

Department of Energy

Pt. 725

- 2.0 Cost Allowability Issues
 - 2.1 Underlying Cause for Incurrence of Costs
- Attachment—Contractor Litigation and Legal Costs, Model Bill Format

MANAGEMENT AND ADMINISTRATION OF OUTSIDE LEGAL SERVICES

This guidance is intended to assist contractors, contracting officers and retained legal counsel in managing the costs of outside legal services.

1.0 Alternative Dispute Resolution

Contractors are expected to evaluate all matters for appropriate alternative dispute resolution (ADR) at various stages of an issue in dispute, e.g., before a case is filed, during pre-discovery, after initial discovery and during pretrial. This evaluation should be done in coordination with the Department's ADR liaison if one has been established or appointed or Department Counsel if an ADR liaison has not been appointed. Contractors, contractor counsel, and Department Counsel are also encouraged to consult with the Department's Director of the Office of Conflict Prevention and Resolution. The Department anticipates that mediation will be the principal and most common method of alternative dispute resolution. Agreement to arbitrate should generally be consistent with the Administrative Dispute Resolution Act (incorporated in part at 5 U.S.C. 571, et seq.) and Department guidance issued under that Act. When a decision to arbitrate is made, a statement fixing the maximum award

amount should be agreed to in advance by the participants.

2.0 Cost Allowability Issues

A determination of cost reasonableness depends on a variety of considerations and circumstances. 48 CFR 31.201-3 establishes that no presumption of reasonableness is attached to the incurrence of costs by a contractor.

2.1 Underlying Cause for Incurrence of Costs

While 10 CFR part 719 provides procedures associated with incurring and monitoring legal costs, the evaluation of the reason for the incurrence of the legal costs, e.g., liability, fault or avoidability, is a separate issue. The reason for the contractor incurring costs may affect the allowability of the contractor's legal costs. In some cases, the final determination of allowability of legal costs cannot be made until a matter is fully resolved. In certain circumstances, contract and cost principle language may permit conditional reimbursement of costs pending the outcome of the legal matter. Whether the Department makes conditional reimbursements or withholds any payment pending the outcome, legal costs ultimately reimbursed by the Department must comply with the applicable cost principles, the terms of the contract, and part 719.

ATTACHMENT—CONTRACTOR LITIGATION AND LEGAL COSTS, MODEL BILL FORMAT

1. Model Bill Format

I—FOR FEES

Date of service	Description of service	Name or initials of attorney	Approved rate	Time charged	Amount (rate × time)
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(See Note 1 to this table).

II—FOR DISBURSEMENTS

Date	Description of disbursement	Amount
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(See Note 1 to this table).

NOTE 1—DESCRIPTION OF SERVICE: All fees must be itemized and described in sufficient detail and specificity to reflect the purpose and nature of the work performed (e.g., subject matter researched or discussed; names of participants of calls/meetings; type of documents reviewed).

NOTE 2—DESCRIPTION OF DISBURSEMENT: Description should be in sufficient detail to determine that the disbursement expense was in accordance with all applicable Department policies on reimbursement of contractor legal costs and the terms of engagement between the contractor and the retained legal counsel. The date the expense was incurred or disbursed should be listed

rather than the date the expense was processed. The following should be itemized: copy charge (i.e., number of pages times the price per page); fax charges (date, phone number and actual amount); overnight delivery (date and amount); electronic research (date and amount); extraordinary postage (e.g., bulk or certified mail); court reporters; expert witness fees; filing fees; outside copying or binding charges; temporary help (assuming prior approval).

NOTE 3—RECEIPTS: Receipts for all expenses equal to or above \$75 must be attached.

PART 725—PERMITS FOR ACCESS TO RESTRICTED DATA

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APPENDIX A TO PART 725—CATEGORIES OF RESTRICTED DATA AVAILABLE

AUTHORITY: Sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 943, 42 U.S.C. 2201.

SOURCE: 41 FR 56778, Dec. 30, 1976, unless otherwise noted.

GENERAL PROVISIONS

§ 725.1 Purpose.

This part establishes procedures and standards for the issuance of an Access Permit to any person subject to this part who requires access to Restricted Data applicable to civil uses of atomic energy for use in his business, trade or profession; provides for the amendment, renewal, suspension, termination and revocation of an Access Permit; and specifies the terms and conditions under which the Chief Health, Safety and Security Officer will issue the Permit.

[41 FR 56778, Dec. 30, 1976, as amended at 71 FR 68732, Nov. 28, 2006]

§ 725.2 Applicability.

The regulations in this part apply to any person within or under the jurisdiction of the United States who de-

sires access to Restricted Data for use in his business, profession or trade.

§ 725.3 Definitions.

As used in this part:

(a) *Access Permit* means a permit, issued by the Administrator authorizing access by the named permittee to Restricted Data applicable to civil uses of atomic energy in accordance with the terms and conditions stated on the permit.

(b) *Act* means the Atomic Energy Act of 1954 (68 Stat. 919), including any amendments thereto.

(c) *Category* means a category of Restricted Data designated in appendix A to the regulations in this part.

(d) *Chief Health, Safety and Security Officer* means the Chief Health, Safety and Security Officer or his duly authorized representatives.

(e) *DOE* means the Department of Energy.

(f) *Permittee* means the holder of a permit issued pursuant to the regulations in this part.

(g) *Person* means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than DOE, any state or any political subdivision of, or any political entity within a state, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

(h) *Restricted Data* means all data concerning (1) design, manufacture or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Act.

(i) *Government Confidential Commercial Information* means sensitive commercial information not including Restricted Data, generated by the government, the release of which could put the government at a competitive disadvantage in providing enrichment services.

[41 FR 56778, Dec. 30, 1976, as amended at 52 FR 30139, Aug. 13, 1987; 71 FR 68732, Nov. 28, 2006]

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§ 725.4 Interpretations.

Except as specifically authorized by the Chief Health, Safety and Security Officer in writing no interpretation of the meaning of the regulations in this part by any officer or employee of DOE other than a written interpretation by the General Counsel will be recognized to be binding upon DOE.

[41 FR 56778, Dec. 30, 1976, as amended at 71 FR 68732, Nov. 28, 2006]

§ 725.5 Communications.

All communications concerning this part should be addressed to the Chief Health, Safety and Security Officer, HS-1/Forrestal Building, U.S. Department of Energy, 1000 Independence Ave, SW., Washington, DC 20585.

[71 FR 68732, Nov. 28, 2006]

§ 725.6 Categories of available information.

For administrative purposes DOE has categorized Restricted Data which will be made available to permittees in the categories as set forth in appendix A to this part. Top Secret information; information pertaining to the design, manufacture or utilization of atomic weapons; and defense information other than Restricted Data are not included in these categories and will not be made available under this part.

§ 725.7 Specific waivers.

The Chief Health, Safety and Security Officer may, upon application of any interested party, grant such waivers from the requirements of this part as he determines are authorized by law and will not constitute an undue risk to the common defense and security.

[41 FR 56778, Dec. 30, 1976, as amended at 71 FR 68732, Nov. 28, 2006]

APPLICATIONS

§ 725.11 Applications.

(a) Any person desiring access to Restricted Data pursuant to this part should submit an application (Form 378), in triplicate, for an access permit to the Chief Health, Safety and Security Officer, HS-1/Forrestal Building, U.S. Department of Energy, 1000 Independence Ave, SW., Washington, DC 20585.

(b) Where an individual desires access to Restricted Data for use in the performance of his duties as an employee, the application for an access permit must be filed in the name of his employer.

(c) Self-employed private consultants, desiring access to Restricted Data, must file the application in their own name for an individual access permit.

(d) Each application should contain the following information:

(1) Name of applicant (unincorporated subsidiaries or divisions of a corporation must apply in the name of the corporation);

(2) Address of applicant;

(3) Description of business or occupation of applicant; and

(4)(i) If applicant is an individual, state citizenship.

(ii) If applicant is a partnership, state name, citizenship and address of each partner and the principal location where the partnership does business.

(iii) If applicant is a corporation or an unincorporated association, state:

(A) The state where it is incorporated or organized and the principal location where it does business;

(B) The names, addresses and citizenship of its directors and of its principal officers;

(C) Whether it is owned, controlled or dominated by an alien, a foreign corporation, or foreign government, and if so, give details.

(iv) If the applicant is acting as agent or representative of another person in filing the application, identify the principal and furnish information required under this subparagraph with respect to such principal;

(5) Total number of full-time employees;

(6) Classification of Restricted Data (Confidential or Secret) to which access is requested;

(7) Potential use of the Restricted Data in the applicant's business, profession or trade. If access to Secret Restricted Data is requested, list the specific categories by number and furnish detailed reasons why such access within the specified categories is needed by

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the applicant. The need for Secret information should be stated by describing its proposed use in specific research, design, planning, construction, manufacturing, or operating projects; in activities under licenses issued by Nuclear Regulatory Commission; in studies or evaluations planned or under way; or in work or services to be performed for other organizations. In addition, if access to secret restricted data in category C-65, plutonium production, or restricted data in category C-24, isotope separation, is requested, the application should also include sufficient information to satisfy the requirements of § 725.15(b) (2) or (3), as the case may be.”

(8) Principal Location(s) at which Restricted Data will be used.

(e) Applications should be signed by a person authorized to sign for the applicant.

(f) Each application shall contain complete and accurate disclosure with respect to the real party or parties in interest and as to all other matters and things required to be disclosed.

[41 FR 56778, Dec. 30, 1976, as amended at 71 FR 68732, Nov. 28, 2006]

§ 725.12 Noneligibility.

The following persons are not eligible to apply for an access permit:

(a) Corporations not organized under the laws of the United States or a political subdivision thereof.

(b) Any individual who is not a citizen of the United States.

(c) Any partnership not including among the partners one or more citizens of the United States; or any other unincorporated association not including one or more citizens of the United States among its principal officers.

(d) Any organization which is owned, controlled or dominated by the Government of, a citizen of, or an organization organized under the laws of a country or area listed as a Subgroup A country or destination in § 371.3 (15 CFR 371.3) of the Comprehensive Export Schedule of the United States Department of Commerce.

(e) Persons subject to the jurisdiction of the United States who are not doing business within the United States.

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§ 725.13 Additional information.

The Chief Health, Safety and Security Officer may, at any time after the filing of the original application and before the termination of the permit, require additional information in order to enable the Chief Health, Safety and Security Officer to determine whether the permit should be granted or denied or whether it should be modified or revoked.

[41 FR 56778, Dec. 30, 1976, as amended at 71 FR 68732, Nov. 28, 2006]

§ 725.14 Public inspection of applications.

Applications and documents submitted to DOE in connection with applications may be made available for public inspection in accordance with the regulations contained in part 702 of this chapter.

§ 725.15 Requirements for approval of applications.

(a) An application for an access permit authorizing access to confidential restricted data in the categories set forth in appendix A of this part (except C-91 and C-24) will be approved only if the application demonstrates that the applicant has a potential use or application for such data in his business, trade, or profession and has filed a complete application form.

(b)(1) An application for an access permit authorizing access to restricted data in category C-24 or secret restricted data in other categories will be approved only if the applicant has a need for such data in his business, trade, or profession and has filed a complete application form.

(2) An application for an access permit authorizing access to Secret Restricted Data in category C-65 Plutonium Production will be approved only if the application demonstrates also that the applicant:

(i) Is directly engaged in a substantial effort to develop, design, build or operate a chemical processing plant or other facility related to his participation in the peaceful uses of atomic energy for which such production rate and cost data are needed; or

(ii) Is furnishing to a permittee having access to C-65 under paragraph

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(b)(2)(i) of this section, substantial scientific, engineering or other professional services to be used by said permittee in carrying out the activities for which said permittee received access to category C-65.

(3) An application for an access permit authorizing access to Restricted Data in category C-24, isotope separation—subcategory A or B—will be approved only if the application demonstrates also that the applicant:

(i) Possesses technical, managerial and financial qualifications demonstrating that the applicant is potentially capable of undertaking or participating significantly in the construction and/or operation of production or manufacturing facilities and offers reasonable assurance of adequacy of resources to carry on, alone or with others, uranium enrichment on a production basis or the large-scale manufacture or assembly of precision equipment systems, or is potentially capable of utilizing centrifuge machines in its business for uranium enrichment or for purposes other than uranium enrichment; and is not subject to foreign ownership, control, or influence; and

(A) For subcategory A, desires to determine its interest in participating significantly in a substantial effort to develop, design, build, and operate a uranium enrichment facility or a facility for the manufacture of uranium enrichment equipment.

(B) For subcategory B, proposes to (1) participate significantly in, or is directly participating significantly in, a substantial effort to evaluate alternative processes, develop, design, build, and operate a uranium enrichment facility or a facility for the manufacture of uranium enrichment equipment, or (2) utilize centrifuge machines and related equipment in its business for uranium enrichment or for purposes other than uranium enrichment, or

(ii) Is furnishing to a permittee having access to Category C-24 under the paragraph (b)(3)(i) of this section substantial scientific, engineering, or other professional services to be used by said permittee in carrying out the activities for which said permittee received access to Category C-24.

(4) An application for an access permit authorizing access to Confidential

and Secret Restricted Data in C-91, Nuclear Reactors for Rocket Propulsion, will be approved only if the application demonstrates also that the applicant:

(i) Possesses qualifications demonstrating that he is capable of making a contribution to research and development in the field of nuclear reactors for rocket propulsion and is directly engaged in or proposes to engage in a substantial research and development program in such field of work; or

(ii) Is engaged in or proposes to engage in a substantial study program in the field of nuclear reactors for rocket propulsion preparatory to the submission of a research and development proposal to DOE; or

(iii) Is furnishing to a permittee having access under paragraph (b)(4) (i) or (ii) of this section substantial scientific, engineering or other professional services to be used by that permittee in a study or research and development program for which said permittee received access.

[41 FR 56778, Dec. 30, 1976, as amended at 52 FR 30139, Aug. 13, 1987]

PERMITS

§ 725.21 Issuance.

(a) Upon a determination that an application meets the requirements of this regulation, the Chief Health, Safety and Security Officer will issue to the applicant an access permit on Form DOE 379.

(b) An Access Permit is not an access authorization. It does not authorize any individual not having an appropriate DOE access authorization to receive Restricted Data. See § 725.24 and part 1016 of this title.

[41 FR 56778, Dec. 30, 1976, as amended at 71 FR 68732, Nov. 28, 2006]

§ 725.22 Scope of permit.

(a) All access permits will as a minimum authorize access, subject to the terms and conditions of the access permit to confidential restricted data in all of the categories set forth in appendix A to this part, except C-91 and C-24.

(b) In addition, access permits may authorize access, subject to the terms and conditions of the access permit to

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such Secret Restricted Data as is included within the particular category or categories specified in the permit.

(c) In addition, access permits may authorize access, subject to the terms and conditions of the access permit, to such government confidential commercial information as is included within the particular category or categories specified in the permit.

[41 FR 56778, Dec. 30, 1976, as amended at 52 FR 30139, Aug. 13, 1987]

§ 725.23 Terms and conditions of access.

(a) Neither the United States, nor DOE, nor any person acting on behalf of DOE makes any warranty or other representation, expressed or implied, (1) with respect to the accuracy, completeness or usefulness of any information made available pursuant to an access permit, or (2) that the use of any such information may not infringe privately owned rights.

(b) The Chief Health, Safety and Security Officer, on behalf of DOE, hereby waives such rights with respect to any invention or discovery as it may have pursuant to section 152 of the Act by reason of such invention or discovery having been made or conceived in the course of, in connection with, or resulting from access to Restricted Data received under the terms of an access permit. (Note provisions of § 725.23(d).)

(c) Each permittee shall:

(1) Comply with all applicable provisions of the Atomic Energy Act of 1954, as amended, and with parts 810 and 1016 of this title and with all other applicable rules, regulations, and orders of DOE, including such rules, regulations, and orders as DOE may adopt or issue to effectuate the policies specified in the act directing DOE to strengthen free competition in private enterprise and avoid the creation or maintenance of a situation inconsistent with the antitrust laws.

(2) Be deemed to have waived all claims for damages under section 183 of title 35 U.S. Code by reason of the imposition of any secrecy order on any patent application and all claims for just compensation under section 173 of the Atomic Energy Act of 1954, with respect to any invention or discovery

made or conceived in the course of, in connection with or as a result of access to Restricted Data received under the terms of the access permit;

(3) Be deemed to have waived any and all claims against the United States, DOE and all persons acting on behalf of DOE that might arise in connection with the use, by the applicant, of any and all information supplied by them pursuant to the access permit;

(4) Obtain and preserve in his files written agreements from all individuals who will have access to Restricted Data under his access permit. The agreement shall be as follows:

In consideration for receiving access to Restricted Data under the access permit issued by the Chief Health, Safety and Security Officer, I hereby agree to:

(a) Waive all claims for damages under section 183 of title 35 U.S. Code by reason of the imposition of any secrecy order on any patent application, and all claims for just compensation under section 173 of the Atomic Energy Act of 1954, with respect to any invention or discovery made or conceived in the course of, in connection with or resulting from access to Restricted Data received under the terms of the access permit issued to (insert the name of the holder of the access permit);

(b) Waive any and all claims against the United States, DOE, and all persons acting on behalf of DOE that might arise in connection with the use, by me, of any and all information supplied by them pursuant to the access permit issued to (insert the name of the holder of the access permit).

In case of an access permit authorizing access to restricted data in category C-24, isotope separation, the agreement shall also provide for such requirements as the permittee considers necessary for purposes of fulfilling its obligations under paragraph (d) of this section.

(5) Pay all established charges for personnel access authorizations, DOE consulting services, publication and reproduction of documents, and such other services as DOE may furnish in connection with the access permit.

(d) The following terms and conditions are applicable to an access permit authorizing access to restricted data in category C-24, isotope separation irrespective of whether access to DOE's restricted data information is desired:

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(1) The permittee agrees to grant a nonexclusive license at reasonable royalties to the United States and, at the request of DOE, to domestic and foreign persons, to use in the production or enrichment of special nuclear material any U.S. patent or any U.S. patent application (otherwise in condition for allowance except for a secrecy order thereon) on any invention or discovery made or conceived by the permittee, its employees, or others engaged by the permittee in the course of the permittee's work under the access permit, or as a result of access to data or information made available by DOE.

(2) The permittee agrees to grant to the United States, and, at the request of DOE, to domestic and foreign persons, the right at reasonable royalties to use for research, development, or manufacturing programs for the production or enrichment of special nuclear material, any technical information or data, including economic evaluations thereof, of a proprietary nature developed by the permittee, its employees, or others engaged by the permittee in the course of the permittee's work under the access permit or as a result of access to data or information made available by DOE and not covered by a U.S. patent or U.S. patent application referred to in paragraph (d)(1) of this section. If DOE disseminates any such proprietary technical information or data in its possession to any of its contractors for use in any DOE research, development, production, or manufacturing programs, it will do so under contractual provisions pursuant to which the contractor would undertake to use this information only for the work under the pertinent DOE contract. Notwithstanding the foregoing provisions of this subparagraph, the permittee waives any claim against DOE for compensation or otherwise, in connection with any use or dissemination of information or data not specifically identified and claimed by the permittee as proprietary in a written notice to DOE at the time of the furnishing of the information or data to DOE. As used in this subparagraph, the term "technical information or data, including economic evaluations thereof, of a proprietary nature" means information or data which:

(i) Is not the property of the Government by virtue of any agreement;

(ii) Concerns the details of trade secrets or manufacturing processes which the permittee has protected from us by others; and

(iii)(A) Is specifically identified as proprietary at the time it is made available to DOE.

(B) Technical information or data shall not be deemed proprietary in nature whenever substantially the same technical information is available to DOE which has been prepared, developed or furnished as nonproprietary information by another source independently of the proprietary information and data furnished by the permittee.

(3) If the amount of reasonable royalties provided for in paragraphs (d) (1) and (2) of this section cannot be agreed upon, the permittee agrees that such amount shall be determined by the Administrator under the provisions of section 157c of the Atomic Energy Act of 1954, as amended.

(4) In the event domestic commercial uranium enriching services are provided by persons other than an agency of the United States, the permittee agrees not to require the United States to pay the royalties provided for in paragraphs (d) (1) and (2) of this section.

(5) The acceptance, exercise, or use of the licenses or rights provided for in paragraphs (d) (1) and (2) of this section shall not prevent the Government, at any time, from contesting their validity, scope or enforceability.

(6) The permittee agrees, during the term of the access permit, to make quarterly reports to DOE in writing, in reasonable detail, respecting all technical information or data, including economic evaluations thereof, which the permittee or DOE considers may be of interest to DOE, including reports of patent applications on inventions or discoveries and of technical information and data of a proprietary nature. These reports will cover the results of the permittee's work under the access permit or as a result of data or information made available by DOE. The foregoing provisions of this subparagraph shall be subject to the provisions of paragraphs (d) (1) and (2) of this section.

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(7) The permittee agrees to make available to DOE, at all reasonable times during the term of the access permit, for inspection by DOE personnel, or by mutual agreement, others on behalf of DOE, all experimental equipment and technical information or data developed by the permittee, its employees, or others engaged by the permittee, in the course of the permittee's work under the access permit or as a result of data or information made available by DOE. The foregoing provision of this subparagraph shall be subject to the provisions of paragraphs (d) (1) and (2) of this section.

(8) The permittee agrees to pay such reasonable compensation as DOE may elect to charge for the commercial use of its inventions and discoveries including related data and technology and, except for an applicant qualifying for a permit pursuant to § 725.15(b)(3)(ii), agrees to pay \$25,000 for an access permit authorizing access to restricted data in subcategory B.

(9) Except as may be otherwise authorized by DOE, the permittee agrees not to disseminate to persons not granted access by DOE, restricted data or government confidential commercial information made available to the permittee by DOE or restricted data developed by the permittee, its employees, or others engaged by the permittee in the course of the permittee's work under the access permit or as a result of data or information made available by DOE.

(10) The granting of an access permit does not constitute any assurance, direct or implied, that the Nuclear Regulatory Commission will grant the permittee a license for a production facility or any other license.

(11) In the event the permittee is engaged by DOE to perform work for DOE in the field of the separation of isotopes, the permittee agrees to undertake such measures as DOE may require for the separation of its activities under the access permit from its work for DOE.

[41 FR 56778, Dec. 30, 1976, as amended at 52 FR 30139, Aug. 13, 1987; 71 FR 68732, Nov. 28, 2006]

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§ 725.24 Administration.

With respect to each permit issued pursuant to the regulations in this part, the Chief Health, Safety and Security Officer will designate a DOE or National Nuclear Security Administration office which will:

(a) Process all personnel access authorizations requested in connection with the permit;

(b) Review the procedures submitted by the Applicant, in accordance with part 1016 of this title, for the safeguarding of Restricted Data; and

(c) Provide information to the permittee with respect to the sources and locations of Restricted Data available under this permit and to assist the permittee in other matters pertaining to the administration of his permit.

[41 FR 56778, Dec. 30, 1976, as amended at 71 FR 68732, Nov. 28, 2006]

§ 725.25 Term and renewal.

(a) Each access permit will be issued for a two year term, unless otherwise stated in the permit.

(b) Applications for renewal shall be filed in accordance with § 725.11. Each renewal application must be complete, without reference to previous applications. In any case in which a permittee has filed a properly completed application for renewal more than thirty (30) days prior to the expiration of his existing permit, such existing permit shall not expire until the application for a renewal has been finally acted upon by the Chief Health, Safety and Security Officer.

[41 FR 56778, Dec. 30, 1976, as amended at 71 FR 68732, Nov. 28, 2006]

§ 725.26 Assignment.

An access permit is nontransferable and nonassignable.

§ 725.27 Amendment.

An access permit may be amended from time to time upon application by the permittee. An application for amendment may be filed, in triplicate, in letter form and shall be signed by an individual authorized to sign on behalf of the applicant. The term of an access permit shall not be altered by an amendment thereto.

§ 725.28 Action on application to renew or amend.

In considering an application by a permittee to review or amend his permit, the Chief Health, Safety and Security Officer will apply the criteria set forth in § 725.15. Failure of an applicant to reply to an DOE request for additional information concerning an application for renewal or amendment within 60 days shall result in a rejection of the application without prejudice to resubmit a properly completed application at a later date.

[41 FR 56778, Dec. 30, 1976, as amended at 71 FR 68732, Nov. 28, 2006]

§ 725.29 Suspension, revocation and termination of permits.

The Chief Health, Safety and Security Officer may revoke or suspend any access permit for any material false statement in the application or in any report submitted to DOE pursuant to the regulations in this part or because of conditions or facts which would have warranted a refusal to grant the permit in the first instance, or for violation of any of the terms and conditions of the Atomic Energy Act of 1954 or rules, regulations or orders issued pursuant thereto. A permittee should request termination of his permit when he no longer requires Restricted Data for use in his business, trade or profession.

[41 FR 56778, Dec. 30, 1976, as amended at 71 FR 68732, Nov. 28, 2006]

§ 725.30 Exceptions and additional requirements.

Notwithstanding any other provision in the regulations in this part, the Chief Health, Safety and Security Officer may deny an application for an access permit or suspend or revoke any access permit, or incorporate additional conditions or requirements in any access permit, upon finding that such denial, revocation or the incorporation of such conditions and limitations is necessary or appropriate in the interest of the common defense and security or is otherwise in the public interest.

[41 FR 56778, Dec. 30, 1976, as amended at 71 FR 68732, Nov. 28, 2006]

§ 725.31 Violations.

An injunction or other court order may be obtained prohibiting any violation of any provision of the Act or any regulation or order issued thereunder. Any person who willfully violates any provision of the Act or any regulation or order issued thereunder may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both, as provided by law.

APPENDIX A TO PART 725—CATEGORIES OF RESTRICTED DATA AVAILABLE

C-24 Isotope separation. This category is divided into subcategories A and B.

Subcategory A includes information in summary form concerning the status and potential of the gaseous diffusion and gas centrifuge processes for the separation of uranium isotopes.

Subcategory B includes information on the following:

a. Any aspect of separating one or more isotopes of uranium from a composition containing a mixture of isotopes of that element by the gas centrifuge or gaseous diffusion processes.

b. Design, construction, and operation of any plant, facility or device capable of separating by the gas centrifuge or gaseous diffusion processes one or more isotopes of uranium from a composition containing a mixture of isotopes of that element, including means and methods of transporting materials from one to another device.

C-44 Nuclear Technology. This category includes classified technical information concerning nuclear technology. It may contain information on the following:

a. Materials, including metals, ceramics, organic and inorganic compounds. Included are such technical areas as the technology and fabrication of fuel elements, corrosion studies, cladding techniques and radiation studies.

b. Chemistry, chemical engineering and radiochemistry of all the elements and their compounds. Included are techniques and processes of chemical separations, radioactive waste handling and feed material processing.

c. Reactor physics, engineering and technology including theory, design, criticality studies and operation of reactors, reactor systems and reactor components.

d. Reserved.

e. Lithium isotope separation technology. This subcategory includes classified technical information on the separation of lithium isotopes by using counter-current flows of lithium amalgam and aqueous lithium hydroxide solution in packed columns. Not included is information regarding plant design

and operating conditions from which total production rates or design capacity of the lithium isotope separation plant (Calex) in Oak Ridge, Tennessee, can be inferred. In addition to the other requirements of this part, access permits for Restricted Data in this subcategory will be approved, provided the permittee:

1. Demonstrates that it is not a corporation or entity owned, controlled or dominated by an alien, a foreign corporation, or a foreign government, and

2. Agrees to insertion in his access permit of the terms and conditions:

(i) Set forth in paragraphs (a) and (b) of § 725.23 of this part;

(ii) Set forth in paragraph (c) of § 725.23 of this part, amended by deleting the phrase "category C-24, isotope separation," and inserting in lieu thereof the phrase "sub-category C-44e, lithium isotope separation technology";

(iii) Set forth in paragraph (d) of § 725.23 of this part, amended by:

(A) Deleting the phrases "production or enrichment of special nuclear material" and "separation of isotopes" wherever they appear, and inserting in lieu thereof the phrase "separation of isotopes of lithium";

(B) Deleting the phrase "domestic commercial uranium enriching services are provided by," and inserting in lieu thereof the phrase "domestic lithium isotope separation capacity becomes available to."

This category does not include information which reveals or from which can be calculated actual or planned (as distinguished from design) capacities, production rates and unit costs for the plutonium production program.

C-65 Plutonium Production. This category includes information on reactor, fuel element and separations technology which reveals or from which can be calculated actual or planned (as distinguished from design) capacities, production rates and unit costs for the Hanford and Savannah River production facilities.

Technology which does not reveal or enable calculation of production rates and unit costs of Hanford or Savannah River production facilities is categorized in C-44 Nuclear Technology.

C-90 Nuclear Reactors for Ram-Jet Propulsion. This category includes information on:

a. Programs pertaining to the development of nuclear reactors for application to ram-jet propulsion systems including theory and/or design, test philosophy procedures and/or results.

b. Fabrication technology and evaluation of performance or characteristics of materials or components for such reactors.

c. Controls, control systems and instrumentation relating to the design or technology of such reactors.

d. Data pertaining to heat transfer, propellant kinetics or corrosion and erosion of materials under conditions of high temperature, high gas flows or other environmental conditions characteristic of ram-jet propulsion systems.

This category does not include information on:

a. Design details of weapons systems or nuclear warheads.

b. Military operational techniques or characteristics.

c. General aspects of nuclear ram-jet missiles, such as payload, aerodynamic characteristics, guidance systems, physical size, gross weight, thrust and information of this kind which is associated with utilization of a nuclear ram-jet propulsion system.

C-91 Nuclear Reactors for Rocket Propulsion. This category includes information on:

a. Programs pertaining to nuclear reactors for rocket propulsion, i.e., missile propulsion, theory and/design, test philosophy procedures and/or results.

b. Design, fabrication technology and evaluation of performance or characteristics of material, components, or subsystems or nuclear rocket reactors.

c. Controls, control systems and instrumentation relating to the design or technology of rocket reactor systems.

d. Data pertaining to heat transfer, propellant kinetics or corrosion and erosion of rocket reactor system materials under conditions of high temperature, high gas flows, or other environmental conditions characteristic of rocket reactors.

This category does not include information on:

a. Design details of weapons systems or nuclear warheads.

b. Military operational techniques or characteristics.

c. General aspects of payload and aerodynamic characteristics.

d. Design details and development, information of components and subsystems of the nuclear rocket engine other than that associated with the reactor system.

C-92 Systems for Nuclear Auxiliary Power (SNAP). This category includes information on:

a. Isotopic SNAP Program, including theory, design, research and development, fabrication, test procedures and results for the device, including power conversion device and the fuels used.

b. Reactor SNAP Program, including theory, design, research and development, fabrication, test procedures and results for the reactor, including the directly associated power conversion device when developed by DOE.

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This category does not include that technical and scientific data developed under the SNAP Advanced Concept Program which should be reported in C-93.

C-93 Advanced Concepts for Future Application.

C-93a Reactor Experiments. This category includes classified technical information developed in the pursuit of work on new or advanced concepts of reactors or components which DOE considers essential to future growth or for general application to future generations of reactors. Classified information developed in the pursuit of work on the lithium cooled reactor experiment is an example of the type of information to be reported in this category, i.e., information resulting from an experimental reactor project or component development which may have many future applications but which is not currently being pursued to meet the specific needs of an approved requirement for which other information categories have been provided. For example, classified technical information developed in the pursuit of work on Naval, Ram-Jet or Rocket nuclear reactors would not be reported here but under their respective specific categories. This category will include classified technical information on the following:

a. Theory, design, and performance, either estimated or actual.

b. Design details, composition and performance characteristics of major components (e.g., fuel media, reflectors, moderators, heat exchangers, pressure shells or containment devices, control rods, conversion devices, instrumentation and shielding).

c. Material (metals, ceramics and compounds) development, alloying, cladding, corrosion, erosion, radiation studies and fabrication techniques.

d. Chemistry, including chemical engineering, processes and techniques. Reactor physics, engineering and criticality studies.

C-93b Conversion Devices. This category includes classified technical information developed in the pursuit of studies, designs, research and development, fabrication and operation of any energy conversion device to be used with nuclear energy sources which is not being applied to a specific system development project.

C-94 Military Compact Reactor (MCR). This category includes classified technical information on the actual or planned Military Compact Reactor and its components developed in the pursuit of studies, designs, research and development, fabrication, and operation of the reactor system or its components.

Examples of the areas of information included are:

a. Reactor core physics.

b. Fuel elements and fuel element components.

c. Moderator and reflector details.
d. Data on primary coolant system.
e. Radiation shield.
f. Controls and instrumentation.

This category does not include information on military operational characteristics or techniques.

[41 FR 56778, Dec. 30, 1976, as amended at 44 FR 37939, June 29, 1979]

PART 727—CONSENT FOR ACCESS TO INFORMATION ON DEPARTMENT OF ENERGY COMPUTERS

Sec.

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AUTHORITY: 42 U.S.C. 7101, *et seq.*; 42 U.S.C. 2011, *et. seq.*; 50 U.S.C. 2425, 2483; E.O. No. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333; and E.O. 12968, 60 FR 40245, 3 CFR, 1995 Comp., p. 391.

SOURCE: 71 FR 40884, July 19, 2006, unless otherwise noted.

§ 727.1 What is the purpose and scope of this part?

(a) The purpose of this part is to establish minimum requirements applicable to each individual granted access to a DOE computer or to information on a DOE computer, including a requirement for written consent to access by an authorized investigative agency to any DOE computer used in the performance of the individual's duties during the term of that individual's employment and for a period of three years thereafter.

(b) Section 727.4 of this part also applies to any person who uses a DOE computer by sending an e-mail message to such a computer.

§ 727.2 What are the definitions of the terms used in this part?

For purposes of this part:

Authorized investigative agency means an agency authorized by law or regulation to conduct a counterintelligence