

NUCLEAR REGULATORY COMMISSION

10 CFR Part 95

3150-AH17

Facility Security Clearance and Safeguarding of National Security  
Information and Restricted Data - Minor Changes

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to reflect organizational changes resulting from the creation of the Office of Nuclear Security and Incident Response, to correct a minor error, and to change the example of the derivative classification stamp.

EFFECTIVE DATE: Insert date of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: J. Keith Everly, Information Security Section,  
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SUPPLEMENTARY INFORMATION: The events of September 11, 2001, highlighted the  
need to examine the way NRC was organized to carry out its safeguards, security, and incident  
response function. After a review of its organizational structure, the NRC, effective on

April 7, 2002, added a new Office of Nuclear Security and Incident Response (NSIR) to its organization. As part of the creation of this new office, NRC's Information Security Section, which was part of the Division of Facilities and Security, Office of Administration, was moved to the Division of Nuclear Security, NSIR. This section receives all communications and reports concerning the regulations in 10 CFR Part 95, "Facility Security Clearance and Safeguarding of National Security Information and Restricted Data." Therefore, the regulations in this part were changed to reflect the transfer of the Information Security Section to NSIR. Accordingly, in relevant sections of Part 95, the organization identification of "Facilities and Security, Office of Administration" has been changed to "Nuclear Security, Office of Nuclear Security and Incident Response."

In addition, the final rule corrects the first sentence of 10 CFR Part 95.1 by removing the words "security facility approval" and adding in their place the words "facility security clearance."

This final rule also amends the example of the derivative classification stamp in paragraph (c)(1)(iii) of 10 CFR 95.37, "Classification and preparation of documents," for derivative classification of classified National Security Information regarding the Originating Agency's Determination Required (OADR) declassification instruction. In accordance with Executive Order 12958, "Classified National Security Information," as implemented in 32 CFR Part 2001, OADR is no longer used on newly generated documents as of October 16, 1995. Additionally, documents generated under previous executive orders do not have to be remarked. The derivative classification stamp includes instructions for declassification.

Because these amendments deal solely with NRC organization, procedure, or practice, the notice and comment provisions of the Administrative Procedure Act do not apply under 5

U.S.C. 553 (b) (A). In addition, good cause exists pursuant to 5 U.S.C. 553 (d) to dispense with the usual 30-day delay in the effective date, because these amendments are of a minor nature, dealing with the organization and procedures of the NRC. Therefore, these amendments are effective upon publication in the Federal Register.

#### Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22 (c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

#### Paperwork Reduction Act Statement

This rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0047.

#### Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

#### Regulatory Analysis

A regulatory analysis has not been prepared for this final rule because this rule is administrative in that it amends the regulations to reflect organizational changes. These are considered minor non-substantive amendments and will not have a significant impact on NRC licensees or the public.

### Backfit Analysis

The NRC has determined that the backfit rule does not apply to this final rule because this rule does not involve any provisions that would impose a backfit as defined in 10 CFR Chapter 1. Therefore a backfit analysis is not required for this rule.

### List of Subjects in 10 CFR Part 95

Classified information, Criminal penalties, Reporting and record keeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 95.

### PART 95 - - FACILITY SECURITY CLEARANCE AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

1. The authority citation for part 95 continues to read as follows:

AUTHORITY: Secs. 145, 161, 193, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C.5841); E.O. 10865, as amended, 3 CFR 1959-1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12829, 3 CFR 1993 Comp., p.570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p.333; E.O. 12968, 3 CFR 1995 Comp., P.391.

§ 95.1 [Amended]

2. In § 95.1, in the first sentence, remove the words “security facility approval,” and add in their place the words “facility security clearance.”

§ 95.9 [Amended]

3. In § 95.9, remove the words “Facilities and” and add in their place the word “Nuclear.”

§ 95.19 [Amended]

4. In § 95.19, the introductory text of paragraph (a), in the second sentence, remove the words “ Facilities and Security, Office of Administration” and add in their place the words “Nuclear Security, Office of Nuclear Security and Incident Response.” In the third sentence, remove the words “Facilities and,” and add in their place the word “Nuclear,” and in paragraph (c), remove the words “Facilities and” and add in their place the word “Nuclear.”

§ 95.20 [Amended]

5. In § 95.20, in the first sentence, remove the words “Facilities and” and add in their place the word “Nuclear.”

§ 95.21 [Amended]

6. In §95.21, in the first sentence, remove the words “Facilities and” and add in their place the word “Nuclear.”

§ 95.36 [Amended]

7. In §95.36, in paragraph (a), in the first sentence, remove the words “Facilities and” and add in their place the word “Nuclear.” In paragraph (c), in the first sentence, remove the words “Facilities and” and add in their place the word “Nuclear,” and in paragraph (d), in the third and fourth sentences, remove the words “Facilities and” and add in their place the word “Nuclear.”

8. In §95.37, paragraph (c)(1)(iii) is revised to read as follows:

§ 95.37 Classification and preparation of documents.

(c) \* \* \*

(1) \* \* \*

(iii) An example of the marking stamp is as follows:

Derived from \_\_\_\_\_  
(Source/Date)  
Reason: \_\_\_\_\_  
Declassify On: \_\_\_\_\_  
(Date/Event/Exemption)  
Classifier: \_\_\_\_\_  
(Name/Title/Number)

\* \* \* \* \*

§ 95.45 [Amended]

9. In §95.45, in paragraph (a), in the second sentence, remove the words “Facilities and Security, Office of Administration,” and add in their place the words “Nuclear Security, Office of Nuclear Security and Incident Response,” and in the third sentence, remove the words “Facilities and” and add in their place the word “Nuclear.”

§ 95.53 [Amended]

10. In §95.53, in the third sentence, remove the words “Facilities and” and add in their place the word “Nuclear.”

§95.57 [Amended]

11. In §95.57, paragraph (c), in the first sentence, remove the words “Facilities and” and add in their place the word “Nuclear,” and in the third sentence, remove the words “Facilities and” and add in their place the word “Nuclear.”

Dated at Rockville, Maryland, this 25<sup>th</sup> day of June 2003.

For the Nuclear Regulatory Commission.

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William D. Travers,  
Executive Director for Operations