

## Department of Energy

## § 709.5

*Special Access Program or SAP* means a program established under Executive Order 12958 for a specific class of classified information that imposes safeguarding and access requirements that exceed those normally required for information at the same classification level.

*Unresolved issues* refers to an opinion which indicates that the analysis of the polygraph charts revealed consistent, significant, timely physiological responses to the relevant questions in personnel screening.

### **§ 709.4 To whom does the polygraph examination requirement under this part apply?**

(a) Except as provided in paragraph (b) of this section, this part applies to DOE and contractor employees and applicants for employment, and other individuals assigned or detailed to Federal positions at DOE, who are in:

(1) Positions that DOE has determined include counterintelligence activities or access to counterintelligence sources and methods;

(2) Positions that DOE has determined include intelligence activities or access to intelligence sources and methods;

(3) Positions requiring access to information that is protected within a non-intelligence special access program (SAP) designated by the Secretary of Energy;

(4) Positions that are subject to the Personnel Security Assurance Program (PSAP);

(5) Positions that are subject to the Personnel Assurance Program (PAP);

(6) Positions that DOE has determined have a need-to-know or access to information specifically designated by the Secretary regarding the design and operation of nuclear weapons and associated use control features;

(7) Positions within the Office of Independent Oversight and Performance Assurance, or any successor thereto, involved in inspection and assessment of safeguards and security functions, including cyber security, of the Department;

(8) Positions within the Office of Security and Emergency Operations, or any successor thereto;

(9) The Accelerated Access Authorization Program (AAAP); and

(10) Positions where the applicant or incumbent has requested a polygraph examination in order to respond to questions that have arisen in the context of counterintelligence investigations or personnel security issues. These examinations are referred to in this part as exculpatory polygraph examinations.

(b) This part does not apply to:

(1) Any individual for whom the Director of the Office of Counterintelligence (D/OCI), gives a waiver, based upon certification from another Federal agency that the individual has successfully completed a full scope or counterintelligence-scope polygraph examination administered within the last five years;

(2) Any individual who is being treated for a medical or psychological condition or is taking medication that, based upon consultation with the individual, the DOE Test Center determines would preclude the individual from being tested; or

(3) Any individual for whom the Secretary of Energy gives a written waiver in the interest of national security.

(c) The Program Manager responsible for each program with positions identified in paragraphs (a)(1)–(8) of this section identifies in the first instance, in order of priority, those specific positions that will be polygraphed.

(d) The Program Manager submits positions identified under paragraph (c) of this section to the D/OCI for review and concurrence. The D/OCI forwards the positions, with suggested additions or deletions, to the Secretary for approval.

### **§ 709.5 How will an individual know if his or her position will be eligible for a polygraph examination?**

(a) All positions in the programs described in § 709.4(a)(1)–(8) are eligible for polygraph examination. When a polygraph examination is scheduled, DOE must notify the individual, in accordance with § 709.21.

(b) Any job announcement or posting with respect to any position in those programs must indicate that the selection of an individual for the position may be conditioned upon his or her

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successful completion of a counterintelligence-scope polygraph examination.

### § 709.6 How often will an individual be subject to polygraph examination?

Positions identified in § 709.4(a)(1)–(8) are subject to a five year periodic, as well as an aperiodic, reinvestigation polygraph.

## Subpart B—Polygraph Examination Protocols and Protection of National Security

### § 709.11 What types of topics are within the scope of a polygraph examination?

(a) DOE may ask questions that are appropriate to a counterintelligence-scope examination or that are relevant to the matter at issue in an exculpatory examination.

(b) A counterintelligence-scope polygraph examination is limited to topics concerning the individual's involvement in espionage, sabotage, terrorism, unauthorized disclosure of classified information, unauthorized foreign contacts, and deliberate damage to or malicious misuse of a U.S. government information or defense system.

(c) DOE may not ask questions that:

- (1) Probe a person's thoughts or beliefs;
- (2) Concern conduct that has no counterintelligence implication; or
- (3) concern conduct that has no direct relevance to an investigation.

### § 709.12 How does DOE determine the wording of questions?

The examiner determines the exact wording of the polygraph questions based on the examiner's pretest interview of the individual, the individual's understanding of the questions, and other input from the individual.

### § 709.13 May an individual refuse to take a polygraph examination?

(a) Yes. An individual may refuse to take a counterintelligence-scope or exculpatory polygraph examination, and an individual being examined may terminate the examination at any time.

(b) If an individual terminates a counterintelligence-scope or exculpatory polygraph examination prior to

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the completion of the examination, DOE may treat that termination as a refusal to take a polygraph examination under § 709.14.

### § 709.14 What are the consequences of a refusal to take a polygraph examination?

(a) If an individual is an applicant for employment, assignment, or detail to one of the positions described in § 709.4(a)(1)–(8), and the individual refuses to take a counterintelligence polygraph examination required by statute as an initial condition of access, DOE and its contractors must refuse to employ, assign, or detail the individual to the identified position.

(b) If the individual is an applicant for employment, assignment, or detail to one of the positions described in § 709.4(a)(1)–(8) and the individual refuses to take a counterintelligence polygraph examination otherwise required by this part, DOE and its contractors may refuse to employ, assign, or detail the individual to the identified position.

(c) If an individual is an incumbent in a position described in § 709.4(a)(1)–(8) and the individual refuses to take a counterintelligence polygraph examination required by statute as a condition of continued access, DOE and its contractors must deny the individual access to the information or involvement in the activities that justified conducting the examination, consistent with § 709.15. If the individual is a DOE employee, DOE may reassign or realign the individual's duties, within the local commuting area, or take other action, consistent with that denial of access.

(d) If the individual is an incumbent in a position described in § 709.4(a)(1)–(8), and the individual refuses to take a counterintelligence polygraph examination as required by this part, DOE and its contractors may deny that individual access to the information or involvement in the activities that justified conducting the examination, consistent with § 709.15. If the individual is a DOE employee, DOE may reassign or realign the individual's duties, within the local commuting area, or take other action, consistent with that denial of access.