



[AF37-1]

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

April 26, 1995

MEMORANDUM TO: James M. Taylor  
Executive Director for Operations

FROM: Patricia G. Norry, Director  
Office of Administration *Patricia G. Norry*

SUBJECT: RECOMMENDATION FOR PROMULGATING A RULE: REVISIONS  
TO 10 CFR PARTS 10, 25 AND 95 TO IMPLEMENT NEW  
NATIONAL SECURITY POLICY DIRECTIVES

In response to the February 13, 1984, memorandum, "Control of NRC Rulemakings by Offices Reporting to the EDO," I have attached pertinent information that supports my recommendation for initiation of the subject rule amendments.

The following three national security initiatives serve as the basis for this recommendation:

1. On October 31, 1994, the Deputy Secretary of Defense, acting as the Executive Agent for the National Industrial Security Program (NISP), approved the NISP Operating Manual (NISPOM). The NISPOM establishes government-wide requirements for the protection of classified National Security Information and Restricted Data at industrial facilities, including NRC contractors, and to the extent feasible within regulatory requirements, NRC licensees and certificate holders.
2. On April 17, 1995, the President signed Executive Order 12958, "Classified National Security Information." The revised requirements for handling and protecting classified information apply to licensees.
3. A proposed Executive Order, "Access to Classified Information," has been circulated in April by OMB to agencies for final review. The new requirements for access to classified information will also apply to licensees.

The effect of the new Executive Orders and the NISPOM is that 10 CFR Part 10, "Criteria and Procedures for Determining Eligibility for Access to Restricted Data or National Security Information or an Employment Clearance," 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," will no longer be consistent with national security policies and directives. Some examples are revised accountability requirements for Secret information, revised requirements for review of Foreign Ownership and Control considerations, new locking mechanism requirements, etc.

Accordingly, I recommend that the current regulations, 10 CFR Parts 10, 25 and 95, be amended to reflect current national security policy. Further, I recommend that this action be a final rulemaking effective 30 days after publication under the exception to the Administrative Procedures Act for rules when public notice and comment are impracticable and unnecessary since this will be an implementation of existing National Security Policies which NRC does not have the authority to modify.

Attachments:

1. Regulatory Agenda Entry
2. Results of Preliminary Office Review of Rulemaking
3. Preliminary Regulatory Analysis

DISTRIBUTION:

SCF: LRD 3.00.03  
LRD 3.00.09 ✓  
LRD 3.00.17

R. L. Spessard, NRR  
R. F. Burnett, NMSS

D/SEC R/F  
H. L. Thompson, Jr., DEDS  
P. G. Norry, ADM  
F. A. Costanzi, RES  
C. M. Holzle, OGC  
B. J. Shelton, IRM  
D. L. Meyer, RPB  
J. J. Dunleavy, PERSEC  
D. A. Dittmeier, FACSEC  
A. L. Silvius, INFOSEC  
ADM R/F  
E. L. Halman, DC  
EDO R/F  
Document Name: CFRREV

Original signed by  
James M. Taylor

Approved: James M. Taylor  
Executive Director for Operations

Date: 5/1/95

\*See attached email concurrences  
\*\* See attached concurrences

(CIRCLE the "C" to receive a copy of this document without enclosures; CIRCLE the "E" to receive a copy with enclosures)

OFFICE	SEC **	C E	PERSEC**	C E	FACSEC**	C E	INFOSEC**	C E	DD/SEC	C E
NAME	DCKidd		JJDunleavy		DADittmeier		ALSilvius		RADopp	
DATE	4/12/95		4/13/95		4/13/95		4/17/95		4/21/95	
OFFICE	D/SEC	CE	RRDB*	C E	D/ADM	C E	IRM	C E	NRR*	C E
NAME	RJBrady		MTLesar		PGNorry		BJShelton		RLSpessard	
DATE	4/21/95		3/24/95		4/14/95		4/25/95		4/4/95	
OFFICE	NMSS*	C E	RES*	C E	OGC*	C E	DEDS	C E		C E
NAME	RFBurnett		FACostanzi		CMHolzle		HLThompson, Jr			
DATE	4/4/95		4/5/95		3/23/95		4/25/95		4/ /95	

OFFICIAL RECORD COPY

Accordingly, I recommend that the current regulations, 10 CFR Parts 10, 25 and 95, be amended to reflect current national security policy. Further, I recommend that this action be a final rulemaking effective 30 days after publication under the exception to the Administrative Procedures Act for rules when public notice and comment are impracticable and unnecessary since this will be an implementation of existing National Security Policies which NRC does not have the authority to modify.

Attachments:

1. Regulatory Agenda Entry
2. Results of Preliminary Office Review of Rulemaking
3. Preliminary Regulatory Analysis

DISTRIBUTION:

SCF: LRD 3.00.03  
LRD 3.00.09  
LRD 3.00.17

R. L. Spessard, NRR  
R. F. Burnett, NMSS

D/SEC R/F  
H. L. Thompson, Jr., DEDS  
P. G. Norry, ADM  
F. A. Costanzi, RES  
C. M. Holzle, OGC  
B. J. Shelton, IRM  
D. L. Meyer, RPB  
J. J. Dunleavy, PERSEC  
D. A. Dittmeier, FACSEC  
A. L. Silvius, INFOSEC  
ADM R/F  
E. L. Halman, DC

Document Name: CFRREV

\*See attached email concurrences

(CIRCLE the "C" to receive a copy of this document without enclosures; CIRCLE the "E" to receive a copy with enclosures)

OFFICE	SEC	<input checked="" type="checkbox"/> C	<input checked="" type="checkbox"/> E	PERSEC	<input checked="" type="checkbox"/> C	<input checked="" type="checkbox"/> E	FACSEC	<input checked="" type="checkbox"/> C	<input checked="" type="checkbox"/> E	INFOSEC	<input checked="" type="checkbox"/> C	<input checked="" type="checkbox"/> E	DD/SEC	<input checked="" type="checkbox"/> C	<input checked="" type="checkbox"/> E
NAME	DGKidd	JJJ Dunleavy			DADittmeier			ALS Silvius			RADopp				
DATE	4/12/95	4/13/95			4/13/95			4/13/95			4/ /95				
OFFICE	D/SEC	<input checked="" type="checkbox"/> C	<input checked="" type="checkbox"/> E	RRDB*	<input checked="" type="checkbox"/> C	<input checked="" type="checkbox"/> E	D/ADM	<input checked="" type="checkbox"/> C	<input checked="" type="checkbox"/> E	IRM	<input checked="" type="checkbox"/> C	<input checked="" type="checkbox"/> E	NRR*	<input checked="" type="checkbox"/> C	<input checked="" type="checkbox"/> E
NAME	RJBrady	MTLesar			PGNorry			BJShelton			RLSpessard				
DATE	4/ /95	3/24/95			4/ /95			4/ /95			4/4/95				
OFFICE	NMSS*	<input checked="" type="checkbox"/> C	<input checked="" type="checkbox"/> E	RES*	<input checked="" type="checkbox"/> C	<input checked="" type="checkbox"/> E	OGC*	<input checked="" type="checkbox"/> C	<input checked="" type="checkbox"/> E	DEDS	<input checked="" type="checkbox"/> C	<input checked="" type="checkbox"/> E		<input checked="" type="checkbox"/> C	<input checked="" type="checkbox"/> E
NAME	RFBurnett	FACostanzi			CMHolzle			HLThompson, Jr							
DATE	4/4/95	4/5/95			3/28/95			4/ /95			4/ /95				

OFFICIAL RECORD COPY

## REGULATORY AGENDA ENTRY

## TITLE:

Protection of and Access to Classified Information for Licensee, Certificate Holder and other Personnel

## CFR CITATION:

10 CFR Part 10, 10 CFR Part 25 and 10 CFR Part 95

## ABSTRACT:

The final rule would amend the Commission's regulations by conforming NRC policy for access to and protection of National Security Information and Restricted Data to new national policies for the protection of such information. The existing regulations were promulgated before the October 31, 1994, approval of the National Industrial Security Program Operating Manual (NISPOM) by the Deputy Secretary of Defense and the April 17, 1995 approval of Executive Order 12958 "Classified National Security Information" by the President. The NISPOM establishes a uniform Government policy for the protection of classified National Security Information and Restricted Data within industrial facilities under a contractual or other (e.g., license) legal relationship with the Government. Executive Order 12958 revises the government-wide requirements for classification and protection of National Security Information. President Clinton is also in the process of approving another new Executive Order, "Access to Classified Information," which revises the government-wide requirements for access to National Security Information. The current 10 CFR Parts 10, 25 and 95 are not fully compliant with the requirements of the NISPOM and the new Executive Orders. Some examples are revised accountability requirements for Secret information, revised requirements for review of Foreign Ownership and Control considerations, new locking mechanism requirements, etc. It is, therefore, necessary to revise these regulations to ensure their consistency with established national policy for the protection of classified information.

## TIMETABLE:

Proposed Action for Division Review: Within 45 days of issuance of the Access to Classified Information Executive Order.

Office Concurrence on Proposed Action Completed: Within 90 days of issuance of the Access to Classified Information Executive Order.

Proposed Action to EDO: Within 110 days of issuance of the Access to Classified Information Executive Order.

Proposed Action Published: Within 140 days of issuance of the Access to Classified Information Executive Order.

## LEGAL AUTHORITY:

42 U.S.C. 2165; 42 U.S.C. 2201; 42 U.S.C. 2273; 42 U.S.C. 5841; E.O. 12829; E.O. 12958; E.O. 10865 (This E.O. will be superseded in whole or in part by the new Access to Classified Information E.O.)

EFFECT ON SMALL BUSINESS AND OTHER ENTITIES: None

AGENCY CONTACT:

Duane G. Kidd  
U. S. Nuclear Regulatory Commission  
Office of Administration  
Washington, DC 20555  
(301) 415-7403



Results of Preliminary Office Review of Rulemaking Entitled  
"Protection of and Access to Classified Information for Licensee,  
Certificate Holder and other Personnel."

Issue to be Addressed

The Office of Administration (ADM) seeks approval to amend 10 CFR Part 10, "Criteria and Procedures for Determining Eligibility for Access to Restricted Data or National Security Information or an Employment Clearance," 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," to conform to the requirements of new national security policies. Specifically, the policies include the National Industrial Security Program Operating Manual (NISPOM), and two new Executive Orders, "Access to Classified Information" and "Classified National Security Information." ADM also proposes to issue these amendments as a final rulemaking effective 30 days after publication under the exception to the Administrative Procedure Act for rules where public notice and comment are impracticable and unnecessary since this will be an implementation of existing National Security Policies which NRC does not have the authority to modify.

Need for Addressing the Issue

Under established procedures for protecting classified National Security Information and Restricted Data under applicable statutory authority, the NRC is obligated to conform its rules to implement changes in national policy imposed as a result of pertinent Executive Orders, among other things. Because these policies for the protection of this information have been revised, it is necessary that NRC conform to the new policies.

Alternatives to Rulemaking

ADM sees no alternative to amending these regulations that would be more effective and use fewer NRC resources.

How Issues will be Addressed by Rulemaking

The final rule would amend 10 CFR Parts 10, 25 and 95 to conform to new national policies.

How the Public, Industry and NRC will be Affected

A negligible effect is predicted for the general public since this rulemaking activity applies only to those licensees and others who need to generate, receive, safeguard and store National Security Information or Restricted Data (as defined in 10 CFR Parts 10, 25 and 95). Approximately 20 NRC licensees and other interests will be affected. In most cases, the effect will consist of minor revisions to Facility Security Plans to conform to new or revised requirements for access to or protection of classified information. Individuals who have already been cleared for access to classified information will be not be required to prepare additional or revised paperwork except perhaps at the time of a

regularly scheduled reinvestigation. In some cases there may be a reduction in administrative requirements because of the standardization of security requirements under the NISPOM when more than one government agency has a security interest at the facility. ADM views these amendments as a necessity.

## PRELIMINARY REGULATORY ANALYSIS

1. Statement of Problem

On October 31, 1994, the Deputy Secretary of Defense, acting as the Executive Agent for the National Industrial Security Program approved the National Industrial Security Program Operating Manual (NISPOM) which established a uniform government policy for the protection of classified National Security Information and Restricted Data at industrial facilities possessing classified information under a legal (e.g., contract or license) relationship with the government. On April 17, 1995 The President signed Executive Order 12958, "Classified National Security Information," revising the requirements for classification and protection of National Security Information. Also in April 1995, the Office of Management and Budget circulated the Executive Order, "Access to Classified Information," that will revise government policies for access to such information. The NRC regulations, 10 CFR Parts 10, 25 and 95, which apply to licensees and certificate holders (Part 95 only), were promulgated prior to these new national policies and are not fully consistent with them. It is, therefore, necessary for NRC to bring its regulations into conformance with current national policy.

2. Objective

The objective of this regulatory initiative is to bring NRC regulations into conformance with national policy.

3. Alternatives

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

4. Consequences

There are approximately 20 affected entities licensed by or certificate holders of the NRC. In most cases, there will be minor revisions to Facility Security Plans required to conform to new or revised requirements for access to or protection of classified information. Individuals who have already been cleared for access to classified information will not be required to prepare additional or revised paperwork except perhaps at the time of a regularly scheduled reinvestigation. In some cases there may be a reduction in administrative requirements because of the standardization of security requirements under the NISPOM when more than one government agency has a security interest at the facility.



5. Decision Rationale

The only available method of imposing these requirements is to revise 10 CFR Parts 10, 25 and 95. Other avenues would lack the requisite formality and legality necessary to require all affected NRC licensees to comply with revised national security policies.

6. Implementation

The Division of Security intends to publish the final rule amending 10 CFR Parts 10, 25 and 95 within 140 days of the issuance of the new Executive Order on access to classified information.