

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

NOTICE

DOE N 472.2

3-17-99

Expires: 3-17-00

SUBJECT: USE OF POLYGRAPH EXAMINATIONS

1. OBJECTIVES. This Notice provides policy on the voluntary use of polygraph examinations by the Department of Energy (DOE), listing the circumstances under which these examinations may be used, establishing controls for their use and for the prevention of unwarranted intrusion into the privacy of individuals, and defining the population subject to the administration of polygraph examinations. Detailed information on conducting polygraph examinations and the training of polygraph examiners will be set out in separate documents.

DOE will conduct polygraph examinations for counterintelligence and national security purposes only.

2. CANCELLATION. None.
3. APPLICABILITY. The provisions of this Notice apply to DOE employees, applicants for DOE employment, and other individuals assigned or detailed to Federal positions at the DOE.
4. REQUIREMENTS.
 - a. General Requirements. DOE will administer polygraph examinations only to the following individuals:
 - (1) an employee, or applicant for employment, in a position that includes counterintelligence activities or access to counterintelligence sources and methods;
 - (2) an employee, or applicant for employment, in a position that includes participation in such intelligence activities or access to such intelligence information, sources or methods that warrants a polygraph examination.
 - (3) an employee in, or an applicant for employment in, assignment to, or detail to, a position requiring access to information of potential interest to a foreign entity or government that is protected within special access programs (SAPs) designated by the Secretary of Energy. This Notice does not apply to Special Access Programs that are intelligence-related and therefore subject to requirements promulgated by the Director of Central Intelligence; it applies only to non-intelligence SAPs;

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- (4) an employee whose position falls, or an applicant for a position which would fall, under the provisions of the Personnel Security Assurance Program (PSAP), where the specific duties of the position require access to information of potential interest to a foreign entity or government;
 - (5) an employee whose position falls, or an applicant for a position which would fall, under the provisions of the Personnel Assurance Program (PAP), where the specific duties of the position require access to information of potential interest to a foreign entity or government;
 - (6) an employee or applicant for employment participating in the Accelerated Access Authorization Program (AAAP); and
 - (7) an employee who requests administration of a polygraph examination as a means of exculpation in the resolution of:
 - (a) counterintelligence investigations or
 - (b) personnel security issues.
- b. Exceptions to General Requirements.
- (1) A Senate-confirmed Presidential appointee is exempt from the administration of a polygraph examination if the appointee has received a favorably adjudicated full-field FBI background investigation.
 - (2) The Secretary of Energy may waive the requirements of this Notice for any individual in the interest of national security.
- c. General Provisions for Polygraph Testing. DOE will administer a polygraph examination only after the individual to be examined has voluntarily consented in writing after having been provided a copy of the "General Provisions for Polygraph Testing." (See Attachment 1.)
- d. Records Maintenance. All polygraph examination reports generated under this Notice will be maintained in the records system of the Office of Counterintelligence, with the exception of polygraph examination reports utilized in making personnel security determinations. Polygraph examination records used for personnel security determinations will be maintained in DOE system-43. Reports and records of polygraph examinations administered to employees in, or applicants for, positions identified in Paragraph 4a(2), above, may also be maintained in the records system of the Office of Intelligence. Information regarding an employee's refusal to take a polygraph examination shall be given the full privacy protection provided by law.

- e. Standards for Selection and Training of Examiners. Only DOE-certified examiners may administer polygraph examinations.
 - (1) Examiners must be experienced counterintelligence or criminal investigators with extensive additional training in using computerized instrumentation in Psychophysiological Detection of Deception (PDD) and in psychology, physiology, interviewing, and interrogation.
 - (2) Examiners must have a favorably adjudicated Single-scope Background Investigation.
 - (3) Examiners must receive basic and/or advanced Forensic Psychophysiological Detection of Deception training from the Department of Defense Polygraph Institute.
 - (4) Examiners must be certified to conduct the Test for Espionage, Sabotage, and Terrorism; Counterintelligence Scope Polygraph tests; Zone Comparison Tests; Modified General Question Tests; Peak of Tension tests; and Relevant and Irrelevant and Directed Lie Control tests. Examiner proficiency is certified by the DOE PDD/Polygraph Program Quality Control Official.
 - (5) Examiners must undergo a minimum of 40 hours training annually within the discipline of Forensic Psychophysiological Detection of Deception. The following provide acceptable curricula meeting this requirement:
 - (a) American Polygraph Association,
 - (b) American Association of Police Polygraphists, and
 - (c) Department of Defense Polygraph Institute.
- f. Implementation. Upon approval of this Notice, its provisions will apply immediately to the use of polygraph in the AAAP and for exculpation. Other uses of polygraph examination provided for in this Notice will be implemented upon approval of designated positions by the Secretary.

5. RESPONSIBILITIES.

- a. The Secretary approves the positions identified pursuant to Paragraphs 4a(1)-(5) for polygraph examination.
- b. The Director of Counterintelligence.
 - (1) Identifies positions described in Paragraph 4a(1) that warrant polygraph examination and forwards the identification of those positions to the Secretary for approval.

- (2) Approves the use of polygraph examination for circumstances described in Paragraph 4a(7)(a).
 - (3) Reviews submissions from the Director, Office of Intelligence; the Executive Secretary, Special Access Program Oversight Committee; the Deputy Assistant Secretary for Military Applications and Stockpile Management; and the Director Office of Safeguards and Security, to determine which positions involving Office of Intelligence personnel, non-intelligence SAPs, PAP, and PSAP, respectively, should be designated positions for purposes of this Notice, based on the position requiring access to information of potential interest to a foreign entity or government. As part of the counterintelligence review of these positions, the Director of Counterintelligence may amend the listings to either add or delete positions. All such amendments will be noted on the documentation forwarding these positions to the Secretary.
 - (4) Forwards the positions identified pursuant to Paragraphs 4a(1) - (5) to the Secretary for approval.
- c. The Director of the Office of Intelligence identifies positions described in Paragraph 4a(2) that warrant polygraph examination and submits identified positions to the Director of Counterintelligence for review and concurrence.
- d. The Executive Secretary of the Special Access Program Oversight Committee.
- (1) In coordination with the sponsoring Government Program Executive Agent or Manager identifies positions described in Paragraph 4a(3) that warrant polygraph examination.
 - (2) Submits identified positions to the Director of Counterintelligence for review and concurrence.
- e. The Director of Security Affairs is responsible for the administration of this Notice.
- (1) In consultation with the Director of Counterintelligence, establishes policies and procedures for the use of polygraph within the Department.
 - (2) Coordinates with the Director of Counterintelligence all matters of counterintelligence concern related to the use of the polygraph in safeguards and security programs.
 - (3) Establishes and maintains a polygraph examination capability for the Department through the DOE Accelerated Access Authorization Test Center.

- (4) In consultation with the Director of Counterintelligence, promulgates guidance on technical aspects of using polygraphs and on the qualification, selection, training, and certification of polygraph examiners. The guidance shall reflect the Government's objective of ensuring protection for the subject of an examination and the accuracy of polygraph results.
 - (5) Approves the use of polygraphs for circumstances described in Paragraph 4a(7)(b).
 - (6) Retains responsibility for administering the AAAP, including the standard use of a counterintelligence scope polygraph examination for each program participant.
- f. The Director of Safeguards and Security.
- (1) In consultation with the responsible operations office manager and program office, identifies positions described in Paragraph 4a(4) that warrant polygraph examination.
 - (2) Forwards the listing of identified positions to the Director of Counterintelligence for review and concurrence.
- g. The Deputy Assistant Secretary for Military Application and Stockpile Management.
- (1) Based on recommendations from the Office of Weapons Surety PAP Manager, identifies positions described in Paragraph 4a(5) that warrant polygraph examination.
 - (2) Forwards the listing of identified positions to the Director of Counterintelligence for review and concurrence.
6. CONTACT. For information concerning this Notice, call the Office of Security Affairs, (202) 586-6591.



BILL RICHARDSON
Secretary of Energy

GENERAL PROVISIONS FOR POLYGRAPH TESTING

1. DOE will administer a polygraph examination only after the individual to be examined has voluntarily consented in writing after having been provided a copy of these "GENERAL PROVISIONS FOR POLYGRAPH TESTING."
2. An individual shall be notified, as far in advance as possible, of the date, time, and place of the polygraph examination and his or her right to obtain and consult with legal counsel or to secure other professional assistance prior to the examination.
3. An individual to be examined shall be advised of his or her privilege against self-incrimination before administration of the polygraph examination.
4. An individual being examined may terminate the polygraph examination at any time.
5. Examinations are conducted by means of calibrated, computerized polygraph systems. The procedure is recorded on audio and videotape. Before the examination, the individual will be informed of—

- the use of these recording devices and
- the characteristics and nature of the polygraph instrument and examination.

The individual will also receive an explanation of the physical operation of the instrument and the procedures to be followed during the examination.

6. Questions asked during the polygraph examination are limited to either the matter at issue (exculpation) or to a counterintelligence-scope examination. DOE prohibits questions that probe a person's thoughts or beliefs and that ask about conduct that has no security implication or is not directly relevant to an investigation.
7. The test procedures for a counterintelligence-scope polygraph examination are set forth in the procedures in the *Federal Psychophysiological Detection of Deception Examiner Handbook* (Limited Distribution), prepared and issued by the Department of Defense Polygraph Institute (DODPI). A Counterintelligence Scope Polygraph Examination is limited to questions pertaining to the examinee's involvement in espionage, sabotage, terrorism, unauthorized disclosure of classified information, and unauthorized foreign contacts as delineated in the DODPI Polygraph Examiner's Handbook. Involvement would include any direct or indirect, as well as unreported, knowledge of such acts by others. The exact wording of these questions is determined during each pretest interview; that is, the final wording of these questions is dependent upon input from, and understanding by, the examinee during the pretest interview.

8. The general areas of all questions to be asked during the examination are reviewed with the individual before the examination.
9. For purposes of interim access authorization, polygraph examinations supplement other forms of investigation. Use of the polygraph is not a substitute for any required investigation.
10. Effects of “deception,” “no opinion,” or “inconclusive opinion.” If the results of an individual’s polygraph examination are interpreted to reflect “deception,” “no opinion,” or “inconclusive opinion,” DOE officials may take the following actions: (NOTE: No adverse personnel action will be taken against a Federal employee solely on the basis of the aforementioned interpretations.)
 - (a) The individual will be denied access to the information that justified the conduct of the examination.
 - (b) The matter will be referred to the Federal Bureau of Investigation as mandated by section 145.d of the Atomic Energy Act of 1954, as amended, if the case involves a question of loyalty.
 - (c) For the Office of Counterintelligence:
 - (1) An applicant will not be selected for the position; or,
 - (2) An incumbent will be removed from access to information regarding counterintelligence activities, sources and methods and may be reassigned or have current duties realigned by the supervisor. If these actions are not feasible, the supervisor must contact the appropriate servicing personnel office for guidance.
 - (d) For the Office of Intelligence:
 - (1) An applicant will not be selected for the position; or,
 - (2) An incumbent will be removed from participation in the activities and denied access to the intelligence information, sources and methods that formed the basis for identifying the position for a polygraph examination. Such incumbent may be reassigned or have current duties realigned by the supervisor. If these actions are not feasible, the supervisor must contact the appropriate servicing personnel office for guidance.
 - (e) For DOE access authorization and the PSAP, an individual applying for or holding DOE access authorization (to include PSAP approval) may be processed under the provisions of Title 10, Code of Federal Regulations, Part 710.

- (f) For another agency assignee or detailee to the DOE, the individual will be removed from access to information that justified the conduct of the examination and returned to the agency of origin.
11. Effect of Declination to Submit to Polygraph Examination. An individual's personnel file shall not reflect his or her declination to submit to a polygraph examination or his or her termination of a polygraph examination prior to its completion.
- (a) Applicants. Declination to take a polygraph examination shall prevent an applicant from being selected or assigned to designated positions in non-intelligence special access programs, PAP, or PSAP.
 - (b) Office of Counterintelligence.
 - (1) Declination to submit to a polygraph examination will prevent selection of the individual for employment, assignment, or detail to the Office of Counterintelligence. If the applicant is currently employed by the DOE, this declination will not affect his or her current employment status.
 - (2) For incumbents in positions designated as requiring a polygraph pursuant to this Notice who decline to submit to a polygraph examination, they will be precluded from access to information regarding counterintelligence activities, sources and methods. The supervisor may reassign an employee or realign the employee's current duties. If these actions are not feasible, the supervisor must contact the appropriate servicing personnel office for guidance.
 - (c) Office of Intelligence.
 - (1) Declination to submit to a polygraph examination will prevent selection of the individual for employment in, or assignment or detail to, the position designated as requiring a polygraph examination. If the applicant is currently employed by DOE, this declination will not affect his or her current employment status.
 - (2) For incumbents in positions designated as requiring a polygraph pursuant to this Notice who decline to submit to a polygraph examination, they will be precluded from participation in the activities and denied access to the intelligence information, sources and methods that formed the basis for identifying the position for a polygraph examination. Such incumbent may be reassigned or have current duties realigned by the supervisor. If these actions are not feasible, the supervisor must contact the appropriate servicing personnel office for guidance.

- (d) Continued Eligibility. Individuals who decline to take a polygraph examination in connection with determining their continued eligibility for access to a non-intelligence SAP, or in connection with remaining in a PAP or PSAP position, will be denied access to the information that justified the conduct of the examination.
 - (e) Exculpation. Adverse action shall not be taken against a person for declination to take a polygraph examination in these cases. Such declination shall not be recorded in the individual's personnel file, personnel security file, or any investigative file.
 - (f) Accelerated Access Authorization Program (AAAP). Individuals who volunteer for the AAAP and subsequently decline to undergo the polygraph examination element of the AAAP will be removed from the AAAP process. The individual will continue to be processed for access authorization under DOE O 472.1B, PERSONNEL SECURITY ACTIVITIES and the reason for this course of action will be noted in the individual's personnel security file.
12. All testing will comply with standards prepared and agreed to by the Director of Counterintelligence and the Director of Security Affairs.
13. A quality assurance program will be established and maintained by the Directors of Security Affairs and Counterintelligence to monitor accuracy, compliance with directives, fairness, effectiveness, and efficiency in the use and administration of all polygraph examinations.

REFERENCES

1. Title 42, United States Code, 2011, et seq., "Atomic Energy Act of 1954, as amended," which provides statutory authority for establishing and implementing a Department of Energy (DOE) security program for controlling access to Restricted Data and special nuclear materials.
2. Title 5, United States Code Annotated, Appendix 2, "Inspector General Act of 1978," which provides the investigative authority of Inspectors General.
3. Title 29, United States Code Annotated, Chapter 22, "Employee Polygraph Protection Act."
4. Presidential Decision Directive-61, of 2-11-98, "U.S. Department of Energy Counterintelligence Program," which states that the DOE will develop and implement specific measures consistent with Executive Orders 12958 and 12968 for reducing the threat to classified and sensitive information at DOE and its field activities, expressly including the use of polygraph.
5. Title 10, Code of Federal Regulations, Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material," which establishes procedures for determining an individual's eligibility for a DOE access authorization (Subpart A) or for occupying a DOE Personnel Security Assurance Program designated position (Subpart B).
6. Title 10, Code of Federal Regulations, Part 711, "Personnel Assurance Program," which establishes procedures for determining an individual's eligibility to occupy a Personnel Assurance Program designated position.
7. Presidential Memorandum to the Heads of Departments and Agencies, "Use of the Polygraph in the Executive Branch," Lyndon B. Johnson.
8. Executive Order 10450, "Security Requirements for Government Employees," of 4-27-53, as amended, which establishes the requirements for determining that all Federal employees are loyal, reliable, trustworthy, and of good conduct and character.
9. Executive Order 12958, "Classified National Security Information," of 4-17-95, which prescribes a uniform system for classifying, protecting, and declassifying national security information.
10. Executive Order 12968, "Access to Classified Information," of 8-2-95, which establishes a uniform Federal personnel security program for employees who will be considered for initial or continuing access to classified information.

11. Department of Energy Delegation Order No. 0204-154, of 1-23-96, which authorizes the Director of Security Affairs to make determinations of eligibility (in accordance with section 4.2[a] of Executive Order 12958), prescribe such regulations or Orders as deemed necessary to protect Restricted Data, and make determinations pursuant to section 145b of the Atomic Energy Act of 1954, as amended.
12. DOE O 452.2A, "SAFETY OF NUCLEAR EXPLOSIVE OPERATIONS," of 1-17-97, which sets out the requirements and responsibilities for ensuring the safety of the Department of Energy's nuclear explosive operations.
13. DOE O 472.1B, "PERSONNEL SECURITY ACTIVITIES," of 3-24-97, which sets out the procedures for making access authorization eligibility determinations and PSAP eligibility determinations.
14. DOE O 5670.3, "COUNTERINTELLIGENCE PROGRAM," of 9-4-92, which sets out the requirements for the Counterintelligence Program in the DOE.