

**F. Review Under Executive Order 12778**

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in sections 2(a) and 2(b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that regulations define key terms and are clear on such matters as exhaustion of administrative remedies and preemption. The Department certified that today's regulatory action meets the requirements of sections 2(a) and 2(b)(2) of Executive Order 12778.

**List of Subjects in 10 CFR Part 710**

Administrative practice and procedure, classified information, government contracts, government employees, nuclear materials.

**Kenneth E. Baker,**

*Acting Director, Office of Nonproliferation and National Security.*

For the reasons set forth in the preamble, part 710 of title 10 of the Code of Federal Regulations is amended as set forth below.

**PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SIGNIFICANT QUANTITIES OF SPECIAL NUCLEAR MATERIAL**

1. The authority citation for part 710 is revised to read as follows:

**Authority:** Sec. 145, 68 Stat. 942 (42 U.S.C. 2165) and sec. 161, 68 Stat. 948 (42 U.S.C. 2201); E.O. 10450, 3 CFR 1949-1953 Comp., p. 936, as amended; E.O. 10865, 3 CFR 1959-1963 Comp., p. 398, as amended, 3 CFR Chap. IV; sec. 104(c), 38 Stat. 1237 (42 U.S.C. 5814); sec. 105(a), 88 Stat. 1238 (42 U.S.C. 5815); secs. 641, 644, 646, 91 Stat. 598, 599 (42 U.S.C. 7251, 7254, and 7256).

2. Subpart B of part 710 is revised to read as set forth below:

**Subpart B—Criteria and Procedure for Establishment of the Personnel Security Assurance Program and Determinations of an Individual's Eligibility for Access to a Personnel Security Assurance Program Position**

**General Provisions**

- 710.50 Purpose.
- 710.51 Scope.
- 710.52 References.
- 710.53 Policy.
- 710.54 Definitions.

**Procedures**

- 710.55 Designation of PSAP positions.
- 710.56 Program process.
- 710.57 Supervisory review.
- 710.58 Medical assessment.
- 710.59 Management evaluation.
- 710.60 DOE security review and clearance determination.

**Subpart B—Criteria and Procedures for Establishment of the Personnel Security Assurance Program and Determinations of an Individual's Eligibility for Access to a Personnel Security Assurance Program Position**

**General Provisions****§ 710.50 Purpose.**

(a) This subpart establishes the policies and procedures for implementing the Department of Energy (DOE) Personnel Security Assurance Program (PSAP) for individuals in positions:

(1) Which afford direct access to or have direct responsibility for transportation or protection of Category I quantities of special nuclear materials (SNM);

(2) Which afford unescorted access to the control areas of a nuclear material production reactor; or

(3) With the potential for causing unacceptable damage to national security.

(b) The DOE Personnel Security Assurance Program is designed to establish the procedures for DOE and DOE contractors to utilize in the selection and continuing evaluation of individuals for assignment to positions described by paragraph (a) of this section. Individuals selected for assignment to such positions must be granted access authorization in accordance with the procedures and requirements set forth in subparts A and B of this part.

**§ 710.51 Scope.**

The criteria and procedures establishing the Personnel Security Assurance Program shall apply to:

(a) Those employees of, and applicants for employment with, DOE who either occupy or make application for PSAP positions, as described by paragraph (a) of § 710.50.

(b) Those employees of, and applicants for employment with, contractors and agents of the DOE who either occupy or make application for PSAP positions, as described by paragraph (a) of § 710.50.

**§ 710.52 References.**

(a) Atomic Energy Act of 1954, as amended, section 11, "Definitions"; section 141, "Policy"; section 143,

"Department of Defense Participation"; section 145, "Restrictions"; section 161 b., "General Provisions"; which provide statutory authority for establishing and implementing a DOE security program for controlling access to Restricted Data and special nuclear material. Copies of selected provisions appear as appendix A to subpart A of this part.

(b) Executive Orders 10450, April 29, 1953, "Security Requirements for Government Employment," 10865, February 20, 1960, "Safeguarding Classified Information Within Industry," and 12564, September 15, 1986, "Drug-Free Federal Workplace," all as amended.

(c) 10 CFR part 707, "Workplace Substance Abuse Programs at DOE Sites," which requires DOE contractors to establish workplace substance abuse prevention programs, including urine drug testing for individuals who occupy sensitive positions such as those requiring a PSAP access authorization.

(d) Implementing directives (DOE Orders) which provide Departmental guidance on the PSAP and related areas are available from the U.S. Department of Energy, Washington, DC 20585, Attention: Directives Distribution.

**§ 710.53 Policy.**

The protection of certain of the DOE's security interests, with the potential, if compromised, of causing unacceptable damage to the national security requires the implementation of a program designed to assure that individuals occupying positions affording access to certain material, facilities, and programs meet the highest standards of reliability. This objective is accomplished under this subpart through a system of continuous evaluation which identifies those individuals whose judgment may be impaired by physical and/or emotional disorders, substance abuse, or the use of alcohol habitually to excess. This process will reduce the risk resulting from the potential threat represented by such employees to an acceptable level. The determination to grant initially and to continue annually the access authorization to a PSAP position is based upon a DOE security assessment of any information of security concern developed in the course of an initial and annual security review process.

**§ 710.54 Definitions.**

As used in this part:

*Contractor* means the contractor and subcontractors at all tiers.

*Direct access* means access to Category I quantities of SNM which would permit an individual to remove, divert, or misuse that material in spite