review of the covered person’s personnel security file and review of other relevant information available to DOE in accordance with applicable guidelines and authorities. As provided in §709.3(b), DOE also may require a CI-scope polygraph examination. As provided for in §709.3(c), a CI evaluation, if conducted on a random basis, will include a CI-scope polygraph examination. As set forth in §709.15(b) and (c) of this part, a counterintelligence evaluation may also include other pertinent measures to address and resolve counterintelligence issues in accordance with Executive Order 12333, the DOE “Procedures for Intelligence Activities,” and other relevant laws, guidelines and authorities, as applicable.

§ 709.11 Topics within the scope of a polygraph examination.

(a) DOE may ask questions in a specific incident polygraph examination that are appropriate for a CI-scope examination or that are relevant to the counterintelligence concerns with a defined foreign nexus raised by the specific incident.

(b) A CI-scope polygraph examination is limited to topics concerning the covered person’s involvement in espionage, sabotage, terrorism, unauthorized disclosure of classified information, unauthorized foreign contacts, and deliberate damage to or malicious misuse of a U.S. government information or defense system.

(c) DOE may not ask questions that:

(1) Probe a covered person’s thoughts or beliefs;

(2) Concern conduct that has no CI implication with a defined foreign nexus; or

(3) Concern conduct that has no direct relevance to a CI evaluation.

§ 709.12 Defining polygraph examination questions.

The examiner determines the exact wording of the polygraph questions based on the examiner’s pretest interview of the covered person, the covered person’s understanding of the questions, established test question procedures from the Department of Defense Polygraph Institute, and other input from the covered person.

§ 709.13 Implications of refusal to take a polygraph examination.

(a) Subject to §709.14 of this part, a covered person may refuse to take a polygraph examination pursuant to §709.3 of this part, and a covered person being examined may terminate the examination at any time.

(b) If a covered person terminates a polygraph examination prior to the completion of the examination, DOE may treat that termination as a refusal to complete a CI evaluation under §709.14 of this part.

§ 709.14 Consequences of a refusal to complete a CI evaluation including a polygraph examination.

(a) If a covered person is an applicant for employment or assignment or a potential detaillee or assignee with regard to an identified position and the covered person refuses to complete a CI evaluation including a polygraph examination required by this part as an initial condition of access, DOE and its contractors must refuse to employ, assign, or detail that covered person with regard to the identified position.

(b) If a covered person is an incumbent employee in an identified position subject to a CI evaluation including a polygraph examination under §709.3(b), (c), or (d), and the covered person refuses to complete a CI evaluation, DOE and its contractors must deny that covered person access to classified information and materials protected under §709.3(b) and (c) and may take other actions consistent with the denial of access, including administrative review of access authorization under 10 CFR part 710. If the covered person is a DOE employee, DOE may reassign or realign the DOE employee’s duties, or take other action, consistent with that denial of access and applicable personnel regulations.

(c) If a DOE employee refuses to take a CI polygraph examination, DOE may not record the fact of that refusal in the employee’s personnel file.

§ 709.15 Processing counterintelligence evaluation results.

(a) If the reviews under §709.10 or a polygraph examination present unresolved foreign nexus issues that raise significant questions about the covered
§ 709.17 Final disposition of CI evaluation findings and recommendations.

(a) Following completion of a CI evaluation, the Director of the Office of Intelligence and Counterintelligence must recommend, in writing, to the appropriate Program Manager that the covered person’s access be approved or retained, or denied or revoked.

(b) If the Program Manager agrees with the recommendation, the Program Manager notifies the covered person that the covered person’s access has been approved or retained, or denied or revoked.

§ 709.16 Application of Counterintelligence Evaluation Review Boards in reaching conclusions regarding CI evaluations.

(a) General. If the results of a counterintelligence evaluation are not dispositive, the Director of the Office of Intelligence and Counterintelligence may convene a Counterintelligence Evaluation Review Board to obtain the individual views of each member as assistance in resolving counterintelligence issues identified during a counterintelligence evaluation.

(b) Composition. A Counterintelligence Evaluation Review Board is chaired by the Director of the Office of Intelligence and Counterintelligence (or his/her designee) and includes representation from the appropriate line Program Managers, lab/site/facility management (if a contractor employee is involved), NNSA, if the unresolved issues involve an NNSA covered person, the DOE Office of Health, Safety and Security and security directors for the DOE or NNSA site or operations office.

(c) Process. When making a final recommendation under § 709.17 of this part, to a Program Manager, the Director of Intelligence and Counterintelligence shall report on the Counterintelligence Evaluation Review Board’s views, including any consensus recommendation, or if the members are divided, a summary of majority and dissenting views.

§ 709.15 Application of Counterintelligence Evaluation Review Boards in reaching conclusions regarding CI evaluations.

(a) General. When a counterintelligence evaluation is not dispositive, the Director of the Office may convene a Counterintelligence Evaluation Review Board to receive views of members regarding conclusions of the evaluation.

(b) Composition. A Counterintelligence Evaluation Review Board is chaired by the Director of the Office of Intelligence and Counterintelligence (or his/her designee) and includes representation from the appropriate line Program Managers, lab/site/facility management (if a contractor employee is involved), NNSA, if the unresolved issues involve an NNSA covered person, the DOE Office of Health, Safety and Security and security directors for the DOE or NNSA site or operations office.

(c) Process. When making a final recommendation under § 709.17 of this part, to a Program Manager, the Director of Intelligence and Counterintelligence shall report on the Counterintelligence Evaluation Review Board’s views, including any consensus recommendation, or if the members are divided, a summary of majority and dissenting views.