

## DEPARTMENT OF ENERGY

## 10 CFR Part 710

RIN 1992-AA13

**Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material**

AGENCY: Office of Safeguards and Security, Department of Energy.

ACTION: Final rule.

**SUMMARY:** The Department of Energy (DOE) is amending its regulations regarding access to classified matter and special nuclear material which establish the Personnel Security Assurance Program (PSAP). The PSAP was created to assure the reliability of individuals in certain positions, referred to as PSAP positions for purposes of this rule. The Department now amends this rule to include references to the drug testing protocols used in the PSAP and to reflect the Government-wide requirements for a standard background investigation. This change will reduce the scope of the background investigation for the PSAP, and thereby reduce cost and intrusiveness.

EFFECTIVE DATE: May 25, 1995.

**FOR FURTHER INFORMATION CONTACT:** Lynn Gebrowsky, Personnel Security Policy Branch, Office of Safeguards and Security, Office of Security Affairs, Department of Energy, (301) 903-3200, or Stephen P. Smith, Office of the Assistant General Counsel for General Law, Office of the General Counsel, Department of Energy, (202) 586-8618.

**SUPPLEMENTARY INFORMATION:****I. General**

A proposed rule to amend 10 CFR part 710, subpart B, by the addition of certain drug and alcohol testing provisions, was published in the **Federal Register** on March 8, 1991 (56 FR 10075). Comments received in response to that publication are discussed in this final rule.

Four written comments were received on the proposed rule. Most of the comments concerned the provision in the proposed rule for alcohol testing in cases of occurrence or reasonable suspicion. This provision has been removed from the final rule pending a government-wide decision on the subject of alcohol testing. In consequence, none of the comments received in reference to alcohol testing will be addressed at this time.

The detailed drug testing protocols put forward in the proposed rule have been removed as a consequence of the

publication of 10 CFR part 707, "Workplace Substance Abuse Programs at DOE Sites," (57 FR 32652) which established those protocols for all drug testing conducted on contractor populations at sites operated under the authority of the Atomic Energy Act of 1954, as amended. The drug testing requirements set out in 10 CFR part 707 serve as the drug testing element for contractors in the PSAP. Drug testing procedures for Federal employees in the PSAP are found in Departmental directives.

One commenter felt that the most recent body of case law in the area of drug and alcohol testing for occurrence and reasonable suspicion had not been examined carefully in its applicability to the PSAP. DOE responds that it is difficult to anticipate the development of the law in such a relatively new field as drug testing, but the relevant case law has been adequately taken into account. The judicial examination of the issues surrounding drug testing has increased greatly over the past 5 years, stimulated by the growing realization of the safety, security, and performance threats represented by employee drug use. Further growth accompanied the issuance of Executive Order 12564 and the concomitant expansion of private sector testing programs.

The threshold issues of constitutionality, with particular reference to the Fourth Amendment, have been thoroughly discussed by the courts. The cases now generally have moved on to matters of detail in the actual conduct of the tests, which have been determined to be constitutionally permissible under the proper circumstances. Throughout the time that this rule (and 10 CFR part 707, which now promulgates the drug testing procedures) has been under development, DOE has been in contact with other Federal agencies having a responsibility for oversight of drug testing procedures. The Department is confident that this rule, relying upon the provisions of 10 CFR part 707 and DOE policies implementing Executive Order 12564, will bear scrutiny under the presently existing case law.

That commenter also expressed uneasiness over the evaluation of "applicants" under the PSAP. No evaluation, other than that which might be understood by drug testing, is addressed in this rule. However, in the proposed rule of March 8, 1991, the issue was considered and the phrase "tentatively selected applicants" employed to narrow the requirement for evaluation from all applicants to those selected for the job but not yet performing the duties of the job.

More specific and detailed comments are addressed below.

**II. Comments Received and DOE Responses****A. Americans With Disabilities Act of 1990**

One commenter stressed that any assessments of individuals under the PSAP need to be consistent with the Americans with Disabilities Act (ADA), which took effect July 26, 1992. Under this act, reasonable accommodation must be afforded individuals with disabilities who are "otherwise qualified" for the job. An individual with a disability is defined as one who has a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or who is regarded as having such an impairment. In order to be considered "otherwise qualified," a person must be able to meet all of a program's requirements in spite of his handicap. *Southeastern Community College v. Davis*, 442 U.S. 397, 406 (1979).

The overriding qualifications for a PSAP position are trustworthiness, reliability and sound judgment (see subpart A of part 710). All evaluations under PSAP are directed toward that determination. The U.S. Court of Appeals for the Second Circuit has held that having poor judgment and exhibiting irresponsible behavior, while it may disqualify an applicant from a job, is not such a substantial limitation in a major life activity that it qualifies as a handicap under the Rehabilitation Act. *Daley v. Koch*, 892 F.2d 212 (2d Cir., 1989).

It is certainly possible for an individual with a disability, either physical or mental, to hold a PSAP position, provided the individual meets the requirements of the program. Current illegal drug users and alcoholics who cannot safely perform their jobs are not protected by the ADA.

**B. Guidelines of the Department of Health and Human Services**

It was suggested that the PSAP rule (and, by inference, the Workplace Substance Abuse rule, which provides the drug testing procedures for the PSAP) could not impose the "Mandatory Guidelines for Federal Workplace Drug Testing Programs," issued by the Department of Health and Human Services (HHS), on contractors without further clarification from the DOE. This concern resulted from an apparent misinterpretation of references to the HHS Guidelines in the proposed rule. Those references were specific and

limited. The text in question is now covered by 10 CFR part 707; however, to respond fully to the commenter, the following is provided:

In paragraph 710.59(e)(1) (superseded by § 707.12(a) of 10 CFR part 707) there was a requirement that laboratories conducting drug testing for the PSAP use the cutoff levels in the HHS Guidelines for determining whether a test is negative or positive. The paragraph continued with the requirement that any laboratory utilized for PSAP drug testing be certified by the Department of Health and Human Services. Paragraph 710.59(e)(3) (superseded by § 707.12(b)(2)) stated that the amount of urine collected in a specimen will be at least 60 milliliters, in accordance with the HHS Guidelines. This statement provided the rationale for the amount specified (i.e., it reflected the widely used and accepted standard). Under 10 CFR part 707, the requirement for a specific volume is deleted and the site collection person is directed to ascertain that a sufficient amount of urine is collected for an initial test, a confirmatory test, and a retest. Paragraph 710.59(f)(1) (superseded by § 707.13(a)) indicated that the gas chromatography/mass spectrometry method would be used in confirmatory tests and directed the reader to certain paragraphs in the HHS Guidelines for information on the procedure. Paragraph 710.59(f)(2) (superseded by § 707.13(b)) directed the medical review officer to make any determinations of substance abuse in accordance with the criteria provided in the Medical Review Officer Manual issued by HHS.

It was never intended that the HHS Guidelines be adopted in their entirety by contractors under the PSAP. Only those sections of the Mandatory Guidelines and the Medical Review Officer Manual referenced in 10 CFR part 707 apply to the PSAP. An inadvertent reference was made in § 710.59(e)(3) to a "permanent record book," which reflects an HHS requirement. This reference has been deleted, as the paragraph was superseded by the provisions of 10 CFR part 707, which replaces the requirement for a permanent record book with the use of a multi-part specimen chain of custody form.

### C. Drug Testing

Two commenters took exception to the requirement in paragraph 710.59(b) that employees who have not undergone a random drug test for a given year at the time of that year's medical examination be tested for the use of illegal drugs during the medical

examination. It was observed that, under the procedures used in certain facilities, this would prevent the test from being unannounced. The intent of the statement was to offer a method of assuring that all individuals in the PSAP were tested annually. There are any number of mechanisms through which the testing can be conducted on an unannounced, random basis, with every individual in the population being tested at least annually. The sentence is therefore removed and the precise mechanism of testing administration left to the contractor, with the stipulation that any method used result in random, unannounced, annual tests.

### D. Training

One commenter felt that the supervisor training referred to in the preamble to the proposed rule implied that training would be incorporated as a requirement in the final rule without due opportunity for public comment. This was never intended. The reference to training was solely to provide information to contractors on the assistance available through the DOE for implementation of the PSAP. This final rule contains no training requirements.

### III. Changes From Proposed Rule

In addition to the removal of alcohol testing requirements and those drug testing protocols now found in 10 CFR part 707, there has been a revision in the security requirements, based on recent personnel security research findings and on comments from within the Department of Energy. Specifically, in § 710.60(c), the investigative requirement is now a single-scope background investigation, the standard used by the Department for the granting of a Q access authorization. In keeping with that standard, § 710.60(e) now requires a periodic reinvestigation in accordance with those procedures used to maintain a Q access authorization. Paragraph 710.60(d) is changed to eliminate the annual national agency check (NAC) and to clarify that the yearly update of the SF-86 is for Part II of that form only. The strength of the PSAP is in its continuing evaluation of covered individuals, and while its investigative elements are important, it is felt that there is little benefit gained by a 15-year scope investigation and annual NAC, relative to the cost incurred.

In § 710.54, Definitions, the definition for "drug certification" has been deleted, as this administrative instrument is not a form or procedure of the PSAP.

A non-substantive change has been made to §§ 710.50(a) and 710.55,

regarding the positions covered by the Personnel Security Assurance Program. The second category of positions in each of those paragraphs has been revised to refer to positions "which afford unescorted access to the control areas of a nuclear material production reactor," instead of positions "identified as nuclear material production reactor operators." This change makes the second category of covered positions grammatically parallel with the first category. The Department does not intend any change in the scope of the second category of covered positions.

### IV. Procedural Requirements

#### A. Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

#### B. Regulatory Flexibility Act

In accordance with section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., DOE finds that sections 603 and 604 of the said Act do not apply to this rule because, if promulgated, the rule will affect only DOE contractors operating Government-owned or leased sites and their subcontractors, and will not have significant economic impact on a substantial number of small entities.

#### C. National Environmental Policy Act

There is no impact on the environment under today's rule. Accordingly, preparation of neither an environmental assessment nor an environmental impact statement is required.

#### D. Paperwork Reduction Act

Today's rule has been reviewed in accordance with the Paperwork Reduction Act and has been determined to contain no collection of information requirements other than those already approved under OMB Control Number 1910-1800.

#### E. Federalism Effects

The principal impact of today's rule will be on government contractors and their employees. The rule is unlikely to have a substantial direct effect on the States, the relationship between the States and Federal government, or the distribution of power and responsibilities among various levels of government. No Federalism assessment under E.O. 12612 is required.

**F. Review Under Executive Order 12778**

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in sections 2(a) and 2(b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that regulations define key terms and are clear on such matters as exhaustion of administrative remedies and preemption. The Department certified that today's regulatory action meets the requirements of sections 2(a) and 2(b)(2) of Executive Order 12778.

**List of Subjects in 10 CFR Part 710**

Administrative practice and procedure, classified information, government contracts, government employees, nuclear materials.

**Kenneth E. Baker,**

*Acting Director, Office of Nonproliferation and National Security.*

For the reasons set forth in the preamble, part 710 of title 10 of the Code of Federal Regulations is amended as set forth below.

**PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SIGNIFICANT QUANTITIES OF SPECIAL NUCLEAR MATERIAL**

1. The authority citation for part 710 is revised to read as follows:

**Authority:** Sec. 145, 68 Stat. 942 (42 U.S.C. 2165) and sec. 161, 68 Stat. 948 (42 U.S.C. 2201); E.O. 10450, 3 CFR 1949-1953 Comp., p. 936, as amended; E.O. 10865, 3 CFR 1959-1963 Comp., p. 398, as amended, 3 CFR Chap. IV; sec. 104(c), 38 Stat. 1237 (42 U.S.C. 5814); sec. 105(a), 88 Stat. 1238 (42 U.S.C. 5815); secs. 641, 644, 646, 91 Stat. 598, 599 (42 U.S.C. 7251, 7254, and 7256).

2. Subpart B of part 710 is revised to read as set forth below:

**Subpart B—Criteria and Procedure for Establishment of the Personnel Security Assurance Program and Determinations of an Individual's Eligibility for Access to a Personnel Security Assurance Program Position**

**General Provisions**

- 710.50 Purpose.
- 710.51 Scope.
- 710.52 References.
- 710.53 Policy.
- 710.54 Definitions.

**Procedures**

- 710.55 Designation of PSAP positions.
- 710.56 Program process.
- 710.57 Supervisory review.
- 710.58 Medical assessment.
- 710.59 Management evaluation.
- 710.60 DOE security review and clearance determination.

**Subpart B—Criteria and Procedures for Establishment of the Personnel Security Assurance Program and Determinations of an Individual's Eligibility for Access to a Personnel Security Assurance Program Position**

**General Provisions****§ 710.50 Purpose.**

(a) This subpart establishes the policies and procedures for implementing the Department of Energy (DOE) Personnel Security Assurance Program (PSAP) for individuals in positions:

(1) Which afford direct access to or have direct responsibility for transportation or protection of Category I quantities of special nuclear materials (SNM);

(2) Which afford unescorted access to the control areas of a nuclear material production reactor; or

(3) With the potential for causing unacceptable damage to national security.

(b) The DOE Personnel Security Assurance Program is designed to establish the procedures for DOE and DOE contractors to utilize in the selection and continuing evaluation of individuals for assignment to positions described by paragraph (a) of this section. Individuals selected for assignment to such positions must be granted access authorization in accordance with the procedures and requirements set forth in subparts A and B of this part.

**§ 710.51 Scope.**

The criteria and procedures establishing the Personnel Security Assurance Program shall apply to:

(a) Those employees of, and applicants for employment with, DOE who either occupy or make application for PSAP positions, as described by paragraph (a) of § 710.50.

(b) Those employees of, and applicants for employment with, contractors and agents of the DOE who either occupy or make application for PSAP positions, as described by paragraph (a) of § 710.50.

**§ 710.52 References.**

(a) Atomic Energy Act of 1954, as amended, section 11, "Definitions"; section 141, "Policy"; section 143,

"Department of Defense Participation"; section 145, "Restrictions"; section 161 b., "General Provisions"; which provide statutory authority for establishing and implementing a DOE security program for controlling access to Restricted Data and special nuclear material. Copies of selected provisions appear as appendix A to subpart A of this part.

(b) Executive Orders 10450, April 29, 1953, "Security Requirements for Government Employment," 10865, February 20, 1960, "Safeguarding Classified Information Within Industry," and 12564, September 15, 1986, "Drug-Free Federal Workplace," all as amended.

(c) 10 CFR part 707, "Workplace Substance Abuse Programs at DOE Sites," which requires DOE contractors to establish workplace substance abuse prevention programs, including urine drug testing for individuals who occupy sensitive positions such as those requiring a PSAP access authorization.

(d) Implementing directives (DOE Orders) which provide Departmental guidance on the PSAP and related areas are available from the U.S. Department of Energy, Washington, DC 20585, Attention: Directives Distribution.

**§ 710.53 Policy.**

The protection of certain of the DOE's security interests, with the potential, if compromised, of causing unacceptable damage to the national security requires the implementation of a program designed to assure that individuals occupying positions affording access to certain material, facilities, and programs meet the highest standards of reliability. This objective is accomplished under this subpart through a system of continuous evaluation which identifies those individuals whose judgment may be impaired by physical and/or emotional disorders, substance abuse, or the use of alcohol habitually to excess. This process will reduce the risk resulting from the potential threat represented by such employees to an acceptable level. The determination to grant initially and to continue annually the access authorization to a PSAP position is based upon a DOE security assessment of any information of security concern developed in the course of an initial and annual security review process.

**§ 710.54 Definitions.**

As used in this part:

*Contractor* means the contractor and subcontractors at all tiers.

*Direct access* means access to Category I quantities of SNM which would permit an individual to remove, divert, or misuse that material in spite

of any controls that have been established to prevent such unauthorized actions.

*Illegal drugs* means a controlled substance included in Schedules I, II, III, IV, or V, as defined by 21 U.S.C. 802(6), the possession of which is unlawful under chapter 13 of that title. The term "illegal drugs" does not apply to the use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by law.

*Management official* means an individual designated by the DOE or a DOE contractor, as appropriate, who has programmatic responsibility for PSAP positions.

*Occurrence* means any event or incident that is a deviation from the planned or expected behavior or course of events in connection with any Department of Energy or Department of Energy-controlled operation, if the deviation has environmental, public health and safety, or national security protection significance. Incidents having such significance include the following, or incidents of a similar nature:

- (1) Injury or fatality to any person involving actions of a Department of Energy contractor employee.
- (2) Involvement of nuclear explosives under Department of Energy jurisdiction which results in an explosion, fire, the spread of radioactive material, personal injury or death, or significant damage to property.
- (3) Accidental release of pollutants which results or could result in a significant effect on the public or environment.
- (4) Accidental release of radioactive material above regulatory limits.

*PSAP Approving Official* means a senior DOE official with direct personnel security responsibilities appointed by an operations office manager to review all relevant information, including DOE F 5631.35, "PSAP Management, Medical, and Security Report" as part of the DOE security review process, and who is responsible for granting or continuing the PSAP access authorization, or determining that an individual be processed under the provisions of subpart A of this part.

*PSAP position* means a position that affords direct access to or has direct responsibility for transportation or protection of Category I quantities of SNM, affords unescorted access to nuclear material production reactor control areas, or with the potential to cause unacceptable damage to national security.

*Reasonable suspicion* means a suspicion based on an articulable belief that an employee uses illegal drugs, drawn from particularized facts and reasonable inferences from those facts, as detailed further in part 707 of this chapter.

*Security concern* means the presence of information, regarding an individual applying for or holding a PSAP position, that may be considered derogatory under the criteria in subpart A of this part.

*Selecting official* means the management official responsible for making the final employment decision regarding an individual seeking a PSAP position.

*Site occupational Medical Director* means a physician responsible for the overall direction and operation of the occupational medical program at a particular site.

*Supervisor* means an individual who has direct oversight and responsibility for a person holding a PSAP position.

*Unacceptable damage* means an incident that could result in a nuclear explosive detonation, a major environmental release from a nuclear material production reactor, or an interruption of nuclear weapons production with a significant impact on national security.

## Procedures

### § 710.55 Designation of PSAP positions.

PSAP positions shall be designated by the cognizant Operations Office Manager in accordance with the following criteria:

(a) Positions that afford direct access to Category I quantities of SNM or have direct responsibility for transportation or protection of Category I quantities of SNM.

(b) Positions that afford direct access to the control areas of a nuclear material production reactor.

(c) Positions with the potential for causing unacceptable damage to national security which are not included in paragraph (a) or (b) of this section, and are designated by the Director, Office of Safeguards and Security, DOE.

### § 710.56 Program process.

(a) Individuals selected for assignment to PSAP positions must be granted a PSAP access authorization in accordance with the procedures and requirements set forth in this subpart.

(b) The PSAP involves four components: Supervisory review; Medical assessment; management evaluation; and security determination. A DOE determination to grant initially and to continue annually an

individual's PSAP access authorization is based upon a DOE security assessment of any information of security concern developed in the course of the supervisory review, medical assessment, management evaluation, and security review.

(c) DOE shall make its decision as to a PSAP access authorization in accordance with the criteria in subpart A, § 710.8 of this part.

### § 710.57 Supervisory review.

(a) The supervisory review shall be performed on all applicants tentatively selected for PSAP positions, transferees to PSAP positions, individuals occupying PSAP positions but not yet holding a PSAP access authorization, and PSAP-cleared employees.

(b) The initial SF-86, OMB Control No. 3206.007, "Questionnaire for Sensitive Positions" of an applicant tentatively selected for a PSAP position and an annual update of the "Questionnaire for Sensitive Positions," Part II, of each incumbent in a PSAP position shall be completed and forwarded to the appropriate PSAP Approving Official.

(c) Before being selected for a PSAP position, any tentatively selected applicant must undergo a pre-employment suitability determination as defined by 48 CFR 970.2201. For DOE employees, this pre-employment check must comply with the requirements established by the Office of Personnel Management in part 731 of title 5, Code of Federal Regulations. For contractor employees, this pre-employment check must comply with the requirements established by the DOE in section 970.2201(b)(1)(ii) of title 48.

(d) Each applicant tentatively selected for a PSAP position and each individual occupying a PSAP position but not yet holding a PSAP access authorization shall execute the appropriate PSAP releases, acknowledgements, and waivers. The request for a PSAP access authorization shall not be further processed until these documents are completed. Failure of an individual, occupying a PSAP position but not yet holding a PSAP access authorization, to complete these documents may prevent DOE from reaching an affirmative finding required for granting or continuing PSAP access authorization. An effort shall be made to reassign that individual to a position not requiring a PSAP access authorization. For purposes of this section and all sections of this rule that relate to reassignment from PSAP duties, any Federal employee will be immediately removed from PSAP duties. The affected employee's supervisor may reassign the

employee or realign the employee's current duties. If these actions are not feasible, the supervisor must contact the appropriate servicing personnel office for guidance.

(e) Applicants tentatively selected for PSAP positions and each individual occupying a PSAP position, but not yet holding a PSAP access authorization, shall undergo testing for the use of illegal drugs in accordance with the provisions of the DOE policies implementing Executive Order 12564, or Part 707 of this chapter, which establish workplace substance abuse programs for DOE and contractor employees respectively. A determination of the use of illegal drugs, based on a drug test, shall result in termination of consideration for the PSAP access authorization. An employee who has been determined to have used illegal drugs, based on a drug test, shall be immediately reassigned from the PSAP duties and processed under the provisions of Subpart A of this part.

(f) The supervisor (or selecting official) shall report any security concerns, resulting from his or her review, to the appropriate management official.

(g) Annual review. Each PSAP-cleared employee shall have an annual PSAP review conducted by the supervisor during which the supervisor shall evaluate information relevant to security. The supervisor shall report any security concerns, resulting from his or her review, to the appropriate management official.

(h) Recognition of security concerns and unusual Conduct. In order to facilitate early recognition of an individual who represents a possible security concern, individuals who, in the judgment of the responsible supervisor, exhibit unusual conduct shall be referred to the site Occupational Medical Director, who may arrange for the PSAP-cleared employee to be examined by the appropriate medical staff. Information indicating a possible security concern shall be reported immediately to the appropriate management official and PSAP Approving Official.

(i) Temporary reassignment to non-PSAP duties. Where an individual has demonstrated a possible security concern or a condition which may temporarily affect his or her reliability, the individual, with the recommendation of the site Occupational Medical Director or the PSAP Approving Official, may be temporarily reassigned to non-PSAP duties. In the event that a PSAP-cleared employee is temporarily reassigned to

non-PSAP duties, the supervisor, jointly with the site Occupational Medical Director and/or the PSAP Approving Official, as appropriate, may determine the temporary restrictions to be placed on the employee. The PSAP Approving Official shall be notified immediately upon the decision to temporarily reassign the employee to non-PSAP duties and the reason for such action, and upon the decision to reinstate such employee. If the reason for the temporary reassignment was based upon a security concern, the PSAP Approving Official must approve the request for reinstatement.

#### § 710.58 Medical assessment.

(a) *The medical examination.* The purpose of the PSAP medical examination is to ensure that an applicant tentatively selected for, or incumbent in, a PSAP position does not represent a security concern or have a condition which may prevent the individual from performing PSAP duties in a reliable and safe manner. The examination shall include an evaluation to determine the presence of any physical or mental condition that causes or may cause a significant defect in the judgment or reliability of the individual, including that which may result from the use of illegal drugs or the use of alcohol habitually to excess.

(b) *When performed.* The medical assessment is performed initially upon applicants tentatively selected for PSAP positions and employees occupying PSAP positions who have not yet received a PSAP access authorization. The medical assessment shall be performed annually, or more often as may be required by the site Occupational Medical Director, for PSAP-cleared employees.

(c) *Contents of medical assessment.* The medical assessment shall include: A comprehensive medical examination; an examination for use of alcohol habitually to excess; a psychological assessment and/or psychiatric evaluation as provided for in any applicable DOE medical standards, and as permitted by Federal regulations; and an examination for the cause of any reported unusual conduct.

(d) *Examination for use of alcohol habitually to excess.* The use of alcohol habitually to excess represents a potential threat to national security and is inconsistent with access to a PSAP position. Accordingly, the medical assessment shall include:

(1) *Diagnosis.* Employees in, or applicants tentatively selected for, a PSAP position shall be evaluated for the use of alcohol habitually to excess. Those employees diagnosed currently to

use alcohol habitually to excess shall be temporarily reassigned to non-PSAP duties and the PSAP Approving Official shall be notified immediately.

(2) *Rehabilitation.* Individuals reinstated to PSAP duties following treatment leading to rehabilitation from the use of alcohol habitually to excess shall be required to undergo evaluation as prescribed by the site Occupational Medical Director to ensure continued rehabilitation. Such evaluation shall be consistent with appropriate Departmental substance abuse programs.

(e) *Examination for the cause of reported unusual conduct.* Upon referral of a PSAP-cleared employee by a supervisor for observed unusual conduct, the site Occupational Medical Director may arrange for the employee to be examined by appropriate specialists.

(f) *Report of occupational Medical Director.* Upon completion of the medical assessment, the site Occupational Medical Director shall report any security concerns resulting from the medical assessment to the appropriate management official.

(g) *Temporary restrictions on a PSAP position.* In the event that a condition or circumstance develops that may affect the judgment or reliability of a PSAP-cleared employee, the site Occupational Medical Director may recommend restrictions. The site Occupational Medical Director shall report these restrictions immediately, in writing, to the appropriate management official who shall immediately notify the appropriate PSAP Approving Official. Removal of restrictions requires notification in writing to both the management official and the PSAP Approving Official by the site Occupational Medical Director.

(h) *Sick leave from a PSAP position.* PSAP-cleared employees who have been on sick leave for five or more consecutive work days are required to report in person to the site Occupational Medical Director before being allowed to return to normal duties. The site Occupational Medical Director shall provide a recommendation to the appropriate management official regarding the employee's return to work. A PSAP-cleared employee may in certain circumstances also be required to report to the site Occupational Medical Director for written recommendation to return to normal duties after any period of sick leave.

#### § 710.59 Management evaluation.

(a) *Evaluation components.* A management evaluation based upon a careful review of the results of the

supervisory review, medical assessment, and drug testing of an individual in, or an applicant tentatively selected for, a PSAP position is required before that individual can be considered for an initial granting or the continuance of a PSAP access authorization. The appropriate manager of an organization having PSAP positions (management official) shall evaluate the information in these reports and forward his or her recommendation, including any security concern, to the PSAP Approving Official.

(b) *Drug testing component.* Drug testing for the use of illegal drugs, as required by the PSAP, shall be established to test all individuals in, or applicants tentatively selected for, PSAP positions. Testing shall be conducted in accordance with the DOE policies implementing Executive Order 12564, or part 707 of this chapter, which establish workplace substance abuse programs for DOE and contractor employees respectively. The program shall include unannounced annual drug testing and testing for occurrence or reasonable suspicion for all PSAP-cleared individuals. A PSAP-cleared individual who has been determined to have used illegal drugs based on a drug test shall be reassigned immediately to non-PSAP duties, and the PSAP Approving Official shall be notified immediately.

(c) *Occurrence or reasonable suspicion testing component.* When a PSAP-cleared employee is involved in or associated with an occurrence requiring notification to the DOE or whose behavior creates the basis for a reasonable suspicion of substance abuse, the employee shall be tested for the use of illegal drugs. Drug testing shall be conducted in accordance with the provisions of the DOE policies implementing Executive Order 12564, or part 707 of this chapter, which

establish workplace substance abuse programs for DOE and contractor employees respectively.

(d) *Rehabilitation.* Individuals reinstated to PSAP duties following treatment leading to rehabilitation from the use of illegal drugs shall be required to undergo evaluation and testing as prescribed in DOE drug-free workplace and substance abuse policies and by the site Occupational Medical Director or other designated official, as appropriate, in order to ensure continued rehabilitation.

(e) *Corporate policy.* Nothing in this subpart is intended to interfere with or prohibit a contractor of the Department from conducting medical and other evaluations, including testing for the use of illegal drugs as a matter of corporate policy, so long as such policy is at least as effective as the requirements and procedures of this subpart.

#### **§ 710.60 DOE security review and clearance determination.**

(a) *When performed.* The final component of the PSAP process is a security review and clearance determination performed by the PSAP Approving Official upon receipt of the management evaluation and recommendation.

(b) *The criteria.* The PSAP access authorization and adjudication shall be conducted in accordance with the criteria and procedures contained in relevant sections of this part.

(c) *Review for initial PSAP access authorization.* An initial PSAP access authorization requires the applicant or employee to have a DOE Q access authorization, based upon a background investigation. The adjudication and determination for a PSAP access authorization shall be based upon a review of security information, including the results of the background

investigation and the information provided by management and medical sources.

(d) *Annual PSAP access authorization continuance.* Once an employee has received the PSAP access authorization, he or she shall thereafter undergo an annual security evaluation by the PSAP Approving Official. The evaluation shall include a review of the individual's DOE personnel security file, and an updated SF-86, OMB Control No. 3206-007, "Questionnaire for Sensitive Positions," Part II. The determination to continue the PSAP access authorization shall be based upon a review and any necessary adjudication of the information resulting from the annual security evaluation, and the information provided by management and medical sources, in accordance with the criteria and procedures contained in relevant sections of this part.

(e) *Periodic reinvestigation.* The PSAP-cleared employee shall undergo periodic reinvestigation as required to maintain a Q access authorization. The determination to continue the PSAP access authorization shall be based upon a review of security information, including the results of the limited background investigation and the information provided by management and medical sources.

(f) *Processing under 10 CFR part 710, subpart A.* Any matters of security concern raised to the attention of the PSAP Approving Official, such as confirmed use of illegal drugs or use of alcohol habitually to excess, shall be evaluated in accordance with the criteria under subpart A, § 710.8 of this part. Any administrative review under the PSAP shall be conducted in accordance with the provisions and procedures in subpart A of this part.

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