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DEPARTMENT OF ENERGY

10 CFR Parts 602, 710, 712, 725, 820, 824, 835, 850, 851, 852, 861, 862, 871, 1004, 1008, 1016, 1017, 1021, 1044, 1045, 1046, and 1049

RIN 1901-AB22

Technical Amendments: Transfer of Office Functions and Removal of Obsolete Regulations

AGENCY: Department of Energy (DOE).
ACTION: Final rule; technical amendment.

SUMMARY: DOE has created a new Office of Health, Safety and Security to strengthen and improve formulation and implementation of health, safety and security policy. Incident to creation of the new office, DOE has transferred certain health, safety and security functions to the new office that previously were carried out by the Office of Environment, Safety and Health and the Office of Security and Safety Performance Assurance. Certain functions related to DOE's responsibilities under the National Environmental Policy Act have been transferred to the Office of the General Counsel. Other functions outside of the core mission of health, safety and security have been transferred to other DOE offices performing similar or related functions. This notice of final rulemaking makes technical amendments to DOE's regulations to substitute the officials to whom or offices to which functions have been transferred pursuant to the reorganization of offices and functions. DOE also is removing Office of Environment, Safety and Health regulations in 10 CFR part 852 because Congress has transferred that authority to the Department of Labor. Today's regulatory amendments do not alter substantive rights or obligations under current law.

DATES: *Effective Date:* This rule is effective on November 28, 2006.

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SUPPLEMENTARY INFORMATION:

I. Introduction

DOE has created a new office to strengthen and improve the health, safety, and security of DOE workers, facilities and the public. The new office, called the Office of Health, Safety and Security (HSS), will help formulate and implement health, safety, environmental, and security policy for DOE, provide assistance to DOE sites, conduct oversight through rigorous field inspections, and carry out enforcement activities previously carried out by the Offices of Environment, Safety and Health (EH) and Security and Safety Performance Assurance (SSA). HSS is led by a Chief Health, Safety and Security Officer who reports directly to the Secretary of Energy.

The HSS office has nine offices dedicated to health, safety and security, which include the Office of Health and Safety; Office of Nuclear Safety and Environment; Office of Corporate Safety Analysis; Office of Enforcement; Office of Independent Oversight; Office of Security Policy; Office of Security Technology and Assistance; Office of Classification; and the National Training Center. In addition, HSS now includes the Office of the Departmental Representative to the Defense Nuclear Facilities Safety Board and the Office of Security Operations.

Functions that were performed by EH or SSA but which are outside the core mission of health, safety and security have been transferred to other DOE program offices performing similar or related functions. The DOE Office of National Environmental Policy Act (NEPA) Policy and Compliance has been transferred to the Office of the General Counsel. DOE's continuity of government program and support for technical review of authorization basis documents, previously performed by SSA, has been transferred to DOE's National Nuclear Security Administration (NNSA). Support of safety regulations for newly constructed facilities and new start projects are now

the responsibility of the Office of the Under Secretary for Energy, and for new NNSA facilities, the Office of the Under Secretary for Nuclear Security. Management of the Radiological Environment Science Laboratory has been transferred to the Office of Nuclear Energy and the management of the New Brunswick Laboratory has been transferred to the Office of Science to better align those activities with their current programmatic functions. The Office of Management will assume non-safety related quality assurance program elements and the management of DOE's foreign travel and exchange visitor program.

Certain of the functions that were transferred to HSS and the NEPA functions that were transferred to the Office of the General Counsel are subject to regulations in title 10 of the Code of Federal Regulations. As a result of the transfers, title 10 of the Code of Federal Regulations contains references to DOE program offices and positions that are no longer extant. Today's final rule amends title 10 of the Code of Federal Regulations to reflect DOE's new organizational structure and to update addresses that are no longer correct. In addition, DOE takes this opportunity to remove regulations in 10 CFR part 852 made obsolete by the repeal of the statute that authorized those regulations. None of the regulatory amendments in this notice of final rulemaking alter substantive rights or obligations under current law.

This final rule has been approved by the Office of the Secretary of Energy.

II. Procedural Requirements

A. Review Under Executive Order 12866

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

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for 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 (August 16, 2002), DOE published procedures and policies to ensure that the potential impacts of its draft rules on small entities are properly considered during the rulemaking process (68 FR 7990, February 19, 2003), and has made them available on the Office of General Counsel's Web site: <http://www.gc.doe.gov>.

The regulatory amendments in this notice of final rulemaking reflecting transfers of functions and address changes relate solely to internal agency organization, management or personnel, and as such, are not subject to the requirement for a general notice of proposed rulemaking under the Administrative Procedure Act (5 U.S.C. 553). Furthermore, it is unnecessary to propose removal of 10 CFR part 852 for public comment because the statutory authority for it has been repealed. Consequently, this rulemaking is exempt from the requirements of the Regulatory Flexibility Act.

C. Review Under the Paperwork Reduction Act

This final rule does not impose a collection of information requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule amends existing regulations without changing the environmental effect of the regulations being amended, and, therefore, is covered under the Categorical Exclusion in paragraph A5 of Appendix A to subpart D, 10 CFR part 1021. 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 examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's rule and has determined that it does not preempt State law and 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

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995.

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to assess the effects of a Federal regulatory action on State, local, and tribal governments, and the private sector. DOE has determined that today's regulatory action does not impose a Federal mandate on State, local or tribal governments or on the private sector.

H. 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 rule that may affect family well-being. This 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.

I. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. 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 promulgated or is expected to lead to 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 alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

List of Subjects

10 CFR Part 602

Grant programs-health, Medical research, Occupational safety and health, Reporting and recordkeeping requirements.

10 CFR Part 710

Administrative practice and procedure, Classified information, Government contracts, Government employees, Nuclear materials.

10 CFR Part 712

Administrative practice and procedure, Alcohol abuse, Classified information, Drug abuse, Government contracts, Government employees, Health, Occupational safety and health, Radiation protection, Security measures.

10 CFR Part 725

Classified information, Nuclear materials, Reporting and recordkeeping requirements.

10 CFR Part 820

Administrative practice and procedure, Government contracts, Penalties, Radiation protection.

10 CFR Part 824

Administrative practice and procedure, Government contracts, Penalties, Radiation protection.

10 CFR Part 835

Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 850

Beryllium, Hazardous substances, Lung diseases, Occupational safety and

health, Reporting and recordkeeping requirements.

10 CFR Part 851

Administrative practice and procedure, Government contracts, Hazardous substances, Reporting and recordkeeping requirements, Workers' compensation.

10 CFR Part 852

Administrative practice and procedure, Government contracts, Hazardous substances, Reporting and recordkeeping requirements, Workers' compensation.

10 CFR Part 861

Federal buildings and facilities, Penalties, Traffic regulations.

10 CFR Part 862

Aircraft, Federal buildings and facilities, Security measures.

10 CFR Part 871

Air transportation, Hazardous materials transportation, Plutonium, Radioactive materials.

10 CFR Part 1004

Freedom of information.

10 CFR Part 1008

Privacy.

10 CFR Part 1016

Classified information, Nuclear materials, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 1017

Administrative practice and procedure, Government contracts, National defense, Nuclear energy, Penalties, Security measures.

10 CFR Part 1021

Environmental impact statements.

10 CFR Part 1044

Administrative practice and procedure, Classified information, Government contracts, Whistleblowing.

10 CFR Part 1045

Classified information.

10 CFR Part 1046

Government contracts, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 1049

Federal buildings and facilities, Government contracts, Law enforcement, Security measures.

Issued in Washington, DC on November 20, 2006.

Glenn Podonsky,

Chief Health, Safety and Security Officer,
Office of Health, Safety and Security.

David R. Hill,

General Counsel.

■ For the reasons set forth in the preamble, 10 CFR parts 602, 710, 712, 725, 820, 824, 835, 850, 851, 852, 861, 862, 871, 1004, 1008, 1016, 1017, 1021, 1044, 1045, 1046, and 1049 are amended as follows:

PART 602—EPIDEMIOLOGY AND OTHER HEALTH STUDIES FINANCIAL ASSISTANCE PROGRAM

■ 1. The authority citation for part 602 continues to read as follows:

Authority: 42 U.S.C. 2051; 42 U.S.C. 5817; 42 U.S.C. 5901–5920; 42 U.S.C. 7254 and 7256; 31 U.S.C. 6301–6308.

§ 602.1 [Amended]

■ 2. Section 602.1 is amended by removing "Office of Environment, Safety and Health" and adding in its place "Office of Health, Safety and Security".

§ 602.4 [Amended]

■ 3. Section 602.4(a) is amended by removing "Assistant Secretary for Environment, Safety and Health" and adding in its place "DOE Chief Health, Safety and Security Officer".

§ 602.5 [Amended]

■ 4. Section 602.5(a) is amended by removing "Office of Environment, Safety and Health" and adding in its place "Office of Health, Safety and Security".

§ 602.7 [Amended]

■ 5. Section 602.7(c) is amended by removing "Office of Epidemiology and Health Surveillance (EH-42), U.S. Department of Energy, Washington, DC 20585, (301) 903-5926)" and adding in its place "Office of Illness and Injury Prevention Programs, HS-13/ Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-1290, 301-903-4501".

§ 602.9 [Amended]

■ 6–7. Section 602.9 is amended as follows:

■ A. In paragraph (b), by removing "Office of Environment, Safety and Health" and adding in its place "Office of Health, Safety and Security"; and

■ B. In paragraph (g), by removing "Office of Environment, Safety and Health" and adding in its place "Office of Health, Safety and Security", and by

Environment” after “Office of Nuclear Safety”.

■ c. Section XIII.b. by removing “Office of Investigation and Enforcement” and adding in its place “Office of Enforcement”.

PART 824—PROCEDURAL RULES FOR THE ASSESSMENT OF CIVIL PENALTIES FOR CLASSIFIED INFORMATION SECURITY VIOLATIONS

■ 61. The authority citation for part 824 continues to read as follows:

Authority: 42 U.S.C. 2201, 2282b, 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

Appendix A to Part 824 [Amended]

■ 62. Appendix A to Part 824 is amended in:

■ a. Section IV.b. by removing “10 CFR part 824.6” and adding in its place “§ 824.6”.

■ b. Section VIII.9., paragraph e.(1) by removing “and Performance Assurance”.

PART 835—OCCUPATIONAL RADIATION PROTECTION

■ 63. The authority citation for part 835 continues to read as follows:

Authority: 42 U.S.C. 2201; 7191.

§ 835.1 [Amended]

■ 64. Section 835.1(b)(2) is amended by removing “Director, Naval Nuclear Propulsion Program” and by adding in its place “Deputy Administrator for Naval Reactors”.

■ 65. Section 835.2(a) is amended by adding the definition of “Secretarial Officer” to read as follows:

§ 835.2 Definitions.

* * * * *

Secretarial Officer means an individual who is appointed to a position in the Department of Energy by the President of the United States with the advice and consent of the Senate or the head of a departmental element who is primarily responsible for the conduct of an activity under the Act. With regard to activities and facilities covered under E.O. 12344, 42 U.S.C. 7158 note, pertaining to Naval nuclear propulsion, Secretarial Officer means the Deputy Administrator for Naval Reactors.

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PART 850—CHRONIC BERYLLIUM DISEASE PREVENTION PROGRAM

■ 66. The authority citation for part 850 continues to read as follows:

Authority: 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 29 U.S.C. 668; 42 U.S.C. 7101

et seq.; 50 U.S.C. 2401 *et seq.*, E.O. 12196, 3 CFR 1981 comp., at 145 as amended.

§ 850.10 [Amended]

■ 67. Section 850.10(b)(2) is amended by removing “Assistant Secretary for Environment, Safety and Health” and adding in its place “Chief Health, Safety and Security Officer”.

§ 850.39 [Amended]

■ 68–69. Section 850.39 is amended in paragraph (a) by removing “Assistant Secretary for Environment, Safety and Health” and adding in its place “Chief Health, Safety and Security Officer”, and in paragraph (h) , by removing “DOE Office of Epidemiologic Studies with the Office of Environment, Safety and Health” and adding in its place “Office of Illness and Injury Prevention Programs, Office of Health, Safety and Security”.

PART 851—WORKER SAFETY AND HEALTH PROGRAM

■ 70. The authority citation for part 851 continues to read as follows:

Authority: 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 42 U.S.C. 5801 *et seq.*; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

§ 851.8 [Amended]

■ 71–72. Section 851.8 is amended in paragraph (b) by removing “Office of Environment, Safety and Health, Office of Health (EH–5)” and adding in its place “Office of Health, Safety and Security”, and in paragraph (c) , by removing “Office of Environment, Safety and Health, Office of Price-Anderson Enforcement (EH–6)” and adding in its place “Office of Health, Safety and Security, Office of Enforcement, HS–40,”.

§ 851.11 [Amended]

■ 73. Section 851.11(b)(2) is amended by removing “Assistant Secretary for Environment, Safety and Health” and adding in its place “Chief Health, Safety and Security Officer”.

§ 851.27 [Amended]

■ 74. Section 851.27(a)(2)(ii) is amended by removing “Office of Environment, Safety and Health” and adding in its place “Office of Health, Safety and Security”.

§ 851.30 [Amended]

■ 75. Section 851.30(a) is amended by removing “Assistant Secretary for Environment, Safety and Health” and adding in its place “Chief Health, Safety and Security Officer”.

§ 851.31 [Amended]

■ 76–78. In § 851.31, paragraphs (a)(1), (a)(2), and (a)(3) are amended by removing “Assistant Secretary for Environment, Safety and Health” and adding in its place “Chief Health, Safety and Security Officer”, paragraph (b) introductory text is amended by removing “Assistant Secretary for Environment, Safety and Health to be incomplete, the Assistant Secretary” and adding in its place “Chief Health, Safety and Security Officer to be incomplete, the Chief Health, Safety and Security Officer”, and paragraph (c)(5) is amended by removing “Assistant Secretary for Environment, Safety and Health” and adding in its place “Chief Health, Safety and Security Officer”.

§ 851.32 [Amended]

■ 79–80. Section 851.32 is amended in:

■ a. Paragraph (a)(1) by removing “Assistant Secretary for Environment, Safety and Health recommends approval of a variance application, the Assistant Secretary” and adding in its place “Chief Health, Safety and Security Officer recommends approval of a variance application, the Chief Health, Safety and Security Officer”.

■ b. Paragraph (a)(2) by removing “Assistant Secretary for Environment, Safety and Health” and adding in its place “Chief Health, Safety and Security Officer” and by removing “Office of Price-Anderson Enforcement” and adding in its place “Office of Enforcement”.

■ c. Paragraph (a)(4), by removing “Assistant Secretary for Environment, Safety and Health” and adding in its place “Chief Health, Safety and Security Officer”.

■ d. Paragraph (c)(1), by removing “Assistant Secretary for Environment, Safety and Health recommends denial of a variance application, the Assistant Secretary” and adding in its place “Chief Health, Safety and Security Officer recommends denial of a variance application, the Chief Health, Safety and Security Officer”.

■ e. Paragraphs (c)(2)(i) and (c)(2)(ii), by removing “Assistant Secretary” and adding in its place “Chief Health, Safety and Security Officer”.

§ 851.34 [Amended]

■ 81. In § 851.34, paragraphs (a) and (c) are amended by removing “Assistant Secretary for Environment, Safety and Health” and adding in its place “Chief Health, Safety and Security Officer”.