

§ 154.1

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APPENDIX I TO PART 154—OVERSEAS INVESTIGATIONS

APPENDIX J TO PART 154—ADP POSITION CATEGORIES AND CRITERIA FOR DESIGNATING POSITIONS

AUTHORITY: E.O. 10450, 18 FR 2489, 3 CFR, 1949–1953 Comp., p. 936; E.O. 12356, 47 FR 14874 and 15557, 3 CFR, 1982 Comp., p. 166; E.O. 10865, 25 FR 1583, 3 CFR, 1959–1963 Comp., p. 398; E.O. 12333, 46 FR 59941, 3 CFR, 1981 Comp., p. 200.

SOURCE: 52 FR 11219, Apr. 8, 1987, unless otherwise noted.

Subpart A—General Provisions

§ 154.1 Purpose.

(a) To establish policies and procedures to ensure that acceptance and retention of personnel in the Armed Forces, acceptance and retention of civilian employees in the Department of Defense (DoD), and granting members of the Armed Forces, DoD civilian employees, DoD contractors, and other affiliated persons access to classified information are clearly consistent with the interests of national security.

(b) This part: (1) Establishes DoD personnel security policies and procedures;

(2) Sets forth the standards, criteria and guidelines upon which personnel security determinations shall be based;

(3) Prescribes the kinds and scopes of personnel security investigations required;

(4) Details the evaluation and adverse action procedures by which personnel security determinations shall be made; and

(5) Assigns overall program management responsibilities.

§ 154.2 Applicability.

(a) This part implements the Department of Defense Personnel Security Program and takes precedence over all other departmental issuances affecting that program.

(b) All provisions of this part apply to DoD civilian personnel, members of the Armed Forces, excluding the Coast Guard in peacetime, contractor personnel and other personnel who are affiliated with the Department of Defense except that the unfavorable administrative action procedures pertaining to contractor personnel requir-

ing access to classified information are contained in DoD 5220.22–R and in 32 CFR part 155.

(c) The policies and procedures which govern the National Security Agency are prescribed by Public Laws 88–290 and 86–36, Executive Orders 10450 and 12333, DoD Directive 5210.45¹, Director of Central Intelligence Directive (DCID) 1/14² and regulations of the National Security Agency.

(d) Under combat conditions or other military exigencies, an authority in paragraph A, Appendix E, may waive such provisions of this part as the circumstances warrant.

[52 FR 11219, Apr. 8, 1987, as amended at 58 FR 61024, Nov. 19, 1993]

§ 154.3 Definitions.

(a) *Access*. The ability and opportunity to obtain knowledge of classified information. An individual, in fact, may have access to classified information by being in a place where such information is kept, if the security measures that are in force do not prevent him from gaining knowledge of such information.

(b) *Adverse action*. A removal from employment, suspension from employment of more than 14 days, reduction in grade, reduction in pay, or furlough of 30 days or less.

(c) *Background Investigation (BI)*. A personnel security investigation consisting of both record reviews and interviews with sources of information as prescribed in paragraph 3, Appendix A, this part, covering the most recent 5 years of an individual's life or since the 18th birthday, whichever is shorter, provided that at least the last 2 years are covered and that no investigation will be conducted prior to an individual's 16th birthday.

(d) *Classified information*. Official information or material that requires protection in the interests of national security and that is classified for such

¹Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

²Copies may be obtained, if needed from Central Intelligence Agency (CCIS/ICS), 1225 Ames Building, Washington, DC 20505.

purpose by appropriate classifying authority in accordance with the provisions of Executive Order 12356.

(e) *Defense Clearance and Investigative Index (DCII)*. The DCII is the single, automated, central DoD repository which identifies investigations conducted by DoD investigative agencies, and personnel security determinations made by DoD adjudicative authorities.

(f) *DoD component*. Includes the Office of the Secretary of Defense; the Military Departments; Chairman of the Joint Chiefs of Staff; Directors of Defense Agencies and the Unified and Specified Commands.

(g) *Entrance National Agency Check (ENTNAC)*. A personnel security investigation scoped and conducted in the same manner as a National Agency Check except that a technical fingerprint search of the files of the Federal Bureau of Investigation is not conducted.

(h) *Head of DoD component*. The Secretary of Defense; the Secretaries of the Military Departments; the Chairman of Joint Chiefs of Staff; and the Commanders of Unified and Specified Commands; and the Directors of Defense Agencies.

(i) *Immigrant alien*. Any alien lawfully admitted into the United States under an immigration visa for permanent residence.

(j) *Interim security clearance*. A security clearance based on the completion of minimum investigative requirements, which is granted on a temporary basis, pending the completion of the full investigative requirements.

(k) *Limited access authorization*. Authorization for access to Confidential or Secret information granted to non-US. citizens and immigrant aliens, which is limited to only that information necessary to the successful accomplishment of their assigned duties and based on a background investigation scoped for 10 years (paragraph 3, Appendix A).

(l) *Minor derogatory information*. Information that, by itself, is not of sufficient importance or magnitude to justify an unfavorable administrative action in a personnel security determination.

(m) *National Agency check (NAC)*. A personnel security investigation con-

sisting of a records review of certain national agencies as prescribed in paragraph 1, Appendix A, this part, including a technical fingerprint search of the files of the Federal Bureau of Investigation (FBI).

(n) *National Agency Check Plus Written Inquiries (NACI)*. A personnel security investigation conducted by the Office of Personnel Management, combining a NAC and written inquiries to law enforcement agencies, former employers and supervisors, references and schools.

(o) *National security*. National security means the national defense and foreign relations of the United States.

(p) *Need-to-know*. A determination made by a possessor of classified information that a prospective recipient, in the interest of national security, has a requirement for access to, knowledge, or possession of the classified information in order to perform tasks or services essential to the fulfillment of an official U.S. Government program. Knowledge, possession of, or access to, classified information shall not be afforded to any individual solely by virtue of the individual's office, position, or security clearance.

(q) *Periodic Reinvestigation (PR)*. An investigation conducted every five years for the purpose of updating a previously completed background investigation, special background investigation, single scope background investigation or PR on persons occupying positions referred to in §154.19. Investigative requirements are as prescribed in appendix A to part 154, section 5. The period of investigation will not normally exceed the most recent 5-year period.

(r) *Personnel Security Investigation (PSI)*. Any investigation required for the purpose of determining the eligibility of DoD military and civilian personnel, contractor employees, consultants, and other persons affiliated with the Department of Defense, for access to classified information, acceptance or retention in the Armed Forces, assignment or retention in sensitive duties, or other designated duties requiring such investigation. PSIs include investigations of affiliations with subversive organizations, suitability information, or hostage situations (see §154.9(d)) conducted for the purpose of

making personnel security determinations. They also include investigations of allegations that arise subsequent to adjudicative action and require resolution to determine an individual's current eligibility for access to classified information or assignment or retention in a sensitive position.

(s) *Scope.* The time period to be covered and the sources of information to be contacted during the prescribed course of a PSI.

(t) *Security clearance.* A determination that a person is eligible under the standards of this part for access to classified information.

(u) *Senior Officer of the Intelligence Community (SOIC).* The DoD Senior Officers of the Intelligence Community include: the Director, National Security Agency/Central Security Service; Director, Defense Intelligence Agency; Assistant Chief of Staff for Intelligence, U.S. Army; Assistant Chief of Staff for Intelligence, U.S. Air Force; and the Director of Naval Intelligence, U.S. Navy.

(v) *Sensitive position.* Any position so designated within the Department of Defense, the occupant of which could bring about, by virtue of the nature of the position, a materially adverse effect on the national security. All civilian positions are either critical-sensitive, noncritical-sensitive, or nonsensitive as described in §154.13(b).

(w) *Significant derogatory information.* Information that could, in itself, justify an unfavorable administrative action, or prompt an adjudicator to seek additional investigation or clarification.

(x) *Special access program.* Any program imposing "need-to-know" or access controls beyond those normally provided for access to Confidential, Secret, or Top Secret information. Such a program may include, but not be limited to, special clearance, adjudication, investigative requirements, material dissemination restrictions, or special lists of persons determined to have a need-to-know.

(y) *Special Background Investigation (SBI).* A personnel security investigation consisting of all of the components of a BI plus certain additional investigative requirements as prescribed in paragraph 4, Appendix B, this part.

The period of investigation for an SBI is the last 15 years or since the 18th birthday, whichever is shorter, provided that the last 2 full years are covered and that no investigation will be conducted prior to an individual's 16th birthday.

(z) *Special Investigative Inquiry (SII).* A supplemental personnel security investigation of limited scope conducted to prove or disprove relevant allegations that have arisen concerning a person upon whom a personnel security determination has been previously made and who, at the time of the allegation, holds a security clearance or otherwise occupies a position that requires a personnel security determination under the provisions of this part.

(aa) *Service.* Honorable active duty (including attendance at the military academies), membership in ROTC Scholarship Program, Army and Air Force National Guard, Military Reserve Force (including active status and ready reserve), civilian employment in Government service, or civilian employment with a DoD contractor or as a consultant involving access under the DoD Industrial Security Program. Continuity of service is maintained with change from one status to another as long as there is no single break in service greater than 12 months.

(bb) *Unfavorable administrative action.* Adverse action taken as the result of personnel security determinations and unfavorable personnel security determinations as defined in this part.

(cc) *Unfavorable personnel security determination.* A denial or revocation of clearance for access to classified information; denial or revocation of access to classified information; denial or revocation of a Special Access authorization (including access to SCI); non-appointment to or nonselection for appointment to a sensitive position; non-appointment to or nonselection for any other position requiring a trustworthiness determination under this part; reassignment to a position of lesser sensitivity or to a nonsensitive position; and nonacceptance for or discharge from the Armed Forces when any of the foregoing actions are based on derogatory information of personnel security significance.

(dd) *United States Citizen (Native Born)*. A person born in one of the 50 United States, Puerto Rico, Guam, American Samoa, Northern Mariana Islands, U.S. Virgin Islands; or Panama Canal Zone (if the father or mother (or both) was or is, a citizen of the United States).

[52 FR 11219, Apr. 8, 1987, as amended at 58 FR 61024, Nov. 19, 1993]

Subpart B—Policies

§ 154.6 Standards for access to classified information or assignment to sensitive duties.

(a) *General*. Only U.S. citizens shall be granted a personnel security clearance, assigned to sensitive duties, or granted access to classified information unless an authority designated in Appendix E has determined that, based on all available information, there are compelling reasons in furtherance of the Department of Defense mission, including, special expertise, to assign an individual who is not a citizen to sensitive duties or grant a Limited Access Authorization to classified information. Non-U.S. citizens may be employed in the competitive service in sensitive civilian positions only when specifically approved by the Office of Personnel Management, pursuant to E.O. 11935. Exceptions to these requirements shall be permitted only for compelling national security reasons.

(b) *Clearance and sensitive position standard*. The personnel security standard that must be applied to determine whether a person is eligible for access to classified information or assignment to sensitive duties is whether, based on all available information, the person's loyalty, reliability, and trustworthiness are such that entrusting the person with classified information or assigning the person to sensitive duties is clearly consistent with the interests of national security.

(c) *Military service standard*. The personnel security standard that must be applied in determining whether a person is suitable under national security criteria for appointment, enlistment, induction, or retention in the Armed Forces is that, based on all available information, there is no reasonable basis for doubting the person's loyalty

to the Government of the United States.

§ 154.7 Criteria for application of security standards.

The ultimate decision in applying either of the security standards set forth in § 154.6 (b) and (c) must be an overall common sense determination based upon all available facts. The criteria for determining eligibility for a clearance under the security standard shall include, but not be limited to the following:

(a) Commission of any act of sabotage, espionage, treason, terrorism, anarchy, sedition, or attempts thereat or preparation therefor, or conspiring with or aiding or abetting another to commit or attempt to commit any such act.

(b) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, terrorist, revolutionist, or with an espionage or other secret agent or similar representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or to alter the form of Government of the United States by unconstitutional means.

(c) Advocacy or use of force or violence to overthrow the Government of the United States or to alter the form of Government of the United States by unconstitutional means.

(d) Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in any foreign or domestic organization, association, movement, group or combination of persons (hereafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the U.S. or of any State or which seeks to overthrow the Government of the U.S. or any State or subdivision thereof by unlawful means.

(e) Unauthorized disclosure to any person of classified information, or of other information, disclosure of which