

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 25 and 95

RIN 3150-AH52

Broadening Scope of Access Authorization and  
Facility Security Clearance Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is amending its regulations to broaden the scope of the regulations applicable to persons who may require access to classified information, to include persons who may need access in connection with licensing and regulatory activities under the regulations that govern the disposal of high-level radioactive waste in geologic repositories, and persons who may need access in connection with other activities as the Commission may determine, such as vendors of advanced reactor designs. The Commission is also amending its regulations to broaden the scope of the regulations applicable to procedures for obtaining facility security clearances, to include persons who may need to use, process, store, reproduce, transmit, transport, or handle NRC classified information in connection with the above-identified activities. In addition, NRC is correcting the scope section of the regulations that govern access authorization for licensee personnel to include certificate holders and applicants for a certificate; clarifying the definition of "license" in the regulations that govern access authorization for licensee personnel and govern facility security clearance to include a reference to the regulations that govern combined licenses; correcting a typographical error in the definition of "security container" in its facility

security regulations; and updating the references to Executive Order 12958 which has been amended.

**DATES:** The final rule is effective on **(insert date 75 days after publication in the Federal Register)**, unless significant adverse comments are received by **(insert date 30 days after publication in the Federal Register)**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In addition, if the NRC receives substantive comments on the information collection requirements by **(insert date 30 days after publication in the Federal Register)**, the direct final rule will be withdrawn. Then, the NRC will publish a document that withdraws the direct final rule and will address the comments received in a final rule as a response to the companion proposed rule published elsewhere in this issue of the Federal Register.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number (RIN 3150-AH52) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: [SECY@nrc.gov](mailto:SECY@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit

comments via the NRC's rulemaking web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking website to Carol Gallagher (301) 415-5905; email [cag@nrc.gov](mailto:cag@nrc.gov).

Comments can also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone (301) 415-1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by email to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Note: Public access to documents, including access via ADAMS and the PDR, has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. However, access to the documents identified in this rule continues to be available through the rulemaking web site at

<http://ruleforum.inl.gov>, which was not affected by the ADAMS shutdown. Please check with the listed NRC contact concerning any issues related to document availability.

FOR FURTHER INFORMATION CONTACT: Dr. Anthony N. Tse, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6233, e-mail [ant@nrc.gov](mailto:ant@nrc.gov).

SUPPLEMENTARY INFORMATION:

### Background

NRC's regulations at 10 CFR Parts 25 and 95 govern access to and protection of classified information by licensees or other persons who have a need for access to this information. Part 25 contains procedures for establishing initial and continuing eligibility for access authorizations for individuals who may require access to classified information. Part 95 contains procedures for obtaining a facility security clearance for licensees, certificate holders, or other persons who need to use, process, store, reproduce, transmit, transport, or handle certain types of NRC classified information at any location in connection with Commission-related activities. The purpose of this rulemaking is to amend Parts 25 and 95 to: (1) add references to 10 CFR Parts 60 and 63 in §§ 25.5, 25.17(a) and 95.5; (2) expand the scope of §§ 25.3 and 95.3 to include persons who may not be licensees or certificate holders or applicants for a license or certificate; (3) clarify the definition of "license" in §§ 25.5 and 95.5 to include a reference to Part 52; (4) correct the omission of a reference to certificate holders in § 25.3; (5) correct a typographical error in the definition of "security container" in § 95.5; and (6)

update references to Executive Order 12958 to reflect that this Executive Order has been amended and could be further amended in the future.

## Discussion

Although 10 CFR 25.3 speaks broadly of the regulations that apply to “licensees and others who may require access to classified information related to a license or an application for a license,” in 10 CFR 25.5, “license” is defined to mean “a license issued pursuant to 10 CFR Parts 50, 70, or 72.” Similarly, 10 CFR 95.3 states that the regulations apply to licensees and certificate holders and others regulated by the Commission who need access in connection with a license or certificate or an application for a license or certificate. However, at 10 CFR 95.5, “license” is defined to mean “a license issued pursuant to 10 CFR Parts 50, 70, or 72.” Absent from these provisions is any reference to the Commission’s regulations that govern the issuance of construction authorizations and licenses for disposal of high-level radioactive waste in geologic repositories (10 CFR Part 60) or in a potential geologic repository at Yucca Mountain, Nevada (10 CFR Part 63). Parts 25 and 95 were published on March 5, 1980; 45 FR 14476, before issuance of Part 60 (February 25, 1981; 46 FR 13971) or Part 63 (November 2, 2001; 66 FR 55732) and Parts 25 and 95 were not amended to include these regulations. The Commission currently anticipates receiving a license application from the U.S. Department of Energy under the provisions of Part 63. An adjudicatory proceeding on this license application could implicate the need for access authorizations and facility security clearances by persons who are admitted as parties to the proceeding. Accordingly, NRC is amending the definition of “license” in §§ 25.5 and 95.5 to include references to licenses issued under Parts 60 and 63. For the same reason, references to Parts 60 and 63 are added to § 25.17(a).

A second restriction that presently exists in 10 CFR 25.3 and 95.3 is that the requested access authorizations or facility security clearances must be related to a license or certificate, or an application for a license or certificate. There may be, however, certain Commission-related activities undertaken by entities who are not licensees or certificate holders, or applicants for a license or certificate where an access authorization or facility security clearance may be needed. The NRC believes there is a need for access authorizations and facility security clearances for vendors who are involved in the design of advanced reactors. These vendors could need access to classified information which would enable them to consider potential mitigative measures for operating reactors and design features for the various advanced reactor systems. Currently, a vendor who is not an NRC licensee or a contractor to an NRC licensee and does not have a facility clearance or access authorization provided by another Government agency, is not eligible for an access authorization or a facility security clearance under Parts 25 and 95. NRC believes that most current vendors of advanced reactor designs are NRC licensees or contractors to NRC licensees or holders of clearances from other Government agencies. However, to allow for the possibility that there could be vendors who would need to seek access authorizations and facility security clearances through the regulations at Parts 25 and 95, the NRC is adding language to the scope sections of these parts to allow the processing of requests for access authorization or facility security clearances with respect to “other activities as the Commission may determine.” This language could also be used to begin the processing of such requests, in advance of NRC’s receipt of a license application under Part 63, by potential parties in an adjudication on the application, or in circumstances when a need for access authorization might arise in the future.

Further, the NRC is clarifying the definition of “license” in §§ 25.5 and 95.5 to include a reference to Part 52 which contains provisions for combined licenses in Subpart C and for

manufacturing licenses in Appendix M. Although NRC's intent that access authorizations needed in connection with activities under Part 52 be included is evidenced by a reference to Part 52 in § 25.17(a), a similar reference to Part 52 does not appear in the definition of "license" in §§ 25.5 and 95.5. The Commission is correcting this oversight in this rulemaking.

In this rulemaking, the NRC is also correcting the omission of a reference to certificate holders in § 25.3. Although § 25.5 includes a definition of "certificate holder" and § 25.17(a) includes activities under Part 76 that issue certificates to gaseous diffusion plants, § 25.3, unlike § 95.3, does not include a reference to certificate holders or certificates. The NRC believes this is an oversight that is now being corrected.

In addition, the NRC is correcting a typographical error which appears in the definition of "security container" in § 95.5. In the description of a "safe" in paragraph (2), the phrase "at least ½ thick" should read "at least ½ inch thick."

Finally, NRC is amending references to Executive Order 12958 where they appear in Parts 25 and 95 to include the phrase "as amended." This reflects that Executive Order 12958 was amended on March 25, 2003 by Executive Order 13292 (68 FR 15315; March 28, 2003) and could be further amended in the future.

#### Discussion of Amendment by Section

##### § 25.3 Scope.

The current scope limits the access to classified information to access "related to a license or an application for a license." This scope is broadened to include persons who may need access in connection with other activities as the Commission may determine, such as vendors of advanced reactor designs. Thus, the phrase "or other activities as the Commission

may determine” is added to this section. The Commission is also correcting an oversight by including certificate holders in this section.

#### § 25.5 Definitions.

References to Parts 52, 60, and 63 are added to the definition of “license.”

The phrase “Executive Order 12958” is replaced by “Executive Order 12958, as amended” under definitions of “classified national security information” and “national security information.”

#### § 25.17 Approval for processing applicants for access authorizations.

References to Parts 60 and 63 are added to paragraph (a).

#### § 25.37 Violations.

The phrase, “Executive Order 12958” is replaced by “Executive Order 12958, as amended” in paragraph (b).

#### § 95.3 Scope.

The current scope applies to “licensees, certificate holders and others regulated by the Commission” who may require access to certain types of classified information “in connection with a license or certificate or an application for a license or certificate.” The Commission is broadening the scope of the regulations applicable to procedures for obtaining facility security clearances, to include persons who may need to use, process, store, reproduce, transmit,

transport, or handle NRC classified information in connection with other activities as the Commission may determine, such as vendors of advanced reactor designs. Thus, the phrase “regulated by the Commission” is deleted and the phrase “or other activities as the Commission may determine” is added.

#### § 95.5 Definitions.

References to Parts 52, 60, and 63 are added under the definition of “license.”

The phrase “E.O. 12958” is replaced by “E.O. 12958, as amended” under definitions of “classified national security information,” “infraction,” and “violation.”

The phrase “at least ½ thick” is replaced by “at least ½ inch thick” under the definition of “Security container,” paragraph (2).

#### § 95.59 Inspections.

The phrase “E.O. 12958” is replaced by “E.O. 12958, as amended.”

### Procedural Background

This rulemaking will become effective on **(insert 75 days after publication in the Federal Register)**. However, if the NRC receives significant adverse comments by **(insert 30 days after publication in the Federal Register)** or if the NRC receives substantive comments on information collection requirements by **(insert date 30 days after publication in the Federal Register)**, then the NRC will publish a document that withdraws the direct final rule and will address the comments received in a final rule as a response to the companion

proposed rule published elsewhere in this issue of the *Federal Register*. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

#### Agreement State Compatibility

Under the “Policy Statement on Adequacy and Compatibility of Agreement State Programs” approved by the Commission on June 30, 1997, and published in the Federal Register on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category “NRC.” Compatibility is not required for Category “NRC” regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State’s administrative procedure laws but does not confer regulatory authority on the State.

#### Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, “Plain Language in Government Writing” directed that the Government’s writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading “ADDRESSES” above.

#### Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104-113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC broadens the scope of Parts 25 and 95

by adding references to Parts 60 and 63 and by including language in the scope sections which will enable NRC to consider access authorizations and facility security clearance for persons who are not licensees or certificate holders or applicants for a license or certificate. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

#### Environmental Impact: Categorical Exclusion

The NRC has determined that this direct final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this direct final rule.

#### Paperwork Reduction Act Statement

This direct final rule contains amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

*Type of submission, new or revision:* Revision.

*The title of the information collection:* 10 CFR Part 25 - Access Authorization for Licensee Personnel; 10 CFR Part 95 - Facility Security Clearance and Safeguarding of National Security Information and Restricted Data.

*The form number if applicable:* Not applicable.

*How often the collection is required:* On occasion.

*Who will be required or asked to report:* Persons who may need access in connection with licensing and regulatory activities under 10 CFR Parts 60 and 63 for the disposal of high-level radioactive waste in geologic repositories and in connection with other activities as the Commission may determine, such as vendors of advanced reactor designs.

*An estimate of the number of annual responses:* 688 (Part 25: 572; Part 95:116)

*The estimated number of respondents (one time):* 34 (Part 25: 28; Part 95: 6)

*An estimate of the total number of hours needed annually to complete the requirement or request:* 485 (Part 25: 150; Part 95: 335)

*Abstract:* The NRC is broadening the scope of its regulations applicable to persons who may require access to classified information to include persons who may need access in connection with licensing and regulatory activities under 10 CFR Parts 60 and 63 for the disposal of high-level radioactive waste in geologic repositories, and persons who may need access in connection with other activities as the Commission may determine, such as vendors of advanced reactor designs. The Commission is also broadening the scope of its regulations applicable to procedures for obtaining facility security clearances to include persons who may need to use, process, store, reproduce, transmit, transport, or handle NRC classified information in connection with the above-identified activities.

The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in this direct final rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

A copy of the OMB clearance package may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, MD 20852. The OMB clearance package and rule are available at the NRC worldwide Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html> for 60 days after the signature date of this notice and are also available at the rule forum site, <http://ruleforum.llnl.gov>.

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by **(insert date 30 days after publication in the federal register)** to the Records and FOIA/Privacy Services Branch (T-5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail to [INFOCOLLECTS@NRC.GOV](mailto:INFOCOLLECTS@NRC.GOV) and to the Desk Officer, John A. Asalone, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0046 and 3150-0047), Office of Management and Budget, Washington, DC 20503. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. You may also e-mail comments to [John A. Asalone@omb.eop.gov](mailto:John.A.Asalone@omb.eop.gov) or comment by telephone at (202) 395-4650.

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 direct final rule because this rule is considered minor and not a substantial amendment; it has no economic impact on NRC licensees or the public.

#### Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule merely makes procedures available to individuals and entities for obtaining access authorizations and facility security clearances in connection with licensing activities under Parts 60 and 63 or with other activities as the Commission may determine, corrects the omission of a reference to Part 52 in the definition of “license” in Parts 25 and 95, corrects the omission of a reference to certificate holders in Part 25, updates references to Executive Order 12958, and clarifies a dimension used to describe a security container.

#### Backfit Analysis

The NRC has determined that the backfit rule (§§ 50.109, 70.76, 72.62, or 76.76) does not apply to this direct final rule because this amendment does not involve any provisions that

would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

### Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

### List of Subject Terms

#### 10 CFR Part 25

Classified information, Criminal penalties, Investigations, Reporting and recordkeeping requirements, Security measures.

#### 10 CFR Part 95

Classified information, Criminal penalties, Reporting and recordkeeping 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 Parts 25 and 95.

### PART 25 - Access Authorization for Licensee Personnel

1. The authority citation for Part 25 is revised to read as follows:

AUTHORITY: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); 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, 3 CFR, 1995 Comp., p. 333, as amended by E. O. 13292, 3 CFR, 2004 Comp., p.196; E.O. 12968, 3 CFR, 1995 Comp, p. 396.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

2. Section 25.3 is revised to read as follows:

§ 25.3 Scope.

The regulations in this part apply to licensees, certificate holders, and others who may require access to classified information related to a license, certificate, an application for a license or certificate, or other activities as the Commission may determine.

3. In § 25.5, the definitions of *Classified National Security Information*, *License*, and *National Security Information* are revised to read as follows:

§ 25.5 Definitions.

\* \* \* \* \*

*Classified National Security Information* means information that has been determined pursuant to E.O. 12958, as amended, or any predecessor order to require protection against unauthorized disclosure and that is so designated.

\* \* \* \* \*

*License* means a license issued under 10 CFR Parts 50, 52, 60, 63, 70, or 72.

\* \* \* \* \*

*National Security Information* means information that has been determined under Executive Order 12958, as amended, or any predecessor order to require protection against unauthorized disclosure and that is so designated.

\* \* \* \* \*

4. In § 25.17, paragraph (a) is revised to read as follows:

§ 25.17 Approval for processing applicants for access authorization.

(a) Access authorizations must be requested for licensee employees or other persons (e.g., 10 CFR part 2, subpart I) who need access to classified information in connection with activities under 10 CFR Parts 50, 52, 54, 60, 63, 70, 72, or 76.

\* \* \* \* \*

5. In § 25.37, paragraph (b) is revised to read as follows:

§25.37 Violations.

\* \* \* \* \*

(b) National Security Information is protected under the requirements and sanctions of Executive Order 12958, as amended.

PART 95 - Facility Security Clearance and Safeguarding of National Security Information and Restricted Data

6. The authority for Part 95 is revised 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); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); 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, as amended by E. O. 13292, 3 CFR, 2004 Comp., p.196; E.O. 12968, 3 CFR, 1995 Comp., P. 391.

7. Section 95.3 is revised to read as follows:

§ 95.3 Scope.

The regulations in this part apply to licensees, certificate holders and others who may require access to classified National Security Information and/or Restricted Data and/or Formerly Restricted Data (FRD) that is used, processed, stored, reproduced, transmitted, transported, or handled in connection with a license or certificate or an application for a license or certificate, or other activities as the Commission may determine.

8. In § 95.5, the definitions of *License* and paragraph (2) of *Security container* are revised to read as follows:

§ 95.5 Definitions.

\* \* \* \* \*

*License* means a license issued pursuant to 10 CFR Parts 50, 52, 60, 63, 70, or 72.

\* \* \* \* \*

*Security container* includes any of the following repositories:

\* \* \* \* \*

(2) A safe--burglar-resistive cabinet or chest which bears a label of the Underwriters' Laboratories, Inc., certifying the unit to be a TL-15, TL-30, or TRTL-30, and has a body



