

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 25 and 95

RIN 3150-AH52

#### Broadening Scope of Access Authorization and Facility Security Clearance Regulations

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC or Commission) is proposing to amend its regulations to broaden the scope of the regulations applicable to persons who may require access to classified information, to include persons who may need access in connection with licensing and regulatory activities under the regulations that govern the disposal of high-level radioactive waste in geologic repositories, and persons who may need access in connection with other activities as the Commission may determine, such as vendors of advanced reactor designs. The Commission is also proposing to amend its regulations to broaden the scope of the regulations applicable to procedures for obtaining facility security clearances, to include persons who may need to use, process, store, reproduce, transmit, transport, or handle NRC classified information in connection with the above-identified activities. In addition, NRC is proposing to correct the scope section of the regulations that govern access authorization for licensee personnel to include certificate holders and applicants for a certificate; to clarify the definition of "license" in the regulations that govern access authorization for licensee personnel and govern facility security clearance to include a reference to the regulations that govern combined licenses; to correct a typographical error in the definition of "security container" in its facility security regulations; and to update the references to Executive Order 12958 which has been amended.

**DATES:** Comments on the proposed rule must be received on or before January 14, 2005.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number (RIN 3150-AH52) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: [SECY@nrc.gov](mailto:SECY@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking website to Carol Gallagher (301) 415-5905; e-mail [cag@nrc.gov](mailto:cag@nrc.gov). Comments can also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone (301) 415-1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's

Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

**Note:** Public access to documents, including access via ADAMS and the PDR, has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. However, access to the documents identified in this rule continues to be available through the rulemaking Web site at <http://ruleforum.llnl.gov>, which was not affected by the ADAMS shutdown. Please check with the listed NRC contact concerning any issues related to document availability.

**FOR FURTHER INFORMATION CONTACT:** Dr. Anthony N. Tse, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6233, e-mail [ant@nrc.gov](mailto:ant@nrc.gov).

**SUPPLEMENTARY INFORMATION:** For additional information see the Direct Final Rule published in the final rules section of this **Federal Register**.

#### Procedural Background

Because NRC considers this action noncontroversial and routine, we are publishing this proposed rule concurrently as a direct final rule. The direct final rule will become effective on February 28, 2005. However, if the NRC receives significant adverse comments on the proposed rule by January 14, 2005, or if the NRC receives substantive comments on information collection requirements by January 14, 2005, then the NRC will publish a document to withdraw the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period for this action if the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or

unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

List of Subjects

10 CFR Part 25

Classified information, Criminal penalties, Investigations, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 95

Classified information, Criminal penalties, 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. 552; the NRC is proposing to adopt the following amendments to 10 CFR Parts 25 and 95.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

1. The authority citation for Part 25 is revised 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); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); E.O. 10865, as amended, 3 CFR 1959–1963 Comp., p. 398 (50 U.S.C. 401, note); E.O. 12829, 3 CFR, 1993 Comp., p. 570; E.O. 12958, 3 CFR, 1995 Comp., p. 333, as amended by E.O. 13292, 3 CFR, 2004 Comp., p. 196; E.O. 12968, 3 CFR, 1995 Comp., p. 396.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

2. Section 25.3 is revised to read as follows:

§ 25.3 Scope.

The regulations in this part apply to licensees, certificate holders, and others

who may require access to classified information related to a license, certificate, an application for a license or certificate, or other activities as the Commission may determine.

3. In § 25.5, the definitions of Classified National Security Information, License, and National Security Information are revised to read as follows:

§ 25.5 Definitions.

Classified National Security Information means information that has been determined pursuant to E.O. 12958, as amended, or any predecessor order to require protection against unauthorized disclosure and that is so designated.

License means a license issued under 10 CFR Parts 50, 52, 60, 63, 70, or 72.

National Security Information means information that has been determined under Executive Order 12958, as amended, or any predecessor order to require protection against unauthorized disclosure and that is so designated.

4. In § 25.17, paragraph (a) is revised to read as follows:

§ 25.17 Approval for processing applicants for access authorization.

(a) Access authorizations must be requested for licensee employees or other persons (e.g., 10 CFR part 2, subpart I) who need access to classified information in connection with activities under 10 CFR Parts 50, 52, 54, 60, 63, 70, 72, or 76.

5. In § 25.37, paragraph (b) is revised to read as follows:

§ 25.37 Violations.

(b) National Security Information is protected under the requirements and sanctions of Executive Order 12958, as amended.

PART 95—FACILITY SECURITY CLEARANCE AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

6. The authority for Part 95 is revised to read as follows:

Authority: Secs. 145, 161, 193, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); E.O. 10865, as amended, 3 CFR 1959–1963 Comp., p. 398 (50 U.S.C. 401, note); E.O. 12829, 3 CFR, 1993 Comp.,

p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333, as amended by E.O. 13292, 3 CFR, 2004 Comp., p.196; E.O. 12968, 3 CFR, 1995 Comp., p. 391.

7. Section 95.3 is revised to read as follows:

§ 95.3 Scope.

The regulations in this part apply to licensees, certificate holders and others who may require access to classified National Security Information and/or Restricted Data and/or Formerly Restricted Data (FRD) that is used, processed, stored, reproduced, transmitted, transported, or handled in connection with a license or certificate or an application for a license or certificate, or other activities as the Commission may determine.

8. In § 95.5, the definitions of License and paragraph (2) of Security container are revised to read as follows:

§ 95.5 Definitions.

License means a license issued pursuant to 10 CFR Parts 50, 52, 60, 63, 70, or 72.

Security container includes any of the following repositories:

(2) A safe—burglar-resistive cabinet or chest which bears a label of the Underwriters' Laboratories, Inc., certifying the unit to be a TL-15, TL-30, or TRTL-30, and has a body fabricated of not less than 1 inch of steel and a door fabricated of not less than 1½ inches of steel exclusive of the combination lock and bolt work; or bears a Test Certification Label on the inside of the door, or is marked "General Services Administration Approved Security Container" and has a body of steel at least ½ inch thick, and a combination locked steel door at least 1 inch thick, exclusive of bolt work and locking devices; and an automatic unit locking mechanism.

9. Section 95.59 is revised to read as follows:

§ 95.59 Inspections.

The Commission shall make inspections and reviews of the premises, activities, records and procedures of any person subject to the regulations in this part as the Commission and CSA deem necessary to effect the purposes of the Act, E.O. 12958, as amended, and/or NRC rules.

Dated at Rockville, Maryland, this 30th day of November, 2004.

For the Nuclear Regulatory Commission.

**Luis A. Reyes,**

*Executive Director for Operations.*

[FR Doc. 04-27406 Filed 12-14-04; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Parts 110 and 165

[CGD05-04-035]

RIN 1625-AA00, 1625-AA01

#### Anchorage Grounds and Safety Zone; Delaware River

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a permanent safety zone and to modify Anchorage 6 off Deepwater Point, Anchorage 7, off Marcus Hook, and Anchorage 9, near the entrance to Mantua Creek on the Delaware River in the area of the Marcus Hook Range Channel. The U.S. Army Corps of Engineers (USACE) conducts annual dredging operations between September 1 and December 31, which is necessary to maintain congressionally authorized project depths. The safety zone and anchorage modifications are necessary to ensure safe vessel transits during the dredging operations. These regulations will temporarily alter the route of vessels transiting the channel and requirements for those vessels wishing to anchor during the dredging operations.

**DATES:** Comments and related material must reach the Coast Guard on or before January 14, 2005.

**ADDRESSES:** You may mail comments and related material to Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania, 19147. The Marine Safety Office Philadelphia Waterways Management Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Marine Safety Office Philadelphia between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade Kevin Sligh or Ensign Jill Munsch, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271-4889.

### SUPPLEMENTARY INFORMATION:

#### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05-04-035), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

#### Public Meeting

We do not now plan to hold a public meeting but you may submit a request for a meeting by writing to the Marine Safety Office Philadelphia, Waterways Management Branch to the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### Background and Purpose

USACE conducts annual dredging operations on the Delaware River in the vicinity of the Marcus Hook Range Channel to maintain the authorized forty-foot Federal navigation project depth. The dredging occurs between September 1 and December 31 of each year.

To reduce the hazards associated with dredging the channel, vessel traffic that would normally transit through the Marcus Hook Range Channel will be diverted through part of Anchorage 7 during the dredging operations. Therefore, additional requirements and restrictions on the use of Anchorage 7 are necessary.

For the protection of mariners transiting in the vicinity of dredging operations, the Coast Guard also proposes to establish a safety zone in all waters within a 150-yard radius around the dredging vessels. The safety zone is intended to protect mariners from the potential hazards associated with dredging operations and equipment, and to protect vessels engaged in dredging operations.

#### Discussion of Proposed Rule

The Coast Guard proposes to place a permanent safety zone in waters within

a 150-yard radius around vessels engaged in dredging operations in the Marcus Hook Range Channel and to place additional requirements and restrictions at Anchorage 6 and Anchorage 7.

The safety zone will protect mariners transiting the area from the potential hazards associated with dredging operations. Vessels transiting the Marcus Hook Range Channel will need to divert from the main ship channel through Anchorage 7 and must operate at the minimum safe speed necessary to maintain steerage and reduce wake. No vessel would be allowed to enter the safety zone unless it received permission from the Captain of the Port or his designated representative.

The Coast Guard is proposing the placement of additional requirements on vessels in the affected anchorages. Pursuant to 33 CFR Section 110.157(b)(2) vessels are allowed to anchor for up to 48 hours in the anchorage grounds listed in § 110.157(a), which includes Anchorage 7. However, because of the limited anchorage space available in Anchorage 7, the Coast Guard is adding a paragraph in 33 CFR 110.157(b) to provide additional requirements and restrictions on vessels utilizing Anchorage 7 during the USACE dredging of Marcus Hook Reach Channel. During the enforcement period, vessels desiring to use Anchorage 7 must obtain permission from the Captain of the Port Philadelphia at least 24 hours in advance. The Captain of the Port would permit only one vessel at a time to anchor in Anchorage 7 and would grant permission on a "first come, first serve" basis. A vessel would be directed to a location within Anchorage 7 where it may anchor, and would not be permitted to remain in Anchorage 7 for more than 12 hours.

The Coast Guard expects that vessels normally permitted to anchor in Anchorage 7 would use Anchorage 6 or Anchorage 9, because they are the next closest anchorage grounds. To control access to Anchorage 7, the Coast Guard proposes to require a vessel desiring to anchor in Anchorage 7 to obtain advance permission from the Captain of the Port. To control access to Anchorages 6 and 9, the Coast Guard would require any vessel 700 feet or greater in length to obtain advance permission from the Captain of the Port before anchoring. Anchorages 6 and 9 are not as large as Anchorage 7; therefore the need exists to have one or two tugs on scene while a vessel is anchored in those anchorages. The purpose of this is to prohibit vessels from swinging into the channel or going