

U.S. Department of Energy
Washington, D.C.

ORDER

DOE 3731.1

12-19-89
Change 1: 7-8-92

This directive was reviewed and certified as current and necessary by (Enter Name), (Enter Title) Director, Office of Management, Budget and Evaluation/Chief Financial Officer, XX-XX-XXXX.

SUBJECT: SUITABILITY, POSITION SENSITIVITY DESIGNATIONS, AND RELATED PERSONNEL MATTERS

1. **PURPOSE.** To identify the interrelationships among suitability, security and access authorizations; to establish guidance and policy regarding position sensitivity designations, certain background investigations, and suitability determinations; and to establish the policies and procedures regarding waivers of preemployment investigations.
2. **SCOPE.** The provisions of this Order apply to all Departmental applicants and employees, except individuals appointed by the President.
3. **REFERENCES.**
 - a. DOE 3735.1, DISSEMINATION OF THE DEPARTMENTAL CONDUCT OF EMPLOYEES REGULATIONS, of 5-1-80, which provides a copy of the DOE regulations on conduct to each employee.
 - b. DOE 3750.1, WORK FORCE DISCIPLINE, of 3-23-83, which provides guidance and DOE policy on adverse and disciplinary actions.
 - c. DOE 5631.2B, PERSONNEL SECURITY PROGRAM, of 5-18-88, which establishes policy, responsibilities and authorities for implementing the personnel security program relating to access to classified information or special nuclear materials.
 - d. Federal Personnel Manual (FPM) Chapter 432, "Reduction in Grade and Removal Based on Unacceptable Performance," which describes actions taken based on performance.
 - e. FPM Chapters 731, 732 and 754, "Personnel Suitability," "Personnel Security," and "Suitability Disqualification Actions" which describe laws, rules and regulations relating to suitability and security issues.
 - f. FPM Chapter 735, "Employee Responsibilities and Conduct," which describes statutory debarment issues.
 - g. FPM Chapter 752, "Adverse Actions By Agencies", which describes adverse action procedures.
 - h. Office of Management and Budget (OMB) Circular A-130, which contains the requirement for designating the sensitivity of certain computer positions.

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- i. Title 5, Code of Federal Regulations (CFR), Part 5, which contains the authority for making suitability determinations.
- j. Title 5 CFR Part 5.4, describing required information and testimony.
- k. Title 5 CFR Parts 315 and 752, which describe removal and adverse action procedures.
- l. Title 5 CFR Parts 731, 732, and 754, which describe regulations relating to suitability and security.
- m. Title 10 CFR Part 710, which establishes criteria and procedures for determining eligibility for access to classified matter or significant quantities of special nuclear materials.
- n. Title 5, United States Code (U.S.C.), section 7532, which provides for removals that are necessary or advisable in the interests of national security.
- o. Section 145(b) of the Atomic Energy Act of 1954, as amended, which describes access requirements.
- p. Executive Order 10450, of 4-27-53, which contains investigative requirements.
- q. Executive Order 12356, of 4-2-82, which describes a system for safeguarding national security information.

4. DEFINITIONS.

- a. Access Authorization. An access authorization or security clearance is an administrative determination that an individual is eligible for access to classified information or special nuclear materials. Section 145(b) of the Atomic Energy Act of 1954 states that there shall be no access to Restricted Data until the Office of Personnel Management (OPM) shall have made an investigation and report on the character, associations and loyalty of the individual. For certain levels of access the Federal Bureau of Investigation performs the role assigned to OPM by this section of this act.
- b. Designated Adjudicators. Designated adjudicators are members of a servicing personnel office who make suitability determinations. They must have attended an appropriate OPM training course in adjudication and must have been subject to a favorable evaluation based on at least a Background Investigation.
- c. Investigation. A review of an applicant's or employee's background. The different levels of investigation are:

- (1) National Agency Check. The National Agency Check consists of record searches with selected sources covering specific areas of the subject's background.
 - (2) National Agency Check and Inquiries. The National Agency Check and Inquiries consists of written inquiries and record searches covering specific areas of the subject's background during the past 5 years.
 - (3) Minimum Background Investigation. The Minimum Background Investigation consists of the National Agency Check and Inquiries and a credit search.
 - (4) Limited Background Investigation. The Limited Background Investigation consists of an interview, personal interviews with selected sources covering specific areas of the subject's background during the past 1-3 years, and written inquiries, record searches and credit searches covering the past 5 years.
 - (5) Background Investigation. The Background Investigation consists of an interview, written inquiries, record searches, credit searches and personal interviews with selected sources, covering specific areas of the subject's background for at least the past 5 and not more than 7 years.
 - (6) Special Background Investigation. The Special Background Investigation consists of an interview, written inquiries, record searches, credit searches and personal interviews with selected sources covering specific areas of the subject's background during the past 15 years.
- d. Personnel Security. Personnel security, for purposes of this Order, means a requirement or requirements for Government employment relating to the protection and preservation of the military, economic, and productive strength of the United States, including the security of the Government in domestic and foreign affairs, against or from espionage, sabotage, and subversion and any and all other acts or situations likely to weaken or destroy the United States. Executive Order 10450, section 3(a) states that the appointment of each civilian officer or employee shall be made subject to investigation. The scope of the investigation shall be determined according to the degree of adverse impact on the national security, but in no event shall be less than a National Agency Check and Inquiries.
- e. Preinvestigative Referral. If a review of an individual's application and application-related information received or developed identifies any potentially disqualifying suitability issues, the case must be referred to an agency or OPM adjudicator for a preliminary suitability determination. This process takes place when the individual

is applying for placement or retention on a competitive register or when the individual is being given employment consideration outside a register. Generally, the referral results from a review of submitted materials only. However, if these materials indicate a possibly disqualifying issue, the review may be broader in scope to determine appropriate action.

f. Risk.

- (1) The magnitude of harm which an individual could cause to the national interest by virtue of occupancy in a position or performance of an activity;
- (2) The opportunity that an individual would have for effecting harm; and
- (3) The extent to which any harm effected would be correctable.

g. Suitability. Suitability means a requirement or requirements for Government employment relating to a person's character, reputation, trustworthiness and fitness as related to the efficiency of the service. The authority for making this determination comes from Title 5 CFR Part 5, which states that the Director, OPM, may investigate the qualifications and suitability of applicants for positions in the competitive service.

5. POLICY.

- a. The Department of Energy (DOE) will apply the same requirements for suitability investigation and adjudication to non-Presidential appointees in the Senior Executive Service (SES) and excepted services as apply to positions in the competitive service, except that Part 754 and Part 752 procedures will only apply as specifically required by law or OPM regulation.
- b. The sensitivity of each position in the Department will be designated in accordance with established, uniform criteria.
- c. The Department will conduct a suitability program to ensure that each person employed will promote the efficiency of the service.

6. RESPONSIBILITIES AND AUTHORITIES.

a. Secretary.

- (1) Provides general policy direction for the DOE suitability program.

- (2) Authorizes access to National Security Information pursuant to section 4.1(a) of Executive Order 12356 prior to completion of the required investigation when such action has been determined to be in the national interest.
- b. Under Secretary. Approves or disapproves requests to waive the preemployment investigation required for critical -sensitive or noncritical -sensitive positions.
- c. Director of Security Affairs (SA-1).
 - (1) Authorizes access to Restricted Data pursuant to sections 145(b) and 145(c) of the Atomic Energy Act of 1954, as amended, prior to, or in lieu of completion of the required investigation, after determining that such action is in the national interest.
 - (2) Grants, reinstates, continues, denies, or revokes access authorization in accordance with 10 CFR 710.32.
 - (3) Recommends to the Chief Financial Officer (CR-1) the amount of funding necessary for conducting investigations.
 - (4) Concurs on requests to the Under Secretary for waivers of preappointment investigations.
 - (5) Makes all determinations relating to access to Restricted Data, other than those cited in paragraph 6c(1) above.
- d. Heads of Departmental Elements.
 - (1) As required, request waivers of preemployment investigations from the Under Secretary.
 - (2) Designate a point of contact for position sensitivity level designations-and processing of investigative forms.
 - (3) Request approval to utilize an alternative procedure to one described in this directive.
 - (4) As required, request access to Restricted Data prior to, or in lieu of completion of the required investigation from the Office of Security Affairs.
- e. Deputy Assistant Secretary for Naval Reactors (NE-60). Determines position sensitivity or positions to which personnel are assigned within the Naval Nuclear Propulsion Program.

- f. Director of Personnel (AD-50).
- (1) Develops, promulgates, implements, and provides advice on policies, standards and procedures concerning suitability, position sensitivity level designations, and related personnel matters.
 - (2) Evaluates the effectiveness of the suitability and position sensitivity level designation programs.
 - (3) Maintains liaison with OPM and other organizations regarding suitability and position sensitivity matters.
 - (4) Approves requests to utilize an alternative procedure to one described in this directive.
- g. Managers and Supervisors. Determine the level of access required and the sensitivity of each subordinate position and certify that information as required by the provisions of this Order.
- h. Employees and Applicants. As required, complete security and suitability forms completely, accurately, and in a timely manner. This involves providing full, frank, and truthful answers to relevant and material questions and, when appropriate, furnishing or authorizing others to furnish information during the course of an initial background investigation, reinvestigation, interview, letter of interrogatory, or hearing. An individual may elect not to furnish such information, but such an election may result in a disciplinary action, up to and including removal, or, in the case of an applicant, a decision not to employ.
- i. Servicing Personnel Offices.
- (1) Provide day-to-day advice and guidance to managers, employees and supervisors on the suitability and position sensitivity level designation programs.
 - (2) Perform all phases of technical personnel operational support to organizational units serviced in order to ensure that the provisions of this Order and other related Orders that are under their jurisdiction are followed consistently.
 - (3) Provide input to appropriate data systems (e.g., PAY/PERS) in order to ensure the accuracy of such systems.
 - (4) Designate a suitability adjudicator and, where possible, a backup, who will determine the action to be taken in response to the identification of adverse suitability information.

7. OVERVIEW. The following describe the primary areas of activity which are covered by this directive:
- a. Position Sensitivity Level Designation. A determination of how comprehensive a background investigation will be required for entry into a given position.
 - b. Pre-Investigation Referral. Where derogatory information is discovered prior to initiating the appropriate level of investigation, the case must be referred to a designated adjudicator or to OPM for a preliminary suitability determination.
 - c. Investigation. If no preliminary derogatory information is discovered, or if such matters are adjudicated in the applicant's or employee's favor, an appropriate level of review of the applicant's or employee's background is conducted.
 - d. Waiver of Investigation. In some cases, a waiver may allow an applicant or employee to enter a new position or assume new duties prior to completion of the investigation. A waiver does not alter the requirement for an investigation or final suitability determination.
 - e. Suitability Determination. Following completion of the investigation, a final suitability determination must be made. If an adverse determination is made, or if access authorization is suspended or revoked, appropriate actions must be taken.
8. ALTERNATIVE PROCEDURES.
- a. An intent of this directive is to ensure that matters relating to suitability are conducted with a degree of uniformity and consistency within DOE and that all applicable laws and regulations be properly observed. The head of any field element holding delegated personnel authority or the Director of Classification and Staffing Division (AD-53) may request approval from AD-53 to utilize alternative Procedures to those described in this directive, so long as the alternative procedures proposed meet these requirements.
 - b. Any request for approval of an alternative procedure must clearly describe the procedure to be used, including any alternative forms and must be signed by the head of the field-element or by AD-53.

BY ORDER OF THE SECRETARY OF ENERGY:



DOLORES L. ROZZI
Director of Administration
and Human Resource Management

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CHAPTER I

POSITION SENSITIVITY LEVEL DESIGNATIONS

1. POSITION SENSITIVITY LEVEL DESIGNATIONS.

- a. In order to comply with all applicable requirements, some investigation must be made on any individual who is to be employed by the Federal Government. In order to determine how comprehensive the investigation will be, three separate determinations have to be made:
 - (1) How sensitive the position is in terms of the potential for adverse impact on the efficiency of the service;
 - (2) How sensitive the position is in terms of the potential for impact on the national security, including any ADP security considerations; and
 - (3) What, if any, access is required to Restricted Data, Formerly Restricted Data, National Security Information, or special nuclear materials in categories I or II.
- b. Determinations regarding access to classified information or special nuclear materials and position sensitivity in terms of the national security are both issues under the purview of the Office of Security Affairs (SA-1). Details regarding these matters are discussed in DOE 5631.28, PERSONNEL SECURITY PROGRAM, and questions should be referred to SA-1. In an effort to clarify the steps that must be taken, however, all three determinations will be discussed in this Order.
- c. Position sensitivity level designations result from the determinations described in paragraph 1a above and must be made for every position in the Department. Regardless of whether the designation is made based on the efficiency of the service or the national security, the same four designations are used: Special -Sensitive (SS), Critical Sensitive (CS), Noncritical -Sensitive (NCS), and Nonsensitive (NS). These designations are used to identify the type of investigation to which the applicant or incumbent will be subject and the frequency with which reinvestigations will be performed. In addition to the four basic sensitivity designations, positions that involve the responsibility for, involvement in, or access to computer systems must be identified by the addition of the letter "C" after the designation, pursuant to OMB Circular A-130 and FPM Chapter 732, subchapter 2-3. Finally, there are four access authorization

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designations: Q-sensitive, Q-nonsensitive, L, and S. Each position in DOE will be assigned a position sensitivity level designation that will include, if applicable, all of these designations. This means that there are a total of 30 possible position sensitivity level designations as shown in Attachment I-1.

2. PROCEDURES.

- a. Position sensitivity level designations will be made using either the process described in FPM Chapter 731, Appendix A, or the modification of that process described on the "Position Sensitivity Level Designation Worksheet." In either case, DOE F 3731.1, "Position Sensitivity Level Designation," must be used to document the designation. The worksheet presents supervisors with a series of questions which, when answered, will result in a proper position sensitivity level designation. Samples of the worksheet and of the designation form are shown in Attachment I-2.
- b. A part of the designation process deals with designating the impact and scope of the program with which the position is concerned. To facilitate this part of the process, Attachment I-3 contains a list of program placement designations. If individual organizations find that the designations shown are not appropriate, an alternative list may be developed. The list must apply to the entire organization (Departmental Element) and must be available for review. The steps described in FPM Chapter 731, Appendix A, will apply and appropriate documentation must be maintained. If an employee is engaged in work that involves more than one program, the program having the highest level of sensitivity must be used in the designation process, regardless of the amount of time the employee spends in that program.
- c. DOE F 3731.1, "Position Sensitivity Level Designation," only will be submitted to the servicing personnel office and will be filed, at the option of the servicing personnel office, on the left-hand side of the Official Personnel Folder of the incumbent of the position, in a separate file of position sensitivity level designations, or with the official position description.
- d. Within 6 months of the date of issuance of this Order, all supervisors must complete a DOE F 3731.1, "Position Sensitivity Level Designation," for each subordinate position. If more than one individual is covered by a single position description (standard jobs or additional-identical positions), and if the position sensitivity is determined based on risk factors and not on unique factors, a single copy of the form may be completed and photocopied for each incumbent. Each

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supervisor, however, must complete at least one form for each group of positions. If, for example, a Departmental Element utilizes a standard position description for clerk-typists, each supervisor must complete a form for clerk-typists under his or her direction. A single form may not be used to cover all clerk-typists in the Departmental Element.

POSITION SENSITIVITY LEVEL DESIGNATION

Position Sensitivity	Access Required/ADP-Computer Security Involved									
	D-sensitive access required; ADP-computer security involved	D-sensitive access required	D-non-sensitive access required; ADP-computer security involved	D-non-sensitive access required	L access required; ADP-computer security involved	L access required	S access required; ADP-computer security involved	S access required	no access required; ADP-computer security involved	no access required; no ADP-computer security involved
Special-Sensitive	SSDS-C	SSDS	SSDN-C	SSDN	SSL-C	SL	SSS-C	SSS	SS-C	SS
Critical-Sensitive	CSDS-C	CSDS	CSDN-C	CSDN	CSL-C	CSL	CSS-C	CSS	CS-C	CS
Non-Critical Sensitive			NCSDN-C	NCSDN	NCSL-C	NCSL	NCSS-C	NCSS	NCS-C	NCS
Non-Sensitive									NS-C	NS

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POSITION SENSITIVITY LEVEL DESIGNATION

ORGANIZATION LOCATION:

First Subdivision: Administration and Human Resource Management

Second Subdivision: Office of Personnel

Third Subdivision: Division of Classification and Staffing

Fourth Subdivision: Recruitment and Staffing Policy

Fifth Subdivision: _____

POSITION TITLE, SERIES, AND GRADE: Personal Management Specialist, 201-13

POSITION NUMBER: _____

I hereby certify that this position is designated as having the following sensitivity level and access requirement:

NCS

This determination is based on the official duties of the position and was arrived at based on the following:

(If this determination was arrived at based on any one of the worksheet or the special adjustment factors from Appendix A of Federal Personnel Manual #1, enter the reason for the determination):

Position responsible for adjudication or review of background investigations.

(If this determination was arrived at based on risk factors, enter the program placement level assigned and the risk points in each column):

PROGRAM PLACEMENT LEVEL _____ TOTAL RISK POINTS: _____

RISK POINTS ASSIGNED: A _____ B _____ C _____ D _____ E _____

ADP-COMPUTER SECURITY: -

Typed Name and Title
First Level Supervisor

Typed Name and Title
Reviewing Official

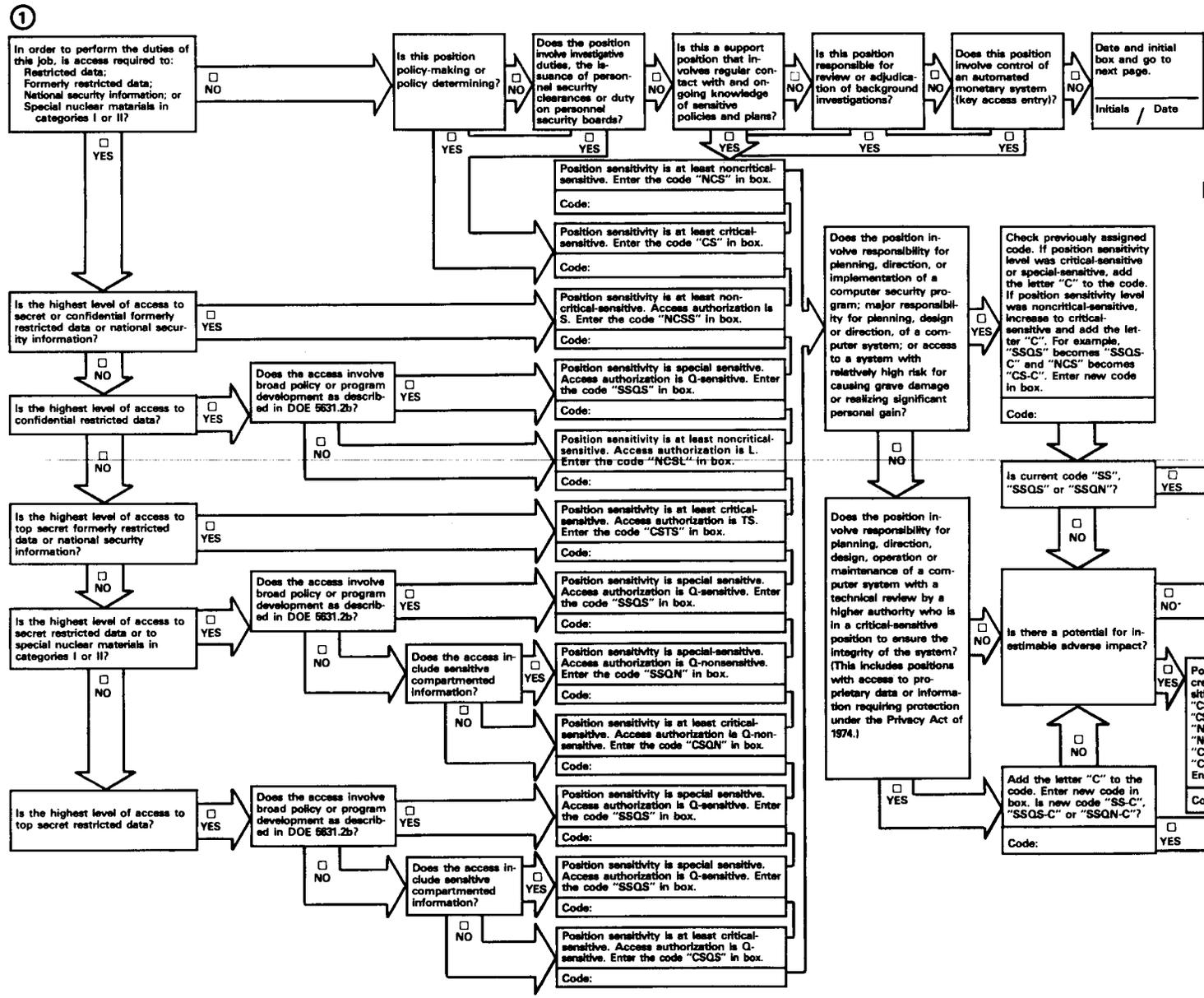
Signature

Date

Signature

Date

Vertical line denotes change.



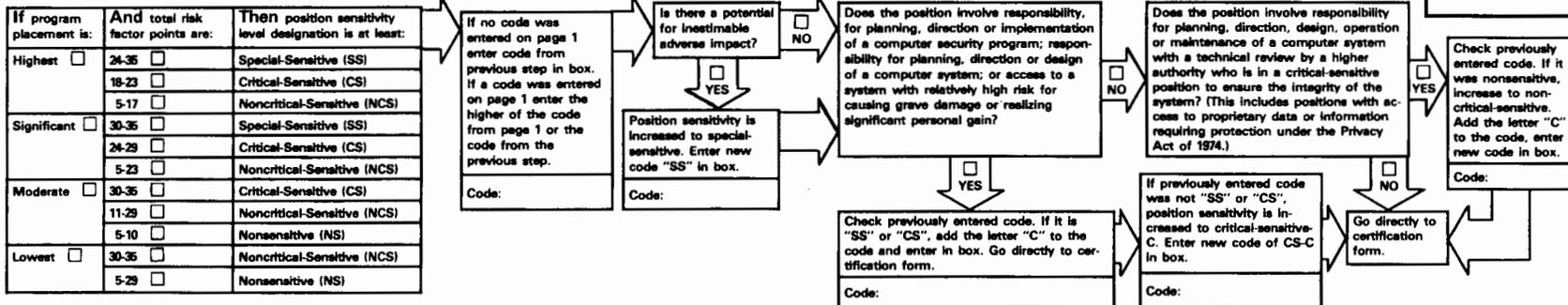
Position Sensitivity Level Designation Worksheet

- READ all questions carefully
- CHECK the appropriate answer box in response to each question
- COMPLETE the appropriate box or boxes to show position sensitivity or completion of this step.

2 For each risk factor, CIRCLE the point value that best describes the degree of impact.

IMPACT DESCRIPTIONS	RISK FACTORS				RISK FACTORS AND IMPACT DESCRIPTION	LINE TOTALS
	DEGREE OF PUBLIC TRUST Expectation that duties are carried out with honesty, integrity, justice, reliability and responsibility.	FIDUCIARY RESPONSIBILITY Authority or ability to obligate, expend or control public monies or items of value.	IMPORTANCE TO PROGRAM Impact the individual position has, due to status in or influence on the program as a whole.	PROGRAM AUTHORITY Ability to manipulate or control the outcome or results of all or key portions of a program or policy.		
Potential for independently crippling most or all phases of program operation or long-term compromise of program integrity.	7 points	7 points	7 points	7 points	Occasional review only with respect to major policy issues by superior without expertise in the technical aspects of program policy and operations. 7 points	Add the total points circled on this line and enter here:
Potential for independently compromising the integrity and effectiveness of a major program element or component or, in conjunction with others, damaging all phases of program operations.	6 points	6 points	6 points	6 points	Review in connection with basic policy considerations only as they arise by superior with no real expertise in the technical aspects of program policy and operations. 6 points	Add the total points circled on this line and enter here:
Potential for causing a serious question to be raised as to the integrity and effectiveness of program operations, through independent action or with others.	5 points	5 points	5 points	5 points	Ongoing spot review of policy and major operational considerations of work by superior with some knowledge of program operations, but with minimal technical program expertise. 5 points	Add the total points circled on this line and enter here:
Potential for reducing the efficiency of overall program operations, or the overall operations of major program elements or components, through independent action or with others.	4 points	4 points	4 points	4 points	Continuing review of work by superior with some knowledge of program operations, but with some technical program expertise. 4 points	Add the total points circled on this line and enter here:
Potential for independently reducing the efficiency of overall operations of a major program element or component or, with others, the efficiency of overall program operations.	3 points	3 points	3 points	3 points	Ongoing spot review of work in connection with important operational issues by superior with technical program expertise. 3 points	Add the total points circled on this line and enter here:
Potential for reducing the efficiency of one phase of day-to-day operations of a major program element or component, through independent action or with others.	2 points	2 points	2 points	2 points	Continuing review of work by superior with technical program expertise. 2 points	Add the total points circled on this line and enter here:
Potential for damage not meeting above criteria.	1 point	1 point	1 point	1 point	Continuing review of all phases of work by supervisor with technical program expertise. 1 point	Add the total points circled on this line and enter here:
						Add line totals and enter here:

Identify program placement level from DOE 3731.1, or from FPM chapter 731 and enter here: _____



PROGRAM PLACEMENT DESIGNATIONS

HIGHEST

Manage nuclear materials program.

Perform nuclear weapons activities.

Provide for an adequate stockpile of enriched uranium.

Test nuclear weapons systems.

Grant permits and authorizations related to international trade in natural gas and electricity.

Issue licenses and authorizations for the import and export of electricity and natural gas consistent with the integrity of the United States' energy supply systems and the security of the foreign supply sources.

SIGNIFICANT

Administer safeguards, security, arms control and intelligence programs.

Conduct nuclear waste treatment and storage activities and manage civilian radioactive waste management activities.

Oversee, manage or investigate the design, licensing, building, testing and operation of nuclear reactors.

Conduct and manage proceedings to distribute refunds collected through enforcement and settlement actions.

MODERATE

Maintain relationships with foreign governments and international organizations.

Perform national security reviews.

Conduct classification program (dealing with the control of information, not position classification).

Provide technical advice regarding international energy negotiations.

Conduct environmental research and development activities.

Coordinate, supervise and conduct investigations or audits of all DOE activities and recommend corrective actions.

Perform inertial confinement or magnetic fusion research and development.

Manage cooperative international energy programs.

Develop and implement voluntary and incentive programs to increase domestic supplies of petroleum, natural gas, coal and uranium.

Manage the naval petroleum and oil shale reserves.

Provide for the design and development of improved naval nuclear propulsion plants.

Provide analysis and forecasting services.

Conduct technology application programs to improve energy efficiency and system utilization and reduce energy consumption.

Review and assess environmental impact statements and DOE policies, products and plans for environmental impacts.

Establish safety standards.

Manage the strategic petroleum reserve.

Refer to the Department of Justice cases for the initiation of court enforcement actions.

Provide an impartial forum for resolving disputes involving the Department and its contractors; patent rights; grants, cooperative agreements and loan guarantees; and applications for extraordinary contractual relief.

Conduct environmental hearings.

LOWEST

Collect, validate, and interpret industry, production and other economic data.

Assess world energy price and supply trends and technological developments.

Produce and market energy resources.

Manage DOE aspects of Federal energy resource leasing procedures and power transmission and marketing.

Develop programs to respond to emergency situations and conditions.

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Attachment I-3
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Negotiate, oversee and administer contracts, grants, cooperative agreements and loan guarantees.

Explore and develop advanced processes for converting coal to synthetic fuels and chemical feedstocks and for direct utilization of coal.

Provide support for the increased production of oil and natural gas reserves.

Manage DOE multi-purpose laboratories.

Coordinate policy initiatives, proposed legislation and the National Energy Policy Plan.

Review proposed DOE regulations for legal sufficiency.

Prepare DOE legislation and legislative comments.

Provide legal opinions and advice.

Perform and coordinate DOE litigation.

Evaluate legislation for impact on DOE programs.

Manage the DOE patent program.

Oversee and administer standards of conduct, ethics and financial disclosure.

Coordinate the DOE evaluation and analysis of policies and programs.

Manage the DOE consumer affairs programs.

Oversee and conduct DOE relations with Congress, the news media, the States, regional and local agencies, educational institutions and other groups.

Develop and implement conservation programs to improve energy efficiency and system utilization and reduce energy consumption.

Conduct energy conservation and solar commercialization activities.

Conduct solar and geothermal heating and cooling programs.

Assure adequate health and safety measures in DOE programs.

Assure compliance with environmental laws and procedures.

Administer, oversee and provide guidance on construction programs.

Manage information programs.

Operate DOE accounting system.

Prepare and support the DOE budget, including oversight activities.

Administer financing studies and conduct cost estimates.

Develop authorization and appropriation legislation.

Manage Federal property.

Plan and conduct procurements.

Provide personnel management, including resource allocation, employment, labor-management and employee relations, classification, reporting and control.

Manage the DOE equal employment opportunity program,

Provide administrative services and support, records and reports management and real property control.

Develop, implement and manage automatic data processing programs and management information systems.

Provide protective services, including firefighting, emergency medical technician and guard functions.

Administer loan guarantee programs, grants or demonstration projects.

Promote academic community research.

Conduct advanced experimental and theoretical studies of the properties and dynamics of atomic nuclei and of the forces that govern the interaction among nucleons.

Provide advice regarding research and development.

Oversee all research and development.

Prepare DOE reports to the Congress.

Conduct investigations and audits to identify regulatory violations.

Negotiate settlements resolving potential liability for regulatory violations.

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Pursue the administrative collection of funds owed under final Departmental Orders.

Petition for the initiation of administrative refund procedures.

Determine the specific kinds of energy policies and programs which are needed to significantly enhance the economic conditions of minorities, minority enterprises and minority educational institutions, in the energy technology environment.

Manage, evaluate and promote the DOE small and disadvantaged business program, and report to Congress thereon.

CHAPTER II

PREINVESTIGATIVE REFERRALS

1. PROCEDURES. Before a request for an investigation is initiated, a review of any submitted application materials must be made in order to determine whether there are any disqualifying factors that would preclude employment:
 - a. In any Federal position (basic suitability);
 - b. In any position with the level of sensitivity of the vacancy; (position sensitivity); or
 - c. In the particular position for which application has been made; (position performance).

The servicing personnel office will review the application materials for disqualifying factors as described in FPM Chapter 731, subchapter 3, except as provided for in FPM Chapter 731, subchapter 4. If any factors are identified, the application will be referred either to the designated adjudicator or to OPM. The adjudicator will determine whether the individual appears to be suitable for employment in the Federal Government, in any position with the level of sensitivity of the vacancy, or in the particular position for which application has been made. The specific procedures to be used are described in the remainder of this chapter and in FPM Chapter 731.

2. REFERRALS BASED ON DELEGATED OR DIRECT HIRE EXAMINING AUTHORITY. Unless alternative procedures have been agreed upon with OPM, any servicing personnel office that holds delegated examining authority must follow these procedures when an application for the examination is received:
 - a. The application must first be reviewed to determine whether the individual qualifies for the position in question. If he or she is qualified and is either within reach for appointment or likely to be within reach in the near future, the application is to be marked "eligible" or with a numerical rating.
 - b. After the qualification determination is made, a suitability determination must be made. If there is no indication of potential adverse suitability information, the examiner must make a notation in the examining office section of the application form indicating that the application is acceptable from a suitability standpoint. The notation must include the initials of the examiner and the date the determination was made (e.g., "OK suit. VN/1-1-86"). The following entries are indications of potential adverse suitability information:

- (1) An other than honorable discharge from military service, any statutory debarment issue as shown in FPM Chapter 735, any loyalty or terrorism issue, or any evidence of dishonesty in the examination or application process (e.g., falsification of the application);
- (2) Any felony or firearms or explosives offense which occurred within 15 years of the date of the application.
- (3) Any two or more occurrences of the offenses listed under 2b(3) or a combination of two or more occurrences of the offenses listed under 2b(3) and 2b(4) below which occurred within 5 years of the date of application:
 - (a) alcohol-related traffic offenses;
 - (b) willful disregard of financial obligations;
 - (c) bad check offenses;
 - (d) employment termination or forced resignation for absenteeism or attendance problems;
 - (e) drunk in public; or
 - (f) drunk and disorderly.
- (4) Any three or more occurrences of the offenses listed under 2b(4) which occurred within 5 years of the date of application:
 - (a) minor liquor law violation (e.g., open container, drinking in public);
 - (b) disturbing the peace;
 - (c) abusive language;
 - (d) vagrancy;
 - (e) loitering;
 - (f) trespassing;
 - (g) minor traffic offenses not involving alcohol or drugs; or
 - (h) employment termination or forced resignation for attitude or personality conflict.

- (5) Any occurrence of a suitability issue other than those listed in 2b above which occurred within 7 years of the date of application.
- c. All issues relating to material intentional false statements, deception, or fraud in examination or appointment or refusal to furnish testimony as required in 5 CFR 5.4 will be referred to:
- U.S. Office of Personnel Management
Federal Investigations Processing Center (FIPC)
Suitability Adjudication Branch
Boyers, PA 16018.
- d. All other issues relating to suitability determinations will be referred to the designated adjudicator, if the local OPM office has delegated this adjudication authority to the servicing personnel office, or to the OPM-FIPC.
- e. In the event that an application is received that contains questions of suitability that cannot be resolved or that can only be resolved on the basis of additional information, one of the following two options must be selected:
- (1) If there is only one vacancy to be filled with no further appointments anticipated in the near future or if substantially all vacancies will be filled as a result of immediate certification from the inventory, the issuance of a certificate will be delayed to allow either the servicing personnel officer (or his or her designee) or the OPM-FIPC 10 working days to act on the case and to notify the examining office of the action taken. In referring these cases, the examining office is responsible for identifying the case as needing expedited handling by adding the phrase "Case Examining Special Handling" to the space for other information on the OFI-86A "Request for Determination or Advisory," and for ensuring that all information is complete prior to submission. The action that will be taken will be one of the following:
- (a) eligible on the basis of the information at hand;
- (b) ineligible on the basis of the information at hand, in which case 5 CFR Part 754 procedures will apply; or
- (c) eligibility suspended pending final decision which cannot be made on the basis of the information at hand.

Any of these actions will allow the examining office to issue a certificate.

- (2) If the conditions described in subparagraph e(1) above do not exist (i.e., if there are continuing employment opportunities), the examining office may continue to issue certificates and must either:
 - (a) Suspend processing of the application. The individual will be requested to provide the required information in writing within 30 calendar days. If no response is received within that time, the application will be returned to the individual for a failure to respond to official correspondence.
 - (b) Cancel the application and return it to the applicant for resubmission. In this case the application is treated in the same manner as any other incomplete application.
- f. If an application is submitted to a servicing personnel office that holds direct hire or delegated examining authority and if an adverse suitability determination is made under the provisions of 5 CFR Part 754, the applicant or employee may appeal the determination to the Merit Systems Protection Board (MSPB), as specified in Chapter VI. If the applicant or employee believes that the determination involved prohibited discrimination, he or she may appeal the determination to the Equal Employment Opportunity Commission. The servicing personnel office making the determination must notify the individual of his or her appeal rights and the procedures required to file such an appeal.
- g. If the individual's name appears on a selection certificate, and if adverse suitability information is present, the servicing personnel office may request approval to object to or pass over that individual.
 - (1) If the position is nonsensitive and the issue has been reviewed by an adjudicator, the following steps will be taken:
 - (a) If the servicing personnel office holds delegated examining authority, that office may approve or disapprove the request to pass over the individual on that selection certificate, but will retain the name of the individual on the register, except as provided for in subparagraph (2) below. The case will be referred to the OPM-FIPC for a final decision as to whether eligibility on the register will be cancelled.
 - (b) If the servicing personnel office does not hold delegated examining authority, the local OPM examining office will rule on the request. Referral to the OPM-FIPC will be the responsibility of the local examining office.

- (2) If the position is other than nonsensitive; if the individual in question is a 30 percent or more compensable, service connected disability veteran; or if the case involves a single agency register, the request will be referred to the OPM-FIPC.
3. INITIAL REVIEW OF SF-85 "QUESTIONNAIRE FOR NONSENSITIVE POSITIONS," OR SF-86, "QUESTIONNAIRE FOR SENSITIVE POSITIONS." When a servicing personnel office receives a completely and accurately filled out SF-85 or SF-86 under the provisions of Chapter III, the material contained in the form must be reviewed and acted on in the same manner as is described above in paragraphs 2b, c, d, and g.
 4. PROCEDURE FOR MAKING A REFERRAL. Any referral that is made will be made using OFI-86A, "Request for Determination or Advisory." The requesting office must complete items 1 through 10 and 12 and, if applicable, item 11. Referrals will only be made when the candidate is within reach or will soon be within reach for certification.
 5. SAFEGUARDING REPORTS. The requirements and procedures described in FPM Chapter 732, subchapter 7, will be followed for all suitability investigation materials.

CHAPTER III

INVESTIGATIVE REQUIREMENTS AND PROCEDURES

1. EMPLOYMENT OF A NON-DOE INDIVIDUAL.

- a. If the position in question is sensitive (i.e., SS, CS, or NCS), the individual may not be brought on board until:
 - (1) After the appropriate background investigation has been completed and adjudicated; or
 - (2) In the case of a CS or NCS position, after a waiver of the preappointment background investigation has been granted by the Under Secretary, in accordance with the procedures described in Chapter IV.
- b. A waiver will not be granted unless the required background investigation forms have been properly and completely filled out and submitted.
- c. If the position in question is SS, the individual may not be brought on board until after the background investigation has been completed and adjudicated. Waivers may not be granted for these positions.
- d. If a waiver is granted for a CS or NCS position, the individual will not be granted access to classified information or special nuclear materials prior to the completion and adjudication of the background investigation, unless an interim access is also authorized. The procedures for obtaining an interim access are described in DOE 5631.26, PERSONNEL SECURITY PROGRAM. Interim access authorizations will only be considered for positions requiring a Top Secret or Q clearance.
- e. If the position is NS, the individual may not be brought on board until after the required background investigation forms have been properly and completely filled out and submitted to the servicing personnel office.

2. A POSITION CHANGE OF A CURRENT DOE EMPLOYEE WHICH REQUIRES A MORE STRINGENT INVESTIGATION.

- a. An upgraded background investigation may be required when position sensitivity or the need for or potential access to classified information changes due to the employee being placed in another position or the addition of new duties or responsibilities to the present position.

- b. A position change involving movement to a different position requiring a more stringent investigation will not be effected until:
 - (1) After the appropriate background investigation has been completed and adjudicated; or
 - (2) In the case of a CS or NCS position, after a waiver of the preappointment background investigation has been granted by the Under Secretary, in accordance with the procedures described in Chapter IV.
- c. A waiver will not be granted unless the required background Investigation forms have been properly and completely filled out and submitted to SA-1.
- d. If the position in question is SS, the position change will not be effected until after the background investigation has been completed and adjudicated.
- e. If a waiver is granted, the employee will not be granted access to classified information or special nuclear materials prior to the completion and adjudication of the background investigation, unless an interim access is also authorized. The procedures for obtaining an interim access are described in DOE 5631.2B, PERSONNEL SECURITY PROGRAM. Interim access authorizations will only be considered for positions requiring a Top Secret or Q clearance.

3. PROCEDURES

- a. Whenever a personnel action is requested that requires submission of a DOE F 3511.1, "Position Description," a copy of DOE F 3731.1 "Position Sensitivity Level Designation," must accompany the request. The form may be a photocopy, but must carry an original signature and current date.
- b. The servicing personnel office will be responsible for determining whether an SF-86, "Questionnaire for Sensitive Positions," or an SF-85, "Questionnaire for Nonsensitive Positions," is required. The servicing personnel office will forward the appropriate form to the employee or selectee through the employing or selecting organization's point of contact for investigations. If access is required, the servicing personnel office will also include a DOE F 5631.18, "Security Acknowledgment."
- c. The employee or selectee will be provided with instructions to return the original and two copies of the SF-86 and, if appropriate, the original DOE F 5631.18 to the employing or selecting organization.

Vertical line denotes change.

When returning the forms, he or she will be directed to complete Part II of the SF-86 in private, seal it in an envelope, print or type his or her full name and the words "QSP-Part II" on the envelope, staple it to Part I, and return it to the employing or selecting organization. That organization will be responsible for reviewing Part I of the completed form to ensure that it is completely and properly filled out and for forwarding the form directly to the servicing personnel office. Part 11 of the form will only be reviewed by authorized personnel. A chart showing the required forms appears in Attachment I-1.

- d. The servicing personnel office receiving a completed SF-85 or SF-86 will review the submitted materials to determine if a preinvestigative referral is required under the provisions of Chapter II. The servicing personnel office will then complete sections A through P of Part 1 of the SF-86 or sections A through K of the SF-85 and will arrange to obtain two completed SF-87, "Fingerprint Cards." In addition, if access is required, DOE F 5631.18, a Security Acknowledgement form, will be obtained. If access is not required and if referral is not warranted, the servicing personnel office will forward the forms to OPM for the appropriate investigation. If access is required and if referral is not warranted, the servicing personnel office will forward the forms to SA-1 or the appropriate local security office for processing.
- e. If the individual has submitted any forms or information that indicate that a background investigation has been performed within the past 15 years, the servicing personnel office should make every effort to determine the investigating agency, the agency that requested the investigation, the date the investigation was completed, and any other information that would aid in obtaining the results of the investigation. If the position requires access, a notation should be made on the transmittal to SA-1 or the appropriate local security office which summarizes the information. A copy of any investigative reports on file will be submitted with the request for access authorization. Original reports must not be sent. If the position does not require access, the information should be transmitted to the investigating agency.
- f. Any completed SF-85 or SF-86 should generally be referred to the appropriate investigating organization within 7 working days.
- g. Individual servicing personnel offices may establish deadlines for the return of a properly completed SF-85 or SF-86. If the forms are not returned prior to the deadline, the servicing personnel office may cancel any requested personnel action.

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- h. The following rules will be followed when submitting forms:
- (1) All forms must be typewritten or legibly printed in ink.
 - (2) All copies must be signed and dated. Photocopies of signatures are not acceptable. Part I of the SF-86 should contain a signature and date in case Part 11 is lost or destroyed.
 - (3) Complete 5-digit ZIP codes must be included in all spaces provided.
 - (4) The FROM and TO dates for each period of employment, education and residence must be completed. The SF-85 or SF-86 must contain an account of all time periods.
 - (5) All blocks on the Fingerprint Card must be completed. The person being printed and the person taking the prints must sign the card. Fingers must be fully rolled and prints must make the appointment. No test papers will be submitted.

4. REINVESTIGATIONS.

- a. Any employee whose position sensitivity is Special-Sensitive or Critical-Sensitive must be reinvestigated every 5 years after the initial placement. For those positions that do not involve access to classified information or special nuclear materials, the servicing personnel office will initiate the reinvestigation by sending an SF-86 to the organization's point of contact no later than 90 days prior to the expiration of the 5-year period. The organization's point of contact will be responsible for returning the forms, completely and accurately filled out, to the servicing personnel office no later than 30 days prior to the expiration of the 5-year period. Noncritical-sensitive positions also may be reinvestigated at the option of the agency.
- b. SA-1 or the local personnel security office is responsible for reinvestigations of incumbents of positions involving access to classified information or special nuclear materials. The applicable procedures are described in DOE 5631.2B, PERSONNEL SECURITY PROGRAM. If an individual's access is terminated under the provisions of Chapter VII of DOE 5631.2B, PERSONNEL SECURITY PROGRAM, SA-1 or the local security office shall so notify the servicing personnel office so that any reinvestigations that may be required subsequent to the termination may be scheduled.

Vertical line denotes change.

5. RECORDKEEPING.

- a. Any application or SF-85 stamped "Cleared/Processed/Investigated/Results Referred Under E.O. 10450" which was received by servicing personnel office prior to April 1, 1988, must be retained in the employee's Official Personnel Folder.
- b. Any application or investigation completion certificate stamped "Processed/Investigated/Results Referred Under E.O. 10450" received after April 1, 1988, will be maintained by the local servicing personnel office.
- c. Any investigative reports involving access authorizations will be retained by the local personnel security office. Any investigative reports not involving access authorization will be retained by the servicing personnel office.
- d. Any waivers of preappointment investigations will be retained in the employee's Official Personnel Folder and a copy will be provided to the local personnel security office.
- e. A copy of an SF-86 used to initiate an investigation will be retained in the employee's Official Personnel Folder.
- f. No investigations records, cases, reports, transcripts, fingerprint cards or other case file documentation will be filed in the Official Personnel Folder, except certifications of investigation and adjudication.

Vertical line denotes change.

REQUIRED FORMS

Position Sensitivity Level Designation form DOE F 3731.1	Questionnaire for Nonsensitive Positions SF-85	Questionnaire for Sensitive Positions, SF-86	Fingerprint Card SF-87
SS, SS-C		Submit original to OPM. Retain one copy in tickler file.	Submit one original to OPM.
CS, CS-C		Submit original to OPM. Retain one copy in tickler file.	Submit one original to OPM.
NCS, NCS-C		Submit original to OPM. Retain one copy in tickler file.	Submit one original to OPM.
NS	Submit original to OPM. Retain one copy.		Submit one original to OPM.
SSQS, SSQS-C CSQS, CSQS-C CSTS, CSTS-C		Submit original and two copies to local security office. Retain one copy in tickler file.	Submit two originals to local security office.
NCSQN, NCSQN-C NCSL, NCSL-C NCSS, NCSS-C		Submit original and two copies to local security office. Retain one copy in tickler file.	Submit two originals to local security office.
SS, SS-C, CS CS-C and incumbent is scheduled for reinvestigation		Submit original to OPM. Retain one copy in tickler file.	Submit one original to OPM.

Position Sensitivity Level Designation form DOE F 3731.1	Personal Qualifications Statement SF-171	Security Acknowledgement, DOE F 5631.1B	Investigation/Clearance Request and Notification, HQ F 5631.2
SS, SS-C	Submit copy of SF-171 received with SF-39 or submitted as application.		
CS, CS-C	Submit copy of SF-171 received with SF-39 or submitted as application.		
NCS, NCS-C	Submit copy of SF-171 received with SF-39 or submitted as application.		
NS	Submit copy of SF-171 received with SF-39 or submitted as application.		
SSQS, SSQS-C CSQS, CSQS-C CSTS, CSTS-C	Submit copy of SF-171 received with SF-39 or submitted as application.	Submit one original to local security office.	Submit one original and four copies to local security office.
NCSQN, NCSQN-C NCSL, NCSL-C NCCS, NCCS-C	Submit copy of SF-171 received with SF-39 or submitted as application.	Submit one original to local security office.	Submit one original and four copies to local security office.
SS,SS-C, CS CS-C and incumbent is scheduled for reinvestigation			

NOTE: Forms need not be submitted if access authorization is not required and one of the following conditions is met:

- (1) Appropriate investigation, or a higher one, was completed within the past 90 days;
- (2) Appropriate investigation or a higher one, was completed within 3 years of prior civilian service that was terminated less than 1 year prior to current appointment;
- (3) Appropriate investigation, or a higher one, was completed during prior service that is being used as a basis for exercise of restoration rights or return to duty from military service or compensable injury; or
- (4) Appropriate investigation, or higher one, was completed within 3 years and individual was honorably discharged from military service within the past year.

CHAPTER IV

WAIVER OF PREAPPOINTMENT INVESTIGATION

1 . WAIVER OF PREAPPOINTMENT INVESTIGATION.

- a. Since investigations require several months to complete, a request for a waiver of the preappointment investigation may be submitted for consideration in an emergency for positions designated as CS or NCS.
- b. The authority to approve waivers of the preappointment investigation rests with the Under Secretary and may not be redelegate.
- c. Waivers of preappointment investigations may not be requested for SS positions.

2. PROCEDURES. The procedure for submitting requests for waivers is as follows:

- a. A waiver may only be requested when the Head of the Departmental Element certifies to the following conditions:
 - (1) The need to have the individual commence work as soon as possible is a "case of emergency" and that such action is necessary in the national interest;
 - (2) A review of the applicant's SF-86, "Questionnaire for Sensitive Positions," past employment, and results of reference checks were favorable;
 - (3) Meaningful work for the organization can be accomplished by the individual without access to classified information or, if the individual is already a DOE employee who has been granted a more restricted level of access than is now required, such access as has been authorized may be continued.
- b. The authority to certify to the above conditions may not be redelegate.
- c. The Head of the Departmental Element will prepare a memorandum, based on the example shown in Attachment IV-1. The request must contain a recommendation for approval or disapproval of the waiver by the servicing personnel office based on the suitability determination criteria and a recommendation for approval or disapproval of the waiver by the local security office based on the outcome of a subject interview, if required. Interviews will be conducted by the local security officer or his or her designee. The request must be submitted to SA-1.

Vertical line denotes change.

- d. SA-1 will contact such other investigative organizations as he or she deems fit to determine whether any derogatory information is likely to be developed during an investigation. He or she will then recommend either approval or disapproval of the waiver based on all available information. The waiver will then be submitted to the Under Secretary for a final decision regarding the granting of a waiver.
- e. Requesting organizations need to be aware that the processing time for a waiver request is generally between 4 and 8 weeks. Most of this time is required in order to obtain responses from other investigative organizations and cannot be reduced.
- f. An approved waiver of preappointment investigation will be placed in the employee's Official Personnel Folder. If access authorization is involved, a copy of the approved waiver will be provided to the local personnel security office.

Vertical line denotes change.

EXAMPLE WAIVER REQUEST

DOE F 1325.8
(10-86)

United States Government

Department of Energy

memorandum

DATE:
REPLY TO: (Organization Routing Designator)
ATTN OF:
SUBJECT: Request for Waiver of Preappointment Investigation

TO: Under Secretary
THRU: Director, Office of Security Affairs, SA-1

In accordance with the procedure for waivers of preappointment investigations, the following request for a waiver is submitted:

Name: Mary Smith Grade: GS-12
Current DOE Security Clearance: None
Proposed Position Title: Personnel Management Specialist
Organization: Office of Personnel
Immediate Supervisor: Bob Doe
Proposed EOD or Effective Date: 1 - 1 - 90

Based on this organization's review, there appears to be no derogatory information which would preclude employment in a Critical-/Sensitive or a Noncritical-/Sensitive position.

The individual's duties, pending completion of the investigation and granting (or upgrading) of a security clearance, will involve

attending training, developing local personnel procedures,
processing personnel actions, and providing advice and guidance
to managers

If approved, I will ensure that the individual will have no access to any classified information prior to the granting of a security clearance or will have access to the level of his or her current DOE clearance. Forms required for the investigation were submitted on 12-15-89 [date].

I certify that this request is an emergency and in the national interest and recommend approval because the personnel officer position must be
filled in order to continue the work of the organization. There are no
other employees capable of performing these duties

Signature and Title: _____

Vertical line denotes change.

REQUEST FOR WAIVER OF PREAPPOINTMENT INVESTIGATION

Date: _____ Organization: (Organization Routing Designator)

Name: Mary Smith

Based on an interview conducted by the Security Officer or his or her designee, if required, there is no indication of pertinent derogatory information precluding the appointment indicated.

Signature Title Date
Security Officer

Based on the servicing personnel office's review of the individual's previous employment record, his or her SF-86, and, if appropriate, the transcript of an interview conducted by the Security Officer or his or her designee, there is no indication of pertinent derogatory information that would be likely to result in an adverse suitability determination.

EXAMPLE

Signature Title Date
Personnel Officer

Indices checks conducted by the Office of Security Affairs reflect no indication of pertinent derogatory information precluding the appointment indicated.

Signature Date
Director, Office of Security Affairs

WAIVER OF A PREAPPOINTMENT INVESTIGATION FOR THE ABOVE NAMED INDIVIDUAL TO OCCUPY A CRITICAL-SENSITIVE OR A NONCRITICAL-SENSITIVE POSITION IS NECESSARY IN THE NATIONAL INTEREST.

APPROVED: _____ DATE: _____
Under Secretary
Department of

DISAPPROVED: _____ DATE: _____
Under Secretary
Department of Energy

Vertical line denotes change.

CHAPTER V

SUITABILITY DETERMINATIONS

1. SUITABILITY ADJUDICATORS.

- a. Each servicing personnel office must identify at least one individual who will serve as an adjudicator and, where possible, a backup to serve as adjudicator in the absence of the regular adjudicator. Adjudicators must be thoroughly familiar with the laws, regulations, and criteria pertaining to suitability determinations. Adjudicators must consider all the information of record, both favorable and unfavorable, and assess it in terms of its relevance, recency, and seriousness. Adjudicators must also be mindful that the objective is to adjudicate suitability in a manner that will promote the efficiency of the service while assuring fair, impartial, and equitable treatment of the individual. Protecting the interests of the Federal Government is the first responsibility of adjudicators, but it must also be remembered that suitability decisions directly affect the lives of people, their ambitions, their desires, their families, and their careers.
- b. All adjudicators must have been subject to a favorable evaluation based on a Background or Special Background Investigation.

2. APPLICATIONS RECEIVED.

- a. Agencies receive applications through a number of different means. These may include, for example, applications submitted in response to a vacancy announcement, unsolicited applications, and applications received from OPM in response to a request for a certificate of eligibles. If a servicing personnel office receives and considers an application from an individual who is not a current Federal employee through any means other than from an OPM certificate of eligibles, that servicing personnel office is responsible for reviewing the applicant's application form and any information developed in connection with the application to determine whether there are any potentially disqualifying suitability issues. This step must be performed regardless of the sensitivity of the position and must be performed prior to the issuance of any tentative offer of employment, initiation of preappointment investigation or initiation of a request for a waiver of a preappointment investigation.

- b. The determination as to whether there are any potentially disqualifying suitability issues is made to establish a reasonable expectation that the employment or continued employment of a person either would or would not promote the efficiency of the service. This determination is based on considerations of whether the conduct of the individual indicates a potential for behavior that would interfere with, prevent or otherwise adversely impact the performance of the person in the position for which he or she is applying, the performance of others in the Federal Government, or the ability of any of the Federal agencies to carry out their responsibilities. Two issues are considered: whether the conduct in question indicates a potential for inadequate or reduced performance of specific duties and whether the conduct indicates any immediate or long term risk for abuse of the public trust in carrying out the responsibilities of the position.
 - c. Disqualification factors and information on how those factors are applied are contained in FPM Chapter 731 and Chapter 2 of this Order. Adjudications may also have to be made based on derogatory information that may be identified as a result of a background investigation or through some other means.
3. ADVERSE DETERMINATIONS. In the event that an adverse suitability determination is made, the individual may be subject to a number of actions, ranging from issuing a letter of warning to the person concerned to debarment from competitive civil service examinations or employment for a period not to exceed 3 years. These actions may also involve actions affecting an employee (for example, when adverse suitability information that was not developed during the application process surfaces during an investigation and the individual was brought on board in a NS position or under a waiver of a preappointment investigation). The actions that can be taken and guides to which action might be appropriate in any given situation are contained in FPM Chapter 731 and, if applicable, in DOE 3750.1, WORK FORCE DISCIPLINE.
 4. TIMELINESS. If adverse suitability information (other than evidence of dishonesty in the application or examination process), surfaces after completion of a probationary or trial period, any action must be taken under the provisions of FPM Chapter 752. This may mean that conduct that may be disqualifying from a suitability standpoint may not be sufficient grounds for separation under Chapter 752. As a result, it is critical that required investigations be conducted in a timely manner so that any adverse suitability information can be discovered and acted upon during the first year of employment.

5. ADJUDICATIONS. Any reports of investigations will be returned to the Department through SA-1 or the local security office. In the event that derogatory information is received, SA-1 or the local security office will forward a copy of the report to the servicing personnel office. If the position is one that requires access, the designated adjudicator will review the information for a suitability determination at the same time as SA-1 or the local security office is reviewing the information to determine whether access will be granted. If either organization plans to contact the individual to obtain further information relating to the derogatory information, that action will be coordinated before any contact is made. If either organization makes an adverse determination, the other organization should be notified immediately.

Vertical line denotes change.

CHAPTER VI

ACTIONS TAKEN AS A RESULT OF AN ADVERSE SUITABILITY DETERMINATION
OR A REVOCATION OR SUSPENSION OF AN ACCESS AUTHORIZATION

1. TERMINATION DURING A PERIOD OF PROBATION.

- a. If an employee is serving a probationary period under 5 CFR 315.801, and if the derogatory information involves issues arising during the period of probation, he or she may be terminated under the provisions of 5 CFR 315.804.
- b. If the derogatory information involves issues arising in whole or in part prior to his or her appointment, the probationary employee may be separated under the provisions of 5 CFR 315.805.
- c. An individual terminated under the provisions of paragraph 1(a) or 1(b) above, may appeal that action to the MSPB if he or she alleges that the action was based on partisan political reasons or marital status. He or she may also appeal to the Equal Employment Opportunity Commission (EEOC) if he or she alleges that the action was based on discrimination because of race, color, religion, sex or national origin, physical handicap, or age, provided that at the time of the action he or she was at least 40 years old.
- d. An individual, terminated under the provisions of paragraph 1b, may appeal that action to the MSPB if he or she alleges that the procedural requirements of 5 CFR 315.805 were not properly followed. If prohibited discrimination is raised in addition to the procedural issue, the employee may raise that issue in the appeal to the MSPB.

2. REMOVAL AND DEBARMENT ACTIONS FOR UNSUITABILITY.

- a. Coverage. This route is appropriate in the following circumstances:
 - (1) The individual is serving in an appointment in the competitive service "subject to investigation" under 5 CFR 731.301(a). Positions subject to investigation generally include probationers and others with less than a full year of current service. DOE may terminate these appointees for unsuitability for most of the types of misconduct listed in 5 CFR 731.202 (criminal conduct, misconduct in previous employment, habitual use of intoxicants, etc.). Misconduct involving deception or fraud in

an examination or appointment or involving a refusal to furnish testimony must be dealt with by OPM, MSPB or the Office of Special Counsel, as appropriate.

- (2) The individual has served in a competitive position for longer than 1 year of current service and-is, therefore, no longer "subject to investigation." Employees in this category may only be removed for unsuitability on OPM orders and only for reasons of either material intentional false statement or deception or fraud in examination or appointment; or refusal to furnish testimony required under 5 CFR 5.4. In these cases, DOE also has an opportunity to respond. Any such response must have the concurrence of AD-50.

- b. Procedures. Removals and debarment for suitability are handled using procedures contained in 5 CFR Part 731, and 5 CFR Part 754. These procedures provide for a 30-day written notice of the proposed action, an opportunity to respond, a written decision, and an appeal to MSPB. If the employee appeals the action, Part 754 requires that the employee be maintained in a pay status pending action on the appeal. It is OPM's position that "employee" in this context only applies to people who are no longer serving in positions "subject to investigation." If the person is still within the "subject to investigation" period, DOE may suspend the person without pay, or may keep him or her in a pay status. Part 752 does not apply to a suspension in this situation. Depending on the seriousness of the offense, the individual may be debarred from competing in a competitive examination or accepting competitive employment for a period of not more than 3 years. Upon expiration of the period of debarment, the individual may not be appointed to any competitive service position until after OPM has determined his or her fitness.
- c. Actions are not grievable or arbitrable under DOE or negotiated grievance procedures.

3. ADVERSE ACTIONS FOR MISCONDUCT UNDER 5 CFR PART 752.

- a. Coverage. This route is appropriate for any employee in the competitive service who is not serving a probationary period and who is not on a temporary appointment. It is also appropriate for certain employees in excepted service positions. Specific coverage is discussed in 5 CFR 752.201, 5 CFR 752.401, and DOE 3750.1, WORK FORCE DISCIPLINE. Also, if the action to be taken is less severe than removal (e.g., suspension), Part 752 procedures apply. That is, even if the individual is potentially subject to a Part 754 action, but the proposed action is less severe than removal, the action must be processed under Part 752.

- b. Procedures. Procedures require written notice, an opportunity to respond, a written decision, and an appeal to MSPB for any action other than a suspension of 14 days or less. There is no requirement for keeping an employee who is removed or suspended on active duty pending completion of the appeal process. The misconduct may be of any type, in contrast with the suitability and security routes which have listed criteria. Specific procedures are described in DOE 3750.1, WORK FORCE DISCIPLINE.
- c. Adverse actions are grievable and arbitrable under negotiated grievance procedures.

4. ACTIONS INVOLVING AN APPLICANT OR ELIGIBLE.

- a. Coverage. Any individual who has applied to compete in a competitive examination or for employment in a competitive service position may be subject to being rated ineligible, having his or her eligibility cancelled or may be debarred for a period of not more than 3 years from competing in a competitive examination or from accepting competitive employment. Debarment may only be effected by OPM.
- b. Procedures. Removals, nonselections, and debarment are handled using procedures contained in 5 CFR Part 731, and 5 CFR Part 754. These procedures provide for a 30-day written notice of the proposed action, an opportunity to respond, a written decision, and an appeal to MSPB. Any action taken under 5 CFR Parts 731 or 754 which are based on material intentional false statement or deception or fraud in examination or appointment or on a refusal to furnish testimony may only be directed by OPM.

5. ADVERSE ACTIONS BASED ON SECURITY CONSIDERATIONS.

- a. Coverage. This route is appropriate for any nontemporary employee whose position requires access to classified information or special nuclear materials and who is not serving a probationary period.
- b. Procedures.
 - (1) The first step is a determination by DOE security personnel that the employee does not appear to meet the criteria for granting or maintaining access to classified information or special nuclear materials. This determination is followed by an administrative review procedure within the Department, as provided for in 10 CFR 710. The employee may be detailed to a position not requiring access during this review process or may be placed on indefinite suspension (a nonpay status) under Part 752 pending completion of the review process.

- (2) After completion of the first step, one of two routes is possible unless the employee is reassigned to a position not requiring access.
 - (a) Removal under 5 U.S.C. 7532, where the Secretary has determined that removal is necessary or advisable in the interest of national security. There is no appeal to the MSPB from this determination, which may only be made after completion of an internal procedure outlined in 5 U.S.C. 7532. This route is appropriate only when there is direct concern with the protection of the nation from "internal subversion or foreign aggression" such as espionage or sabotage.
 - (b) Removal or demotion under 5 CFR 752 for failure to meet requirements of the position. Procedures are the same as for other Part 752 actions, and the employee may appeal to the MSPB. However, in cases involving access authorizations, the MSPB review is limited to procedural matters and does not include a review of the merits of the decision to deny or revoke access.
- c. The issue must generally be one of those listed in 10 CFR 710 in order for a clearance to be revoked or denied. Adverse actions under 5 CFR Part 752 are grievable and arbitrable under negotiated grievance procedures. The Department takes the position, however, that the arbitrator does not have the authority to review an access authorization determination made by DOE.

6. ACTIONS INVOLVING MEMBERS OF THE SENIOR EXECUTIVE SERVICE WHO ARE SERVING A PROBATIONARY PERIOD.

- a. Coverage. A career appointee to the SES who is serving a period of probation may be removed for unacceptable executive performance or conduct under the provisions of 5 CFR Part 359.
- b. Procedures. The career appointee is entitled to a written notice prior to the effective date of the removal. If the reasons for the removal arose in whole or in part from incidents/occurrences prior to the SES appointment, the employee has the right to respond to the notice and to a written notice of decision. No removal may be made effective within 120 days after:
 - (1) The appointment of a new agency head (unless the action was initiated before the new agency head's appointment); or
 - (2) The appointment in the agency of the career appointee's most immediate supervisor who:

- (a) Is a noncareer appointee; and
- (b) Has the authority to remove the career appointee (unless the action was initiated before the new supervisor's appointment).

- c. A removal action during an SES probationary period is not appealable to the MSPB. If the employee alleges that the 120-day restriction was violated, such an allegation may be submitted to the Special Counsel of the MSPB as an alleged prohibited personnel practice.
- d. A removal for suitability reasons during the period of probation will be considered removal for cause. Therefore, the incumbent will not be entitled to placement rights under 5 CFR Part 359.701.

7. ACTIONS INVOLVING MEMBERS OF THE CAREER SENIOR EXECUTIVE SERVICE WHO ARE NOT SERVING A PERIOD OF PROBATION.

- a. Coverage. Members of the career SES who are not serving a period of probation may only be removed under the provisions of 5 CFR 752.601.
- b. Procedures. The only actions that may be taken are removal and a suspension for more than 14 days. The employee is entitled to a notice of proposed action, the right to review any material on which the action is based, an opportunity to reply orally and in writing, representation, and a written notice of the decision. Generally, the employee is entitled to remain in a duty status in his or her regular position during the advance notice period. The employee may appeal the action to the MSPB.

8. ACTIONS INVOLVING NONCAREER MEMBERS OF THE SENIOR EXECUTIVE SERVICE.

- a. A limited term or limited emergency appointee who received the limited appointment without a break in service in the same agency as the one in which the employee held a career or career-conditional appointment (or its equivalent) in a permanent position outside the SES, and who was covered by 5 U.S.C. 7511 immediately before appointment to the SES, is entitled to the same coverage and procedures as in paragraph 7 above.
- b. Any member of the SES not covered by one of the other provisions of paragraphs 6 and 7 above or 8 may be removed at any time. The employee is entitled to a notice in writing in advance of the effective date of the removal. There are no placement rights or appeal rights to these removals.

CHAPTER VII

LOCAL PROGRAMS

1. REPORTING REQUIREMENTS

- a. Any designated adjudicator who makes an adverse suitability determination must provide the following information to the Office of Personnel, Classification and Staffing Division, Recruitment and Staffing Policy Branch (AD-532);
 - (1) The nature of the derogatory information;
 - (2) The level at which the determination was made (basic suitability, position sensitivity, or position performance);
 - (3) The action being proposed;
 - (4) The status of the affected individual; and
 - (5) Any other pertinent information.
- b. No adverse suitability action will be taken until at least 5 working days after receipt of the required information by AD-532 unless such a delay would adversely affect the organization's ability to take the action (e.g., expiration of the "subject to investigation" period).
- c. The primary purpose of the requirement is to increase the degree of uniformity in adjudicating suitability within the Department.

2. REVIEWS OF LOCAL PROGRAMS

- a. Servicing personnel offices must provide for an annual self review of their suitability program. Such a review must include, but is not limited to, the following concerns:
 - (1) Whether forms are being completed and submitted by the selecting or employing organization in a timely manner and in accordance with the provisions of Chapter 111, paragraph 3;
 - (2) Whether completed forms are being referred to the proper investigating organization or Security Affairs in a timely manner;
 - (3) Whether completed investigations are being recorded and filed;

Vertical line denotes change.

- (4) Whether position sensitivity designations are being properly made and documented;
 - (5) Whether there are a high percentage of changes to position sensitivity designations, indicating the possibility that initial designations are being made incorrectly;
 - (6) Whether all required investigations or waivers are obtained prior to filling an other than nonsensitive position;
 - (7) Whether requests for reinvestigations are being initiated properly and in a timely manner.
- b. Periodic reviews of local suitability programs may be made either during a Departmental personnel management evaluation or through a special review made by AD-532.
3. LOCAL PLANS. Local plans must specify the location used to file position sensitivity designations (see Chapter I, paragraph 2c), and must provide for tickler systems to ensure that:
- a. reinvestigations are requested in a timely manner;
 - b. forms are submitted to the investigating organization or Security Affairs in a timely manner; and
 - c. the local organization remains aware of whether reports of investigations are obtained in a reasonable period of time.

Vertical line denotes change.

U.S. Department of Energy
Washington, D.C.

PAGE CHANGE

DOE 3731.1 Chg 1

7-8-92

SUBJECT: SUITABILITY, POSITION SENSITIVITY DESIGNATIONS, AND RELATED PERSONNEL MATTERS

1. PURPOSE. To transmit revised pages to DOE 3731.1, SUITABILITY, POSITION SENSITIVITY DESIGNATIONS, AND RELATED PERSONNEL MATTERS, of 12-19-89.
2. EXPLANATION OF CHANGE. To transmit revised pages to reflect only organizational title and routing symbol editorial revisions required by Notices in the SEN-6 series. No substantive changes have been made at this time. However, this Order will undergo substantive changes in the near future. If you have any questions about specific provisions of the Order, please consult appropriate staff members in the Office of Personnel.
3. FILING INSTRUCTIONS.

a.	<u>Remove Page</u>	<u>Dated</u>	<u>Insert Page</u>	<u>Dated</u>
	1	12-19-89	1	7-8-92
		12-19-89	2	12-19-89
	5 thru 7 (and 8)	12-19-89	5 thru 7 (and 8)	7-8-92
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	I-1	12-19-89	I-2	12-19-89
	Atch I-2, page I-7	12-19-89	Atch I-2, page I-7	7-8-92
	(and I-8)		(and I-8)	
	III-1	12-19-89	III-1	12-19-89
	III-2 thru III-5	12-19-89	III-2	7-8-92
	(and III-6)		III-3 thru III-5	7-8-92
			(and III-6)	
	IV-1 and IV-2	12-19-89	IV-1 and IV-2	7-8-92
	Atch IV-1, page	12-19-89	Atch IV-1, page	7-8-92
	IV-3 and IV-4		IV-3 and IV-4	
	V-3 (and V-4)	12-19-89	V-3 (and V-4)	7-8-92
	VI-1	12-19-89	VI-1	12-19-89
	VI-2	12-19-89	VI-2	7-8-92
	VII-1 and VII-2	12-19-89	VII-1 and VII-2	7-8-92

- b. After the attached pages are filed, this transmittal may be discarded.

BY ORDER OF THE SECRETARY OF ENERGY:



DOLORES L. ROZZI
Director of Administration
and Human Resource Management

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