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MEMORANDUM FOR: James A. Taylor SEP 6 1989  
Acting Executive Director  
for Operations

FROM: Patricia G. Norry, Director  
Office of Administration

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

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."

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 note regarding the issuance of this proposed rule will be included in the next weekly report to the Commission.

Original signed by  
Patricia G. Norry

Patricia G. Norry, Director  
Office of Administration

Enclosure:

- A. Federal Register Notice of Final Rulemaking
- B. Regulatory Analysis
- C. Draft Daily Staff Notes Item

DISTRIBUTION:

SCF: LRD 3.00.00	MCF: None	P. G. Norry, D/ADM
LRD 3.00.05	D/SEC R/F	H. L. Thompson, Jr., DEDS
LRD 3.00.09	PERSEC R/F	J. Voegele, OGC
LRD 3.00.17	EDO R/F	D. L. Meyer, RPB
E. S. Beckjord, RES	R. F. Burnett, NMSS	B. K. Grimes, NRR
*Concurred in Draft	**Concurred by phone	M. G. Malsch, OIG

OFC	:PERSEC	:PERSEC	:OGC	:DD/SEC	:D/SEC	:RPB	:RES
NAME	:BBradshaw:vg	:JJDunleavy	:RJVoegele*	:RADopp	:RBrady	:DLMeyer*	:ESBeckjord**
DATE	:08/ /89	:08/26/89	:08/24/89	:08/30/89	:08/30/89	:08/28/89	:08/28/89

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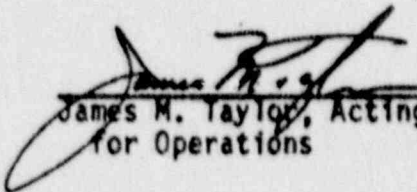
Approved for Publication

The Commission delegated to the EDO (10 CFR 1.31(a)(3)) the authority to develop and promulgate rules as defined in the Administrative Procedure Act (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 licensee "R" special nuclear material access authorization and "L" security clearance applicants by adding a credit check; and (2) revising the corresponding fee schedules to recover 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.

9/6/89  
Date

  
James M. Taylor, Acting Executive Director  
for Operations

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ENCLOSURE A

[7590-01]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11, 25 and 95

RIN 3150 - AD28

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 recover 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-licensee 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 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) 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 ----- <sup>1</sup>0
- iv. NRC-U or R renewal ----- <sup>1</sup>25
- v. NRC-R ----- <sup>1</sup>25
- vi. NRC-R based on certification of comparable investigation ----- <sup>2</sup>0

<sup>1</sup> 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.

<sup>2</sup> 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:

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. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201 (i)); and §§ 25.13 and 25.33(b) are issued under sec. 161o, 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 .....	<sup>1</sup> \$25
Reinstatement of "L" Access Authorization .....	<sup>1</sup> \$25
Extension or Transfer of "L" Access Authorization .....	<sup>1</sup> \$25
Initial "Q" Access Authorization .....	\$2,127
Initial "Q" Access Authorization (expedited processing).....	\$2,645
Reinstatement of "Q" Access Authorization .....	<sup>2</sup> \$2,127
Reinstatement of "Q" Access Authorization (expedited processing) .....	<sup>2</sup> \$2,645
Extension or Transfer of "Q" .....	<sup>2</sup> \$2,127
Extension or Transfer of "Q" (expedited processing) .....	<sup>2</sup> \$2,645

<sup>1</sup> 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.

<sup>2</sup> 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.

\* \* \* \* \*

Dated at Rockville, Maryland this \_\_\_\_ day of \_\_\_\_\_, 1989

For the Nuclear Regulatory Commission.

\_\_\_\_\_  
James M. Taylor, Acting Executive Director  
for Operations.

AD28-1  
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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 recover 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



REGULATORY ANALYSIS1. Statement of Problem

The investigative scope for licensee "R" special nuclear material access authorization and "L" security clearance applicants needs to be expanded to include a credit check. While the current investigative scope provides important coverage of an individual's background, it does not provide information concerning an individual's financial situation. The 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.

The current fee schedules need to be changed to recover the additional cost of each initial credit check. Otherwise, NRC would be subsidizing licensee applications for special nuclear material access authorizations and security clearances.

2. Objective

The objective of this regulatory initiative is to inform licensees and others that (1) NRC proposes to add a credit check to the investigative scope for licensee "R" special nuclear material access authorization and "L" security clearance applicants; (2) the 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; and (3) it is necessary to revise the corresponding fee schedules to recover the additional cost of each credit check.

3. Alternatives

There is no reasonable alternative to the revision of these regulations that would achieve the desired result.

4. Consequences

There are approximately 31 affected entities licensed by the NRC who require "R" and "L" special nuclear material access authorizations/security clearances to permit them access to or control over special nuclear material and/or classified information. Unless the credit check is added to the investigative scope, NRC will not achieve a higher level 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. Additionally, unless the additional cost is recovered, the NRC would be subsidizing licensee applications for special nuclear material access authorizations/security clearance.

5. Decision Rationale

The only available method of imposing this legitimate requirement on selected licensees is to revise 10 CFR Parts 11, 25, and 95. Other avenues would lack the requisite formality and legality necessary.

6. Implementation

The Division of Security intends to publish a proposal rule by September 1989.

DAILY STAFF NOTES  
OFFICE OF ADMINISTRATION

Proposed Rule Signed by the Acting EDO

On \_\_\_\_\_, the Acting Executive Director for Operations approved a proposed rule that amends 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 10 CFR Part 95, "Security Facility Approval and Safeguarding of National Security Information and Restricted Data." The amendments will (1) expand the initial 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 recover the additional cost of each credit check.

This notice informs the Commission that, in accordance with the rulemaking authority delegated to the EDO, the EDO has signed this proposed rule and proposes to forward it on \_\_\_\_\_ to the Office of the Federal Register for publication, unless otherwise directed by the Commission.