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Date: 08/07/2002 (Regulations may contain various dates)

Category: [REDACTED] - Conduct; Accountability and Discipline

OPR: [REDACTED]

Title: AR [REDACTED] (U) PERSONNEL EVALUATION BOARD

[REDACTED]

SUMMARY: 7 August 2002 (0705)

AR [REDACTED] is added to the Agency regulatory system to establish the Personnel Evaluation Board (PEB) as the primary mechanism for reviewing employee suitability and security cases that may result in the imposition of serious discipline, termination of employment, or revocation of security clearances; and the regulation is placed under a new regulatory series entitled 'Conduct, Accountability, and Discipline'. Certain information formerly contained in HR [REDACTED] and HR [REDACTED] have been incorporated into this new regulation.

HR [REDACTED] and HR [REDACTED] is hereby rescinded.

Because this regulation is new, boldfaced text has not been used.

This regulation was written by the EXDIR's office in coordination with OGC, HR, and OS. Questions regarding this regulation may be addressed to OS/SAS on secure [REDACTED]

5. (U) PERSONNEL EVALUATION BOARD

SYNOPSIS. This regulation establishes the Personnel Evaluation Board (PEB) as the primary mechanism for reviewing employee suitability and security cases that may result in the imposition of serious discipline, termination of employment, or revocation of security clearances. The PEB shall have purview over both trial-period employees and employees who have been certified out of trial period. The PEB shall review cases in which information surfaced during Office of Security (OS), Inspector General (IG), or other investigations, or otherwise coming to the attention of Agency management presents cause for concern regarding an employee's performance, conduct, or suitability; advise the Chief Human Resources Officer on the suitability of employees for continued employment with the Agency; advise the Director of Security (D/OS) on cases raising security concerns; provide recommendations to management for disciplinary actions; and assist management upon request in determining the

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acceptability of employees for overseas and other sensitive assignments or certification out of trial period. The PEB also serves on request as an advisory council in the areas of employee discipline, suitability, performance, standards of conduct, and the handling and administration of problem or difficult employees.

a. POLICY

(1) The national security missions, functions, and activities of the Agency are of such importance and sensitivity that any concerns pertaining to an employee's performance, conduct and/or suitability for continued Agency employment must be considered carefully and resolved fully whenever they arise. It is Agency policy to seek to resolve such issues in a manner that is both helpful and supportive to employees, while at the same time protective of the Agency's equities, which are paramount. The PEB serves as a central point of review of pertinent information to assist Agency management to achieve these ends. The PEB also ensures that security, human resource, medical, legal, counterintelligence, and management considerations are taken into account.

b. ORGANIZATION. The Chief, Office of Security/Personnel Security Group (C/PSG), or designee, shall chair the PEB. The voting members of the PEB include the following individuals or their designees: CHRO; Director of Medical Services (D/OMS); Director of Security (D/OS); Chief of the Counterintelligence Center (C/CIC); and the Head of the Employee's Career Service or career subgroup. In addition, the IG, the General Counsel (GC), the Director of Equal Employment Opportunity (D/EEO), or their designees, as well as a representative from the employee's home directorate or mission support office shall serve as nonvoting advisors to the PEB to ensure the accuracy, fairness, and effectiveness of the process. The PEB may invite representatives from other Agency components (for example, the employee's office of assignment) to assist the PEB in its deliberations. The Office of Security, Special Activities Staff (OS/SAS) shall serve as Executive Secretary to the PEB and provide it with staff support. The board shall meet on the call of C/SAS.

c. RESPONSIBILITIES AND PROCEDURES

(1) Any manager or supervisor who discovers or develops information that raises significant security concerns about any Agency employee, doubts about the suitability of any Agency employee for continued employment by the Agency, or identifies performance or conduct deficiencies of such severity that they may warrant imposition of serious discipline, as described in AR [REDACTED] should refer the matter to SAS. Cases may also be referred to SAS by any Head of Career Service or Operating Official who desires senior review of possible courses of action in such cases or the interpretation/development of Agency policy in this area.

(2) A request to convene the PEB may be made by the OS, OMS, OIG, CIC, or by the head of the employee's home office or the office to which the employee has been assigned. The referring component shall, as appropriate, coordinate the referral with the Employee's Career Service.

(3) In making a request for the PEB, the referring component shall, in writing, provide a detailed statement describing the basis for convening the board. The referring

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component shall also advise SAS whether the component believes there is a need to remove the employee from the workplace pending Agency action and, if so, shall provide the basis for that belief. In those cases where a request is made that the employee be removed from the workplace pending adjudication of the case, a decision will be made by D/OS or designee as to whether the employee should be placed on administrative leave, to include enforced annual leave, or be placed in a suspension without pay status. D/OS or designee may also choose to suspend an employee's security clearance and/or access approval(s) in connection with the removal of the employee from the workplace.

- (4) Once a case is referred to SAS, the Agency component of assignment of the employee who is the subject of the PEB shall, on a timely basis, submit to the PEB via SAS all pertinent information and documentation available to the component. Upon request by SAS, HR (including OMS), OS, CIC, OEEO, IG, and any other components having information pertinent to a case are also responsible for bringing the information to the attention of the PEB via SAS.
- (5) The employee who is the subject of the PEB request shall be notified in writing at least five business days prior to the convening of the PEB. The notification shall advise the employee that the PEB is being convened to make recommendations concerning possible administrative actions. If the employee is not available after reasonable efforts to locate the employee have been made or if there are security or counterintelligence reasons not to inform the employee about the convening of the PEB, the employee need not be notified.
- (6) The employee shall be informed in writing of all the issues that are expected to be discussed concerning the employee at the PEB. SAS may omit a particular issue from the statement if D/OS or designee determines there are security or counterintelligence reasons not to inform the employee of the particular issue. D/OS or designee shall coordinate with C/CIC as appropriate regarding counterintelligence issues. The PEB may consider other issues that arise during discussions even though they were not brought to the attention of the employee prior to the convening of the panel.
- (7) A representative from SAS shall meet with the employee prior to the convening of the PEB except if a decision has been made not to notify the employee of the PEB, if there are other security reasons not to meet with the employee, or if the employee is assigned overseas or outside of the Headquarters area, or is otherwise unavailable. Where personal meetings are not possible, SAS shall seek to communicate with the employee via secure telephone or cable.
- (8) At the pre-PEB meeting, SAS shall advise the employee that he/she has up to five business days from the date of receipt of the written notification to comment in writing on the issues being brought before the board. SAS shall notify the employee that the panel will be convened without information from the employee if the employee does not provide a written statement within the prescribed period. Classified comments must be prepared in a secure facility acceptable to D/OS or designee. Employees who have been removed from access to Agency facilities must prepare classified comments, if they have

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any, at a secure facility designated by D/OS or designee.

- (9) All written comments received by SAS shall be provided or made available to the PEB members in advance of the meeting to permit their review and consideration. Neither the employee who is the subject of the PEB meeting nor the employee's personal representative may attend the PEB meeting.
- (10) The PEB shall analyze and evaluate the information and make recommendations to D/OS or designee in cases raising security concerns or to Chief Human Resources Officer in cases raising solely suitability or performance concerns. The PEB has the authority to recommend the full range of disciplinary actions as described in AR [REDACTED] as well as other corrective measures such as reassigning the employee to another position. The PEB may also recommend revocation of security clearances. It is the PEB's responsibility in each case to assess any adverse actions it proposes in terms of both the possible risk to national security and the employee's past contributions and potential future value to the Agency. As appropriate, the PEB shall recommend risk management plans to minimize the risk to classified information and Agency personnel and programs that may be the result of any adverse action.
- (11) PEB members shall strive to reach consensus in making their recommendations to management. In those instances where a consensus of PEB members is not reached, the differing positions shall be recorded to assist the appropriate senior official, as identified in paragraph 10 above, in making a determination with respect to imposition of discipline, employment termination, security revocation, and/or other action regarding the employee.
- (12) After each panel meeting, SAS shall prepare a statement of facts and pertinent issues with the panel's conclusions, reasons, and recommendations. If, for non-security reasons, the panel recommends disciplinary action, up to and including termination of employment, SAS shall forward the document to Chief Human Resources Officer for decision. In deciding a case, Chief Human Resources Officer shall coordinate with the Head of the Employee's Career Service. With the concurrence of the Head of the Employee's Career Service, Chief Human Resources Officer may choose to take action other than that recommended by the PEB. In those rare instances where there are compelling time pressures, a verbal approval may be obtained from Chief Human Resources Officer and the Head of the Career Service to proceed with agreed upon action(s).
- (13) PEB recommendations for disciplinary action based on security concerns or on mixed suitability and security concerns shall be forwarded by SAS to D/OS or designee for decision. In making the disciplinary decision, D/OS or designee shall coordinate with the Head of the Employee's Career Service. If the PEB recommends revocation of security clearances, the recommendation shall be forwarded to DD/OS for decision¹. Whenever DD/OS decides to revoke an employee's access to classified information, it is not necessary to obtain the approval or concurrence of CHRO, the Head of the Employee's Career Service, or any other Agency official for the revocation to become effective. DD/OS may revoke or suspend an employee's access to classified information

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regardless of the recommendations from the PEB.

¹DD/OS is the revoking authority. D/OS serves as an appeal authority pursuant to the provisions of AR [REDACTED]

- (14) In PEB cases requiring coordination, the Head of the Employee's Career Service shall implement the decisions made by Chief Human Resources Officer or D/OS or designee with which he/she concurs. The Heads of the Employee's Career Service shall notify SAS in a timely manner via memorandum when recommended actions have been implemented or provide explanations for not implementing recommendations. For decisions with which the Head of the Employee's Career Service does not concur, the Head of Career Service shall within five business days advise Chief Human Resources Officer or D/OS or designee, as appropriate, of his/her non-concurrence and propose an alternative. If all parties agree on the alternative proposal, that proposal shall be implemented. If Chief Human Resources Officer or D/OS or designee continues to support the original decision, he or she may request that the PEB be reconvened or may forward the original decision and the career-service alternative proposal to the Executive Director (EXDIR) for a final decision.
 - (15) Once a final decision has been made, a representative of SAS shall meet or otherwise confer with the employee and provide the employee with a written statement of the decision, including a statement that sets forth the reasons for the decision, in accordance with the notice requirements of AR [REDACTED]. The employee shall also be advised of his/her appeal rights and provided the opportunity to acknowledge the statement. For cases involving revocation of the employee's access to classified information, the statement and other associated material shall conform to the requirements of AR [REDACTED].
 - (16) It is the responsibility of SAS to follow up on the decisions made by responsible officials regarding PEB cases to ensure that these decisions are carried out. In some cases, SAS is responsible for implementing the decisions, while in other cases SAS will monitor implementation carried out by others.
 - (17) Deliberations of the PEB are considered to be privileged and confidential, and all notes, memoranda, and/or minutes of these deliberations will be maintained solely by SAS. No dissemination of PEB deliberative material will be made outside of the PEB or SAS except on a strict need-to-know basis.
- d. **APPEAL PROCEDURES.** The rights of employees to appeal PEB decisions are set forth in this regulation and depend on the severity of the discipline being imposed. Descriptions of "lesser disciplinary action" and "serious disciplinary action" are set forth in AR [REDACTED]
- (1) There is no appeal for lesser disciplinary actions, for example, those actions that result in an oral admonition, letter of warning, letter of reprimand (with or without caveats), or suspension of five days or less.
 - (2) Serious disciplinary action—such as suspension for more than five days, reduction in grade, or termination of employment where termination is for reasons other than

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revocation of security clearances—generally may be appealed to the EXDIR. SAS shall advise the employee that he/she has five business days from the date of receipt of the notification of the disciplinary decision to submit written comments to SAS. In cases where the employee requests access to Agency regulations or other relevant materials, the employee shall have five business days from receipt of the requested materials or notice that the materials will not be provided to submit written comments to SAS. SAS shall make the employee's written comments available to the EXDIR and notify the employee in writing of the EXDIR's decision.

- (3) Where employment is being terminated because of revocation of access to classified information, the procedures for an employee to appeal the revocation decision shall be those set forth in AR [REDACTED]
- (4) The EXDIR's decision shall be final with respect to all disciplinary actions except termination of employment. In cases involving termination of employment for reasons other than revocation of access to classified information, employees may appeal to the Director of Central Intelligence (DCI) if the EXDIR denies the initial appeal. The employee shall have five business days from receipt of the EXDIR's decision to submit written comments through SAS to the DCI. The employee must prepare any classified written comments to the EXDIR or to the DCI at a secure facility designated by D/OS or designee. Upon receipt of an appeal, the DCI will decide, in his discretion, whether to terminate the individual's Agency employment pursuant to the DCI's statutory authority to do so. SAS shall notify the employee in writing of the DCI's decision.
- (5) Notwithstanding the provisions of any other Agency regulation or policy statement, including the Agency's expedited Privacy Act procedures for employees, employees who have been removed from access to Agency facilities (for example, employees who have been placed on administrative leave or who have had their access to classified information suspended or revoked) will be provided access to Agency regulations for preparation of their statements to the PEB, or appeals to the EXDIR or DCI, only to the extent that C/SAS determines the regulations are relevant to the employee's case and to the extent that access would not be inconsistent with national security. No employee has a right to review any CIA file or record in connection with preparation of a statement to the PEB, or an appeal to the EXDIR or DCI. Any request for access to Agency files in connection with a PEB case will be provided to C/SAS for decision. The decision of C/SAS shall be final and not subject to appeal. Employees and their representatives may review classified information only in a secure facility designated by D/OS or designee. The review shall be conducted during normal business hours at a time and under circumstances determined by D/OS or designee.
- (6) Employees may choose to employ private counsel at their own expense and in compliance with the requirements set forth in AR [REDACTED]. Private counsel must receive a security clearance, access approval, or security approval as determined appropriate by C/SAS and sign appropriate non-disclosure agreements prior to being provided access to classified information. Private counsel shall not be entitled to receive any more information than C/SAS determines may be provided to the employee and may

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be prohibited from obtaining access to information that has been provided to the employee when C/SAS determines such access would be inconsistent with the national security.

e. OVERSEAS CANDIDATE REVIEW BOARD (OCRB)

- (1) The OCRB is the PEB subpanel that is chaired by C/SAS and has the same membership as the PEB. The OCRB's function is to review proposed overseas assignments involving questions as to the suitability of the employee under consideration for such assignments or their dependents and to make recommendations to the home components of such employees.
- (2) Cases may be referred to the OCRB by the components involved in the employee's assignment, by the employee's career service, or by OS, OIG, CIC, OMS or HR.
- (3) A component that chooses not to accept the recommendations of the OCRB must advise SAS in writing of its reasons for nonacceptance.

f. NO ADDITIONAL RIGHTS CONFERRED. This regulation does not create for any Agency employee any property or other interest or privilege in Agency employment. Nor does this regulation entitle an employee to any due process rights or in any way limit or detract from the authority of the Director of Central Intelligence to discipline an employee or terminate an individual's Agency employment, with or without the procedures set forth in this regulation, AR [REDACTED] or elsewhere.

/s/

George J. Tenet

Director of Central Intelligence

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