



441 G St. N.W.
Washington, DC 20548

B-330049

May 21, 2018

The Honorable Lisa Murkowski
Chairman
The Honorable Maria Cantwell
Ranking Member
Committee on Energy and Natural Resources
United States Senate

The Honorable Greg Walden
Chairman
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Department of Energy: Human Reliability Program*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Energy (DOE) entitled "Human Reliability Program" (RIN: 1992-AA44). We received the rule on May 7, 2018. It was published in the *Federal Register* as a final rule on April 26, 2018, with an effective date of July 25, 2018. 83 Fed. Reg. 18,195.

The final rule amends DOE's regulation concerning the Human Reliability Program (HRP). According to DOE, this regulation provides the policies and procedures to ensure that individuals who occupy positions affording unescorted access to certain nuclear materials, nuclear explosive devices, facilities, and programs meet the highest standards of reliability and physical and mental suitability. The revisions include some clarification of the procedures and burden of proof applicable in certification review hearings, the addition and modification of certain definitions, and a clear statement that a security concern can be reviewed pursuant to the HRP regulation in addition to the DOE regulations for determining eligibility for access to classified matter or special nuclear material. DOE also states that these revisions are intended to provide better guidance to HRP-certified individuals and to ensure consistency in HRP decision making.

Enclosed is our assessment of DOE's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the agency's submission to us indicates that DOE complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Daniel Cohen
Assistant General Counsel for Legislation,
Regulation, and Energy Efficiency
Department of Energy

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF ENERGY
ENTITLED
“HUMAN RELIABILITY PROGRAM”
(RIN: 1992-AA44)

(i) Cost-benefit analysis

The Department of Energy (DOE) did not provide a cost-benefit analysis in the final rule.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

DOE certifies that the rule would not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

DOE states this rulemaking does not impose a federal mandate on state, local, or tribal governments or on the private sector

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

DOE published a notice of proposed rulemaking on June 22, 2017. 82 Fed. Reg. 28,412. DOE received comments from three individuals and one entity, and the agency responded to the comments in the final rule. DOE published the final rule on April 26, 2018. 83 Fed. Reg. 18,195.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

DOE states the information collection was approved by the Office of Management and Budget under number 1910-5122. The estimated burden is 0.08 hours per response.

Statutory authorization for the rule

DOE promulgated the rule under 42 U.S.C. §§ 2165, 2201, 5814, 5815, 7101 *et seq.*; 50 U.S.C. § 2401 *et seq.*

Executive Order No. 12,866 (Regulatory Planning and Review)

DOE states the rule has been determined not to be a significant regulatory action under the Order and thus not subject to review by the Office of Information and Regulatory Affairs.

Executive Order No. 13,132 (Federalism)

DOE states the rule does not preempt state law and would 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.