

## Department of Energy

## § 1045.53

### § 1045.52 Mandatory declassification review requests.

All DOE information classified as NSI is subject to review for declassification by the DOE if:

(a) The request for a review describes the document containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort;

(b) The information is not exempted from search and review under the Central Intelligence Agency Information Act;

(c) The information has not been reviewed for declassification within the past 2 years; and

(d) The request is sent to the Director, Office of Classification, HS-90/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585-1290.

[62 FR 68509, Dec. 31, 1997, as amended at 71 FR 68737, Nov. 28, 2006]

### § 1045.53 Appeal of denial of mandatory declassification review requests.

(a) If the Department has reviewed the information within the past 2 years, the request may not be processed. If the information is the subject of pending litigation, the processing of the request may be delayed pending completion of the litigation. The Department shall inform the requester of this fact and of the requester's appeal rights.

(b) When the Director of Classification has denied a request for review of NSI, the requester may, within 30 calendar days of its receipt, appeal the determination to the Director of Security Affairs.

(c) *Elements of appeal.* The appeal shall be in writing and addressed to the Chief Health, Safety and Security Officer, HS-1/Forrestal Building, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585. The appeal shall contain a concise statement of grounds upon which it is brought and a description of the relief sought. It should also include a discussion of all relevant authorities which include, but are not limited to DOE (and predecessor agencies) rulings, regulations, interpretations, and decisions on appeals, and any judicial determina-

tions being relied upon to support the appeal. A copy of the letter containing the determination being appealed shall be submitted with the appeal.

(d) *Receipt of appeal.* An appeal shall be considered to be received upon receipt by the Chief Health, Safety and Security Officer.

(e) *Action within 60 working days.* The appeal authority shall act upon the appeal within 60 working days of its receipt. If no determination on the appeal has been issued at the end of the 60-day period, the requester may consider his or her administrative remedies to be exhausted and may seek a review by the Interagency Security Classification Appeals Panel (ISCAP). When no determination can be issued within the applicable time limit, the appeal shall nevertheless continue to be processed. On expiration of the time limit, DOE shall inform the requester of the reason for the delay, of the date on which a determination may be expected to be issued, and of his or her right to seek further review by the ISCAP. Nothing in this subpart shall preclude the appeal authority and the requester from agreeing to an extension of time for the decision on an appeal. The Chief Health, Safety and Security Officer shall confirm any such agreement in writing and shall clearly specify the total time agreed upon for the appeal decision.

(f) *Form of action on appeal.* The Chief Health, Safety and Security Officer's action on an appeal shall be in writing and shall set forth the reason for the decision. The Department may refuse to confirm or deny the existence or nonexistence of requested information whenever the fact of its existence or nonexistence is itself classified under E.O. 12958.

(g) *Right of final appeal.* The requester has the right to appeal a final Department decision or a failure to provide a determination on an appeal within the allotted time to the ISCAP for those appeals dealing with NSI. In cases where NSI documents also contain RD and FRD, the RD and FRD portions of the document shall be deleted prior to forwarding the NSI and

unclassified portions to the ISCAP for review.

[62 FR 68509, Dec. 31, 1997, as amended at 71 FR 68737, Nov. 28, 2006]

## PART 1046—PHYSICAL PROTECTION OF SECURITY INTERESTS

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APPENDIX A TO SUBPART B OF PART 1046—  
MEDICAL AND PHYSICAL FITNESS QUALIFICATION STANDARDS

APPENDIX B TO SUBPART B OF PART 1046—  
TRAINING AND QUALIFICATION FOR SECURITY SKILLS AND KNOWLEDGE

AUTHORITY: Sec. 2201, Pub. L. 83-703, 68 Stat. 919 (42 U.S.C. 2011 *et seq.*); sec. 7151, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*)

SOURCE: 58 FR 45791, Aug. 31, 1993, unless otherwise noted.

### Subpart A—General

#### § 1046.1 Purpose.

The purpose of this part is to set forth Department of Energy, hereinafter “DOE,” security policies and procedures regarding the physical protection of security interests.

#### § 1046.2 Scope.

This part applies to DOE contractor employees at Government-owned facilities, whether or not privately operated.

#### § 1046.3 Definitions.

For the purposes of this part:

*Contractor.* The term “contractor” includes subcontractors at all tiers.

*Defensive combative personnel.* Security police officers other than offensive combative personnel.

*Designated physician.* An occupational medical physician who is recommended

by the designated management supervisory official of the local DOE field office and authorized by the Director, Office of Health and Safety, to determine the medical and physical condition of protective force personnel. When an occupational medical physician is not available, physicians who are not board-certified in occupational medicine may be recommended and authorized by the Director as designated physicians for the purpose of this part. Designated physicians need not be employed full-time, but contractually shall be responsible to DOE for performance of the medical functions required by this part.

*Facility.* An educational institution, manufacturing plant, laboratory, office building or other area utilized by the DOE or its contractors or subcontractors for the performance of work under DOE jurisdiction.

*Field organization.* Any organizational component of the DOE located outside the Washington, DC metropolitan area.

*Guard.* Also referred to as Security Officer, an unarmed individual who is employed for, and charged with, the protection of classified matter or Government property.

*Medical condition.* General health, physical condition, and emotional and mental stability.

*Offensive combative personnel.* Security police officers assigned to response force duties including pursuit and assault functions.

*Protective force personnel.* Security officers and security police officers assigned to protective details, who are employed to protect DOE security interests.

*Requalification date.* The date of expiration of current qualification at which demonstration of knowledge, skills and/or abilities is required to maintain specific job status.

*Security inspector.* Also referred to as Security Police Officer, a uniformed person who is authorized under section 161.k of the Atomic Energy Act of 1954, as amended, or other statutory authority, to carry firearms and to make arrests without warrants and who is employed for, and charged with, the protection of classified matter, special nuclear material, or other Government property.