Office of the Secretary, DHS

§ 27.310 Commencement of adjudication proceedings.

(a) Proceedings Instituted by Facilities or other Persons. A facility or other person may institute proceedings to review a determination by the Assistant Secretary:

(1) Finding, pursuant to the §27.230(a)(12)(iv), that an individual is a potential security threat;

(2) Disapproving a Site Security Plan pursuant to §27.245(b); or

(3) Issuing an Order pursuant to §27.300(a) or (b).

(b) Procedure for Applications by Facilities or other Persons. A facility or other person may institute Proceedings by filing a Notice of Application for Review specifying that the facility or other person requests a Proceeding to review a determination specified in paragraph (a) of this section.

(1) An Applicant institutes a Proceeding by filing a Notice of Application for Review with the office of the Department hereinafter designated by the Secretary.

(2) An Applicant must file a Notice of Application for Review within seven calendar days of notification to the facility or other person of the Assistant Secretary’s Finding, Determination, or Order.

(3) The Applicant shall file and simultaneously serve each Notice of Application for Review and all subsequent filings on the Assistant Secretary and the General Counsel.

(4) An Order is stayed from the timely filing of a Notice of Application for Review until the Presiding Officer issues an Initial Decision, unless the Secretary has lifted the stay due to exigent circumstances pursuant to paragraph (d) of this section.

(5) The Applicant shall file and serve an Application for Review within fourteen calendar days of the notification to the facility or other person of the
§ 27.315 Presiding officers for proceedings.

(a) Immediately upon the filing of any Application for Review, the Secretary shall appoint an attorney, who is employed by the Department and who has not performed any investigative or prosecutorial function with respect to the matter, to act as a neutral adjudications officer or Presiding Officer for the compilation of a factual record and the recommendation of an Initial Decision for each Proceeding.  

(b) Notwithstanding paragraph (a) of this section, the Secretary may appoint one or more attorneys who are employed by the Department and who do not perform any investigative or prosecutorial function with respect to this subpart, to serve generally in the capacity as Presiding Officer(s) for such matters pursuant to such procedures as the Secretary may hereafter establish.

§ 27.320 Prohibition on ex parte communications during proceedings.

(a) At no time after the designation of a Presiding Officer for a Proceeding and prior to the issuance of a Final Decision pursuant to §27.345 with respect to a facility or other person, shall the appointed Presiding Officer, or any person who will advise that official in the decision on the matter, discuss ex parte the merits of the proceeding with any interested person outside the Department, with any Department official who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person.  

(b) If, after appointment of a Presiding Officer and prior to the issuance of a Final Decision pursuant to §27.345 with respect to a facility or other person, the appointed Presiding Officer, or any person who will advise that official in the decision on the matter, receives from or on behalf of any party, by means of an ex parte communication, information which is relevant to the decision of the matter and to which other parties have not had an opportunity to respond, a summary of such information shall be served on all other parties, who shall have an opportunity to reply to the ex parte communication within a time set by the Presiding Officer.  

(c) The consideration of classified information or CVI pursuant to an in camera procedure does not constitute a prohibited ex parte communication for purposes of this subpart.

§ 27.325 Burden of proof.

The Assistant Secretary bears the initial burden of proving the facts necessary to support the challenged administrative action at every proceeding instituted under this subpart.

§ 27.330 Summary decision procedures.

(a) The Presiding Officer appointed for each Proceeding shall immediately consider whether the summary adjudication of the Application for Review is appropriate based on the Application for Review, the Response, and all the supporting filings of the parties pursuant to §§27.310(b)(5) and 27.310(c).