

**SUBJECT: IMPLEMENTATION OF SECTION 1072 OF THE NATIONAL DEFENSE
AUTHORIZATION ACT FOR FISCAL YEAR 2008**

1. **PURPOSE.** To provide requirements for implementing the mandates of section 1072 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181), commonly referred to as the Bond Amendment.
2. **CANCELLATIONS.** None.
3. **APPLICABILITY.**

- a. **Departmental Elements.** Except for the exclusions listed in paragraph 3c, this Notice applies to all Departmental elements with personnel security offices that grant access authorizations for federal and contractor personnel and automatically applies to Departmental elements created after it is issued (Go to www.directives.doe.gov/pdfs/reftools/org-list.pdf for the current listing of DOE elements).

The Administrator of the National Nuclear Security Administration (NNSA) will assure that NNSA employees comply with their respective responsibilities under this Notice.

- b. **DOE Contractors.** This Notice does not apply to contractors.
 - c. **Exclusions.** In accordance with the responsibilities and authorities assigned by Executive Order (E.O.) 12344, codified at 50 U.S.C. 2406 and 2511, and to ensure consistency throughout the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this Notice for activities under the Director's cognizance, as deemed appropriate.
4. **REQUIREMENTS.**
 - a. The Bond Amendment places several restrictions on eligibility for access to sensitive compartmented information (SCI), special access programs (SAP), as defined in section 4.1 of E.O. 12958 (60 Fed. Reg. 19825), or Restricted Data (RD), as defined in section 11 of the Atomic Energy Act of 1954. Within DOE, eligibility for access to RD is inherent in both Q and L access authorizations. Therefore, the limitations on security clearances mandated by the Bond Amendment apply to all Q and L access authorization cases, as well as to all SCI and SAP determinations.

- b. The Bond Amendment mandates that a Federal or contractor employee who is an unlawful user of a controlled substance or is an addict [as the terms are defined in section 102(1) of the Controlled Substances Act, 21 U.S.C. 802] is barred from access to SCI, SAP and RD. Under the adjudicative guidelines promulgated pursuant to E.O. 12968 persons who are unlawful users of, or who are addicted to, any controlled substance must be denied an access authorization, or to have an existing access authorization suspended or revoked. Therefore, the application of the Bond Amendment's debarment for unlawful drug use will not alter the current adjudicative process for cases with these issues.
- (1) Where a negative access authorization determination is made, the adjudicator must note that the person is subject to the Bond Amendment. Actions based upon this disqualification will continue to be forwarded to the Office of Departmental Personnel Security for Administrative Review (AR).
 - (2) Nothing in this Notice will be construed to limit or to impact in any way the provisions of the Secretary of Energy's September 14, 2007, decision memorandum regarding illegal drug use.
- c. The Bond Amendment mandates that an individual must be disqualified from eligibility to SCI, SAP and RD if the individual:
- (1) has been convicted in any court of the United States of a crime, was sentenced to imprisonment for a term exceeding one year for that crime, and was incarcerated as a result of that sentence for not less than 1 year;
 - (2) has been discharged or dismissed from the Armed Forces under dishonorable conditions; or
 - (3) is mentally incompetent, as determined by an adjudicating authority, based on an evaluation by a duly qualified mental health professional employed by, or acceptable to and approved by, the United States Government.
- d. In meritorious cases, waivers of these three disqualifying circumstances may be authorized by an agency where mitigating factors exist.
- e. The Bond Amendment directs that waivers must be authorized in accordance with "standards and procedures prescribed by, or under the authority of, an Executive order or other guidance issued by the President." The only extant Presidential "standards and procedures" are those adjudicative guidelines promulgated pursuant to E.O. 12968. Therefore, these guidelines will determine whether a Bond Amendment disqualification waiver may be authorized.

- f. For cases that contain Bond Amendment disqualifiers, adjudicators must continue to apply the national adjudicative guidelines in the manner in which they have been trained.
 - (1) Where the application of these guidelines suggests a waiver is warranted [i.e., the issue(s) have been mitigated and a favorable determination is indicated], the adjudicator must issue a favorable determination recommendation, and will note that a Bond Amendment waiver is being considered. In these cases, the file must be forwarded to the Office of Departmental Personnel Security for concurrence.
 - (a) If the Office of Departmental Personnel Security concurs with the recommendation, the file must be annotated appropriately and returned to the adjudicator for action and disposition.
 - (b) If the Office of Departmental Personnel Security disagrees with the recommendation, the Office of Departmental Personnel Security must confer with the site to determine whether additional information, clarification of issues, or other action is needed.
 - (c) Where the Office of Departmental Personnel Security ultimately non-concurs with a recommendation, the site will be instructed to initiate AR proceedings.
 - (2) The Office of Departmental Personnel Security will maintain a record of all such Bond Amendment waivers for periodic reporting to appropriate committees of Congress, as required by the Bond Amendment.
- g. Ultimately, because of the continued application of the E.O. 12968 guidelines, it is anticipated that the adjudicative determination on any case with a Bond Amendment disqualifier will be the same under the Bond Amendment as it would have been before the Bond Amendment was implemented.
- h. Whether Bond Amendment issues surface during pre-screening, investigation, adjudication, or between periodic reinvestigations, they must be managed in the same manner such issues were managed prior to the Bond Amendment under the same circumstances, and the guidance above applies.
- i. No general review of existing access authorizations is required to ensure compliance with the Bond Amendment.

- j. All negative access authorization determinations must continue to be processed as per current procedure, to include appeal rights, regardless of whether Bond Amendment issues are present.
 - k. Individuals ultimately determined to be ineligible for an access authorization due, in part or in whole, to Bond issues may receive reconsideration for such eligibility in accordance with procedures set forth at 10 CFR 710.31.
 - l. Inter-Agency notification and reciprocity:
 - (1) All final favorable adjudicative determinations made in cases with Bond issues must be recorded as such in the Central Personnel Clearance Index (CPCI) and must include, for each waiver issued, the disqualifying factor(s) under paragraph 4(c) above, and the reasons for the waiver of the disqualifying factor.
 - (2) When reporting clearance and access authorization information for inclusion in the Office of Personnel Management's (OPM) clearance database [currently the Clearance Verification System (CVS)], the clearance/access authorization record must reflect a generic waiver in the Exception data field. At such time as OPM enhances the CVS to allow specific recording of Bond-related matters, these waivers will be clearly noted as such.
 - (3) In cases where an unfavorable final determination was made due to Bond-related issues, it is anticipated that the same determination would have been made had the case not been affected by Bond, in accordance with the national adjudicative guidelines. Therefore, the record forwarded for inclusion in the CVS must carry no special designation.
 - (4) When considering whether to reciprocally accept a clearance or access authorization from another agency, the terms and conditions outlined in DOE N 470.3, *Reciprocal Recognition of Existing Personnel Security Clearances*, dated 7-20-06, (and in any successor directives) must apply. Clearances and access authorizations issued by other agencies were granted using the same adjudicative criteria that DOE uses, and all issues, to include Bond issues, would have been mitigated in the same manner as at DOE. Therefore, reciprocity remains unaffected.
5. RESPONSIBILITIES.
- a. Adjudicators and Associated Management Personnel. Must be cognizant of Bond issues, and will make initial recommendations for Bond waivers to senior management. This will be done in the same manner as recommendations for AR processing are currently made.

- a. Site Managers. Recommend Bond waivers from their sites, and forward them to the Office of Departmental Personnel Security for consideration. This will be done in the same manner as AR processing recommendations are now forwarded.

NOTE: Within the NNSA Service Center, this function will continue to be performed by the Personnel Security Manager.

- b. Office of Departmental Personnel Security. Serves as final approval authority for all Bond waiver recommendations throughout the Department.

6. REFERENCES.

- a. Section 1072 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181),
[http://www.hss.energy.gov/DepPersonnelSec/guidance/Bond_Amendment\(2\).pdf](http://www.hss.energy.gov/DepPersonnelSec/guidance/Bond_Amendment(2).pdf).
- b. Adjudicative Guidelines for Determining Eligibility for Access to Classified Information,
http://www.hss.energy.gov/DepPersonnelSec/guidance/Adjudicative_Guidelines_122905.pdf.

7. CONTACT. Questions concerning this Notice should be addressed to the Office of Departmental Personnel Security at 202-586-3249.

BY ORDER OF THE SECRETARY OF ENERGY:



DANIEL B. PONEMAN
Deputy Secretary