

## STATEMENT RE POLYGRAPH EXAMINATION

I have been asked to consent to a polygraph examination. I am aware that DOE may not administer a polygraph examination unless DOE has “notified the individual of the polygraph examination in writing in accordance with § 709.21” and has “obtained written consent from the individual.” (10 C.F.R. § 709.23)

I understand that the consequences of refusing to take a polygraph examination, or terminating an examination once it has begun, are that the DOE and its contractors may, or in some cases must, deny access “to the information or involvement in the activities that justified conducting the examination...” Although a permanent denial of access to information may not take place without a full investigation, even a temporary denial will make it difficult or impossible for me to perform the duties and responsibilities of my position.

Although I am consenting to the polygraph examination, I am not waiving any procedural right I have under the regulations. These rights include but are not limited to:

- The right to proper notice (10 C.F.R. § 709.21).<sup>1</sup>
- The right to obtain and consult with legal counsel. (*Ibid.*)
- The right to an explanation of the polygraph instrument and examination. (10 C.F.R. § 709.24)<sup>2</sup>

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<sup>1</sup> “When a polygraph examination is scheduled, DOE must notify the individual, in writing, of the date, time, and place of the polygraph examination, and the individual’s right to obtain and consult with legal counsel or to secure another representative prior to the examination. DOE must provide a copy of this part to the individual. The individual must receive the notification at least ten days, excluding weekend days and holidays, before the time of the examination except when good cause is shown or when the individual waives the advance notice provision.” (10 C.F.R. § 709.21)

<sup>2</sup> “Before administering the polygraph examination, the examiner must: (a) Inform the individual of the use of audio and video recording devices and other observation devices, such as two-way mirrors and observation rooms; (b) Explain to the individual the characteristics and nature of the polygraph instrument and examination; (c) Explain the physical operation of the instrument and the procedures to be followed during the examination; (d) Review with the individual the control questions and relevant questions to be asked during the examination; (e) Advise the individual of the individual’s privilege against self-incrimination; and (f) Provide the individual with a pre-addressed envelope addressed to the D/OCI in Washington, D.C., which

- The right to be examined only as to appropriate matters. (10 C.F.R. § 709.11)<sup>3</sup>
- Under specified circumstances, the right to a comprehensive investigation. (10 C.F.R. § 709.15)<sup>4</sup>
- The right to privacy with respect to polygraph examinations. (10 C.F.R. § 709.26)<sup>5</sup>
- The right to a qualified polygraph examiner. (10 C.F.R. § 709.31)<sup>6</sup>
- The right to administrative review of any adverse polygraph examination. (10 C.F.R. § 710)

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may be used to submit comments or complaints concerning the examination.” (10 C.F.R. § 709.24)

<sup>3</sup> “(a) DOE may ask questions that are appropriate to a counterintelligence-scope examination or that are relevant to the matter at issue in an exculpatory examination. (b) A counterintelligence-scope polygraph examination is limited to topics concerning the individual’s involvement in espionage, sabotage, terrorism, unauthorized disclosure of classified information, unauthorized foreign contacts, and deliberate damage to or malicious misuse of a U.S. government information or defense system. (c) DOE may not ask questions that: (1) Probe a person’s thoughts or beliefs; (2) Concern conduct that has no counterintelligence implication; or (3) concern conduct that has no direct relevance to an investigation.” (10 C.F.R. § 709.11)

<sup>4</sup> “If, after the polygraph examination, there are remaining unresolved issues that raise significant questions relevant to the individual’s access to the information or involvement in the activities that justified the polygraph examination, DOE must so advise the individual and provide an opportunity for the individual to undergo an additional polygraph examination. If the additional polygraph examination is not sufficient to resolve the matter, DOE must undertake a *comprehensive investigation* of the individual, using the polygraph examination as an investigative lead.” (10 C.F.R. § 709.15(b))

<sup>5</sup> DOE is required to “afford the full privacy protection provided by law to information regarding an employee’s refusal to take a polygraph examination.” (§ 709.26(e))

<sup>6</sup> “DOE adheres to the procedures and standards established by the Department of Defense Polygraph Institute (DODPI). DOE administers only DODPI approved testing formats.” (§ 709.31(a)) The examiner must be certified by the DOE and must conduct no more than five examination in any 24-hour period. (§ 709.31, subparts (b) - (d)) Examiners must meet specified training requirements. (§ 709.32)

This statement is to advise you that I do not waive any rights in consenting to this polygraph examination, including but not limited to the rights described above.

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