

# Proposed Rules

Federal Register

Vol. 77, No. 44

Tuesday, March 6, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF ENERGY

### 10 CFR Part 1046

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

RIN 1992-AA40

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

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearings.

**SUMMARY:** The Department of Energy (DOE or Department) proposes to revise the regulation 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. The existing version of this regulation was promulgated in 1993 and substantial portions of the regulation date to the mid-1980s. Since 1993 DOE policy has placed greater reliance upon technology, vehicular response, and increased firepower and, correspondingly, has reduced its reliance upon the ability of PF personnel to perform the running tasks required in the current regulation. 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 proposed revisions bring DOE PF medical and physical readiness requirements in line with these tactical and organizational priorities. The proposed revisions reduce the exposure of the PF population to injuries related to physical readiness testing. They would create a PF readiness classification designed specifically to encourage the retention of experienced personnel. The revisions would further ensure that PF personnel would be 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 proposed revisions would further ensure that reasonable accommodations would be considered before a determination is made that an individual cannot perform the essential functions of a particular position. The proposed rule also would provide for new medical review processes for PF personnel disqualified from medical certification. The proposed rule would ensure that DOE PF medical and physical readiness requirements would be compliant with the Americans with Disabilities Act (ADA) of 1990, as amended by the Americans with Disabilities Amendment 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. In addition, the proposed rule would promote operational efficiency through greater emphasis on aligning training with mission-essential tasks and the increased use of simulation technologies. Finally, the proposed revision would update the regulation to reflect organizational changes in the Office of Health, Safety and Security and the creation of the National Nuclear Security Administration (NNSA).

**DATES:** Written comments must be received by DOE on or before April 5, 2012. Oral views, data, and arguments may be presented at the public hearings, which are scheduled as follows:

- March 15, 2012, in Germantown, MD, from 1:30 to 4:30 p.m.
- March 21, 2012, in Albuquerque, New Mexico, from 1:30 to 4:30 p.m.

**ADDRESSES:** The public hearings will be held at the following addresses:

- Germantown, MD: DOE Germantown Auditorium, 19901 Germantown Road, 20874 Albuquerque, NM: Technology Ventures Corporation—McCorkle Room, 1155 University Blvd., SE

Written comments should be addressed to: Mr. Glenn S. Podonsky, Chief Health, Safety and Security Officer, Office of Health, Safety and Security, HS-1/Forrestal Building, Department of Energy, Docket No. DOE-HQ-2012-0002, 1000 Independence Avenue SW., Washington, DC 20585 or via email at [1992-AA40@hq.doe.gov](mailto:1992-AA40@hq.doe.gov). Questions concerning submitting

written comments should be addressed to: Mr. John Cronin, Office of Security Policy, Office of Health, Safety and Security, Department of Energy, HS-51/Germantown Building, 1000 Independence Avenue SW., Washington, DC 20585-1290, (301) 903-6209 or via email at [1992-AA40@hq.doe.gov](mailto:1992-AA40@hq.doe.gov). You may submit comments, identified by [DOE-HQ-2012-0002 and/or 1992-AA40], by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Email:** [1992-AA40@hq.doe.gov](mailto:1992-AA40@hq.doe.gov). Include [DOE-HQ-2012-0002 and/or 1992-AA40] in the subject line of the message.

- **Mail:** [Mailing Address for paper, disk, or CD-ROM submissions: Department of Energy, Office of Security Policy, (HS-51, Attn: John Cronin), 1000 Independence Ave. SW., Washington, DC 20585-1290].

- **Hand Delivery/Courier:** [Street Address: Department of Energy, Office of Security Policy, (HS-51, Attn: John Cronin), 1000 Independence Ave. SW., Washington, DC 20585-1290].

**Instructions:** All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to [<http://www.regulations.gov>], including any personal information provided.

**Docket:** For access to the docket to read background documents or comments received, 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).

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Section by Section Analysis
- III. Regulatory Review and Procedural Requirements
  - A. Review Under Executive Order 12866
  - B. Review Under the Regulatory Flexibility Act
  - C. Review Under Paperwork Reduction Act
  - D. Review Under the National Environmental Policy Act

- E. Review Under Executive Order 13132
- F. Review Under Executive Order 12988
- G. Review Under the Unfunded Mandates Reform Act of 1995
- H. Review Under Executive Order 13211
- I. Review Under the Treasury and General Government Appropriations Act of 1999
- IV. Opportunity for Public Comment

## I. Background

Pursuant to the Atomic Energy Act of 1954 (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 has developed the proposed modifications to 10 CFR part 1046 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” to 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. This rule proposes 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.

The proposed modifications to 10 CFR part 1046 are described in the Section by Section Analysis in section II below.

## II. Section by Section Analysis

The heading for this part would be revised to *Protective Force Personnel Medical, Physical Readiness, Training and Access Authorization Standards*. The revision is intended to more accurately reflect the contents of the regulation.

### Subpart A—General

1. Proposed changes for § 1046.1, Purpose, would revise the language of this section for clarity, but would not change it substantively.

2. Proposed changes for § 1046.2, Scope, would revise for clarity, but would 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 and testing, and the appropriate sharing of medical information related to PF personnel.

3. Proposed changes for § 1046.3, Definitions, would add the following.

The terms “direct threat” and “essential functions of the job” would be defined consistent with the definitions of these terms in the ADAAA.

The terms “defensive combative standard” and “offensive combative standard” would be replaced with “basic readiness standard” (BRS) and “advanced readiness standard” (ARS) personnel 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” would be replaced with “security officer” (SO) and “security police officer” (SPO) to conform to current usage for the names of these positions. The term “PF personnel” would also be added to encompass SOs, SPOs and special response team (SRT)-qualified personnel.

The term “Designated Physician” and its definition would be updated.

The term “field organization” would be replaced with “field element” to conform to current usage.

The term “applicants” as pertains to PF personnel would be added as a result of the use of this term in proposed section 1046.11.

The term “corrective devices” as pertains to reasonable accommodation would be added as a result of the use of this term in proposed section 1046.13.

The term “emergency conditions” as an aspect of PF personnel performance requirements would be added due to the use of this term in proposed section 1046.17.

The terms “medical certification” and “medical certification disqualification” would be added as a result of the use of these terms in proposed sections 1046.13, 1046.14, and 1046.15.

The term “medical examination” is added and its related requirements would be described in section 1046.13.

The terms “Chief Medical Officer,” “Site Occupational Medical Director” (SOMD), and “Physical Protection Medical Director” (PPMD) would be added to section 1046.3 and related requirements would be described in the new proposed section 1046.4.

The term “semi-structured interviews” associated with examining PF personnel would be added to section 1046.3 and related provisions provided in section 1046.13.

The terms “Independent Review” and “Final Review” would be added to section 1046.3 and the process associated with medical certification would also be added to section 1046.15 in this proposed update of the regulations.

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

4. Proposed changes for § 1046.4 to include addressing the PPMD.

DOE proposes to delete the existing section 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 section 1046.4 proposes the required qualifications of

the PPMD and the responsibilities of the PPMD to oversee site physical protection medical activities and to nominate and evaluate the performance of the Designated Physician. The required qualifications for Designated Physicians to be nominated are also proposed in this section. This section would also enhance DOE oversight of the PPMD and Designated Physicians DOE facilities.

5. Proposed changes for § 1046.5 Designated Physician.

This new section proposes the roles and responsibilities for the position of Designated Physician. Among other duties, the Designated Physician would be responsible for the medical examination of SOs and SPOs and would determine whether portions of each certification examination could be performed by other qualified personnel.

*Subpart B—PF Personnel*

1. Proposed changes for § 1046.11 Essential functions of PF personnel

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

2. Proposed changes for § 1046.12 Medical, physical readiness, and training requirements for PF personnel.

This section proposes to establish the medical certification requirements for PF personnel to support their meeting the physical readiness qualification requirements proposed in section 1046.16; to have the required knowledge, skills and abilities; and to meet the requirements of a physical training program as proposed in section 1046.17.

3. Proposed changes for § 1046.13 Medical certification standards and procedures.

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

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

for both SOs and SPOs would be clarified to require recertification within thirty days of the 24-month or 12-month anniversary of the previous qualification. In addition, this section proposes 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 proposed changes in this section also will allow the Designated Physician to require any other medical examination, test, consultation or evaluation he/she deems necessary.

There are several changes proposed by DOE for compliance purposes with the ADA, as amended by the ADAAA, which 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 creates an undue hardship for the employer. Language has been added to paragraph (a) referring to “essential functions” as set forth in section 1046.11 and “direct threat.” The section would also require, 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 proposed 1046.13, the reference to waivers of medical qualification standards would be deleted from the existing section 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 for a health status exit review for 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) proposes that a determination regarding the compatibility of such devices with emergency and protective equipment be made by a designated supervisor in conjunction with the Designated Physician. Paragraph (g)(4) proposes to require 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, 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.

• § 1046.14 *Medical certification disqualification.*

This new section proposes 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 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 (e.g., preparing for or participating in a physical readiness standard qualification attempt). 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.

• § 1046.15 *Review of medical certification disqualification.*

This new section would permit an individual denied medical certification for employment in a particular position to request in writing that an Independent Review of his/her case be conducted. If the Independent Review of an individual’s case results in an unfavorable decision from the Office of Health, Safety and Security, the individual would be able to petition the DOE Office of Hearings and Appeals for a Final Review. Procedures for the proposed review process are described in detail in this section.

• § 1046.16 *SPO physical readiness qualification program requirements.*

This section proposes the program requirements (FPRS, BRS, and ARS) for

individual SPO fitness assessments, physical readiness maintenance, remedial physical fitness training, and safety. The FPRS level is proposed to be added, which would be required to be physically demonstrated every year but would not require a running standard. These changes would 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 would be retained for the BRS and ARS levels, the number of officers annually asked to demonstrate that readiness would be reduced. Greater reliance would be placed on medical evaluation to determine physical readiness of BRS and ARS SPOs. In addition to the medical evaluation process, which is analogous to that used as the physical readiness evaluation by law enforcement agencies, the DOE evaluation program would be validated by testing of randomly selected BRS and ARS SPOs.

- *§ 1046.17 Training standards and procedures.*

DOE proposes to modify the language of this section from the existing section 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 would be 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 that would be required would be developed based on the applicable Job Analysis (JA) or Mission Essential Task List (METL). This proposal would ensure that training requirements comport readily to existing conditions and essential job functions as dictated by the site-specific JA or METL.

Firearms qualification requirements would be modified regarding how SPOs are required to qualify with the individually-issued and primary weapons required by their duty assignment (*i.e.*, specialty weapon, long gun and/or handgun). These requirements would also require 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 proposes to clarify the procedure for developing site-specific and/or specialized courses of fire.

- *§ 1046.18 Access authorization.*

The language of this section would be modified from the existing 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 would instead require 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 would continue to be required under certain circumstances.

- *§ 1046.19 Medical/fitness for duty status reporting requirements.*

This new section proposes to restate the reporting requirements for PF personnel but has not changed substantially from the requirements in Appendix A of the existing rule. The section would clarify 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 job duties. PF personnel would also be required to provide a detailed report identifying the change to the Designated Physician. This section would also require PF personnel to advise their supervisors when a corrective device is not functioning properly.

In addition, this section would restate the requirement that management 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).

- *§ 1046.20 Medical record maintenance requirements.*

This section proposes to clarify record retention and confidentiality requirements contained in Appendix A, section C, of the existing version of the rule. This rule would substitute 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.

- *§ 1046.21 Materials incorporated by reference.*

This section lists the industry standards proposed to be incorporated by reference in DOE’s PF regulations.

- Appendix A to Subpart B of Part 1046—*Medical and Physical Fitness Qualifications Standards* and Appendix B to Subpart B of Part 1046—*Training Qualification for Security Skills and Knowledge*.

These Appendices have been removed and necessary elements have been incorporated into the rule for clarity and completeness, as described in the preceding discussion.

### 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 proposed rule under the Regulatory Flexibility Act and certifies that, if adopted, the rule would not have a significant impact on a substantial number of small entities. This proposed action would amend an existing rule which establishes medical and physical training requirements and standards for DOE PF personnel. The rule would affect approximately twenty private firms (*e.g.*, integrated Management and Operating contractors, security services contractors and subcontractors) at the Department’s facilities around the United States. Some of those firms

which provide protective services are classified under NAICS Code 561612, Security Guards and Patrol Services. To be classified as a small business, they must have average annual receipts of \$18.5 million or less. Some of the private firms affected by these standards and requirements would be classified as small businesses.

The proposed rule would update the medical certification and physical readiness requirements for PF personnel and require PF contractors to make reasonable accommodations to modify emergency and protective equipment for qualified individuals. The rule would also set 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, and the proposed 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 proposes a process for review of a medical certification disqualification and for medical removal protection benefits in certain circumstances. The proposed review process would 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 will be reimbursable to the contractor under the applicable contract with DOE.

The rule would also update 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 proposed 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 proposed updates would 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 would be significant. DOE seeks comment on its estimate of the number of small entities and the expected impacts of today's proposed rule. DOE emphasizes that these firms are under contract to DOE either directly or indirectly, so any costs incurred while meeting the standards and requirements proposed in this rule would be invoiced and may be reimbursable in accordance with the terms of the contract and applicable law.

For the above reasons, DOE certifies that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

#### *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 proposed rule amends existing policies and procedures establishing medical and physical readiness standards for DOE PF personnel and has no significant environmental impact. Consequently, the Department has determined that this rule is covered under Categorical Exclusion A-5, of Appendix A to Subpart D, 10 CFR part 1021, which applies to a rulemaking

<sup>1</sup> DOE notes that the rule would also set forth qualification requirements for the PPMD 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.

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 proposed and revised 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 proposed 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 would require 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 proposed 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 proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

## **IV. Opportunity for Public Comment**

### *A. Participation in Rulemaking*

DOE encourages the maximum level of public participation in this rulemaking. Interested persons are encouraged to participate in the public hearings at the times and places indicated at the beginning of this proposed rulemaking.

DOE has established a period of thirty days following publication of this proposed rulemaking for persons and organizations to comment. All public comments, hearing transcripts, and other docket material will be available for review and copying at the DOE offices at each of the hearing sites. The docket material will be filed under “DOE–HQ–2012–0002.”

### *B. Written Comment Procedures*

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this proposed rulemaking. Instructions for submitting written comments are set forth at the beginning

of this notice and below. Where possible, comments should identify the specific section they address.

Comments should be labeled both on the envelope and on the documents, “Docket No. DOE–HQ–2012–0002” and must be received by the date specified at the beginning of this proposed rulemaking. All comments and other relevant information received by the date specified at the beginning of this proposed rulemaking will be considered by DOE in the subsequent stages of the rulemaking process.

Pursuant to the provisions of 10 CFR part 1004, any person submitting information or data that is believed to be confidential and exempt by law from public disclosure should submit one complete copy of the document and three copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

### *C. Public Hearings*

The dates, times and places of the public hearings are indicated at the beginning of this proposed rulemaking. DOE invites any person or organization who has an interest in these proceedings to make a request to make an oral presentation at one of the public hearings. Requests can be phoned in advance to the telephone number indicated at the beginning of this proposed rulemaking. The person making the request should provide a telephone number where he or she may be contacted.

DOE reserves the right to schedule the presentations, and to establish the procedures governing the conduct of the hearings. Each presentation is limited to ten minutes.

A DOE official will be designated to preside at the hearings and ask questions. The hearings will not be judicial or evidentiary-type hearings, but will be conducted in accordance with section 501 of the DOE Organization Act, 42 U.S.C. 7191. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal or clarifying statement, subject to time limitations. Any further procedural rules regarding proper conduct of the hearings will be announced by the presiding official.

Transcripts of the hearings will be made and the entire record of this rulemaking, including the transcripts, will be retained by DOE and made available for inspection as provided at the beginning of this proposed

rulemaking. Any person may also purchase a copy of a transcript from the transcribing reporter.

#### List of Subjects in 10 CFR Part 1046

Government contracts, Incorporation by reference, Reporting and recordkeeping requirements, Security measures.

Issued in Washington, DC, on February 10, 2012.

**Daniel B. Poneman,**  
*Deputy Secretary of Energy.*

For the reasons set out in the preamble, the Department of Energy (DOE) proposes to amend 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.
- 1046.21 Materials incorporated by reference.

**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 (hereinafter “PF”) personnel who provide security services at Department of Energy (DOE) 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, hereinafter “DOE” or the “Department,” 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 Protection Program Medical Director). Similarly, when appropriate medical, psychological, or other examinations, evaluations, or testing 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, or testing 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 non-medical requirements 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. The exemption process required by DOE must be used. 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.

(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.

##### § 1046.3 Definitions.

The following definitions apply to this part:

**Active shooter** means an individual actively engaged in 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, and a 40-yard dash from the prone position in 8.0 seconds and any other site-specific measure of physical readiness 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, and a 40-yard dash from the prone position in 8.5 seconds and any other site-specific measure of physical readiness 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 leadership and 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 devices, such as eyeglasses or hearing aids, which are necessary to enable an examinee to meet medical qualification standards, and which the supervisor responsible for the performance of the examinee and the Designated Physician have determined are compatible with the performance of the essential functions of the position.

*Designated Physician* means an MD or DO, licensed without restriction in the state of practice, who has been approved by the Physical Protection Medical Director (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.

*Efficiency*, for the purposes of this part, pertains to the individual's physical efficiency rather than operational efficiency.

*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) or accident (e.g., fire, explosion, 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 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 site-specific measure of physical readiness 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 his/her 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 will 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 it is medically appropriate for an individual to attempt the physical performance qualification test.

*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 section 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 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 personnel* means Special Response Team members, SPOs, and SOs who are employed to protect Department security interests.

*Qualification* means the determination that an individual meets the applicable medical, physical, and as appropriate, firearms training standards, and possesses the knowledge, skills, abilities and clearances 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 corrective devices and medications which allow the examinee to meet medical qualification standards, are compatible with the performance of the



essential functions of the position, and are documented in writing.

*Requalification 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 personnel; sensitive technology; classified matter; nuclear weapons, components, and assemblies; special nuclear material (SNM) and 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.

*Site occupational medical program* means the comprehensive occupational health services and basic worker protection requirements for contractor employees.

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

*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).

*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/weapon 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 replicate those of the corresponding actual weapon, and noise

signatures and felt recoil should be simulated to the extent technically feasible. Additionally, when used for qualification testing of protective force officers, the weight and balance of the simulated weapon with assigned duty loads must be closely approximated.

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

(a) *General.* The PPMD is the physician programmatically responsible for the overall direction and operation of site medical programs supporting the requirements of this part. 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 officially designated Federal security authority who in turn must consult with the Office of Health, Safety and Security prior to the PPMD's approval. At the time of initial nomination for the PPMD designation, the nominee shall submit to the Office of Health, Safety and Security, through his or her employer and the Federal security authority, 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); and
- (iii) Current medical license in the state in which duties will be performed. If determined necessary by the Office of Health, Safety and Security, 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) may be requested. The nominee may be requested to instruct the licensing body to send such certifications to the Office of Health, Safety and Security. 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. The curriculum vitae, if requested, must provide a discussion of any gaps in employment..

(2) *Other roles and responsibilities.* Nothing in this part is intended to preclude the PPMD from fulfilling similar or related roles under other parts, 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.

(3) *Qualifications.* The PPMD shall possess an MD or DO degree; be board certified in or have equivalent advanced training, in occupational medicine; be a professionally qualified physician in good standing in his or her 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 he/she belongs.

(b) *Nominations.* The PPMD must nominate in writing, through the local officially designated Federal security authority, to the Office of Health, Safety and Security, one or more Designated Physicians.

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

(2) Each nominee must be professionally qualified in good standing in his or her 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 he/she belongs.

(3) To be nominated, a Designated Physician shall possess an MD or DO degree and be board certified or have equivalent advanced training 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); and
- (3) Current medical license in the state in which duties will be performed. If determined necessary by the PPMD, 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) may be requested. 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/or a current curriculum vitae. The curriculum vitae, if requested, must provide a discussion of any gaps in employment.

(d) *Self reporting.* Each individual covered under paragraphs (a) and (b) of this section must agree to report the following information about him/herself as a condition of his/her designation. PPMDs must report to their employer, who must forward the information to the Office of Health, Safety and Security through the Federal security authority. Designated Physicians must report to the PPMD:

- (1) Any change in status or initiation of an adverse action by any state medical licensing board or any other professional licensing board;
- (2) Initiation of an adverse action by any Federal or state regulatory board;
- (3) Being named a defendant in any criminal proceedings (felony or misdemeanor);
- (4) Being named in a civil suit alleging professional malpractice;
- (5) Being evaluated or treated for alcohol use disorder or drug dependency or abuse;
- (6) Occurrence of a physical disorder, a mental disorder, or any other health condition that might affect his or her ability to perform professional duties; and
- (7) Any adverse action against the medical license(s) of the individual, past or present (these may be obtained in written form or electronically). The incumbent or nominee may be instructed to request the licensing body to provide such information to the appropriate individual. Under no circumstances will such information be accepted directly from the incumbent or nominee. All such actions must be submitted to DOE for consideration and possible action which may result in rejection of, or termination of, the applicable designation.

(e) *Annual activity report.* The PPMD must send an annual activity report to the Office of Health, Safety and Security through the appropriate field element, reporting on the current credentials of

each incumbent Designated Physician and recommending the retention or replacement of each incumbent.

(f) *Retention or replacement.* 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 his 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 his or her designee through the manager of the Field Element. The PPMD must comply with applicable DOE requirements specifying report content.

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

(a) *Responsibilities.* The Designated Physician is responsible for the conduct of medical examinations, evaluations, and medical certification of SOs and SPOs. The Designated Physician must:

- (1) Annually determine whether to approve an individual's participation in programmed training programs required under this rule and determine the individual's ability to perform the physical readiness and training 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, physician's assistant, or a nurse practitioner;

(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.

(b) *Approval in lieu of nomination.* If the Designated Physician has been

approved under the provisions of 10 CFR part 712, "Human Reliability Program," that approval will satisfy the requirement for nomination to, and approval by, DOE under this part.

### 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), as appropriate, 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 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;

(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) Perform complex tasks, and make life or death decisions under stressful conditions while armed and authorized to use deadly force;

(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;

(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; and

(9) Make critical decisions and take appropriate actions in a confused and potentially life-threatening environment throughout the duration of an emergency situation, e.g., active shooter scenarios.

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

(1) Have night vision sufficient to read placards and street signs while driving or to see and respond to imminently hazardous situations in conditions of darkness;

(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 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) 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 section 1046.13 as meeting the medical certification standards 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 § 1046.17.

**§ 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) An evaluation of incumbent security police officer 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 PPMD.

(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 job analysis submitted by PF management prior to each examination. Specific qualifications for SOs and SPOs are set forth in paragraphs (d) and (e), respectively, of this section.

(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 on 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 a difference of not more than 15 db average loss between the two ears; the ability to recognize speech as demonstrated by a Speech Recognition Threshold of 20 db or less (by ANSI S3.6, 2010 audiometry (incorporated by reference, see § 1046.21)). If a hearing aid is 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).

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

(e) *Specific medical standards for SPOs.* In addition to the criteria identified in section 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 a difference of not more than 15 db average loss between the two ears; the ability to recognize speech as demonstrated by a Speech Recognition Threshold of 25 db or less (by ANSI S3.6, 2010 audiometry (incorporated by reference, see § 1046.21)). 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 all speech frequencies. 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 in the other eye.

(B) If uncorrected distant vision in the better eye is not at least 20/25 and 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 will 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 continuous or continual medications such as bronchodilators or beta agonists. A full evaluation and approval by the PPMD is required whenever there is a past history of sleep apnea, with or without treatment.

(ii) *Cardiovascular.* (A) Capacity for tolerating physical and high levels of exertion during emergencies. 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, 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 tuning fork test for peripheral neuropathy at fingers and toes is required annually. Absence of neurotic or psychotic conditions which would affect adversely 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 overhead reaching and the ability for full 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.

(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 precluding respirator fit is not acceptable.

(10) *Endocrine/nutritional/metabolic.* Status adequate to meet the stresses and demands of assigned normal and emergency job duties. Ability to accommodate to changing work and meal schedules without potential or actual incapacity. 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. Medical certification remains valid through the end of the twenty-fourth month following each certification 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). Medical certification remains valid through the end of the twelfth month following each qualification 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 of whether the individual meets the Medical Certification Standards for the applicable position:

(i) An updated 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 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 or annual medical examination must be conducted by a psychologist. 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 will 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, psychiatric evaluations (if required), and reviews of job performance may indicate disqualifying medical 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 required. 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 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 an incumbent SO's or SPO's ability to perform essential job duties or 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 supervisor responsible for the examinee's performance, in conjunction with the Designated Physician, 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. 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 qualified for physical training, testing, or the relevant position.

(6) PF management must request from the PPMD a health status exit review for all employees leaving PF service. This review must include all of the medical standards for the PF position being vacated.

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

(a) *Removal.* An individual 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 individual, temporarily or permanently, disqualified from medical certification by the PPMD must be removed from the protective force job classification by his or her 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 it is

medically appropriate to remove the SPO from PF duties as a result of injuries sustained while engaging in required physical readiness activities (e.g., preparing for or participating in a physical readiness standard qualification attempt) or training activities requiring physical exertion. 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 remove an SPO. The employee pay benefits specified in this part 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 injury.

(1) *Temporary removal pending final medical determination.* 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.

(i) In this section, "final medical determination" means the outcome of the Independent Review process or the Final Review process provided for in § 1046.15(c) and (d), as appropriate.

(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 active payroll unless alternative duties for which the worker is qualified or can be trained in a short period of time are refused or alternative duties are performed unsatisfactorily.

(iii) When the SPO remains on the active payroll pursuant to paragraph (b)(1)(ii) of this section, the SPO's employer must maintain for the duration of the temporary assignment the SPO's total base pay, seniority, and other worker rights and benefits as if the worker had not been removed.

(iv) If there are no suitable alternative duties available as described in paragraph (ii), 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 for one year, whichever comes first.

(2) *Permanent medical removal resulting from injuries.* 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

(e.g., preparing for or participating in a physical readiness standard qualification attempt) or training activities requiring physical exertion, employer Human Resources policies, disability insurance, and/or collective bargaining agreements will dictate further employment status and compensation.

(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 questions concerning medical removal answered; and

(iii) Obtain the SPO's signature or document that the SPO has been advised on the benefits 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) The SPO's employer, subject to paragraph (b)(4)(ii) of this section, must not return an SPO who has been permanently removed under this section to the SPO's former job status unless the PPMD first determines in a written medical opinion that continued medical removal is no longer necessary to protect the SPO's health and well-being or to prevent the SPO from being a direct threat to self or others.

(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.

(c) *Medical removal protection benefits.* If an SPO has been removed from duty pursuant to paragraph (b)(2) of this section as a result of injuries sustained while engaging in required physical readiness activities (e.g., preparing for or participating in a physical readiness standard qualification attempt) or other training activities requiring physical exertion, 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;

(1) If required by this section to provide medical removal protection benefits, the SPO's employer must maintain for a period of one year, beginning from the date of the PPMD's determination as described in paragraph (b)(1) of this section, the removed worker's total base pay, and seniority, as though the SPO had not been removed.

(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 pending disposition of the claim, the claimant has recovered, or one year, whichever comes first. The SPO's employer will receive no credit towards the SPO's base pay for the SPO's compensation payments received by the SPO for treatment related expenses.

(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 employer-funded compensation program, or from employment with another employer made possible by virtue of the worker's removal.

(d) *Collective Bargaining Agreements.* For the purposes of this section, the requirement that the SPO 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 determined by the PPMD to be removed from a disqualification status. This limited duty may include assignment to duties in any job classification where all essential functions can be safely and efficiently performed. A temporary medical certification disqualification may not exceed a period of twelve months. During or by 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 the initial notification of disqualification, and at any time during or at the end of 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 his 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 officially designated Federal security authority: 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 of his/her choice 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) 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. 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 Federal authority for security: For DOE HQ sites, the Director, Office of Security Operations; for NNSA sites, the cognizant local NNSA Security Director; 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.

(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 his or her 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 his or her appeal. In the request for a Final Review, the individual must state with specificity why he or she disagrees with the Independent Review confirming his or her medical certification disqualification. The Office of Health, Safety and Security will 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 he or she 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 will issue a Decision and Order setting forth its findings on appeal and its conclusions based on the record before it. Upon receipt of the unfavorable results of a Final Review determination 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 his or her employer. However, nothing in this determination 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 the favorable results of a Final Review determination from the Office of Hearings and Appeals, the individual must be reinstated to the PF job classification by his or her 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.

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

(a) *General.* Employers must provide SPOs with a copy of the applicable physical readiness standards, a copy of these regulations, and must 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 skills, knowledge 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 requalify every year according to their applicable readiness standard, pursuant to paragraph (d)(1), (f), or (g) of this section. Requalification must occur no later than the twelfth month following the previous annual qualification. The requalification may be accomplished at any time during, or prior to, the requalification month.

(3) All qualification and requalification activities must be conducted under the supervision of personnel knowledgeable of DOE physical readiness program requirements and approved by the local officially designated Federal security authority.

(b) *Physical readiness training program.* Each SPO must engage in a year-round physical readiness training program to:

(1) Achieve and maintain the cardio-respiratory and musculoskeletal fitness necessary to safely perform all essential functions of normal and emergency PF duties at any time, without posing a direct threat to self or others; 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 which 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 stretching/warm-up and cool down activities designed by certified 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 and approved by the PPMD in consultation with the local officially designated Federal security authority.

(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. The SPO's participation in this training program must be validated by the SPO's employing organization.

(4) Assessments of an SPO's level of physical readiness must be conducted at least every six months by personnel knowledgeable of DOE requirements and be based upon recognized assessment standard values (e.g., American College of Sports Medicine [<http://www.acsmstore.org/>], Cooper Fitness Institute [<http://www.cooperinstitute.org/>], and Rockport Walk Protocol [available online from a variety of Web sites]). Though not a qualification, the assessment 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 must be

available at the assessment site. An individual trained in cardio-pulmonary resuscitation and automatic external defibrillator equipment must be present.

(5) An SPO who fails to requalify during the twelfth month following the anniversary of the date of initial or previous qualification must be removed from armed SPO status and must participate in a remedial physical readiness training program. 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.

(6) SPOs must maintain physical readiness standards on a continuing basis. 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). The employer must provide access to a work hardening or rehabilitation program upon PPMD medical evaluation validating the need for such a program.

(7) 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 officially designated Federal security authority. Failure to meet the physical readiness standard will be treated as if the SPO failed the first attempt during routine qualification, and the procedures of paragraphs (g)(3), (4) and (5) of this section will apply.

(d) *Physical readiness standards for SPOs.* The physical readiness standards for SPOs are as follows:

(1) *Fixed Post Readiness Standard (FPRS).* This standard applies to all SPOs and must be physically demonstrated every year. The standard is 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 arrest of suspects and place them under restraint, e.g., with handcuffs or other physical restraint devices; and meet any other site-specific measure of physical readiness

prescribed by site management and approved by the respective program office.

(2) *Basic Readiness Standard (BRS).* In addition to demonstrating the FPRS requirements as stated in paragraph (d)(1) of this section, the BRS consists of a one-half mile run with maximum qualifying times of 4 minutes 40 seconds and a 40-yard dash from the prone position in 8.5 seconds, and any other site-specific measure of physical readiness prescribed by site management and approved by the respective program office.

(3) *Advanced Readiness Standard (ARS).* In addition to demonstrating the FPRS requirements as stated in paragraph (d)(1) of this section, the ARS consists of a one mile run with maximum qualifying times of 8 minutes 30 seconds and a 40-yard dash from the prone position in 8.0 seconds, and any other site-specific measure of physical readiness prescribed by site management and approved by the respective program office.

(e) *Administrative Procedure Act.* 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.* The Designated Physician's evaluation and documentation that an incumbent BRS or ARS SPO has reasonable expectation of meeting the appropriate physical readiness standard will be deemed to have met the annual physical readiness qualification requirement without having to take the appropriate BRS or ARS test. 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. The physical readiness capability evaluation must be made by the Designated Physician without delegation (e.g., to a physician's assistant or nurse practitioner). A site standard form must be used, and pertinent negatives must be documented on the form.

(1) Evaluation of BRS and ARS SPOs must include consideration of normative data where it is available for individuals deemed to be physically capable. The following criteria must be evaluated: Cardiac function to include resting pulse rate, pulse recovery after exertion; neuromuscular function to include assessments of strength, range/freedom of motion, and movement without pain.

(2) The designated physician may clear the BRS or ARS SPO medically 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.

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

(4) If the PPMD concurs with the Designated Physician, the SPO may challenge the decision by taking and passing the appropriate physical readiness test, which must be accomplished successfully within 30 days of the date of the physical evaluation for the SPO to remain in status. 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 work would require following the new hire process for medical clearance and physical readiness testing.

(5) Should the PPMD determine that the SPO does appear to have a reasonable expectation of meeting the appropriate physical readiness standard, the SPO will be 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 cleared for SPO duties. In this case, the SPO will be removed from status with appropriate PPMD review and medical intervention provided.

(7) Each year, 10 percent of the BRS and ARS SPO populations at each site will be randomly selected by the employer for physical testing pursuant to paragraph (g). The identity of an individual as the selectee shall be kept confidential by the employer in a manner that ensures this information does not become known to the selected individual 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 (f)(5) of this section. The selected individuals must successfully complete the applicable physical readiness standard in order 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) Should the passing percentage of those randomly selected in a particular physical readiness category at a

particular site drop below 90 percent on their first attempts at annual qualification, then subsequently all incumbent SPOs in that category at that site must be tested against their appropriate physical readiness standard when their anniversary date occurs. This testing will continue until a 95 percent successful completion rate for that category of physical readiness is achieved at the site. Once a 95 percent successful completion rate on the first attempt is achieved for a given testing year, the required testing ratio will return to 10 percent for that category.

(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) in any given year, shall physically meet the applicable physical readiness standard during the month of, or prior to, 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 of more than one year from protective force duties must physically meet 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 and have successfully completed a physical readiness assessment 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.

(6) SPOs must qualify on the applicable standard annually either by medical clearance or by physically passing the required test. The testing protocol shall include mandated participation by the officer being tested in pre-test stretching, warm-up, and cool-down activities as described in paragraph (c) of this section. The responsible person in charge of the qualification activity must ensure that the SPO understands 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 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 requalification must occur not later than during the twelfth month from the previous annual qualification. Failure to qualify within this one-month period, or earlier, must result in removal from SPO status. All attempts must be made within 30 days of the medical approval required in § 1046.16 (g)(5). Not more than five attempts may be allowed during the 30-day period.

(8) Remedial training program: Each incumbent SPO who has not met the applicable physical readiness qualification standards as set forth herein for reasons other than injury or illness must participate in a supervised physical readiness remedial training program.

(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 after completion of remedial training program.

(i) Once an incumbent 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 incumbent SPO must be assessed using the same process that is used for the required semiannual assessment as required in (b)(4) of this section with the results indicating the SPO is ready to take the test.

(iii) The incumbent 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) interrupt the attempt.

When the attempt is interrupted, it may then be rescheduled within seven days.

(iv) The SPO's original anniversary qualification date will remain the same.

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

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

(ii) When an extension is granted because of an inability to qualify without a certified medical or physical condition, the PF member is not entitled to temporary removal protection benefits.

(iii) Upon completion of the time extension period and requisite physical readiness training, as applicable, the incumbent SPO must be assessed using the same process that is used for the required semiannual assessment as required in (b)(4) of this section with the results indicating the SPO is ready to take the test.

(iv) For time extensions exceeding three months, the SPO's original anniversary qualification date may be revised to reflect the date for passing 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 qualification and training programs must be based upon criteria approved by the officially designated Federal security authority.

(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). 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 competence 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 a well-defined, minimum level of competency required to perform each essential function and task acceptably, with or without reasonable accommodations;

(3) Employ standardized lesson plans 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 officially designated Federal security authority on an annual basis.

(e) *SOs*—(1) *SO initial training requirements.* (i) Prior to initial assignment to duty, each SO must successfully complete a basic SO training course, approved by the local officially designated Federal security authority, designed to provide the minimum level of skills, knowledge 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 will 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 themselves 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), each SPO must successfully complete the approved Department basic SPO training course. 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 themselves 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 will 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 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 approved SRT basic qualification course designed to provide the minimum level of skills, knowledge and ability needed to competently perform all the identified essential functions of the job and tasks associated with SRT job responsibilities. 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 skills and knowledge 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 will 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 himself or to others.

(2) *SRT maintenance training.* After assignment to duties as a member of an SRT, an SRT-qualified SPO must, as a minimum, train semiannually in all of the areas determined necessary by a site-specific JA or METL. Failure to

achieve a minimum level of competency will 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 will 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 the minimum level of skills, knowledge and 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 officially designated Federal security authority.

(i) *Supervisors—(1) Supervisor training requirements.* Prior to initial assignment to duty, each PF supervisor must successfully complete a supervisor training program designed to provide the minimum level of skills, knowledge and 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 will be based on a site-specific JA or METL and will 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. They 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 officially designated Federal security authority. 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 6 months. Requalification or proficiency demonstration must occur no later than the sixth month from the previous qualification. The requalification or proficiency demonstration may be accomplished at any time prior to or during the requalification month. In the case of individually assigned/primary weapons, if the SPO does not re-qualify during the re-qualification month, 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 requalification month, 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. If requalification occurs prior to the anniversary month, the month of requalification becomes the new anniversary month.

(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 officially designated Federal security authority. Failure to meet the standard will be treated as if the individual failed the first attempt during routine semiannual qualification or proficiency demonstration. In this event, the requirements of paragraphs (k)(11) through (k)(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 semi-annual 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 semi-annual 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 replicate those of the corresponding actual weapon, and noise signatures and felt recoil should be simulated to the extent technically feasible. Additionally, when used for qualification testing of protective force officers, the weight and balance of the simulated weapon with assigned duty loads must be closely approximated.

(6) SPOs assigned to posts which require the operation of site-specific 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 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.

(7) Weapon system simulators may be used for training, familiarization, and semi-annual 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 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 safety 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 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 officially designated Federal security authority, the developed courses will be submitted to the respective program office for review and approval.

(10) When qualification 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 will 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 will 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, 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 will be a combination of basic weapon manipulation skills, firearms safety, and an additional segment of time tailored to provide the SPO with the necessary individual training to afford a reasonable opportunity to meet the firearms/weapons qualification or proficiency standards.

(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 suspended from duties that require the issuance of that weapon. If the weapon is considered a primary duty weapon, *e.g.*, rifle or handgun, the contractor may, at its discretion, permanently remove that individual from SPO status based on recurring inability to maintain qualification status. Three consecutive recurrent remediations on specialty weapons shall result in permanent removal from duties that require those specific weapons. The contractor may consider reinstating an individual permanently removed from SPO status if the individual can demonstrate the ability to pass the current Department qualification course for that firearm with written validation from a certified firearms instructor. All such training and validation expenses are solely the responsibility of the SPO. If such an individual is reinstated, the contractor 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 will 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 will 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 officially designated Federal security authority. 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 (NACLC), 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 with credible roll-up potential to Category I 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 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 to 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 DOE Privacy Act System of Records 33—Personnel Medical Records.

(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 will be retained according to Paragraph 21.1, Department of Energy, Administrative Records Schedule 1: Personnel Records, September 2010, Revision 3 ([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)).

(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 will provide written work restrictions to the affected SPO/SO and PF management. PF management must approve and implement site-specific plans to ensure confidentiality of PF medical information. This plan must permit access to only those with a need to know the 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 Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Family and Medical Leave Act of 1993 (FMLA), and the ADA, as amended by the ADAAA.

#### **§ 1046.21 Materials incorporated by reference.**

(a) *General.* DOE incorporates by reference the following standards into part 1046. The material has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552a and 1 CFR part 51. Any subsequent amendment to a standard by the standard-setting organization will not affect the DOE regulations unless and until amended by DOE. Material will be incorporated as it exists on the date of the approval and a notice of any change to the material will be published in the **Federal Register**. All approved material will be available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). Also, this material will be available for inspection at U.S. Department of Energy, Office of Health, Safety and Security, 1000 Independence Ave. SW., Washington, DC 20585. Standards can be obtained from the sources below.

(b) *ANSI.* American National Standards Institute, 25 W. 43rd St., 4th Floor, New York, NY 10036, 212-642-4900, or go to <http://www.ansi.org>.

(1) ANSI/ASA S3.6-2010 ("ANSI S3.6"), American National Standard Specification for Audiometers, approved 2010; IBR approved for § 1046.13.

(2) [Reserved].

[FR Doc. 2012-5280 Filed 3-5-12; 8:45 am]

BILLING CODE 6450-01-P

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

[Docket No. FAA-2012-0188; Directorate Identifier 2011-NM-120-AD]

RIN 2120-AA64

#### **Airworthiness Directives; BAE SYSTEMS (Operations) Limited Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all BAE SYSTEMS (Operations) Limited Model 4101 airplanes. This proposed AD was prompted by reports of cracking found in the wing rear spar. This proposed AD would require a one-time detailed inspection for cracks, corrosion, and other defects of the rear face of the wing rear spar, and repair if necessary. We are proposing this AD to detect and correct cracking in the rear spar, which could propagate to a critical length, possibly affecting the structural integrity of the area and resulting in a fuel tank rupture, with consequent damage to the airplane and possible injury to its occupants.

**DATES:** We must receive comments on this proposed AD by April 20, 2012.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact BAE SYSTEMS (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email [RApublications@baesystems.com](mailto:RApublications@baesystems.com); Internet <http://www.baesystems.com/Businesses/RegionalAircraft/index.htm>. You may review copies of the referenced service information at the

FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

#### **Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

#### **FOR FURTHER INFORMATION CONTACT:**

Todd Thompson, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone 425-227-1175; fax 425-227-1149.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2012-0188; Directorate Identifier 2011-NM-120-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

##### **Discussion**

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011-0096, dated May 25, 2011 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Four cracks were found on a wing rear spar by an operator during a fuel leak investigation. The cracks were located between ribs 6 and 7, immediately inboard of the inboard engine rib. The cracks initiated at adjacent fastener bores in the rear spar