ORDER FOR SUPPLIES OR SERVICES

PAGE 1 OF PAGES

IMPORTANT: Mark all packages and papers with contract and/or order numbers.

BPA NO.

1. DATE OF ORDER APR 14 2006

2. CONTRACT NO. (If any)

3. ORDER NO. DR-10-06-426 MODIFICATION NO.

4. REQUISITION/REFERENCE NO. ADM-06-426

5. ISSUING OFFICE (Address correspondence to)
U.S. Nuclear Regulatory Commission
Div. of Contracts
Attn:Sharlene McCubbin
Mail Stop T-7-I-2
Washington, DC 20555

6. SHIP TO:
a. NAME OF CONSIGNEE
U.S. Nuclear Regulatory Commission
Project Officer Christine Secor
b. STREET ADDRESS
Mail Stop T-6E46
11545 Rockville Pike
c. CITY Rockville
d. STATE MD
e. ZIP CODE 20852

7. TO:
a. NAME OF CONTRACTOR
BURBACH, RODNEY V M.D., P.C.
b. COMPANY NAME
c. STREET ADDRESS
5630 WISCONSIN APT 1004
d. CITY CHEVY CHASE
e. STATE MD
f. ZIP CODE 208154456

f. SHIP VIA

8. TYPE OF ORDER
[X] a. PURCHASE
Reference your quote dtd 2/28/06
Please furnish the following on the terms and conditions specified on both sides of this order and on the attached sheet, if any, including delivery as indicated.
[ ] b. DELIVERY
Except for billing instructions on the reverse, this delivery/task order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract.

9. ACCOUNTING AND APPROPRIATION DATA $13,500.00
31x0200 B&R: 64015-5B1304 BOC: 252A JCN: D2375
OBLIGATE: $13,500.00 DUNS No.:805198173

10. REQUISITIONING OFFICE ADM
Office of Adminisration

11. BUSINESS CLASSIFICATION (Check appropriate box(es))
[X] a. SMALL
[ ] b. OTHER THAN SMALL
[ ] c. DISADVANTAGED
[ ] g. SERVICE-DISABLED VETERAN-OWNED
[ ] d. WOMEN-OWNED
[ ] e. HUBZone
[ ] f. EMERGING SMALL BUSINESS

12. F.O.B. POINT
Destination

13. PLACE OF
a. INSPECTION
b. ACCEPTANCE

14. GOVERNMENT B/L NO.

15. DELIVER TO F.O.B. POINT ON OR BEFORE (Date)
See below

16. DISCOUNT TERMS
N/A

17. SCHEDULE (See reverse for Rejections) See CONTINUATION Page

ITEM NO. (A)	SUPPLIES OR SERVICES (B)	QUANTITY ORDERED (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)	QUANTITY ACCEPTED (G)
1	YEAR 1 Evaluation services for mental health Estimate [redacted] evaluation sessions per year	[redacted]			$13,500.00	
2	YEAR 2 (Option Yr. 1) Evaluation services for mental health Estimate [redacted] evaluation sessions per year	[redacted]			$13,900.00	
3	YEAR 3 (Option Yr. 2) Evaluation services for mental health Estimate [redacted] evaluation sessions per year	[redacted]			$14,300.00	
4	YEAR 4 (Option Yr. 3) Evaluation services for mental health Estimate [redacted] evaluation sessions per year	[redacted]			$14,700.00	
5	YEAR 5 (Option Yr. 4) Evaluation services for mental health Estimate [redacted] evaluation sessions per year	[redacted]			$15,100.00	
	The services shall be performed in accordance with the attached Statement of Work.					
	The project officer is Christine Secor (301) 415-6546					
	The amount obligated for this purchase order is $13,500.00.					

SEE BILLING INSTRUCTIONS ON REVERSE

18. SHIPPING POINT
19. GROSS SHIPPING WEIGHT
20. INVOICE NO.

21. MAIL INVOICE TO:
a. NAME
U.S. Nuclear Regulatory Commission
Division of Contracts
b. STREET ADDRESS (or P.O. Box)
Mail Stop T-7-I2
c. CITY Washington
d. STATE DC
e. ZIP CODE 20555

17(h) TOTAL (Cont. pages)

17(i). GRAND TOTAL $13,500.00

22. UNITED STATES OF AMERICA
BY (Signature) Phyllis Bower

23. NAME (Typed)
Phyllis Bower
Contracting Officer
TITLE: CONTRACTING/ORDERING OFFICER

AUTHORIZED FOR LOCAL REPRODUCTION
PREVIOUS EDITION NOT USABLE

OPTIONAL FORM 347 (REV. 3/2005)
PRESCRIBED BY GSA/FAR 48 CFR 53.213(e)

TEMPLATE - ADM001

SUNSI REVIEW COMPLETE

ADM002

ADDITIONAL SIMPLIFIED ACQUISITION TERMS AND CONDITIONS

A.1 NOTICE LISTING CLAUSES INCORPORATED BY REFERENCE

The following clauses are hereby incorporated by reference (by Citation Number, Title, and Date) in accordance with the clause at FAR "52.252-2 CLAUSES INCORPORATED BY REFERENCE" contained in this document. FAR 52.252-2 contains the internet address for electronic access to the full text of a clause.

NUMBER	TITLE	DATE
	FEDERAL ACQUISITION REGULATION (48 CFR Chapter 1)	
52.222-42	STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES	MAY 1989
52.223-6	DRUG-FREE WORKPLACE	MAY 2001
52.233-4	APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM	OCT 2004
52.237-1	SITE VISIT	APR 1984
52.237-2	PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION	APR 1984
52.243-1	CHANGES--FIXED PRICE ALTERNATE I (APR 1984)	AUG 1987
52.213-3	NOTICE TO SUPPLIER	APR 1984

A.2 52.213-4 TERMS AND CONDITIONS - SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (FEB 2006)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

(1) The clauses listed below implement provisions of law or Executive order:

(i) 52.222-3, Convict Labor (June 2003) (E.O. 11755).

(ii) 52.222-21, Prohibition of Segregated Facilities (Feb 1999) (E.O. 11246).

(iii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).

(iv) 52.225-13, Restrictions on Certain Foreign Purchases (FEB 2006) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

(v) 52.233-3, Protest After Award (Aug 1996) (31 U.S.C. 3553).

(vi) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

(2) Listed below are additional clauses that apply:

(i) 52.232-1, Payments (Apr 1984).

(ii) 52.232-8, Discounts for Prompt Payment (Feb 2002).

(iii) 52.232-11, Extras (Apr 1984).

(iv) 52.232-25, Prompt Payment (Oct 2003).

(v) 52.233-1, Disputes (Jul 2002).

(vi) 52.244-6, Subcontracts for Commercial Items (FEB 2006).

(vii) 52.253-1, Computer Generated Forms (Jan 1991).

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or Executive order:

(i) 52.222-19, Child Labor--Cooperation with Authorities and Remedies (JAN 2006) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)

(ii) 52.222-20, Walsh-Healey Public Contracts Act (Dec 1996) (41 U.S.C. 35-45) (Applies to supply contracts over $10,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212) (Applies to contracts of $25,000 or more).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793). (Applies to contracts over $10,000, unless the work is to be performed outside the United States by employees recruited outside the United States.) (For purposes of this clause, United States includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)

(v) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212) (Applies to contracts of $25,000 or more).

(vi) 52.222-41, Service Contract Act of 1965, As Amended (JUL 2005) (41 U.S.C. 351, et seq.) (Applies to service contracts over $2,500 that are subject to the Service Contract Act and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, or the outer continental shelf lands).

(vii) 52.223-5, Pollution Prevention and Right-to-Know Information (AUG 2003) (E.O. 13148) (Applies to services performed on Federal facilities).

(viii) 52.225-1, Buy American Act--Supplies (June 2003) (41 U.S.C. 10a-10d) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use in the United States or its outlying areas, if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold and the acquisition--

(A) Is set aside for small business concerns; or

(B) Cannot be set aside for small business concerns (see 19.502-2), and does not exceed $25,000.)

(ix) 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration (OCT 2003). (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the Central Contractor Registration (CCR) database as its source of EFT information.)

(x) 52.232-34, Payment by Electronic Funds Transfer--Other than Central Contractor Registration (May 1999). (Applies when the payment will be made by EFT and the payment office does not use the CCR database as its source of EFT information.)

(xi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. Appx 1241). (Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at 47.504(d).)

(2) Listed below are additional clauses that may apply:

(i) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (JAN 2005) (Applies to contracts over $25,000).

(ii) 52.211-17, Delivery of Excess Quantities (SEPT 1989) (Applies to fixed-price supplies).

(iii) 52.247-29, F.o.b. Origin (FEB 2006) (Applies to supplies if delivery is f.o.b. origin).

(iv) 52.247-34, F.o.b. Destination (NOV 1991) (Applies to supplies if delivery is f.o.b. destination).

(c) FAR 52.252-2, Clauses Incorporated by Reference (FEB 1998). This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

http://www.arnet.gov/far

(d) Inspection/Acceptance. The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its postacceptance rights--

(1) Within a reasonable period of time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(e) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(f) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage

of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(g) Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(h) Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

A.3 NRC Acquisition Clauses - (NRCAR) 48 CFR Ch. 20

2052.209-72	CONTRACTOR ORGANIZATIONAL CONFLICTS OF INTEREST	JAN 1993

A.4 Other Applicable Clauses

[] See Addendum for the following in full text (if checked)

[] 52.216-18, Ordering

[] 52.216-19, Order Limitations

[] 52.216-22, Indefinite Quantity

[] 52.217-6, Option for Increased Quantity

[] 52.217-7, Option for Increased Quantity Separately Priced Line Item

[x] 52.217-8, Option to Extend Services

[X] 52.217-9, Option to Extend the Term of the Contract

A.5 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 30 days prior to expiration of the contract.

A.6 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 1989)

(a) The Government may extend the term of this contract by written notice to the Contractor within 15 days of contract expiration; provided that the Government shall give the Contractor a preliminary written notice of its intent to extend at least 30 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option provision.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed five years.

A.7 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

A.8 52.224-2 PRIVACY ACT (APR 1984)

(a) The Contractor agrees to--

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies--

(i) The systems of records; and

(ii) The design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the design, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor and any employee of the Contractor is considered to be an employee of the agency.

(c) (1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

52.204-7	CENTRAL CONTRACTOR REGISTRATION (OCT 2003)	OCT 2003

A.9 52.232-18 AVAILABILITY OF FUNDS (APR 1984)

Funds are not presently available for this contract. The Government's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

52.232-33	PAYMENT BY ELECTRONIC FUNDS--CENTRAL CONTRACTOR REGISTRATION	OCT 2003

A.10 52.232-19 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR (APR 1984)

Funds are not presently available for performance under this contract beyond . The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond , until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

A.11 PROJECT OFFICER AUTHORITY (ALT 1) (FEB 2004)

(a) The contracting officer's authorized representative hereinafter referred to as the project officer for this contract is:

Name: Christine Secor

Address: U.S. Nuclear Regulatory Commission
Mail Stop : T-6-E46
Washington, DC 20555

Telephone Number: 301-415-6546

(b) The project officer shall:

(1) Request services from the contractor via telephone or in writing for items required under this contract up to the amount obligated on the contract award document.

(2) Monitor contractor performance and recommend changes in requirements to the contracting officer.

(3) Inspect and accept products/services provided under the contract.

(4) Review all contractor invoices/vouchers requesting payment for roducts/services provided under the contract and make recommendations for approval, disapproval, or suspension.

(5) Immediately notify the Security Branch, Division of Facilities and Security (SB/DFS) (via e-mail) when a contractor emplyee no longer requires access authorization and return of any NRC issued badge to SB/DFS within three days after their termination.

(c) The project officer may not make changes to the express terms and conditions of this contract.

*To be incorporated into any resultant contract

A.12 SEAT BELTS

Contractors, subcontractors, and grantees, are encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles.

A.13 Compliance with U.S. Immigration Laws and Regulations

NRC contractors are responsible to ensure that their alien personnel are not in violation of United States Immigration and Naturalization (INS) laws and regulations, including employment authorization documents and visa requirements. Each alien employee of the Contractor must be lawfully admitted for permanent residence as evidenced by Alien Registration Receipt Card Form 1-151 or must present other evidence from the Immigration and Naturalization Services that employment will not affect his/her immigration status. The INS Office of Business Liaison (OBL) provides information to contractors to help them understand the employment eligibility verification process for non-US citizens. This information can be found on the INS website, http://www.ins.usdoj.gov/graphics/services/employerinfo/index.htm#obl.

The NRC reserves the right to deny or withdraw Contractor use or access to NRC facilities or its equipment/services, and/or take any number of contract administrative actions (e.g., disallow costs, terminate for cause) should the Contractor violate the Contractor's responsibility under this clause.

(End of Clause)

STATEMENT OF WORK

TITLE

"MENTAL HEALTH EVALUATIONS FOR THE DIVISION OF FACILITIES AND SECURITY, NRC"

BACKGROUND

In accordance with 10 CFR Part 10, (Attachment 1), the Security Branch (SB), requests, as needed, mental health evaluations of employees, consultants, contractors, and licensee personnel to resolve security concerns involving drug use and emotional, mental and personality disorders.

OBJECTIVES

The contractor shall conduct mental health evaluations, as needed, of U. S. Nuclear Regulatory Commission (NRC) employees, consultants, contractors and licensee personnel in accordance with 10 CFR Part 10. Activities associated with these evaluations include coordinating the evaluation with SB, reviewing the individual's Personnel Security File (PSF), conducting the mental health evaluation, consult with the individual's mental health care provider, and providing SB with a written report, which includes findings and a recommendation. SB will request these evaluations to resolve security concerns involving drug use and emotional, mental and personality disorders.

SCOPE OF WORK

Under this Purchase Order (P.O.), the contractor shall conduct evaluations at the NRC facility in Rockville, M.D. When an evaluation is required, SB will call the contractor to schedule the evaluation and to provide pertinent biographical data. SB will subsequently forward to the contractor for review, prior to the evaluation, a copy of the individual's PSF, which may include the background investigation, case analysis, and interview transcript and analysis, if applicable. The contractor will conduct the mental health evaluation and will provide SB with a written report of his findings and a recommendation.

The contractor shall conduct file reviews, as requested, to assess security issues, determine the necessity for a mental health evaluation and recommend further personnel security actions. This professional consultation is advisory in nature and does not obligate or restrict SB in their independent adjudication of security issues.

ESTIMATED QUANTITY OF SERVICES REQUIRED PER YEAR

SB may request approximately 10 mental health evaluations per year under this P.O. The charge shall include reviewing the PSF provided by SB, travel to and from the NRC, conducting the mental health evaluation, and preparing a written report of findings and recommendation.

SB may request approximately 10 PSF reviews per year under this P.O.

NRC-FURNISHED MATERIAL

Within 2 working days from the date of request for a mental health evaluation, SB will provide the contractor with the individual's PSF for review prior to the scheduled evaluation. The contractor will coordinate with SB the return of all NRC-furnished materials after he submits his report.

SCHEDULE FOR DELIVERABLES

The contractor shall schedule evaluations to take place within 10 working days from the date of SB's request.

The contractor shall provide written reports of findings and recommendations to SB within 7 working days from the date the evaluation was conducted.

The contractor shall provide oral and/or written results of file reviews within 5 working days from the date the information was received.

QUALIFICATIONS TO CONDUCT SECURITY RELATED MENTAL HEALTH EVALUATIONS

A credentialed mental health professional, e.g., psychiatrist, employed by, accepted to, or approved by the NRC, with experience in conducting such evaluations for personnel security organizations within the Federal government, shall be utilized in evaluating potentially disqualifying and mitigating information fully and properly, and particularly for consultation with the individual's mental health care provider.

The contractor shall possess, or be capable of receiving, a security clearance at the secret level or above and be available to conduct mental health evaluations on site at the NRC Headquarters facility in Rockville, MD.

TRAVEL

The NRC will not be responsible for any travel costs to and from the NRC headquarters for performance of these services. The NRC will only pay travel costs should the contractor have to travel to one of NRC regional offices. That cost will be handled separately and will not be a part of this purchase order.

PART 10--CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO RESTRICTED DATA OR NATIONAL SECURITY INFORMATION OR AN EMPLOYMENT CLEARANCE

Part Index

Subpart A--General Provisions

Sec.

10.1 Purpose.

10.2 Scope.

10.3 [Reserved]

10.4 Policy.

10.5 Definitions.

Subpart B--Criteria for Determining Eligibility for Access to Restricted Data or National Security Information or an Employment Clearance

10.10 Application of the criteria.

10.11 Criteria.

10.12 Interview and other investigation.

Subpart C--Procedures

10.20 Purpose of the procedures.

10.21 Suspension of access authorization and/or employment clearance.

10.22 Notice to individual.

10.23 Failure of individual to request a hearing.

10.24 Procedures for hearing and review.

10.25 NRC Hearing Counsel.

10.26 Appointment of Hearing Examiner.

10.27 Prehearing proceedings.

10.28 Conduct of hearing.

10.29 Recommendation of the Hearing Examiner.

10.30 New evidence.

10.31 Actions on the recommendations.

10.32 Recommendation of the NRC Personnel Security Review Panel.

10.33 Action by the Deputy Executive Director for Information Services and Administration and Chief Information Officer.

10.34 Action by the Commission.

10.35 Reconsideration of cases.

Subpart D--Miscellaneous

10.36 Terminations.

10.37 Attorney representation.

10.38 Certifications.

Authority: Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10450, 3 CFR parts 1949-1953 COMP., p. 936, as amended; E.O. 10865, 3 CFR 1959-1963 COMP., p. 398, as amended; 3 CFR Table 4; E.O. 12968, 3 CFR 1995 COM., p. 396.

Source: 47 FR 38676, Sept. 2, 1982, unless otherwise noted.

Subpart A--General Provisions

§ 10.1 Purpose.

(a) This part establishes the criteria, procedures, and methods for resolving questions concerning:

(1) The eligibility of individuals who are employed by or applicants for employment with NRC contractors, agents, and licensees of the NRC, individuals who are NRC employees or applicants for NRC employment, and other persons designated by the Deputy Executive Director for Information Services and Administration and Chief Information Officer of the NRC, for access to Restricted Data pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, or for access to national security information; and

(2) The eligibility of NRC employees, or the eligibility of applicants for employment with the NRC, for employment clearance.

(b) This part is published to implement the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, Executive Order 10865, 25 FR 1583 (February 24, 1960) Executive Order 10450, 18 FR 2489 (April 27, 1954), and Executive Order 12968, 60 FR 40245 (August 2, 1995).

[64 FR 15641, Apr. 1, 1999]

§ 10.2 Scope.

The criteria and procedures in this part shall be used in determining eligibility for NRC access authorization and/or employment clearance involving:

(a) Employees (including consultants) of contractors and agents of the Nuclear Regulatory Commission and applicants for employment;

(b) Licensees of the NRC and their employees (including consultants) and applicants for employment;

(c) NRC employees (including consultants) and applicants for employment; and

(d) Any other person designated by the Deputy Executive Director for Information Services and Administration and Chief Information Officer of the Nuclear Regulatory Commission.

[47 FR 38676, Sept. 2, 1982, as amended at 64 FR 15641, Apr. 1, 1999]

§ 10.3 [Reserved]

§ 10.4 Policy.

It is the policy of the Nuclear Regulatory Commission to carry out its responsibility for the security of the nuclear energy program in a manner consistent with traditional American concepts of justice. To this end, the Commission has established criteria for determining eligibility for access authorization and/or employment clearance and will afford those individuals described in § 10.2 the opportunity for administrative review of questions concerning their eligibility for access authorization and/or employment clearance.

§ 10.5 Definitions.

Access authorization means an administrative determination that an individual (including a consultant) who is employed by or an applicant for employment with the NRC, NRC contractors, agents, and licensees of the NRC, or other person designated by the Deputy Executive Director for Information Services and Administration and Chief Information Officer, is eligible for a security clearance for access to Restricted Data or National Security Information.

Commission means the Nuclear Regulatory Commission of five members or a quorum thereof sitting as a body, as provided by section 201 of the Energy Reorganization Act of 1974, or its designee.

Eligible or *Eligibility* means both initial eligibility and continued eligibility of an individual for access authorization and/or employment clearance.

Employment Clearance means an administrative determination that an individual (including a consultant) who is an NRC employee or applicant for NRC employment and other persons designated by the Deputy Executive Director for Information Services and Administration and Chief Information Officer of the NRC is eligible for employment or continued employment pursuant to subsection 145(b) of the Atomic Energy Act of 1954, as amended.

Hearing Counsel means an NRC attorney assigned by the General Counsel to prepare and administer hearings in accordance with this part.

Hearing Examiner means a qualified attorney appointed by the Director, Office of Administration, to conduct a hearing in accordance with this part.

National Security Information means information that has been determined pursuant to Executive Order 12958 or any predecessor order to require protection against unauthorized disclosure and that is so designated.

NRC Personnel Security Review Panel means an appeal panel appointed by the Deputy Executive Director for Information

Services and Administration and Chief Information Officer and consisting of three members, two of whom shall be selected from outside the security field. One member of the Panel shall be designated as Chairman.

Personnel Security Review Examiners are persons designated by the Executive Director for Operations to conduct a review of the record in accordance with this part.

Restricted Data means all data concerning design, manufacture, or utilization of atomic weapons, the production of special nuclear material, or 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 Atomic Energy Act of 1954, as amended.

[47 FR 38676, Sept. 2, 1982, as amended at 51 FR 35999, Oct. 8, 1986; 52 FR 31609, Aug. 21, 1987; 54 FR 53316, Dec. 28, 1989; 64 FR 15641, Apr. 1, 1999]

Subpart B--Criteria for Determining Eligibility for Access to Restricted Data or National Security Information or an Employment Clearance

§ 10.10 Application of the criteria.

(a) The decision as to access authorization and/or employment clearance is a comprehensive, common-sense judgment, made after consideration of all the information, favorable or unfavorable, relevant to whether the granting of access authorization and/or employment clearance would not endanger the common defense and security and would be clearly consistent with the national interest.

(b) The criteria in § 10.11 set forth a number of the types of derogatory information used to assist in making determinations of eligibility for access authorization and/or employment clearance. These criteria are not exhaustive but contain the principal types of derogatory information which create a question as to the individual's eligibility for access authorization and/or employment clearance. While there must necessarily be adherence to such criteria, the NRC is not limited to them, nor precluded from exercising its judgment that information or facts in a case under its cognizance are derogatory although at variance with, or outside the scope of, the stated categories. These criteria are subject to continuing review and may be revised from time to time as experience and circumstances may make desirable.

(c) When the reports of investigation of an individual contain information reasonably tending to establish the truth of one or more of the items in the criteria, such information shall be regarded as derogatory and shall create a question as to the individual's eligibility for access authorization and/or employment clearance. A question concerning the eligibility of an

individual for access authorization and/or employment clearance shall be resolved in accordance with the procedures set forth in § 10.20 et seq.

(d) In resolving a question concerning the eligibility or continued eligibility of an individual for access authorization and/or employment clearance, the following principles shall be applied by the Director, Division of Facilities and Security, Hearing Examiners, and the NRC Personnel Security Review Panel:

(1) Information reasonably tending to establish the truth of one or more of the items in the criteria shall be the basis for recommending denial or revocation of access authorization and/or employment clearance unless evidence to support faith in the individual's reliability and trust-worthiness is affirmatively shown.

(2) When deemed material to the deliberations, the extent of the activity, conduct, or condition, the period in which they occurred or existed, the length of time which has since elapsed, and the attitude and convictions of the individual shall be considered in determining whether the recommendation will be adverse or favorable.

[47 FR 38676, Sept. 2, 1982, as amended at 64 FR 15641, Apr. 1, 1999]

§ 10.11 Criteria.

(a) The criteria for determining eligibility for access authorization and/or employment clearance shall relate, but not be limited, to the following where an individual:

(1) Committed, attempted to commit, aided, or abetted another who committed or attempted to commit any act of sabotage, espionage, treason, sedition, or terrorism.

(2) Publicly or privately advocated actions that may be inimical to the interest of the United States, or publicly or privately advocated the use of force or violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means.

(3) Knowingly established or continued a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, terrorist, or revolutionist, or with an espionage agent or other secret agent or representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means.

(4) Joined or engaged in any activity knowingly in sympathy with or in support of any foreign or domestic organization, association, movement, group, or combination of persons which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or any State or any subdivisions thereof by unlawful means, or which advocate the use of force and violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means. (Ordinarily, criteria (3) and (4) will not include chance or casual meetings or contacts limited to normal business or official relations.)

(5) Deliberately misrepresented, falsified or omitted relevant and material facts from or in a personnel security questionnaire, a personal qualifications statement, a personnel security interview, or any other information submitted pursuant to this part.

(6) Willfully violated or disregarded security regulations or was grossly negligent with respect thereto to a degree which could endanger the common defense and security; or by intention

or gross carelessness disclosed Restricted Data or national security information to any person not authorized to receive it.

(7) Has any illness or mental condition which in the opinion of competent medical authority may cause significant defect in the judgment or reliability of the individual.

(8) Has been convicted of crimes indicating habitual criminal tendencies.

(9) Has been convicted of a crime, or has a background, where the facts, circumstances, or conduct are of a nature indicating poor judgment, unreliabilty, or untrustworthiness.

(10) Is a user of alcohol habitually and to excess, or has been such without adequate evidence of rehabilitation.

(11) Has been, or is, a user of a drug or other substance listed in the schedules of Controlled Substances established pursuant to the Controlled Substances Act of 1970 (such as amphetamines, barbiturates, narcotics, etc.), except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, without adequate evidence of rehabilitation.

(12) Refused, without satisfactory explanation, to answer questions before a congressional committee, Federal or state court, or Federal administrative body including the NRC regarding charges relevant to the individual's eligibility for access authorization and/or employment clearance.

(13) Engaged in any other conduct or is subject to any other circumstances which tend to show that the individual is not reliable or trustworthy, or which furnishes reason to believe that the individual may be subject to coercion, influence, or

pressures which may cause the individual to act contrary to the national interest.

§ 10.12 Interview and other investigation.

(a) The Director, Division of Facilities and Security, Office of Administration, may authorize the granting of access authorization and/or employment clearance on the basis of the information in the possession of the NRC or may authorize an interview with the individual, if the individual consents to be interviewed, or other investigation as the Director deems appropriate. On the basis of this interview and/or an investigation, the Director may authorize the granting of access authorization and/or employment clearance.

(b) The individual may elect on constitutional or other grounds not to participate in an interview or other investigation; however, such refusal or failure to furnish or authorize the furnishing of relevant and material information is deemed to be derogatory information pursuant to § 10.11(a)(5) and (12).

(c) If the Director, Division of Facilities and Security, cannot make a favorable finding regarding the eligibility of an individual for access authorization and/or employment clearance, the question of the individual's eligibility must be resolved in accordance with the procedures set forth in § 10.20 *et seq.*

[47 FR 38676, Sept. 2, 1982, as amended at 52 FR 31609, Aug. 21, 1987; 54 FR 53316, Dec. 28, 1989; 64 FR 15642, Apr. 1, 1999]

Subpart C--Procedures

§ 10.20 Purpose of the procedures.

These procedures establish methods for the conduct of hearings and administrative review of questions concerning an individual's eligibility for an access authorization and/or an employment clearance pursuant to the Atomic Energy Act of 1954, as amended, and Executive Orders 10450, 10865, and 12968 when a resolution favorable to the individual cannot be made on the basis of the interview or other investigation.

[64 FR 15642, Apr. 1, 1999]

§ 10.21 Suspension of access authorization and/or employment clearance.

In those cases where information is received which raises a question concerning the continued eligibility of an individual for an access authorization and/or an employment clearance, the Director, Division of Facilities and Security, through the Director, Office of Administration, shall forward to the Deputy Executive Director for Information Services and Administration and Chief Information Officer or other Deputy Executive Director, his or her recommendation as to whether the individual's access authorization and/or employment clearance should be suspended pending the final determination resulting from the operation of the procedures provided in this part. In making this recommendation the Director, Division of Facilities and Security, shall consider factors such as the seriousness of the derogatory information developed, the degree of access of the individual to classified information, and the individual's opportunity by reason of his or her position to commit acts adversely affecting the national security. An individual's access authorization and/or employment clearance may not be suspended except by the direction of the Executive Director for Operations, Deputy Executive Director for Information Services and Administration and Chief Information Officer or other Deputy Executive Director.

[64 FR 15642, Apr. 1, 1999]

§ 10.22 Notice to individual.

A notification letter, prepared by the Division of Facilities and Security, approved by the Office of the General Counsel, and signed by the Director, Office of Administration, must be presented to each individual whose eligibility for an access authorization and/or an employment clearance is in question. Where practicable, the letter will be presented to the individual in person. The letter will be accompanied by a copy of this part and must state:

(a) That reliable information in the possession of the NRC has created a substantial doubt concerning the individual's eligibility for an access authorization and/or an employment clearance;

(b) The information that creates a substantial doubt regarding the individual's eligibility for an access authorization and/or an employment clearance, that must be as comprehensive and detailed as the national security interests and other applicable law permit;

(c) That the individual has the right to be represented by counsel or other representative at their own expense;

(d) That the individual may request within 20 days of the date of the notification letter, any documents, records and reports which form the basis for the question of their eligibility for an access authorization and/or an employment clearance. The individual will be provided within 30 days all such documents, records and reports to the extent they are unclassified and do not

reveal a confidential source. The individual may also request the entire investigative file, which will be promptly provided, as permitted by the national security interests and other applicable law;

(e) That unless the individual files with the Director, Office of Administration, a written request for a hearing within 20 days of the individual's receipt of the notification letter or 20 days after receipt of the information provided in response to a request made under paragraph (d) of this section, whichever is later, the Director, Division of Facilities and Security, through the Director, Office of Administration, will submit a recommendation as to the final action to the Deputy Executive Director for Information Services and Administration and Chief Information Officer on the basis of the information in the possession of the NRC;

(f) That if the individual files a written request for a hearing with the Director, Office of Administration, the individual shall file with that request a written answer under oath or affirmation that admits or denies specifically each allegation and each supporting fact contained in the notification letter. A general denial is not sufficient to controvert a specific allegation. If the individual is without knowledge, he or she shall so state and that statement will operate as a denial. The answer must also state any additional facts and information that the individual desires to have considered in explanation or mitigation of allegations in the notification letter. Failure to specifically deny or explain or deny knowledge of any allegation or supporting fact will be deemed an admission that the allegation or fact is true.

(g) That if the individual does not want to exercise his or her right to a hearing, but does want to submit an answer to the allegations in the notification letter, the individual may do so by filing with the Director, Office of Administration, within 20 days of receipt of the notification letter or 20 days after receipt of the information provided in response to a request made under paragraph (d) of this section, whichever is later, a written answer in accordance with the requirements of paragraph (f) of this section;

(h) That the procedures in § 10.24 *et seq.* will apply to any hearing and review.

[64 FR 15642, Apr. 1, 1999]

§ 10.23 Failure of individual to request a hearing.

(a) In the event the individual fails to file a timely written request for a hearing pursuant to § 10.22, a recommendation as to the final action to be taken will be made by the Director, Division of Facilities and Security, through the Director, Office of Administration, to the Deputy Executive Director for Information Services and Administration and Chief Information Officer on the basis of the information in the possession of the NRC, including any answer filed by the individual.

(b) The Director, Office of Administration, may for good cause shown, at the request of the individual, extend the time for filing a written request for a hearing or for filing a written answer to the matters contained in the notification letter.

[47 FR 38676, Sept. 2, 1982, as amended at 52 FR 31609, Aug. 21, 1987; 54 FR 53316, Dec. 28, 1989; 64 FR 15642, Apr. 1, 1999]

§ 10.24 Procedures for hearing and review.

(a) Upon receipt of a timely filed request for a hearing and answer complying with the requirements set forth in § 10.22, the Director, Office of Administration, shall forthwith appoint a Hearing Examiner, and the General Counsel shall forthwith assign an NRC attorney to act as Hearing Counsel. The Director, Office of Administration, shall promptly notify the

individual of the identity of the Hearing Examiner and proposed hearing date, which shall be selected with due regard for the convenience of the parties and their representatives.

(b) Within 72 hours of being notified of the identity of the Hearing Examiner, the individual may request that the Hearing Examiner be disqualified for cause by filing with the Director, Office of Administration, a written statement of the individual's reasons for seeking disqualification. The time for filing the request may be extended by the Director, Office of Administration, for good cause shown. If the Director, Office of Administration, grants the request the procedures of paragraph (a) of this section and this paragraph shall be followed just as though there had been no prior appointment.

(c) The individual shall have the right to appear at the hearing before the Hearing Examiner, to be represented by counsel or other representative, to introduce documentary or other evidence, and to call, examine, and cross-examine witnesses, subject to the provisions and limitations set forth in this part.

[47 FR 38676, Sept. 2, 1982, as amended at 51 FR 35999, Oct. 8, 1986; 52 FR 31609, Aug. 21, 1987; 54 FR 53316, Dec. 28, 1989]

§ 10.25 NRC Hearing Counsel.

(a) Hearing Counsel assigned pursuant to § 10.24 will, before the scheduling of the hearing, review the information in the case and will request the presence of witnesses and the production of documents and other physical evidence relied upon by the Director, Division of Facilities and Security, in making a finding that a question exists regarding the eligibility of the individual for an NRC access authorization and/or an employment clearance in accordance with the provisions of this part. When the presence of a witness and the production of documents and other physical evidence is deemed by the Hearing Counsel to be necessary or desirable for a determination of the issues, the Director, Division of Facilities and Security, will make arrangements for the production of evidence and for witnesses to appear at the hearing by subpoena or otherwise.

(b) Hearing Counsel is authorized to consult directly with individual's counsel or representative or the individual, if the individual is not so represented, for purposes of reaching mutual agreement upon arrangements for expeditious hearing of the case. Such arrangements may include clarification of issues and stipulations with respect to testimony and contents of documents and other physical evidence. Such stipulations when entered into shall be binding upon the individual and the NRC for the purposes of this part. Prior to any consultation with the individual, the Hearing Counsel shall advise the individual of his or her rights under this part, of his or her right to counsel or other representation, and of the possibility that any statement made by the individual to the Hearing Counsel may be used in subsequent proceedings.

(c) The individual is responsible for producing witnesses in his or her own behalf and/or presenting other evidence before the Hearing Examiner to support the individual's answer and defense to the allegations contained in the notification letter. When requested by the individual, however, the Hearing Counsel may assist the individual to the extent practicable and necessary. The Hearing Counsel may at his or her discretion request the Director, Division of Facilities and Security, to arrange for the issuance of subpoenas for witnesses to attend the hearing in the individual's behalf, or for the production of specific documents or other physical evidence, provided a showing of the necessity for assistance has been made.

[47 FR 38676, Sept. 2, 1982, as amended at 64 FR 15643, Apr. 1, 1999]

§ 10.26 Appointment of Hearing Examiner.

The appointment of a Hearing Examiner, pursuant to § 10.24 of this part, shall be from a list of qualified attorneys possessing the highest degree of integrity, ability, and good judgment. To qualify, an attorney shall have an NRC "Q" access authorization and may be an employee of the NRC, its contractors, agents or licensees. However, no employee or consultant of the NRC shall serve as Hearing Examiner hearing the case of an employee (including a consultant) or applicant for employment with the NRC; nor shall any employee or consultant of an NRC contractor, agent or licensee serve as Hearing Examiner hearing the case of an employee (including a consultant) or an applicant for employment of that contractor, agent, or licensee. No Hearing Examiner shall be selected who has knowledge of the case or of any information relevant to the disposition of it, or who for any reason would be unable to issue a fair and unbiased recommendation.

§ 10.27 Prehearing proceedings.

(a) After the appointment of the Hearing Examiner, he or she shall be furnished the record in the case, which shall consist of the letter of notification, the request for hearing and its supporting answer, and the notice of hearing, if it has been issued, and any stipulations agreed to by the individual and the Hearing Counsel.

(b) The Hearing Examiner may on his or her own motion, or on that of either party, convene a prehearing conference with the Hearing Counsel and the individual and his or her counsel or representative, if any, for the purpose of clarifying the issues, identifying witnesses who may be called, identifying documents and other physical evidence that may be offered into evidence, and entering into stipulations of fact.

(c) The parties will be notified by the Hearing Examiner at least ten days in advance of the hearing of the time and place of the hearing. For good cause shown, the Hearing Examiner may order postponements or continuances from time to time. If, after due notice, the individual fails to appear at the hearing, or appears but is not prepared to proceed, the Hearing Examiner shall, unless good cause is shown, return the case to the Director, Division of Facilities and Security, who shall make a recommendation on final action to be taken, through the Director, Office of Administration, to the Deputy Executive Director for Information Services and Administration and Chief Information Officer on the basis of the information in the possession of the NRC.

[47 FR 38676, Sept. 2, 1982, as amended at 52 FR 31609, Aug. 21, 1987; 54 FR 53316, Dec. 28, 1989; 64 FR 15643, Apr. 1, 1999]

§ 10.28 Conduct of hearing.

(a) The Hearing Examiner shall conduct the hearing in an orderly, impartial and decorous manner. Technical rules of evidence may be relaxed so that a full evidentiary record may be made based on all material and relevant facts. Hearsay evidence may for good cause shown be received at the discretion of the Hearing Examiner and accorded such weight as the circumstances warrant.

(b) The proceedings shall be open only to duly authorized representatives of the staff of the NRC, the individual, his or her counsel or representative, and such persons as may be officially authorized by the Hearing Examiner. Witnesses shall not testify in the presence of other witnesses except that the Hearing Examiner may, at his or her discretion, allow for expert witnesses to be present during testimony relevant to their own testimony.

(c) Witnesses, including the individual, shall be examined under oath or affirmation by the party who called them and may be cross-examined by the other. The Hearing Examiner shall rule on all evidentiary matters, may further examine any witness, and may call for additional

witnesses or the production of documentary or other physical evidence if, in the exercise of his or her discretion, such additional evidence is deemed necessary to the resolution of an issue.

(d) If it appears during the hearing that Restricted Data or national security information may be disclosed, the Hearing Examiner shall assure that disclosure is made only to persons authorized to receive it.

(e) The Hearing Examiner may, at any time during the hearing, permit the Hearing Counsel to amend the notification letter to add or modify allegations to be considered. In the event of such an amendment to the notification letter, the individual shall be given an opportunity to answer the amended allegations. If the changes are of such a substantial nature that the individual cannot answer the amended allegations without additional time, the Hearing Examiner shall grant such additional time as he or she deems necessary.

(f) The Hearing Examiner may receive and consider evidence in the form of depositions or responses to interrogatories upon a showing that the witness is not available for good reason such as death, serious illness or similar cause, or in the form of depositions, interrogatories, affidavits or statements with agreement of the parties. The Hearing Examiner may take official notice at any stage of the proceeding, where appropriate, of any fact not subject to reasonable dispute in that it is either (1) generally known within the United States or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking such official notice. In the absence of prior notification the request may be made after notice is taken.

(g) Hearing Counsel shall examine and cross-examine witnesses and otherwise assist the Hearing Examiner in such a manner as to bring out a full and true disclosure of all facts, both favorable and unfavorable, having a bearing on the issues before the Hearing Examiner. In performing these duties, the Hearing Counsel shall avoid the attitude of a prosecutor and shall always bear in mind that the proceeding is an administrative hearing and not a trial.

(h) Hearing Counsel shall not participate in the deliberations of the Hearing Examiner, and shall express no opinion to the Hearing Examiner concerning the merits of the case. Hearing Counsel shall also, during the course of the hearing, advise the individual of his or her rights under these procedures when the individual is not represented by counsel or other representative.

(i) The individual shall be afforded an opportunity to cross-examine persons who have made oral or written statements adverse to the individual relating to a controverted issue except that any such statement may be received and considered by the Hearing Examiner without affording such opportunity in either of the following circumstances:

(1) The head of the department or 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 that disclosure of the informant's identity would substantially harm the national interest or would endanger the well-being of the informant.

(2) The Commission has determined, after considering the information furnished by the investigative agency concerning the reliability of the person who furnished the information and the accuracy of the statement concerned, that the statement appears to be reliable and material, and that failure of the Hearing Examiner to receive and consider such statement would, in view of the fact that access authorization and/or employment clearance is being sought, be substantially harmful to the national security and that the person who furnished the information cannot appear to testify due to death, serious illness, or similar cause.

(j)(1) Whenever the procedure under paragraph (i)(1) of this section is used, the individual shall be given a summary of the information which shall be as comprehensive and detailed as the national security permits.

(2) Whenever the procedure under paragraph (i)(2) is used, the individual shall be provided the identity of the person and the information to be considered.

(3) In both paragraph (i) (1) and (2) procedures, appropriate consideration shall be accorded to the fact that the individual did not have an opportunity to cross-examine such informant or person.

(k) Records provided by investigative agencies that were compiled as a regular or routine procedure by the business or agency from which obtained, or other physical evidence other than investigative reports, may be received and considered subject to rebuttal without authenticating witnesses, provided that the investigative agency furnished such information to the NRC pursuant to its responsibilities in connection with assisting the NRC in determining the individual's eligibility for access authorization and/or employment clearance.

(l) Records compiled in the regular course of business, or other physical evidence other than investigative reports, relating to a controverted issue which, because they are classified, may not be inspected by the individual, may be received and considered provided that:

(1) The Commission has made a determination that such records or other physical evidence appears to be material;

(2) The Commission has made a determination that failure to receive and consider such records or other physical evidence would, in view of the fact that access authorization and/or employment clearance is being sought, be substantially harmful to the national security; and

(3) To the extent that national security permits, a summary or description of such records or other physical evidence is made available to the individual. In every such case, information as to the authenticity and accuracy of such physical evidence furnished by the investigative agency shall be considered.

(m) If the Hearing Examiner determines that additional investigation of any material information is required, he or she shall request in writing that the Director, Office of Administration, arrange for the investigation and shall specify those issues upon which more evidence is requested and identify, where possible, any persons or sources that might provide the evidence sought.

(n) A written transcript of the entire proceeding must be made by a person possessing appropriate NRC access authorization and/or employment clearance and, except for portions containing Restricted Data or National Security Information, or other lawfully withholdable information, a copy of the transcript will be furnished the individual without cost. The transcript or recording will be made part of the applicant's or employee's personnel security file.

[47 FR 38676, Sept. 2, 1982, as amended at 52 FR 31609, Aug. 21, 1987; 54 FR 53316, Dec. 28, 1989; 64 FR 15643, Apr. 1, 1999]

§ 10.29 Recommendation of the Hearing Examiner.

(a) The Hearing Examiner's findings and recommendation shall be based upon the entire record consisting of the transcript of the hearing, the documentary and other evidence adduced therein, and the letter of notification and answer. The Hearing Examiner shall also

consider the circumstances of the receipt of evidence pursuant to § 10.28, the individual's record of past employment, and the nature and sensitivity of the job the individual is or may be expected to perform.

(b) The Hearing Examiner shall make specific findings on each allegation in the notification letter including the reasons for his or her findings, and shall make a recommendation as to the action which should be taken in the case.

(c) The Hearing Examiner's recommendation shall be predicated upon his or her findings. If, after considering all the factors in light of the criteria in this part, the Hearing Examiner is of the opinion that granting or continuing access authorization and/or employment clearance to the individual will not endanger the common defense and security and will be clearly consistent with the national interest, a favorable recommendation shall be made; otherwise, an adverse recommendation shall be made.

(d) The Hearing Examiner shall submit his or her findings and recommendation in a signed report together with the record of the case to the Director, Office Administration, with the least practical delay.

(e) The Hearing Examiner shall not consider the possible impact of the loss of the individual's services upon the NRC program.

[47 FR 38676, Sept. 2, 1982, as amended at 52 FR 31609, Aug. 21, 1987; 54 FR 53316, Dec. 28, 1989]

§ 10.30 New evidence.

After the close of the hearing, in the event the individual discovers new evidence not previously available or known to him or her, the individual may petition the Hearing Examiner if the Hearing Examiner's recommendation has not yet been issued, or thereafter, the Director, Office of Administration, to reopen the record to receive that evidence. If the Hearing Examiner or the Director, respectively, deem it material and appropriate, the record may be reopened to accept the evidence either by stipulation, with the agreement of the Hearing Counsel, or in a reconvened hearing.

[47 FR 38676, Sept. 2, 1982, as amended at 52 FR 31610, Aug. 21, 1987; 54 FR 53316, Dec. 28, 1989]

§ 10.31 Actions on the recommendations.

(a) Upon receipt of the findings and recommendation from the Hearing Examiner, and the record, the Director, Office of Administration, shall forthwith transmit it to the Deputy Executive Director for Information Services and Administration and Chief Information Officer who has the discretion to return the record to the Director, Office of Administration, for further proceedings by the Hearing Examiner with respect to specific matters designated by the Deputy Executive Director for Information Services and Administration and Chief Information Officer.

(b)(1) In the event of a recommendation by the Hearing Examiner that an individual's access authorization and/or employment clearance be denied or revoked, the Deputy Executive Director for Information Services and Administration and Chief Information Officer shall immediately notify the individual in writing of the Hearing Examiner's findings with respect to each allegation contained in the notification letter, and that the individual has a right to request a review of his or her case by the NRC Personnel Security Review Panel and of the right to submit a brief in support of his or her contentions. The request for a review must be

submitted to the Deputy Executive Director for Information Services and Administration and Chief Information Officer within five days after the receipt of the notice. The brief will be forwarded to the Deputy Executive Director for Information Services and Administration and Chief Information Officer, for transmission to the NRC Personnel Security Review Panel not later than 10 days after receipt of the notice.

(2) In the event the individual fails to request a review by the NRC Personnel Security Review Panel of an adverse recommendation within the prescribed time, the Deputy Executive Director for Information Services and Administration and Chief Information Officer may at his or her discretion request a review of the record of the case by the NRC Personnel Security Review Panel. The request will set forth those matters at issue in the hearing on which the Deputy Executive Director for Information Services and Administration and Chief Information Officer desires a review by the NRC Personnel Security Review Panel.

(c) Where the Hearing Examiner has made a recommendation favorable to the individual, the Deputy Executive Director for Information Services and Administration and Chief Information Officer may at his or her discretion request a review of the record of the case by the NRC Personnel Security Review Panel. If this request is made, the Deputy Executive Director for Information Services and Administration and Chief Information Officer shall immediately cause the individual to be notified of that fact and of those matters at issue in the hearing on which the Deputy Executive Director for Information Services and Administration and Chief Information Officer desires a review by the NRC Personnel Security Review Panel. The Deputy Executive Director for Information Services and Administration and Chief Information Officer will further inform the individual that within 10 days of receipt of this notice, the individual may submit a brief concerning those matters at issue for the consideration of the NRC Personnel Security Review Panel. The brief must be forwarded to the Deputy Executive Director for Information Services and Administration and Chief Information Officer for transmission to the NRC Personnel Security Review Panel.

(d) In the event of a request for a review pursuant to paragraphs (b) and (c) of this section, the Hearing Counsel may file a brief within 10 days of being notified by the Deputy Executive Director for Information Services and Administration and Chief Information Officer that a review has been requested. The brief will be forwarded to the Deputy Executive Director for Information Services and Administration and Chief Information Officer for transmission to the NRC Personnel Security Review Panel.

(e) The Hearing Counsel may also request a review of the case by the NRC Personnel Security Review Panel. The request for review, which will set forth those matters at issue in the hearing on which the Hearing Counsel desires a review, will be submitted to the Deputy Director Executive for Management Services within five days after receipt of the Hearing Examiner's findings and recommendation. Within 10 days of the request for review, the Hearing Counsel may file a brief which will be forwarded to the Deputy Executive Director for Information Services and Administration and Chief Information Officer for transmission to the NRC Personnel Security Review Panel. A copy of the request for review, and a copy of any brief filed, will be immediately sent to the individual. If the Hearing Counsel's request is for a review of a recommendation favorable to the individual, the individual may, within 10 days of receipt of a copy of the request for review, submit a brief concerning those matters at issue for consideration of the NRC Personnel Security Review Panel. The brief will be forwarded to the Deputy Executive Director for Information Services and Administration and Chief Information Officer for transmission to the NRC Personnel Security Review Panel and Hearing Counsel. A copy of the brief will be made a part of the applicant's personnel security file.

(f) The time limits imposed by this section for requesting reviews and the filing of briefs may be extended by the Deputy Executive Director for Information Services and Administration and Chief Information Officer for good cause shown.

(g) In the event a request is made for a review of the record by the NRC Personnel Security Review Panel, the Deputy Executive Director for Information Services and Administration and Chief Information Officer shall send the record, with all findings and recommendations and any briefs filed by the individual and the Hearing Counsel, to the NRC Personnel Security Review Panel. If neither the individual, the Deputy Executive Director for Information Services and Administration and Chief Information Officer, nor the Hearing Counsel requests a review, the final determination will be made by the Deputy Executive Director for Information Services and Administration and Chief Information Officer on the basis of the record with all findings and recommendations.

[64 FR 15643, Apr. 1, 1999]

§ 10.32 Recommendation of the NRC Personnel Security Review Panel.

(a) The Deputy Executive Director for Information Services and Administration and Chief Information Officer shall designate an NRC Personnel Security Review Panel to conduct a review of the record of the case. The NRC Personnel Security Review Panel shall be comprised of three members, two of whom shall be selected from outside the security field. To qualify as an NRC Personnel Security Review Panel member, the person designated shall have an NRC "Q" access authorization and may be an employee of the NRC, its contractors, agents, or licensees. However, no employee or consultant of the NRC shall serve as an NRC Personnel Security Review Panel member reviewing the case of an employee (including a consultant) or applicant for employment with the NRC; nor shall any employee or consultant of an NRC contractor, agent or licensee serve as an NRC Personnel Security Review Panel member reviewing the case of an employee (including a consultant) or an applicant for employment of that contractor, agent, or licensee. No NRC Personnel Security Review Panel member shall be selected who has knowledge of the case or of any information relevant to the disposition of it, or who for any reason would be unable to issue a fair and unbiased recommendation.

(b) The NRC Personnel Security Review Panel shall consider the matter under review based upon the record supplemented by any brief submitted by the individual or the Hearing Counsel. The NRC Personnel Security Review Panel may request additional briefs as the Panel deems appropriate. When the NRC Personnel Security Review Panel determines that additional evidence or further proceedings are necessary, the record may be returned to the Deputy Executive Director for Information Services and Administration and Chief Information Officer with a recommendation that the case be returned to the Director, Office of Administration, for appropriate action, which may include returning the case to the Hearing Examiner and reconvening the hearing to obtain additional testimony. When additional testimony is taken by the Hearing Examiner, a written transcript of the testimony will be made a part of the record and will be taken by a person possessing an appropriate NRC access authorization and/or employment clearance and, except for portions containing Restricted Data or National Security Information, or other lawfully withholdable information, a copy of the transcript will be furnished the individual without cost.

(c) In conducting the review, the NRC Personnel Security Review Panel shall make its findings and recommendations as to the eligibility or continued eligibility of an individual for an access authorization and/or an employment clearance on the record supplemented by additional testimony or briefs, as has been previously determined by the NRC Personnel Security Review Panel as appropriate.

(d) The NRC Personnel Security Review Panel shall not consider the possible impact of the loss of the individual's services upon the NRC program.

(e) If, after considering all the factors in light of the criteria set forth in this part, the NRC Personnel Security Review Panel is of the opinion that granting or continuing an access

authorization and/or an employment clearance to the individual will not endanger the common defense and security and will be clearly consistent with the national interest, the NRC Personnel Security Review Panel shall make a favorable recommendation; otherwise, the NRC Personnel Security Review Panel shall make an adverse recommendation. The NRC Personnel Security Review Panel shall prepare a report of its findings and recommendations and submit the report in writing to the Deputy Executive Director for Information Services and Administration and Chief Information Officer, who shall furnish a copy to the individual. The findings and recommendations must be fully supported by stated reasons.

[64 FR 15644, Apr. 1, 1999]

§ 10.33 Action by the Deputy Executive Director for Information Services and Administration and Chief Information Officer.

(a) The Deputy Executive Director for Information Services and Administration and Chief Information Officer, on the basis of the record accompanied by all findings and recommendations, shall make a final determination whether access authorization and/or employment clearance shall be granted, denied, or revoked, except when the provisions of § 10.28 (i), (j), or (l) have been used and the Deputy Executive Director for Information Services and Administration and Chief Information Officer determination is adverse, the Commission shall make the final agency determination.

(b) In making the determination as to whether an access authorization and/or an employment clearance shall be granted, denied, or revoked, the Deputy Executive Director for Information Services and Administration and Chief Information Officer or the Commission shall give due recognition to the favorable as well as the unfavorable information concerning the individual and shall take into account the value of the individual's services to the NRC's program and the consequences of denying or revoking access authorization and/or employment clearance.

(c) In the event of an adverse determination, the Deputy Executive Director for Information Services and Administration and Chief Information Officer shall promptly notify the individual through the Director, Office of Administration, of his or her decision that an access authorization and/or an employment clearance is being denied or revoked and of his or her findings with respect to each allegation contained in the notification letter for transmittal to the individual.

(d) In the event of a favorable determination, the Deputy Executive Director for Information Services and Administration and Chief Information Officer shall promptly notify the individual through the Director, Office of Administration.

[64 FR 15644, Apr. 1, 1999 as amended at 70 FR 30896, May 31, 2005]

§ 10.34 Action by the Commission.

(a) Whenever, under the provisions of § 10.28(i), (j), or (l) an individual has not been afforded an opportunity to confront and cross-examine witnesses who have furnished information adverse to the individual and an adverse recommendation has been made by the Deputy Executive Director for Information Services and Administration and Chief Information Officer, the Commission shall review the record and determine whether an access authorization and/or an employment clearance should be granted, denied, or revoked, based upon the record.

(b) When the Commission determines to deny or revoke access authorization and/or employment clearance, the individual shall promptly be notified through the Director, Office of

Administration, of its decision that access authorization and/or employment clearance is being denied or revoked and of its findings and conclusions with respect to each allegation contained in the notification letter for transmittal to the individual.

(c) Nothing contained in these procedures shall be deemed to limit or affect the responsibility and powers of the Commission to deny or revoke access to Restricted Data or national security information if the security of the nation so requires. Such authority may not be delegated and may be exercised when the Commission determines that invocation of the procedures prescribed in this part is inconsistent with the national security. Such determination shall be conclusive.

[47 FR 38676, Sept. 2, 1982, as amended at 52 FR 31610, Aug. 21, 1987; 54 FR 53316, Dec. 28, 1989; 64 FR 15645, Apr. 1, 1999]

§ 10.35 Reconsideration of cases.

(a) Where, pursuant to the procedures set forth in §§ 10.20 through 10.34, the Deputy Executive Director for Information Services and Administration and Chief Information Officer or the Commission has made a determination granting an access authorization and/or an employment clearance to an individual, the individual's eligibility for an access authorization and/or an employment clearance will be reconsidered only when subsequent to the time of that determination, new derogatory information has been received or the scope or sensitivity of the Restricted Data or National Security Information to which the individual has or will have access has significantly increased. All new derogatory information, whether resulting from the NRC's reinvestigation program or other sources, will be evaluated relative to an individual's continued eligibility in accordance with the procedures of this part.

(b) Where, pursuant to these procedures, the Commission or Deputy Executive Director for Information Services and Administration and Chief Information Officer has made a determination denying or revoking an access authorization and/or an employment clearance to an individual, the individual's eligibility for an access authorization and/or an employment clearance may be reconsidered when there is a bona fide offer of employment and/or a bona fide need for access to Restricted Data or National Security Information and either material and relevant new evidence is presented, which the individual and his or her representatives are without fault in failing to present before, or there is convincing evidence of reformation or rehabilitation. Requests for reconsideration must be submitted in writing to the Deputy Executive Director for Information Services and Administration and Chief Information Officer through the Director, Office of Administration. Requests must be accompanied by an affidavit setting forth in detail the information referred to above. The Deputy Executive Director for Information Services and Administration and Chief Information Officer shall cause the individual to be notified as to whether his or her eligibility for an access authorization and/or an employment clearance will be reconsidered and if so, the method by which a reconsideration will be accomplished.

(c) Where an access authorization and/or an employment clearance has been granted to an individual by the Director, Division of Facilities and Security, without recourse to the procedures set forth in §§ 10.20 through 10.34, the individual's eligibility for an access authorization and/or an employment clearance will be reconsidered only in a case where, subsequent to the granting of the access authorization and/or employment clearance, new derogatory information has been received or the scope or sensitivity of the Restricted Data or National Security Information to which the individual has or will have access has significantly increased. All new derogatory information, whether resulting from the NRC's reinvestigation program or other sources, will be evaluated relative to an individual's continued eligibility in accordance with the procedures of this part.

[64 FR 15645, Apr. 1, 1999]

Subpart D--Miscellaneous

§ 10.36 Terminations.

In the event the individual is no longer an applicant for access authorization and/or employment clearance or no longer requires such, the procedures of this part shall be terminated without a final determination as to the individual's eligibility for access authorization and/or employment clearance.

§ 10.37 Attorney representation.

In the event the individual is represented by an attorney or other representative, the individual shall file with the Director, Office of Administration, a document designating such attorney or representative and authorizing such attorney or representative to receive all correspondence, transcripts, and other documents pertaining to the proceeding under this part.

[47 FR 38676, Sept. 2, 1982, as amended at 52 FR 31610, Aug. 21, 1987; 54 FR 53316, Dec. 28, 1989]

§ 10.38 Certifications.

Whenever information is made a part of the record under the exceptions authorized by § 10.28 (i), (j), or (l), the record shall contain certificates evidencing that the required determinations have been made.