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Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Dear Sir:

Exxon Nuclear Company, Inc. hereby submits its comments on the proposed 10 CFR Parts 25 and 95, as published in the Federal Register for July 2, 1979.

Exxon Nuclar Company, Inc. is engaged in, and intends to engage in, a variety of research, development, and production activities in connection with the nuclear fuel cycle. Certain of these activities involve contractual relationships with the Department of Energy, in connection with which Exxon Nuclear Company, Inc. has access to Restricted Data as a Department of Energy contractor. In addition, Exxon Nuclear Company, Inc. holds a DOE Access Permit pursuant to Part 725 of Title 10 of the United States Code. In still other phases of its business, Exxon Nuclear holds licenses issued by the Nuclear Regulatory Commission under 10 CFR Part 70.

As we understand the allocation of functions and responsibilties between DOE and NRC under the Energy Reorganization Act of 1974, both agencies have responsibility to control the dissemination of Restricted Data in the interest of the common defense and security, but DOE has the sole responsibility to establish the "basic standards and procedures". The proposed NRC regulations, however, largely ignore the existence of the Department of Energy's "basic standards and procedures" and of DOE's regulations covering Restricted Data in the hands of DOE contractors and Access Permitees.

It would appear from the proposed regulations that a company that has access to Restricted Data, and has cleared personnel, under a DOE contract or under a DOE Access Permit, would nevertheless be required to come into compliance with the proposed Part 95 if the company has a "need to use, process, store, reproduce, transmit or handle National Security Information and/or Restricted Data in connection with Commission related activities". This gives rise to a number of significant problems.

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The basis for the proposed regulation is not clear. In the Supplementary Information section, it is stated that the joint task force recommended that the NRC enable licensees to have access to classified information pertinent to the protection of their facilities. Presumably, this includes classified information on perceived threats to nuclear facilities licensed under Parts 50 and 70 and potential "classified" information deriving from the licensees' activities in protecting SSNM and vital facilities.

The proposed regulation deals only with the procedures for safeguarding National Security Information and Restricted Data once it is placed within the possession of a licensee or license applicant. Of equal importance is the issue of what information will be classified and when it will become classified. We assume that the NRC will address this issue in a separate rule since it has not been adequately dealt with in these proposed rules. The NRC must recognize that its attempt to install a classification program applicable to licensees and license applicants represents a government attempt to classify information developed by private entities who are developing information for application to private as opposed to government facilities. Certainly, all licensees and license applicants expect to come within the purview of security requirements developed by the NRC if they are given access to NRC-developed Restricted Data or National Security Information, but such licensees and license applicants must be informed of the rules for determining what information they develop might be considered classified by NRC. Therefore, we believe that a separate rulemaking is necessary to determine the procedures to be followed in classifying information which will be subject to the security provisions of Parts 25 and 95.

As partially explained above, it is not clear at what point in time a licensee or applicant for license would become subject to the proposed Part 95. It seems clear by reason of Section 95.3, that licensees and license applicants who require access to National Security Information and/or Restricted Data in connection with the license or the application are subject to Part 95. But Section 95.3 seems to impart even broader scope, since it makes the regulations applicable to "licensees and others regulated by the Commission who may require access ... in connection with a license or an application for a licenses" (emphasis added). Similarily, Section 95.15 reaches a "licensee, or other person who has a need ... in connection with Commission related activities" (emphasis added). These provisions give potentially enormous breadth to the applicability of the proposed Part 95. Particularly in view of the fact that violation of Part 95 may involve criminal prosecution, we urge that the proposed regulations specifically identify the kinds of persons who are subject to them instead of sweeping persons with the rule through such broad and ambiguous phrases as "other regulated" and "Commission related activities". Questions such as the following should be resolved:

Is a putative license applicant subject to Part 95 in the early stages of its planning, long before a license application is even drafted? Are suppliers and consultants of licensees subject of Part 95? If so, when do they become subject?

A second set of problems relates to the NRC-DOE interface. Our concerns about this are heightened by our belief that, if we should become subject to the security jurisdiction of the Nuclear Regulatory Commission, the Department of Energy would nevertheless continue to insist upon applicability of its own security requirements even though the activities for both NRC and DOE might involve the same personnel. The consequence of this is that we would be faced with the necessity for complying with two separate sets of security requirements and two sets of access authorizations for our personnel. The problems inherent in such a duplicative security regime are exacerbated by the fact that there are a number of substantive differences between 10 CFR Part 795 and the Proposed Part 95. For example:

1) The proposed Section 95.37 would require, or at least authorize, classification markings at variance with those required by DOE under 10 CFR Section 795.32 although they appear to be consistent with DOE's Appendix 2301. This raises the possibility that certain documents in the hands of a company subject to Part 95 might have two sets of classification stamps applied to it.

2) Contrary to any comparable DOE requirements, Section 95.57(b) would require a company subject to Part 95 to submit a Form 790 each time a classified document is "generated". In this connection, the distinction, if any, between "orginated", "generated", and "reproduced" is not clear. It is not clear whether a document would be "generated" for purposes of Part 95.57(b) if it were derived from information made available under the Access Permit Program under DOE. This provision would create an overwhelming document control problem for a company such as Exxon Nuclear.

3) Another provision of the proposed Part 95 for which there is no analog in Part 795 is Section 95.25(h), seems to require a report to the NRC <u>every time</u> and unattended security container is found open. Similarly, Section 95.57 requires that all "infractions" (defined to mean acts or omissions involving failure to comply with NRC security regulations) be "immediately" reported to NRC. While we have no doubt that some security infractions should be subject to immediate reporting, when we consider the number of licensees which may be involved in NRC security programs we believe it is imperative that some kind of "rule of reason" be incorporated into the proposed regulations to avoid the suffocation in an ocean of paper of both the NRC and persons subject to Part 95 resulting from minor infractions where security is not breached.

Even if the persons who drafted the proposed Part 95 intended no substantive distinction between the requirements of the proposed Part 95 and DOE's Part 795, the fact that different language is used in the two regulations necessarily gives rise to problems of interpretation and to considerable confusion. We cannot perceive any reason why, if NRC desires to have its own security regulations applicable to persons subject to its jurisdiction, it cannot adopt as its own the precise language of 10 CFR Part 795.

Further with respect to the DOE-NRC interface, we note that DOE has reserved the authority in 10 CFR Part 725 to deny access to certain kinds of Restricted Data under the Access Permit program. On the other hand, we seen nothing in the NRC's proposed rules which would authorize NRC to deny access to particular kinds of Restricted Data. This gives rise to the question whether a company that has not been afforded access to Restricted Data under Part 725 might be afforded such access through compliance with the NRC regulations or vice versa.

With respect to the proposed Part 25, we do not understand the necessity for the apparent requirements for separate NRC Access Authorization determinations for a person who already has a DOE Access Authorization for Restricted Data. Indeed, since DOE establishes the "basic standards and procedure" for security clearances for access to Restricted Data, there is a heavy presumption that an individual who has been cleared by DOE was cleared in accordance with such basic standards and procedures. Under these circumstances, we can see no justification for a separate NRC determination, which would be time consuming and unnecessarily costly to all concerned. Such needless, repetitive governmental requirements should be avoided in order to comply with policy directives to government agencies to eliminate unnecessary burdensome rules and regulations which are duplicative in nature.

Under 10 CFR 25.17 (b and c), each request for access authorization is to include a completed personnel security packet which includes PSQ's, fingerprint cards, etc. even though the individual already has current Federal access authorizations. If the NRC is going to accept the investigations and reports of other Federal Government agencies in lieu of complete new investigations for current access holders, then provisions are needed to permit the submittal of an abbreviated personnel security packet. This would eliminate the necessity for new PSQ's and several other forms and reduce the preparation costs for the licensee and the processing cost for the NRC.

Under proposed 10 CFR 25.33, access authorizations are required to be terminated when an individual is separated from employment or separated from the activity for which the access authorization was obtained for a period of 60 days or more. The 60-day period is excessively short. Many special assignments fall in the range of 90 to 120 days. Full compliance with the regulation would require termination of the access authorization and reinstatement of it in such cases. At least, the regulation should be consistent with the DOE requirement which is 90 days.

Section 25.37 requires that requests for classified visits be sent to the NRC Division of Security for verification of NRC access authorization at least 15 days ahead of the visit. Procedures need to be established which will permit:

a. Visits with much shorter notification periods to cover the unusual situations.

b. Multiple visits within an extended period of time. This one is particularly important if compliance inspectors are to continue to make unannounced audits. Otherwise, the licensee will be notified of the access authorization verification ahead of each visit.

In general, we believe that the proposed new Parts 25 and 95 were drafted without adequate consideration of their impact and implications, particularly from the standpoint of a company such as Exxon Nuclear that has broad interests in nuclear technology and has a background of significant access to classified information.

We urge that the proposed regulations be thoroughly reconsidered in the light of the respective roles of DOE and NRC. At the very least, the NRC's regulations should acknowledge and reflect the existence of DOE jurisdiction and authority, and provide guidance as to the impact of NRC's regulation on a company vis-a-vis DOE's Restricted Data procedures. Hopefully, NRC's regulations should also accord a substantial degree of comity and reciprocity to DOE's security measures and requirements. The objective should be the maximum possible simplicity, economy and efficiency compatible with NRC's statutory responsibilities.

The announcement of the proposed regulations asked that commenters advise the NRC of the number of personnel access authorizations and facility clearances which would be required. Assuming that the classified information relates to special nuclear material safeguards, our estimate is 100 persons and three facilities at this time. About 10% of these persons already hold DOE clearances and two of the facilities are already cleared under DOE security programs.

We hope that these comments will be helpful to the NRC.

Sincerely,

R. Nilson, Manager
Licensing

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