



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

AD28-1
PDR
6

AUG 28 1989

MEMORANDUM FOR: James Dunleavy, Chief
Personnel Security Branch
Division of Security
Office of Administration

FROM: David L. Meyer, Chief
Regulatory Publications Branch
Division of Freedom of Information and
Publications Services
Office of Administration

SUBJECT: AMENDMENTS TO 10 CFR PARTS 11, 25, AND 95
TO EXPAND THE PERSONNEL SECURITY INVESTIGATIVE
COVERAGE

The Regulatory Publications Branch concurs on the proposed rule to amend 10 CFR Parts 11, 25, and 95. Enclosed is a marked-up copy of the proposed rule package that presents a few additional editorial corrections. We have also made an adjustment to the amendatory language necessary to comply with OFR publication requirements. Please note that the Office of the Federal Register will not accept a notice with the date and signature block on a page by itself. Therefore, text from the previous page should be added to the signature page. We have also added an Approved for Publication page which is part of the memorandum to the EDO.

If you have any questions concerning this matter, please have a member of your staff contact Betty K. Golden, Regulatory Publications Branch, ADM (extension 24268).

W. L. Meyer

David L. Meyer, Chief
Regulatory Publications Branch
Division of Freedom of Information
and Publications Services
Office of Administration

Enclosures:
As stated

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AD28-1
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MEMORANDUM FOR: James M. Taylor
Acting Executive Director
for Operations

FROM: Raymond J. Brady, Director *mony*
Division of Security
Office of Administration

SUBJECT: AMENDMENTS TO 10 CFR PARTS 11, 25 and 95 TO
EXPAND THE PERSONNEL SECURITY INVESTIGATIVE
COVERAGE

① Enclosed for your signature is a ~~Proposed Rule~~ to amend 10 CFR Part 11, "Criteria and Procedures for Determining Eligibility for Access to or Control Over Special Nuclear Material," 10 CFR Part 25, "Access Authorization for Licensee Personnel," and to make a conforming change to 10 CFR Part 95, "Security Facility Approval and Safeguarding of National Security Information and Restricted Data."

② On April 12, 1989, the EDO approved the immediate addition of a credit check to the scope of the initial investigation coverage required for an NRC "L" security clearance for NRC employees, contractors, and other non-licensee personnel. The EDO also approved the initiation of rulemaking to implement the same investigative scope change for "R" and "L" licensee applicants and to recover the additional cost of each credit check. Accordingly, this ~~Proposed Rule~~ would amend our regulations by expanding the present investigative scope for licensee "R" special nuclear material access authorization and "L" security clearance applicants by adding a credit check and would revise the corresponding fee schedules to recover the additional cost of each credit check.

Congressional committees will not be informed of these actions. A public announcement will not be prepared.

A Notes regarding the issuance of this ~~Proposed Rule~~ will be included in the next weekly report to the Commission. ✓

Raymond J. Brady, Director *mony*
Division of Security
Office of Administration

Enclosure: As stated

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Acting Executive Director
for Operations

FROM: Raymond J. Brady, Director
Division of Security
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Congressional committees will not be informed of these actions. A public announcement will not be prepared.

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Raymond J. Brady, Director
Division of Security
Office of Administration

Enclosure: As stated

AD28-1
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NUCLEAR REGULATORY COMMISSION
10 CFR Parts 11, 25 and 95
RIN 3150 - AD 28
Credit Checks - Expanded Personnel
Security Investigative Coverage

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission proposes to amend its regulations to (1) expand the investigative scope for "R" special nuclear material access authorization and "L" security clearance applicants by adding a credit check; and (2) revise the corresponding fee schedules to reflect the additional cost of each credit check. This amendment is necessary to achieve a higher degree of assurance that "R" and "L" applicants are reliable, trustworthy, and do not have any significant financial problems which may cause them to be susceptible to pressures, blackmail, or coercion to act contrary to the national interest.

DATE: Comment period expires _____. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U. S. Nuclear Regulatory Commission, Washington, DC 20555, ATTENTION: Docketing and Service Branch.

Deliver Comments to: 11555 Rockville Pike, Rockville, Maryland,
between 7:30 a.m. and 4:15 p.m. Federal workdays.

Copies of the regulatory analysis and comments received may be
examined at: Room LL6, 2120 L Street, NW. (Lower Level), Washington; DC.

FOR FURTHER INFORMATION CONTACT: Beth Bradshaw, Personnel Security
Branch, Division of Security, Office of Administration, U. S. Nuclear
Regulatory Commission, Washington, DC 20555, telephone: (301)
492-4120.

SUPPLEMENTARY INFORMATION: On April 12, 1989, the Executive Director for
Operations (EDO) approved the immediate addition of a credit check to the scope
of the initial investigation coverage required for an NRC "L" security
clearance for NRC employees, contractors, and other non-licensure
personnel. The EDO also approved the initiation of rulemaking to implement
the same investigative scope change for "R" and "L" licensee applicants.
The current investigative coverage for "R" and "L" applicants normally
consists of a National Agency Check (NAC) conducted by the Office of
Personnel Management (OPM). While a NAC provides important coverage of
an individual's background (e.g., FBI criminal history fingerprint and
name checks; record checks with OPM, the Department of Defense (DOD) and
other applicable agencies), it does not provide information concerning an
individual's current financial situation. NRC proposes, therefore, to
expand the present investigative scope for an "R" special nuclear material
access authorization and "L" security clearance by adding a credit check.

The addition of the credit check is necessary to achieve a higher degree of assurance that "R" and "L" applicants are reliable, trustworthy, and do not have any significant financial problems which may cause them to be susceptible to pressures, blackmail, or coercion to act contrary to the national interest. In October 1987, OPM added several significant financial questions to its SF-86, "Questionnaire For Sensitive Positions," which the NRC currently uses as a basis for its personnel security investigations. OPM added these questions in order to identify security related concerns and possible exploitable weaknesses in a person's background. In view of recent espionage for money cases, it is important to identify those individuals who have serious financial difficulties and are, therefore, more susceptible to committing espionage or similar activities against the United States.

Furthermore, NRC has found, based on actual case experience, that an individual's financial difficulties may be an indicator or result of other more serious problems such as drug abuse, alcohol abuse, or dishonesty.

In addition to providing greater assurance of an "R" and "L" applicant's eligibility, the credit check will achieve greater comparability between NRC's requirements and those of the Department of Energy and other agencies which require the credit check for their "L" and Secret clearances. The proposed requirement will be more consistent with the investigative coverage proposed in the Nuclear Management and Resources Council (NUMARC) guidelines for licensee personnel with unescorted access to protected and vital areas of nuclear power plants.

The applicable fee schedules will be revised to reflect the additional cost associated with the conduct of the credit check. Specifically, the fee for an NRC "R" special nuclear material access authorization or "L" security clearance will increase from \$15.00 to \$25.00.

Environmental Impact: Categorical Exclusion

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

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) Existing requirements were approved by the Office of Management and Budget, approval numbers 3150-0046, 3150-0047, and 3150-0062.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for

inspection in the NRC Public Document Room, Room LL6, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Beth Bradshaw, Division of Security, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492-4120.

Regulatory Flexibility Certification

Based upon the information available at this stage of the rulemaking proceeding and in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that, if promulgated, this rule will not have a significant economic impact on a substantial number of small entities. This rulemaking activity applies only to those licensees and others who need to use, process, store, transport, or deliver to a carrier for transport formula quantities of special nuclear material (as defined in 10 CFR Part 73) or generate, receive, safeguard, and store National Security Information or Restricted Data (as defined in 10 CFR Part 25). Approximately 31 NRC licensee and other license related interests would be affected under the provisions of 10 CFR Parts 11 and/or 25. However, 20 of these licensee or other interests have only a limited number of active clearances, e.g., one or two each, relating to safeguards activities. Because these licensees are not classified as small entities as defined by the NRC's size standards (December 9, 1985; 50 FR 50241), the Commission finds that this rule will not have a significant economic impact upon a substantial number of small entities.

Backfit Analysis

The NRC ^(has) determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and therefore, that a backfit analysis is not required for this proposed rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 11

Hazardous materials - transportation, Investigations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 25

Classified information, Investigations, Penalty, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 95

Classified information, Penalty, 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. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 11, 25, and 95.

PART 11 - CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

- 1. The authority citation for Part 11 continues to read as follows: ✓
 AUTHORITY: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

- 2. In § 11.7 paragraph (d) is revised to read as follows:

§ 11.7 Definitions.

* * * * *

(d) "NRC - 'R' special nuclear material access authorization" means an administrative determination based upon a national agency check and credit investigation that an individual in the course of employment is eligible to work at a job falling within the criterion of § 11.11(a)(2).

- 3. In § 11.15 paragraphs (e)(1) and (f)(1) and (2) are revised to read as follows: ✓

§ 11.15 Application for special nuclear material access authorization.

* * * * *

(e)(1) Each application for special nuclear material access authorization, renewal, or change in level must be accompanied by the licensee's remittance, payable to the U. S. Nuclear Regulatory Commission, according to the following schedule:

- i. NRC-U requiring full field investigation ----- \$2,127
- ii. NRC-U requiring full field investigation (expedited processing)
----- \$2,645
- iii. NRC-U based on certification of comparable full field background
investigation ----- ¹0
- iv. NRC-U or R renewal ----- ¹25
- v. NRC-R ----- ¹25
- vi. NRC-R based on certification of comparable investigation ----- ²0

¹ If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of \$2,127 will be assessed prior to the conduct of the investigation.

² If the NRC determines, based on its review of available data, that a national agency check and credit investigation is necessary, a fee of \$25.00 will be assessed prior to the conduct of the investigation; however, if a full field investigation is deemed necessary by the NRC based on its review of available data, a fee of \$2,127 will be assessed prior to the conduct of the investigation.

(f)(1) Any Federal employee, employee of a contractor of a Federal agency, licensee, or other person visiting an affected facility for the purpose of conducting official business, who possesses an active NRC or DOE-Q access authorization or an equivalent Federal security clearance granted by another Federal agency ("Top Secret") based on a comparable full field background investigation may be permitted in accordance with § 11.11 the same level of unescorted access that an NRC-U special nuclear material access authorization would afford.

(2) Any Federal employee, employee of a contractor of a Federal agency, licensee, or other person visiting an affected facility for the purpose of conducting official business, who possesses an active NRC or DOE-L access authorization or an equivalent security clearance granted by another Federal agency ("Secret") based on a background investigation or national agency check and credit investigation may be permitted in accordance with § 11.11 the same level of unescorted access that an NRC-R special nuclear material access authorization would afford. An NRC or DOE-L access authorization or an equivalent security clearance ("Secret"), based on a background investigation or national agency check, which was granted or being processed by another Federal agency prior to [date final rule is published in the Federal Register] is acceptable to meet this requirement.

4. Section 11.16 is revised to read as follows:

§ 11.16 Cancellation of request for special nuclear material access authorization.

When a request for an individual's access authorization is withdrawn or cancelled, the licensee shall notify the Chief, Personnel Security Branch, NRC Division of Security immediately, by telephone, so that the full field investigation or national agency check and credit investigation may be discontinued. The caller shall provide the full name and date of birth of the individual, the date of request, and the type of access authorization originally requested ("U" or "R"). The licensee shall promptly submit written confirmation of the telephone notification to the Personnel Security Branch, NRC Division of Security. A portion of the fee for the "U" special nuclear material access authorization may be refunded depending upon the status of the full field investigation at the time of withdrawal or cancellation.

PART 25 - ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

5. The authority citation for Part 25 continues to read as follows:

H 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); E.O. 10865, as amended, 3 CFR 1959-1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9071).

For the purposes of sec. 223, 68 Stat. 958 as amended (42 U.S.C. 2273), §§ 25.13, 25.17(a), 25.33(b) and (c) are issued under sec. 1611, 68 Stat. 949, as amended (42 U.S.C. 2201 (f)); and §§ 25.13 and 25.33(b) are issued under sec. 1610, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

6. In § 25.5 the definition of "L" is revised to read as follows:

§ 25.5 Definitions.

* * * * *

"L" access authorization means an access authorization granted by the Commission which is normally based on a national agency check and credit (NAC&C) investigation or national agency check, inquiries and credit (NACIC) investigation conducted by the Office of Personnel Management.

* * * * *

7. Section 25.25 is revised to read as follows:

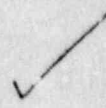
§ 25.25 Cancellation of requests for access authorization.

When a request for an individual's access authorization is withdrawn or cancelled, the requester shall notify the NRC Division of Security immediately, by telephone, so that the full field investigation or national agency check and credit investigation may be discontinued. The caller shall supply the full name and date of birth of the individual, the date of request, and the type of access authorization originally requested ("Q" or "L"). The telephone notification must be promptly confirmed in writing.

8. Appendix A is revised to read as follows:

Appendix A - Fees for NRC Access Authorization

Category	Fee
Initial "L" Access Authorization	¹ \$25
Reinstatement of "L" Access Authorization	¹ \$25
Extension or Transfer of "L" Access Authorization	¹ \$25
Initial "Q" Access Authorization	\$2,127
Initial "Q" Access Authorization (expedited processing).....	\$2,645
Reinstatement of "Q" Access Authorization	² \$2,127
Reinstatement of "Q" Access Authorization (expedited processing)	² \$2,645
Extension or Transfer of "Q"	² \$2,127
Extension or Transfer of "Q" (expedited processing)	² \$2,645



¹ If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of \$2,127 will be assessed prior to the conduct of the investigation.

² Full fee will only be charged if investigation is required.

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

9. The authority citation for Part 95 continues to read as follows:

AUTHORITY: Secs. 145, 161, 88 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. 12356, 47 FR 14874, April 6, 1982.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 95.13, 95.15(a), 95.25, 95.27, 95.29(b), 95.31, 95.33, 95.35, 95.37, 95.39, 95.41, 95.43, 95.45, 95.47, 95.51, 95.53, and 95.57 are also issued under sec. 1611, 68 Stat. 949, as amended (42 U.S.C. 2201(i)).

10. In § 95.5 the definition of "L" is revised to read as follows:

§ 95.5 Definitions.

* * * * *

"L" access authorization means an access authorization granted by the Commission which is normally based on a national agency check and credit investigation (NAC&C) or national agency check, inquiries and credit (NACIC) investigation conducted by the Office of Personnel Management.

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AD28-1

Dated at Rockville, Maryland this _____ day of _____, 1989

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For the Nuclear Regulatory Commission.

James M. Taylor, Acting Executive Director
for Operations

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Approved for Publication

The Commission delegated to the EDO (10 CFR 1.31(a)(3)) the authority to develop and promulgate rules as defined in the APA (5 U.S.C. 551 (4)) subject to the limitations in NRC Manual Chapter 0103, Organization and Functions, Office of the Executive Director for Operations, paragraphs 0213, 038, 039, and 0310.

The enclosed rule, entitled, "Credit Checks - Expanded Personnel Security Investigative Coverage," will amend Parts 11, 25, and 95 by (1) expanding the investigative scope for "R" special nuclear material access authorization and "L" security clearance applicants by adding a credit check; and (2) revising the corresponding fee schedules to reflect the additional cost of each credit check.

This proposed rule does not constitute a significant question of policy, nor does it amend regulations contained in 10 CFR Parts 7, 8, or 9 Subpart C concerning matters of policy. I, therefore, find that this rule is within the scope of my rulemaking authority and am proceeding to issue it.

_____ Date

James M. Taylor, Acting
Executive Director for Operations