

and extent requirements for the access authorization requested.

(c) If an individual believes that the provisions of paragraph (b) of this section have been inappropriately applied, a written appeal may be filed with the Director within 30 calendar days of the date the individual was notified of the action. The Director shall act on the written appeal as described in §710.6(c).

**§ 710.33 Time frames.**

Statements of time established for processing aspects of a case under this part are the agency’s desired time frames in implementing the procedures set forth in this part. However, failure to meet the time frames shall have no impact upon the final disposition of an access authorization by a Manager, Administrative Judge, the Appeal Panel, or the Secretary, and shall confer no procedural or substantive rights upon an individual whose access authorization eligibility is being considered.

**§ 710.34 Acting officials.**

Except for the Secretary, the responsibilities and authorities conferred in this part may be exercised by persons who have been designated in writing as acting for, or in the temporary capacity of, the following DOE positions: The Local Director of Security; the Manager; the Director, or the General Counsel. The responsibilities and authorities of the Deputy Director for Security, Office of Environment, Health, Safety and Security may be exercised by persons in senior security-related positions within the Office of Environment, Health, Safety and Security who have been designated in writing as acting for, or in the temporary capacity of, the Deputy Director for Security, Office of Environment, Health, Safety and Security, with the approval of the Director, Office of Environment, Health, Safety and Security.

[81 FR 71335, Oct. 17, 2016, as amended at 88 FR 41292, June 26, 2023]

**PART 712—HUMAN RELIABILITY PROGRAM**

**Subpart A—Establishment of and Procedures for the Human Reliability Program**

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AUTHORITY: 42 U.S.C. 2165; 42 U.S.C. 2201; 42 U.S.C. 5814–5815; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; E.O. 10450, 3 CFR 1949–1953 Comp., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 Comp., p. 398, as amended; 3 CFR Chap. IV.

SOURCE: 69 FR 3223, Jan. 23, 2004, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 712 appear at 88 FR 41292, June 26, 2023.

### Subpart A—Establishment of and Procedures for the Human Reliability Program

SOURCE: 83 FR 18200, Apr. 26, 2018, unless otherwise noted.

#### GENERAL PROVISIONS

##### § 712.1 Purpose.

This part establishes the policies and procedures for a Human Reliability Program (HRP) in the Department of Energy (DOE), including the National Nuclear Security Administration (NNSA). The HRP is a security and safety reliability program designed to ensure that individuals who occupy positions affording access to certain materials, nuclear explosive devices, facilities, and programs meet the highest standards of reliability and physical and mental suitability. This objective is accomplished under this part through a system of continuous evaluation that identifies individuals whose judgment and reliability may be impaired by physical or mental/personality disorders, alcohol abuse, use of illegal drugs or the abuse of legal drugs or other substances, or any other condition or circumstance that may be of a security or safety concern.

##### § 712.2 Applicability.

The HRP applies to all applicants for, or current employees of DOE or NNSA or a DOE or NNSA contractor or subcontractor in a position defined or designated under § 712.10 of this subpart as an HRP position.

##### § 712.3 Definitions.

The following definitions are used in this part:

*Access* means:

(1) A situation that may provide an individual proximity to or control over Category I special nuclear material (SNM); or

(2) The proximity to a nuclear explosive and/or Category I SNM that allows the opportunity to divert, steal, tamper with, and/or damage the nuclear explosive or material in spite of any controls that have been established to prevent such unauthorized actions.

*Alcohol* means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol.

*Alcohol abuse* means consumption of any beverage, mixture, or preparation, including any medication containing alcohol that results in impaired social or occupational functioning.

*Alcohol concentration* means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test.

*Alcohol use disorder* means a maladaptive pattern in which a person's intake of alcohol is great enough to damage or adversely affect physical or mental health or personal, social, or occupational function; or when alcohol has become a prerequisite to normal function.

*Case chronology* means a written recitation of all actions that support a recommendation to revoke an individual's HRP certification under § 712.19.

*Certification* means the formal action the HRP certifying official takes that permits an individual to perform HRP duties after it is determined that the individual meets the requirements for certification under this part.

*Contractor* means contractors and subcontractors at all tiers and any industrial, educational, commercial, or other entity, grantee, or licensee, including an employee that has executed an agreement with the Federal government for the purpose of performing under a contract, license, or other arrangement.

*Designated Physician* means a licensed doctor of medicine or osteopathy who has been nominated by the Site Occupational Medical Director (SOMD) and approved by the Manager or designee, with the concurrence of the Director, Office of Environment, Health, Safety and Security or his or her designee to provide professional expertise in occupational medicine for the HRP.

*Designated Psychologist* means a licensed Ph.D., or Psy.D., in clinical psychology who has been nominated by the SOMD and approved by the Manager or designee, with the concurrence of the Director, Office of Environment, Health, Safety and Security or his or her designee to provide professional expertise in the area of psychological assessment for the HRP.

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

*Director, Office of Environment, Health, Safety and Security* means the DOE individual with responsibility for policy and quality assurance for DOE occupational medical programs.

*Drug abuse* means use of an illegal drug or misuse of legal drugs.

*Evaluative report* means the document that sets forth the bases supporting the revocation of an individual's certification.

*Evidential-grade breath alcohol device* means a device that conforms to the model standards for an evidential breath-testing device as listed on the Conforming Products List of Evidential Breath Measurement Devices published by the National Highway Traffic Safety Administration (NHTSA).

*Flashback* means an involuntary, spontaneous recurrence of some aspect of a hallucinatory experience or perceptual distortion that occurs long after taking the hallucinogen that produced the original effect; also referred to as hallucinogen persisting perception disorder.

*Hallucinogen* means a drug or substance that produces hallucinations, distortions in perception of sights and sounds, and disturbances in emotion, judgment, and memory.

*HRP candidate* means an individual being considered for assignment to an HRP position.

*HRP-certified individual* means an individual who has successfully completed the HRP requirements.

*HRP certifying official* means the Manager or the Manager's designee who certifies, recertifies, temporarily removes, reviews the circumstances of an individual's removal from an HRP position, and directs reinstatement.

*HRP management official* means an individual designated by the DOE or a DOE contractor, as appropriate, who has programmatic responsibility for HRP positions.

*Illegal drug* means a controlled substance, as specified in Schedules I through V of the Controlled Substances Act, 21 U.S.C. 811 and 812; the term does

not apply to the use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by Federal law.

*Impaired or impairment* means a decrease in functional capacity of a person that is caused by a physical, mental, emotional, substance abuse, or behavioral disorder.

*Incident* means an unplanned, undesired event that interrupts the completion of an activity and that may include property damage or injury.

*Job task analysis* means the formal process of defining the requirements of a position and identifying the knowledge, skills, and abilities necessary to effectively perform the duties of the position.

*Manager* means the senior Federal line manager at a departmental site or Federal office with HRP-designated positions.

*Material access area* means a type of Security Area that is authorized to contain a Category I quantity of special nuclear material and that has specifically defined physical barriers, is located within a Protected Area, and is subject to specific access controls.

*Medical assessment* means an evaluation of an HRP candidate and HRP-certified individual's present health status and health risk factors by means of:

- (1) Medical history review;
- (2) Job task analysis;
- (3) Physical examination;
- (4) Appropriate laboratory tests and measurements; and
- (5) Appropriate psychological and psychiatric evaluations.

*Nuclear explosive* means an assembly of fissionable and/or fusionable materials and main charge high explosive parts or propellants that is capable of producing a nuclear detonation.

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

*Occurrence* means any event or incident that is a deviation from the planned or expected behavior or course of events in connection with any DOE or DOE-controlled operation if the deviation has environmental, public health and safety, or national security protection significance, including (but not limited to) incidents involving:

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(1) Injury or fatality to any person involving actions of a DOE employee or contractor employee;

(2) An explosion, fire, spread of radioactive material, personal injury or death, or damage to property that involves nuclear explosives under DOE jurisdiction;

(3) Accidental release of pollutants that results from, or could result in, a significant effect on the public or environment; or

(4) Accidental release of radioactive material above regulatory limits.

*Psychological assessment or test* means a scientifically validated instrument designed to detect psychiatric, personality, and behavioral tendencies that would indicate problems with reliability and judgment.

*Random alcohol testing* means the unscheduled, unannounced alcohol testing of randomly selected employees by a process designed to ensure that selections are made in a nondiscriminatory manner.

*Random drug testing* means the unscheduled, unannounced drug testing of randomly selected employees by a process designed to ensure that selections are made in a nondiscriminatory manner.

*Reasonable suspicion* means a suspicion based on an articulable belief that an individual uses illegal drugs or is under the influence of alcohol, drawn from reasonable inferences from particular facts, as detailed further in part 707 of this title.

*Recertification* means the action the HRP certifying official takes annually, not to exceed 12 months, that permits an employee to remain in the HRP and perform HRP duties.

*Reinstatement* means the action taken after it has been determined that an employee who has been temporarily removed from the HRP meets the certification requirements of this part and can be returned to HRP duties, contingent on the individual completing any and all components of the annual recertification process under §712.11 and any other specific requirements that must be completed in order to return to full HRP duties.

*Reliability* means an individual's ability to adhere to security and safety rules and regulations.

*Restoration* means the actions necessary to restore an individual's HRP duties after a final decision has been made by the cognizant Under Secretary or his/her designee to overturn the revocation decision. The restoration of HRP duties is contingent on the individual completing any and all components of the annual recertification process under §712.11 and any other specific requirements that must be completed in order to return to full HRP duties.

*Safety concern* means any condition, practice, or violation that causes a reasonable probability of physical harm, property loss, and/or environmental impact.

*Security concern* means the presence of information regarding an individual that raises a question as to whether HRP certification and recertification would endanger the common defense and security and would be clearly consistent with the national interest.

*Semi-structured interview* means an interview by a Designated Psychologist, or a psychologist under his or her supervision, who has the latitude to vary the focus and content of the questions depending on the interviewee's responses.

*Site Occupational Medical Director (SOMD)* means the physician responsible for the overall direction and operation of the occupational medical program at a particular site or program.

*Supervisor* means the individual who has oversight and organizational responsibility for a person holding an HRP position, and whose duties include evaluating the behavior and performance of the HRP-certified individual.

*Transfer* means an HRP-certified individual moving from one site to another site.

*Unacceptable damage* means an incident that could result in a nuclear detonation; high-explosive detonation or deflagration from a nuclear explosive; the diversion, misuse, or removal of Category I special nuclear material; or an interruption of nuclear explosive operations with a significant impact on national security.

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*Unsafe practice* means either a human action departing from prescribed hazard controls or job procedures or practices, or an action causing a person unnecessary exposure to a hazard.

[83 FR 18200, Apr. 26, 2018, as amended at 88 FR 41292, June 26, 2023]

### § 712.4 Exemptions.

The Department is authorized to grant exemptions from the requirements in § 712.11 of this part as it determines are authorized by law. Exemptions from requirements in this part are allowed only on a case-by-case basis. All requests for an exemption should be submitted in writing from the Manager to the Director, Office of Environment, Health, Safety and Security for coordination, and approval by the cognizant Under Secretary. A request for an exemption shall be approved only if the cognizant Under Secretary determines that the exemption will not endanger life or property or the common defense and security, and is otherwise consistent with the national interest. The procedures in this section shall not be used to establish stricter recertification standards than those required by § 712.11.

[83 FR 18200, Apr. 26, 2018, as amended at 88 FR 41292, June 26, 2023]

### PROCEDURES

### § 712.10 Designation of HRP positions.

(a) HRP certification is required for each individual assigned to, or applying for, a position that:

(1) Affords access to Category I SNM or has responsibility for transportation or protection of Category I quantities of SNM;

(2) Involves nuclear explosive duties or has responsibility for working with, protecting, or transporting nuclear explosives, nuclear devices, or selected components;

(3) Affords access to information concerning vulnerabilities in protective systems when transporting nuclear explosives, nuclear devices, selected components, or Category I quantities of SNM; or

(4) Is not included in paragraphs (a)(1) through (3) of this section but affords the potential to significantly impact national security or cause unac-

ceptable damage and is approved pursuant to paragraph (b) of this section.

(b) The Manager or the HRP management official may nominate positions for the HRP that are not specified in paragraphs (a)(1) through (3) of this section or that have not previously been designated HRP positions. All such nominations must be submitted to and approved by either the NNSA Administrator, his or her designee, the Director, Office of Environment, Health, Safety and Security or the appropriate Lead Program Secretarial Officer, or his or her designee.

(c) Before nominating a position for designation as an HRP position, the Manager or the HRP management official must analyze the risks the position poses for the particular operational program. If the analysis shows that more restrictive physical, administrative, or other controls could be implemented that would prevent the position from being designated an HRP position, those controls will be implemented, if practicable.

(d) Nothing in this part prohibits contractors from establishing stricter employment standards for individuals who are nominated to DOE for certification or recertification in the HRP.

[83 FR 18200, Apr. 26, 2018, as amended at 88 FR 41292, June 26, 2023]

### § 712.11 General requirements for HRP certification.

(a) The following requirements apply to each individual applying for or in an HRP position:

(1) A DOE "Q" access authorization;

(2) Signed releases, acknowledgments, and waivers to participate in the HRP on forms provided by DOE;

(3) Completion of initial and annual HRP instruction as provided in § 712.17;

(4) Successful completion of an initial and annual supervisory review, medical assessment, management evaluation, and a DOE personnel security review;

(5) No use of any hallucinogen in the preceding 5 years and no experience of flashback resulting from the use of any hallucinogen more than 5 years before applying for certification or recertification;

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(6) An initial drug test and random drug tests for the use of illegal drugs at least once each 12 months;

(7) An initial alcohol test and random alcohol tests at least once each 12 months; and

(8) For designated positions, identified pursuant to 10 CFR part 709, successful completion of a counterintelligence evaluation, which may include a counterintelligence-scope polygraph examination in accordance with DOE's Polygraph Examination Regulation, 10 CFR part 709, and any subsequent revisions to that regulation.

(b) Each HRP candidate must be certified in the HRP before being assigned to HRP duties and must be recertified annually, not to exceed 12 months between recertifications.

(c) Individuals in newly identified HRP positions must immediately sign the releases, acknowledgments, and waivers to participate in the HRP and complete initial instruction on the importance of security, safety, reliability, and suitability. If these requirements are not met, the individual must be removed from the HRP position. All remaining HRP requirements listed in paragraph (a) of this section must be completed in an expedited manner.

(d) Alcohol consumption is prohibited within an eight-hour period preceding scheduled work for individuals performing nuclear explosive duties and for individuals in specific positions designated by either the Manager, the NNSA Administrator, his or her designee, or the appropriate Lead Program Secretarial Officer, or his or her designee.

(e) Individuals reporting for unscheduled nuclear explosive duties and those specific positions designated by either the Manager, the NNSA Administrator or his or her designee, or the appropriate Lead Program Secretarial Officer, or his or her designee, will be asked prior to performing any type of work if they have consumed alcohol within the preceding eight-hour period. If they answer "no," they may perform their assigned duties but still may be tested.

(f) Any doubt as to an HRP candidate's or HRP certified individual's eligibility for certification shall be resolved against the candidate or indi-

vidual in favor of national security and/or safety.

**§712.12 HRP implementation.**

(a) The implementation of the HRP is the responsibility of the appropriate Manager or his or her designee.

(b) The HRP Management Official must prepare an HRP implementation plan and submit it to the applicable Manager for review and approval. The implementation plan must:

(1) Be reviewed and updated every 2 years;

(2) Include the four annual components of the HRP process: supervisory review, medical assessment, management evaluation (which includes random drug and alcohol testing), and a DOE personnel security determination; and

(3) Include the HRP instruction and education component described in §712.17 of this part.

(c) The Under Secretary for Nuclear Security, or his/her designee, must:

(1) Provide advice and assistance to the Director, Office of Environment, Health, Safety and Security regarding policies, standards, and guidance for all nuclear explosive duty requirements; and

(2) Be responsible for implementation of all nuclear explosive duty safety requirements.

(d) The Director, Office of Environment, Health, Safety and Security, or designee, is responsible for HRP policy and must:

(1) Ensure consistency of the HRP throughout the DOE and NNSA;

(2) Review and comment on all HRP implementation plans to ensure consistency with policy; and

(3) Provide policies and guidance, including instructional materials, to NNSA and non-NNSA field elements concerning the HRP, as appropriate.

(e) The Manager must:

(1) Review and approve the HRP implementation plan for sites/facilities under their cognizance and forward the plan to the Director, Office of Corporate Security Strategy, or designee; and

(2) Ensure that the HRP is implemented at the sites/facilities under their cognizance.

(f) The HRP certifying official must:

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(1) Approve placement, certification, reinstatement, and recertification of individuals into HRP positions; for unresolved temporary removals, follow the process in § 712.19(f);

(2) Ensure that instructional requirements are implemented;

(3) Immediately notify (for the purpose of limiting access) the appropriate HRP management official of a personnel security action that results in the suspension of access authorization; and

(4) Ensure that the supervisory review, medical assessment, and management evaluation, including drug and alcohol testing, are conducted on an annual basis (not to exceed 12 months).

(g) Individuals assigned to HRP duties must:

(1) Execute HRP releases, acknowledgments, and waivers to facilitate the collection and dissemination of information, the performance of drug and alcohol testing, and medical examinations;

(2) Notify the Designated Physician, the Designated Psychologist, or the SOMD immediately of a physical or mental condition requiring medication or treatment;

(3) Report any observed or reported behavior or condition of another HRP-certified individual that could indicate a reliability concern, including those behaviors and conditions listed in § 712.13(c), to a supervisor, the Designated Physician, the Designated Psychologist, the SOMD, or the HRP management official; and

(4) Report to a supervisor, the Designated Physician, the Designated Psychologist, the SOMD, or the HRP management official, any behavior or condition, including those listed in § 712.13(c), that may affect his or her ability to perform HRP duties.

[83 FR 18200, Apr. 26, 2018, as amended at 88 FR 41292, June 26, 2023]

### § 712.13 Supervisory review.

(a) The supervisor must ensure that each HRP candidate and each individual occupying an HRP position but not yet HRP certified executes the appropriate HRP releases, acknowledgments, and waivers. If these documents are not executed:

(1) The request for HRP certification may not be further processed until these requirements are completed; and

(2) The individual is immediately removed from the position.

(b) Each supervisor of HRP-certified personnel must conduct an annual review of each HRP-certified individual during which the supervisor must evaluate information, based on his or her personal knowledge that is relevant to the individual's suitability to perform HRP tasks in a reliable and safe manner.

(c) The supervisor must report any concerns resulting from his or her review to the appropriate HRP management official. Types of behavior and conditions that would indicate a concern include, but are not limited to:

(1) Psychological or physical disorders that impair performance of assigned duties;

(2) Conduct that warrants referral for a criminal investigation or results in arrest or conviction;

(3) Indications of deceitful or delinquent behavior;

(4) Attempted or threatened destruction of property or life;

(5) Suicidal tendencies or attempted suicide;

(6) Use of illegal drugs or the abuse of legal drugs or other substances;

(7) Alcohol use disorders;

(8) Recurring financial irresponsibility;

(9) Irresponsibility in performing assigned duties;

(10) Inability to deal with stress, or the appearance of being under unusual stress;

(11) Failure to comply with work directives, hostility or aggression toward fellow workers or authority, uncontrolled anger, violation of safety or security procedures, or repeated absenteeism;

(12) Significant behavioral changes, moodiness, depression, or other evidence of loss of emotional control; and

(13) Any unusual conduct or being subject to any circumstances which tend to show that the individual is not reliable.

(d) A supervisor must immediately remove an individual from HRP duties:

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(1) When the supervisor has a reasonable belief that the individual is not reliable, based on either a safety or security concern based on one or more of the types of behaviors and conditions identified in §712.13(c);

(2) When the individual does not obtain HRP recertification; or

(3) When requested to do so by the HRP certifying official and/or HRP management official.

(e) The supervisor must contact the appropriate personnel office for guidance as to any actions that should occur as a result of the immediate removal.

(f) Immediate removal: If the supervisor immediately removes an HRP-certified individual for any reason specified in this part, he or she must, at a minimum:

(1) Require the individual to stop performing HRP duties;

(2) Take action to ensure the individual is denied both escorted and unescorted access to the material access areas; and

(3) Notify, within 24 hours, the HRP management official of the immediate removal. The HRP management official shall take actions consistent with §712.19.

### §712.14 Medical assessment.

(a) *Purpose.* The HRP medical assessment is performed to evaluate whether an HRP candidate or an HRP-certified individual:

(1) Represents a security concern; or

(2) Has a condition that may prevent the individual from performing HRP duties in a reliable and safe manner.

(b) *When performed.* (1) The medical assessment is performed initially on HRP candidates and individuals occupying HRP positions who have not yet received HRP certification. The medical assessment is performed annually for HRP-certified individuals, or more often as required by the SOMD.

(2) The Designated Physician and other examiners working under the direction of the Designated Physician also will conduct an evaluation:

(i) If an HRP-certified individual requests an evaluation (*i.e.*, self-referral); or

(ii) If an HRP-certified individual is referred by management for an evaluation.

(c) *Process.* The Designated Physician, under the supervision of the SOMD, is responsible for the medical assessment of HRP candidates and HRP-certified individuals. In performing this responsibility, the Designated Physician or the SOMD must integrate the medical evaluations, available testing results, psychological evaluations, any psychiatric evaluations, a review of current legal drug use, and any other relevant information. This information is used to determine if a reliability, safety, or security concern exists and if the individual is medically qualified for his or her assigned duties.

(d) *Evaluation.* The Designated Physician, with the assistance of the Designated Psychologist, must determine the existence or nature of any of the following:

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

(2) Mental/personality disorders or behavioral problems, including alcohol and other substance use disorders, as described in the *Diagnostic and Statistical Manual of Mental Disorders*;

(3) Use of illegal drugs or the abuse of legal drugs or other substances, as identified by self-reporting or by medical or psychological evaluation or testing;

(4) Threat of suicide, homicide, or physical harm; or

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

(e) *Job task analysis.* Before the initial or annual medical assessment and psychological evaluation, employers must provide, to both the Designated Physician and Designated Psychologist, a job task analysis for each HRP candidate or HRP-certified individual. Medical assessments and psychological evaluations may not be performed if a

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job task analysis has not been provided.

(f) *Psychological evaluations.* Psychological evaluations must be conducted:

(1) For initial HRP certification. This psychological evaluation consists of a psychological assessment (test), approved by the Director, Office of Environment, Health, Safety and Security or his or her designee, and a semi-structured interview.

(2) For recertification: This psychological evaluation consists of a semi-structured interview. A psychological assessment (test) may also be conducted as warranted.

(3) Every third year: The medical assessment for recertification must include a psychological assessment (test) approved by the Director, Office of Environment, Health, Safety and Security or his or her designee. This requirement can be implemented over a 3-year period for individuals who are currently in an HRP position.

(4) When additional psychological or psychiatric evaluations are required by the SOMD to resolve any concerns.

(g) *Return to work after sick leave.* HRP-certified individuals who have been on sick leave for five or more consecutive days, or an equivalent time period for those individuals on an alternative work schedule, must report in person to the Designated Physician, the Designated Psychologist, or the SOMD before being allowed to return to normal duties. The Designated Physician, the Designated Psychologist, or the SOMD must provide a written recommendation to the appropriate HRP supervisor regarding the individual's return to work. An HRP-certified individual also may be required to report to the Designated Physician, the Designated Psychologist, or the SOMD for written recommendation to return to normal duties after any period of sick leave.

(h) *Temporary removal or restrictions.* The Designated Physician, the Designated Psychologist, or the SOMD may recommend temporary removal of an individual from an HRP position or restrictions on an individual's work in an HRP position if a medical condition or circumstance develops that affects the individual's ability to perform assigned job duties. The Designated Phy-

sician, the Designated Psychologist, or the SOMD must immediately recommend medical removal or medical restrictions in writing to the appropriate HRP management official. If the HRP management official concurs, he or she will then notify the appropriate HRP certifying official. To reinstate or remove such restrictions, the Designated Physician, the Designated Psychologist, or the SOMD must make written recommendation to the HRP management official. The HRP management official will then notify the appropriate HRP certifying official.

(i) *Medical evaluation after rehabilitation.* (1) Individuals who request reinstatement in the HRP following rehabilitative treatment for alcohol use disorder, use of illegal drugs, or the abuse of legal drugs or other substances, must undergo an evaluation, as prescribed by the SOMD, to ensure continued rehabilitation and adequate capability to perform their job duties.

(2) The HRP certifying official may reinstate HRP certification of an individual who successfully completes an SOMD-approved drug or alcohol rehabilitation program. Recertification is based on the SOMD's follow-up evaluation and recommendation. The individual is also subject to unannounced follow-up tests for illegal drugs or alcohol and relevant counseling for 3 years.

(j) *Medication and treatment.* HRP-certified individuals are required to immediately report to the Designated Physician, the Designated Psychologist, or the SOMD any physical or mental condition requiring medication or treatment. The Designated Physician, the Designated Psychologist, or the SOMD determines if temporary removal of the individual from HRP duties is recommended and follows the procedures pursuant to paragraph (h) of this section.

[83 FR 18200, Apr. 26, 2018, as amended at 88 FR 41292, June 26, 2023]

### § 712.15 Management evaluation.

(a) *Evaluation components.* An evaluation by the HRP management official is required before an individual can be considered for initial certification or recertification in the HRP. This evaluation must be based on a careful review of the results of the supervisory

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review, medical assessment, and drug and alcohol testing. If a safety or security concern is identified with respect to an HRP-certified individual, the HRP management official must take actions consistent with §712.19(a).

(b) *Drug testing.* All HRP candidates and HRP-certified individuals are subject to testing for the use of illegal drugs, as required by this part. Testing must be conducted in accordance with 10 CFR part 707, the workplace substance abuse program for DOE contractor employees, and DOE Order 343.1, “Federal Substantive Abuse Testing Program,” for DOE employees. The program must include an initial drug test, random drug tests at least once every 12 months from the previous test, and tests of HRP-certified individuals if they are involved in an incident, unsafe practice, occurrence, or based on reasonable suspicion. Failure to appear for unannounced testing within 2 hours of notification constitutes a refusal to submit to a test. Sites may establish a shorter time period between notification and testing but may not exceed the two-hour requirement. If an HRP-certified individual refuses to submit to a drug test or, based on a drug test, is determined to use illegal drugs, the supervisor must immediately remove the individual from HRP duties and take actions consistent with §712.13(f).

(c) *Alcohol testing.* All HRP candidates and HRP-certified individuals are subject to testing for the use of alcohol, as required by this part. The alcohol testing program must include, as a minimum, an initial alcohol test prior to performing HRP duties and random alcohol tests at least once every 12 months from the previous test, and tests of HRP-certified individuals if they are involved in an incident, unsafe practice, occurrence, or based on reasonable suspicion. The supervisor who has been informed that an HRP-certified individual’s confirmatory breath alcohol test result is at or above an alcohol concentration of 0.02 percent shall send that individual home and not allow that individual to perform HRP duties for 24 hours, and take all appropriate administrative action consistent with §712.13(f).

(1) Breath alcohol testing must be conducted by a certified breath alcohol

technician and conform to the DOT procedures (49 CFR part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs, subparts J through N) for use of an evidential-grade breath analysis device approved for 0.02/0.04 cutoff levels, which conforms to the DOT model specifications and the most recent “Conforming Products List” issued by NHTSA.

(2) An individual required to undergo DOT alcohol testing is subject to the regulations of the DOT. If such an individual’s blood alcohol level exceeds DOT standards, the individual’s employer may take appropriate disciplinary action.

(3) The following constitutes a refusal to submit to a test and shall be considered as a positive alcohol concentration test of 0.02 percent, which requires the individual be sent home and not allowed to perform HRP duties for 24 hours:

(i) Failure to appear for unannounced testing within 2 hours of notification (or established shorter time for the specific site);

(ii) Failure to provide an adequate volume of breath in 2 attempts without a valid medical excuse; and

(iii) Engaging in conduct that clearly obstructs the testing process, including failure to cooperate with reasonable instructions provided by the testing technician.

(d) *Occurrence testing.* (1) When an HRP-certified individual is involved in, or associated with, an occurrence requiring immediate reporting to the DOE, the following procedures must be implemented:

(i) Testing for the use of illegal drugs in accordance with the provisions of the DOE policies implementing Executive Order 12564, and 10 CFR part 707 or DOE Order 3792.3, which establish workplace substance abuse programs for contractor and DOE employees, respectively.

(ii) Testing for use of alcohol in accordance with this section.

(2) Testing must be performed as soon as possible after an occurrence that requires immediate notification or reporting.

(3) The supervisor must immediately remove an HRP-certified individual

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from HRP duties if the individual refuses to undergo the testing required by this subsection.

(e) *Testing for reasonable suspicion.* (1) If the behavior of an individual in an HRP position creates the basis for reasonable suspicion of the use of an illegal drug or alcohol, that individual must be tested if two or more supervisory or management officials, at least one of whom is in the direct chain of supervision of the individual or is the Designated Physician, the Designated Psychologist, or the SOMD, agree that such testing is appropriate.

(2) Reasonable suspicion must be based on an articulable belief, drawn from facts and reasonable inferences from those particular facts that an HRP-certified individual is in possession of, or under the influence of, an illegal drug or alcohol. Such a belief may be based on, among other things:

(i) Observable phenomena, such as direct observation of the use or possession of illegal drugs or alcohol, or the physical symptoms of being under the influence of drugs or alcohol;

(ii) A pattern of abnormal conduct or erratic behavior;

(iii) Information provided by a reliable and credible source that is independently corroborated; or

(iv) Detection of alcohol odor on the breath.

(f) *Counterintelligence evaluation.* HRP candidates and, when selected, HRP-certified individuals, must submit to and successfully complete a counterintelligence evaluation, which may include a polygraph examination in accordance with 10 CFR part 709, Polygraph Examination Regulations and any subsequent revisions to that regulation.

### § 712.16 Security review.

(a) A personnel security specialist must review the personnel security file of every HRP candidate and every HRP-certified individual up for certification or recertification.

(b) If the personnel security file review is favorable, this information must be forwarded to the HRP certifying official and so noted on the certification form. If the review reveals a security concern, or if a security concern is identified during another com-

ponent of the HRP process, the HRP certifying official must be notified, and the personnel security specialist must evaluate the concern in accordance with 10 CFR part 710. If a final determination is made by DOE personnel security to suspend access authorization, the HRP management official must be notified, the individual shall be temporarily removed from the HRP position, the HRP certifying official notified, and the information noted on the certification form.

(c) A favorable adjudication of security concerns under 10 CFR part 710 does not require granting or continuing HRP certification. Security concerns can be reviewed and evaluated for purposes of granting or continuing HRP certification even if the concerns have been favorably resolved under part 710.

(d) Any mental/personality disorder or behavioral issues found in a personnel security file, which could impact an HRP candidate or HRP-certified individual's ability to perform HRP duties, may be provided in writing to the SOMD, Designated Physician, and Designated Psychologist previously identified for receipt of this information. Medical personnel may not share any information obtained from the personnel security file with anyone who is not an HRP certifying official, except as consistent with the Privacy Act of 1974.

(e) If the DOE personnel security review is not completed within the 12-month time period for recertification and the individual's access authorization is not suspended, the HRP certification form shall be forwarded to the HRP certifying official for recertification or temporary removal, pending completion of the personnel security review.

### § 712.17 Instructional requirements.

(a) HRP management officials at each DOE site or facility with HRP positions must establish an initial and annual HRP instruction and education program. The program must provide:

(1) HRP candidates, HRP-certified individuals, supervisors, and managers, and supervisors and managers responsible for HRP positions with the knowledge described in paragraph (b)(1) of this section; and

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(2) For all HRP medical personnel, a detailed explanation of HRP duties and responsibilities.

(b) The following program elements must be included in initial and annual instruction. The elements may be tailored to accommodate group differences and refresher training needs:

(1) The objectives of the HRP and the role and responsibilities of each individual in the HRP to include recognizing and responding to behavioral change and aberrant or unusual behavior that may result in a risk to national security or nuclear explosive safety; recognizing and reporting safety and/or security concerns, physical, mental, or emotional conditions that could adversely affect the performance of HRP duties or that require treatment by a doctor, physician's assistant or other health care professional; and prescription drug use; and an explanation of return-to-work requirements and continuous evaluation of HRP participants; and

(2) For those who have nuclear explosive responsibilities, a detailed explanation of duties and safety requirements.

### §712.18 Transferring HRP certification.

(a) For HRP certification to be transferred, the individual must currently be certified in the HRP.

(b) Transferring the HRP certification from one site to another requires the following before the individual is allowed to perform HRP duties at the new site:

(1) Verify that the individual is currently certified in the HRP and is transferring into a designated HRP position;

(2) Incorporate the individual into the new site's alcohol and drug-testing program;

(3) Ensure that the 12-month time period for HRP requirements that was established at the prior site is not exceeded; and

(4) Provide site-specific instruction.

(c) Temporary assignment to HRP positions at other sites requires verification that the individual is currently enrolled in the HRP and has completed all site-specific instruction. The individual is required to return to

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the site that maintains his or her HRP certification for recertification.

### §712.19 Actions related to removal, revocation and/or reinstatement.

(a) *Temporary removal.* The HRP management official shall direct the temporary removal of an HRP-certified individual when the management official:

(1) Identifies, during the course of the management evaluation, a safety or security concern that warrants such removal based on one or more of the types of behaviors and conditions identified in §712.13(c);

(2) Receives a supervisor's written notice of the immediate removal of an HRP-certified individual; or

(3) Receives a recommendation from the Designated Physician, the Designated Psychologist, or the SOMD to medically remove an HRP-certified individual consistent with §712.14(h).

(b) The temporary removal of an HRP-certified individual from HRP duties pending a determination of the individual's reliability is an interim, precautionary action and does not constitute a determination that the individual is not fit to perform his or her required duties. Removal is not, in itself, cause for loss of pay, benefits, or other changes in employment status. Immediately upon directing a temporary removal, the HRP management official must notify the supervisor to take appropriate actions consistent with an immediate removal. Within five (5) business days of placing the individual on a temporary removal, the HRP management official must notify the individual in writing that s/he is temporarily removed.

(c) If temporary removal is based on derogatory information that is a security concern, the HRP management official must notify the HRP certifying official and the applicable DOE personnel security office.

(d) If temporary removal is based on a medical concern, the HRP management official must obtain a recommendation from the Designated Physician, Designated Psychologist, or the SOMD consistent with §712.14(h).

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(e) If the HRP management official determines, after conducting an evaluation of the circumstances or information that led to the temporary removal, that an individual who has been temporarily removed continues to meet the requirements for certification, the HRP management official must:

(1) Direct that the supervisor reinstate the individual and provide written explanation of the reasons and factual bases for the action;

(2) Notify the individual; and

(3) Notify the HRP certifying official.

(f) If the HRP management official determines that an individual who has been temporarily removed does not meet the HRP requirements for certification, the HRP management official must prepare a case chronology that explains why the individual does not meet the requirement for certification and forward it to the HRP certifying official. The HRP management official's determination that an individual does not meet certification requirement must be based on one or more of the types of behaviors and conditions identified in § 712.13(c). The HRP certifying official must review the case chronology from the HRP management official and take one of the following actions:

(1) Direct that the supervisor reinstate the individual, with any applicable medical restrictions, provide written explanation of the reasons and factual bases for the action, and notify the individual;

(2) Direct continuation of the temporary removal pending completion of specified actions (e.g., medical assessment, treatment) to resolve the concerns about the individual's reliability; or

(3) Recommend to the Manager the revocation of the individual's certification and provide the case chronology to the Manager. If the HRP certifying official is the Manager, he or she should take actions consistent with paragraph (g)(2) of this section.

(g) The Manager, on receiving the HRP management official's case chronology and the HRP certifying official's recommendation (if any), must take one of the following actions:

(1) Direct that the supervisor reinstate the individual, provide written explanation of the reasons and factual bases for the action, and notify the individual;

(2) Direct revocation of the individual's HRP certification, in accordance with paragraph (h) of this section; or

(3) Direct continuation of the temporary removal pending completion of specified actions (e.g., medical assessment, treatment) to resolve the concerns about the individual's reliability.

(h) Notification of Manager's initial decision: If the action is revocation, the Manager must direct the HRP management official to prepare an evaluative report. The appropriate DOE or NNSA counsel must review the evaluative report for legal sufficiency. Upon completion of the evaluative report, the Manager must send a letter by certified mail (return receipt requested) or hand deliver it with record of delivery to the individual whose certification is revoked notifying him or her of the reasons for the revocation and the options for review. The evaluative report must be appended to the letter. The Manager may withhold such a report, or portions thereof, to the extent that he or she determines that the report, or portions thereof, may be exempt from access by the employee under the Privacy Act or the Freedom of Information Act.

(i) If an individual is directed by the Manager or HRP certifying official to take specified actions to resolve HRP concerns pursuant to paragraph (f)(2) or (g)(3) of this section he or she must be reevaluated after those actions have been completed, and the Manager must direct either:

(1) Reinstatement of the individual; or

(2) Revocation of the individual's HRP certification. In the case of revocation, the HRP management official will be directed to prepare an evaluative report.

### **§ 712.20 Request for reconsideration or certification review hearing.**

(a) An individual who receives notification of the Manager's decision to revoke his or her HRP certification under § 712.19 may choose one of the following options:

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(1) Submit a written request to the Manager for reconsideration of the decision to revoke certification. The request must include the individual's response to the information that gave rise to the concern. The request must be sent by certified mail to the Manager within 20 working days after the individual received notice of the Manager's decision; or

(2) Submit a written request to the Manager for a certification review hearing. The request for a hearing must be sent by certified mail to the Manager within 20 working days after the individual receives notice of the Manager's decision.

(b) If an individual requests reconsideration by the Manager but not a certification review hearing, the Manager must, within 20 working days after receipt of the individual's request, send by certified mail (return receipt requested) a final agency decision to the individual.

(c) If an individual requests a certification review hearing, the Manager must forward the request to the Office of Hearings and Appeals.

(d) If an individual takes no action within 20 working days after receipt of the Manager's decision, the Manager's decision will become a final agency decision.

### § 712.21 Appointment of DOE counsel.

(a) Upon receipt from the individual of a written request for a certification review hearing, the Manager shall request appointment of DOE counsel as soon as possible.

(b) DOE Counsel is authorized to consult directly with the individual if he is not represented by counsel, or with the individual's counsel or representative if so represented, to clarify issues and reach stipulations with respect to testimony and contents of documents and other physical evidence. Such stipulations shall be binding upon the individual and the DOE Counsel for the purposes of this subpart.

### § 712.22 Office of Hearings and Appeals.

(a) Upon receipt of the hearing request from the Manager, the Director, DOE Office of Hearings and Appeals,

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shall appoint, as soon as practicable, an Administrative Judge.

(b) The Administrative Judge must have a DOE "Q" access authorization.

(c) An individual who requests a certification review hearing has the right to appear personally before the Administrative Judge; to present evidence in his or her own behalf, through witnesses or by documents, or by both; and to be accompanied and represented at the hearing by counsel or any other person of the individual's choosing and at the individual's own expense.

(d) An individual must come forward with evidence to demonstrate that the decision to revoke his or her HRP certification was clearly erroneous or that extraordinary circumstances warrant recertification into HRP. Evidence that the individual has rehabilitated or reformed since the time of the Manager's decision will not be considered by the Administrative Judge.

(e) DOE Counsel shall assist the Administrative Judge in establishing a complete administrative hearing record in the proceeding and bringing out a full and true disclosure of all facts, both favorable and unfavorable, having bearing on the issues before the Administrative Judge.

(f) In conducting the proceedings, the Administrative Judge will:

(1) Determine the date, time, and location of the hearing, including whether the hearing will be conducted by video teleconference;

(2) At least 7 calendar days prior to date scheduled for the hearing, convene a prehearing conference for the purpose of discussing stipulations and exhibits, identifying witnesses, and disposing of other appropriate matters. The conference will usually be conducted by telephone;

(3) Receive all relevant and material information relating to the individual's fitness for HRP duties through witnesses or documentation;

(4) Ensure that the individual is permitted to offer information in his or her behalf; to call, examine, and cross-examine witnesses and other persons who have made written or oral statements, and to present and examine documentary evidence to the extent permitted by national security;

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

(6) Ensure that a transcript of the certification review proceedings is made; and

(7) Not engage in ex parte communications with either party.

(g) The Administrative Judge shall have all powers necessary to regulate the conduct of proceedings, including, but not limited to, establishing a list of persons to receive service of papers, issuing subpoenas for witnesses to attend the hearing or for the production of specific documents or other physical evidence, administering oaths and affirmations, ruling upon motions, receiving evidence, regulating the course of the hearing, disposing of procedural requests or similar matters, and taking other actions consistent with the regulations in this part. Requests for subpoenas shall be granted except where the Administrative Judge finds that the grant of subpoenas would clearly result in evidence or testimony that is repetitious, incompetent, irrelevant, or immaterial to the issues in the case.

(h) The Administrative Judge may return a case to the HRP Manager for a final agency decision consistent with § 712.20(b) if—

(1) The individual or his or her attorney fails to heed the instructions of the Administrative Judge;

(2) The individual fails to appear at the appointed time, date and location for the certification review hearing;

(3) The individual otherwise fails to cooperate at the hearing phase of the process; or

(4) The individual withdraws his/her request for a certification review hearing.

(i) Based on a review of the administrative hearing record, the Administrative Judge shall prepare a decision regarding the individual's eligibility for recertification in the HRP, which shall consist of written findings and a supporting statement of reasons. In making a decision, the Administrative Judge shall ensure that any doubt as to an individual's certification shall be resolved against the individual in favor of national security and/or safety.

### § 712.23 Administrative Judge's decision.

(a) Within 30 calendar days of the receipt of the hearing transcript by the Administrative Judge or the closing of the record, whichever is later, the Administrative Judge should forward his or her decision to the Director, Office of Environment, Health, Safety and Security. The Administrative Judge's decision must be accompanied by a copy of the record.

(b) Within 10 calendar days of receipt of the decision and the administrative record, the Director, Office of Environment, Health, Safety and Security should:

(1) Notify the individual and Manager in writing of the Administrative Judge's decision;

(2) Advise the individual in writing of the appeal procedures available to the individual in paragraph (c) of this section if the decision is unfavorable to the individual;

(3) Advise the Manager in writing of the appeal procedures available to the Manager in paragraph (c) of this section if the decision is favorable to the individual; and

(4) Provide the individual and/or counsel or representative, and the Manager a copy of the Administrative Judge's decision and the administrative record.

(c) The individual or the Manager may file with the Director, Office of Environment, Health, Safety and Security a written request for further review of the decision by the cognizant Under Secretary along with a statement required by paragraph (e) of this section within 20 working days of the individual's or Manager's receipt of the Administrative Judge's decision;

(d) The copy of any request for further review of the individual's case by the cognizant Under Secretary filed by the Manager shall be provided to the individual by the Manager.

(e) The party filing a request for review of the individual's case by the cognizant Under Secretary shall include with the request a statement identifying the issues on which it wishes the cognizant Under Secretary to focus.

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(f) The Administrative Judge's decision shall be considered final if a written request for review is not filed in accordance with paragraph (c) of this section.

[83 FR 18200, Apr. 26, 2018, as amended at 88 FR 41292, June 26, 2023]

### § 712.24 Final decision by DOE Under Secretary.

(a) Within 10 calendar days of receipt of the written request for review, the Director, Office of Environment, Health, Safety and Security should forward to the cognizant Under Secretary the written request for review, the Administrative Judge's decision, and the administrative record.

(b) Upon receipt of the written request for review, the Administrative Judge's decision, and the administrative record, the cognizant Under Secretary, in consultation with the DOE General Counsel, will issue a final written decision. The cognizant Under Secretary may delegate this authority. In issuing a final decision, the cognizant Under Secretary shall expressly state that he or she is either revoking or restoring an individual's HRP certification. A copy of this decision must be sent by certified mail (return receipt requested) to the Manager and to the individual.

(c) The cognizant Under Secretary shall consider only that evidence and information in the administrative record at the time of the Administrative Judge's decision.

[83 FR 18200, Apr. 26, 2018, as amended at 88 FR 41292, June 26, 2023]

### § 712.25 Cooperation by the individual.

(a) It is the responsibility of the HRP candidate or HRP certified individual to provide full, frank, and truthful answers to relevant and material questions, and when requested, furnish, or authorize others to furnish, information that DOE deems pertinent to reach a decision regarding HRP certification or recertification. This obligation to cooperate applies at any stage, including but not limited to initial certification, recertification, temporary removal, revocation, and/or hearing. The individual or candidate may elect not to cooperate; however, such refusal

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may prevent DOE from reaching an affirmative finding required for granting or continuing HRP certification. In this event, any HRP certification then in effect may be revoked, or, for HRP candidates, may not be granted.

(b) An HRP certified individual who receives notification of the Manager's decision to revoke his or her certification due to failure to cooperate may choose one of the following options:

(1) Take no action; or

(2) Within 20 working days after the individual received notice of the Manager's revocation decision, submit a written request by certified mail to the Manager for reconsideration. The request must include the individual's response to the information that gave rise to the revocation decision.

(c) Upon receipt of the request for reconsideration, the Manager shall notify the individual, in writing, within 20 calendar days of receipt of the written appeal, as to whether the action to revoke certification was appropriate. If the Manager determines that the action was inappropriate, he or she shall reverse revocation.

## Subpart B—Medical Standards

### § 712.30 Applicability.

This subpart establishes standards and procedures for conducting medical assessments of DOE and DOE contractor individuals in HRP positions.

### § 712.31 Purpose.

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

(a) Identify the presence of any mental/personality disorders, physical, or behavioral characteristics or conditions that present or are likely to present an unacceptable impairment in reliability;

(b) Facilitate the early diagnosis and treatment of disease or impairment and foster accommodation and rehabilitation;

(c) Determine what functions an HRP-certified individual may be able to perform and to facilitate the proper placement of individuals; and

(d) Provide for continuing monitoring of the health status of individuals to facilitate early detection and

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correction of adverse health effects, trends, or patterns.

### § 712.32 Designated Physician.

(a) The Designated Physician must be qualified to provide professional expertise in the area of occupational medicine as it relates to the HRP.

(b) The Designated Physician must:

- (1) Be a graduate of an accredited school of medicine or osteopathy;
- (2) Have a valid, unrestricted state license to practice medicine in the state where HRP medical assessments occur;
- (3) Have met the applicable HRP instruction requirements; and
- (4) Be eligible for the appropriate DOE access authorization.

(c) The Designated Physician is responsible for the medical assessments of HRP candidates and HRP-certified individuals, including determining which components of the medical assessments may be performed by other qualified personnel. Although a portion of the assessment may be performed by another physician, physician's assistant, or nurse practitioner, the Designated Physician remains responsible for:

- (1) Supervising the evaluation process;
- (2) Interpreting the results of evaluations;
- (3) Documenting medical conditions or issues that may disqualify an individual from the HRP;
- (4) Providing medical assessment information to the Designated Psychologist to assist in determining psychological fitness;
- (5) Determining, in conjunction with DOE if appropriate, the location and date of the next required medical assessment; and
- (6) Signing a recommendation about the medical fitness of an individual for certification or recertification.

(d) The Designated Physician must immediately report to the SOMD any of the following about himself or herself:

- (1) Initiation of an adverse action by any state medical licensing board or any other professional licensing board;
- (2) Initiation of an adverse action by any Federal regulatory board since the last designation;

(3) The withdrawal of the privilege to practice by any institution;

(4) Being named a defendant in any criminal proceedings (felony or misdemeanor) since the last designation;

(5) Being evaluated or treated for alcohol use disorder or drug dependency or abuse since the last designation; or

(6) Occurrence, since the last designation, of a physical, mental/personality disorder, or health condition that might affect his or her ability to perform professional duties.

### § 712.33 Designated Psychologist.

(a) The Designated Psychologist reports to the SOMD and determines the psychological fitness of an individual to participate in the HRP. The results of this evaluation may be provided only to the Designated Physician or the SOMD.

(b) The Designated Psychologist must:

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

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

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

(4) Have met the applicable HRP instruction requirements; and

(5) Be eligible for the appropriate DOE access authorization.

(c) The Designated Psychologist is responsible for all psychological evaluations of HRP candidates, HRP-certified individuals, and others as directed by the SOMD. Although a portion of the psychological evaluation may be performed by another psychologist, the Designated Psychologist must:

(1) Supervise the psychological evaluation process and designate which components may be performed by other qualified personnel;

(2) Upon request of management, assess the psychological fitness of HRP candidates and HRP-certified individuals for HRP duties, including specific

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work settings, and recommend referrals as indicated; and

(3) Make referrals for psychiatric, psychological, substance abuse, or personal or family problems, and monitor the progress of individuals so referred.

(d) The Designated Psychologist must immediately report to the SOMD any of the following about himself or herself:

(1) Initiation of an adverse action by any state medical licensing board or any other professional licensing board;

(2) Initiation of an adverse action by any Federal regulatory board since the last designation;

(3) The withdrawal of the privilege to practice by any institution;

(4) Being named a defendant in any criminal proceeding (felony or misdemeanor) since the last designation;

(5) Being evaluated or treated for alcohol use disorder or drug dependency or abuse since the last designation; or

(6) Occurrence since the last designation of a physical, mental/personality disorder, or health condition that might affect his or her ability to perform professional duties.

### § 712.34 Site Occupational Medical Director.

(a) The SOMD must nominate a physician to serve as the Designated Physician and a clinical psychologist to serve as the Designated Psychologist. The nominations must be sent through the Manager to the Director, Office of Environment, Health, Safety and Security or his or her designee. Each nomination must describe the nominee's relevant training, experience, and licensure, and include a curriculum vitae and a copy of the nominee's current state or district license.

(b) The SOMD must submit a renomination report biennially through the Manager to the Director, Office of Environment, Health, Safety and Security or his or her designee. This report must be submitted at least 60 days before the second anniversary of the initial designation or of the last redesignation, whichever applies. The report must include:

(1) A statement evaluating the performance of the Designated Physician and Designated Psychologist during the previous designation period; and

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(2) A copy of the valid, unrestricted state or district license of the Designated Physician and Designated Psychologist.

(c) The SOMD must submit, annually, to the Director, Office of Environment, Health, Safety and Security or his or her designee through the Manager, a written report summarizing HRP medical activity during the previous year. The SOMD must comply with any DOE directives specifying the form or contents of the annual report.

(d) The SOMD must investigate any reports of performance issues regarding a Designated Physician or Designated Psychologist, and the SOMD may suspend either official from HRP-related duties. If the SOMD suspends either official, the SOMD must notify the Director, Office of Environment, Health, Safety and Security or his or her designee and provide supporting documentation and reasons for the action.

[69 FR 3223, Jan. 23, 2004, as amended at 71 FR 68731, Nov. 28, 2006; 83 FR 18208, Apr. 26, 2018; 88 FR 41292, June 26, 2023]

### § 712.35 Director, Office of Environment, Health, Safety and Security.

The Director, Office of Environment, Health, Safety and Security or his or her designee must:

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

(b) Review the qualifications of Designated Physicians and Designated Psychologists, and concur or non-concur with their designations by sending a statement to the Manager and an informational copy to the SOMD; and

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

[69 FR 3223, Jan. 23, 2004, as amended at 71 FR 68732, Nov. 28, 2006; 83 FR 18208, Apr. 26, 2018; 88 FR 41292, June 26, 2023]

### § 712.36 Medical assessment process.

(a) The Designated Physician, under the supervision of the SOMD, is responsible for the medical assessment of HRP candidates and HRP-certified individuals. In carrying out this responsibility, the Designated Physician or the SOMD must integrate the medical evaluations, psychological evaluations,

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psychiatric evaluations, and any other relevant information to determine an individual's overall medical qualification for assigned duties.

(b) Employers must provide a job task analysis for those individuals involved in HRP duties to both the Designated Physician and the Designated Psychologist before each medical assessment and psychological evaluation. HRP medical assessments and psychological evaluations may not be performed if a job task analysis has not been provided.

(c) The medical process by the Designated Physician includes:

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

(2) Evaluations resulting from self-referrals and referrals by management;

(3) Routine medical contacts and occupational and nonoccupational health counseling sessions; and

(4) Review of current legal drug use.

(d) Psychological evaluations must be conducted:

(1) For initial certification. This psychological evaluation consists of a generally accepted psychological assessment (test) approved by the Director, Office of Environment, Health, Safety and Security or his or her designee and a semi-structured interview.

(2) For recertification. This psychological evaluation consists of a semi-structured interview, which is conducted annually at the time of the medical examination.

(3) Every third year. The medical assessment for recertification must include a generally accepted psychological assessment (test) approved by the Director, Office of Environment, Health, Safety and Security or his or her designee.

(4) When the SOMD determines that additional psychological or psychiatric evaluations are required to resolve HRP concerns as listed in § 712.13(c).

(e) Following absences requiring return-to-work evaluations under applicable DOE directives, the Designated Physician, the Designated Psychologist, or the SOMD must determine whether a psychological evaluation is necessary.

(f) Except as provided in paragraph (g) of this section, the Designated Physician must forward the completed medical assessment of an HRP candidate and HRP-certified individual to the SOMD, who must make a recommendation, based on the assessment, to the individual's HRP management official. If the Designated Physician determines that a currently certified individual no longer meets the HRP requirements, the Designated Physician must immediately, orally, inform the HRP management official. A written explanation must follow within 24 hours.

(g) The Designated Physician, the Designated Psychologist, or the SOMD may make a medical recommendation for return to work and work accommodations for HRP-certified individuals.

(h) The following documentation is required after treatment of an individual for any disqualifying condition:

(1) A summary of the diagnosis, treatment, current status, and prognosis to be furnished by the treatment provider to the Designated Physician;

(2) The medical opinion of the Designated Physician advising the individual's supervisor whether the individual is able to return to work in either an HRP or non-HRP capacity; and

(3) Any periodic monitoring plan, approved by the Designated Physician or the Designated Psychologist and the SOMD, used to evaluate the reliability of the individual.

[69 FR 3223, Jan. 23, 2004, as amended at 71 FR 68731, Nov. 28, 2006; 83 FR 18208, Apr. 26, 2018; 88 FR 41292, June 26, 2023]

### **§ 712.37 Evaluation for hallucinogen use.**

If DOE determines that an HRP candidate or HRP-certified individual has used any hallucinogen, the individual is not eligible for certification or recertification unless:

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

(b) There is no evidence of any flashback within the last five years from the previous hallucinogen use; and

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

**§ 712.38**

**10 CFR Ch. III (1–1–25 Edition)**

**§ 712.38 Maintenance of medical records.**

(a) The medical records of HRP candidates and HRP-certified individuals must be maintained in accordance with the Privacy Act, 5 U.S.C. 552a, and DOE implementing regulations in 10 CFR part 1008; the Department of Labor’s regulations on access to individual exposure and medical records, 29 CFR 1910.1020; and applicable DOE directives. DOE contractors also may be subject to section 503 of the Rehabilitation Act, 29 U.S.C. 793, and its implementing rules, including confidentiality provisions in 41 CFR 60–741.23 (d).

(b) The psychological record of HRP candidates and HRP-certified individuals is a component of the medical record. The psychological record must:

- (1) Contain any clinical reports, test protocols and data, notes of individual contacts and correspondence, and other information pertaining to an individual’s contact with a psychologist;
- (2) Be stored in a secure location in the custody of the Designated Psychologist; and
- (3) Be kept separate from other medical record documents, with access limited to the SOMD and the Designated Physician.

**PART 715—DEFINITION OF NON-RECURSE PROJECT-FINANCED**

Sec.

715.1 Purpose and scope.

715.2 Definitions.

715.3 Definition of “Nonrecourse Project-Financed.”

AUTHORITY: 42 U.S.C. 7651o(a)(2)(B); 42 U.S.C. 7254.

SOURCE: 56 FR 55064, Oct. 24, 1991, unless otherwise noted.

**§ 715.1 Purpose and scope.**

This part sets forth the definition of “nonrecourse project-financed” as that term is used to define “new independent power production facility,” in section 416(a)(2)(B) of the Clean Air Act Amendments of 1990, 42 U.S.C. 7651o(a)(2)(B). This definition is for purposes of section 416(a)(2)(B) only. It is not intended to alter or impact the tax treatment of any facility or facil-

ity owner under the Internal Revenue Code and regulations.

**§ 715.2 Definitions.**

As used in this subpart—

*Act* means the Clean Air Act Amendments of 1990, 104 Stat. 2399.

*Facility* means a “new independent power production facility” as that term is used in the Act, 42 U.S.C. 7651o(a)(2).

**§ 715.3 Definition of “Nonrecourse Project-Financed”.**

*Nonrecourse project-financed* means when being financed by any debt, such debt is secured by the assets financed and the revenues received by the facility being financed including, but not limited to, part or all of the revenues received under one or more agreements for the sale of the electric output from the facility, and which neither an electric utility with a retail service territory, nor a public utility as defined by section 201(e) of the Federal Power Act, as amended, 16 U.S.C. 824(e), if any of its facilities are financed with general credit, is obligated to repay in whole or in part. A commitment to contribute equity or the contribution of equity to a facility by an electric utility shall not be considered an obligation of such utility to repay the debt of a facility. The existence of limited guarantees, commitments to pay for cost overruns, indemnity provisions, or other similar undertakings or assurances by the facility’s owners or other project participants will not disqualify a facility from being “nonrecourse project-financed” as long as, at the time of the financing for the facility, the borrower is obligated to make repayment of the term debt from the revenues generated by the facility, rather than from other sources of funds. Projects that are 100 percent equity financed are also considered “nonrecourse project-financed” for purposes of section 416(a)(2)(B).

**PART 719—CONTRACTOR LEGAL MANAGEMENT REQUIREMENTS**

Sec.

**Subpart A—General Provisions**

719.1 What is the purpose of this part?