§ 710.29 Final appeal process.

(a) The Appeal Panel shall be convened by the Deputy Chief for Operations, Office of Health, Safety and Security, to review and render a final decision in an access authorization eligibility case referred by the individual, the Manager, or the Director, Office of Personnel Security, in accordance with §§710.22, 710.28, and 710.32.

(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 Deputy Chief for Operations, Office of Health, Safety and Security, shall serve as a permanent member of the Appeal Panel and as the Appeal Panel Chairman. The second member of the Appeal Panel shall be elected by the first member from among the third member and another DOE Headquarters employee.

(1) The Manager or the Director, Office of Personnel Security, DOE Headquarters, 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 Deputy Chief for Operations, Office of Health, Safety and Security, may, at the written request of the Manager or Director, Office of Personnel Security, DOE Headquarters, 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 Personnel Security, DOE Headquarters, 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 Personnel 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.

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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 Personnel Security, shall provide staff support to the Appeal Panel as requested by the Deputy Chief for Operations, Office of Health, Safety and Security.

(d) Within 15 calendar days from the date of receipt of a request for a review of a case by the Appeal Panel, the Deputy Chief for Operations, Office of Health, Safety and Security, 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 himself designate, 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. 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 Deputy Chief for Operations, Office of Health, Safety and Security, shall grant or reinstate access authorization for the individual; otherwise, he 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 Deputy Chief for Operations, Office of Health, Safety and Security, through the Director, Office of Personnel 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 Deputy Chief for Operations, Office of Health, Safety and Security, 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 Deputy Chief for Operations 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 Deputy Chief for Operations, shall:
§ 710.30 New evidence.

(a) In the event of the discovery of new evidence relevant to the allegations contained in the notification letter prior to final decision of the individual’s eligibility for access authorization, such evidence shall be submitted by the offering party to the Director, Office of Personnel Security, DOE Headquarters. DOE Counsel shall notify the individual of any new evidence submitted by DOE.

(b) The Director, Office of Personnel Security, DOE Headquarters, shall:

(1) Refer the matter to the Hearing Officer appointed in the individual’s case if the Hearing Officer has not yet issued a decision. The Hearing Officer receiving the application for the presentation of new evidence shall determine the appropriate form in which any new evidence, and the other party’s response, shall be received, e.g., by testimony before the Hearing Officer, by deposition or by affidavit.

(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 Deputy Chief for Operations, Office of Health, Safety and Security. In the event that the Deputy Chief for Operations, 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.

(3) When new evidence submitted by either party is received into the record, the opposing party shall be afforded the opportunity to cross-examine the source of the new information or to submit a written response, unless the information is subject to the exceptions in §710.26(l) or (o).


§ 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 Deputy Chief for Operations, Office of Health, Safety and Security, to the Secretary under §710.29(1), 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