

**CLASS DEVIATION
DETERMINATION AND FINDINGS
DEPARTMENT OF ENERGY ACQUISITION REGULATION (DEAR)
SECURITY REQUIREMENTS
DEAR 952.204-2**

Findings

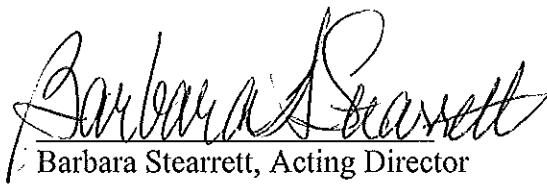
1. Definitions. DEAR 904.401 defines a *background review* as “a Contractor’s assessment of the background of an uncleared applicant or uncleared employee for a position requiring a DOE access authorization prior to selecting that individual for such a position.” In other words, the background review is performed before hiring an employee who will later be subject to an access authorization. An *access authorization* is defined as “an administrative determination that an individual is eligible for access to classified information or is eligible for access to, or control over, special nuclear material.”
2. Background Review. Under DEAR 952.204-2(h)(2), contractors are required to conduct a background review of an uncleared applicant or uncleared employee, including a test for illegal drugs, prior to selecting the individual for a position requiring a DOE access authorization. DEAR 952.204-2(h)(2)(vi) further requires contractors to furnish to the head of the cognizant local DOE Security Office, in writing, the following information concerning each uncleared applicant/employee who is selected for a position requiring an access authorization: (1) the date(s) each review was conducted; (2) each entity that provided information concerning the individual; (3) a certification that the review was conducted in accordance with all applicable laws, regulations, and Executive Orders; (4) a certification that all information collected during the review was reviewed and evaluated in accordance with the Contractor’s personnel policies; and (5) the results of the test for illegal drugs.
3. Access Authorization. Determination of eligibility for access to classified matter or special nuclear material under 10 C.F.R. Part 710 is an adjudicative decision rendered by a federal employee who has been designated and trained to perform this function. See also Executive Order No. 12968; DOE Order 472.2. The Contractor Requirements Document to DOE Order 472.2, Personnel Security, specifies what information a contractor must include with a security clearance request to the cognizant local DOE Security Office. DOE Order 472.2, Attachment 1 § 4(a), Attachment 2. The Order does not require the contractor to include information relating to background reviews. Instead, the contractor must submit, among other things, a complete e-QIP submission (SF 86, Questionnaire for National Security Positions) by the individual so that an access authorization may be completed.
4. Because DOE Order 472.2 does not require information relating to background reviews, items 1-4 of DEAR 952.204-2(h)(2)(vi) are not considered or used in


deciding an individual's eligibility for an access authorization. As for item 5, both DEAR 942.204-2(h)(2)(vi)(E) and DOE Order 472.2, Attachment 2, require the contractor to submit the results of a drug test. However, the required drug test under DEAR 942.204-2(h)(2) may not satisfy the DOE Order 472.2 drug test requirement. Section 2(a) of Attachment 2 to DOE Order 472.2 requires that a security clearance request must include the "negative results of a drug test taken within 60 calendar days of the individual's SF 86 signature" Therefore, if the drug test submitted by a contractor was not conducted within 60 days of the individual's signature on the SF 86, Questionnaire for National Security Positions, the results of the test are not considered or used in deciding an individual's eligibility for an access authorization.

5. In an effort to reduce administrative processing time and the amount of paperwork that the head of the cognizant local DOE Security Office receives from contractors, DEAR 952.204-2 (h)(2)(vi) will no longer require contractors to furnish background review information to the head of the cognizant local DOE Security Office. Instead, contractors will be required to maintain a record of information concerning each uncleared applicant/employee who is selected for a position requiring an access authorization, and to furnish background review information only upon request of the cognizant local DOE Security Office.
6. The DEAR will be amended to reflect this change in an upcoming rulemaking.

Determination

It is hereby determined that a class deviation from DEAR 952.204-2 (h)(2)(vi), removing the requirement to furnish background review information, in writing, to the head of the cognizant local DOE Security Office is appropriate. Contractors will be required to maintain a record of information concerning each uncleared applicant/employee who is selected for a position requiring an access authorization, and to furnish such information to the cognizant local DOE Security office upon the request of that office.


Barbara Stearrett, Acting Director
Office of Acquisition
Management, NNSA


Paul Bosco, Director
Office of Acquisition and
Project Management, DOE

10/29/2013
Effective Date