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concerning their eligibility for access authorization.

(b) It is also the policy of DOE that none of the procedures established by DOE for determining eligibility for access authorization shall be used for an improper purpose, including any attempt to coerce, restrain, threaten, intimidate, or retaliate against individuals for exercising their rights under any statute, regulation or DOE directive. Any DOE officer or employee violating, or causing the violation of this policy, shall be subject to appropriate disciplinary action.

(c) If the individual is currently awaiting a hearing or trial, or has been convicted of a crime punishable by imprisonment of six (6) months or longer, or is awaiting or serving a form of preprosecution probation, suspended or deferred sentencing, court ordered probation, or parole in conjunction with an arrest or criminal charges initiated against the individual for a crime that is punishable by imprisonment of six (6) months or longer, DOE may suspend processing an application for access authorization until such time as the hearing, trial, criminal prosecution, suspended sentencing, deferred sentencing, probation, or parole has been completed.

(d) DOE may suspend processing an application for access authorization if sufficient information about the individual's background cannot be obtained to meet the investigative scope and extent requirements for the access authorization requested.

(e) DOE may suspend processing an application for access authorization until such time as a question regarding an individual's national allegiance is resolved. For example, if an individual is exercising rights of citizenship conferred by a country other than the United States, DOE will be concerned with whether granting access authorization to that individual constitutes an unacceptable national security risk.

(f) DOE may suspend processing an application for access authorization whenever an individual fails to fulfill the responsibilities described in § 710.6.

(g) If an individual believes that the provisions of paragraph (c), (d), or (e) of this section have been inappropriately applied, a written appeal may be filed with the Director, Office of Safeguards and Security, DOE Headquarters, within 30 calendar days of the date the individual was notified of the action. The Director, Office of Safeguards and Security, shall act on the written appeal as described in section 710.6(c).

[59 FR 35185, July 8, 1994, as amended at 66 FR 47062, Sept. 11, 2001]

§ 710.5 Definitions.

(a) As used in this subpart:

Access authorization means an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.

Classified Matter means the material of thought or expression that is classified pursuant to statute or Executive Order.

DOE Counsel means a DOE attorney assigned to represent DOE in proceedings under this subpart. DOE Counsel shall be a U.S. citizen and shall have been subject to a favorably adjudicated background investigation.

Hearing Officer means a DOE attorney or senior management official appointed by the Director, Office of Hearings and Appeals, pursuant to § 710.25. A Hearing Officer shall be a U.S. citizen and shall have been subject to a favorably adjudicated background investigation.

Local Director of Security means the Operations Office or Naval Reactors Office Security and Safeguards Division Director, or other similar title; for Washington, DC area cases, the Director, Headquarters Operations Division; for the Idaho Operations Office, the Program Manager, Security and Resource Management Division; for the Pittsburgh Naval Reactors Office, the Director, Contracts and Securities Division; for the Savannah River Operations Office, the Director, Internal Security Division; and any person designated in writing to serve in one of the aforementioned positions in an ''acting'' capacity.

National Security Information means any information that has been determined, pursuant to Executive Order 12958 or any predecessor Order, to require protection against unauthorized disclosure and that is so designated.

Operations Office Manager or *Manager* means the Manager of a DOE Operations Office (Albuquerque, Chicago, Idaho, Nevada, Oak Ridge, Oakland, Richland, or Savannah River), the Manager of the Pittsburgh Naval Reactors Office, the Manager of the Schenectady Naval Reactors Office, and, for Washington, DC area cases, the Director, Office of Safeguards and Security.

Secretary means the Secretary of Energy, as provided by section 201 of the Department of Energy Organization Act.

Special nuclear material means plutonium, uranium enriched in the isotope 233, or in the isotope 235, and any other material which, pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or any material artificially enriched by any of the foregoing, not including source material.

(b) Throughout this subpart the use of the male gender shall include the female gender and vice versa.

[59 FR 35185, July 8, 1994, as amended at 66 FR 47063, Sept. 11, 2001]

CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SPECIAL NUCLEAR MATERIAL

§ 710.6 Cooperation by the individual.

(a) It is the responsibility of the individual to cooperate by providing full, frank, and truthful answers to DOE's relevant and material questions, and when requested, to furnish or authorize others to furnish information that the DOE deems pertinent to the individual's eligibility for DOE access authorization. This obligation to cooperate applies when completing security forms, during the course of a personnel security background investigation or reinvestigation, and at any stage of DOE's processing of the individual's access authorization, including but not limited to, personnel security interviews, DOE-sponsored mental evaluations, and other authorized DOE investigative activities under this subpart. The individual may elect not to cooperate; however, such refusal may prevent DOE from reaching an affirmative finding required for granting or continuing access authorization. In this event, any access authorization then in effect may be terminated, or, for applicants, further processing may be suspended.

(b) If the individual believes that the provisions of paragraph (a) of this section have been inappropriately applied in his case, he may file a written appeal of the action with the Director, Office of Safeguards and Security, DOE Headquarters, within 30 calendar days of the date he was notified of the action.

(c) Upon receipt of the written appeal, the Director, Office of Safeguards and Security, shall conduct an inquiry as to the circumstances involved in the action and shall, within 30 calendar days of receipt of the written appeal, notify the individual, in writing, as to whether the action to terminate or suspend processing of access authorization was appropriate. If the Director, Office of Safeguards and Security, determines that the action was inappropriate, he shall direct that the individual continue to be processed for access authorization, or that access authorization for the individual be reinstated.

§ 710.7 Application of the criteria.

(a) The decision as to access authorization is a comprehensive, commonsense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security. Absent any derogatory information, a favorable determination usually will be made as to access authorization eligibility.

(b) To assist in making these determinations, on the basis of all the information in a particular case, there are set forth in this subpart criteria consisting of a number of specific types of derogatory information. These criteria are not exhaustive but contain the principal types of derogatory information which create a question as to the