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DEPARTMENT OF DEFENSE POLYGRAPH PROGRAM(U) OFFICE OF
THE DEPUTY UNDER SECRETARY OF DEFENSE FOR POLICY
WASHINGTON DC JAN 85 DOD-5210.48-R

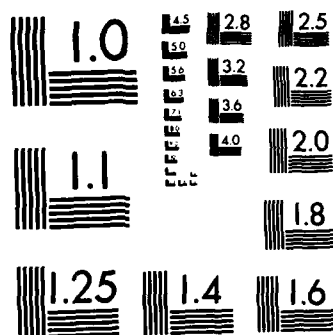
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DEPARTMENT OF DEFENSE



POLYGRAPH PROGRAM

JANUARY 1985
OFFICE OF THE DEPUTY UNDER
SECRETARY OF DEFENSE POLICY

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THE UNDER SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

9 JAN 1985

POLICY

FOREWORD

This Regulation is issued under the authority of DoD Directive 5210.48, "DoD Polygraph Program," December 24, 1984. Its purpose is to provide guidance and establish controls governing the use of the polygraph to ensure an equitable balance between the need of the Government to secure and verify investigative information and the recognition and preservation of the rights of the individual. It specifies the circumstances under which the polygraph may or shall be used, prescribes procedures for conducting polygraph examinations and establishes standards for the selection, training and supervision of DoD polygraph examiners. 2-6 p. 11

This Regulation applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

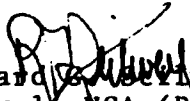
The provisions of this Regulation also apply when DoD polygraph examinations involve contractor personnel and any other person affiliated with the Department of Defense.

This Regulation is effective immediately and is mandatory for use by all DoD Components.

Send recommended changes to this Regulation through channels to:

Director
Counterintelligence and
Investigative Programs
Room 3C260, The Pentagon
Washington, D.C. 20301-2200

DoD Components may obtain copies of this Regulation through their own publication channels. Other federal agencies and the public may obtain copies from the U.S. Department of Commerce, National Technical Information Service, 5288 Port Royal Road, Springfield, Virginia 22161.


Richard A. Bellwell
General, USA (Ret.)
Deputy

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REFERENCES

- (a) Title 10, United States Code, Sections 801-940, Uniform Code of Military Justice, Article 31.b.
- (b) Executive Order 12356, "National Security Information," April 2, 1982
- (c) DoD 5200.1-R, "Information Security Program Regulation," August, 1982, authorized by DoD Directive 5200.1, "DoD Information Security Program," June 7, 1982
- (d) DoD 5200.2-R, "DoD Personnel Security Program," December 1979, authorized by DoD Directive 5200.2, "DoD Personnel Security Program," December 20, 1979
- (e) DoD Directive 5400.11, "Personal Privacy and Rights of Individuals Regarding Their Personal Records," June 9, 1982.
- (f) Manual for Courts-Martial, 1969 (revised edition), Chapter XXVII, Military Rules of Evidence, Section III
- (g) DoD 5400.7-R, "DoD Freedom of Information Act Program," December 1980, authorized by DoD Directive 5400.7, "DoD Freedom of Information Act Program," March 24, 1980

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DEFINITIONS

1. Adverse Action. As defined in paragraph 1-301, DoD 5200.2-R (reference (d)), if taken as a result of an unfavorable personnel security determination.
2. Counterintelligence. Information gathered and activities conducted to protect against espionage and other clandestine intelligence activities, sabotage, international terrorist activities, or assassinations conducted for or on behalf of foreign powers, organizations, or persons.
3. Cryptographic Information. All information significantly descriptive of cryptographic techniques and processes or of cryptographic systems and equipment, or their functions and capabilities, and all cryptomaterial. ("Significantly descriptive" means that the information could, if made known to unauthorized persons, permit recovery of specific cryptographic features of classified crypto-equipment, reveal weaknesses of associated equipment that would allow recovery of plain text or of key, aid materially in the cryptanalysis of a general or specific cryptosystem, or lead to the cryptanalysis of an individual message, command, or authentication.)
4. Cryptologic Information. Information pertaining to the production of signals intelligence and maintenance of communications security.
5. Foreign Intelligence. Information relating to the capabilities, intentions, and activities of foreign powers, organizations, or persons.
6. Foreign Nationals. All persons not citizens of, not nationals of, nor immigrant aliens to, the United States.
7. Polygraph Examination. Includes questioning and other processing of an examinee before the actual use of the polygraph instrument; the use of a polygraph instrument with respect to such examinee; and any questioning or other processing involving the examinee after the use of the polygraph. Specifically, examinations consist of three phases:
 - a. Pretest. The pretest phase includes:
 - (1) The examiner being introduced and obtaining assurance that the person to be examined has consented to take the examination.
 - (2) The examinee being informed of the nature and characteristics of the polygraph instrument and examination.
 - (3) The examinee being informed of his or her privilege against self-incrimination in accordance with the Fifth Amendment to the Constitution, or if the person to be examined is a member of the U.S. Armed Forces, in accordance with Article 31.b. of the Uniform Code of Military Justice (reference (a));
 - (4) The examinee being informed of his or her right to obtain and consult with legal counsel.

(5) The examiner reviewing with the examinee all questions to be asked during the test.

b. In-test. The actual administering of the examination and analysis of the charts.

c. Post-test. Interrogation of the examinee if the charts are analyzed as deceptive or inconclusive.

8. Polygraph Examination Results. A synopsis of the polygraph examination that normally includes a brief identification and background information, the relevant questions asked, the subject's answers, the examiner's opinions concerning the indication of truthfulness or deception, and any admissions made by the examinee during the examination.

9. Polygraph Examination Technical Report. The complete detailed technical report prepared by the polygraph examiner including pretest preparations, the examiner's notes, examination charts, and other technical details of the polygraph examination.

10. Polygraph Instrument. A diagnostic instrument capable of measuring and recording, as a minimum, respiration, electrodermal, blood volume, and heart rate responses to verbal and or visual stimuli.

11. Relevant Question. A polygraph question pertaining directly to the matter under investigation for which the examinee is being tested.

12. Technical Questions. Refers to any of the following:

a. Control Question. A question used during polygraph examinations which, although not relevant to the matter under investigation, is designed to be used as a baseline against which responses relevant to the investigation may be evaluated.

b. Irrelevant or Neutral Question. A polygraph question about which the examinee normally would tell the truth. It does not pertain to the matter under investigation and should have no apparent emotional impact to the examinee.

c. Symptomatic Question. A polygraph question designed to indicate the possible influence of an outside issue that could be of concern to the examinee.

13. Unfavorable Administrative Action. As defined in paragraph 1-323, DoD 5200.2-R (reference (d)).

14. Unfavorable Personnel Security Determination. As defined in paragraph 1-324, DoD 5200.2-R (reference (d)).

CHAPTER 1
AUTHORIZED USES OF POLYGRAPH EXAMINATIONS

A. POLICY

1. The polygraph shall be employed within the Department of Defense only when the person to be examined has consented to the examination. Except as provided in this Regulation, this consent must be in writing.

2. The person being considered for polygraph examination shall be given timely notification of the date, time, and place of the examination as well as their right to obtain and consult with legal counsel. Legal counsel may be available for consultation during the polygraph examination.

3. Polygraph examinations shall be considered as supplementary to, not as a substitute for, other forms of investigation that may be required under the circumstances. Moreover, no unfavorable administrative action will be taken solely on the basis of a polygraph examination chart that indicates deception, except as provided in subsection A.6., below.

4. Applicants for employment, assignment, or detail to positions requiring access to specifically designated information in special access programs; assignment or detail to the Central Intelligence Agency; employment, assignment, or detail to critical intelligence positions in the Defense Intelligence Agency (DIA); or employment, assignment, or detail to the National Security Agency (NSA); who refuse to take a polygraph examination shall not be selected or assigned.

5. Persons who refuse to take a polygraph examination in connection with determining their continued eligibility for access to specifically designated information in special access programs, in accordance with paragraph B.2.a., below; or continued employment, assignment or detail to a critical intelligence position in DIA, in accordance with paragraph C.3., below; to include incumbents of positions subsequently determined to require polygraph examination as a condition of access, employment, assignment, or detail; may be denied access, employment, assignment, or detail, provided that, with the exception of NSA, the DoD Component concerned shall ensure that such individual is retained in a position of equal grade and pay that does not require polygraph examination, or shall arrange like employment for the individual at another DoD Component.

6. When deception is indicated by the examiner's interpretation of polygraph charts in polygraph examinations conducted under the provisions of paragraph B.2.a. and subsection C.3., below, an indepth interview of the subject will be undertaken by the examiner immediately following the running of the chart, to resolve any indication of deception. If the indication of deception cannot be resolved through such means, the subject will be so advised and the results of the examination forwarded to the requesting agency. If, after reviewing the polygraph examination results, the requesting agency determines that they raise significant question relevant to the subject's clearance or access status, the subject shall be given an opportunity to undergo additional examination by the examining agency, using the same or a different examiner. If such additional examination is not sufficient to resolve the matter, a comprehensive investigation of the subject shall be undertaken, utilizing the results of the polygraph examination as an investigative lead. If such investigation develops no derogatory information upon which an unfavorable

administrative action to the subject may be independently based, no such action shall be permitted, unless approved by an authority designated in subsection B.2. of Chapter 4 of this Regulation, in specific cases, based upon his or her written finding that the information in question is of such extreme sensitivity that access under the circumstances poses an unacceptable risk to the national security. In such cases:

a. The determining authority shall notify the subject, in writing, that, although the investigation which followed the indication of deception during the polygraph examination did not in and of itself provide an independent basis for denial of access, a determination to deny such access to the subject had been made, based upon the finding of the determining authority that access under the circumstances poses an unacceptable risk to the national security. The subject shall also be advised, in the case of a determination made by a Component authority, that the determination may be appealed to the Secretary of Defense. Determinations by the Secretary of Defense are conclusive.

b. Appeals must be filed by appellants within 60 days of notification by the determining authority. The appeal may contain any information which the appellant wishes the Secretary of Defense to consider in reaching a final determination.

c. Copies of the determination as well as the determining authority's notification to the subject may be retained only in the immediate office of the determining authority and in the security office of the DoD Component responsible for controlling access to the information in question. This provision does not preclude use of such records in the event of litigation.

d. No notification other than provided for in a. above, shall be made.

7. Unfavorable administrative action shall not be taken against a person for refusal to take a polygraph examination in criminal or unauthorized disclosure cases.

8. Polygraph examinations administered by DoD polygraph examiners shall be conducted only as prescribed by this Regulation and shall be authorized for use only in connection with the investigative cases specified in this chapter.

B. INVESTIGATIVE CASES FOR WHICH THE POLYGRAPH MAY BE USED

1. Criminal Investigations. A polygraph examination may be authorized in a criminal investigation when the following apply:

a. The crime involves an offense punishable under Federal law, including the Uniform Code of Military Justice (reference (a)), by death or confinement for a term of 1 year or more.

b. Investigation by other means has been as thorough as circumstances permit.

c. The development of information by means of a polygraph examination is essential to the conduct of the investigation.

d. The person being considered for examination has been interviewed and there is reasonable cause to believe that the person has knowledge of or was involved in the matter under investigation.

2. Personnel Security Investigations. A polygraph examination may be authorized in connection with personnel security investigations as follows:

a. Access to Specifically Designated Information in Special Access Programs. A polygraph examination may be authorized to assist in determining the initial eligibility, and aperiodically thereafter, on a random basis, to assist in determining the continued eligibility, of DoD civilian, military, and contractor personnel for access to specifically designated classified information protected within special access programs, established under E.O. 12356 (reference b)) and DoD 5200.1-R (reference (c)). Any use of the polygraph for such purpose shall have the prior approval of the Deputy Under Secretary of Defense for Policy (DUSD(P)), and be based upon the request of the head of the DoD Component concerned, who shall certify in writing that unauthorized disclosure of the information in question could reasonably be expected to: (1) jeopardize human life or safety; (2) result in the loss of unique or uniquely productive intelligence sources or methods vital to U.S. security; or (3) would compromise technologies, plans or procedures vital to the strategic advantage of the United States. The scope of any polygraph examination administered for such purpose shall be limited to the counter-intelligence topics prescribed in Appendix B of this Regulation.

b. Resolution of Certain Personnel Security Investigations

(1) The use of the polygraph may be authorized to assist in determining the initial eligibility of foreign nationals who require access to classified information.

(2) The polygraph may be authorized for use on an aperiodic basis for foreign nationals, to ensure that continued access to classified information is clearly consistent with the interests of national security.

(3) The use of the polygraph may be authorized for DoD civilian, military, contractor, and other personnel, to resolve credible derogatory information developed in connection with a personnel security investigation, when such information causes substantial doubt whether access or continuation of access to classified information is clearly consistent with the interests of national security, and the adverse information cannot be resolved in any other manner.

c. Access to Sensitive Compartmented Information (SCI)

(1) Exceptional Cases. The polygraph may be authorized for use in a limited number of cases when operational exigencies require the immediate utilization of a person's services before the completion of a background investigation in determining the interim eligibility of DoD civilian, military, and contractor personnel for access to SCI provided that, at a minimum the following apply:

(a) A determination has been made that it is necessary and advisable in the national interest to authorize access.

(b) The person being considered for access has been interviewed in accordance with paragraph 2-306.c. of DoD 5200.2-R (reference (d));

(c) A Special Background Investigation (SBI) has been initiated.

(d) The questions asked during the examination are limited to the counterintelligence topics set forth in Appendix B of this Regulation.

(2) Authority. Authority to approve the use of the polygraph under subparagraph B.2.c.(1) above is limited to the DUSD(P) and the Senior Officials of the Intelligence Community (SOICs) within the Department of Defense.

3. Counterintelligence Investigations

a. Unauthorized Disclosures. DoD civilian, military, and contractor personnel may be requested to submit to a polygraph examination in connection with the investigation of an unauthorized disclosure of classified information, provided that there is reasonable cause to believe that the person has knowledge of or was involved in the unauthorized disclosure. No unfavorable administrative actions may be taken when persons refuse to cooperate with polygraph examinations administered under this provision.

b. Other Counterintelligence Investigations. A polygraph examination may be authorized for use in a counterintelligence investigation involving alleged acts of espionage, sabotage, or terrorism provided that the following apply:

(1) Investigation by other means has been as thorough as circumstances permit.

(2) The development of information by means of a polygraph examination is essential to the conduct of the investigation.

(3) The individual being considered for examination has been interviewed and there is reasonable cause to believe that the person has knowledge of or was involved in the matter under investigation.

4. Foreign Intelligence and Counterintelligence Operations. Polygraph examination may be authorized to determine the suitability, reliability, or credibility of personnel who are used as, proposed for use as, or who purport to be, agents, sources, or operatives in foreign intelligence or counterintelligence activities. Such examinations shall be conducted in accordance with regulations issued by the heads of the DoD Components with prior approval of the DUSD(P), or his designee, the Director, Counterintelligence and Investigative Programs, Office of the DUSD(P) (CI&IP, ODUSD(P)). It is not required that consent be obtained in writing from persons who are to be examined under the provisions of this subsection.

5. Exculpation. The use of the polygraph may be authorized for the purpose of exculpation, provided that the request for such examination was

initiated by the subject of a criminal, personnel security, or counterintelligence investigation, and administering of the examination is considered to be essential to a just and equitable resolution of the matter under investigation.

6. Use of the Polygraph Outside the Department of Defense. The providing of polygraph service or support to entities other than DoD Components must receive the prior approval of the DUSD(P), or his designee, the Director, CI&IP, ODUSD(P). Prior approval is not required, however, when DoD personnel are examined in connection with a criminal investigation conducted by a non-DoD law enforcement entity or when non-DoD personnel are subject to the Uniform Code of Military Justice (reference (a)).

C. INVESTIGATIVE CASES FOR WHICH THE POLYGRAPH SHALL BE USED

1. Employment, Assignment, or Detail to NSA. Polygraph examination shall be required for DoD civilian, military, contractor, and General Service Administration (GSA) personnel to assist in determining their eligibility for initial or continued employment, assignment, or detail for duty with NSA in activities that require access to sensitive cryptologic information, or to spaces where sensitive cryptologic information is produced, processed, or stored. In the case of military personnel being assigned or detailed for duty with NSA, the scope of such examinations shall be limited to the counterintelligence topics prescribed in Appendix B of this Regulation.

2. Assignment or Detail for Duty with the Central Intelligence Agency (CIA). Polygraph examinations shall be required for DoD civilian and military personnel, to assist in determining their eligibility for assignment or detail to CIA in positions where CIA requires a polygraph examination.

3. Employment or Assignment to Critical Intelligence Positions. Polygraph examinations limited to the counterintelligence areas set forth in Appendix B of this Regulation shall be required to assist in determining the eligibility of DoD civilian, military, and contractor personnel for initial or continued employment or assignment to the DIA in positions that have been designated in writing by the Director, DIA, as critical intelligence positions.

D. LIMITATIONS

1. Any final administrative determination rendered in cases in which polygraph examination is taken shall not be based solely on the results of an analysis of the polygraph charts. However, the results of an analysis of the polygraph charts may be considered to have probative value in administrative determinations. Responses to technical questions have no probative value with respect to the issue under investigation.

2. The results of a polygraph examination and record of results shall be considered privileged information and shall be disseminated only in accordance with subsection B.2. of Chapter 2 of this Regulation.

3. Except as provided in subsections A.5., B.2.b.(1) and (2), B.2.c., B.4., and C. 1., 2., and 3. of this Chapter, no unfavorable administrative actions may be taken when persons refuse to undergo polygraph examination in

connection with the provisions of this Regulation. Refusal to undergo polygraph examination under these provisions shall in no manner effect the person's eligibility for positions that have not been determined to require polygraph examination as a condition of employment, assignment, detail or access.

4. Information concerning a person's refusal to undergo polygraph examination shall, in all cases, be given the full privacy protection provided by DoD Directive 5400.11 (reference (e)). Specifically, information concerning a person's refusal shall not be:

a. Recorded in the person's personnel file, investigative file, or any other file. As an exception, in criminal cases, a refusal may be recorded in the polygraph examination technical report maintained in the headquarters of the Component investigative agency having jurisdiction for the purposes of administration, control and conduct of criminal investigations.

b. Communicated to a person's supervisor, and in the case of a contractor employee, a person's employer, unless such action is necessary in support of action to be taken under the provisions of subsection A.5. of this Chapter. In criminal cases, the fact of refusal to undergo polygraph examination shall not be communicated to persons other than those directly involved in the administration, control or conduct of criminal investigations.

c. Permitted to effect the person's official evaluation report or eligibility for promotion or awards.

5. As an exception to 4. above, DoD Components authorized to conduct polygraph examinations shall provide information concerning refusal to undergo Polygraph examination offered in connection with the DoD Polygraph Test Program to the Director, Counterintelligence and Investigative Programs, ODUSD(P), for inclusion in the report of results of the test program that is to be made to Congress. The Component Test Program Project Director shall retain a copy of data submitted in connection with the test program and shall destroy such information upon notification from the ODUSD(P) Test Program Project Director.

Type of Case	Competitive Civilian Service	Excepted Civilian Service	Military	Contractors	Foreign Civilian	Foreign Military	Other (Specify)	Total
Critical Intelligence Positions								
Interim Access to SCI								
Assignment/Detail to CIA								
Assignment/Detail to NSA								
Foreign National Initial								
Foreign National Aperiodic								
Resolve Credible Derog								
Total								
Pretest Admission or Confession	Deception Indicated (DI)		No Deception Indicated (NDI)		Post-test Admission or Confession	Inconclusive	Not Completed	Information Developed Requiring Additional Investigation
	DI Confirmed	DI Unconfirmed	NDI Confirmed	NDI Unconfirmed				

5. Use of the polygraph for personnel security purposes:

Type of Case	Competitive Civilian Service	Excepted Civilian Service	Military	Contractors	Foreign Civilian	Foreign Military	Other (Specify)	Total
Special Access Program Applicants								
Number of Applicants Refusing								
Number of Applicants Denied Employment/Assignment								
Special Access Program Incumbents								
Number of Incumbents Refusing								
Number of Incumbents Denied Access								
Number of Incumbents Transferred/Reassigned								

APPENDIX A REPORTING FORMAT

1. Period ending _____, 19____
2. Date report submitted: _____, 19____
3. Name of reporting activity: _____
4. Use of the polygraph in criminal investigations: _____

Type of Case	Competitive Civilian Service	Excepted Civilian Service	Military	Contractors	Foreign Civilian	Foreign Military	Other (Specify)	Total
Crimes Against Persons								
Crimes Against Property								
Crimes Involving Fraud								
Crimes Involving Drugs								
Other (Specify)								
Total								
Pretest Admission or Confession	Deception Indicated (DI)		No Deception Indicated (NDI)		Post-test Admission or Confession		Information Developed Requiring Additional Investigation	
	DI Confirmed	DI Unconfirmed	NDI Confirmed	NDI Unconfirmed	Inconclusive	Not Completed		

D. INFORMATION REQUIREMENTS

1. The IG, DoD, Secretaries of the Military Departments, the Directors, of NSA/Chief, CSS, DIA, and DIS, shall submit to the DUSD(P), semiannually as of December 31 and June 30, a report of polygraph activities in the format prescribed by Appendix A of this Regulation.

2. This reporting requirement has been assigned Reports Control Symbol DD-POL(SA)1361. For the purposes of this reporting requirement, a polygraph examination is considered to have taken place when at least one of the phases described in the definition section of this Regulation has been initiated.

E. IMPLEMENTATION REQUIREMENTS

DoD Components shall forward two copies of implementing documents to the Deputy Under Secretary of Defense for Policy. These implementing documents shall list by title those officials within each DoD Component who have been delegated polygraph authority under the provisions of paragraph E.2.b. of DoD Directive 5210.48.

CHAPTER 4

PROGRAM MANAGEMENT

A. IMPLEMENTATION

To ensure uniform implementation of the DoD Polygraph Program throughout the Department of Defense, program responsibility shall be centralized to the extent possible.

B. RESPONSIBILITIES

1. The DUSD(P) shall provide guidance, oversight, and approval for policy and procedures governing polygraph program matters within the Department of Defense. The DUSD(P) shall coordinate with the IG, DoD, on all matters concerning use of the polygraph in connection with the investigation of criminal offenses.

2. Exceptions under the provisions of subsection A.6., of Chapter 1 of this Regulation shall be personally approved by one of the Secretaries of the Military Departments or the Director, NSA, for their respective Components, or the Secretary or Deputy Secretary of Defense for other DoD Components.

3. Except as provided in subsection B.2., above, the DUSD(P), or his designee, the Director, CI&IP, ODUSD(P), are the only DoD officials authorized to approve waivers or exceptions to the provisions of this Regulation.

4. Heads of DoD Components authorized to approve the use of the polygraph shall ensure that:

a. The DoD Polygraph Program is administered within their area of responsibility in a manner consistent with this Regulation.

b. A single authority within each DoD Component is assigned responsibility for administering the program.

c. Information and recommendations concerning any aspect of the program are provided to the DUSD(P) upon request.

C. DoD POLYGRAPH COMMITTEE

There shall be established a DoD Polygraph Committee.

1. There shall be a DoD Polygraph Committee established. This Committee shall be chaired by the Director, CI&IP, ODUSD(P), and shall be comprised of policy and polygraph technical representatives of the IG, DoD; Secretaries of the Military Departments; the Directors of the NSA/Chief, CSS, DIA, DIS; and the Defense Legal Service Agency.

Representatives of other DoD Components may be invited to meet with the Committee on matters of particular interest to those Components. The Committee shall meet at the call of the chair or at the request of a member agency, and shall serve as a forum for the review and discussion of problems or issues impacting on the DoD Polygraph Program.

6. Polygraph examinations shall not be conducted if, in the opinion of the polygraph examiner, any of the following conditions inhibit the person's ability to respond. The provisions of subsection A.4., of Chapter 2 of this Regulation, shall be followed if any of the following are apparent:

- a. The examinee is mentally or physically fatigued.
- b. The examinee is unduly emotionally upset, intoxicated, or rendered unfit to undergo an examination because of excessive use of sedatives, stimulants, or tranquilizers.
- c. The examinee is known to be addicted to narcotics.
- d. The examinee is known to have a mental disorder.
- e. The examinee is experiencing physical discomfort of significant magnitude or appears to possess physical disabilities or defects that in themselves, might cause an abnormal response.

4. A certified polygraph supervisory official shall review the record of polygraph examination in conjunction with other pertinent investigative information to determine whether it is appropriate to request the examinee to undergo a second polygraph examination. Such a request may be made when considered appropriate, regardless of whether the person examined has made significant admissions in connection with the investigation and regardless of whether the results of the examination indicate unusual physiological responses. The investigative agency may comment, as appropriate, on the polygraph examination technical report.

5. Determinations with respect to further investigation of cases wherein a polygraph examination has been undertaken shall not be made solely by the polygraph examiner.

6. When the results of an initial polygraph examination have been interpreted as "inconclusive," immediate subsequent examination may be made by the original examiner (normally within 30 days) without obtaining additional approval from the official who initially approved the polygraph examination.

D. LIMITATIONS

1. Persons certified as DoD polygraph examiners shall not perform polygraph examinations nor participate in polygraph-related activities in connection with nonduty-hour employment with any private or commercial polygraph firm or agency without the approval of the head of the DoD Component concerned. The provisions of this subsection do not apply to DoD polygraph examiners of the reserve components, except while such examiners are on temporary or extended active duty.

2. Polygraph examiners shall not participate in any public demonstrations of the polygraph technique that includes a mock test in which there is an attempt to interpret the results of the test. This does not preclude a public demonstration of the mechanical operations of the instrument or a demonstration to show the physiological changes that take place during emotional stimulation, provided no attempt is made to interpret the changes and no unfounded claims of application or reliability are made. Only polygraph examiners certified under the provision of this Regulation may be used as instructors, lecturers, or demonstrators of the polygraph.

3. Under no circumstances shall polygraph examiners allow themselves to be identified as other than investigative personnel or take any measures that might create a clinical appearance.

4. The polygraph instrument shall not be utilized as a psychological prop in conducting interrogations.

5. Persons who are not in sound physical or mental condition will not be subjected to a polygraph examination. Should the examiner or examinee have any doubt as to the physical or mental fitness of the examinee, the matter shall be referred to medical authorities. An examiner shall not attempt to make a psychological or physical diagnosis of an examinee.

- (1) Investigative techniques, including methods of interrogation.
- (2) The basic elements of normal, abnormal, and criminal psychology.
- (3) Constitutional and other legal considerations.
- (4) The basic elements of physiology.
- (5) The functioning of the polygraph, including its capabilities and limitations.
- (6) DoD policies and procedures concerning the use of the polygraph.
- (7) Polygraph techniques.
- (8) Question formulation and chart interpretation.

2. Probationary Period.

Before being certified as a qualified DoD polygraph examiner by the head of the DoD Component concerned, each candidate shall serve a probationary period under a certified examiner. This probationary period shall be no more than 1 year nor less than 6 months following completion of the basic polygraph examiner training course. During this time, the candidate shall be required to demonstrate proficiency in the use of the polygraph by conducting at least 25 polygraphic examinations under the supervision of a certified polygraph examiner. Heads of DoD Components shall ensure that polygraph examiners obtain refresher training at least every 2 years.

C. SUPERVISION OF POLYGRAPH EXAMINERS

Heads of DoD Components that have a polygraph capability shall establish procedures for the close supervision of polygraph examiners, and provide for professional and technical review of individual examiner techniques, to ensure maintenance of proficiency standards. These procedures shall include the following:

1. Certified examiners shall exercise their technical skills regularly and conduct a minimum of 18 polygraph examinations semiannually. Civilian and military polygraph specialists who direct and instruct examiners and are responsible for the proficiency of examiners may be exempted from this requirement by the head of the DoD Component concerned or his designee.
2. Examiners who fail to satisfy current proficiency standards shall have their certificates immediately suspended or revoked.
3. Certifications suspended for failure to meet minimum requirements may be reissued after suitable refresher training or after the examiner has demonstrated satisfactorily an acceptable standard of proficiency, as determined by the head of the DoD Component concerned or his designee.

CHAPTER 3

SELECTION, TRAINING, AND SUPERVISION OF DOD POLYGRAPH EXAMINERS

A. SELECTION

1. General. Candidates selected for the position of polygraph examiner shall meet the following minimum requirements:

- a. Be a U.S. citizen.
- b. Be twenty-five years of age;
- c. Have graduated from an accredited 4-year college (or equivalent) plus 2 years as an investigator with a recognized U.S. Government or other law enforcement agency;
- d. Be of high moral character and sound emotional temperament, based on a background investigation.
- e. Have completed a DoD-approved course of instruction;
- f. Be judged suitable for the position after taking a polygraph examination to ensure that he or she fully realizes the impact of such an examination on persons. This examination shall be given before the beginning of the course of instruction.

2. Incumbents. Persons who do not meet the educational requirements set forth in paragraph A.1.c., above, who previously were certified as polygraph examiners by the heads of DoD Component investigative agencies may continue in this capacity.

B. TRAINING

1. General

a. Under the policy guidance of the DUSD(P), the Secretary of the Army shall establish and manage training programs for DoD polygraph examiners, and shall ensure that such training programs are conducted by qualified professional, medical, or legal personnel.

b. The Director, NSC/Chief, CSS may approve alternative courses for training of NSA/CSS polygraph examiners and shall provide timely advice of such approvals to the DUSD(P).

c. Use of any other training programs shall be approved by the DUSD(P).

d. DoD polygraph training programs shall be designed to ensure that no person be certified as a qualified polygraph examiner without successfully completing an approved course of instruction and demonstrating the appropriate application of the following:

b. Estimated cost of the study or research.

c. Purpose of the study or research.

d. The dates the study or research is to begin and end.

4. DoD Components shall advise the DUSD(P) of the results and recommendations of all studies undertaken with regard to the use of the polygraph.

5. Routine statistics or analysis of the contents of the polygraph materials or reports do not constitute research for the purpose of this Regulation.

C. POLYGRAPH INSTRUMENT PROCUREMENT, MAINTENANCE, AND STORAGE

1. Issue. Polygraph instruments are items of issue within the Department of Defense. Spare parts and expendable supplies are to be requisitioned through authorized procurement channels.

2. Authorized Items. The use of equipment known as lie detecting or polygraph recording instruments for operational purposes by DoD Components is restricted to items procured in accordance with subsection C.1., above. All DoD polygraph instruments will measure and record, at a minimum, respiration, electrodermal response, blood volume, and heart rate. Except as provided in this Regulation, the use of other equipment is prohibited.

3. Maintenance. DoD Component investigative agencies shall establish procedures that include schedules for and techniques to be used in calibration and maintenance, to ensure proper and accurate operation of polygraph instruments.

4. Storage. Polygraph instruments shall be stored in secure locations to prevent damage or misuse by unauthorized persons. A notation shall be made in examination records of the serial number of the instrument used.

D. POLYGRAPH STUDIES AND RESEARCH

1. The heads of DoD Components may, by issuance of regulations, authorize the acquisition and use of experimental equipment to conduct research to determine the operational characteristics and reliability of the equipment.

2. The heads of DoD security and investigation activities may request the procurement of newly developed polygraph instruments provided that the following apply:

a. The DUSD(P) is notified in advance of the procurement.

b. The equipment has been tested under subsection D.1., above, and the following apply.

(1) Equipment is electromechanically suitable.

(2) Equipment produces reliable operational results.

(3) Instructional material relating to the equipment will be made available for inclusion in DoD service school curricula with the least possible expense and delay.

3. The DUSD(P), or his designee, the Director, CI&IP, ODUSD(P), may authorize the conduct of studies or research involving the use of the polygraph. DoD Components desiring to conduct a polygraph-related study or research shall submit a request to the DUSD(P) that shall include:

a. Identity and qualifications of the agency or contractor who will conduct the study or research.

b. Polygraph examination results may be filed with other materials relating to the investigation in which the examination was authorized. Additionally the following apply:

(1) Nonrecord copies of polygraph examination results shall be destroyed within 3 months from the date of completion of the investigation in which the polygraph examination was authorized.

(2) Record copies shall be retained in accordance with records retention procedures established by the Archivist of the United States.

2. Dissemination

a. Except as required by law, polygraph examination technical reports shall not be disseminated outside the Department of Defense. Normally, these reports are exempted from release under the provisions of Exemption 7 of the Freedom of Information Act (see DoD 5400.7-R, reference (g)).

b. Results of polygraph examinations may be made available to the following:

(1) Within the Department of Defense, officials responsible for personnel security, intelligence, counterintelligence, law enforcement, and the administration of criminal justice. (When a polygraph examination is conducted in connection with a personnel security investigation, a copy of the polygraph examination results shall be provided to the Defense Investigative Service for inclusion in the person's personnel security investigative file. This copy and the copy maintained by the examining agency are the only authorized record copies).

(2) Appropriate law enforcement officials outside the Department of Defense when the examination has been conducted in connection with the investigation of a criminal offense, or reveals criminal activity on the part of the individual examined.

(3) The DoD Component authorizing disclosure must comply with DoD Directive 5400.11 (reference (e)).

(4) The examinee or his or her legal counsel, upon request, subject to the provisions for safeguarding of classified defense information (DoD 5200.1-R, reference (c)).

(5) DoD Component members of the National Foreign Intelligence Board (NFIB) and other NFIB member agencies, provided there is an official need for the material and the third agency limitation will be applied.

(6) The National Archives and Records Service, GSA upon retirement of the file.

3. Questions asked during Polygraph Examination

a. All questions asked concerning the matter at issue, except for technical questions necessary to the polygraph technique during a polygraph examination, must be of special relevance to the subject matter of the particular investigation. Questions probing a person's thoughts or beliefs that are not related directly to the investigation are prohibited. Subject matters that should not be probed include religious and racial beliefs and affiliations, political beliefs and affiliations of a lawful nature, and opinions regarding the constitutionality of legislative policies.

b. When use of the polygraph is authorized pursuant to subparagraphs B.2.a. and c., and subsection B.3 and C.3, of Chapter 1 of this Regulation, technical questions utilized in such examinations shall be constructed to avoid embarrassing, degrading or unnecessarily intrusive questions. Additionally, except for polygraph examinations conducted under the provisions of subsection C.1. of Chapter 1 of this Regulation, all technical questions to be used during such examinations must be reviewed with the examinee before being posed to him or her for response.

c. No relevant question may be asked during the polygraph examination that has not been reviewed with the examinee before the examination.

d. Standard question topics to be asked in connection with the use of the polygraph for employment screening or assignment purposes, or any modification or change to these question topics, must be approved by the DUSD(P), or his designee, the Director, CI&IP, ODUSD(P), before implementation. The requirement for prior approval does not apply when it is necessary to modify the phrasing of an approved question topic to clarify a response given by the examinee, provided that the substance of the question topic remains unchanged.

4. Examinee Fitness. In all cases, the examiner shall have the authority to decline to conduct an examination or to discontinue testing when he or she doubts that the examinee is physically or mentally fit to be tested. In these instances, the examination shall be discontinued or postponed until appropriate medical, psychological, or technical authorities have declared the individual fit for testing.

B. RECORDS ADMINISTRATION

1. Storage and Retention

a. Polygraph examination technical reports may be filed with other materials relating to the investigation in which the examination was authorized and shall be:

(1) Retained by the examining agency in accordance with records retention procedures established by the Archivist of the United States.

(2) Removed before granting persons outside the examining agency access to the related materials.

CHAPTER 2
CONDUCT OF POLYGRAPH EXAMINATIONS

A. PROCEDURES

1. General. Polygraph examinations may be conducted only by polygraph examiners certified in accordance with and under circumstances and procedures detailed in this Regulation or by intern examiners under the close supervision of a DoD-certified examiner.

2. Pretest. Before administering a polygraph examination, the polygraph examiner shall:

a. Obtain assurance from the person to be examined of his or her voluntary consent to the examination. In criminal, employment screening, personnel security, and counterintelligence investigations, the consent must be in writing and shall be included and maintained in the polygraph examination technical report.

b. Ensure that the person to be examined has not been subjected to prolonged interrogation immediately before the polygraph examination.

c. Interview the person to be examined. During this interview, as a minimum, the examinee shall be informed of the following:

(1) The characteristics and nature of the polygraph instrument and examination, including an explanation of the physical operation of the instrument, the procedures to be followed during the examination, and all questions to be asked during the examination.

(2) If the polygraph examination area contains a two-way mirror, camera, or other device through which the examinee can be observed and if other devices, such as those used in conversation monitoring or recording, will be used simultaneously with the polygraph.

(3) That he or she is privileged against self-incrimination under the Fifth Amendment to the Constitution or, if the person to be examined is a member of the U.S. Armed Forces, under Article 31.b., Uniform Code of Military Justice (reference (a)) and the Manual for Courts-Martial, (reference (f)). The requirement to advise of privilege against self-incrimination does not apply to examinations conducted under the provisions of subparagraphs B.2.b(1) and (2) and section B.4. of Chapter 1 of this Regulation.

(4) That he or she has the right to obtain and consult with legal counsel and that legal counsel may be available for consultation during the polygraph examination. The examinee also shall be advised that he or she may terminate the examination at his or her own volition, or upon advice of counsel, during any phase of the examination.

6. Use of the polygraph in counterintelligence investigations:

Type of Case	Competitive Civilian Service	Excepted Civilian Service	Military	Contractors	Foreign Civilian	Foreign Military	Other (Specify)	Total		
Unauthorized Disclosure										
Espionage										
Sabotage										
Treason										
Subversion										
Sedition										
Terrorism										
Other (Specify)										
Total										
Pretest Admission or Confession	Deception Indicated (DI)		No Deception Indicated (NDI)		Post-test Admission or Confession		Not Completed	Information Developed Requiring Additional Investigation		
	DI Confirmed	DI Unconfirmed	NDI Confirmed	NDI Unconfirmed						

7. Use of the polygraph for the purpose of exculpation:

Type of Case	Competitive Civilian Service	Excepted Civilian Service	Military	Contractors	Foreign Civilian	Foreign Military	Other (Specify)	Total
Crimes Against Persons								
Crimes Against Property								
Crimes Involving Fraud								
Crimes Involving Sex								
Crimes Involving Drugs								
Unauthorized Disclosure								
Espionage								
Sabotage								
Treason								
Subversion								

7. (Continued)

Type of Case	Competitive Civilian Service	Excepted Civilian Service	Military	Contractors	Foreign Civilian	Foreign Military	Other (Specify)	Total
Sedition								
Terrorism								
Personnel Security (Specify)								
Other (Specify)								
Total								
Pretest Admission or Confession	Deception Indicated (DI)		No Deception Indicated (NDI)		Post-test Admission or Confession	Inconclusive	Not Completed	Information Developed Requiring Additional Investigation
	DI Confirmed	DI Unconfirmed	NDI Confirmed	NDI Unconfirmed				

8. Use of the polygraph in intelligence or counterintelligence operations:

Type of Case	Competitive Civilian Service	Excepted Civilian Service	Military	Contractors	Foreign Civilian	Foreign Military	Other (Specify)	Total				
Intelligence Operation												
Counter-intelligence Operation												
Total												
Pretest Admission or Confession	Deception Indicated (DI)		No Deception Indicated (NDI)		Post-test Admission or Confession		Inconclusive	Not Completed	Information Developed Requiring Additional Investigation			
	DI Confirmed	DI Unconfirmed	NDI Confirmed	NDI Unconfirmed								

9. National Security Agency reporting format:

<u>Screening Polygraph Examination</u>	<u>Cases Conducted</u>	<u>Substantive Information Provided</u>	<u>No Substantive Information Provided</u>
Applicants for Excepted Service Employment			
General Service Administration Employees			
Employees of Contractors and Consultants			
Aliens			
Federal Protective Service Police Applicants			
Special Projects			
Other: (Specify)			
Subtotal			
<u>Sensitive Access Examinations</u>			
Excepted Service Position Occupants			
Military Assignees			
Employees of Contractors and Consultants			
Special Projects			
Other: (Specify)			
Subtotal			
<u>Investigative Examinations</u>			
Personnel Security			
Counterintelligence			
Subtotal			
Totals			

9. (Continued)

Status of Polygraph examiners:

a. Number of certified examiners at the beginning of the reporting period.

b. Number of certificates suspended (Failure to meet standards and criteria).

c. New certifications

d. Certifications renewed

e. New students (Trainees)

f. Number of students completing training.

g. Number of examiners completing refresher training

h. Number of certified examiners at the end of the reporting period

Substantive
Information
Provided

APPENDIX B
COUNTERINTELLIGENCE SCOPE

When the scope of a polygraph examination authorized under this Regulation is limited to counterintelligence areas, questions posed in the course of such examinations shall be limited to those necessary to determine:

WHETHER THE EXAMINEE HAS:

1. Ever engaged in espionage or sabotage against the United States.
2. Knowledge of anyone who is engaged in espionage or sabotage against the United States.
3. Ever been approached to give or sell any classified materials to unauthorized persons.
4. Ever given or sold any classified materials to unauthorized persons.
5. Knowledge of anyone who has given or sold classified materials to unauthorized persons.
6. Any unauthorized contact with representatives of a foreign government.

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