[redacted]

12.3

U.S. NUCLEAR REGULATORY COMMISSION

DIRECTIVE TRANSMITTAL

TN: DT–99–28

To: NRC Management Directives Custodians

Subject: Transmittal of Directive 12.3, "NRC Personnel Security Program."

Purpose: Directive and Handbook 12.3 have been revised to include the DEDM position and responsibilities, changes to position sensitivity criteria, and procedures for NRC contractor unescorted access to NRC facilities. Several revisions in the handbook were made to comply with Executive Order 12968, "Access to Classified Information," including eligibility for access to classified information, conditions for reinstatement of access, circumstances affecting eligibility for access to classified information, determination of eligibility, access for dual citizens and aliens, and the investigation and reinvestigation programs.

Office and Division of Origin: Office of Administration

Contact: Leigh Chase, 301–415–6541

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Volume: 12 Security

Directive: 12.3, "NRC Personnel Security Program."

Availability: Rules and Directives Branch
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NRC Personnel Security Program

Directive 12.3

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NRC Personnel Security Program Directive 12.3

Policy
(12.3–01)

It is the policy of the U.S. Nuclear Regulatory Commission to establish a personnel security program to ensure that determinations of an individual's eligibility for an NRC access authorization, employment clearance, unescorted access to nuclear power facilities; for access to unclassified Safeguards Information or to sensitive NRC information technology systems and data or unescorted access to NRC facilities; for the conduct of visits involving classified information; or for providing information to foreign regulatory assignees are accomplished in accordance with pertinent laws, Executive orders, management directives, and applicable directives of other Federal agencies.

Objectives
(12.3–02)

To provide effective controls to further protect classified and sensitive unclassified information.

Organizational Responsibilities and Delegations of Authority
(12.3–03)

Commission
(031)

- Grants access authorization and/or employment clearance to individuals for whom no report has been made to the NRC on their character, associations, and loyalty, provided that the Commission determines that this action is clearly consistent with the national interest. (a)

Commission
(031) (continued)

- Performs the Commission functions specified in 10 CFR Part 10 relative to personnel clearance cases subject to personnel security hearing procedures. (b)

General Counsel, Office of the General Counsel (OGC)
(032)

- Performs the functions assigned to the General Counsel under 10 CFR Part 10, including concurrence in the issuance of subpoenas. (a)
- Performs legal review of matters related to personnel security. (b)

Director, Office of International Programs (OIP)
(033)

Approves or disapproves the assignment of foreign regulatory employees to NRC after coordination with Division of Facilities and Security (DFS) and the office to which the person is temporarily assigned.

Deputy Executive Director for Management Services (DEDM)
(034)

- Performs the functions assigned to the DEDM under 10 CFR Part 10, including appointment of the NRC Hearing Counsel and the granting, suspension, denial, or revocation of access authorization in accordance with the requirements of 10 CFR Part 10. (a)
- Grants exemptions to 10 CFR Parts 25, "Access Authorization for Licensee Personnel," and 95, "Security Facility Approval and Safeguarding of National Security Information and Restricted Data," when a finding can be made that the requested exemption does not endanger the common defense and security, as authorized by SECY-80-387. (b)
- Performs the functions of the designated NRC Senior Agency Official, pursuant to the provisions of Section 6.1(a) of Executive Order (EO) 12968, "Access to Classified Information," to direct and administer the NRC's Personnel Security Program, including

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Deputy Executive Director for Management Services (DEDM)
(034) (continued)

active oversight and implementation of continuing security education and awareness programs, to ensure that the order is effectively carried out. (c)

- Approves NRC's employment of individuals before the security investigation is completed, as required by Section 145b of the Atomic Energy Act of 1954, as amended (AEA), provided that the individual is not granted access to classified information, the requesting organization clearly demonstrates a need for the individual, and an affirmative recommendation is made by the Director, DFS, ADM. (d)

- Grants, under the authority in Section 145b, AEA, access to Restricted Data and other NRC classified information to designated members of Congress (no investigation to be conducted). This access, as authorized by SECY-81-291, applies to members of Congress serving on NRC Congressional Oversight Subcommittees. (e)

- Establishes, under the authority of Section 145g, AEA, standards and specifications in writing as to the scope and extent of investigations, the reports of which NRC will use to make the determination that permitting a person access to Restricted Data will not endanger the common defense and security. (f)

Director, Office of Administration (ADM)
(035)

- Performs the functions assigned to ADM under 10 CFR Part 10. (a)

- Oversees the NRC personnel security program as carried out by the DFS, ADM. (b)

Director, Office of Investigations (OI)
(036)

Provides DFS any information developed or received in accordance with the OI/SEC agreement of February 1983.

Director, Office of Human Resources (HR)
(037)

Concurs in request for preappointment investigation waiver.

Office Directors and Regional Administrators
(038)

- Ensure that NRC employees, NRC contractor personnel, and any other personnel under their jurisdiction are cognizant of and comply with the provisions of this directive and handbook, as appropriate. (a)
- Ensure that NRC licensee and licensee-related personnel under their jurisdiction are cognizant of and comply with the personnel security provisions of 10 CFR Parts 10, 25, and 95. (b)
- Advise DFS of any information that indicates noncompliance with this directive and handbook or that is otherwise pertinent to the proper protection of classified interests, sensitive unclassified information, or NRC property. (c)
- Notify DFS of individuals under their jurisdiction who possess an access authorization or similar access approval, or for whom an access authorization or similar access approval has been requested, who are hospitalized or otherwise treated for an illness or mental condition that may cause defects in their judgment or reliability, and of any subsequent developments as required by this handbook. (d)
- Notify DFS of persons under their jurisdiction possessing access authorizations or similar access approval who are disabled for a prolonged period, who die, who for any other reason no longer require access authorization or similar access approval, require change of access authorization or similar access approval, or who are subject to any circumstance that may affect their continued eligibility for access authorization or access approval. (e)
- Report immediately to the Inspector General (IG) and DFS all alleged or suspected incidents of employee or contractor fraud, misconduct, unauthorized disclosure, or misuse of automated information systems. (f)

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Director, Division of Facilities and Security (DFS), ADM
(039)

- Plans, develops, establishes, and administers policies, standards, and procedures for the overall NRC personnel security program, including granting access authorization or similar access approval involving substantially derogatory information falling within 10 CFR 10.11 when the case has been favorably resolved through an interview or other investigation. (a)
- Administers the visitor control program which covers visits requiring access to classified information, the assignment of foreign regulatory employees to the NRC in coordination with the Office of International Programs, and the acceptance and issuance of security assurances to and from foreign governments. (b)
- Serves as the NRC central point of contact with the Federal Bureau of Investigation, the Office of Personnel Management, and other investigative agencies on NRC personnel security matters. (c)
- Recommends to the DEDM a preappointment investigation waiver. (d)

Applicability
(12.3–04)

This directive and handbook apply to all NRC employees, consultants, experts, panel members, applicants for employment, and other persons designated by the DEDM as well as to all NRC contractors and subcontractors to whom they apply as a condition of a contract or a purchase order.

Handbook
(12.3–05)

Handbook 12.3 provides guidelines for personnel security, classified visits, and foreign assignees.

Exceptions or Deviations
(12.3–06)

Exceptions or deviations to this directive and handbook may be granted by DFS, except for those areas in which the responsibility or authority is vested solely with the Commission, the DEDM, or ADM and is nondelegable; or for matters specifically required by law, Executive order, or directive to be referred to other management officials.

References
(12.3–07)

Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.).

Code of Federal Regulations—

10 CFR Part 10, "Criteria and Procedures for Determining Eligibility for Access to Restricted Data or National Security Information or an Employment Clearance."

10 CFR Part 25, "Access Authorization for Licensee Personnel."

10 CFR Part 95, "Security Facility Approval and Safeguarding of National Security Information and Restricted Data."

32 CFR 147, "Adjudicative Guidelines for Determining Eligibility for Access to Classified Information."

"Crimes and Criminal Procedures" (Title 18, United States Code).

Energy Reorganization Act of 1974, as amended (42 U.S.C. 5801 et seq.).

Executive Order 10450, "Security Requirements for Government Employment," April 27, 1953, as amended.

— 10865, "Safeguarding Classified Information Within Industry," February 20, 1960, as amended.

— 12958, "Classified National Security Information," April 17, 1995.

— 12968, "Access to Classified Information," August 2, 1995.

Freedom of Information Act of 1966 (5 U.S.C. 522).

"National Industrial Security Program Operating Manual (NISPOM)," Department of Defense.

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References

(12.3–07) (continued)

NRC Management Directive—

3.1, "Freedom of Information Act."

3.2, "Privacy Act."

3.4, "Release of Information to the Public."

10.1, "Appointments, General Employment Issues, Details, and Position Changes."

11.1, "NRC Acquisition of Supplies and Services."

12.2, "NRC Classified Information Security Program."

NRC SECY-80-387, "Delegation of Authority to Grant Exemptions to 10 CFR Parts 25 and 95," August 15, 1980.

— 81-291, "Approval Under Section 145b of the Atomic Energy Act of 1954, as Amended, to Grant Access to Restricted Data and Other NRC Classified Information to Designated Members of Congress (No Investigation to be Conducted)," May 5, 1981.

NRC System of Records NRC-39, "Personnel Security Files and Associated Records—NRC."

Privacy Act of 1974, as amended (5 U.S.C. 552a).

"Suspension and Removal" (5 U.S.C. 7532).

NRC Personnel Security Program

Handbook 12.3

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Part I

Access Authorization and Employment Clearance

Introduction (A)

Procedures are given for meeting the requirements of the NRC personnel security program, which investigates and determines the eligibility of individuals for NRC access authorization and/or employment clearance, unescorted access to nuclear power facilities, access to unclassified Safeguards Information (SGI), access to sensitive NRC information technology systems and data, or unescorted access to NRC buildings. (1)

Personnel security and associated records maintained under the provisions of the NRC personnel security program are protected from public disclosure under the provisions of the Privacy Act of 1974, as amended, and are subject to the routine uses specified for NRC System of Records NRC-39, "Personnel Security Files and Associated Records—NRC." (2)

Position Sensitivity Criteria (B)

These criteria determine whether a person in a particular NRC position requires a "Q" security clearance on the basis of a single-scope background investigation (SSBI) by the Federal Bureau of Investigation (FBI), or a "Q" or High Public Trust "L" on the basis of an SSBI by the Office of Personnel Management (OPM), or an "L" security clearance, as a minimum, on the basis of an access national agency check with inquiries (ANACI).

"Q" Positions of a High Degree of Importance or Sensitivity (1)

People in positions of a high degree of importance or sensitivity require an NRC "Q" access authorization based on an FBI SSBI pursuant to

Position Sensitivity Criteria (B) (continued)

"Q" Positions of a High Degree of Importance or Sensitivity (1) (continued)

Section 145f of the Atomic Energy Act of 1954 (AEA), as amended. These positions include the following:

- The Chairman (a)
- An NRC Commissioner (b)
- Any other individual so designated by the Commission (Under this criterion, the Commission-designated Commissioners' assistants who have access to sensitive compartmented information.) (c)

Positions of a Critical and Sensitive Nature Require a "Q" Clearance (2)

People in critical and sensitive positions must have an NRC "Q" access authorization based on an OPM SSBI. Functions considered critical and sensitive have one or more of the following characteristics:

- Access to Secret or Top Secret Restricted Data or Top Secret National Security Information (a)
- Access to Confidential Restricted Data involving broad naval nuclear propulsion program policy or direction (e.g., preliminary safety analysis reports, final safety analysis reports, and amendments thereto) (b)

Positions of High Public Trust Require an "L" Clearance (3)

People in positions of high public trust require an "L" access authorization based on an OPM SSBI. The types of functions considered to be of high public trust include one or more of the following characteristics:

- Final approval of plans, policies, or programs that directly affect the overall operations and direction of the NRC (a)
- Responsibility for the planning, direction, and implementation of a computer security program; major responsibility for the direction, planning, and design of a computer system, including the hardware and software; or the capability to access a computer system during its operation or maintenance in such a way that could cause, or that has a relatively high risk of causing, grave damage; or the capability to realize a significant personal gain from computer access (b)

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Position Sensitivity Criteria (B) (continued)

Positions of High Public Trust Require an "L" Clearance (3) (continued)

- Resident inspectors (c)
- Criminal investigators (d)
- Such other duties requiring high public trust as determined on an as-needed basis by the Deputy Executive Director for Management Services (DEDM) (e)

"L" Positions of a Noncritical and Sensitive Nature (4)

People in any NRC position not covered by Section (B)(1), (2), or (3) of this part require an NRC "L" access authorization based on an ANACI.

Access Authorization Requests (C)

Employees (1)

Access authorizations ("Q" or "L") for NRC employees, applicants for NRC employment (i.e., anyone who has received an authorized conditional offer of employment), and NRC experts, panel members, and consultants must be requested from the Division of Facilities and Security (DFS), Office of Administration, on NRC Form 236, "Personnel Security Clearance Request and Notification," by the employing division director or his or her designee. Requests for access authorization are submitted through the Office of Human Resources (HR) or the Regional Personnel Office (RPO), as appropriate. The Office of the Inspector General (OIG) requests are forwarded directly to DFS. Instructions are printed on the reverse side of the form. (a)

The NRC official (HR or regional designee) responsible for submitting NRC Form 236 to DFS with a completed security forms packet shall ensure that the information shown on the applicant's employment form is consistent with the information reflected in Part 1 of the Questionnaire for National Security Positions (QSP, Standard Form [SF] 86). If the information is not consistent, an explanation and assessment should be furnished to DFS regarding the inconsistency. (b)

Access Authorization Requests (C) (continued)

Contractors (2)

Access authorizations for NRC contractors, subcontractors, or other individuals who are not NRC employees (e.g., other Government agency personnel) may be requested on NRC Form 237, "Request for Access Authorization." The requester must forward this form to DFS or, if otherwise indicated, to the approving official of the NRC office sponsoring the activity that requires NRC access authorization. Instructions are printed on the reverse side of the form. (a)

At those contractor facilities at which NRC is not the cognizant security authority (CSA), access authorizations will be requested following the procedures of the CSA. (b)

Security Forms Packet (3)

Unless otherwise indicated, each request for access authorization must be accompanied by a properly completed security forms packet consisting of—(a)

- SF 86, QSP (Part 2 of the QSP is the privacy portion and is to be placed in the sealed envelope, NRC Form E-1, provided to the respondent. The NRC will maintain the privacy of the information provided on this form, Parts 1 and 2.) (i)
- Two applicant fingerprint cards (SF 87 for Federal employee applicants or FD 258 for contractors) (ii)
- NRC Form 176, "Security Acknowledgment" (iii)
- Two copies of Optional Form (OF) 612, "Optional Application for Federal Employment"; SF 171, "Application for Federal Employment" (6/88 or subsequent version); or equivalent for NRC applicants (iv)
- Related forms when so specified in the accompanying instructions (i.e., NRC Form 254) (To prevent errors and omissions that may delay consideration of a request, detailed instructions for completing the security forms packet, contained in NRC Form 254, should be followed carefully. Further instructions or guidance may be obtained from DFS.) (v)
- NRC Form 89, "Photo-Identification Badge Request" (for NRC employees, consultants, and contractors) (vi)

Access Authorization Requests (C) (continued)

Security Forms Packet (3) (continued)

DFS will return requests for access authorization to requester if—(b)

- All security forms are not completed and signed as required. (i)
- The printed content of the security or release form is altered. (ii)
- Required information is not provided. (iii)
- The forms are illegible. (iv)
- The "Authorization for Release of Information" on the SF 86 is not signed. (v)

Information entered on the forms in the security forms packet will be used in conjunction with any other relevant information to determine a person's initial or continuing eligibility for an access authorization, an employment clearance, unescorted access to nuclear power facilities, access to SGI, or access to sensitive NRC information technology systems and data. (c)

Cancelled or Withdrawn Request (4)

When a request for an applicant's access authorization or similar access approval is to be withdrawn or cancelled, DFS should be notified immediately by telephone so that the investigation may be promptly discontinued. The notification should contain the full name of the individual, the date of the request, and the type of access authorization or similar access approval request being cancelled. Telephone notifications must be promptly confirmed in writing to DFS.

Unescorted Access by NRC Contractors (D)

Sponsoring Office Responsibilities for Unescorted Access of NRC Contractors (1)

The NRC sponsoring office shall decide whether performance under an NRC contract will involve unescorted access to nuclear power facilities, access to nuclear power reactor unclassified SGI, access to NRC sensitive information technology systems and data, or unescorted access to NRC headquarters or regional office facilities. For these contracts, the sponsoring office shall—

Unescorted Access by NRC Contractors (D) (continued)

Sponsoring Office Responsibilities for Unescorted Access of NRC Contractors (1) (continued)

- Check "yes" for security requirements and insert one of the following statements in the appropriate block on the NRC Form 400, "Request for Procurement Action (RFPA)": (a)
  - "This contract requires unescorted access to nuclear power facilities by contractor employees," or "This contract requires contractor access to nuclear power reactor unclassified SGI, or "This contract requires access to NRC sensitive information technology systems and data." (i)
  - "This contract requires continuous unescorted access (in excess of 30 days or more) to NRC headquarters or regional office facilities, or otherwise requires NRC photo identification or keycard badges." (ii)
- Include an NRC Form 187, "Contract Security and/or Classification Requirements," according to the requirements of Management Directive (MD) 11.1, "NRC Acquisition of Supplies and Services," with the appropriate blocks in Section 5 of the form completed. (b)

Unescorted Access of Nuclear Power Reactor Facilities (2)

Individual contractors requiring access will be approved for unescorted access to protected and vital areas of nuclear power facilities in accordance with the following procedures:

- Temporary Approval (a)

  Temporary approvals may be obtained by two methods:

  - For the **first method**, the contractor shall submit to DFS through the NRC project officer the following information: (i)
    - A completed personnel security forms packet, including an SF 86 QSP (*a*)
    - Copies of the contractor's 5-year employment and education history checks, including verification of the highest degree obtained (*b*)
    - A reference from at least one additional person not provided by the individual (*c*)

Unescorted Access by NRC Contractors (D) (continued)

Unescorted Access of Nuclear Power Reactor Facilities (2) (continued)

- Results of the psychological evaluation (*d*)
- A signed copy of NRC Form 570, "Access Authorization Acknowledgement" (The contractor employee's signature indicates that he or she understands his or her responsibility to report to NRC any information bearing on his or her continued eligibility for access authorization as specified in 10 CFR 10.11.) (*e*)
- A certification that the contractor has found all checks acceptable (*f*)
- In limited cases, as determined by the sponsoring office, a copy of the contractor's 1-year employment check, along with items (D)(2)(a)(i)(*a*) and (*c*) through (*f*) of this part (*g*)

– DFS will conduct criminal history and credit checks and hold a security assurance interview with the contractor employee as specified in the above items. On the basis of the result of these checks, DFS will determine the contractor employee's eligibility for temporary access and will indicate "objection" or "no objection" to the sponsoring office, pending completion of the required background investigation. (ii)

– For the **second method**, the contractor employee will be fingerprinted by the utility and the individual will be subject to the utility's access authorization program. (iii)

- Final Approval (b)

  Final access approval will be granted after—

  – The required investigation on the individual has been completed and is satisfactory, resulting in NRC's endorsement of the individual's unescorted access at all nuclear facilities for the life of the contract. (i)

  – The contractor has obtained unescorted access authorization (other than temporary access) at the specific facility through that utility's access authorization program. (ii)

  – The individual possesses a valid Government-issued clearance as verified by DFS. (iii)

Unescorted Access by NRC Contractors (D) (continued)

Unescorted Access of Nuclear Power Reactor Facilities (2) (continued)

- Resolving Questions of Eligibility (c)

The investigation described in Section (D)(2)(b)(i) of this part may involve an ANACI or other investigation as DFS deems necessary. Any question regarding the contractor employee's eligibility for unescorted access to protected or vital areas of nuclear power facilities will be resolved in accordance with the provisions specified in Exhibit 1 of this handbook.

Access to Unclassified Safeguards Information (SGI) by NRC Contractors (E)

The NRC sponsoring office shall decide whether performance under an NRC contract will involve access to nuclear power reactor SGI. This access may require a national agency check (NAC) or other investigation as DFS deems necessary. Any question regarding the contractor employee's eligibility for access to nuclear power reactor SGI will be resolved in accordance with the provisions specified in Exhibit 1 of this handbook. Based on the review of the applicant's security forms by DFS and/or the receipt of adverse information by NRC, the individual may be denied access to nuclear power reactor SGI until a final determination of his or her eligibility for access is made under the provisions specified in Exhibit 1 of this handbook. While DFS is processing new contractor employees for access to nuclear power reactor SGI, access may be granted under licensee programs.

Access to NRC Sensitive Information Technology Systems and Data by NRC Contractors (F)

The Executive Director for Operations (EDO) approved the sensitivity criteria to be used in determining whether individual contractor employees shall require information technology (IT) Level I or II approval for access to NRC sensitive information technology systems and data. An IT Level I approval shall require a limited background investigation (LBI) by OPM and an IT Level II approval shall require, as a minimum, an ANACI by OPM. Dual citizens (United States citizens who are also a citizen of another country) and immigrant aliens and foreign nationals may be processed for IT Level I and II if investigative

Access to NRC Sensitive Information Technology Systems and Data by NRC Contractors (F) (continued)

coverage can be obtained for the immediate 10-year retrospective period. Only for these categories will an LBI be required for an IT Level II.

IT Level I (1)

IT Level I involves responsibility for the planning, direction, and implementation of a computer security program; major responsibility for the direction, planning, and design of a computer system, including the hardware and software; or the capability to access a computer system during its operation or maintenance in such a way that could cause or that has a relatively high risk of causing grave damage; or the capability to realize a significant personal gain from computer access. Such positions may involve—

- Responsibility for the development and administration of agency computer security programs, including direction and control of risk analysis and/or threat assessment (a)
- Significant involvement in life-critical or mission-critical systems (b)
- Responsibility for the preparation or approval of data for input into a system that does not necessarily involve personal access to the system but with relatively high risk for causing grave damage or realizing significant personal gain (c)
- Relatively high risk assignments associated with or directly involving the accounting, disbursement, or authorization for disbursement from systems of either—(d)
  - Dollar amounts of $10 million per year or greater (i)
  - Lesser amounts if the activities of the individual are not subject to technical review by higher authority at the IT Level I to ensure the integrity of the system (ii)
- Positions involving major responsibility for the direction, planning, design, testing, maintenance, operation, monitoring, and/or management of systems hardware and software (e)
- Other positions that involve relatively high risk for causing grave damage or realizing significant personal gain (f)

Access to NRC Sensitive Information Technology Systems and Data by NRC Contractors (F) (continued)

IT Level II (2)

All other IT positions. (a)

Individual contractor employees requiring access will be approved for access in accordance with the following procedures. (b)

- Temporary Approval (i)
  - The contractor shall submit a completed personnel security forms packet, including an SF 86 QSP to DFS through the NRC project officer. (*a*)
  - The project officer shall forward the completed security forms packet to DFS together with a written request identifying whether the contractor employee shall be processed for IT Level I or II approval and the specific criterion(ia) that applies. (*b*)
  - DFS will conduct criminal history and credit checks and will hold a security assurance interview with the individual. (*c*)
  - On the basis of the results of these checks, DFS will determine the contractor employee's eligibility for temporary access and will indicate approval or disapproval to the sponsoring office, pending completion of the required background investigation and final approval for IT Level I or II access. (*d*)
- Final Approval (ii)
  - Final access approval will be granted after the required investigation on the contractor employee has been completed and is satisfactory, resulting in the contractor employee's approval for IT Level I or II access. (*a*)
  - DFS will notify the sponsoring office of final approval. (*b*)

Access to NRC Sensitive Information Technology Systems and Data by NRC Contractors (F) (continued)

Resolving Questions of Eligibility (3)

Any question regarding the contractor employee's eligibility for IT Level I or II approval will be resolved in accordance with the due process procedures (Exhibit 1 of this handbook). On the basis of DFS's review of the contractor employee's security forms and/or the receipt of adverse information, the contractor employee may be denied access to NRC sensitive information technology systems and data until a final determination of eligibility for access is made under the provisions of due process.

Continuous Unescorted Access to NRC Headquarters and Regional Office Facilities By NRC Contractor Employees and Others Not Otherwise Screened Under Sections C Through F Above (G)

The NRC sponsoring office shall decide whether performance under an NRC contract, interagency agreement, memorandum of understanding, or similar agreement, will involve continuous unescorted access (in excess of 30 or more days) or otherwise requires NRC photo identification or keycard badge to NRC headquarters buildings and regional office facilities by NRC contractor employees, or by other individuals not covered by NRC contracts (e.g., vendors, health unit personnel). This access will require limited background checks (i.e., criminal history checks, conducted by the General Services Administration [GSA]). For these contractual or other similar arrangements or agreements, the sponsoring office shall include an NRC Form 187 with Section 5F checked. (1)

Individual contractor employees or other individuals requiring access will be approved for continuous unescorted access in accordance with the following procedures: (2)

Continuous Unescorted Access to NRC Headquarters and Regional Office Facilities By NRC Contractor Employees and Others Not Otherwise Screened Under Sections C Through F Above (G) (continued)

- Temporary Approval (a)

  The contractor shall submit the following information to DFS through the NRC headquarters or regional project officer: a completed GSA Form 176, "Statement of Personal History," and two FD-258s, "Fingerprint Chart," and NRC Form 89, "Photo Badge Request." (i)

  On the basis of the DFS review of the applicant's security forms and/or NRC's receipt of adverse information, DFS will determine the individual's eligibility for temporary access and will indicate approval or disapproval to the sponsoring office, pending completion of the required criminal history checks and final approval by GSA. (ii)

- Final Approval (b)

  Final continuous unescorted access approval will be granted under one of the following conditions:

  - After completion and approval of the required GSA investigation, indicated in Section (G)(2)(a) of this part, resulting in GSA's endorsement of the individual's unescorted access to NRC facilities (i)
  - As determined by DFS, the individual possesses a valid NRC/Government-issued clearance or has previously received final security approval under one of DFS' various screening programs (ii)

- Recertification (c)

  This approval is valid for 3 years from the date of the notification letter to the requester, provided that the individual remains employed under the contract, agreement, or similar arrangement. In accordance with GSA requirements, each individual who is approved for unescorted building access must be recertified every 3 years from the date of the initial approval and each subsequent recertification. (i)

Continuous Unescorted Access to NRC Headquarters and Regional Office Facilities By NRC Contractor Employees and Others Not Otherwise Screened Under Sections C Through F Above (G) (continued)

Ninety days before the expiration of the initial approval, and each subsequent recertification, the contractor will submit a GSA Form 176, "Statement of Personal History," and two FD-258s to DFS, through the NRC headquarters or regional project officer, for each individual who requires recertification. With timely application and in the absence of any adverse information, the individual will maintain unescorted access pending recertification. If the contractor fails to submit a timely application, unescorted access approval will expire at the end of the 3-year period and the individual will be denied admittance to NRC space. (ii)

- Resolving Questions of Eligibility (d)

  Any questions regarding the individual's eligibility for continuous unescorted access to NRC facilities on the basis of the GSA investigation will be resolved directly between the individual and GSA.

A contractor employee or other individual requiring unescorted access shall not be provided unescorted access to NRC facilities until he or she is approved for temporary or final access in accordance with these procedures. (3)

Investigations (H)

The hiring or employing office, in concert with HR, shall determine the position sensitivity for NRC employees, applicants for employment, consultants, experts, and panel members, using the criteria specified in Section (B) of this part, before requesting access authorization for these individuals. The access authorization or similar access approval level or type of investigation required for NRC contractor and subcontractor employees will usually be determined on the basis of their classified access requirements, their need for unescorted access to nuclear power facilities, their access to SGI, access to sensitive NRC information technology systems and data, or unescorted access to NRC headquarters or regional office facilities. (1)

Investigations (H) (continued)

In lieu of an OPM investigation and report, NRC may accept an investigation and report not more than 5 years old for "Q" access authorization (or "L" access authorization for a position of high public trust) and not more than 10 years old for an "L" access authorization on the character, associations, and loyalty of an individual from another Government agency that conducts personnel security investigations, provided that an access authorization has been granted to the individual by another Government agency on the basis of such an investigation and report. (2)

Certification of "Q" and "L" Access Authorization (I)

An NRC "Q" access authorization and an NRC "L" access authorization for positions of high public trust may be granted on the basis of a current Top Secret or "Q" access authorization certified by another Government agency if the supporting SSBI investigation is not more that 5 years old. An NRC "L" access authorization for other than high public trust positions may be granted on the basis of a current Secret or "L" access authorization certified by another Government agency if the supporting ANACI or national agency check with law and credit (NACLC), as appropriate, is not more than 10 years old. An up-to-date security forms packet may be required before certification can be granted.

Reopening of Cancelled Cases (J)

For security clearance processing requests that are cancelled before the investigation is completed, and more than 90 days have elapsed since the security forms originally submitted were signed, the individual will be required to update a copy of the forms, if necessary, and resign and date the forms so they may be submitted for investigation.

Preappointment Investigation Waiver With No Access to Classified Information (K)

The Deputy Executive Director for Management Services (DEDM) is authorized to approve the employment of an individual by the NRC before completion of the security investigation and the reports required by Section 145b of the AEA. This authority may not be

Preappointment Investigation Waiver With No Access to Classified Information (K) (continued)

redelegated and is limited to situations in which the individual will not have access to classified information. Also, there must be an affirmative recommendation from the Director, DFS, and a clear need shown by the requesting organization to use the services of that individual during the required investigation. (1)

A request for a preappointment investigation waiver (Exhibit 2) must be forwarded to HR for evaluation and processing, with the exception of waivers involving OIG. If concurred in by HR and DFS, HR will send the request to the DEDM for approval or disapproval. OIG will forward a request for a preappointment investigation waiver to DFS. If concurred in by DFS, OIG may send the request directly to the DEDM for approval or disapproval. All waivers must—(2)

- Be requested by the office director or the deputy office director for headquarters personnel or by the regional administrator or deputy regional administrator for regional personnel (a)
- Be justified by indicating that a serious delay or interference to an essential NRC operation or program will occur unless the individual is employed as soon as possible (b)
- Indicate that administrative controls will be established to ensure the individual will not have access to classified information until the appropriate access authorization is granted (c)
- Be concurred in by the Director or Deputy Director, HR, the Director or Deputy Director, DFS, and if regional personnel are involved, the Regional Personnel Officer (d)

HR and DFS shall process all Section 145b requests in accordance with the procedures specified in Exhibit 3 of this handbook. HR or the RPO, when applicable, must provide DFS with the results of pre-employment checks conducted on NRC applicants who are being considered for employment under Section 145b. (3)

Preappointment Investigation Waiver With No Access to Classified Information (K) (continued)

An exception to personnel reference checking for consultants or experts may be recommended to the Director, HR, by the office director or the regional administrator in those cases in which the consultant or expert is known to be highly regarded and respected in the professional community. This recommendation must be reflected in the Section 145b request (Exhibit 2). (4)

In the case of students being considered for temporary summer appointments, personal reference checking must be conducted in accordance with the procedures specified in Exhibit 4. (5)

Expedited Approval for Temporary Unescorted Access for NRC Employees, Including Inspectors and Resident Clerical Aides (L)

When requests for approval for unescorted access to nuclear power facilities by NRC employees are received, including those from inspectors and resident clerical aides, the procedures specified in Exhibit 5 must be followed. When the need for temporary access is known at the time the Section 145b request is prepared, that need must be documented in the Section 145b request (Exhibit 2).

Extension and Transfer of Access Authorization (M)

An extension of an access authorization by DFS permits an individual who possesses an active NRC access authorization in connection with a particular employer or activity to have concurrent access to classified information at a level comparable to or lower than that already authorized. (1)

Transfer of an access authorization is the termination of an individual's access authorization from one employer or activity while at the same time activating the access authorization at another employer or activity. (2)

Extension and Transfer of Access Authorization (M) (continued)

The requester should ensure that requests to DFS for extension or transfer of access authorization contain the full name, social security number, and date of birth of the individual, in addition to the level of access authorization requested. At the discretion of DFS (as, for example, in the case of significant changes since execution of the last QSP), a new security forms packet may be required. In all cases involving the extension or transfer of an access authorization to a position certified as being **of a high degree of importance or sensitivity**, a new security forms packet will be required. (3)

Circumstances for Reinstatement (Reapproval) of Access Authorization (N)

Where access has been terminated because an individual no longer has need for access and a new need for access arises, access eligibility up to the same level shall be reapproved without further investigation provided the last investigation was completed within the past 5 years; he or she has remained employed with the same employer during the period in question; the individual certifies in writing through the completion of a new SF 86 or by updating and resigning a copy of his or her most recent SF 86 that there has been no change in the relevant information provided by the individual for the last investigation; and there is no information that would tend to indicate the individual may no longer satisfy the standards established by EO 12968 for access to classified information. (1)

Access eligibility shall be reapproved for individuals who were determined to be eligible on the basis of a favorable adjudication of an investigation completed within the prior 5 years and who have been retired or otherwise separated from United States Government employment for not more than 2 years, provided there is no indication, through the completion of a new SF 86 or by updating and resigning a copy of his or her most recent SF 86, the individual may no longer satisfy the standards of information provided by the individual for the last background investigation, and an appropriate record check reveals no unfavorable information. (2)

Circumstances for Reinstatement (Reapproval) of Access Authorization (N) (continued)

An access authorization may be reinstated at the same or lower level if no significant changes are known to have occurred since the date of the SF 86 used for the current investigation. When new security forms are not required, requests for reinstatements will contain the full name, social security number, and date of birth of the individual to establish positive identification. A new "Security Acknowledgment" will be obtained in all cases. (3)

A supplemental investigation will normally be requested before reinstatement when—(4)

- More than 5 years has elapsed since the previous investigation or the individual has not remained employed with the same employer during the time period in question. (a)
- More than 2 years have elapsed since the access authorization of the individual has been terminated as a result of separation or retirement from U.S. Government employment. (b)

When the reinstatement involves the assignment of an individual to a position **of a high degree of importance or sensitivity** and the previous investigation was conducted by a Government agency other than the FBI, a new security forms packet will be forwarded to the FBI for investigation. The Chief, Personnel Security Branch (PERSEC), DFS, may authorize the reinstatement of access authorization before the report of the new investigation is received from the FBI. (5)

When the reinstatement involves an individual who falls within the scope of the reinvestigation program, a new security forms packet will be obtained and the case will concurrently be processed for reinvestigation. The Chief, PERSEC, may authorize the reinstatement of access authorization before the reinvestigation report is received. (6)

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Circumstances Affecting Eligibility for Access Authorization (O)

When a person who possesses or is being processed for NRC access authorization, unescorted access to nuclear power facilities, access to SGI, or access to sensitive NRC information technology systems and data, or unescorted access to NRC headquarters or regional office facilities is hospitalized or otherwise treated for an illness or mental condition that may cause a defect in the person's judgment or reliability, the person's employer (i.e., in the case of an NRC employee, the employee's office director, regional administrator, or other designated official) shall promptly report the circumstances to the Director, DFS. (1)

In the case of contractor personnel, the circumstances must promptly be reported to the Director, DFS, by the contracting officer, the security officer, or other person so designated. (2)

The reporting requirements of Sections (O)(1) and (2) of this part do not relieve an individual from the requirement to report to DFS his or her arrest as required by the QSP (SF 86), the security acknowledgment (NRC Form 176), or other form signed by the individual. The arrest must be reported within 10 workdays. (3)

Other circumstances that may affect a person's initial or continued eligibility for NRC access authorization, employment clearance, unescorted access to nuclear power facilities, access to SGI, or access to sensitive NRC information technology systems and data are listed in 10 CFR 10.11. These matters must also be promptly reported to the Director, DFS, by the person's designated employment official. (4)

Individuals are encouraged and expected to report any information that raises doubts as to whether another individual's continued eligibility for access to classified information is clearly consistent with the national security. (5)

NRC employees and designated management officials are encouraged to seek information and assistance available from the NRC Employee Assistance Program Manager concerning issues that may affect an individual's eligibility for security clearance, including sources of assistance about financial matters, mental health, and substance abuse. NRC contractor personnel and others may seek assistance from similar financial, health, and substance abuse organizations in the local community. (6)

Determination of Eligibility for Access Authorization (P)

Except as provided for in Section (R) of this part, an NRC "L" or "Q" access authorization shall be granted only to employees and contractors who are United States citizens for whom an appropriate investigation has been completed and whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information. The determination of eligibility for access authorization will be consistent with 5 U.S.C. 7532 or 10 CFR Part 10. The determination of eligibility for unescorted access to nuclear power facilities, access to SGI, or access to sensitive NRC information technology systems and data will be made in accordance with the provisions of Exhibit 1 of this handbook. (1)

Applicants for NRC access authorization will be required to sign an SF 312, "Classified Information Nondisclosure Agreement." (2)

Interim Authorization for Access to Classified Information (Q)

Only the Commission may grant an interim access authorization for access to Restricted Data. (1)

Requests for interim access authorization must be forwarded to DFS in the same manner as requests for access authorization and must include the forms and information specified in Section (C) of this part. These requests also must include a justification from the NRC sponsoring office that a serious delay or interference in an operation or project essential to an NRC program may be experienced unless the designated individual is granted immediate access to classified information. (2)

HR or the RPO, as appropriate, must provide DFS with the results of the preemployment checks on NRC applicants who are being considered for interim access authorization (see Exhibit 4 for the scope of the required preemployment checks). (3)

If DFS's evaluation of the information developed on an applicant is unfavorable, DFS will inform the requester of its recommendation in the matter and, if applicable, HR. (4)

Access Authorization for Aliens and Dual Citizens (R)

A dual citizen, that is, a United States citizen who is also a citizen of another country, may be processed for a "Q" or an "L" access authorization when the need for access authorization is adequately supported and investigative coverage can be obtained for the immediate 10-year retrospective period. As provided for in EO 12968, where there are compelling reasons in furtherance of the NRC's mission, immigrant aliens and foreign national employees who possess a special expertise may, in the discretion of the Director, DFS, be granted an NRC "L" or "Q" access authorization with access to classified information limited to the specific programs, project, contracts, licenses, certificates, or grants for which there is a need for access. Such individuals shall not be eligible for access to any greater level of classified information than the United States Government has determined may be releasable to the country of which the subject is currently a citizen, and such limited access may be approved only if the prior 10 years of the subject's life can be appropriately investigated. (1)

An interview with the applicant will normally be conducted and include the applicant's—(2)

- Statement and disclosure of national allegiance (a)
- Intent as to permanent residence in the United States (b)
- General attitude toward the United States vis-a-vis the country of the applicant's current citizenship (c)
- For dual citizens, eligibility and intention to maintain dual citizenship (d)
- Previous civilian or military service with a foreign government (e)
- Family or other relatives abroad or employed by a foreign government (f)
- The names and addresses of United States citizens who can furnish information as to the applicant's background and activities outside the United States (g)

A verbatim transcript or detailed summary of the interview will be maintained and provided to the applicant upon request. (3)

Access Authorization for Aliens and Dual Citizens (R) (continued)

If DFS concludes that adequate support exists to initiate the investigation, the pertinent record will be forwarded to the investigation agency. An SSBI will be required for an "L" access authorization. (4)

If DFS concludes that the case is not suitable for further processing, the NRC sponsor (e.g., HR) will be informed and given advice as to whether the objection to processing can be resolved by submission of further information, documentation, or testimony. (5)

Data Report on Spouse (S)

Applicants for NRC access authorization, unescorted access to nuclear power facilities, access to SGI, or access to sensitive NRC information technology systems and data whose spouses are aliens, or who marry after they have submitted a QSP, must furnish DFS with two copies of NRC Form 354, "Data Report on Spouse."

Reinvestigation Program (T)

The NRC reinvestigation program is designed to ensure the continued eligibility for access authorization of individuals employed in the NRC program. The program applies to all those who possess "Q" or "L" access authorization, including NRC employees, consultants, experts, panel members; former senior NRC officials who retain their clearances after terminating their employment when continued access to classified information is required in the conduct of the agency's activities; congressional staff members cleared by NRC; employees and consultants of NRC contractors; and agents of NRC. DFS must reevaluate the continued eligibility of those individuals cleared at the "Q" level not to exceed every 5 years. The eligibility of individuals cleared at the "L" level who are in positions of high public trust must be reevaluated not to exceed 5 years. All other individuals cleared at the "L" level (e.g., a regular "L") must be reevaluated not to exceed 10 years. (See Exhibit 6 for "Q" and "L" reinvestigation requirements.) (1)

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Reinvestigation Program (T) (continued)

Each year, DFS will provide NRC office directors and regional administrators, or their designees, with the names of the individuals in their offices who are to be reinvestigated and the dates by which the individuals are to complete the security forms packet. DFS will advise former senior NRC officials who have retained their NRC security clearances, congressional staff members, and contractor organizations directly. DFS will provide each individual to be reinvestigated with a security forms packet and advise him or her of the due date. (2)

Each individual must complete the security forms packet and return it to his or her office or regional contact in a sealed envelope by the specified date. The office director or the regional administrator, or their designee, must ensure that individuals complete and return security forms packets to them and that all completed and sealed security forms packets are returned to DFS by the specified date. Contractor personnel must return forms through their security office. If the contractor fails to submit forms by the specified date, the NRC security clearance for contractor personnel may be administratively terminated. (3)

Upon satisfactory completion of the investigation, DFS will provide certification to the appropriate personnel office for the individual's official personnel file or other appropriate record. (4)

Termination of Access Authorization (U)

Access authorization will be terminated and a security termination statement (NRC Form 136) must be signed when—(1)

- An individual is separated from employment with the NRC. (a)
- In the case of a non-NRC employee, an individual is separated for a period of 60 days or more from activities for which he or she was granted an access authorization. (b)
- Access authorization is no longer required. (c)

Upon the voluntary or involuntary separation (e.g., death) from employment of a person who holds an NRC access authorization, the employing office at headquarters or the regional office or facility (e.g., an NRC contractor) must as a minimum, when applicable to persons being separated—(2)

Termination of Access Authorization (U) (continued)

- Provide prompt notification of the termination of employment to DFS and headquarters or the regional office, if other than the employing office, as applicable (a)
- Ensure that all classified and sensitive unclassified documents charged to the person are accounted for and properly disposed of (b)
- Arrange for the recovery of badges, passes, and other forms of official identification and their return to the responsible security office or NRC official (in the case of NRC employees) (c)
- Arrange for the person's name to be removed from all access and mailing lists, especially those involving classified or sensitive unclassified information (d)
- Ensure that combinations are changed of any repositories to which the person had access (e)
- Arrange for the person's name to be removed from access permissions to critical or sensitive areas, such as telephone closets and computer rooms (f)
- Arrange for the deactivation of the person's formal access permissions to all IT systems from mainframes to desktops as well as Internet working systems such as the local area network. (g)
- Arrange for the deactivation, expiration, or removal of the person's user IDs; if the user's ID and password are shared by others, the password should be changed immediately (h)
- Arrange for the deactivation, expiration, or removal of the person's external communications login ID (i)

Upon completion of a security termination statement—(3)

- The signed copy of the security termination statement must be forwarded to DFS. DFS will retain the statement in the employee's personnel security file. (a)

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Termination of Access Authorization (U) (continued)

- If a security termination statement is used when an individual's association with a particular contract, agreement, or facility is terminated, but the NRC access authorization is to remain active, the following wording is suggested to modify the introductory paragraph of the statement: (b)

  "I make the following statement relating to the termination of my access authorization granted by the Nuclear Regulatory Commission in connection with my work, or my association with (*name of contractor, party to agreement of facility*). My NRC access authorization will remain active in connection with other interests."

Disability (4)

In the case of the disability of a person when it is apparent that the disability will render the individual unable to perform his or her duties for at least 6 months, prompt notification must be made to DFS and measures similar to those specified in Section (U)(2)(b) through (i) of this part must be employed.

Termination of Employment in the Interest of National Security (V)

The DEDM may suspend or remove an employee when suspension or removal is considered to be in the interest of national security in accordance with 5 U.S.C. 7532. (1)

The criteria set forth in 10 CFR 10.11 must be used to determine whether an action should be taken under 5 U.S.C. 7532. (2)

When a hearing is held under 5 U.S.C. 7532, the NRC's "Procedures for the Conduct of Hearings Under 5 U.S.C. 7532" (Exhibit 7) must be used. (3)

Termination of Access Approval (W)

The NRC sponsoring office must immediately notify DFS in writing when a contractor employee no longer requires unescorted access to nuclear power facilities, access to SGI, access to sensitive NRC information technology systems and data, or unescorted access to NRC headquarters or regional office facilities.

Part II

Control of Visits Involving Classified Information

Introduction (A)

Standards and procedures are given for the protection of classified information involved in the course of visits to NRC, or visits by NRC employees and NRC contractors to other Government agencies and contractors.

General (B)

Before disclosing classified information to any visitor, individuals must confirm the visitor's identity, need-to-know, and level of access authorization. (1)

NRC or contractor officials (e.g., supervisors) must ensure that visit requests are submitted early enough for timely processing and notification of the person or facility to be visited. (2)

Continuing visit approval for 1 year or less may be granted for repeated visits to NRC, the Department of Energy (DOE), or other facilities. A single visit request form may be used if the repeated visits are to the same facility and involve the same individuals, the same level of classified information (e.g., Secret), and the same type of classified information (e.g., Restricted Data). (3)

Visit requests of an unusual or emergency nature for which timely notification cannot be given may be transmitted to the NRC Division of Facilities and Security (DFS), Office of Administration, by facsimile, teletype, or telephone. Telephone arrangements must be immediately confirmed with DFS in writing. Visit requests that are not in writing or that do not provide timely notification may not be accepted at some facilities. (4)

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General (B) (continued)

Classified information must not be given to NRC employees or other individuals who possess an NRC red (no access) badge. (5)

Access to classified information other than that authorized in the visit request must not be granted, regardless of the level of access authorization stipulated for the visitor. (6)

The NRC office, NRC contractor, or other NRC activity visited shall establish appropriate administrative controls over the movement of approved visitors to ensure that they are given access only to the classified information authorized. (7)

Neither classified nor unclassified naval nuclear propulsion information may be disclosed to individuals who are not United States citizens or to others not authorized access to this information. (8)

The NRC photo-identification badge will be accepted as authority for admission to DOE headquarters but is not accepted as authority for access to classified information. Similarly, the DOE photo identification badge will be accepted as authority for admission to NRC headquarters but may not be accepted as authority for access to classified information (see Section (D)(2) of this part). (9)

If appropriate, the visitor should confirm in advance with the facility to be visited that necessary approvals have been received. (10)

Access to Restricted Data requires a "Q" or "L" access authorization, depending on the classification level of the Restricted Data, except as provided in Section (D)(1) of this part. (11)

Requests for visits to NRC offices or divisions, except as indicated in Section (C)(1)(a) of this part, to NRC contractors, to other NRC facilities, or to other Government agencies involving classified information must be requested on NRC Form 277, "Request for Visit or Access Approval," or in an appropriate written request containing the following information: (12)

- Identity of each visitor, including full name, social security number, citizenship, date of birth, and organization with which affiliated (a)
- Specific information to which access is requested, including the classification level and type of information, for example, Restricted Data or National Security Information (b)

General (B) (continued)

- Access authorization level ("Q", "L", Top Secret, Secret, or Confidential) and the need-to-know of each person certified by an appropriate official (c)
- Purpose of the visit (d)
- Name and location of facility(ies) to be visited (e)
- Anticipated dates of visit and names of persons to be visited (If a conference is involved, provide the date, place, and sponsor of the conference.) (f)
- Name, title of position, organization, and telephone number of the person who prepared the request (g)
- Requests for visits to NRC, NRC contractors, or other NRC facilities by individuals outside NRC should be sent to the following address: (h)

  U.S. Nuclear Regulatory Commission
  Chief, Personnel Security Branch
  Division of Facilities and Security
  Washington, D.C. 20555

Classified notes or other classified records must not be released to a visitor to take outside the facility without the express permission of the person visited. If the visit is in connection with a conference or other such activity, the express permission of the person responsible for the activity must be obtained. Also, records so released must be protected in accordance with Management Directive (MD) 12.2, "NRC Classified Information Security Program." (13)

Visits by NRC (C)

NRC Employees (1)

For visits to NRC headquarters and regional offices, a request for visit or access approval (NRC Form 277) is not necessary. The employee's NRC photo-identification badge will serve to identify the employee and the access authorization held. A blue badge signifies a "Q" access authorization and a yellow badge an "L". A red photo-identification badge signifies no access authorization has been granted to the employee. (a)

Visits by NRC (C) (continued)

NRC Employees (1) (continued)

For visits to NRC contractors, licensees and their related facilities, and to other Government agencies or their contractors, NRC employees should submit an NRC Form 277 to DFS at least 7 working days before the initial date of the visit. When acting as representatives of the Federal Government in their official capacities as inspectors, investigators, or auditors, NRC employees may visit a contractor or licensee facility, without furnishing advanced notification, provided these employees present appropriate NRC credentials upon arrival. (b)

Access to weapon data, sensitive nuclear material production information, inertial fusion data, advanced isotope separation technology, uranium enrichment technology, or naval nuclear propulsion information requires special processing and approval by DOE. For this reason, an NRC Form 277 should be submitted to DFS at least 15 working days before the initial visit date. (c)

For visits to facilities performing work on naval reactors for DOE, an NRC Form 277 should be received at least 15 working days before the initial visit date, especially for visits that do not involve inspections. (d)

A separate NRC Form 277 should be used for visits to a Government agency other than NRC, to DOE headquarters, and to DOE field or area offices having jurisdiction over the facilities and personnel being visited. (e)

NRC Contractor or Subcontractor Personnel and NRC Consultants (2)

For visits to facilities other than NRC, an NRC Form 277 or other written request for visit or access approval should be submitted to the NRC office or division sponsoring the contract, to the consultant or licensed activity to be visited for certification of the individual's need-to-know, and to DFS for verification of access authorization. The NRC sponsoring office or division should receive the visit request at least 15 working days before the initial date of the visit. Because of the limited number of firms that have classified contracts with NRC, the authority to certify the contractor employees clearance and need-to-know shall remain with DFS. At those contractor or licensee facilities at which NRC is not the cognizant security authority (CSA), the visit control procedures of the CSA shall be followed. (a)

Visits by NRC (C) (continued)

NRC Contractor or Subcontractor Personnel and NRC Consultants (2) (continued)

Requests to visit NRC offices should be submitted directly to DFS at least 10 working days before the initial date of the visit. (b)

Requests for visits to facilities performing work on naval reactors for DOE should be received by the NRC sponsoring office or division at least 15 working days before the initial visit date. (c)

NRC consultants who plan to visit NRC employees directing or monitoring their consultant interests will not be required to submit an NRC Form 277. The person visited must confirm the NRC consultant's need-to-know and required access authorization level before classified information is disclosed to the visitor. (d)

Visits by Others (D)

Personnel and Contractors of the Department of Defense (DOD) and the National Aeronautics and Space Administration (NASA) (1)

For visits by personnel and contractors of DOD and NASA to NRC, NRC contractors, or other NRC facilities, an NRC Form 277, a NASA Form 405, or a memorandum or teletype signed by or in the name of an official of the agency originating the request must be submitted to DFS for processing and approval by the NRC activity involved. (a)

DOD or Armed Forces personnel and contractors may be granted access to Restricted Data on the basis of an NRC "Q" or "L" access authorization or a DOD-certified access authorization (security clearance) approved by the NRC activity involved. (b)

NASA personnel or their contractors may be granted access to Restricted Data related to aeronautical or space activities on the basis of a NASA access authorization (security clearance). Access to Restricted Data not related to aeronautical and space activities will require an NRC "Q" or "L" access authorization, depending on the classification level of the Restricted Data. (c)

Visits by Others (D) (continued)

Personnel, Contractors, and Subcontractors of the Department of Energy (DOE) (2)

For visits by personnel, contractors, and subcontractors of DOE to NRC, NRC contractors, or other NRC facilities, a DOE Form DOE F 5631.20, an NRC Form 277, or a memorandum or teletype signed by or in the name of the appropriate DOE official should be transmitted to DFS. Verification of DOE access authorization and certification of need-to-know must be included in the visit request before NRC will process the request. (a)

Contractor personnel at DOE national laboratories who are engaged in contract work for the NRC should have DOE forward their visit requests for transmission to DFS. These requests verify their DOE access authorization to the NRC office administering the contract. (b)

Employees, Contractors, and Subcontractors of Government Agencies Other Than DOD, NASA, or DOE (3)

Restricted Data in the possession of the NRC, its contractors, or in NRC facilities must not be released to visitors from Government agencies or their contractors unless they have the appropriate NRC or DOE access authorization and the need for access has been properly certified. (a)

Classified information, other than Restricted Data, may be furnished to employees of agencies and their contractor or subcontractor personnel when they have the required access authorization and their need for access is confirmed by the NRC activity to be visited. (b)

For visits involving access to classified information, including Restricted Data, an NRC Form 277 or a memorandum or teletype signed by or in the name of an official of the requesting agency should be submitted to DFS for processing and approval by the NRC activity involved. (c)

If authorized by the Director, DFS, representatives of other agencies (e.g., the FBI or OPM) acting in their official capacities may be granted access to classified information upon presentation of proper credentials. In case of doubt about identity or the level of access authorized, DFS will verify these credentials or the level of access by contacting a security official of the agency or activity involved. (d)

Visits by Others (D) (continued)

Members of Congress and Congressional Staff (4)

Visits to NRC, NRC contractors, or other activities associated with the NRC program involving access to Restricted Data or other classified information by members of Congress or their staff may be approved by directors of headquarters offices or divisions, or by regional administrators. The identity of the visitors and their need-to-know must be established by the responsible congressional official or staff member. The proposed visit must be coordinated with the Director, DFS, to certify access authorization and with the Director, NRC Office of Congressional Affairs.

Immigrant Aliens Admitted to the United States for Permanent Residence (5)

Visit requests for immigrant aliens who possess DOD or NASA access authorization will be handled in accordance with the procedures specified in Section (D)(1) of this part. Procedures specified in Section (D)(2) of this part apply to those immigrant aliens who possess DOE access authorization. The procedures specified in Section (D)(3) of this part apply to those immigrant aliens who possess access authorization granted by Government agencies other than the DOD, NASA, and DOE.

Visits Involving Access to Sensitive Compartmented Information (SCI) (E)

Visitors to the NRC must have their SCI access authorization and need-to-know forwarded to the Special Security Officer in the NRC Division of Facilities and Security through SCI channels. As a minimum, the information required for these visits should include the full name of the visitor, the agency affiliation, the purpose of the visit, the date of the visit, the name of the person to be visited, and the SCI compartments involved. This information may be provided by telephone by a known or verifiable special security officer of the agency or department requesting the visit, by memorandum or teletype. If access to classified information other than SCI is involved, the need for this access must be certified and the required access authorization must be verified. (1)

Visits Involving Access to Sensitive Compartmented Information (SCI) (E) (continued)

NRC employees visiting other Government agencies or departments, or their contractors, shall contact the Special Security Officer in DFS to have their SCI access authorization properly forwarded to the agency to be visited. A request for access to classified information other than SCI may be included with the request for SCI or may be processed separately in accordance with the procedure specified in this part. (2)

Visits by Foreign Nationals Sponsored by Foreign Governments or International Organizations (F)

Requests for foreign nationals to visit NRC, NRC contractors, or other activities associated with the NRC program must be forwarded to the Director, DFS. Any security assurance the foreign nationals may possess must be officially certified to DFS by an authorized official of the foreign government sponsoring the visit, with the assistance of the Office of International Programs (OIP), if necessary. If the foreign nationals do not possess security assurance, OIP shall request DFS to conduct investigative checks. For further guidance on the disclosure of classified information to foreign nationals, refer to MD 12.2. (1)

Representatives of the International Atomic Energy Agency (IAEA) who are authorized to make visits to or inspect NRC-licensed facilities in accordance with the U.S./IAEA Safeguards Agreement may be authorized access to classified information, except for Restricted Data, on the basis of a DFS-issued disclosure authorization letter (DAL). The DAL will specify the names of the IAEA representatives and the classified information authorized, in addition to other relevant information. For further guidance on the disclosure of classified information to IAEA representatives, refer to MD 12.2. (2)

Visits to Foreign Governments or Activities by NRC Personnel (G)

For visits to foreign governments or activities by NRC personnel, an NRC Form 277 should be submitted to DFS for processing and coordination with OIP when classified information is involved. If an NRC Form 277 is not available, the information listed under Section (B)(12) of this part should be submitted to DFS. (1)

Visits to Foreign Governments or Activities by NRC Personnel (G) (continued)

These visit requests should be submitted at least 30 days in advance of the initial visit date. (2)

Records of Visit Requests (H)

Records of visit requests consisting of the NRC Form 277 or its equivalent and any related correspondence must be retained for 2 years after the expiration date of the visit authorized by the requesting office and the office of the facility visited.

Part III

Assignment of Foreign Regulatory Employees to NRC

Introduction (A)

Guidelines are given for the prevention of unauthorized access to classified information or sensitive unclassified information by foreign regulatory employees assigned to the NRC. The responsibilities of the Office of International Programs (OIP), the Division of Facilities and Security (DFS, Office of Administration), supervisors, and employees also are specified in this part.

Activity Plans (B)

OIP, in cooperation with DFS, will establish and coordinate the assignee program and individual assignee activity plans that enumerate the variety of activities in which the assignee is expected to participate.

Assignments (C)

Consideration for assignments will be given in the following order of priority: (1)

- Nationals from developing countries building or operating U.S.-type light water reactors (a)
- Nationals from other countries with which NRC has entered into information exchange and cooperation arrangements (b)
- Nationals from the International Atomic Energy Agency (IAEA) member states sponsored under the IAEA Fellowship Program, if different from Sections (C)(1)(a) and (b) of this part (c)
- Other foreign nationals as decided on a case-by-case basis (d)

Assignments (C) (continued)

Within each of these categories, preference will be given, in general, to nationals from countries party to the Treaty on the Non-Proliferation of Nuclear Weapons. Foreign nationals actively engaged in unsafeguarded nuclear activities in non-nuclear weapons states will not normally be selected. (2)

All personnel accepted for NRC assignments of generally not less than 6 months should—(3)

- Be fluent in English (a)
- Have successfully completed an NRC-approved English language foreign competency examination (b)
- Have professional training, experience, or education (c)
- Be certified as regular employees of either their national regulatory agencies or of other institutes or organizations responsible for performing domestic regulatory and safety functions (d)

The sponsoring government, institute, or other organization must bear all costs associated with the assignment, including, but not limited to, the assignee's salary, travel, and per diem. Any questions about costs should be referred to OIP. Assignees should be largely self-sufficient after orientation in order to minimize the impact on the NRC staff. Personal services such as assistance with housing and other orientation briefings will be handled by the Embassy of the assignee's country or by local representatives of his or her institution. Assignees will normally be given duties similar to those of NRC employees, without special "diverse experience" assignments, except when convenient to NRC. (4)

OIP must notify the Commission promptly whenever an application from a sensitive country is received to allow the Commission the opportunity to request any action they believe necessary while the staff is attempting to arrange placement and before any commitment is made. Another notification to the Commission must be prepared as soon as details of the proposed assignment are confirmed within the staff and at least 1 full week before the assignment is formally approved. Special care must be taken in regard to security considerations in selecting and screening foreign nationals, placing them within the staff, monitoring them closely, and educating their supervisors and co-workers. (5)

Assignments (C) (continued)

OIP shall forward all formal NRC letters of invitation accepting proposed assignments through State Department channels in conformance with and in furtherance of U.S. laws, regulations, and policy directives and objectives. Letters of invitation must be countersigned and returned to OIP 4 weeks before the assignee's expected arrival at the NRC. (6)

OIP approves or disapproves the assignment of a foreign national to the NRC and designates the office to which the foreign national will be assigned, subject to the concurrence of the cognizant office director or regional administrator and DFS. (7)

Foreign nationals will not be assigned to the Commission, to the Office of the Secretary, to the Office of the Executive Director for Operations, to office directors, or to offices in which classified information or other sensitive information is often in use. Generally, assignments will not be made to branches in which large amounts of classified or other sensitive unclassified information is processed or stored, or to areas near these branches. (8)

Background Check (D)

Before inviting the foreign regulatory employee to join the NRC, OIP will obtain the required background and biographical data and submit it to DFS with a request that the appropriate indices check be conducted by the appropriate agencies (the Central Intelligence Agency, the Federal Bureau of Investigation, and the Department of State). Information that creates a question as to whether assignment of the foreign national is consistent with the national interest will be evaluated by DFS and forwarded with a recommendation to OIP.

Assignee Agreements (E)

Foreign assignees will be required to sign a commitment patterned after the agreement signed by the Government contract consultants agreeing not to take any proprietary documents away from their proper place of use and storage and not to disclose proprietary information or otherwise violate the conditions under which NRC staff members receive and use this information. The signing of the confidentiality agreement by the assignee is made a condition of the assignment under the terms of the agency-to-agency agreement that both the NRC and the foreign regulatory agency sign. Specific procedures are as follows:

Assignee Agreements (E) (continued)

- The supervisor of an assignee will make a determination of the need for an assignee to have access to proprietary information. A separate determination of need will be made for the proprietary information related to each program area in which the assignee is authorized to work. The supervisor will prepare a note concerning this access and will maintain a listing of documents to which the assignee has access. Whenever work on a program area is terminated, and at the end of each assignment, the assignee will return all proprietary documents. The supervisor of the assignee shall ensure that all documents on the assignee's list are returned. (1)
- Access to special classes of information identified in 10 CFR 2.790(d), including details of facility security plans, material control and accounting information, and Safeguards Information that is subject to 10 CFR 73.21, must not be granted unless approved by the Office of Nuclear Material Safety and Safeguards, Division of Fuel Cycle Safety and Safeguards (NMSS/FCSS), or the Office of Nuclear Reactor Regulation, Safeguards Branch (NRR/PSGB), in the case of reactors. (2)

Security Plans (F)

Representatives from DFS, OIP, and the office to which the foreign employee will be assigned will work together to define the assignment and to develop a security plan for each assignee. This task will be completed before the invitation letter is issued. The host office will be primarily responsible for developing the plan. This plan must be developed and approved before the assignee arrives. Each foreign assignee will be required to read, agree to, and sign the security plan. The plan will require the approval of OIP, the host office, and DFS and must include the following elements: (1)

- Description of the physical location of the assignment within NRC, a licensee facility, or another facility (a)
- Identification of specific areas to which assignees are to be given unescorted access in order to perform essential responsibilities (The assignee's access should be consistent with the requirements of DFS and the assignments of the host office.) (b)
- Explanation of special badging required and associated restrictions (c)

Security Plans (F) (continued)

- Explanation of restrictions on the use of, or connection to, NRC computing resources such as local area networks, other NRC computing systems, document management systems, and sensitive data. (d)
- Discussion of the ways in which commercial or foreign proprietary information must be protected if the assignment requires access to this information (Assignments should normally be tailored so that they do not require access to this information.) (e)
- Instructions on alerting co-workers about an assignee's presence and the assignee's restricted access, both physical and informational, including a DFS counterintelligence-type briefing (f)
- Assignment of a supervisor and an alternate to monitor the assignee's day-to-day activities (g)
- Requirement for monthly or quarterly progress reports from the assignee (Copies of the report are to be sent to the supervisor and other appropriate persons in the office to which the foreign national is assigned.) (h)
- Requirement for a mid-point (or more frequent) interview by DFS of the assignee, the assignee's supervisors and, as appropriate, the assignee's co-workers to ensure that the assignee and supervisors are continuing to comply with the approved security plan (Any problems will be reported to OIP and any other appropriate office.) (i)

If later experience indicates that the security plan requirements cannot be met, or conditions change that warrant a possible change in requirements, or if any other problems arise, the supervisor will immediately advise OIP and DFS. Any changes in the security plan must be approved by DFS and OIP. (2)

DFS will issue assignees special identification badges. These badges, while allowing assignees unescorted access to specific areas, are prominently marked "Assignee" and are color-coded red for "no access." Foreign assignees will be required to wear their badges at all times. (3)

Security Plans (F) (continued)

Co-workers and other staff members in the assignee's area also will be made aware of the requirement for the assignee to wear his or her badge at all times. Access by the assignee into other areas not specified in the plan will require that the assignee be escorted by a cleared NRC employee designated by the assignee's supervisor. (4)

The assignee's supervisor will make an initial evaluation of an assignee's work area, as well as a reevaluation at the midpoint of the assignment and at any time the security plan is amended. Any recommendations should be given to DFS for action at this time. (5)

Assignee Responsibilities (G)

Assignees will not authorize visits by other individuals to NRC, NRC contractors, or other NRC facilities. (1)

Assignee duties are to be limited to those that do not require representing NRC in public or acting as an official representative in meetings with NRC licensees. (2)

Assignees will be responsible for obtaining and making whatever copies of records or documents they desire to take with them before completion of their assignments. Assignees will be required to obtain the supervisor's approval before copying these records and will also be required to provide a list of these records to their NRC supervisors, OIP, and DFS. (3)

Evaluation of Assignees (H)

Upon completion of the assignment, OIP will provide an evaluation form to the supervisor. The supervisor shall complete the form and send copies of it to OIP, DFS, and the cognizant office director or regional administrator.

Exhibit 1

Due Process Procedures

Purpose of the Procedures (A)

The procedures specified herein are established for the conduct of hearings to determine the eligibility of NRC contractor personnel for unescorted access to nuclear power facilities, access to unclassified Safeguards Information (SGI), and access to sensitive NRC information technology systems and data under the NRC computer personnel screening program. Guidance is provided in 10 CFR 10.10 and 10.11 as to the types of information that raise questions concerning the consistency of an individual's eligibility for unescorted access to nuclear power facilities or access to unclassified SGI and the public health and safety; or for access to sensitive NRC information technology systems and data and the loss or harm that could result from improper operation of the information systems and from inadvertent or deliberate disclosure, alteration, or destruction of the data.

Notification to Individual of Hearing (B)

A notification letter providing the date, hour, and place of the hearing and the identity of the hearing official will be presented to each individual who has requested a hearing. When practicable, this letter will be presented to the individual in person at least 10 days in advance of the hearing, which will be scheduled with due regard for the convenience and necessity of the parties. The letter will be accompanied by a copy of these procedures and other administrative instructions, as necessary. (1)

The individual will have the right to appear personally before the hearing official and present evidence on his or her behalf through witnesses or by document or both, and may call, examine, and cross-examine witnesses. The individual may be present during the hearing to the extent permitted by national security concerns. The individual may be accompanied, represented, and advised by counsel or other representatives of his or her own choosing. In this case, the individual shall file with the Deputy Executive Director for Management Services (DEDM) a document designating the attorney or representative and authorizing him or her to receive all correspondence pertaining to the hearing. (2)

NRC Hearing Counsel (C)

The NRC hearing counsel assigned shall, before the scheduling of the hearing, review the information in the case and shall request the presence of witnesses and the production of documents and other physical evidence that the Division of Facilities and Security (DFS), Office of Administration (ADM), relied on to determine a substantial doubt exists concerning the individual's eligibility for unescorted access to nuclear power facilities, access to unclassified SGI, or access to sensitive NRC information technology systems and data.

Exhibit 1 (continued)

NRC Hearing Counsel (C) (continued)

When the presence of a witness and the production of documents and other physical evidence are deemed by the hearing counsel to be necessary or desirable for a determination of the issues, the Director, DFS shall make arrangements for the production of this evidence and for the witnesses to appear at the hearing by subpoena or by other means. (1)

The hearing counsel is authorized to communicate directly with the individual's counsel or representative, or the individual if the individual is not so represented, for purposes of mutually agreeing upon arrangements for expeditious hearing of the case. (2)

The individual is responsible for producing witnesses in his or her own behalf and presenting other evidence before the hearing official to support his or her position. The hearing counsel may at his or her discretion request the Director, DFS, to arrange for the issuance of subpoenas for witnesses to attend the hearing in the individual's behalf or for the production of specific documents or other physical evidence, provided the necessity for this assistance has been shown. (3)

Appointment of Hearing Official (D)

The NRC shall appoint a hearing official from a list of qualified attorneys possessing the highest degree of integrity, ability, and good judgment. To qualify, an attorney must have an NRC "Q" access authorization. No hearing official will be selected who has knowledge of the case or of any information relevant to the disposition of the case, or who for any reason would be unable to issue a fair and unbiased recommendation.

Prehearing Proceedings (E)

Before the hearing, the hearing official will be furnished the record in the case, consisting of the statement of charges and any associated amendment(s), the request for the hearing and the notice of hearing if it has been issued, and any agreements between the individual and the hearing counsel. (1)

The parties will be notified by the hearing official at least 10 days in advance of the hearing of the date, hour, and place of the hearing. The hearing official may order postponements or continuances from time to time for good cause shown. If, after due notice, the individual fails to appear at the hearing, or appears but is not prepared to proceed, the hearing official shall, unless good cause is shown, return the case to the DEDM who shall make the final determination on the basis of the information in the NRC's possession. (2)

Conduct of Hearing (F)

The hearing official shall conduct the hearing in an orderly, impartial, and decorous manner. Technical rules of evidence may be relaxed so that a full evidentiary record may be made based on all material and relevant facts. (1)

Exhibit 1 (continued)

Conduct of Hearing (F) (continued)

The proceedings will be open only to duly authorized NRC staff representatives, the individual, his or her counsel or representative, and those persons as may be officially authorized by the hearing official. Witnesses shall not testify in the presence of other witnesses except that the hearing official may, at his or her discretion, allow for expert witnesses to be present during testimony relevant to their own testimony. (2)

Witnesses, including the individual, shall be examined under oath or affirmation by the party who called them and may be cross–examined by the other party. The hearing official will rule on all evidentiary matters, may further examine any witness, and may call for additional witnesses or the production of documentary or other physical evidence if, in the exercise of his or her discretion, this additional evidence is deemed necessary to the resolution of an issue. (3)

If it appears during the hearing that Restricted Data or National Security Information may be disclosed, the hearing official shall ensure that disclosure is made only to persons authorized to receive it. (4)

The hearing official may permit the hearing counsel to amend the statement of charges to add or modify charges to be considered at any time during the hearing. In the event of such an amendment, the individual shall be given an opportunity to answer the amended charges. If the changes are of such a substantial nature that the individual cannot answer the amended charges without additional time, the hearing official shall grant such additional time as he or she deems necessary. (5)

The hearing official may receive and consider evidence in the form of depositions or responses to interrogatories upon a showing that the witness is not available for good reason, such as death, serious illness, or similar cause, or in the form of depositions, interrogatories, affidavits, or statements with agreement of the parties. The hearing official may take official notice at any stage of the proceeding, where appropriate, of any fact not subject to reasonable dispute in that it is either generally known within the United States or capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questioned. A party is entitled, upon timely request, to an opportunity to be heard as to the propriety of taking such official notice. In the absence of prior notification, the request may be made after notice is taken. (6)

Records provided by investigative agencies that were compiled as a regular or routine procedure by the business or agency from which obtained, or other physical evidence other than investigative reports, may be received and considered subject to rebuttal without authenticating witnesses, provided that the investigative agency furnished this information to the NRC pursuant to its responsibilities in connection with assisting the NRC in determining the individual's eligibility. (7)

Records compiled in the regular course of business, or other physical evidence other than investigative reports, relating to a controverted issue that may not be inspected by the individual because they are classified may be received and considered, provided—(8)

Exhibit 1 (continued)

Conduct of Hearing (F) (continued)

- The DEDM has made a determination that the records or other physical evidence appears to be material. (a)
- The DEDM has made a determination that failure to receive and consider the records or other physical evidence would, in view of the fact that access eligibility is being sought, be substantially harmful to the NRC programs. (b)
- To the extent that national security permits, a summary or description of the records or other physical evidence is made available to the individual. In every such case, information as to the authenticity and accuracy of the physical evidence furnished by the investigative agency must be considered. (c)

Whenever information is made part of the record under Section (F)(7) or (F)(8) of this exhibit, the record must contain certification evidencing that the required determinations have been made. (9)

If the hearing official determines that additional investigation of any material information is required, he or she shall request in writing that the Director, DFS, arrange for the investigation and shall specify those issues for which more evidence is requested and identify, when possible, any persons or sources that might provide the evidence sought. (10)

A written transcript of the entire proceeding shall be made by a person possessing appropriate NRC access authorization and, except for portions containing Restricted Data or National Security Information, or other lawfully withholdable information, a copy of this transcript will be furnished the individual without cost. (11)

Recommendation of the Hearing Official (G)

The hearing official's findings and recommendation shall be on the basis of the entire record, consisting of the transcript of the hearing, the documentary and other evidence adduced therein, and the statement of charges and any associated amendment and answer. The hearing official also shall consider the circumstances of the receipt of evidence and the nature and sensitivity of the job the individual is performing or may be expected to perform. (1)

The hearing official shall make specific findings on each charge in the statement of charges, including the reasons for his or her findings, and shall make a recommendation as to the action that should be taken in the case. (2)

The hearing official's recommendation shall be predicated upon his or her findings. If, after considering all the factors, the hearing official is of the opinion that the individual has clearly demonstrated that approving him or her for unescorted access to nuclear power facilities or for

Exhibit 1 (continued)

Recommendation of the Hearing Official (G) (continued)

access to unclassified SGI does not constitute an unreasonable risk to the public health and safety; or approving him or her for access to sensitive NRC information technology systems and data does not constitute an unreasonable risk to the security of such systems and data, a favorable recommendation must be made; otherwise, an adverse recommendation must be made. (3)

The hearing official shall submit his or her findings and recommendation in a signed report with the record of the case to the DEDM as soon as possible. (4)

The hearing official shall not consider the possible impact of the loss of the individual's services upon the NRC program. (5)

New Evidence (H)

After the close of the hearing, in the event the individual discovers new evidence not previously available or known to him or her, the individual may petition the hearing official if the hearing official's recommendation has not yet been issued, or thereafter, the DEDM to reopen the record to receive that evidence. If the hearing official or the DEDM, respectively, deems it material and appropriate, the record may be reopened to accept the evidence either by stipulation, with the agreement of the hearing counsel, or in a reconvened hearing.

Actions by the DEDM on the Recommendations (I)

Upon receipt of the findings and recommendation from the hearing official, and the record, the DEDM at his or her discretion may return the record for further proceedings by the hearing official with respect to specific matters designated by the DEDM. (1)

If no further proceedings are necessary, upon receipt of the findings and the recommendation by the hearing official, the DEDM, on the basis of the record accompanied by all findings and recommendations, shall make a final determination on whether the individual is eligible for unescorted access to nuclear power facilities, for access to unclassified SGI, or for access to sensitive NRC information technology systems and data. (2)

In making his or her determination, the DEDM shall give due consideration to the favorable as well as the unfavorable information concerning the individual. (3)

In the event of an adverse determination, the DEDM shall promptly notify the individual of his or her final decision concerning the individual's eligibility and of his or her findings with respect to each charge contained in the statement of charges. (4)

In the event of a favorable determination, the DEDM shall promptly notify the individual. (5)

Exhibit 2

Format for a Request for a Preappointment Investigation Waiver

MEMORANDUM TO: _____, Director
Office of Human Resources

FROM: (Requesting Office Director or Regional Administrator)

SUBJECT: AUTHORITY TO APPROVE THE EMPLOYMENT OF AN INDIVIDUAL BEFORE COMPLETION OF THE REQUIRED INVESTIGATION AND REPORT WHEN ACCESS TO CLASSIFIED MATTER IS NOT INVOLVED

This relates to the authority vested in the Deputy Executive Director for Management Services (DEDM) for approving employment of an NRC applicant before the completion of the required investigation when access to classified matter will not initially be required.

I request DEDM approval to employ the following individual(s) before the completion of the security investigation and report required by Section 145b of the Atomic Energy Act of 1954, as amended. The individual(s) has/have been selected to fill the position(s) indicated. Favorable preemployment checks have been conducted.

(Name(s)) (Position(s))

(Provide adequate justification for each request. Justification should not be standardized and should detail why a serious delay or interference to an NRC operation or program will result if the request is not approved. Note: If the request involves interim unescorted access to nuclear power plants for inspectors and resident clerical aides or a recommendation for waiving personnel reference checks for NRC consultants or experts, it should be clearly stated in the justification.)

Administrative controls will be established to ensure that (the individual(s)) will not have access to National Security Information or Restricted Data until he/she/they is/are granted an access authorization by the Division of Facilities and Security, Office of Administration.

Approved: November 6, 1992
(Revised: November 17, 1999)

Exhibit 3

Preemployment Screening and Section 145b Processing Procedures for NRC Applicants

The headquarters Human Resources (HR) specialist or the Regional HR Officer will—(A)

- Obtain security forms from the selectee (1)
- Ensure that character and employment reference checks covering the required number of years are conducted in accordance with the standard operating procedures of Exhibit 4 to this handbook (2)
- Evaluate and certify the acceptability of the character and employment reference checks (3)

The required documentation for all acceptable packages (consisting of the Standard Form 86, Parts 1 and 2; two fingerprint charts; and NRC Form E–1, 176 and 354) will be forwarded to the Division of Facilities and Security (DFS), Office of Administration. This documentation will include the memorandum requesting a preappointment waiver and certifying need by the regional administrator, the office director, or the deputy office director, pursuant to Section 145b of the Atomic Energy Act of 1954, as amended. (B)

Upon receipt of the Section 145b package, DFS will—(C)

- Request the Office of Personnel Management to conduct a National Crime Information Center (NCIC) check on the selectee (1)
- Conduct an online computer credit check of the selectee (2)
- If deemed necessary, telephonically conduct a security assurance interview with the selected applicant to discuss in detail the answers provided on the SF 86, as well as any other matters of security concern (3)
- Evaluate the eligibility of the applicant for a Section 145b *employment waiver* on the basis of a review of the final package and the results of the credit check, the NCIC check, and the security interview, if conducted, and recommend approval or disapproval (4)

Exhibit 4

Standard Operating Procedures for Preemployment Screening of NRC Applicants

The headquarters Human Resources (HR) specialist or the Regional HR Officer will obtain a current Optional Form (OF) 612, Standard Form (SF) 171, or equivalent and security forms package (consisting of the SF 86, Parts 1 and 2; two fingerprint charts; and NRC Forms E–1, 176, and 354) from the selectee. The HR specialist or the Regional HR Officer will ensure that appropriate reference checks are conducted using the OF 612, SF 171, or equivalent and the SF 86, Part 1, as the source documents. (A)

The reference checks will generally follow the format of NRC Form 212, "Qualifications Investigation," plus additional requirements as indicated below. Questions 23, 24, 25, and 26 must be asked of each source. Space is provided on the form for annotations and appropriate comments. Additional pages should be used as needed. (B)

The following additional requirements apply: (C)

- All personnel conducting reference checks must be thoroughly familiar with the NRC Form 212 and reference check techniques. (1)
- Using the OF 612, SF 171, or equivalent and the SF 86, Part 1, as guides, identify employers for at least the past 5 years, where applicable. (2)
- On the basis of the answer to each item or question on NRC Form 212, ask as many followup questions as needed to develop a full response. (3)
- For applicants other than students being considered for temporary summer appointments, reference checks must cover at a minimum the last 5 years. For applicants who do not have 5 years of employment experience, obtain, if possible, references from high school or college sources, as appropriate, to cover at least the past 5 years. For students being considered for temporary summer employment, conduct supervisory reference checks for all jobs held during the past 2 years, where applicable. For students who do not have 2 years of employment experience, obtain, if possible, references from school and other sources. In either case, at least two references are required. If any adverse employment or security-related information is noted or developed during processing, the student will be processed in accordance with the normal processing procedures. Summer employees other than students are subject to the normal processing procedures. (4)
- In all cases, verify dates of attendance at the educational institution, the highest educational level attained, and the type and year of degree. (5)

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Exhibit 4 (continued)

Standard Operating Procedures for Preemployment Screening of NRC Applicants (continued)

- To supplement the education and employment history for applicants other than students being considered for summer employment, develop at least one additional source on the applicant (developed references are not required for students being considered for summer employment). This additional source must not be an individual listed on the OF 612, SF 171, or equivalent or the SF 86 or otherwise provided by the applicant. This source may be developed by asking employers or those responding to education questions if they can name anyone else who has personal knowledge of the applicant. Use NRC Form 212 to obtain the reference from the developed source. (6)

The HR specialist or the Regional HR Officer will review the results of all the reference checks to determine acceptability of the applicant. If either the HR specialist or the Regional HR Officer has any doubt as to the applicant's acceptability, he or she must discuss whether to proceed with the selecting official. If the decision is to proceed with the applicant, the HR specialist or the Regional HR Officer will certify the acceptability of the Section 145b package and will send the complete security forms package, the Section 145b request memorandum, all reference checks, and any other documentation normally required to DFS by overnight mail if from a region or by interoffice mail if from a headquarters office. (D)

Exhibit 5

Expedited Temporary Unescorted Access Approval for NRC Employees, Including Inspectors and Resident Clerical Aides

The preemployment screening and processing procedures to meet Section 145b requirements for NRC applicants (Exhibit 3 of this handbook) will proceed as usual. The following steps, as applicable, are to be followed when temporary unescorted access is required:

- The Regional Human Resources (HR) Officer will initiate processing of security forms from the selectee. The Regional HR Officer will immediately forward to Division of Facilities and Security (DFS), by overnight mail, an advance copy of Standard Form (SF) 86, "Questionnaire for National Security Positions," two fingerprint cards, and a copy of the Optional Form (OF) 612, SF 171, or equivalent completed by the individual. (1)
- Upon receipt of these forms, DFS will conduct a National Crime Information Center (NCIC) check and the required online credit checks. The credit and NCIC checks must be completed before unescorted access is granted. (2)
- Upon the Regional HR Officer's completion and evaluation of character and employment reference checks on the selectee, the Regional HR Officer will forward the results of these checks to HR via overnight mail. If the Regional HR Officer has been delegated the authority to submit the documentation directly to DFS by the Director, HR, the Regional HR Officer may make and certify the acceptability of reference checks in accordance with paragraph (5) of this exhibit. The original security forms on the selected applicant, the memorandum requesting a preappointment waiver and certifying need for immediate employment by the regional administrator or the deputy pursuant to Section 145b, and all other documentation normally required also will be forwarded if it has not already been submitted. (3)
- The regional administrator will document the need for an additional security interview by DFS for *temporary unescorted access* to the protected or vital areas of a nuclear power plant, pending the grant of an NRC security clearance. (4)
- HR will evaluate the acceptability of character and employment reference checks and will forward the acceptable packages to DFS. (5)
- Upon receipt of the final acceptable package from HR, DFS will conduct a security assurance interview by telephone with the selected applicant to discuss in detail the answers provided on the SF 86, as well as any other matters of security concern. DFS will then evaluate the applicant based on a review of the final package and the results of the credit check, the NCIC check, and the security interview. DFS will advise the regional administrator of its "no objection" or "objection" to the approval of temporary

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Exhibit 5 (continued)

Expedited Temporary Unescorted Access Approval for NRC Employees, Including Inspectors and Resident Clerical Aides (continued)

unescorted access, pending the grant of the security clearance. DFS must be provided with a copy of the regional administrator's final decision. (6)

- DFS will advise the regional office and HR when DFS receives any significant adverse information on an individual who is on board or being processed that raises immediate security concerns. DFS will recommend to the regional administrator whether temporary unescorted access approval, if access has been granted, should be rescinded pending the resolution of security concerns under the provisions of 10 CFR Part 10. The regional administrator will decide whether temporary unescorted access approval should be rescinded and shall notify DFS of the decision. (7)

Exhibit 6

"Q" and "L" Reinvestigation Program Requirements

"Q" and Sensitive Compartmented Information (SCI) Reinvestigation Requirements (I)

For employees, consultants experts, panel members, former senior NRC officials, contractors and agents of the NRC, and congressional staff members—

- Each individual to be reinvestigated shall submit a new Questionnaire for National Security Positions (QSP, Standard Form 86) and related forms, including an NRC Form 176, "Security Acknowledgment." These forms will be the basis for an investigation as specified below. (1)
- An OPM single-scope background investigation periodic reinvestigation (SSBI--PR) will be conducted for "Q" and SCI cleared individuals other than the Chairman, Commissioners, and the Inspector General who are subject to an FBI (re)investigation in connection with their presidential appointment. (2)
- Further investigative coverage may be undertaken on a case-by-case basis if the scheduled coverage is insufficient to obtain the required information. (3)

"L" Reinvestigation Program Requirements (II)

Each individual to be reinvestigated shall submit a new QSP and related forms, including an NRC Form 176, "Security Acknowledgment." These forms will be the basis for an investigation as follows:

- A national agency check with law and credit (NACLC) shall be conducted. The investigation may be expanded as necessary to determine if access is clearly consistent with national security. (1)
- Further investigative coverage may be undertaken on a case-by-case basis if the scheduled coverage is insufficient to obtain the required information (2)
- Although not normally required for "Q" or "L" reinvestigations, a new set of fingerprint cards may be requested on a case-by-case basis. (3)

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Exhibit 7
Procedures for the Conduct of Hearings Under 5 U.S.C. 7532

Purpose of the Procedures (A)

The procedures set forth below are established for the conduct of hearings pursuant to 5 U.S.C. 7532 to determine whether an individual's continued employment with the NRC is clearly consistent with the national security. Guidance is provided in 10 CFR 10.10 and 10.11 as to the types of information that raise questions concerning the consistency of an individual's employment and the national security.

Notification to Individual of Hearing (B)

A notification letter providing the date, hour, and place of the hearing and the identity of the hearing official will be presented to each individual who has requested a hearing. Where practicable, this letter will be presented to the individual in person at least 10 days in advance of the hearing, which will be scheduled with due regard for the convenience and necessity of the parties. The letter will be accompanied by a copy of these procedures and other administrative instructions, as necessary. (1)

The individual will have the right to appear personally before the hearing official and present evidence in his or her behalf through witnesses or by document or both, and may call, examine, and cross-examine witnesses. The individual may be present during the hearing to the extent permitted by national security concerns. The individual may be accompanied, represented, and advised by counsel or other representatives of his or her own choosing. In this case, the individual shall file with the Deputy Executive Director for Management Services (DEDM) a document designating the attorney or representative and authorizing him or her to receive all correspondence pertaining to the hearing. (2)

NRC Hearing Counsel (C)

The NRC hearing counsel assigned shall, before the scheduling of the hearing, review the information in the case and shall request the presence of witnesses and the production of documents and other physical evidence relied upon in suspending the individual pursuant to the provisions of 5 U.S.C. 7532. When the presence of a witness and the production of documents and other physical evidence are deemed by the hearing counsel to be necessary or desirable for a determination of the issues, the Director, Division of Facilities and Security (DFS), Office of Administration, shall make arrangements for the production of this evidence and for the witnesses to appear at the hearing by subpoena or by other means. (1)

The hearing counsel is authorized to communicate directly with the individual's counsel or representative, or the individual if the individual is not so represented, for purposes of mutually agreeing upon arrangements for expeditious hearing of the case. (2)

Exhibit 7 (continued)

Procedures for the Conduct of Hearings Under 5 U.S.C. 7532 (continued)

NRC Hearing Counsel (C) (continued)

The individual is responsible for producing witnesses in his or her own behalf and presenting other evidence before the hearing official to support his or her position. The hearing counsel may at his or her discretion request the Director, DFS, to arrange for the issuance of subpoenas for witnesses to attend the hearing in the individual's behalf or for the production of specific documents or other physical evidence, provided the necessity for this assistance has been shown. (3)

Appointment of Hearing Official (D)

The NRC shall appoint a hearing official from a list of qualified attorneys possessing the highest degree of integrity, ability, and good judgment. To qualify, an attorney must have an NRC "Q" access authorization. No hearing official will be selected who has knowledge of the case or of any information relevant to the disposition of the case, or who for any reason would be unable to issue a fair and unbiased recommendation.

Prehearing Proceedings (E)

Before the hearing, the hearing official will be furnished the record in the case, consisting of the statement of charges and any associated amendment(s), the request for the hearing and the notice of hearing if it has been issued, and any agreements between the individual and the hearing counsel. (1)

The parties will be notified by the hearing official at least 10 days in advance of the hearing of the date, hour, and place of the hearing. The hearing official may order postponements or continuances from time to time for good cause shown. If, after due notice, the individual fails to appear at the hearing, or appears but is not prepared to proceed, the hearing official shall, unless good cause is shown, return the case to the DEDM who shall make the final determination on the basis of the information in the NRC's possession. (2)

Conduct of Hearing (F)

The hearing official shall conduct the hearing in an orderly, impartial, and decorous manner. Technical rules of evidence may be relaxed so that a full evidentiary record may be made based on all material and relevant facts. (1)

Exhibit 7 (continued)

Procedures for the Conduct of Hearings Under 5 U.S.C. 7532 (continued)

Conduct of Hearing (F) (continued)

The proceedings will be open only to duly authorized NRC staff representatives, the individual, his or her counsel or representative, and those persons as may be officially authorized by the hearing official. Witnesses shall not testify in the presence of other witnesses except that the hearing official may, at his or her discretion, allow for expert witnesses to be present during testimony relevant to their own testimony. (2)

Witnesses, including the individual, shall be examined under oath or affirmation by the party who called them and may be cross-examined by the other party. The hearing official will rule on all evidentiary matters, may further examine any witness, and may call for additional witnesses or the production of documentary or other physical evidence if, in the exercise of his or her discretion, this additional evidence is deemed necessary to the resolution of an issue. (3)

If it appears during the hearing that Restricted Data or National Security Information may be disclosed, the hearing official shall ensure that disclosure is made only to persons authorized to receive it. (4)

The hearing official may permit the hearing counsel to amend the statement of charges to add or modify charges to be considered at any time during the hearing. In the event of such an amendment, the individual shall be given an opportunity to answer the amended charges. If the changes are of such a substantial nature that the individual cannot answer the amended charges without additional time, the hearing official shall grant such additional time as he or she deems necessary. (5)

The hearing official may receive and consider evidence in the form of depositions or responses to interrogatories upon a showing that the witness is not available for good reason, such as death, serious illness, or similar cause, or in the form of deposition, interrogatories, affidavits, or statements with agreement of the parties. The hearing official may take official notice at any stage of the proceeding, where appropriate, of any fact not subject to reasonable dispute in that it is either generally known within the United States or capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questioned. A party is entitled, upon timely request, to an opportunity to be heard as to the propriety of taking such official notice. In the absence of prior notification, the request may be made after notice is taken. (6)

Exhibit 7 (continued)

Procedures for the Conduct of Hearings Under 5 U.S.C. 7532 (continued)

Conduct of Hearing (F) (continued)

Records provided by investigative agencies that were compiled as a regular or routine procedure by the business or agency from which obtained, or other physical evidence other than investigative reports, may be received and considered subject to rebuttal without authenticating witnesses, provided that the investigative agency furnished this information to the NRC pursuant to its responsibilities in connection with assisting the NRC in determining the individual's eligibility for reinstatement consistent with the national security. (7)

Records compiled in the regular course of business, or other physical evidence other than investigative reports, relating to a controverted issue that, because they are classified, may not be inspected by the individual, may be received and considered, provided—(8)

- The DEDM has made a determination that the records or other physical evidence appears to be material. (a)
- The DEDM has made a determination that failure to receive and consider the records or other physical evidence would, in view of the fact that access authorization and/or employment clearance is being sought, be substantially harmful to the national security. (b)
- To the extent that national security permits, a summary or description of the records or other physical evidence is made available to the individual. In every such case, information as to the authenticity and accuracy of the physical evidence furnished by the investigative agency must be considered. (c)

Whenever information is made part of the record under Section (F)(7) or (8) of this exhibit, the record must contain certification evidencing that the required determinations have been made. (9)

If the hearing official determines that additional investigation of any material information is required, he or she shall request in writing that the Director, DFS, arrange for the investigation and shall specify those issues upon which more evidence is requested and identify, where possible, any persons or sources that might provide the evidence sought. (10)

A written transcript of the entire proceeding shall be made by a person possessing appropriate NRC access authorization and/or employment clearance and, except for portions containing Restricted Data or National Security Information, or other lawfully withholdable information, a copy of this transcript shall be furnished the individual without cost. (11)

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Exhibit 7 (continued)
Procedures for the Conduct of Hearings Under 5 U.S.C. 7532 (continued)

Recommendation of the Hearing Official (G)

The hearing official's findings and recommendation shall be based upon the entire record consisting of the transcript of the hearing, the documentary and other evidence adduced therein, and the statement of charges and any associated amendment and answer. The hearing official also shall consider the circumstances of the receipt of evidence and the nature and sensitivity of the job the individual was performing. (1)

The hearing official shall make specific findings on each charge in the statement of charges, including the reasons for his or her findings, and shall make a recommendation as to the action that should be taken in the case. (2)

The hearing official's recommendation shall be predicated upon his or her findings. If, after considering all the factors, the hearing official is of the opinion that the individual has clearly demonstrated that reinstating his or her access authorization and/or employment clearance, or reinstatement of employment will not endanger the national security, a favorable recommendation must be made; otherwise, an adverse recommendation must be made. (3)

The hearing official shall submit his or her findings and recommendation in a signed report with the record of the case to the DEDM as soon as possible. (4)

The hearing official shall not consider the possible impact of the loss of the individual's services upon the NRC program. (5)

New Evidence (H)

After the close of the hearing, in the event the individual discovers new evidence not previously available or known to him or her, the individual may petition the hearing official if the hearing official's recommendation has not yet been issued, or thereafter, the DEDM to reopen the record to receive that evidence. If the hearing official or the DEDM, respectively, deems it material and appropriate, the record may be reopened to accept the evidence either by stipulation, with the agreement of the hearing counsel, or in a reconvened hearing.

Exhibit 7 (continued)

Procedures for the Conduct of Hearings Under 5 U.S.C. 7532 (continued)

Actions by the DEDM on the Recommendations (I)

Upon receipt of the findings and recommendation from the hearing official, and the record, the DEDM at his or her discretion may return the record for further proceedings by the hearing official with respect to specific matters designated by the DEDM. (1)

If no further proceedings are necessary, upon receipt of the findings and the recommendation by the hearing official, the DEDM, on the basis of the record accompanied by all findings and recommendations, shall make a final determination whether the individual will be reinstated or removed in the interest of national security. (2)

In making the determination as to whether the individual will be reinstated or removed in the interest of national security, the DEDM shall give due recognition to the favorable as well as the unfavorable information concerning the individual. (3)

In the event of an adverse determination, the DEDM shall promptly notify the individual of his or her final decision to remove that individual in the interest of national security and of his or her findings with respect to each charge contained in the statement of charges. (4)

In the event of a favorable determination, the DEDM shall promptly notify the individual. (5)

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