authorization shall be reconsidered in accordance with established procedures for determining eligibility for access authorizations.

(d) If the individual’s access authorization is not reinstated following reconsideration, the individual shall be advised by the Director, Office of Personnel Security, DOE Headquarters, in writing:

(1) Of the unfavorable action and the reason(s) therefor; and

(2) That within 30 calendar days from the date of receipt of the notification, he may file, through the Director, Office of Personnel Security, DOE Headquarters, DOE Headquarters, a written request for a review of the decision by the Appeal Panel, in accordance with §710.29.

[66 FR 47066, Sept. 11, 2001, as amended at 71 FR 68731, Nov. 28, 2006]

MISCELLANEOUS

§ 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.

[66 FR 47067, Sept. 11, 2001]

§ 710.34 Attorney representation.

In the event the individual is represented by an attorney or other representatives, the individual shall file with the Administrative Judge and DOE Counsel a document designating such attorney or representatives and authorizing one such attorney or representative to receive all correspondence, transcripts, and other documents pertaining to the proceeding under this subpart.


§ 710.35 Time frames.

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. However, failure to meet the time frames shall have no impact upon the final disposition of an access authorization by a Manager, Administrative Judge, the Appeal Panel, or the Secretary, and shall confer no procedural or substantive rights upon an individual whose access authorization eligibility is being considered.

[66 FR 47067, Sept. 11, 2001]

§ 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 Personnel Security, DOE Headquarters; or the General Counsel. The responsibilities and authorities of the Principal Deputy Chief for Mission Support Operations, Office of Health, Safety and Security, may be exercised by persons in security-related Senior Executive Service positions within the Office of Health, Safety and Security who have been designated in writing as acting for, or in the temporary capacity of, the Principal Deputy Chief for Mission Support Operations, with the approval of the Chief Health, Safety and Security Officer.

[77 FR 71691, Dec. 4, 2012]


(By authority of the Department of Energy Organization Act, 42 U.S.C. 7151(a), the Secretary of Energy or her designated representative is to be substituted for the “Commission” and “General Manager” as appropriate.)

Sec. 141. Policy. It shall be the policy of the Commission to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. * * *

Sec. 145. Restriction. (a) No arrangement shall be made under section 31, no contract shall be made or continued in effect under
section 141, and no license shall be issued under section 103 or 104, unless the person with whom such arrangement is made, the contractor or prospective contractor, or the prospective licensee agrees in writing not to permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

(b) Except as authorized by the Commission or the General Manager upon a determination by the Commission or General Manager that such action is clearly consistent with the national interest, no individual shall be employed by the Commission nor shall the Commission permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

(c) In lieu of the investigation and report to be made by the Civil Service Commission pursuant to subsection (b) of this appendix, the Commission may accept an investigation and report on the character, associations, and loyalty of an individual made by another Government agency which conducts personnel security investigations, provided that a security clearance has been granted to such individual by another Government agency based on such investigation and report.

(d) In the event an investigation made pursuant to subsections (a) and (b) of this appendix develops any data reflecting that the individual who is the subject of the investigation is of questionable loyalty, the Civil Service Commission shall refer the matter to the Federal Bureau of Investigation for the conduct of a full field investigation, the results of which shall be furnished to the Civil Service Commission for its information and appropriate action.

(e) If the President deems it to be in the national interest he may from time to time determine that investigations of any group or class which are required by subsections (a), (b), and (c) of this appendix be made by the Federal Bureau of Investigation.

(f) Notwithstanding the provisions of subsections (a), (b), and (c) of this appendix, a majority of the members of the Commission shall certify those specific positions which are of a high degree of importance or sensitivity, and upon such certification, the investigation and reports required by such provisions shall be made by the Federal Bureau of Investigation.

(g) The Commission shall establish standards and specifications in writing as to the scope and extent of investigations, the reports of which will be utilized by the Commission in making the determination, pursuant to subsections (a), (b), and (c) of this appendix, that permitting a person access to Restricted Data will not endanger the common defense and security. Such standards and specifications shall be based on the location and class or kind of work to be done, and shall, among other considerations, take into account the degree of importance to the common defense and security of the Restricted Data to which access will be permitted.

(h) Whenever the Congress declares that a state of war exists, or in the event of a national disaster due to enemy attack, the Commission is authorized during the state of war or period of national disaster due to enemy attack to employ individuals and to permit individuals access to Restricted Data pending the investigation report, and determination required by section 145b, to the extent that and so long as the Commission finds that such action is required to prevent impairment of its activities in furtherance of the common defense and security.

Sec. 161. General provisions. In the performance of its functions the Commission is authorized to:

(a) Establish advisory boards to advise with and make recommendations to the Commission on legislation, policies, administration, research, and other matters, provided that the Commission issues regulations setting forth the scope, procedure, and limitations of the authority of each such board;

(b) Establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property;

(c) Make such studies and investigations, obtain such information, and hold such meetings or hearings as the Commission may deem necessary or proper to assist it in exercising any authority provided in this chapter, or in the administration or enforcement of this Act, or any regulations or orders issued thereunder. For such purposes the Commission is authorized to administer oaths and affirmations, and by subpoena to require any person to appear and testify, or to appear and produce documents, or both, at any designated place. Witnesses subpoenaed under this subsection, shall be paid the same
fees and mileage as are paid witnesses in the
district courts of the United States.

* * * * *

(i) Prescribe such regulations or orders as
it may deem necessary (1) to protect Re-
stricted Data received by any person in con-
nection with any activity authorized pursuant
to this Act, (2) to guard against the loss
or diversion of any special nuclear material
acquired by any person pursuant to section
53 or produced by any person in connection
with any activity authorized pursuant to the
Act, to prevent any use or disposition there-
of which the Commission may determine to
be inimical to the common defense and secu-
ritv, including regulations or orders design-
ating activities, involving quantities of spe-
cial nuclear material which in the opinion of
the Commission are important to the com-
mon defense and security, that may be con-
ducted only by persons whose character, as-
ociations, and loyalty shall have been inves-
tigated under standards and specifications
established by the Commission and as to
whom the Commission shall have determined
that permitting each such person to conduct
the activity will not be inimical to the com-
mon defense and security, and (3) to govern
any activity authorized pursuant to this Act,
including standards and restrictions gov-
erning the design, location, and operation of
facilities used in the conduct of such activ-
ity, in order to protect health and to mini-
imize danger to life or property;

* * * * *

(n) Delegate to the General Manager or
other officers of the Commission any of
those functions assigned to it under this Act
except those specified in sections 51, 57b, 61,
106, 123, 145b (with respect to the determina-
tion of those persons to whom the Commis-
sion may reveal Restricted Data in the na-
tional interest), 145f, and 161a;

* * * * *

(p) Make, promulgate, issue, rescind, and
amend such rules and regulations as may be
necessary to carry out the purposes of this
Act.

APPENDIX B TO SUBPART A OF PART
710—ADJUDICATIVE GUIDELINES AP-
PROVED BY THE PRESIDENT IN AC-
CORDANCE WITH THE PROVISIONS OF
EXECUTIVE ORDER 12968

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

ADJUDICATIVE GUIDELINES FOR DETERMINING
ELIGIBILITY FOR ACCESS TO CLASSIFIED IN-
FORMATION

1. Introduction. The following adjudicative
guidelines are established for all U.S. gov-
ernment civilian and military personnel,
consultants, contractors, employees of con-
tractors, licensees, certificate holders or
grantees and their employees and other indi-
viduals who require access to classified in-
formation. They apply to persons being con-
sidered 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 examina-
tion 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 informa-
tion is predicated upon the individual meet-
ing these personnel security guidelines. The
adjudicative process is the careful weighing
of a number of variables known as the whole
person concept. Available, reliable informa-
tion about the person, past and present, fa-
vorable and unfavorable, should be consid-
ered in reaching a determination. In evalu-
ating the relevance of an individual’s con-
duct, the adjudicator should consider the fol-
lowing factors:

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

(2) The circumstances surrounding the con-
duct, to include knowledgeable participa-
tion;

(3) The frequency and recency of the con-
duct;

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

(5) The voluntariness of participation;

(6) The presence or absence of rehabilita-
tion and other pertinent behavioral changes;

(7) The motivation for the conduct;

(8) The potential for pressure, coercion, ex-
plotation, or duress; and

(9) The likelihood of continuation or recur-
rence.

(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 continuance 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;