

DEPARTMENT OF ENERGY**Office of Defense Programs; Personnel Assurance Program; Human Reliability Policies**

AGENCY: Department of Energy.

ACTION: Notice of interim Personnel Assurance Program procedures and standards with opportunity to comment.

SUMMARY: The Department of Energy (DOE) today publishes interim Personnel Assurance Program (PAP) procedures and standards for DOE personnel and contractor personnel who are assigned nuclear explosive duties at DOE facilities. The PAP is a systematic program, previously established by internal DOE Directive, to prevent accidental or unauthorized detonation of nuclear explosives as a result of assignment of nuclear explosives duties to employees who have or develop emotional and mental instability or physical incapacity.

DATES: The interim certification procedures and standards are effective October 9, 1996. Comments are due on or before November 8, 1996.

ADDRESSES: Comments (7 copies) may be submitted to Thomas Stepan, USDOE, DP-21, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Copies of the written comments and any other docket material received may be read and copied at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Room 1E-190, 1000 Independence Avenue, S.W., Washington, D.C., telephone (202) 586-6020 between the hours of 8:30 a.m. and 4:00 p.m. Monday through Friday except Federal holidays. The docket file material will be filed under "DP-RM-96-100."

FOR FURTHER INFORMATION CONTACT: Thomas Stepan, USDOE, DP-21, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (301) 903-3463. For information concerning submission of written comments, contact Andi Kasarsky, (202) 586-3012.

SUPPLEMENTARY INFORMATION:**I. Introduction and Background**

Pursuant to the Atomic Energy Act of 1954 (Act), DOE owns defense nuclear facilities in various locations in the United States which are operated by management and operating contractors with DOE supervision. These facilities are involved in researching, testing, producing, disassembling, and transporting of nuclear explosives which, when mated with Department of Defense-provided delivery systems, become nuclear weapons systems.

Pursuant to section 161 of the Act, 42 U.S.C. 2201(b), (i)(3), and (p), DOE and its predecessor agencies—the Atomic Energy Commission (AEC) and the Energy Research and Development Administration (ERDA)—have used some version of PAP to certify, actively monitor, and periodically recertify personnel as suitable to perform nuclear explosive duties in a safe and reliable manner. PAP provides for disqualification of persons from performance of nuclear explosive duties who fail to meet PAP requirements for emotional and mental stability and physical capability. In DOE's internal administrative directives, DOE Order 452.2, formerly DOE Order 5610.11, the term "Nuclear Explosive Duty" has been defined to include DOE or contractor employees who have custody of or "access" to a nuclear explosive. "Access" has been defined to mean: "The proximity to a nuclear explosive that affords a person the opportunity to tamper with it or to cause a detonation."

By active monitoring, PAP continuously applies to all PAP-certified employees. The certification of such employees is subject to immediate review in light of facts and circumstances about an employee or an employee's behavior indicating a reliability risk that warrants protective action to neutralize a nuclear explosive hazard by having an individual immediately removed from nuclear explosive duties. Immediate removal does not constitute a determination that the individual is unsuitable for nuclear explosive duties, but indicates that the individual's suitability is in question.

The PAP procedures and standards are legally binding on contractors under the terms and conditions of their contractual agreements which require them to comply with applicable DOE directives. They also apply to contractor personnel and could be the basis for the contractor to take some action affecting an employee's employment rights.

In 1992, the Independent Guard Association of Nevada, Local No. 1, representing PAP-certifiable civilian security guards employed by Wackenhut Security, Inc., at DOE's Nevada Test Site, brought suit challenging DOE Order 5610.11 which established the Department's nuclear explosive and weapons safety program, including the PAP. The DOE Order was challenged for failure to promulgate it through public notice and comment in compliance with the Administrative Procedure Act, 5 U.S.C. 553. In particular, the union challenged the requirement for disqualification from PAP of employees who had used hallucinogens at any time in the past.

DOE defended its administrative directive under the military functions, statement of policy, and the agency practice and procedure exceptions from notice and comment rulemaking. *Id.*

The United States District Court for the District of Nevada initially ruled that the military functions exception applied. Subsequently, however, in *Independent Guard Association of Nevada, Local No. 1 v. O'Leary*, 57 F.3d 766 (C.A.9 1995), the United States Court of Appeals for the Ninth Circuit reversed the district court's judgment. The Court of Appeals held that although DOE performs military functions with regard to nuclear explosives, the military functions exception did not apply to the promulgation of DOE Order 5610.11 insofar as DOE sought to make the requirements section (containing the PAP procedures and standards) binding on civilian support contractor personnel performing duties that did not directly involve a military function. On remand in *Independent Guard Association of Nevada v. O'Leary*, No. CV-S-92-204-LDG-LRL (D. Nev. June 14, 1996), the district court concluded that none of the other categorical exceptions from notice and comment rulemaking on which DOE relied were applicable. The district court's judgment enjoined DOE from enforcing the "requirements section" (section 2) of DOE Order 5610.11, Chapter I, against contractor employees pending notice and comment rulemaking under 5 U.S.C. 553.

Consistent with the rulings in the *Independent Guard* litigation, DOE intends to issue a notice of proposed rulemaking under 5 U.S.C. 553 in the fall of 1996 to codify the PAP employee certification procedures and standards, as well as other PAP-related policies, such as the standards for the site office medical director. Subject to consideration of the comments that are submitted in response to that notice, DOE intends to issue a final rule establishing certification procedures and standards applicable to the DOE and contractor employees performing duties that involve nuclear explosive-related functions. DOE's goal is to publish a final rule by the end of 1996 or early 1997.

DOE today is publishing interim PAP procedures and standards pursuant to the good cause exceptions in 5 U.S.C. 553(b)(B) and (d)(3) and under the authority of section 161 of the Act, 42 U.S.C. 2201. DOE finds that certification, recertification, active monitoring of personnel assigned nuclear explosive duties, and provisions for the removal of individuals from such duties pending suitability determinations are necessary to mitigate

the risk of accidental or unauthorized detonation of a nuclear explosive. Absence of PAP procedures and standards with regard to employees assigned nuclear explosive duties during the period necessary to complete notice and comment rulemaking would create an intolerable occupational and public safety risk. Accordingly, DOE concludes that it would be impracticable and contrary to the public interest to provide prior notice or a 30-day delay of the effective date for these interim procedures and standards. Although the interim PAP procedures and standards published today will be effective immediately under the good cause exceptions in 5 U.S.C. 553(b)(B) and (d)(3), DOE invites and will consider comments on the interim procedures and standards.

II. Description and Basis for Interim Procedures and Standards

The program elements of certification, periodic recertification, and spot physical or psychological evaluation for cause are based on DOE's experience, as well as the experience of the DOE's predecessor agencies for over 30 years. Both the AEC and ERDA had internal provisions for PAP, and DOE has had internal administrative directives setting forth PAP policies.

Today's interim rule contains several modifications of the PAP as set forth in DOE directives. These modifications include: (1) A requirement for an individual to sign a form documenting "refusal of consent" if the individual chooses not to participate in the PAP; (2) flexibility in selecting and designating a psychological inventory evaluation tool as a substitute for the specific designation of the Minnesota Multi-Phasic Personality Inventory; (3) a requirement for a more flexible "semi-structured" interview, which is a substitute for the prior requirement for a "structured" interview; (4) the addition of a psychological evaluation in every third year, as part of an individual's annual recertification; (5) clarification of requirements for random drug testing, and (6) the addition of evaluation requirements for individuals who have used hallucinogenic drugs during the preceding five years.

This part of the Supplementary Information discusses the meaning of, and basis for, those provisions of the interim certification procedures and standards that require explanation. It does not discuss provisions that are largely self-explanatory.

Section 2 sets forth definitions. The definition of "illegal drug" lists the drugs that are set forth in "Mandatory Guidelines for Federal Workplace

Testing Programs" issued by the Department of Health and Human Services, 53 FR 11970 (April 11, 1988). The definitions of "access," "custody," "nuclear explosive," "nuclear explosive area," and "pit" were developed in consultation with a variety of interested stakeholders and subject matter experts.

Section 11 of the interim procedures and standards identifies both the medical assessment requirements and the actions DOE may take based on medical evaluations. Paragraph (a) of section 11 summarizes the purpose of medical assessments and provides that such an assessment consists of physical examination and psychological evaluation for certification and periodic recertification. Paragraph (a) also indicates that such an assessment may be required to evaluate an employee for possible drug or alcohol abuse.

Paragraph (b) presents more details about the medical assessments for the purpose of initial certification and periodic recertification. It refers to the use of a "generally accepted, self-reporting psychological inventory tool" together with a "semi-structured interview," both of which are required initially. Also, the semi-structured interview is part of the annual medical evaluation for recertification, while the psychological inventory tool is required every third year as part of the medical evaluation for recertification. The Minnesota Multi-Phasic Personality Inventory is an example of a psychological inventory tool. A "semi-structured interview" involves a series of questions by a clinical psychologist who has latitude to vary the focus and content of questions as a function of what the personality inventory or interviewee responses indicates should be probed.

Paragraph (c) deals with the policies applicable to detecting and acting with regard to positive indications of drug abuse. Paragraph (c)(2) cross references 10 CFR part 707 which provides DOE's general policy to promote drug free workplaces, and applies to DOE contractors and subcontractors performing work at DOE owned or controlled sites. However, paragraph (c) adds some requirements to those in part 707.

Paragraph (c) states a special policy for hallucinogenic drug use. The hallucinogens in question are listed in a definition of the term "hallucinogenic drug" which appears in section 2. The policy provides that hallucinogenic drug use more than five years earlier is not, in itself, an adequate basis for denying certification or recertification. The five-year rule reflects a period of time that should elapse, as a protective

practice, to minimize the likelihood of flashbacks. "Flashback" is the term used to describe a transient, spontaneous recurrence of certain aspects of a person's hallucinogenic drug experience. Flashbacks typically have all the qualities of the original experience, and they are strongly felt. Because flashbacks are sudden, often unpredictable, largely involuntary, dramatic alterations of emotional state, perception, sensation, and behavior, an accident would likely result if a flashback were to occur during the performance of a hazardous task. Flashbacks may occur within a few days after drug use, or they may occur a few weeks, months, or even years later.

An individual who used hallucinogenic drugs more than five years earlier will be considered for nuclear explosive duties. However, paragraph (c)(6) further provides that an individual who has used hallucinogenic drugs must have an acceptable job record and observed behavior; not be susceptible to flashbacks resulting from hallucinogenic drug use; and must undergo a medical evaluation to determine the individual's reliability.

Paragraph (d) deals with medical assessments for alcohol abuse. It specifies the blood alcohol concentration that warrants enforcement action. Based on the practices of the Federal Aviation Administration with regard to airplane pilots, DOE has adopted the policy of prohibiting alcohol consumption within an eight hour period preceding nuclear explosive duties and does not permit an individual to perform nuclear explosive duties for a minimum of 24 hours in the event a confirmatory breath alcohol test result is at or above 0.02 percent. (Reference 14 CFR 91.17(a)(1); 49 CFR 382.505(b)). Removal from nuclear explosive duties due to results of a confirmatory breath alcohol test could lead to revocation of PAP certification, but there is provision for reinstatement following completion of an approved alcohol treatment program.

Issued in Washington, DC, on October 2, 1996.

Victor H. Reis,

Assistant Secretary for Defense Programs.

Nuclear Explosive Safety Interim Certification Procedures and Standards for the DOE Personnel Assurance Program

1. General

These interim procedures and standards apply to all Department of Energy (DOE) personnel or contractor personnel who are assigned nuclear explosive duties. The Personnel

Assurance Program (PAP) is a human reliability program designed to ensure that individuals assigned to nuclear explosive duties do not have or develop emotional, mental, or physical incapacities that could result in the accidental or unauthorized detonation of a nuclear explosive. In general:

(a) PAP certification is required for assignment to nuclear explosive duties, and, in addition, the individual must meet all other applicable job qualification requirements;

(b) Failure of an individual to be certified or recertified for assignment to nuclear explosive duties shall not, in itself, reflect on the individual's suitability for assignment to other duties and shall not, in itself, be a cause for loss of pay or other benefits or other changes in employment status;

(c) Personnel management actions based on the consideration of technical competence and other job qualification requirements shall not affect the qualification for the PAP;

(d) Except for the functions in section 8(b), managers of Operations Offices may delegate PAP functions to the deputy managers, assistant managers, division directors, and/or area office managers; and

(e) These interim procedures and standards do not apply to responses to unplanned events (e.g., Accident Response Group activities), which are addressed in DOE 5530-series Orders and DOE Order 151.1, "Comprehensive Emergency Management System."

2. Definitions

(a) "Access" means the proximity to a nuclear explosive that affords a person the opportunity to tamper with it or to cause a detonation.

(b) "Custody" means responsibility for control of and access to nuclear explosives.

(c) "Hallucinogenic drug" means D-lysergic acid diethylamide (LSD), mescaline (peyote cactus), methoxylated amphetamines, or psilocybin (Psilocybin fungus).

(d) "Illegal drug" means cocaine, marijuana, opiates, amphetamines, or phencyclidine.

(e) "Nuclear explosive" means an assembly containing fissionable and/or fusionable materials and main charge high explosive parts or propellants capable of producing a nuclear detonation (e.g., a nuclear weapon or test device).

(f) "Nuclear explosive area" means any area that contains nuclear explosive or collocated pit and main charge high explosive parts.

(g) "Nuclear explosive duty" means work assignments that allow custody of

a nuclear explosive device or access to a nuclear explosive device or area.

(h) "PAP certifying official" means the DOE Operations Office manager or the manager's delegate, unless the Secretary of Energy delegates the certification function to another individual. The certification function shall not be delegated to a level lower than area office manager.

(i) "Pit" means a fissile component, or a set of fissile components, designed to fit in the central cavity of an implosion system and which if placed therein will create a nuclear explosive.

(j) "SOMD" means the Site Occupational Medical Director.

3. Requirements

Prior to being assigned to nuclear explosive duties, personnel shall be certified in the PAP by a PAP certifying official and be recertified annually, not to exceed 12 months between recertifications. To be certified, an individual must:

(a) Have an active DOE Q access authorization;

(b) Sign an acknowledgment and agreement to participate in the PAP on a form for certification and recertification provided by DOE;

(c) Complete a medical assessment for certification and recertification as required by the SOMD in compliance with section 11 of these interim certification procedures and standards; and

(d) Be interviewed and briefed on the importance of the nuclear explosive duty assignment, PAP requirements, and the nature and objectives of the PAP. If an individual chooses to not participate in the PAP, he or she shall sign a form provided by DOE documenting that refusal.

4. PAP Certification Process

The PAP Certifying Official determines certification or recertification and reviews circumstances concerning an individual's decertification from nuclear explosive duties and possible recertification. Managers of Operations Offices who exercise jurisdiction over PAP certification shall issue instructions for implementing the PAP. As a minimum, the instructions shall provide for:

(a) Conducting a supervisory interview of each individual, during which the supervisor shall determine the individual's willingness to accept the requirements and conditions of the PAP;

(b) Ensuring that individuals undergo the medical assessment required by section 11;

(c) Ensuring that the personnel security file has been reviewed for PAP concerns;

(d) Ensuring that other available personnel data has been reviewed for PAP concerns;

(e) Allowing the exchange of information concerning a PAP individual among responsible DOE or DOE contractor officials during the certification, recertification, or decertification process;

(f) Requesting DOE certification or recertification of contractor personnel when the contractor has determined, on the basis of all information available, that the individual is suitable. The contractor requesting certification or recertification shall assure the PAP certifying official that all PAP certification requirements have been met;

(g) Addressing any requirement not met during the recertification process. The contractor shall provide any personal data that may have a bearing on the individual's recertification;

(h) Documenting PAP certification/recertification on a form provided by DOE;

(i) Developing a mechanism for co-workers, supervisors, and managers to communicate concerns regarding an individual's suitability to perform nuclear explosive duties; the instructions shall ensure that these concerns are reported to the appropriate official, as specified in sections 5 and 6, for timely resolution; and

(j) Ensuring that if an individual is no longer being considered for assignment to nuclear explosive duties or is no longer assigned to such duties, any processing of a decision with respect to the individual's certification will be terminated. If, at a later date, the same individual is again being considered for assignment to nuclear explosive duties, processing of the individual's certification shall be completely redone.

5. Supervisor Responsibilities

Supervisory personnel are responsible for observing PAP-certified individuals and reporting and documenting behavior that would cause a reasonable belief that the individual's ability to perform assigned tasks in a safe, secure and reliable manner may be impaired. An individual whose PAP suitability is in question shall be immediately removed from nuclear explosive duties, as provided in section 7. Behavior that could indicate unsuitability for the PAP, regardless of how the knowledge was obtained or where the incident occurred, shall be reported immediately to the SOMD and/or other PAP official

for evaluation. Examples of such behavior include the following:

- (a) Psychological or physical disorders that impair performance of assigned duties;
- (b) Illegal conduct, arrest, or conviction;
- (c) Indications of deceitful or delinquent behavior;
- (d) An attempt or implied threat to destroy property or life;
- (e) Suicidal tendencies or attempted suicide;
- (f) Use of illegal drugs, the abuse of alcohol, or the abuse of legal drugs;
- (g) Recurring financial irresponsibility;
- (h) Irresponsibility in performing assigned duties;
- (i) Inability to deal with stress, or the appearance of being under unusual stress;
- (j) Evidence of failure to understand work directives, hostility or aggression toward fellow workers or authority, uncontrolled anger, willful violation of safety or security procedures, or repeated absenteeism; and
- (k) Significant behavioral changes, moodiness, depression, or other evidence of loss of emotional control.

6. Individual Responsibilities

(a) Individuals in the PAP are responsible for reporting any behavior of other PAP personnel that could indicate unsuitability for nuclear explosive duties, including the types of behavior listed in section 5, to a supervisor, the SOMD, or a PAP official.

(b) Individuals who are in the PAP are responsible for reporting any condition that may affect their own suitability for nuclear explosive duties to a supervisor, to the SOMD, or to a PAP official.

7. Immediate Removal From Nuclear Explosive Duties

(a) An individual whose PAP suitability is in question shall be immediately removed from nuclear explosive duties. Immediate removal from nuclear explosive duties requires, as a minimum, that:

- (1) The individual ceases performance of nuclear explosive duties;
 - (2) The individual shall be denied access to nuclear explosive areas; and
 - (3) The circumstances that led to the removal of the individual from nuclear explosive duties shall be documented.
- (b) Immediate removal from nuclear explosive duties does not constitute a determination that the individual is unsuitable for nuclear explosive duties. It only means that the individual's suitability is in question.
- (c) Immediate removal action will not, in itself, be cause for loss of pay or other

benefits or other changes in employment status.

8. Removal From PAP

(a) When the DOE PAP certifying official receives official written notification that an individual has been removed from nuclear explosive duties and the reasons for such removal, the individual shall be temporarily removed from PAP.

(b) The PAP certifying official shall conduct and document an evaluation of the circumstances of the temporary removal. The evaluation shall include the PAP certifying official's determination regarding the individual's suitability for continuing PAP certification and appropriate recommendations.

(1) If the certifying official determines that continuing PAP certification is appropriate, the Operations Office manager shall be notified and the individual reinstated in the PAP. The individual may resume nuclear explosive duties.

(2) If the certifying official determines that continuing PAP certification is inappropriate, the Operations Office manager shall be notified and provided with the PAP certifying official's evaluation and recommendations.

(c) The operations office manager, after receiving the evaluation from the PAP certifying official that an individual is not suitable for continuing PAP certification, shall take one of the following actions:

- (1) Direct that the individual be reinstated in the PAP and document the basis for reinstatement.
- (2) Direct that action be initiated to revoke the individual's PAP certification, in accordance with Section 12, and document the basis for the action; or
- (3) Direct that appropriate actions be taken to resolve PAP concerns (e.g., medical assessment, security evaluation, rehabilitation); based on the results of these actions, the PAP certifying official will provide a written recommendation to the operations office manager, who shall take action (1) or (2) above, as appropriate.

9. List of PAP-Certified Personnel

Managers of operations offices who grant PAP certifications shall establish procedures for developing and maintaining a current list of DOE and DOE contractor personnel certified in the PAP. The list will be used for PAP program administration; it is not an authorization for personnel to perform nuclear explosive duties. The list shall be promptly updated and verified on a quarterly basis.

10. PAP Training Requirements

Managers of Operations Offices shall ensure a program is developed and maintained to:

- (a) Provide special training in the nature and objectives of the PAP to all individuals with nuclear explosive duties;
- (b) Provide special training to medical personnel performing medical assessments for PAP certification and recertification; the medical training program shall:
 - (1) Explain nuclear explosive duties and nuclear explosive safety;
 - (2) Explain the objectives, purposes, policies, and requirements of the PAP;
 - (3) Include an orientation visit to nuclear explosive areas; and
 - (4) Emphasize the importance of timely reporting of any PAP concern to appropriate personnel;
- (c) Provide supervisory-level PAP training to DOE and DOE contractor supervisors of PAP individuals and to DOE PAP certifying officials; and the supervisory training program shall:
 - (1) Explain nuclear explosive duties and nuclear explosive safety;
 - (2) Explain the objectives, purposes, policies, and requirements of the PAP;
 - (3) Include training on the early identification of behavior (including attitude, job performance, use of illegal drugs, abuse of alcohol, or the abuse of legal drugs) that indicates a degradation in reliability or judgment; and
 - (4) Emphasize the importance of timely reporting of any PAP concern to appropriate personnel;
- (d) Establish and maintain PAP training records for supervisors of PAP personnel, PAP personnel, and medical personnel.

11. Medical Assessments

(a) The purpose of medical assessments is to ensure that an individual does not have a condition that may prevent performance of nuclear explosive duties in a safe and reliable manner. Medical assessments consist of physical examinations and psychological evaluations for PAP certification and recertification. In addition, individuals in the PAP are subject to evaluation for drug and alcohol abuse.

(b) A medical assessment for PAP certification and recertification shall include:

- (1) A comprehensive physical examination;
- (2) A psychological evaluation by the clinical psychologist designated by the SOMD, with concurrence from the DOE Office of Occupational Medicine;
- (i) For the initial certification, the psychological evaluation consists of a

generally accepted, self-reporting psychological inventory tool approved by the Director of the Office of Occupational Medicine, and a semi-structured interview;

(ii) For recertification, the psychological evaluation consists of a semi-structured interview;

(iii) Every third year, the medical evaluation for recertification shall include a generally accepted self-reporting psychological inventory tool approved by the Director of the Office of Occupational Medicine; and

(iv) Additional psychological evaluations may be required by the SOMD when necessary to resolve PAP concerns.

(c) The policies applicable to a medical assessment in order to evaluate for drug abuse are as follows.

(1) Except as otherwise provided by this paragraph, a medical assessment for Federal employees shall be conducted under DOE 3792.3, "Drug-Free Federal Workplace Testing Implementation Program";

(2) Except as otherwise provided by this paragraph, a medical assessment for contractor employees shall be conducted under 10 CFR part 707;

(3) For any individual in the PAP, there shall be a test for illegal drugs at least once during every 12 months in an unannounced and unpredictable manner, and if warranted, for cause or reasonable suspicion.

(4) If, in a medical assessment, an individual refuses to submit a urine sample or attempts deception by substitution, adulteration or other means, then DOE immediately shall remove the individual from nuclear explosive duties.

(5) Confirmation of use of illegal drugs through drug testing shall result in revocation of PAP certification.

(6) When DOE suspects use of a hallucinogenic drug, the Department will review the circumstances, and for reasonable suspicion or cause may test an individual for hallucinogenic drug use. If DOE determines that an individual has used any hallucinogenic drug, then the individual shall not be eligible for PAP certification or recertification unless:

(i) Five years has passed since the last use of the hallucinogenic drug;

(ii) The individual has a record of acceptable job performance and observed behavior;

(iii) The individual is not susceptible to flashbacks resulting from hallucinogenic drug use; and

(iv) A medical evaluation is performed to determine reliability.

(7) In each case of drug abuse, the SOMD, in consultation with the clinical

psychologist, shall evaluate the individual for evidence of psychological impairment and make a recommendation to the PAP certifying official as to the individual's reliability.

(8) After successfully completing an SOMD-approved drug rehabilitation program, and subject to SOMD-directed unannounced tests for illegal drugs and relevant counseling for three years, DOE may reinstate an individual in the PAP based on the SOMD's follow-up evaluation and recommendation.

(d) The policies applicable to a medical assessment for alcohol use or abuse are as follows.

(1) When alcohol abuse is suspected, an individual shall be examined for evidence of alcohol abuse. Evidence of alcohol abuse is reason to question the individual's certification or continued certification in PAP and shall require further evaluation, which may include psychological assessment.

(2) Alcohol consumption is prohibited within an eight-hour period preceding and during nuclear explosive duties. DOE shall implement or require the contractor to implement procedures that will ensure that persons called in to perform unscheduled work are fit to perform the task assigned.

(3) Individuals in the PAP shall be tested at the work site if there is reasonable indication of alcohol use in violation of the requirements of paragraph 11(d)(2) of these interim procedures and standards.

(4) Tests for alcohol must be administered by a certified Breath Alcohol Technician using an evidential-grade breath analysis device that conforms to the Department of Transportation's (DOT) National Highway Traffic Safety Administration model specifications (58 FR 48705, September 17, 1993), and the most recent "Conforming Products List" issued by DOT.

(5) An individual whose confirmatory breath alcohol test result is at or above a blood alcohol concentration of 0.02 percent shall not be allowed to perform nuclear explosive duties for a minimum of 24 hours.

(6) Individuals refusing to submit to a breath alcohol test shall be immediately removed from nuclear explosive duties.

(7) The SOMD, in conjunction with the clinical psychologist, shall evaluate each case of alcohol abuse for evidence of psychological impairment and provide the PAP certifying official a recommendation as to the individual's reliability.

(8) After successfully completing an SOMD-approved alcohol treatment program, DOE may reinstate an individual in the PAP based on the

SOMD's follow-up evaluation and recommendation.

12. Due Process

(a) The operations office manager, prior to rendering a decision not to certify or to revoke the PAP certification of a DOE employee or contractor employee, shall provide, in writing, the following information to the individual regarding the PAP suitability decision and review process:

(1) The individual has three options after receiving notification of the manager's decision:

(i) Take no action; or

(ii) Respond to the information giving rise to the question of the individual's suitability in writing to the manager, under oath or affirmation before a notary public, within 20 working days of receipt of the notification; or

(iii) Request, in writing to the manager, to appear before a certification review hearing officer, as provided in subparagraph (b), for a review of the information giving rise to the question as to the individual's suitability. The individual must request this option within 20 working days from receipt of the notification.

(2) At the review conducted by the certification review hearing officer, the individual may be represented by counsel of the individual's own choosing and at the individual's own expense;

(3) At the review, the individual may provide witnesses and documents in support of his or her claim for suitability for PAP certification or recertification; and

(4) If the individual does not request a certification review hearing, the final decision as to suitability shall be based upon the individual's response and other information available to the manager.

(b) Upon receipt of a request from the individual for a certification review hearing, the operations office manager shall appoint a certification review hearing officer, who shall be a DOE attorney, with the appropriate DOE access authorization. The manager shall also appoint a DOE attorney as counsel to the Department to assist in the following:

(1) Obtaining evidence;

(2) Arranging for the appearance of witnesses;

(3) Examining and cross-examining witnesses; and

(4) Notifying the individual in writing, at least 7 working days in advance, of the scheduled place, date, and hour where the review will take place.

(c) The certification review hearing officer shall:

(1) Conduct the review in an orderly and impartial manner with every effort made to protect the interests of the Government and the individual;

(2) Present all information relating to the individual's suitability through witnesses or documentation;

(3) Ensure that the individual is allowed the opportunity to refute the information and to submit mitigating information relating to his or her suitability. The individual shall be permitted to offer information in his or her behalf; to call, confront, examine, and cross-examine witnesses and other persons who have made written or oral statements, except as provided in subparagraph (4); and to present and examine evidence;

(4) Have the option to receive and consider oral or written statements adverse to the individual without affording the individual the opportunity to cross-examine the person making the statement in either of the following circumstances:

(i) The substance of the statement was contained in the individual's personnel clearance investigative file before the question as to the individual's suitability arose; and the head of the Federal agency supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government, and the disclosure of that person's identity would substantially harm the national security; or

(ii) The substance of the statement was contained in the individual's personnel clearance investigative file before the question as to the individual's suitability arose, and the Assistant Secretary for Defense Programs (ASDP) or his or her designee for that particular purpose has

determined, after considering information furnished by the investigative agency as to the reliability of the person and the accuracy of the statement, that—

(A) The statement appears to be reliable and material; and

(B) Failure of the hearing officer to receive and consider such statement would substantially harm the national security; and

(C) The person who furnished the information cannot appear to testify due to death or severe illness, or some other good cause as determined only by ASDP.

(5) Ensure that whenever procedures under subparagraph (4) are used, the individual is given a summary of the information, which shall be as comprehensive and detailed as the national security permits. In addition, whenever a statement is received under subparagraph (4)(ii), the identity of the person making the statement and the information to be considered shall be made available to the individual. Appropriate consideration shall be accorded to the fact that the individual did not have an opportunity to cross-examine such person. When the procedures under subparagraph (4) are used, the operations office manager shall assist the hearing officer in obtaining the necessary verifications or determinations.

(6) Require the testimony of the individual and of all witnesses to be given under oath or affirmation.

(7) Record the review proceedings verbatim and forward a copy of the record to the operations officer manager; and

(8) Provide written findings and recommendations, with supporting rationale, to the operations office manager.

(d) Upon receipt of the certification review hearing officer's submissions, and after receiving the individual's

response in cases in which the individual did not request a hearing, the operations office manager shall promptly issue a decision in the matter. If the manager decides not to certify or to revoke the PAP certification, the manager shall inform the individual in writing of the decision and the reasons supporting it.

(e) If a hearing was conducted, the operations office manager shall forward, along with his or her decision, a copy of the record of the review proceedings and of the certification review hearing officer's findings and recommendations, with supporting rationale, to the individual.

(1) Within 20 working days of the individual's receipt of the Operations Office manager's decision, the individual may request a review by ASDP. The individual must request this review and provide supporting justification in writing to ASDP through the operations office manager and the Deputy Assistant Secretary for Military Application and Stockpile Management. The request must be in writing and include:

(i) A copy of the operations office manager's decision and supporting documentation; and

(ii) If a hearing was conducted, a copy of the record of the review proceedings and of the certification review hearing officer's findings and recommendations.

(2) Upon receipt of an individual's request for review, ASDP shall review all information forwarded by the operations office manager and issue a decision.

(3) If the individual does not request a ASDP review within 20 working days of receipt of the manager's decision, the manager's decision shall be final.

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