically demonstrate the appropriate physical readiness standard.

(i) For BRS SPOs a METs value of seven or greater would be a positive indicator of sufficient aerobic capacity to successfully demonstrate the half mile run associated with the BRS.

(ii) For ARS SPOs a METs value of 12 or greater would be a positive indicator of sufficient aerobic capacity to successfully demonstrate the mile run associated with the ARS.

(2) The designated physician may medically certify the BRS or ARS SPO for SPO duties and document that the SPO has a reasonable expectation of meeting the appropriate physical readiness standard. In this case, the SPO is deemed to have met the annual physical readiness qualification requirement without having to take the appropriate BRS or ARS test, unless the SPO is randomly selected pursuant to paragraph (f)(7) of this section.

(3) The designated physician may indicate the BRS or ARS SPO meets medical standards for SPO duties, but also indicate that the SPO does not appear to have the physical capability to pass the appropriate physical readiness test. In this case, the file must be immediately forwarded to the PPMD for review.

(4) If the PPMD concurs with the Designated Physician that the SPO does not have a reasonable expectation of being able to meet the readiness standard, the SPO may request to attempt to demonstrate the appropriate physical readiness test, which must be accomplished successfully within 30 days of the date of the medical certification for the SPO to remain in

status. If the SPO chooses not to attempt to demonstrate the readiness standard, then the SPO must be removed immediately from duties associated with that physical readiness standard. Should the SPO fail to meet the standard, the retesting process described below in paragraph (g) of this section must be followed. Ultimate return to duties associated with that standard would require following the new hire process of medical clearance for SPO duties and then physically demonstrating the readiness standard which had not been met.

(5) Should the PPMD determine that the SPO does appear to have a reasonable expectation of meeting the appropriate physical readiness standard, the SPO is deemed to have met the annual qualification requirement for the appropriate physical readiness standard.

(6) The Designated Physician may find that the SPO cannot be medically certified for SPO duties. In this case, the SPO must be removed from armed status with appropriate PPMD review and medical intervention recommendations.

(7) Each year, 10 percent of the BRS and ARS SPO populations (supervisors included) at each site must be randomly selected by the employer and physically tested pursuant to paragraph (g) of this section. At the beginning of the testing year as established by each site, the site must ensure that a sufficient number of individuals and alternates are selected in one drawing to ensure that the 10 percent testing requirement can be achieved even though some SPOs selected may not receive a reasonable expectation determination for the Designated Physician as identified in paragraph (f)(2) of this section. Once 10 percent of the SPOs successfully demonstrating the standard has been achieved, the remaining alternates are not required to be physically tested unless they do not receive a reasonable expectation determination. The identity of an individual as a selectee for testing shall be kept confidential by the employer in a manner that ensures this information does not become known to the selected individual, the PPMD, and the Designated Physician until after the individual SPO has been deemed to have a reasonable expectation of meeting the appropriate physical readiness standard pursuant to paragraphs (f)(2) or (5) of this section. The selected individuals must successfully complete the applicable physical readiness standard to retain SPO status. During a given year's testing, at least 90 percent of those tested in each physical readiness category must meet the requirements.

(8)(i) Should the passing percentage of those randomly selected and attempting to physically demonstrate the standard in a particular physical readiness category at a particular site drop below 90 percent (on the first attempt) then all SPOs in that category at that site must be tested on their ability to physically demonstrate the standard. The following parameters apply.

(A) All percentages are based upon first attempts.

(B) The total population of SPOs (supervisors included) in that physical readiness category at the beginning of that testing year at that site must be used to determine the percentage thresholds.

(C) The 100 percent testing of SPOs in that category must commence immediately upon the failure that renders achievement of a 90 percent success rate mathematically impossible for that readiness category during that testing year. The date of this failure will establish the anniversary date of the new testing year.

(D) An insufficient number of randomly selected individuals and alternates available to constitute the 10 percent selection criterion represents a failure to achieve the 90 percent threshold. Identification of additional randomly selected individuals for that testing year is not authorized.

(ii) The 100 percent testing described in paragraph (f)(8)(i) of this section must continue for a minimum of 365 days. With a 95 percent successful demonstration rate of the standard over the year, 10 percent testing may return at the beginning of the new testing year.

(iii) Should 95 percent successful demonstration not be achieved in the 365 days of 100 percent testing, the 100 percent testing described in paragraph (f)(8)(i) of this section must continue for the next 365 days under the conditions specified in paragraphs (f)(8)(i)(A) through (D) of this section. This process must be repeated until 95 percent successful demonstration is achieved.

(g) *Physical testing for BRS and ARS SPOs.* The following procedures apply to an individual physically demonstrating the physical readiness standards for applicants and incumbent SPOs.

(1) Incumbent BRS and ARS SPOs randomly selected for physical testing pursuant to paragraph (f) of this section in any given year shall physically meet the applicable physical readiness standard within 30 days of their anniversary date.

(2) Incumbent SPOs shall physically meet the applicable physical readiness standard prior to their assignment to

duties which require a more stringent standard.

(3) All newly hired SPOs must physically meet the most stringent standard required at the site.

(4) SPOs returning after an absence from protective force duties which encompasses their anniversary date must physically meet at least the standard they were required to meet when they left SPO duties, should such a position requiring that standard be available.

(5) Each applicant and incumbent SPO must be medically approved by the Designated Physician within thirty days prior to initial participation in any physical readiness training program and prior to attempting the applicable standard to determine whether the individual can undertake the standard without undue medical risk to the health and safety of the individual. Incumbents also must have successfully completed a physical readiness assessment within thirty days prior to their annual physical examination by the Designated Physician.

(6) Incumbent SPOs must qualify on the applicable standard annually by physically passing the required test if they have not received a reasonable expectation determination as described in paragraph (f) of this section. The testing protocol shall include mandated participation by the SPO being tested in pre-test warm-up and post-test cool-down activities as described in paragraph (c) of this section. The responsible person in charge of the qualification activity must inform the SPO that the attempt will be for qualification. Once this has been communicated by the person in charge, the attempt will constitute a qualification attempt. Ability to summon appropriate medical emergency response with the capability of responding within a reasonable time must be available at the testing site. An individual trained in cardio pulmonary resuscitation and automatic external defibrillator equipment must be present.

(7) Physical readiness re-qualification for randomly selected incumbent SPOs must occur not more than 30 days from the anniversary date. Failure to qualify within 30 days past the anniversary date must result in removal from SPO status for that physical readiness category. Not more than five attempts may be allowed during the 30-day period. All attempts must be made within 30 days of the medical approval required in paragraph (g)(5) of this section.

(8) Remedial training program: If an SPO fails all attempts pursuant to paragraph (g)(7) of this section for reasons other than injury or illness, the



PF contractor must offer the SPO the opportunity to participate in a supervised physical readiness remedial training program developed by an exercise physiologist.

(i) Supervision of the physical readiness remedial training program may be accomplished by direct observation of the SPO during the training program by personnel knowledgeable of Department physical readiness program requirements, or by these personnel monitoring the SPO's progress on a weekly basis.

(ii) The remedial training program must be based upon an assessment of the SPO's individual physical readiness deficiencies and improvement needs which precluded the SPO from successfully completing the applicable physical readiness standard.

(iii) The remedial training program must not exceed a period of 30 days.

(9) Re-testing of incumbent SPOs after completion of remedial training program.

(i) Once an SPO has begun a remedial training program, it must be completed before the SPO may attempt the applicable standard.

(ii) Upon completion of the remedial training the ARS/BRS SPO must be offered an assessment using the same process that is used for the required semiannual assessment as required in paragraph (c)(4) of this section. Any deficiencies and improvement needs must be identified to the SPO.

(iii) The SPO has seven days from the completion date of the remedial training program to meet the applicable physical readiness qualification standard. Only one attempt during this seven-day period may be made unless circumstances beyond the testing organization or participant's control (e.g., severe weather, equipment failure, or injury as determined by the employer) interrupt the attempt. When the attempt is interrupted, the employer may reschedule it within seven days.

(iv) If the SPO meets the standard on the attempt specified in paragraph (f)(9)(iii) of this section, the original anniversary qualification date remains the same.

(v) Failure to meet the standard must result in the SPO being permanently removed from duties requiring ability to meet that physical readiness standard.

(vi) If an SPO requires remedial training during three consecutive annual qualification periods, then a fourth remediation shall not be offered for subsequent failures to achieve the physical readiness standard. The SPO must be permanently removed from duties requiring ability to meet that physical readiness standard.

(10) The physical readiness standards set forth in this part may not be waived or exempted. Additional time, not to exceed six months, may be granted on a case-by-case basis for those individuals who, because of a temporary medical condition or physical injury certified by the Designated Physician, are unable to satisfy the physical readiness standards within the required period without suffering injury. Additional time totaling more than one year may not be granted. When additional time is granted:

(i) The granting of such time does not eliminate the requirement for the incumbent SPO to be removed from that SPO physical readiness standard status during the time extension.

(ii) When additional time is granted because of an inability to qualify without a certified medical condition or injury, the PF member is not entitled to temporary removal protection benefits. Granting additional time due to deconditioning is not authorized.

(iii) Upon completion of the additional time period and requisite physical readiness training, as applicable, the incumbent SPO must be assessed using the same process that is used for the semiannual assessment as required in paragraph (c)(4) of this section if the results indicate the SPO is ready to take the test. The test must be taken within 30 days of medical clearance as described in § 1046.13(g).

(iv) For a duration exceeding three months, the SPO's original anniversary qualification date may be revised at the discretion of the employer to reflect the most recent date that the SPO qualified under the applicable standard, which will become the new anniversary qualification date.

#### **§ 1046.17 Training standards and procedures.**

(a) Department contractors responsible for the management of PF personnel must establish training programs and procedures for PF members to develop and maintain the knowledge, skills and abilities required to perform assigned tasks. The site-specific qualification and training programs must be based upon criteria approved by the ODFSA.

(b) Department contractors responsible for training PF personnel must prepare and annually review mission essential tasks from which a JA or mission essential task list (METL) is developed. The JAs or METLs must be prepared detailing the required actions or functions for each specific PF job assignment. When a generic Department JA or METL does not exist for a site-specific PF assignment (e.g., dog

handler, investigator, flight crew, pilot, etc.) the site must develop a site-specific JA or METL. The JA or METL must be used as the basis for local site-specific training programs.

(c) The Designated Physician must approve in advance the participation by individuals in training and examinations of training prior to an individual's beginning employment as a PF member and annually thereafter.

(d) The formal PF training program must:

(1) Be based on identified essential functions and job tasks, with identified levels of knowledge, skills and abilities needed to perform the tasks required by a specific position;

(2) Be aimed at achieving at least a well-defined, minimum level of competency required to perform each essential function and task acceptably, with or without reasonable accommodations;

(3) Employ standardized instructional guidelines, based on approved curricula, with clear performance objectives as the basis for instruction;

(4) Include valid performance-based testing to determine and certify job readiness;

(5) Be documented so that individual and overall training status is easily accessible. Individual training records and certifications must be retained for at least one year after termination of the employee from employment as a member of the PF;

(6) Incorporate the initial and maintenance training and training exercise requirements expressly set forth in this part and as otherwise required by DOE;

(7) Be reviewed and revised, as applicable, by PF management on an annual basis; and

(8) Be reviewed and approved by the local ODFSA on an annual basis.

(e) *SOs*—(1) *SO initial training requirements.* (i) Prior to initial assignment to duty, unless they previously have been employed as an SPO at the same DOE facility, each SO must successfully complete a basic SO training course, approved by the local ODFSA, designed to provide the knowledge, skills, and ability needed to competently perform all essential functions and tasks associated with SO job responsibilities.

(ii) The essential functions and minimum competency levels must be determined by a site-specific JA or METL. The essential functions and minimum competency levels must include, but are not limited to, the knowledge, skills, and abilities required to perform the essential functions set forth in this part; task areas as specified

by DOE; and any other site-specific task areas that will ensure the SO's ability to perform all aspects of the assigned position under normal and emergency conditions without posing a direct threat to the SO or to others.

(2) *SO maintenance training.* Each SO must successfully complete an annual course of maintenance training to maintain the minimum level of competency required for the successful performance of tasks and essential functions associated with SO job responsibilities. The type and intensity of training must be based on a site-specific JA or METL. Failure to achieve a minimum level of competency must result in the SO's placement in a remedial training program. The remedial training program must be tailored to provide the SO with the necessary training to afford a reasonable opportunity to meet the level of competency required by the job analysis. Failure to demonstrate competency at the completion of the remedial program must result in loss of SO status.

(3) *SO knowledge, skills, and abilities.* Each SO must possess the knowledge, skills, and abilities necessary to protect Department security interests from the theft, sabotage, and other acts that may harm national security, the facility, its employees, or the health and safety of the public. The requirements for each SO to demonstrate proficiency in, and familiarity with, the knowledge, skills, and abilities and the responsibilities necessary to perform the essential functions of the job must be based on the JA or METL.

(f) *SPOs—(1) SPO initial training requirements.* Prior to initial assignment to duty, in addition to meeting SO training requirements described above in paragraph (e)(1) of this section, each SPO must successfully complete the approved Department basic SPO training course. SPOs who are rehired at the same DOE facility or who have worked as an SPO at another DOE facility are not required to retake the basic training course as determined by a site-specific assessment of the individual. In addition to the basic SPO training course, SPO initial training must include successful completion of site-specific training objectives derived from a site-specific JA or METL, task areas as specified by DOE, and any other site-specific task areas that will ensure the SPO's ability to perform all aspects of the assigned position under normal and emergency conditions without posing a direct threat to the SPO or to others.

(2) *SPO maintenance training.* In addition to meeting the SO maintenance

training requirements described in paragraph (e)(2) of this section, each SPO must successfully complete an annual course of maintenance training to maintain the minimum level of competency required for the successful performance of essential functions and tasks associated with SPO job responsibilities. The type and intensity of training must be determined by a site-specific JA or METL. Failure to achieve a minimum level of competency must result in the SPO being placed in a remedial training program. The remedial training program must be tailored to provide the SPO with necessary training to afford a reasonable opportunity to meet the level of competency required by the JA or METL within clearly established time frames. Failure to demonstrate competency at the completion of the remedial program must result in loss of SPO status.

(3) *SPO knowledge, skills and abilities.* In addition to meeting the SO knowledge, skills and ability requirements described in paragraph (e)(3) of this section, the requirements for each SPO to demonstrate proficiency in, and familiarity with, the responsibilities identified in the applicable JA or METL and proficiency in the individual and collective knowledge, skills, and abilities necessary to perform the essential functions and the job tasks must be based on their applicable JA or METL.

(g) *SRT Members.* In addition to satisfying the initial and maintenance training requirements for SPOs and meeting the SPO knowledge, skill, and ability requirements, SRT members must meet the following requirements.

(1) *SRT initial training requirements.* Prior to initial assignment to duty, each SRT-qualified SPO must successfully complete the current Department-approved SRT basic qualification course designed to provide at least the minimum level of knowledge, skills, and ability needed to competently perform all the identified essential functions of the job and tasks associated with SRT job responsibilities. SPOs who have previously successfully completed the SRT basic qualification course to work at another DOE facility do not have to retake the SRT basic qualification as determined by a site-specific assessment of the individual. After completion of the SRT basic qualification course, the SRT-qualified SPO must participate in a site-specific training program designed to provide the minimum level of knowledge and skills needed to competently perform all the identified essential functions of the job and tasks associated with site-specific SRT job responsibilities. The

site-specific essential functions and minimum levels of competency must be based on a site-specific JA or METL, task areas as specified by DOE, and any other site-specific task areas that will ensure the SRT-qualified SPO's ability to perform all aspects of the assigned position under normal and emergency conditions without posing a direct threat to the SPO or to others.

(2) *SRT maintenance training.* After assignment to duties as a member of an SRT, an SRT-qualified SPO must receive maintenance training annually on each area required by a site-specific JA or METL. The annual maintenance training program must be completed over two or more sessions appropriately spaced throughout the year. Failure to achieve a minimum level of competency must result in the SRT-qualified SPO being placed in a remedial training program or removal from SRT qualification status, as determined by contractor management. The remedial training program must be tailored to provide the SRT-qualified SPO with necessary training to afford a reasonable opportunity to meet the level of competency required by the JA or METL. Failure to demonstrate competency at the completion of the remedial program must result in loss of SRT-qualification status.

(3) *SRT knowledge, skills, and abilities.* The requirements for each SRT-qualified SPO to demonstrate proficiency in, and familiarity with, the responsibilities identified in the applicable JA or METL and proficiency in the individual and collective knowledge, skills, and abilities necessary to perform the job tasks must include, but are not limited to, those identified for SPOs and based on their applicable JA or METL.

(h) *Specialized requirements.* PF personnel who are assigned specialized PF responsibilities outside the scope of normal duties must successfully complete the appropriate basic and maintenance training, as required by DOE and other applicable governing regulating authorities (e.g., Federal Aviation Administration). This training must enable the individual to achieve and maintain at least the minimum level of knowledge, skills, ability needed to competently perform the tasks associated with the specialized job responsibilities, as well as maintain mandated certification, when applicable. Such personnel may include, but are not limited to, flight crews, instructors, armorers, central alarm system operators, crisis negotiators, investigators, canine handlers, and law enforcement specialists. The assignment of such

specialists and scope of such duties must be based on site-specific needs and approved by the local ODFSA.

(i) *Supervisors*—(1) *Supervisor training requirements*. Prior to initial assignment to supervisory duty, each PF supervisor must successfully complete a supervisor training program designed to provide at least the minimum level of knowledge, skills, ability needed to competently perform all essential functions of the job and tasks associated with supervisory job responsibilities. Appropriate annual refresher training must be provided. The essential functions and minimum levels of competency must be based on a site-specific JA or METL and must include the essential functions and task areas identified for the level of PF personnel to be supervised. Armed supervisors of SPOs must be trained and qualified as SPOs. SPO supervisors must meet applicable medical and physical readiness qualification and certification standards for assigned response duties.

(2) *Supervisor knowledge, skills, and abilities*. Each PF supervisor must possess the skills necessary to effectively direct the actions of assigned personnel. Each supervisor must demonstrate proficiency in, and familiarity with, the responsibilities identified in the applicable JA or METL and proficiency in the skills and abilities necessary to perform those jobs.

(j) *PF training exercises*. Exercises of various types must be included in the training and performance testing process for the purposes of achieving and maintaining skills and assessing individual, leader and collective competency levels. The types and frequency of training exercises must be determined by the training needs analysis conducted as part of the training program, and approved by the local ODFSA. These exercises must be planned and conducted to provide site-specific training to the PF in the prevention of the successful completion of potential adversarial acts as specified by DOE.

(k) *Firearms qualification standards*. (1) No person may be authorized to carry a firearm as an SPO until the responsible local ODFSA is assured that the individual who is to be armed with individually issued/primary weapons is qualified in accordance with firearms standards or that, in the case of post-specific crew-served and special weapons, a determination of proficiency and ability to operate the weapon safely has been made.

(2) As a minimum, each SPO must meet the applicable firearms qualification or proficiency standards every six months under daylight and

reduced lighting conditions. Requalification or proficiency demonstration must occur no earlier than 30 days prior to, and no later than 30 days after, six months from the previous qualification. In the case of individually assigned/primary weapons, if the SPO does not re-qualify during the re-qualification period, the individual's authority to be armed and to make arrests must be suspended following the unsuccessful qualification attempts as provided in paragraph (k)(11) of this section. For post-specific and crew-served weapons, if the SPO does not demonstrate proficiency during the re-qualification period, the individual's eligibility for assignment to posts having those post-specific or crew-served weapons must be suspended until such time as proficiency can be demonstrated. To facilitate training programs, employers may adjust qualification and proficiency demonstration schedules as long as the maximum durations as noted in this section are not exceeded.

(3) PF personnel must maintain firearms proficiency on a continuing basis. Therefore, an SPO may be required to demonstrate an ability to meet the applicable firearms qualification or proficiency standard(s) during a Headquarters or field audit, survey, inspection, or other situation directed by the local ODFSA. Failure to meet the standard must be treated as if the individual failed the first attempt during routine semiannual qualification or proficiency demonstration. See paragraph (k)(10) of this section. In the event the SPO fails both attempts, the requirements of paragraphs (k)(11) through (14) of this section apply.

(4) Each SPO must qualify with primary/individually-issued weapons required by duty assignment (to include: specialty weapons, long gun and/or handgun, if so armed). Qualification is the semiannual act of achieving a set score while demonstrating the ability to load, operate, and discharge a firearm or weapon system accurately and safely (to include clearing the weapon at the conclusion of firing) according to a Departmentally-approved course of fire. At least one of the two semiannual qualifications must be accomplished with the same type of firearm or weapon system and ammunition equivalent in trajectory and recoil as that authorized for duty use. All qualification courses must: be constrained by time, identify the maximum amount of available ammunition, and include minimum scoring percentages required to qualify.

(5) For the purposes of this part, weapons system simulator means a device that closely simulates all major

aspects of employing the corresponding actual firearm/weapons system, without firing live ammunition. The simulator should permit all weapons-handling and operational actions required by the actual weapon, and should allow the use of sight settings similar to the corresponding actual weapon with assigned duty loads. Additionally, when weapons or weapons system simulators are used for qualification testing of protective force officers, the operation of the simulated weapon must closely approximate all weapons handling and operational manipulation actions required by the actual weapon. The simulation system must precisely register on-target hits and misses with accuracy comparable to the actual weapon at the same shooting distances. The weight, balance, and sighting systems should closely replicate those of the corresponding actual weapon with assigned duty loads, and noise signatures and felt recoil should be simulated to the extent technically feasible.

(6) SPOs assigned to posts which require the operation of post-specific specialized or crew-served weapons must be trained and must demonstrate proficiency in the safe use of such weapons in a tactical environment. These proficiency courses must provide for the demonstration of skills required to support the site security plan. Ammunition equivalent in both trajectory and recoil to that used for duty must be used during an initial demonstration of proficiency. A weapons proficiency demonstration means a process based on a predetermined, objective set of criteria approved by the respective program office in consultation with the Office of Health, Safety and Security that results in a grade (e.g., pass/fail). The process must ensure that an individual (or team, for crew-served weapons) demonstrates the ability to perform all weapons-handling and operational manipulations necessary to load, operate, and discharge a weapon system accurately and safely (to include clearing/returning to safe mode the weapon system at the conclusion of firing), without the necessity for scoring targets during the course of fire. Proficiency courses of fire must include tactically-relevant time constraints. Demonstrations of proficiency are allowed with the actual weapon and assigned duty load, with alternate loads (e.g., frangible or dye-marking rounds), or with authorized weapons system simulators, as defined in this section. Proficiency courses of fire must be tactically relevant.

(7) Weapon system simulators may be used for training, familiarization, and

semiannual proficiency verifications (e.g., engaging moving vehicles and/or aircraft). Demonstrations of proficiency must include all weapons-handling and operational manipulations necessary to load, operate, and discharge a weapon system accurately and safely (to include clearing the weapon at the conclusion of firing) according to a Departmentally-approved course of proficiency demonstration. Weapon demonstrations of proficiency are allowed with the same type of firearm or weapon system and ammunition equivalent in trajectory and recoil as that authorized for duty use, or with firearms simulators that have the features and capabilities as described in paragraph (k)(5) of this section.

(8) Each SPO must be given a presentation on the basic principles of weapons safety prior to any range activity. This does not require that a weapons safety presentation be given for each course of fire, but does require that, prior to the start of range training or qualification for a given period (e.g., initial qualification, semiannual qualification, training, familiarization, proficiency testing, or range practice), each SPO must be given a range and weapon safety presentation.

(9) Standardized Departmentally-approved firearm/weapon qualification courses must be used for qualification. Site-specific conditions and deployment of specialized firearms/weapons may justify requirements for developing and implementing supplementary special training and proficiency courses. Proficiency courses or demonstrations must be constrained by time limits. Where standardized Department firearms/weapons courses do not exist for a weapons system that is required to address site-specific concerns, both daylight and reduced lighting site-specific qualification or proficiency courses (as applicable) must be developed. After approval by the local ODFSA, the developed courses must be submitted to the respective program office for review and approval.

(10) When qualification or demonstration of proficiency is prescribed, SPOs must be allowed two attempts to qualify with assigned firearms/weapons semiannually. A designated firearms instructor or other person in charge of the range must ensure the shooter understands that the attempt will be for qualification. Once this has been communicated by the firearms instructor or person in charge, the attempt must constitute an attempt to qualify or demonstrate proficiency. The SPO must qualify or demonstrate proficiency during one of these attempts.

(11) Upon suspension of an SPO's authority to carry firearms, in order to return to status, the SPO must enter a standardized, remedial firearms/weapons training program developed by the respective site PF contractor firearms training staff. The remedial training program must be a combination of basic weapon manipulation skills, firearms safety, and an additional segment of time individually designed to provide the SPO with the necessary individual training to afford a reasonable opportunity to meet the firearms/weapons qualification or proficiency standards by addressing specific areas of performance.

(12) When qualification is required following the completion of the remedial training course, any SPO who fails to qualify after two subsequent attempts must lose SPO status and the authority to carry firearms/weapons and to make arrests. When weapons-specific safety or proficiency cannot be demonstrated, the SPO must not be assigned to posts that require the operation of that weapon until such safety or proficiency standards can be met.

(13) Any SPO who requires remedial training on three consecutive semiannual qualification periods with the same type of firearm/weapon (caliber, make, and model, but not necessarily the exact same weapon) must be removed from duties that require the issuance of that weapon. If the weapon is considered a primary duty weapon; e.g., rifle or handgun, the officer must be removed from SPO status based on recurring inability to maintain qualification status. If an SPO requires remedial training for the same firearm during three consecutive semiannual qualification periods, then a fourth remediation shall not be offered for subsequent failures to achieve that firearms qualification standard. The employer may reinstate an individual removed from SPO status if the individual can demonstrate the ability to pass the current Department qualification course for that firearm. Prior to being given the opportunity to obtain reinstatement, the SPO must provide the employer written validation from a certified firearms instructor that the SPO has demonstrated the ability to meet applicable DOE standards. All such training and validation expenses are solely the responsibility of the SPO. If reinstatement under these circumstances occurs, the employer must provide all other training for returning protective force members according to the requirements of this part and as otherwise specified by DOE.

(14) An appropriate Department record must be maintained for each SPO who qualifies or who attempts to qualify or to demonstrate proficiency. Records must be retained for one year after separation of a PF member from SPO duties, unless a longer retention period is specified by other requirements. A supervisor or a training officer must be designated, in writing, as the individual authorized to certify the validity of the scores.

#### **§ 1046.18 Access authorization.**

PF personnel must have the access authorization for the highest level of classified matter to which they have access or SNM which they protect. The specific level of access authorization required for each duty assignment must be determined by the site security organization and approved by the local ODFSA. At sites where access authorizations are not required, SPOs must have at least a background investigation based upon a national agency check with local agency and credit check with maximum duration between reinvestigations not to exceed 10 years. This background investigation must be favorably adjudicated by the applicable Departmental field element. Those SPOs who have access to Category I or Category II quantities of SNM as defined by DOE or with access to credible roll-up potential to Category I according to site-specific determination must have and maintain a DOE "Q" access authorization.

#### **§ 1046.19 Medical and fitness for duty status reporting requirements.**

(a) SPOs and SOs must report immediately to their supervisor that they have a known or suspected change in health status that might impair their capacity for duty. To protect their medical confidentiality, they are required only to identify that they need to see the Designated Physician. SOs and SPOs must provide to the Designated Physician detailed information on any known or suspected change in health status that might impair their capacity for duty or the safe and effective performance of assigned duties.

(b) SPOs and SOs must report to their supervisor and the Designated Physician for a determination of fitness for duty when prescription medication is started or a dosage is changed, to ensure that such medication or change in dosage does not alter the individual's ability to perform any of the essential functions of the job. SPOs and SOs must report to their supervisor and the Designated Physician for a determination of fitness for duty within 24 hours, and prior to

assuming duty, after any medication capable of affecting the mind, emotions, and behavior is started, to ensure that such medication does not alter the individual's ability to perform any of the essential functions of the job. Where a written reasonable accommodation determination already has been made, any additional change to an SO's or SPO's health status affecting that accommodation must be reported to their supervisor and the Designated Physician for a determination of fitness for duty.

(c) Supervisory personnel must document and report to the Designated Physician any observed physical, behavioral, or health changes or deterioration in work performance in SPOs and SOs under their supervision.

(d)(1) PF contractor management must inform the Designated Physician of all anticipated job transfers or recategorizations including:

(i) From SO to FPRS, BRS, ARS, or SRT Member;

(ii) From FPRS, to BRS, ARS or SRT Member;

(iii) From BRS to ARS or SRT Member;

(iv) From ARS to SRT Member;

(v) From SRT Member to ARS, BRS, FPRS or SO;

(vi) From ARS to BRS, FPRS, or SO;

(vii) From BRS to FPRS or SO;

(viii) From FPRS to SO; and

(ix) From PF to other assignments.

(2) For downward re-categorizations in paragraphs (d)(1)(v) through (ix) of this section, the anticipated transfer notification must include appropriate additional information such as the apparent inability of the employee to perform essential functions, meet physical readiness standards, or to serve without posing a direct threat to self or others.

(e) The Designated Physician must notify the PPMD to ensure appropriate medical review can be made regarding any recommended or required changes to the PF member's status.

#### **§ 1046.20 Medical records maintenance requirements.**

(a) The Designated Physician must maintain all medical information for each employee or applicant as a confidential medical record, with the exception of the psychological record. The psychological record is part of the medical record but must be stored separately, in a secure location in the custody of the evaluating psychologist. These records must be kept in accordance with the appropriate DOE Privacy Act System of Records, available at <http://energy.gov/sites/prod/files/maprod/documents/FinalPASORNCompilation.1.8.09.pdf>.

(b) Nothing in this part is intended to preclude access to these records according to the requirements of other parts of this or other titles. Medical records maintained under this section may not be released except as permitted or required by law.

(c) Medical records must be retained according to the appropriate DOE Administrative Records Schedule, available at: [http://energy.gov/sites/prod/files/cioprod/documents/ADM\\_1%281%29.pdf](http://energy.gov/sites/prod/files/cioprod/documents/ADM_1%281%29.pdf) (paragraph 21.1)

(d) When an individual has been examined by a Designated Physician, all available history and test results must be maintained by the Designated Physician under the supervision of the PPMD in the medical record, regardless of whether:

(1) The individual completes the examination;

(2) It is determined that the individual cannot engage in physical training or testing and cannot perform the essential functions of the job; or

(3) It is determined that the individual poses a direct threat to self or others.

(e) The Designated Physician must provide written work restrictions to the affected SPO/SO and PF management. PF management must develop, approve, implement, and operate according to site-specific plans based upon the PF contractor's operational and contract structure to ensure confidentiality of PF medical information. This plan must permit access only to those with a need to know specific information, and must identify those individuals by organizational position or responsibility. The plan must adhere to all applicable laws and regulations, including but not limited to the Privacy Act of 1974, the Health Insurance Portability and Accountability Act of 1996, the Family and Medical Leave Act of 1993, and the ADA, as amended by the ADAAA.

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## **DEPARTMENT OF THE TREASURY**

### **Internal Revenue Service**

#### **26 CFR Part 1**

[TD 9610]

RIN 1545-BK68

#### **Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendments.

**SUMMARY:** This document contains corrections to final regulations (TD 9610), which were published in the **Federal Register** on Monday, January 28, 2013 (78 FR 5874). The regulations related to information reporting by foreign financial institutions (FFIs) with respect to U.S. accounts and withholding on certain payments to FFIs and other foreign entities.

**DATES:** *Effective Date:* These corrections are effective September 10, 2013.

*Applicability Date:* These corrections are applicable on January 28, 2013.

**FOR FURTHER INFORMATION CONTACT:** John Sweeney, (202) 622-3840 (not a toll-free call).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The final regulations that are the subject of these corrections are §§ 1.1471-1 through 1.1474-7, promulgated under sections 1471 through 1474 of the Internal Revenue Code. These regulations affect persons making certain U.S.-related payments to FFIs and other foreign entities, and affect payments by FFIs to other persons. Sections 1471 through 1474 were added to the Internal Revenue Code, as Chapter 4 of Subtitle A, by the Hiring Incentives to Restore Employment Act of 2010 (Pub. L. 111-147, 124 Stat. 71).

##### **Need for Correction**

As published, the final regulations contain a number of items that need to be corrected or clarified. Several citations and cross references are corrected. The correcting amendments also include the addition, deletion, or modification of regulatory language to clarify the relevant provisions to meet their intended purposes. Additions, deletions, and modifications are also made to ensure that the rules in the final regulations are coordinated with other