

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: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is proposing to amend 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 proposing to amend 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 proposing to correct the scope section of the regulations that govern access authorization for licensee personnel to include certificate holders and applicants for a certificate; to clarify 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; to correct a typographical error in the definition of

“security container” in its facility security regulations; and to update the references to Executive Order 12958 which has been amended.

DATES: Comments on the proposed rule must be received on or before **(insert date 30 days after publication in 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. 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.

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.

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.llnl.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.

SUPPLEMENTARY INFORMATION:

For additional information see the Direct Final Rule published in the final rules section of this Federal Register.

Procedural Background

Because NRC considers this action noncontroversial and routine, we are publishing this proposed rule concurrently as a direct final rule. The direct final rule will become effective on **(insert date 75 days after publication in the Federal Register)**. However, if the NRC receives significant adverse comments on the proposed rule by **(insert date 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 to withdraw the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period for this action if the direct final rule is withdrawn.

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.

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; the NRC is proposing to adopt 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 fabricated of not less than 1 inch of steel and a door fabricated of not less than 1½ inches of steel exclusive of the combination lock and bolt work; or bears a Test Certification Label on the inside of the door, or is marked "General Services Administration Approved Security Container" and has a body of steel at least ½ inch thick, and a combination locked steel door at least 1 inch thick, exclusive of bolt work and locking devices; and an automatic unit locking mechanism.

* * * * *

9. Section 95.59 is revised to read as follows:

§ 95.59 Inspections.

The Commission shall make inspections and reviews of the premises, activities, records and procedures of any person subject to the regulations in this part as the Commission and CSA deem necessary to effect the purposes of the Act, E.O. 12958, as amended, and/or NRC rules.

Dated at Rockville, Maryland, this 30th day of November, 2004.

For the Nuclear Regulatory Commission.

/RA/

Luis A. Reyes,
Executive Director for Operations.

9. Section 95.59 is revised to read as follows:

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Dated at Rockville, Maryland, this 30th day of November, 2004.

For the Nuclear Regulatory Commission.

IRA

Luis A. Reyes,
Executive Director for Operations.

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