

May 6, 2003

MEMORANDUM TO: Luis A. Reyes
Executive Director for Operations

FROM: Jack R. Strosnider, Director **/RA/**
Office of Nuclear Material Safety
and Safeguards

SUBJECT: FINAL RULE TO AMEND 10 CFR PARTS 25 AND 95 TO BROADEN
SCOPE OF ACCESS AUTHORIZATION AND FACILITY SECURITY
CLEARANCE REGULATIONS

Attached, for your signature, is a final rule (Attachment 1) amending Nuclear Regulatory Commission (NRC) regulations at 10 CFR Parts 25 and 95. This amendment will broaden the scope of the regulations that apply to persons who may require access to classified information to include persons who may need access to classified information in connection with licensing and regulatory activities under 10 CFR Parts 60 and 63 — the disposal of high-level radioactive waste in geologic repositories — and persons who may need access in connection with other types of activities as determined by the Commission, such as vendors of advanced reactor designs. The amendment will also broaden the scope of the regulations that establish the procedures for persons who may need to use, process, store, reproduce, transmit, transport, or handle NRC classified information to make them consistent with the amended regulations for access authorizations. This amendment is needed to allow NRC to routinely process security clearance requests arising from the anticipated licensing hearing for the potential geologic repository for high-level radioactive waste at Yucca Mountain, Nevada, or from activities involving the design of advanced reactors.

A direct final rule and a companion proposed rule were published in the *Federal Register* on December 15, 2004 (69 FR 74949 and 75007, respectively). The staff withdrew the direct final rule on February 24, 2005 (70 FR 8921), because we received significant adverse comment on the direct final rule.

The following discussion describes how this rulemaking comports with the NRC Strategic Plan for fiscal years 2004 through 2009.

CONTACT: Anthony N. Tse, NMSS/IMNS
(301) 415-6233

Safety

- C This rulemaking will facilitate NRC's efforts to begin regulatory activity when the expected application for the potential Yucca Mountain repository is received — one of the means that NRC is using to support its safety strategies — by extending established procedures that would apply to stakeholders seeking access to classified information to potential participants in the adjudicatory proceeding. The rulemaking would extend the established procedures to designers of advanced reactors.

Security

- C This rulemaking will allow potential interveners in an adjudicatory proceeding on a DOE application for a potential Yucca Mountain repository to be eligible for access authorizations for classified information under existing procedures. In addition, NRC will enhance the ability of advanced-reactor-design vendors to design for security as well as safety.

Openness

- C This rulemaking will facilitate NRC's efforts to provide a fair and timely process for authorized (appropriately cleared with a need to know) stakeholders to have access to classified information. Specifically, it would extend existing procedures to include authorized stakeholder involvement in NRC decision-making in matters involving classified information relating to the potential Yucca Mountain repository, to vendors of advanced reactor designs, and to other activities determined by the Commission.

Effectiveness

- With this rulemaking, NRC will improve the efficiency of its regulations by broadening the scope of Parts 25 and 95 to include persons needing access to classified information related to the expected license application for a potential Yucca Mountain repository, advanced reactor designs, and other activities determined by the Commission. These changes will reduce the effort needed for NRC to authorize stakeholders to have access to classified information on a case-by-case basis.

Management

- This rulemaking does not contribute to the strategies nor the identified means to achieve the strategic goal of ensuring excellence in Agency management to carry out NRC's strategic objective.

Notices: Notice to the Commission that the Executive Director for Operations is reviewing and expected to sign the attached *Federal Register* notice is included (Attachment 2). Notice to the Commission that the Executive Director for Operations has signed the attached *Federal Register* notice is included (Attachment 3). The "Approved for Publication" document is also

included (Attachment 4). The appropriate Congressional committees will be notified. No Environmental Assessment is needed for this action.

Resources: No additional resources will be needed to implement this rule.

Coordination: The Offices of Administration, Enforcement, Nuclear Reactor Regulation, Nuclear Security and Incident Response, State and Tribal Programs, and the Office of Information Services concur with these amendments. The Office of the General Counsel has no legal objection. The Office of the Chief Financial Officer has reviewed the final rule for resource implications and has no objection.

Attachments:

1. FRN
2. EDO Daily Note of Final Rule Being Reviewed by EDO
3. Notice of Final Rule Signed by EDO
4. "Approved for Publication"
5. SBREFA Forms, Submission of Federal Rules
Under the Congressional Review Act

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ML051110493 *See previous concurrence

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