

# Personnel Security in the Atomic Energy Program

William Mitchell

The basic purpose of the U.S. Atomic Energy Commission's personnel security program is to assure that acts of sabotage will not occur and that Restricted Data will not be disclosed to unauthorized sources, either through design, inadvertence, or coercive pressure.

The most effective way of accomplishing this purpose is to exclude persons who would commit sabotage, or disclose Restricted Data, from those areas of the commission's program which are of a classified defense nature and, preferably, to do this in the first instance. This, of course, is the prime objective of our personnel security program. It is an objective whose just accomplishment presents a number of difficult balancing questions for resolution not only by the commission but by other agencies of the Federal Government.

During the first phases of World War II, the Manhattan Engineering District was assigned the task of developing an atomic weapon. In the process of carrying out this assignment, there was assembled, for the first time, a large body of information concerning the science of atomic energy. Much of this information concerned discoveries which were thought to be unknown outside of the scientific group which comprised the heart of the Manhattan Engineering District.

To guard against the disclosure to hostile interests of this information and of other related information of significance to national defense, the Manhattan Engineering District imposed military security regulations to govern its handling and dissemination. Before being afforded access to such information, individuals were investigated under the direction of Military Intelligence and were determined eligible to receive such access by the Manhattan Engineering District. Admittance to Manhattan Engineering District installations was permitted only under exacting identification procedures, and the information itself was assigned a security classification.

With the statutory creation of the U.S. Atomic Energy Commission (AEC) in 1946, the responsibility for the protection of this type of information passed

to a civilian agency of the Federal Government. The basic security concepts established by the Atomic Energy Act of 1946 were essentially patterned after the security procedures of the Manhattan Engineering District, and a special category of information called "Restricted Data," which was comprehensively defined to include virtually all atomic energy data of security significance, was created. Also incorporated were special provisions related to declassification and control of Restricted Data, investigation and determination of eligibility for access, and criminal penalties for wrongful disclosure. With certain significant modifications, these provisions establishing federal control of Restricted Data information and materials have been carried over into the present Atomic Energy Act of 1954.

Under this Act, the Atomic Energy Commission is precluded, except in unusual and limited circumstances, from employing an individual or affording him access to Restricted Data until an investigation has been conducted by the U.S. Civil Service Commission or the Federal Bureau of Investigation to gather data concerning his loyalty, character, and associations, and until the commission determines that permitting such employment or access to Restricted Data will not endanger the common defense and security. My primary purpose in this article (1) is to describe and explain the operations of the program that the commission has established pursuant to this statutory responsibility. The commission's personnel security program lends itself to discussion in three phases. The headings I use are descriptive of these phases.

## Investigation

As is noted in the preceding paragraph, the Atomic Energy Act requires an investigation and report by the Federal Bureau of Investigation or the Civil Service Commission to the commission on the loyalty, character, and associations of individuals before they may be employed by the commission or afforded access to

Restricted Data. There are prescribed exceptions to this general rule. Under certain conditions, the commission is authorized to afford access to Restricted Data to members and employees of the military establishments and their contractors on the basis of military clearance. In addition, the commission may permit Presidential appointees and other high-ranking Government officials to have access to Restricted Data without investigation, provided that it determines such action to be clearly consistent with the national interest. I mention these limited exceptions only in passing to indicate why the requirement of investigation is general rather than absolute.

Under the 1946 act, the scope of the investigation was the same as it is under the present act, involving an inquiry into character, loyalty, and associations. Thus, since 1946, the investigative basis of our personnel security program has been broad enough to permit the commission to establish a security, as distinguished from a strict loyalty, program, and the commission's program, almost from its inception, has been based on a security concept.

The distinction between loyalty and security is based on the theory that a person who is afforded access to classified defense information, although not disloyal to his employer, the Federal Government, may, because of general unreliability of character or through coercive pressure, reveal to unauthorized individuals classified information that has been entrusted to him. If this theory is accepted as a probability (as is the case in the Atomic Energy Commission security program), the individual's character in its broadest aspect becomes a factor of considerable importance in clearance determination. The investigation is designed, therefore, to obtain background information concerning the prospective recipient's conduct, reputation, character, attitudes, convictions, and associations, for all these factors have relevance in determining, in the context of a security program, a man's loyalty and reliability.

## Standards of Evaluation and Their Application

The commission has the exclusive responsibility for determining, on the basis of the investigative report, whether or not permitting the individual to have access to Restricted Data will endanger the common defense and security. This determination is based on an evaluation of the report in the light of certain specific types of so-called "derogatory information" related to conduct, character,

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attitudes, convictions, and associations. These criteria were first defined and published by the commission in 1949.

These standards have been set forth not as decisional principles but as determinants of the categories of information which create serious doubt. If the reported information appears to cast doubt, on the basis of one or more of the items in the criteria, the question raised may be resolved by other information introduced by the applicant or the commission. The commission recognizes that a system which attempted to establish absolute and definitive personnel security criteria and then excluded all persons who came within such criteria would be unrealistic and disastrous. Only the complete conformist would be acceptable, and we would find ourselves achieving security at the price of progress.

This is not to say that personnel security standards should not be developed as an aid to the commission in making sound security determinations. If we did not establish standards and abide by them, every man would apply his own standards, and such subjective methods might be worse than useless.

Since the commission's criteria were first published, in 1949, they have undergone two formal revisions, one in 1950 and a second in 1956. The 1956 revision was formulated by the commission with the advice and assistance of a number of representatives of the scientific community. In January 1955 it was recommended, at a conference of directors of the commission's laboratories, that a committee of scientific, legal, and security personnel be established to make recommendations to the commission on revising the personnel security standards and administrative review procedures. As a result of this recommendation, the commission appointed an ad hoc committee, composed of the directors of the commission's four national laboratories, the director of security, and the general counsel. This committee, it is generally agreed, served a useful purpose in delineating the problems and suggesting workable solutions. Our present criteria and procedures, which became effective in May 1956, reflect the results of this cooperative effort.

The criteria are divided into two categories, according to the degree of significance of the various types of information to the decision that the commission must make concerning the common defense and security. The items of derogatory information that are listed under "Category A" deal with matters of loyalty and character which the commission feels have a direct and positive bearing on the individual's eligibility for Atomic Energy Commission clearance. A presumption of "security risk" is created if there are grounds sufficient to establish

a reasonable belief in the truth of one of these items of derogatory information. But if there exists a basis for a reasonable belief in the truth of a "Category B" item, this alone will not establish the presumption that the individual is a security risk; additional factors—"the extent of the activities, the period in which such activities occurred, the length of time which has since elapsed, and the attitudes and convictions of the individual"—are considered in evaluating the significance of these items.

Within these two categories, three basic types of derogatory information, which relate to loyalty, character, and associations, are defined. The two categories are, in the main, concerned with the same matters of conduct, associations, membership, advocacies, omissions, violations, convictions, addictions, and perversions. The basic distinction is, in most instances, one of degree. For example, "Category A" requires that information indicate that an association is established "knowingly"; that "membership," rather than "affiliation," is involved; that violent revolution is advocated rather than general adherence to an ideology; that willful violation of security, rather than gross carelessness, is involved; that a criminal conviction is recorded rather than evidence of misconduct; that established mental illness, rather than evidence of mental instability, exists.

Let me repeat that the criteria are not intended or used as determinative principles. The finding of "Category A" derogatory information does create a presumption of security risk, but this presumption may be rebutted, and even though it is not satisfactorily rebutted, clearance may be granted in the light of other considerations. The opportunity for, and method of, rebuttal and the factors that are considered in making a final determination are discussed in connection with the administrative review procedures.

The 1956 revision expressly recognized the use of the informal interview as a valuable instrument in the resolution of questions raised by reported information. The role of the informal interview can best be explained in the context of the commission's decentralized operations.

The commission's 12 Operations Offices, which are located throughout the United States, have primary responsibility for most of the operational activities of the Atomic Energy Commission. These operational activities are performed largely by private business organizations or by private or public institutions, acting under contract to the commission. The senior Government official in each of the Operations Offices is the manager of operations, and his role

in the security program is a very significant one. More than 90 percent of the applications for AEC clearance come initially to these offices, and the managers are responsible for the processing of requests for investigation to the U.S. Civil Service Commission or the Federal Bureau of Investigation, for the evaluation of the completed investigative report, and for the granting of clearance if the circumstances warrant it.

When the investigative reports are received at the Operations Office, it is the responsibility of the manager of operations to evaluate them in the light of the established criteria. If the information in the reports reasonably tends to establish the truth of derogatory information, as defined in one or more of the items in the criteria, such information is regarded as "substantially derogatory," and a question is raised about the individual's eligibility for security clearance. As a general rule, such cases must then be forwarded to Washington. But if the information involves association with organizations or individuals which results from, and is limited to, ordinary business or professional activities or chance or casual meetings, the manager "may determine whether such information is substantially derogatory." Thus, even though the reports indicate that an individual has, for example, associated with an organization that is listed by the Attorney General, the manager may, within his discretion, grant security clearance if the association is of the character described in the preceding sentence, provided, of course, that he determines that the common defense and security will not be endangered. This determination is based on a consideration of all the relevant information, both favorable and unfavorable.

If the information is regarded as substantially derogatory, the case must be referred to the director of the Division of Security, in the Headquarters Office of the Atomic Energy Commission. The manager of operations has no authority to deny, revoke, or suspend security clearance. The director of security may follow one of several alternative courses of action. He may authorize the granting of clearance on the basis of the existing record, or he may authorize the conduct of an informal interview with the individual, and, on the basis of this interview and of any other investigation that he deems appropriate, he may grant clearance. The informal interview has proved to be of value in disposing of many questions involving derogatory information which were raised on review of the report alone. When a successful resolution of the difficulty can be accomplished by this method, both the commission and the individual stand to gain by it.

It is important, I think, to point out that the vast majority of cases which are processed by the Operations Offices result in clearance at the local level by the managers of operations. Only a very small percentage of AEC clearance questions go to the director of security for review. It should be emphasized that the denial or revocation of clearance cannot be accomplished without the individual's being afforded the right of administrative review. This rule applies to all applicants for, and holders of, AEC clearance, including employees or applicants for employment with the commission or its contractors.

### Administrative Review Procedures

When the director of security is of the opinion that clearance should not be granted on the basis of the record, as presented to him by a manager of operations, the question concerning the individual's eligibility is resolved in accordance with the commission's administrative review procedures. These procedures establish methods for the conduct of board hearings and administrative review of questions of eligibility, when it is determined that such doubts cannot be favorably resolved through an informal interview or other investigation.

If the question is one of continued eligibility for AEC clearance, the advisability of suspending the clearance pending final determination under the administrative review procedures is considered. The manager of operations in whose office the case originates is required to forward to the general manager his recommendation concerning the question of suspension. In this recommendation, the manager must consider such factors as the seriousness of the derogatory information, the kind of information to which the individual will have access during the period of investigation, and the individual's opportunity, by reason of his position, to commit acts that would adversely affect the national security. Only the general manager, on consideration of these factors, can suspend the individual's clearance. It has seldom been necessary to exercise this authority.

### Notice

Regardless of whether or not a question of suspension is involved, the first procedural step is to notify the individual of the charge. The commission is required to present, in each case, a letter of notification, setting forth, in as much detail and as specifically as considerations of security permit, the information which creates a question regarding the

individual's eligibility for security clearance. This letter is prepared by the director of security and is then reviewed and approved by my office—that of the general counsel. Our regulation requires that it be accurate, that it be clear, and that it be as specific as possible.

The requirements of accuracy and clarity of language do not present unique problems in the context of our security program. But the requirement of specificity does, for our regulation contains the qualification that the charge can be only as specific as considerations of security permit. Apart from the legal question of whether or not the Federal Government must be as specific as the traditional interpretation of the "due process" claims of the Fifth Amendment requires (2), it is the policy of the commission to give notice that is as complete as circumstances allow. We recognize that a difficult balancing question is presented where the security of the nation is concerned. The balance is between individual rights and the necessities of government, and there are, of necessity, some situations in which the preservation of the national security overbalances the right of complete and full due process.

A number of informed individuals who have critically analyzed the Government's security program have also recognized that a limit on traditional due process must, on occasion, be drawn to preserve liberty. The Special Committee on the Federal Loyalty Security Program of the New York Bar Association recommended that the security charges be as full and as detailed as possible "in the light of security considerations." The problem is that, unless the charge discloses the nature of the adverse information, the individual may have difficulty in making an effective presentation of his case. But the committee recognized that certain cases, although few in number, are based on information that is supplied by undercover agents. In these cases, a detailed charge based on this information might reveal the identity of the agent, and the committee expressed the view that in such situations there may be justification for failure to state the charge as fully and as specifically as possible.

In addition to the statement of charges, the letter of notification requests the individual to inform the manager of operations, from whom he received the notice, whether or not he wishes to have a hearing before a Personnel Security Board. He is requested to make answer to the statement of charges and is informed that, if he requests a hearing, the board will be appointed by the manager, and he will be apprised of its membership. The letter also advises him that he will have the right to appear personally before the board, to present evi-

dence in his own behalf through witnesses or by documents, or both, and, subject to certain prescribed limitations (which I will discuss in a later paragraph) to be present during the entire hearing and to be represented by counsel of his own choosing.

### Hearing

The hearing process affords the individual many substantial rights consistent with traditional due process, but there are also significant limitations. As is the case when he is notified of the charge, these limits are based on security considerations.

When the manager of operations is notified that the individual desires a hearing, his first step is to appoint a Personnel Security Board composed of four members, one of whom is a nonvoting member who serves as counsel. Specific rules governing the selection of this board are set forth in our procedures. No person shall be a member of a board who has prejudged the case, who possesses information that would make it embarrassing to make impartial recommendations, or who, on account of bias or prejudice of any kind, would be unable to render fair and impartial recommendations or advice.

Although the procedures provide that counsel to the board may be an employee of the Atomic Energy Commission or an attorney specifically retained from private practice to serve as counsel, it is the commission's usual policy to appoint counsel from private practice. It is counsel's function to advise the voting members of the board concerning the meaning and application of the procedures, to advise the individual whose case is being processed of his rights under the procedures if he is not represented by counsel of his own choosing, and "to examine and cross-examine witnesses and otherwise assist the Board in such a manner as to bring out a full and complete disclosure of all facts both favorable and unfavorable having a bearing on the issues before the Board."

When a board has been selected by the manager within whose jurisdiction the case rests, the individual is notified of its composition and is informed of his right to challenge the members for cause. He may submit his challenges and the reasons therefor to the manager, who determines their validity. If a challenge is sustained, a new member will be appointed and the individual is informed of his right to challenge the newly selected member.

When the question of challenge is resolved, the individual is notified, at least 1 week in advance, of the time and place of the hearing. Both the time and the

place must be convenient for everyone concerned; almost without exception, it is the practice to establish the hearing at a place that is convenient to the individual.

When the voting members, with the advice and assistance of counsel, determine that the presence of a witness is necessary or desirable for a proper resolution of the issues, they request the manager to make arrangements, if possible, for such witnesses to appear, to be confronted by the individual, and to be subjected to examination and cross-examination.

The manager transmits the request of the board to the director of security, who, in turn, contacts the appropriate investigative agency to determine whether the latter has any objection, on the basis of national security, to making available the source of the information in order that the individual concerned may appear and testify before the board. Since the May 1956 revision of the Atomic Energy Act, the commission has inquired about the availability of a number of witnesses whose names appeared in investigative reports. The interested investigative agencies did not feel that it would be contrary to the interests of national security to grant these particular requests, and we have been able to utilize these individuals as witnesses. Nevertheless, a significant limitation does exist and is necessary to the preservation of the Government's intelligence functions. Our procedures depart in an important respect from the traditional methods of due process.

This limitation of traditional due process is expressly recognized in our security regulation when we state: "Because of the confidential nature of the sources of information or for other reasons, confrontation of witnesses by the individual may not always be possible. In such cases, the Board may request the Manager to make arrangements through the Director, Division of Security, for such witnesses to testify privately and be subject to thorough questioning by the Board and its Counsel, and portions of the transcript involving testimony of such witnesses shall not be furnished to the individual."

Thus, we recognize that there may be situations where, even though the source of the information is named in the investigative report, the necessities of the intelligence-gathering function may require that the source shall not be publicly revealed. The more usual situation, in which the source of the information is not made available, occurs when the identity of the individual is veiled because of the undercover nature of an intelligence operation. These sources are usually referred to in the investigative reports as "confidential informants."

Under these circumstances, it may be possible and advisable for the board to hear the testimony of such witnesses privately and to subject them to thorough questioning. Such *ex parte* proceedings are not recognized as valid in the traditional judiciary process. We feel, however, that this departure from usual procedure is justified on the ground that at least the trier of the fact (that is, the board) will have the benefit of examining into the nature and basis of information from a confidential source.

When, through administrative channels, such a witness is made available to appear in open session before the board, prehearing preparation proceeds in much the same manner as in any judicial proceeding. Counsel interviews the prospective witness to determine his willingness to appear and the order of testimony. If, on contact, a prospective witness should show a reluctance to appear, the commission may, and has on several occasions during the past year, exercised its power of subpoena.

Concerning the process of the hearing, there are a number of procedural requirements set forth in our regulation governing the conduct of the board, the witnesses, and the individual whose case is being heard.

The board, including counsel, is to avoid the attitude of a prosecutor and is always to bear in mind the fact that the proceeding is an administrative hearing and not a trial. Argument with either the individual, his witnesses, or his counsel is prohibited.

The board is to admit in evidence any matters, either oral or written, "which in the minds of reasonable men are of probative value in determining the issues," including the testimony of responsible persons concerning the integrity of the individual. The utmost latitude is to be permitted with respect to relevance, materiality, and competency, and every reasonable effort must be made to obtain the best evidence available. Either the individual or his counsel, or both, may examine and cross-examine the witnesses whose testimony is presented to the board in open session. The testimony of all persons is to be given under oath.

#### Recommendations of the Board

At the conclusion of the hearing, the board must carefully evaluate all the material before it, including the reports of investigation, the testimony of all witnesses, and the evidence presented by the individual. In reaching its determination, the board must consider the manner in which the witnesses testified, their demeanor, the probable validity of their testimony, their credibility, and the lack

of evidence on any material point at issue. If the individual is handicapped by the nondisclosure to him of confidential information or by lack of opportunity to cross-examine confidential informants, the board must take this fact into consideration. Finally, the board must consider other information that is available to the commission, such as the individual's record with the atomic energy program and the nature and sensitivity of the job he is performing or may be expected to perform. The possible impact of the loss of the individual's services on the Atomic Energy Commission program is not considered by the board. This important factor is, of course, considered in the decisional process, but only at the highest management level, by those responsible officers of the commission who are best qualified to make such a determination.

The recommendation of the board must be predicated on its findings with respect to the allegations contained in the notification letter. If, after considering all of the previously mentioned factors in the light of the criteria, the board is of the opinion that it will not endanger the common defense and security to grant clearance, it makes a favorable recommendation; otherwise, of course, an adverse recommendation is appropriate. The recommendation of the board is submitted to the manager, accompanied by a statement of the reasons which led to the board's conclusions. This recommendation is advisory. The final decision with respect to security clearance can be made only by the operating head of the Atomic Energy Commission, the general manager.

#### Appeal and Final Determination

When the manager of operations receives the recommendation of the board, he reviews the entire record and makes his recommendation to the general manager. In this recommendation, he must consider the effect which denial of security clearance would have on the atomic energy program.

If the recommendation of the manager of operations is for denial of security clearance, the individual is notified of this fact in writing and is given a copy of the manager's findings. The letter also notifies the individual of his right to request a review of his case by the commission's Personnel Security Review Board and of his right to submit a brief in support of his contentions.

The review board was established as a permanent body in 1949, with the primary function of reviewing and making recommendations to the commission with regard to individual personnel security cases. In the light of its experience, the

review board also advises the commission on the adequacy of the personnel security procedures and standards. Its membership consists of three persons, selected from private life, who are of recognized and outstanding ability in their chosen fields.

If the recommendation of the manager of operations is favorable, the general manager may, on the basis of the entire record, together with all recommendations, including that of the director of security, grant security clearance; or he may decide to transmit the entire record to the review board for its recommendation. In the latter situation, the individual will be notified of the pending review and of those matters concerning which the general manager desires information. Here, also, he may submit a brief in support of his position.

On receipt of a case, the review board makes its deliberations on the entire record and submits its recommendations, in writing, to the general manager. If this board is of the opinion that additional evidence or further proceedings are necessary, it may return the case to the general manager, with a recommendation that it be remanded for further hearing; or the review board may, within its discretion, request that additional testimony be presented before it and evaluate this testimony, together with the rest of the record, in making its recommendation.

The general manager, on receipt of the review board's recommendation, determines either to grant or to deny security clearance. The nature of the decision and the factors to be considered are set forth in the commission's regulations: "The General Manager shall give due recognition to the favorable as well as the unfavorable information concerning the individual and shall take into account the value of the individual's services to the atomic energy program and the operational consequences of denial of clear-

ance. In making his determination, the mature viewpoint and responsible judgment of Commission staff members, and of the contractor concerned, are available for consideration by the General Manager."

### Reconsideration

The decision to grant or deny security clearance is a carefully considered one, based on notice, hearing, and review, which, although subject to important limitations, affords considerable opportunity to the individual and to the commission to explore the questions which are presented. This decision is made at the highest management level within the commission, and it is appropriate, I think, that a reconsideration of this decision be subject to definite limitations.

Once the general manager has granted clearance, an individual's eligibility is to be reconsidered only when, subsequent to the time of the hearing, there is new, substantial derogatory information or a significant increase in the scope or sensitivity of the information to which the individual has, or will have, access. Where the decision was to deny clearance, the individual's eligibility for clearance may be reconsidered when there is (i) a bona fide offer of employment that involves access to Restricted Data, and (ii) material and relevant new evidence which the individual and his representative failed, through no fault of their own, to present previously, or convincing evidence of reformation or rehabilitation. A request for reconsideration must be accompanied by an affidavit that sets forth such information in detail. These are rather severe limitations, but they are necessary to avoid harassment of those who have been cleared and to require of those to whom clearance has been denied presentation of a sound basis for reconsideration.

### Summary

I have attempted to confine this article to an analytic description of the operations of the commission's personnel security program. This program has been analyzed critically and in detail by a number of individuals. I have not attempted to take issue with criticism, for this is not the purpose of a descriptive analysis. I have mentioned those limitations inherent in our program which do not entirely coincide with the traditional methods of due process. These limitations are significant, but, if they are properly exercised in the context of the commission's program, I feel that they are justified.

### Notes

1. I acknowledge, with thanks, the able assistance of William D. English of the Office of General Counsel in the preparation of this article.
2. The Supreme Court has not decided the precise question of whether or not a security charge that involves a Government employee must meet the requirements of full due process under the Fifth Amendment to the Constitution. In the case of *Bailey v. Richardson*, 182 Fed. 2d 46, the Court of Appeals for the District of Columbia stated that if the Fifth Amendment were applicable in such situations (Government employment did not, the court decided, involve a right protected by this amendment), the Executive Branch would not, in all probability, have to afford complete and specific notice or full confrontation to satisfy the due process requirements. The basis of this statement was the court's recognition of the question of balance that is involved where the security of the nation is concerned. This balance between individual rights and the necessities of government was also recognized in the recent case of *Parker v. Lester*, 227 Fed. 2d 708, which dealt with the adequacy of the Port Security Program when viewed in the light of the Fifth Amendment. In this case the Court of Appeals for the Ninth Circuit found that seamen who were given only a general notice of the charge against them and who were not afforded the right of confrontation were deprived of the liberty to follow their chosen employment by direct action of the Government, without due process of law. In so concluding, however, the court indicated that some kind of qualified due process might be sufficient in view of the existing need for the Port Security Program. Although the *Parker* case is distinguishable, on the facts, from a Government employment situation, the principles stated must be borne in mind in examining the federal employee security program.

## R. Zon, Pioneer in Forest Research

Raphael Zon, a blazer of trails in forest research and an outstanding conservationist, died on 27 October 1956, less than 2 months before his 82nd birthday. Thus was closed a long, colorful, and productive career.

Zon was born 1 December 1874 at Simbirsk, Russia. His early education was received at the classical gymnasium there and at the Imperial University at Kazan (1892-96). At the latter institution he specialized in zoology, particu-

larly in comparative embryology. Because of his liberal leanings, Zon had to flee Russia in 1896. He spent the next two academic years at the University in Liège, Belgium, and the University of London, studying natural sciences, political economy, and philosophy.

In 1898 Zon made his way to the United States and, not long thereafter, enrolled at Cornell University in the first American school for training professional foresters. He obtained his degree in forestry in 1901. In July of that year he joined Gifford Pinchot as a forester for the Bureau of Forestry (later U.S. Forest Service) in the U.S. Department of Agriculture. For the next 43