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| DEPARTMENTAL REGULATION | | Number: 4600-002 |
| SUBJECT: Procedures for Denial or Revocation for Access to National Security Information | DATE: February 11, 2002 | |
| | OPI: Procurement & Property Management | |

1 PURPOSE

To establish an appeals process for the United States Department of Agriculture (USDA) employees determined ineligible for access to classified information pursuant to Executive Order (E.O.) 12968.

2 BACKGROUND

E.O. 12968 requires USDA to establish review proceedings for denials or revocations of eligibility for access to classified information. E.O. 12968 sets forth that any individual whose eligibility for access to classified information is denied or revoked will be provided an opportunity to appeal in writing to the Department's Personnel Security Review Board (PSRB). The establishment of the PSRB was delegated to the Assistant Secretary for Administration through a decision memorandum approved by the Secretary on July 16, 2001. The PSRB will be comprised of at least three members, two of whom would be selected from outside the security field. In addition to the written appeal, the employee will be provided an opportunity to appear personally to present relevant documents, material, and information prior to the PSRB rendering a final determination.

3 THE APPEALS PROCESS

a Suspension: When derogatory information is brought to the attention of the Personnel Security Division (PSD), of the Office of Crisis Planning and Management (OCPM), the Personnel Security Officer (Director, OCPM) will make a determination whether, on the basis of all the facts available, it is in the interests of national security to continue the employee's security status unchanged, or to take interim action to suspend the employee's access to classified information or assignment to sensitive duties, until a final determination is made as described below. Whenever a decision is made to suspend an employee's security clearance for access to classified information or assignment to sensitive

duties, the Personnel Security Officer shall notify the employee in writing, which will include a brief statement of the reason(s) for the suspension action consistent with the interests of national security. A final security clearance eligibility determination will be made for all suspensions as described below.

- b Letter Of Intent: After the PSD reviews an employee's background investigation, or any other developed information and/or internal investigation, and determines that there is sufficient adverse information to deem the employee ineligible for access to classified information, the PSD will provide the employee with a Letter of Intent (LOI) to revoke or deny the employee's access to classified information. A copy of the LOI will be forwarded to the employing agency/office to take any necessary administrative action as deemed appropriate. The LOI shall include a statement of reasons (SOR), which will inform the employee of PSD's intention to deny or revoke his/her security clearance and includes all findings of the investigation and/or information on which this action is based. The SOR will include a copy of the E.O. 12968 and other relevant federal and departmental rules and regulations and also inform the employee of the following:

- (1) He/she may request within 30 days any documents, records and reports used as the basis for the denial or revocation, which will be provided within 30 days of such request, to the extent such documents would be provided if requested under the Freedom of Information and the Privacy Acts from the appropriate Agencies.
- (2) He/she may request within 30 days the entire investigative file, as permitted by the national security and other applicable laws, which will be provided within 30 days of such request.
- (3) Information, such as investigative reports, not under the control of the USDA, must be requested directly from the originating Agency/Department, such as the Office of Personnel Management (OPM). PSD will provide the name and address of the Agency/Department, for the employee to request the investigative files. PSD must receive a copy of any requests for information and/or investigations made, within the 30 days of the

- date of the LOI, to Agencies/Departments outside of USDA. The copy of the request(s) will become a permanent part of the official security file.
- (4) His/her right to be represented by counsel or other representative at his/her own expense.
 - (5) He/she will be provided 30 days from the date he/she receives that last requested document to respond to the SOR in writing and provide any mitigating factors for the action(s)/behavior.
- c Adjudication: The PSD will review the employee's written response, if any, along with all case material, within 30 days of receipt to determine whether the evidence in the record indicates that the employee poses a risk to national security. The PSD will make a recommendation to the Department Personnel Security Officer who will render an adjudicative determination that either reinstates, denies or revokes the employee's eligibility for access to national security information.
- d Formal Notification: Within 10 days of the adjudicative determination, the Department Personnel Security Officer will provide the employee and the employee's agency a Letter of Notification with the reasons for and results of the determination concerning the employee's eligibility for access to classified information. If the employee is deemed ineligible for access to classified information, the Letter of Notification will also inform the employee of the following:
- (1) His/her right to appeal in writing to the PSRB.
 - (2) His/her right to appear in person and to present relevant documents, materials and evidence before a presiding officer of the Office of Administrative Law Judges.
- e The Appeal: From the formal notification of denial or revocation of access to classified information, the employee has 30 days to request an appeal of the determination. Unless this time limit is extended for good cause by the Personnel Security Officer, if the employee fails to request an appeal or meet the submission deadline, the employee is ineligible for further proceedings and the denial or revocation will

be implemented 30 days from the Letter of Notification.

- (1) If the employee elects to appeal the determination, the appeal must be made in writing and address only those disqualifying factors listed in the adjudicative determination. The written appeal must be submitted within 30 days from the Letter of Notification to:

USDA
Office of Crisis Planning and Management
Attn: Personnel Security Division
1400 Independence Avenue, SW Mail Stop 9305
Washington, DC 20250-9305

- (2) The written appeal should contain:
 - (a) Three copies of all relevant documentation the employee wishes the PSRB to consider; and
 - (b) A statement regarding whether the employee elects to appear in person before a presiding officer of the Office of the Administrative Law Judges (OALJ).
- (3) The employee shall be granted official time to prepare the written appeal, and if applicable, time to prepare for the personal appearance as deemed reasonable and necessary by the employing Agency/Office.
- (4) If the employee does not elect to appear in person, proceed to Section g of the Appeals Process.

f Personal Appearance: The personal appearance will be scheduled within 30 days of the request. The employee will receive written notification of the date and location for the personal appearance. The appearance will provide the employee or his/her representative with an opportunity to address the reasons for the adjudicative determination and to address the information provided in his/her written appeal.

Below are the guidelines for the personal appearance.

- (1) Except in extraordinary circumstances, the appearance should not exceed one hour in duration.
- (2) The scope of the personal appearance shall be limited to the reasons for the adjudicative determination and the documents, material or information presented in the written appeal.
- (3) The appearance shall be before a presiding officer of the OALJ who will preside at the personal appearance.
- (4) The Office of the Hearing Clerk will arrange to have a transcript prepared of the personal appearance.
- (5) If the employee has additional relevant documents, materials, or information that was not initially provided in the written appeal, the employee must submit the information to the PSD two weeks prior to the appearance for the PSRB's review. The PSRB will decide whether the information is relevant to the case and if it may be entered into the record. If the information is approved for entry, the material will be included as an addendum to the written appeal.
- (6) Any expenses incurred for the appearance (e.g., transcript recordings, etc.) will be borne by the employee's Agency or Office.
- (7) The employing Agency/Office shall bear the travel costs for the employee to make a personal appearance.
- (8) All personal appearances shall be held in the Washington, DC metro area.

Within 15 days of the appearance, the presiding officer will certify a copy of the transcript of the personal appearance to the PSRB for review. The official transcript will be made a permanent part of the employee's security file. A copy of the transcript will be provided to the employee at his/her request.

The presiding officer will facilitate the proceedings and ensure that only relevant material is presented

in the oral argument. The presiding officer will not render any decision or opinion on the case. Participants in the appearance will include the presiding officer, the employee, the employee's counsel or representative, the Department Personnel Security Officer, or designee. No others will be present in the proceedings. The PSRB will limit its review to the written record of the case, including the appearance transcript, to maintain impartiality and ensure integrity of the process.

- g Decision: The PSD will provide all case documentation including the written appeal, and the summary of the personal appearance if one is held, for the PSRB's review. The PSRB will have 30 days to review all documentation and meet to render a decision. The PSRB will, within 30 days of meeting to render a decision, issue a written decision. This decision will be final and may not be appealed to the Secretary. The denial or revocation is not an adverse action and is not subject to the provisions of the Merit Systems Protection Board. The PSRB may decide either to: 1) re-affirm the Department Personnel Security Officer's determination; 2) reverse the Department Personnel Security Officer's decision; or 3) grant the employee access to classified information with conditions. The PSRB will notify the Department Personnel Security Officer of the decision in writing, and if applicable, provide instructions to enforce any terms of conditions established. The Department Personnel Security Officer will notify the Administrator or Director of the employing Agency or Office and the employee of the PSRB's decision. Further, if the determination is favorable to the employee, the PSD will grant the employee the appropriate level of access to classified information. If the PSRB upholds the Department Personnel Security Officer's decision, the employing agency will take any necessary administrative action, as deemed appropriate, to ensure the employee does not have access to classified information.