(9) Has been convicted of a crime, or has a background, where the facts, circumstances, or conduct are of a nature indicating poor judgment, unreliabilty, or untrustworthiness.

(10) Is a user of alcohol habitually and to excess, or has been such without adequate evidence of rehabilitation.

(11) Has been, or is, a user of a drug or other substance listed in the schedules of Controlled Substances established pursuant to the Controlled Substances Act of 1970 (such as amphetamines, barbiturates, narcotics, etc.), except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, without adequate evidence of rehabilitation.

(12) Refused, without satisfactory explanation, to answer questions before a congressional committee, Federal or state court, or Federal administrative body including the NRC regarding charges relevant to the individual's eligibility for access authorization and/or employment clearance.

(13) Engaged in any other conduct or is subject to any other circumstances which tend to show that the individual is not reliable or trustworthy, or which furnishes reason to believe that the individual may be subject to coercion, influence, or pressures which may cause the individual to act contrary to the national interest.

§ 10.12 Interview and other investigation.

(a) The Director, Division of Facilities and Security, Office of Administration, may authorize the granting of access authorization and/or employment clearance on the basis of the information in the possession of the NRC or may authorize an interview with the individual, if the individual consents to be interviewed, or other investigation as the Director deems appropriate. On the basis of this interview and/or an investigation, the Director may authorize the granting of access authorization and/or employment clearance.

(b) The individual may elect on constitutional or other grounds not to participate in an interview or other investigation; however, such refusal or failure to furnish or authorize the furnishing of relevant and material information is deemed to be derogatory information pursuant to § 10.11(a) (5) and (12).

(c) If the Director, Division of Facilities and Security, cannot make a favorable finding regarding the eligibility of an individual for access authorization and/or employment clearance, the question of the individual's eligibility must be resolved in accordance with the procedures set forth in § 10.20 *et seq*.

[47 FR 38676, Sept. 2, 1982, as amended at 52 FR 31609, Aug. 21, 1987; 54 FR 53316, Dec. 28, 1989; 64 FR 15642, Apr. 1, 1999]

Subpart C—Procedures

§ 10.20 Purpose of the procedures.

These procedures establish methods for the conduct of hearings and administrative review of questions concerning an individual's eligibility for an access authorization and/or an employment clearance pursuant to the Atomic Energy Act of 1954, as amended, and Executive Orders 10450, 10865, and 12968 when a resolution favorable to the individual cannot be made on the basis of the interview or other investigation.

[64 FR 15642, Apr. 1, 1999]

§ 10.21 Suspension of access authorization and/or employment clearance.

In those cases where information is received which raises a question concerning the continued eligibility of an individual for an access authorization and/or an employment clearance, the Director, Division of Facilities and Security, through the Director, Office of Administration, shall forward to the Deputy Executive Director for Management Services or other Deputy Executive Director, his or her recommendation as to whether the individual's access authorization and/or employment clearance should be suspended pending the final determination resulting from the operation of the procedures provided in this part. In making this recommendation the Director, Division of Facilities and Security, shall consider factors such as the seriousness of the derogatory information developed, the degree of access of the individual to classified information, and the individual's opportunity by reason of his or

her position to commit acts adversely affecting the national security. An individual's access authorization and/or employment clearance may not be suspended except by the direction of the Executive Director for Operations, Deputy Executive Director for Management Services or other Deputy Executive Director.

[64 FR 15642, Apr. 1, 1999]

§ 10.22 Notice to individual.

A notification letter, prepared by the Division of Facilities and Security, approved by the Office of the General Counsel, and signed by the Director, Office of Administration, must be presented to each individual whose eligibility for an access authorization and/or an employment clearance is in question. Where practicable, the letter will be presented to the individual in person. The letter will be accompanied by a copy of this part and must state:

(a) That reliable information in the possession of the NRC has created a substantial doubt concerning the individual's eligibility for an access authorization and/or an employment clearance;

(b) The information that creates a substantial doubt regarding the individual's eligibility for an access authorization and/or an employment clearance, that must be as comprehensive and detailed as the national security interests and other applicable law permit;

(c) That the individual has the right to be represented by counsel or other representative at their own expense;

(d) That the individual may request within 20 days of the date of the notification letter, any documents, records and reports which form the basis for the question of their eligibility for an access authorization and/or an employment clearance. The individual will be provided within 30 days all such documents, records and reports to the extent they are unclassified and do not reveal a confidential source. The individual may also request the entire investigative file, which will be promptly provided, as permitted by the national security interests and other applicable law;

(e) That unless the individual files with the Director, Office of Administration, a written request for a hearing within 20 days of the individual's receipt of the notification letter or 20 days after receipt of the information provided in response to a request made under paragraph (d) of this section, whichever is later, the Director, Division of Facilities and Security, through the Director, Office of Administration, will submit a recommendation as to the final action to the Deputy Executive Director for Management Services on the basis of the information in the possession of the NRC;

(f) That if the individual files a written request for a hearing with the Director, Office of Administration, the individual shall file with that request a written answer under oath or affirmation that admits or denies specifically each allegation and each supporting fact contained in the notification letter. A general denial is not sufficient to controvert a specific allegation. If the individual is without knowledge, he or she shall so state and that statement will operate as a denial. The answer must also state any additional facts and information that the individual desires to have considered in explanation or mitigation of allegations in the notification letter. Failure to specifically deny or explain or deny knowledge of any allegation or supporting fact will be deemed an admission that the allegation or fact is true.

(g) That if the individual does not want to exercise his or her right to a hearing, but does want to submit an answer to the allegations in the notification letter, the individual may do so by filing with the Director, Office of Administration, within 20 days of receipt of the notification letter or 20 days after receipt of the information provided in response to a request made under paragraph (d) of this section, whichever is later, a written answer in accordance with the requirements of paragraph (f) of this section;

(h) That the procedures in § 10.24 *et seq.* will apply to any hearing and review.

[64 FR 15642, Apr. 1, 1999]