Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 710

RIN 1992–AA22

Office of Nonproliferation and National Security; Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material

AGENCY: Office of Nonproliferation and National Security, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The DOE proposes to amend its regulations concerning the procedures used to render final determinations of eligibility for access to classified matter and/or special nuclear material. The purpose of the amendments is to ensure that DOE procedures in this regard conform to the access eligibility determination provisions in Part 5 of Executive Order 12968,''Access to Classified Information,'' signed by the President in August 1995.

DATES: Comments may be submitted by October 15, 1999.

ADDRESSES: Ten (10) copies of comments should be sent to: A. Barry Dalinsky, Policy, Standards and Analysis Division, Office of Safeguards and Security, NN–512, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

FOR FURTHER INFORMATION CONTACT: A. Barry Dalinsky at the address above or telephone 301–903–5010.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background
II. Summary of Proposed Changes
III. Section by Section Discussion of Changes
IV. Procedural Requirements
A. Executive Order 12866
B. Review Under the Regulatory Flexibility Act
C. Review Under the National Environmental Policy Act
D. Review Under the Paperwork Reduction Act
E. Review Under Executive Order 12988
F. Review Under the Unfunded Mandates Reform Act of 1995
G. Review Under the Treasury and General Government Appropriations Act, 1999
V. Opportunity for Public Comment

I. Introduction and Background

The DOE has established procedures to resolve questions concerning the access authorization eligibility for individuals (including consultants and agents) who are applicants for employment or employed by: the DOE; DOE contractors and subcontractors at any tier; DOE access permittees; and other persons designated by the Secretary of Energy for access to DOE classified matter and/or special nuclear material. This access authorization is commonly referred to as a security clearance. These procedures are codified in Subpart A of Title 10, Code of Federal Regulations, Part 710 (hereafter referred to as 10 CFR Part 710) which would be amended if today's proposed rule were promulgated as a final rule.

When the DOE proposes to deny or revoke an access authorization under current procedures, the individual is afforded an opportunity to appear before a DOE Hearing Officer. The Hearing Officer considers favorable and unfavorable information presented during the hearing and prepares a report of findings, relative to the merit of the DOE allegations, and an opinion as to whether access authorization for the individual should be granted or denied, or reinstated or revoked. The Hearing Officer's findings and opinion may be appealed by either the individual or the DOE to the Director, Office of Hearings and Appeals. The administrative record, which includes the opinions rendered by the Hearing Officer and the Director, Office of Hearings and Appeals, is then forwarded to the Director, Office of Security Affairs, who carefully considers the record and makes a final determination as to whether access authorization for the individual will be either granted or denied, or reinstated or revoked. On August 2, 1995, the President signed Executive Order 12968, ''Access to Classified Information,'' which requires that an individual determined not to meet the standards for access authorization be provided an opportunity to appeal in writing a denial of access to a high level panel comprised of at least three members, two of whom shall be selected from outside the security field. As noted above, current DOE procedures allow for opinions to be rendered by the Hearing Officer and the Director, Office of Hearings and Appeals. However, the final determination in a case under review is rendered by the Director, Office of Security Affairs. In order to comply with the Executive Order requirement that an individual be afforded the opportunity to appeal to a high level panel, the DOE proposes to amend 10 CFR Part 710 to allow for: an initial decision concerning access authorization eligibility to be made by the local DOE Manager; a review decision to be made after completion of a hearing by a Hearing Officer; and a final decision to be made by a high level three member Appeal Panel (hereafter referred to as ''Appeal Panel'') at DOE Headquarters. This Appeal Panel, consistent with Executive Order 12968, would consist of one DOE security official and two other DOE officials outside the security field. The DOE proposes that its Appeal Panel be comprised of: the Director, Office of Security Affairs; an attorney from the Office of General Counsel; and a representative from the appropriate DOE Headquarters office. The notifications currently provided to the individual and the opportunity afforded the individual to participate in a hearing before a DOE Hearing Officer would not be affected by the amendments proposed today. The DOE also proposes several other amendments to 10 CFR Part 710 as described below.

II. Summary of Proposed Changes

As noted above, the proposed regulations will revise existing regulations to comply with Executive Order 12968. The proposed procedures continue to provide for a hearing before a Hearing Officer; however, the possibility of an appeal of the Hearing Officer's opinion to the Director, Office of Hearings and Appeals, is eliminated and the final determination currently rendered by the Director, Office of Security Affairs, is replaced by a final decision rendered by an Appeal Panel.

Under the proposed regulations, the initial decision is to be made by the local Manager to deny or revoke an individual's access authorization. The individual is advised of the initial decision and the reason(s) therefor and offered the opportunity to appear at a hearing before a DOE Hearing Officer. If the individual elects not to participate

in a hearing, the initial decision by the Manager is considered final unless the individual requests a review and final decision by the Appeal Panel. If the individual elects to participate in a hearing, the Hearing Officer will conduct a hearing and render a written decision upon completion of the hearing to either grant or deny, or reinstate or revoke, access authorization for the individual. The individual is advised of the Hearing Officer's decision which, if unfavorable to the individual, is referred at the individual's request to the Appeal Panel for further review and a final decision as to the individual's access authorization eligibility. If the individual fails to request a referral to the Appeal Panel, the decision rendered by the Hearing Officer is final. If the Hearing Officer's decision is favorable to the individual, either the Manager or Director, Office of Safeguards and Security, may elect to refer the individual's case to the Appeal Panel for further review and a final decision. If DOE officials elect not to refer the individual's case to the Appeal Panel for further review, the Hearing Officer's decision in the case is final. If a case is referred to the Appeal Panel by either the individual or DOE officials, the Appeal Panel members will review the administrative record and any additional material submitted for consideration by the parties, and render a final written decision, decided by majority vote of the panel members, as to the individual's access authorization eligibility. The decision will be made a part of the administrative record.

Upon issuance of the final rule, there will be a provision specifying that cases in process, wherein the individual has been provided a notification letter by the DOE, will continue to be subject to the current regulations.

III. Section by Section Discussion of Changes

Section 710.1 Purpose

Paragraph (b) of this section would be changed by: replacing the reference to Executive Order 12356 with a reference to Executive Order 12958; adding a reference to Executive Order 12968, ''Access to Classified Information;'' and adding a reference to a new Appendix B to the subpart.

Section 710.4 Policy

No substantive changes would be made to paragraphs (a), (b), (d), (e), and (f) of this section. Paragraph (c) would be amended to allow the DOE to determine whether further processing should be continued or suspended for an access authorization applicant who is awaiting trial. The DOE would consider the seriousness of the crime with which the individual has been charged before deciding whether to continue or suspend further processing of the access authorization request. A decision to suspend further processing of the access authorization request could be appealed by the individual under the newly added paragraph (g) to this section which would also allow the individual to appeal an unfavorable decision made under paragraphs (d) and (e) of this section to the Director, Office of Safeguards and Security.

Section 710.5 Definitions

Minor changes would be made to the definitions for Local Director of Security, National Security Information, and Operations Office Manager or Manager to reflect updated organizational changes and an updated reference to the Executive Order. A definition for Classified Matter would be added to this section.

Section 710.7 Application of the Criteria

Changes would be made to paragraph (a) to clarify that: the decision process applies not only to the granting but also the continuation of access authorization; any doubt as to access authorization eligibility would be resolved in favor of the national security (as required in Executive Order 12968); and, absent any derogatory information, a favorable decision usually would be made as to the individual's access authorization eligibility.

Section 710.8 Criteria

Minor nomenclature changes would be made to paragraph (f); paragraph (g) would be expanded to include classified and sensitive information technology systems; the term ''other licensed physician'' would be deleted from paragraphs (h) and (j), and the term ''board-certified psychiatrist'' would be changed in those paragraphs to ''psychiatrist;'' the word ''Federal'' would be inserted before the word ''law'' in paragraph (k); and the term ''conflicting allegiances'' would be added to the second sentence in paragraph (l).

Section 710.9 Action on Derogatory Information

This section is reformatted to clarify DOE internal procedures. The proposed changes will not affect the application of the procedures to the individual.

Section 710.10 Suspension of Access Authorization

Paragraph (a) is rewritten for clarity. Paragraphs (e) and (f) would be added to this section to clarify DOE internal procedures. No substantive changes are made to paragraphs (b), (c), and (d) of this section.

Section 710.21 Notice to Individual

Paragraph (b)(2) is expanded to require the DOE to advise the individual of the specific reason(s) the conduct and/or circumstances have raised a doubt concerning his/her access authorization eligibility. The current section 710.22, Additional information, would be incorporated into this section as a new paragraph (c). Paragraph (c)(3) would be modified to include explaining the individual's rights under the Freedom of Information Act as well as the Privacy Act. The proposed changes will not affect the application of the procedures to the individual.

Section 710.22 Initial Decision Process

This section is retitled and will establish the process by which the Manager renders an initial decision concerning the individual's access authorization eligibility when the individual elects not to request a hearing before a DOE Hearing Officer or fails to respond to the DOE's Notification Letter. The individual will then be notified in writing of the Manager's initial decision and the reason(s) therefor, and, if the initial decision is unfavorable to the individual, the right to file a written request for a review of the matter by the Appeal Panel. In unfavorable initial decisions, if the individual fails to respond to the Manager's notification or fails to file a written request for review by the Appeal Panel, the initial decision of the Manager is final. This initial decision process is similar to current regulations and would implement the first decision level of the three-tiered access eligibility decision process required by Executive Order 12968.

Section 710.23 Extension of Times by the Manager

The words ''Operations Office'' are deleted from the section title.

Section 710.27 Hearing Officer's Decision

Currently titled ''Opinion of the Hearing Officer,'' this section is retitled and changed to allow the Hearing Officer to render a decision as to the individual's access authorization eligibility after completion of the hearing. Previously, the Hearing Officer rendered an opinion only as to the

individual's access authorization eligibility. The procedures used by the Hearing Officer in reaching the findings of fact are not changed.

Section 710.28 Action on the Hearing Officer's Decision

This section is retitled to reflect that the Hearing Officer will issue a decision rather than an opinion. Procedures are established for the individual or DOE officials to request that the case be reviewed by the Appeal Panel. If no such request is made, the decision of the Hearing Officer in the case is final. The party requesting a review of the case by the Appeal Panel is responsible for notifying the other party of the filing and providing the other party with a copy of the statement filed with the Appeal Panel. The Hearing Officer's decision represents the second level in the three-tiered access eligibility decision process required by Executive Order 12968.

Section 710.29 Final Appeal Process

Sections 710.29 through 710.34 would be redesignated as sections 710.30 through 710.34. A new section 710.29, ''Final appeal process,'' is added to implement the third decision level of the three-tiered access eligibility decision process required by Executive Order 12968. Currently, the final decision as to the individual's access authorization eligibility is rendered by the Director, Office of Security Affairs, unless a final decision is rendered by the Manager under section 710.21(b)(8) or the Secretary of Energy under section 710.31. Under the proposed regulations, a final decision as to the individual's access authorization eligibility would be rendered by a three member Appeal Panel comprised of: the Director, Office of Security Affairs, serving as a permanent panel member and as the Appeal Panel Chairman; a DOE attorney designated by the General Counsel; and a DOE employee designated by the head of the appropriate DOE Headquarters element or, in special circumstances by the Director, Office of Security Affairs. Each panel member will be a United States citizen and hold a DOE Q access authorization. The Appeal Panel will convene in response to a request filed by the individual or a DOE official for further review of the individual's case; review the administrative record and any new material submitted by the individual or the DOE; and render a final decision in writing as to whether access authorization should be granted or denied, or reinstated or revoked for the individual. Appeals will be decided by a majority vote of the panel members. The individual will be informed in writing of the Appeal Panel's final decision. This section would be changed also to allow the Director, Office of Security Affairs, with the approval of the Secretary, to defer an Appeal Panel final decision if the individual is the subject of an unresolved inquiry or investigation of a matter that would affect the individual's DOE access authorization eligibility; and, in rare circumstances, to refer a case to the Secretary for a final decision if the Director is aware of information that can not for national security reasons be disclosed in the proceedings before a DOE Hearing Officer.

Section 710.30 New Evidence

Minor changes are made to this newly redesignated section to reflect the new decision structure in the process. The changes do not affect the application of the procedures to the individual.

Section 710.31 Action by the Secretary

Paragraphs (a), (b), and (c) of this newly designated section would be changed and a new paragraph (d) added to allow the Secretary to approve the deferral of an Appeal Panel final decision and to render a final decision in cases where information cannot be disclosed, for national security reasons, during the proceedings before a DOE Hearing Officer.

Section 710.32 Reconsideration of Access Eligibility

Paragraph (c) of this newly redesignated section has been clarified to reflect that only the individual can request reconsideration of his or her case.

Section 710.33 Terminations

This newly redesignated section is changed to allow final decisions to be made a part of the administrative record prior to the DOE being notified of the termination.

Section 710.34 Attorney Representation

No substantive changes are made to this newly redesignated section.

Section 710.35 Timeframes

No substantive changes are made to this newly redesignated section.

Section 710.36 Acting Officials

This section would be added to the current regulations to allow the authorities conferred in this subpart to be exercised by persons designated in writing as acting for, or in the temporary capacity of, the principal decision-makers.

Appendix B

This appendix is added to this subpart for reference purposes only. The Adjudicative Guidelines were developed by the Security Policy Board in March 1997 for distribution throughout the Executive Branch. The guidelines are not subject to public notice and comment rulemaking procedures.

IV. Procedural Requirements

A. 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, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that a federal agency prepare a regulatory flexibility analysis for any rule for which the agency is required to publish a general notice of proposed rulemaking. Such an analysis is not required, however, if the agency certifies that the rule would not, if promulgated, have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)).

DOE certifies that the amendments to 10 CFR Part 710 proposed today would not have a significant economic impact on a substantial number of small entities. This proposed rule, if promulgated as a final rule, would change the Department's procedures for eligibility determinations for access to classified matter and/or special nuclear material. The amendments, which are required to conform 10 CFR Part 710 to the requirements of Executive Order 12968, would affect only individual employees or applicants for employment. The rule does not directly regulate small entities.

C. Review Under the National Environmental Policy Act

DOE has concluded that the proposed rule, which would amend the Department's procedures for eligibility determinations for access to classified matter and/or special nuclear material, 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 (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act of 1969 (42

U.S.C. 4321 et seq.). Specifically, the proposed rule is categorically excluded from environmental review as the proposed rule is strictly procedural (Category Exclusion A6). Accordingly, neither an environmental assessment nor an environmental impact statement is required.

D. Review Under the Paperwork Reduction Act

No new collection of information is proposed to be imposed by this rulemaking. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*).

E. Review Under Executive Order 12988

Section 3 of Executive Order 12988 (61 FR 4729) instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 3 (a) and (b), include eliminating drafting errors and ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. The DOE certifies that today's proposed rule meets the requirements of sections 3 (a) and (b) of Executive Order 12988.

F. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 et seq., requires each federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any federal mandate in an agency rule that may result in the expenditure by state, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. The Act also requires a federal agency to develop an effective process to permit timely input by elected officers of state, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' and it requires an agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. The rule amendments proposed today would not impose a federal mandate on state, local, or tribal governments or on the private sector. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

G. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's proposal 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 Statement.

V. Opportunity for Public Comment

DOE believes that no substantial issue of fact or law exists with respect to the proposed amendments, and that the proposed amendments will not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, the DOE does not intend to provide an opportunity for oral presentation of views or arguments regarding the proposed amendments. Nevertheless, the DOE will consider scheduling a public hearing for the oral presentation of views and arguments if members of the public requesting a hearing present a reasonable argument that a hearing is appropriate. The public is invited to submit written comments regarding the proposed amendments set forth in this notice to the address indicated in the ''addresses'' section of this preamble. The designation ''Amendment of Rules—10 CFR Part 710'' should be indicated on the outside of the envelope and ten (10) copies of comments should be submitted. All comments received by the DOE will be available for public inspection and copying in the DOE's Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, telephone number (202) 586–3142, between 9:00 a.m. and 4:00 p.m., Monday through Friday excluding holidays.

List of Subjects in 10 CFR Part 710

Administrative practice and procedure, Classified information, Governments contracts, Nuclear materials.

Issued in Washington, DC, on August 3, 1999.

Rose Gottemoeller,

Assistant Secretary for Nonproliferation and National Security.

For the reasons set forth in the preamble, Part 710 of Title 10 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SPECIAL NUCLEAR MATERIAL

1. The authority citation for Part 710 is revised to read as follows:

Authority: Atomic Energy Act of 1954, sec. 141, 68 Stat. 940, as amended (42 U.S.C. 2161); Atomic Energy Act of 1954, sec. 145, 68 Stat. 942, as amended (42 U.S.C. 2165); Atomic Energy Act of 1954, sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); E.O. 10450, 3 CFR 1949–1953 comp., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 comp., p. 398, as amended, 3 CFR Chap. IV; E.O. 12958, 3 CFR 1995, comp., p. 333; E.O. 12968, 3 CFR 1995, comp., p. 391.

Subpart A—General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material

2. Section 710.1 is amended by revising paragraph (b) to read as follows:

§ 710.1 Purpose.

* * * * *

(b) This subpart is published to implement: Executive Order 12968, 60 FR 40245 (August 7, 1995); Executive Order 12958, 60 FR 19825 (April 20, 1995); Executive Order 10865, 25 FR 1583 (February 24, 1960), as amended; Executive Order 10450, 18 FR 2489 (April 27, 1954), as amended; and the 1997 Adjudicative Guidelines approved by the President and set forth in Appendix B to this subpart.

3. Section 710.4 is amended by revising paragraph (c) and adding paragraph (g) as follows:

§ 710.4 Policy.

* * * * *

(c) If the individual is currently awaiting 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.

* * * * *

(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).

4. Section 710.5 is amended by adding in alphabetical order a definition for the term ''Classified Matter'' and by revising the definitions for ''Local Director of Security,'' ''National Security Information,'' and ''Operations Office Manager or Manager'' as follows:

§ 710.5 Definitions.

* * * * *

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

* * * * *

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.

* * * * *

5. Section 710.7 is amended by revising paragraph (a) to read as follows:

§ 710.7 Application of the criteria.

(a) The decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or 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.

* * * * *

6. Section 710.8 is amended by adding the words ''(or National Security)'' between the words ''Sensitive'' and ''Positions'' in the first sentence of paragraph (f) and revising paragraphs (g), (h), (j), (k), and (l) to read as follows:

§ 710.8 Criteria.

* * * * *

(g) Failed to protect classified matter, or safeguard special nuclear material; or violated or disregarded security or safeguards regulations to a degree which would be inconsistent with the national security; or disclosed classified information to a person unauthorized to receive such information; or violated or disregarded regulations, procedures, or guidelines pertaining to classified or sensitive information technology systems.

(h) An illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.

* * * * *

(j) Been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.

(k) Trafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by Federal law.

(l) Engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.

7. Section 710.9 is revised to read as follows:

§ 710.9 Action on derogatory information.

(a) If the reports of investigation of an individual or other reliable information tend to establish the validity and significance of one or more items in the criteria, or of other reliable information or facts which are of security concern, although outside the scope of the stated categories, such information shall be regarded as derogatory and create a question as to the individual's access authorization eligibility.

(b) If a question arises as to the individual's access authorization eligibility, the Local Director of Security shall authorize the conduct of an interview with the individual, or other appropriate actions, which may include a DOE-sponsored mental evaluation, and, on the basis of the results of such interview or actions, may authorize the granting of the individual's access authorization. If, in the opinion of the Local Director of Security, the question as to the individual's access authorization eligibility has not been favorably resolved, he shall submit the matter to the Manager with a recommendation that authority be obtained to process the individual's case under administrative review procedures.

(c) If the Manager agrees that unresolved derogatory information is present and that appropriate attempts to resolve such derogatory information have been unsuccessful, he shall submit a request for authority to conduct an administrative review proceeding, accompanied by an explanation of the security concerns and a duplicate Personnel Security File, to the Director, Office of Safeguards and Security. If the Manager believes that the derogatory

information has been favorably resolved, he shall direct that access authorization be granted for the individual. The Manager may also direct the Local Director of Security to obtain additional information in the matter prior to deciding whether to grant the individual access authorization or to submit a request for authority to conduct an administrative review proceeding. A decision in the matter shall be rendered by the Manager within 10 calendar days of its receipt.

(d) Upon receipt of the Manager's request for authority to conduct an administrative review proceeding, the Director, Office of Safeguards and Security, shall review the matter and shall authorize:

(1) The institution of administrative review proceedings set forth in sections §§ 710.20 through 710.32;

(2) The granting of access authorization; or

(3) Such other action as the Director deems appropriate.

(e) The Director, Office of Safeguards and Security, shall authorize one of these options within 30 calendar days of the receipt of the Manager's request unless an extension is granted by the Director, Office of Security Affairs.

8. Section 710.10 is amended by revising paragraph (a) and adding paragraphs (e) and (f) as follows:

§ 710.10 Suspension of access authorization.

(a) If information is received that raises a question concerning an individual's continued access authorization eligibility, the Local Director of Security shall authorize action(s), to be taken on an expedited basis, to resolve the question pursuant to section § 710.9(b). If the question as to the individual's continued access authorization eligibility is not resolved in favor of the individual, the Local Director of Security shall submit the matter to the Manager with a recommendation that the individual's access authorization be suspended pending the final determination resulting from the procedures in this subpart.

* * * * *

(e) Upon receipt of the Manager's request for authority to conduct an administrative review proceeding, the Director, Office of Safeguards and Security shall review the matter and shall authorize:

(1) The institution of administrative review procedures set forth in §§ 710.20 through 710.32;

(2) The reinstatement of access authorization; or

(3) Such other action as the Director deems appropriate.

(f) The Director, Office of Safeguards and Security, shall authorize one of these options within 30 calendar days of the receipt of the Manager's request unless an exception is granted by the Director, Office of Security Affairs.

9. Section 710.21 is amended by revising paragraphs (a) and (b)(2) and adding paragraph (c) to read as follows:

§ 710.21 Notice to the individual.

(a) Unless an extension is authorized by the Director, Office of Safeguards and Security, within 30 calendar days of receipt of authority to institute administrative review procedures, the Manager shall prepare and deliver to the individual a notification letter approved by the local Office of Chief Counsel, or the Office of General Counsel for Headquarters cases. Where practicable, the letter shall be delivered to the individual in person.

(b) * * *

(1) * * *

(2) The information which creates a substantial doubt regarding the individual's access authorization eligibility (which shall be as comprehensive and detailed as the national security permits) and why that information creates such doubt.

* * * * *

(c) The notification letter referenced in paragraph (b) of this section shall also:

(1) Describe the individual's access authorization status until further notice;

(2) Advise the individual of the right to representation at the individual's own expense at each and every stage of the proceedings;

(3) Provide the name and telephone number of the designated DOE official to contact for any further information desired concerning the proceedings, including an explanation of the individual's rights under the Freedom of Information and Privacy Acts; and

(4) Include a copy of this subpart.

10. Section 710.22 is revised to read as follows:

§ 710.22 Initial decision process.

(a) The Manager shall make an initial decision as to the individual's access authorization eligibility based on the existing information in the case if:

(1) The individual fails to respond to the notification letter by filing a timely written request for a hearing before a Hearing Officer or fails to respond to the notification letter after requesting an extension of time to do so;

(2) The individual's response to the notification letter does not request a hearing before a Hearing Officer; or

(3) The Hearing Officer refers the individual's case to the Manager in accordance with § 710.25(e) or § 710.26(b).

(b) Unless an extension of time is granted by the Director, Office of Safeguards and Security, the Manager's initial decision as to the individual's access authorization eligibility shall be made within 15 calendar days of the date of receipt of the information requested in paragraph (a) of this section. The Manager shall either grant or deny, or reinstate or revoke, the individual's access authorization.

(c) A letter reflecting the Manager's initial decision in the individual's case shall be signed by the Manager and delivered to the individual within 15 calendar days of the date of the Manager's decision unless an extension of time is granted by the Director, Office of Safeguards and Security. If the Manager's initial decision is unfavorable to the individual, the individual shall be advised:

(1) Of the Manager's unfavorable decision and the reason(s) therefor;

(2) That within 30 calendar days from the date of receipt of the letter, he may file a written request for a review of the Manager's initial decision through the Director, Office of Safeguards and Security, DOE Headquarters, to the DOE Headquarters Appeal Panel (hereafter referred to as the ''Appeal Panel'');

(3) That the Director, Office of Safeguards and Security, may, for good cause shown, at the written request of the individual, extend the time for filing a written request for a review of the case by the Appeal Panel; and

(4) That if the written request for a review of the Manager's initial decision by the Appeal Panel is not filed within 30 calendar days of the individual's receipt of the Manager's letter, the Manager's initial decision in the case shall be final.

§ 710.23 [Amended]

11. Section 710.23 is amended by removing the words ''Operations Office'' from the section heading.

12. Section 710.27 is amended by revising the section heading, removing the words ''an initial opinion'' in the first sentence of paragraph (a) and inserting in their place the words ''a decision,'' by removing sections 710.27(e), 710.27(f), and 710.27(g) and by revising section 710.27(d) to read as follows:

§ 710.27 Hearing Officer's decision.

* * * * *

(d) The Hearing Officer's decision shall be based on the Hearing Officer's findings of fact. If, after considering all

of the factors in light of the criteria set forth in this subpart, the Hearing Officer is of the opinion that it will not endanger the common defense and security and will be clearly consistent with the national interest to grant or reinstate access authorization for the individual, the Hearing Officer shall render a favorable decision; otherwise, the Hearing Officer shall render an unfavorable decision. Within 15 calendar days of the Hearing Officer's written decision, the Hearing Officer shall provide copies of the decision and the administrative record to the Manager and the Director, Office of Safeguards and Security.

13. Section 710.28 is revised to read as follows:

§ 710.28 Action on the Hearing Officer's decision.

(a) Within 10 calendar days of receipt of the decision and the administrative record, unless an extension of time is granted by the Director, Office of Safeguards and Security, the Manager shall:

(1) Notify the individual in writing of the Hearing Officer's decision;

(2) Advise the individual in writing of the appeal procedures available to the individual in paragraph (b) of this section if the decision is unfavorable to the individual;

(3) Advise the individual in writing of the appeal procedures available to the Manager and the Director, Office of Safeguards and Security, in paragraph (c) of this section if the decision is favorable to the individual; and,

(4) Provide the individual and/or counsel or representative, a copy of the Hearing Officer's decision and the administrative record.

(b) If the Hearing Officer's decision is unfavorable to the individual:

(1) The individual may file with the Director, Office of Safeguards and Security, a written request for further review of the decision by the Appeal Panel along with a statement required by paragraph (e) of this section within 30 calendar days of the individual's receipt of the Manager's notice;

(2) The Director, Office of Safeguards and Security may, for good cause shown, extend the time for filing a request for further review of the decision by the Appeal Panel at the written request of the individual provided the request for an extension of time is filed by the individual within 30 calendar days of receipt of the Manager's notice;

(3) The Hearing Officer's decision shall be considered final if the individual does not: file a written request for a review of the decision by the Appeal Panel or for an extension of time to file a written request for further review of the decision by the Appeal Panel in accordance with paragraphs (b)(1) or (b)(2) of this section; or, file a written request for a further review of the decision by the Appeal Panel after having been granted an extension of time to do so.

(c) If the Hearing Officer's decision is favorable to the individual, within 30 calendar days of the individual's receipt of the Manager's notice:

(1) The Manager or the Director, Office of Safeguards and Security, may file a written request for further review of the decision by the Appeal Panel along with the statement required by paragraph (e) of this section;

(2) The Director, Office of Security Affairs, may, at the written request of the Manager or Director, Office of Safeguards and Security, extend the time for filing a request for further review of the decision by the Appeal Panel; or

(3) The Manager, with the concurrence of the Director, Office of Safeguards and Security, shall grant or reinstate the individual's access authorization.

(d) A copy of any request for further review of the individual's case by the Appeal Panel filed by the Manager or the Director, Office of Safeguards and Security, shall be provided to the individual by the Manager.

(e) The party filing a request for review of the individual's case by the Appeal Panel shall include with the request a statement identifying the issues on which it wishes the Appeal Panel to focus. A copy of such statement shall be served on the other party, who may file a response with the Appeal Panel within 20 calendar days of receipt of the statement.

14. Sections 710.29 through 710.34 are redesignated as §§ 710.30 through 710.35 and a new Peace Corps § 710.29 is added to read as follows:

§ 710.29 Final appeal process.

(a) The Appeal Panel shall be convened by the Director, Office of Security Affairs, to review and render a final decision in an access authorization eligibility case referred by the individual, the Manager, or the Director, Office of Safeguards and Security, in accordance with §§ 710.22, 710.28, and 710.32 of this subpart.

(b) The Appeal Panel shall consist of three members, each of whom shall be a DOE Headquarters employee, a United States citizen, and hold a DOE Q access authorization. The Director, Office of Security Affairs, shall serve as a permanent member of the Appeal Panel and as the Appeal Panel Chairman. The second member of on the Appeal Panel shall be a DOE attorney designated by the General Counsel. The head of the DOE Headquarters element who has cognizance over the individual whose access authorization eligibility is being considered may designate an employee to act as the third member on the Appeal Panel; otherwise, the third member will be designated by the Chairman. Only one member of the Appeal Panel shall be from the security field.

(c) In filing a written request for a review by the Appeal Panel in accordance with §§ 710.22 and 710.28, the individual, or the counsel or representative, shall identify the relevant issues and may also submit any relevant material in support of the individual. The individual's written request and supportive material shall be made a part of the administrative record. The Director, Office of Safeguards and Security, shall provide staff support to the Appeal Panel as requested by the Director, Office of Security Affairs.

(d) Within 15 calendar days from the date of receipt of a request for a review of a case by the Appeal Panel, the Director, Office of Security Affairs, shall:

(1) Request the General Counsel to designate an attorney who shall serve as an Appeal Panel member;

(2) Either request the head of the cognizant DOE element to designate, or designate himself, an employee from outside the security field who shall serve as the third member of the Appeal Panel; and

(3) Arrange for the Appeal Panel members to convene to review the administrative record or provide a copy of the administrative record to the other Appeal Panel members for their independent review.

(e) The Appeal Panel may initiate an investigation of any statement or material contained in the request for an Appeal Panel review and use any relevant facts obtained by such investigation in the conduct of the final decision process. The Appeal Panel may solicit and accept submissions from either the individual or DOE officials that are relevant to the final decision process and may establish appropriate time frames to allow for such submissions. The Appeal Panel may also consider any other source of information that will advance the final decision process, provided that both parties are afforded an opportunity to respond to all third party submissions. All information obtained by the Appeal

Panel under this section shall be made a part of the administrative record.

(f) Within 45 work days of the closing of the administrative record, the Appeal Panel shall render a final written decision in the case predicated upon an evaluation of the administrative record, findings as to each of the allegations contained in the notification letter, and any new evidence that may have been submitted pursuant to § 710.30. Prior to the Appeal Panel reaching its decision, the Director, Office of Security Affairs, shall remind the other panel members that, in accordance with the requirements of Part 3—Access Eligibility Standards of Executive Order 12968, any doubt regarding access eligibility shall be resolved in favor of the national security. If a majority of the Appeal Panel members determine that it will not endanger the common defense and security and will be clearly consistent with the national interest, the Director, Office of Security Affairs, shall grant or reinstate access authorization for the individual; otherwise, the Director, Office of Security Affairs, shall deny or revoke access authorization for the individual. The Appeal Panel written decision shall be made a part of the administrative record.

(g) The Director, Office of Security Affairs, through the Director, Office of Safeguards and Security, shall inform in writing the individual involved and counsel or representative of the Appeal Panel's final decision. A copy of the correspondence shall also be provided to the other panel members and the Manager.

(h) If, upon receipt of a written request for a review of the individual's case by the Appeal Panel, the Director, Office of Security Affairs, is aware or subsequently becomes aware of information that the individual is the subject of an unresolved inquiry or investigation of a matter that could reasonably be expected to affect the individual's DOE access authorization eligibility, the Director may defer action by the Appeal Panel on the request until the inquiry or investigation is completed and its results available for review by the Appeal Panel. In such instances, the Director, Office of Security Affairs, shall:

(1) Obtain written approval from the Secretary to defer review of the individual's case by the Appeal Panel for an initial interval not to exceed 90 calendar days;

(2) Advise the individual and appropriate DOE officials in writing of the initial deferral and the reason(s) therefor;

(3) Request that the individual's employment status not be affected during the initial and any subsequent deferral interval, except at the written request of the individual;

(4) Obtain written approval from the Secretary to extend the deferral for each subsequent 90 calendar day interval and advise in writing all concerned parties of the Secretary's approval;

(5) Inform in writing all concerned parties when the inquiry or investigation has been completed and the results made available to the Appeal Panel.

(i) If, upon receipt of a written request for review of an individual's case by the Appeal Panel, the Director, Office of Security Affairs, is aware or subsequently becomes aware of information that adversely affects the individual's DOE access authorization eligibility and which can not for national security reasons be disclosed in the proceedings before a DOE Hearing Officer, the Director may refer the information and the administrative record to the Secretary for the final decision as to the individual's DOE access authorization eligibility. In such instances, the Director, Office of Security Affairs, shall notify in writing all concerned parties that the individual's case has been provided to the Secretary for a final decision in accordance with § 710.31 of this subpart.

15. Newly redesignated § 710.30 is amended by replacing the word ''determination'' with the word ''decision'' in paragraph (a) and replacing the words ''an opinion'' with the words ''a decision'' in paragraph (b)(1), by replacing the word ''getting'' with the word ''receiving'' in paragraph (b)(1), and by revising paragraph (b)(2) to read as follows:

§ 710.30 New evidence.

* * * * *

(b)(2) In those cases where the Hearing Officer's decision has been issued, the application for presentation of new evidence shall be referred to the Director, Office of Security Affairs. In the event that the Director, Office of Security Affairs, determines that the new evidence shall be received, he shall determine the form in which it, and the other party's response, shall be received.

* * * * *

16. Newly redesignated § 710.31 is revised to read as follows:

§ 710.31 Action by the Secretary.

(a) Whenever an individual has not been afforded an opportunity to cross-examine witnesses who have furnished information adverse to the individual under the provisions of §§ 710.26(l) or (o), or the opportunity to review and respond to the information provided by the Director, Office of Security Affairs, to the Secretary under § 710.29(i), only the Secretary may issue a final decision to deny or revoke DOE access authorization for the individual after personally reviewing the administrative record and any additional material provided by the Director, Office of Security Affairs. The Secretary's authority may not be delegated and may be exercised only when the Secretary determines that the circumstances described in §§ 710.26(l) or (o), or 710.29(i) are present, and such determination shall be final.

(b) Whenever the Secretary issues a final decision as to the individual's DOE access authorization eligibility, the individual and other concerned parties will be notified in writing, by the Director, Office of Security Affairs, of that decision and of the Secretary's findings with respect to each of the allegations contained in the notification letter and each substantial issue identified in the statement in support of the request for review to the extent allowed by the national security.

(c) Nothing contained in these procedures shall be deemed to limit or affect the responsibility and powers of the Secretary to issue subpoenas or to deny or revoke access to Restricted Data, national security information, or special nuclear material.

(d) Only the Secretary may approve initial and subsequent requests under section 710.29(h) by the Director, Office of Security Affairs, to defer the review of an individual's case by the Appeal Panel.

17. Newly redesignated § 710.32 is revised to read as follows:

§ 710.32 Reconsideration of access eligibility.

(a) If, pursuant to the procedures set forth in §§ 710.20 through 710.31 of this subpart, the Manager, Hearing Officer, Appeal Panel, or the Secretary has made a decision granting or reinstating access authorization for an individual, the individual's access authorization eligibility shall be reconsidered as a new administrative review under the procedures set forth in this subpart when previously unconsidered derogatory information is identified, or the individual violates a commitment or promise upon which the DOE previously relied to favorably resolve an issue of access authorization eligibility.

(b) If, pursuant to the procedures set forth in §§ 710.20 through 710.31 of this subpart, the Manager, Hearing Officer, Appeal Panel, or the Secretary has made a decision denying or revoking access authorization for the individual, the

individual's access authorization eligibility may be reconsidered only when the individual so requests, when there is a bona fide offer of employment requiring access to Restricted Data, national security information, or special nuclear material, and when there is either:

(1) Material and relevant new evidence which the individual and the individual's representatives are without fault in failing to present earlier, or

(2) Convincing evidence of rehabilitation or reformation.

(c) A request for reconsideration shall be submitted in writing to the Director, Office of Security Affairs, accompanied by an affidavit setting forth in detail the new evidence or evidence of rehabilitation or reformation. The Director, Office of Security Affairs, shall decide and notify the individual as to whether the individual's access authorization shall be reconsidered and, if so, the method by which reconsideration shall be accomplished.

(d) Final decisions regarding access authorization eligibility in reconsideration cases shall be made by the Appeal Panel.

18. Newly redesignated § 710.33 is revised to read as follows:

§ 710.33 Terminations.

If the individual is no longer an applicant for access authorization or no longer requires access authorization, the procedures of this subpart shall be terminated without a final decision as to the individual's access authorization eligibility, unless a final decision has been rendered prior to the DOE being notified of the change in the individual's pending access authorization status.

19. Newly redesignated § 710.35 is revised to read as follows:

§ 710.35 Timeframes.

Statements of time established for processing aspects of a case under this subpart are the agency's desired time frames in implementing the procedures set forth in this subpart. They shall have no impact upon the final disposition of an access authorization by a Manager, Hearing Officer, the Appeal Panel, or the Secretary, and shall confer no procedural or substantive rights upon an individual whose access authorization eligibility is being considered.

20. Section 710.36 is added to read as follows:

§ 710.36 Acting officials.

Except for the Secretary, the responsibilities and authorities conferred in this subpart may be exercised by persons who have been designated in writing as acting for, or in the temporary capacity of, the following DOE positions: the Local Director of Security, the Manager, the Director, Office of Safeguards and Security, or the General Counsel. The responsibilities and authorities of the Director, Office of Security Affairs, may be exercised in his absence only by the Deputy Director, Office of Security Affairs.

21. Appendix B to subpart A of Part 710 is added to read as follows:

Appendix B to Subpart A of Part 710—Adjudicative Guidelines Approved by the President in Accordance With the Provisions of Executive Order 12968

(The following guidelines, included in this subpart for reference purposes only, are reproduced as provided to the DOE by the Security Policy Board. The President may change the guidelines without notice.)

Adjudicative Guidelines for Determining Eligibility for Access to Classified Information

1. *Introduction.* The following adjudicative guidelines are established for all U.S. government civilian and military personnel, consultants, contractors, employees of contractors, licensees, certificate holders or grantees and their employees and other individuals who require access to classified information. They apply to persons being considered for initial or continued eligibility for access to classified information, to include sensitive compartmented information and special access programs and are to be used by government departments and agencies in all final clearance determinations.

2. *The Adjudicative Process.* (a) The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors:

(1) The nature, extent, and seriousness of the conduct;

(2) the circumstances surrounding the conduct, to include knowledgeable participation;

(3) the frequency and recency of the conduct;

(4) the individual's age and maturity at the time of the conduct;

(5) the voluntariness of participation;

(6) the presence or absence of rehabilitation and other pertinent behavioral changes;

(7) the motivation for the conduct;

(8) the potential for pressure, coercion, exploitation, or duress; and

(9) the likelihood of continuation or recurrence.

(b) Each case must be judged on its own merits, and final determination remains the responsibility of the specific department or agency. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.

(c) The ultimate determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an overall common sense determination based upon careful consideration of the following, each of which is to be evaluated in the context of the whole person concept, as explained further below:

(1) GUIDELINE A: Allegiance to the United States;

(2) GUIDELINE B: Foreign influence;

(3) GUIDELINE C: Foreign preference;

(4) GUIDELINE D: Sexual behavior;

(5) GUIDELINE E: Personal conduct;

(6) GUIDELINE F: Financial considerations;

(7) GUIDELINE G: Alcohol consumption;

(8) GUIDELINE H: Drug involvement;

(9) GUIDELINE I: Emotional, mental, and personality disorders;

(10) GUIDELINE J: Criminal Conduct;

(11) GUIDELINE K: Security violations;

(12) GUIDELINE L: Outside activities;

(13) GUIDELINE M: Misuse of Information Technology Systems.

(d) Although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or emotionally unstable behavior. Notwithstanding, the whole person concept, pursuit of further investigation may be terminated by an appropriate adjudicative agency in the face of reliable, significant, disqualifying, adverse information.

(e) When information of security concern becomes known about an individual who is currently eligible for access to classified information, the adjudicator should consider whether the person:

(1) Voluntarily reported the information;

(2) was truthful and complete in responding to questions;

(3) sought assistance and followed professional guidance, where appropriate;

(4) resolved or appears likely to favorably resolve the security concern;

(5) has demonstrated positive changes in behavior and employment;

(6) should have his or her access temporarily suspended pending final adjudication of the information.

(f) If after evaluating information of security concern, the adjudicator decides that the information is not serious enough to warrant a recommendation of disapproval or revocation of the security clearance, it may be appropriate to recommend approval with a warning that future incidents of a similar nature may result in revocation of access.

Guideline A: Allegiance To The United States

3. *The Concern.* An individual must be of unquestioned allegiance to the United States.

The willingness to safeguard classified information is in doubt if there is any reason to suspect an individual's allegiance to the United States.

4. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Involvement in any act of sabotage, espionage, treason, terrorism, sedition, or other act whose aim is to overthrow the Government of the United States or alter the form of government by unconstitutional means;

(b) association or sympathy with persons who are attempting to commit, or who are committing, any of the above acts;

(c) association or sympathy with persons or organizations that advocate the overthrow of the United States Government, or any state or subdivision, by force or violence or by other unconstitutional means;

(d) involvement in activities which unlawfully advocate or practice the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any state.

5. *Conditions that could mitigate security concerns include:*

(a) The individual was unaware of the unlawful aims of the individual or organization and severed ties upon learning of these;

(b) the individual's involvement was only with the lawful or humanitarian aspects of such an organization;

(c) involvement in the above activities occurred for only a short period of time and was attributable to curiosity or academic interest;

(d) the person has had no recent involvement or association with such activities.

Guideline B: Foreign Influence

6. *The Concern.* A security risk may exist when an individual's immediate family, including cohabitants and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

7. *Conditions that could raise a security concern and may be disqualifying include:*

(a) An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.

(b) sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists;

(c) relatives, cohabitants, or associates who are connected with any foreign country;

(d) failing to report, where required, associations with foreign nationals;

(e) unauthorized association with a suspected or known collaborator or employee of a foreign intelligence service;

(f) conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government;

(g) indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, coercion or pressure;

(h) a substantial financial interest in a country, or in any foreign owned or operated business that could make the individual vulnerable to foreign influence.

8. *Conditions that could mitigate security concerns include:*

(a) A determination that the immediate family member(s) (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States;

(b) contacts with foreign citizens are the result of official United States Government business;

(c) contact and correspondence with foreign citizens are casual and infrequent;

(d) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons or organizations from a foreign country;

(e) foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

Guideline C: Foreign Preference

9. *The Concern.* When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

10. *Conditions that could raise a security concern and may be disqualifying include:*

(a) The exercise of dual citizenship;

(b) possession and/or use of a foreign passport;

(c) military service or a willingness to bear arms for a foreign country;

(d) accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country;

(e) residence in a foreign country to meet citizenship requirements;

(f) using foreign citizenship to protect financial or business interests in another country;

(g) seeking or holding political office in the foreign country;

(h) voting in foreign elections; and

(i) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

11. *Conditions that could mitigate security concerns include:*

(a) Dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship;

(c) activity is sanctioned by the United States;

(d) individual has expressed a willingness to renounce dual citizenship.

Guideline D: Sexual Behavior

12. *The Concern.* Sexual behavior is a security concern if it involves a criminal offense, indicates a personality or emotional disorder, may subject the individual to coercion, exploitation, or duress, or reflects lack of judgment or discretion. (The adjudicator should also consider guidelines pertaining to criminal conduct (Guideline J) and emotional, mental, and personality disorders (Guideline I) in determining how to resolve the security concerns raised by sexual behavior.) Sexual orientation or preference may not be used as a basis for a disqualifying factor in determining a person's eligibility for a security clearance.

13. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Sexual behavior of a criminal nature, whether or not the individual has been prosecuted;

(b) Compulsive or addictive sexual behavior when the person is unable to stop a pattern of self-destructive high-risk behavior or that which is symptomatic of a personality disorder;

(c) Sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress;

(d) Sexual behavior of a public nature and/or that which reflects lack of discretion or judgment.

14. *Conditions that could mitigate security concerns include:*

(a) The behavior occurred during or prior to adolescence and there is no evidence of subsequent conduct of a similar nature;

(b) The behavior was not recent and there is no evidence of subsequent conduct of a similar nature;

(c) There is no other evidence of questionable judgment, irresponsibility, or emotional instability;

(d) The behavior no longer serves as a basis for coercion, exploitation, or duress.

Guideline E: Personal Conduct

15. *The Concern.* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) Refusal to undergo or cooperate with required security processing, including medical and psychological testing; or

(b) Refusal to complete required security forms, releases, or provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personnel security or trustworthiness determination.

16. *Conditions that could raise a security concern and may be disqualifying also include:*

(a) Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances;

(b) The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(c) Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination.

(d) Personal conduct or concealment of information that may increase an individual's vulnerability to coercion, exploitation, or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail;

(e) A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency;

(f) Association with persons involved in criminal activity.

17. *Conditions that could mitigate security concerns include:*

(a) The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;

(b) The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;

(c) The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;

(d) Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided;

(e) The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress;

(f) A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information;

(g) Association with persons involved in criminal activities has ceased.

Guideline F: Financial Considerations

18. *The Concern.* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

19. *Conditions that could raise a security concern and may be disqualifying include:*

(a) A history of not meeting financial obligations;

(b) Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;

(c) Inability or unwillingness to satisfy debts;

(d) Unexplained affluence;

(e) Financial problems that are linked to gambling, drug abuse, alcoholism, or other issues of security concern.

20. *Conditions that could mitigate security concerns include:*

(a) The behavior was not recent;

(b) It was an isolated incident;

(c) The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation);

(d) The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

(e) The affluence resulted from a legal source; and

(f) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Guideline G: Alcohol Consumption

21. *The Concern.* Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

22. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use;

(b) Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job;

(c) Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

(d) Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;

(e) Habitual or binge consumption of alcohol to the point of impaired judgment;

(f) Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

23. *Conditions that could mitigate security concerns include:*

(a) The alcohol related incidents do not indicate a pattern;

(b) The problem occurred a number of years ago and there is no indication of a recent problem;

(c) Positive changes in behavior supportive of sobriety;

(d) Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participated frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Guideline H: Drug Involvement

24. *The Concern.*

(a) Improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

(b) Drugs are defined as mood and behavior altering substances and include: (1) drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances.

(c) Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

25. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Any drug abuse (see above definition);

(b) Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution;

(c) Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;

(d) Evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program;

(e) Failure to successfully complete a drug treatment program prescribed by a credentialed medical professional. Recent drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will almost invariably result in an unfavorable determination.

26. *Conditions that could mitigate security concerns include:*

(a) The drug involvement was not recent;

(b) The drug involvement was an isolated or aberrational event;

(c) A demonstrated intent not to abuse any drugs in the future;

(d) Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional.

Guideline I: Emotional, Mental, and Personality Disorders

27. *The Concern.* Emotional, mental, and personality disorders can cause a significant defect in an individual's psychological, social and occupational functioning. These disorders are of security concern because they may indicate a defect in judgment, reliability, or stability. A credentialed mental health professional (e.g., clinical psychologist or psychiatrist), employed by, acceptable to or approved by the government, should be utilized in evaluating potentially

disqualifying and mitigating information fully and properly, and particularly for consultation with the individual's mental health care provider.

28. *Conditions that could raise a security concern and may be disqualifying include:*

(a) An opinion by a credentialed mental health professional that the individual has a condition or treatment that may indicate a defect in judgment, reliability, or stability;

(b) Information that suggests that an individual has failed to follow appropriate medical advice relating to treatment of a condition, e.g., failure to take prescribed medication;

(c) A pattern of high-risk, irresponsible, aggressive, anti-social or emotionally unstable behavior;

(d) Information that suggests that the individual's current behavior indicates a defect in his or her judgment or reliability.

29. *Conditions that could mitigate security clearance concerns include:*

(a) There is no indication of a current problem;

(b) Recent opinion by a credentialed mental health professional that an individual's previous emotional, mental, or personality disorder is cured, under control or in remission and has a low probability of recurrence or exacerbation;

(c) The past emotional instability was a temporary condition (e.g., one caused by a death, illness, or marital breakup), the situation has been resolved, and the individual is no longer emotionally unstable.

Guideline J: Criminal Conduct

30. *The Concern.* A history or pattern of criminal activity creates a doubt about a person's judgment, reliability and trustworthiness.

31. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;

(b) A single serious crime or multiple lesser offenses.

32. *Conditions that could mitigate security concerns include:*

(a) The criminal behavior was not recent;

(b) The crime was an isolated incident;

(c) The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life;

(d) The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur;

(e) Acquittal;

(f) There is clear evidence of successful rehabilitation.

Guideline K: Security Violations

33. *The Concern.* Noncompliance with security regulations raises doubt about an individual's trustworthiness, willingness, and ability to safeguard classified information.

34. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Unauthorized disclosure of classified information;

(b) Violations that are deliberate or multiple or due to negligence.

35. *Conditions that could mitigate security concerns include actions that:*

(a) Were inadvertent;

(b) Were isolated or infrequent;

(c) Were due to improper or inadequate training;

(d) Demonstrate a positive attitude towards the discharge of security responsibilities.

Guideline L: Outside Activities

36. *The Concern.* Involvement in certain types of outside employment or activities is of security concern if it poses a conflict with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information.

37. Conditions that could raise a security concern and may be disqualifying include any service, whether compensated, volunteer, or employment with:

(a) A foreign country;

(b) Any foreign national;

(c) A representative of any foreign interest;

(d) Any foreign, domestic, or international organization or person engaged in analysis, discussion, or publication of material on intelligence, defense, foreign affairs, or protected technology.

38. *Conditions that could mitigate security concerns include:*

(a) Evaluation of the outside employment or activity indicates that it does not pose a conflict with an individual's security responsibilities;

(b) The individual terminates employment or discontinues the activity upon being notified that it is in conflict with his or her security responsibilities.

Guideline M: Misuse of Information Technology Systems

39. *The Concern.* Noncompliance with rules, procedures, guidelines, or regulations pertaining to information technology systems may raise security concerns about an individual's trustworthiness, willingness, and ability to properly protect classified systems, networks, and information. Information Technology Systems include all related equipment used for the communication, transmission, processing, manipulation, and storage of classified or sensitive information.

40. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Illegal or unauthorized entry into any information technology system;

(b) Illegal or unauthorized modification destruction, manipulation or denial of access to information residing on an information technology system;

(c) Removal (or use) of hardware, software, or media from any information technology system without authorization, when specifically prohibited by rules, procedures, guidelines or regulations;

(d) Introduction of hardware, software, or media into any information technology system without authorization, when specifically prohibited by rules, procedures, guidelines or regulations.

41. *Conditions that could mitigate security concerns include:*

(a) The misuse was not recent or significant;

(b) The conduct was unintentional or inadvertent;

(c) The introduction or removal of media was authorized;

(d) The misuse was an isolated event;

(e) The misuse was followed by a prompt, good faith effort to correct the situation.

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 935

[No. 99–41]

RIN 3069–AA80

Advance Participations; Sales of Whole Advances

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulation governing Federal Home Loan Bank (Bank) advances to approve the sale of whole advances between Banks under certain limited circumstances. The amendment is consistent with the Finance Board's efforts to devolve ministerial and routine business matters to the Federal Home Loan Banks.

DATES: The Finance Board will accept comments in writing on or before September 15, 1999.

ADDRESSES: Send comments to Elaine L. Baker, Secretary to the Board, by electronic mail at *bakere@fhfb.gov,* or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Jonathan Curtis, Senior Financial Analyst, Office of Policy, Research and Analysis, by telephone (202) 408–2866 or by electronic mail at *curtisj@fhfb.gov;* Jane S. Converse, Attorney-Advisor, Office of General Counsel, by telephone at (202) 408–2976 or by electronic mail at *conversej@fhfb.gov;* or Neil R. Crowley, Deputy General Counsel, Office of General Counsel, by telephone (202) 408–2990 or electronic mail at *crowleyn@fhfb.gov,* Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10(d) of the Federal Home Loan Bank Act (Bank Act) authorizes any Bank to sell whole advances, or participations in advances, to any other Bank, subject to Finance Board approval. *See* 12 U.S.C. 1430(d).