

Nuclear Regulatory Commission

§ 95.15

(1) An application of the regulation in the particular circumstances conflicts with other rules or requirements of the NRC;

(2) An application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule;

(3) When compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated;

(4) When the exemption would result in benefit to the common defense and security that compensates for any decrease in security that may result from the grant of the exemption;

(5) When the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation;

(6) When there is any other material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant an exemption. If such a condition is relied on exclusively for satisfying paragraph (b) of this section, the exemption may not be granted until the Executive Director for Operations has consulted with the Commission.

[64 FR 15650, Apr. 1, 1999]

§ 95.13 Maintenance of records.

(a) Each licensee, certificate holder or other person granted facility clearance under this part shall maintain records as prescribed within the part. These records are subject to review and inspection by CSA representatives during security reviews.

(b) Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and

complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

[53 FR 19263, May 27, 1988, as amended at 62 FR 17691, Apr. 11, 1997]

PHYSICAL SECURITY

§ 95.15 Approval for processing licensees and others for facility clearance.

(a) A licensee, certificate holder, or other person who has a need to use, process, store, reproduce, transmit, transport, or handle NRC classified information at any location in connection with Commission-related activities shall promptly request an NRC facility clearance. This specifically includes situations where a licensee, certificate holder, or other person needs a contractor or consultant to have access to NRC classified information. Also included are others who require access to classified information in connection with NRC regulated activities but do not require use, storage, or possession of classified information outside of NRC facilities. However, it is not necessary for a licensee, certificate holder, or other person to request an NRC facility clearance for access to another agency's classified information at that agency's facilities or to store that agency's classified information at their facility, provided no NRC classified information is involved and they meet the security requirements of the other agency. If NRC classified information is involved, the requirements of § 95.17 apply.

(b) The request must include the name of the facility, the location of the facility and an identification of any facility clearance issued by another government agency. If there is no existing facility clearance, the request must include a security Standard Practice Procedures Plan that outlines the facility's proposed security procedures and controls for the protection of classified information, a floor plan of the area in which the matter is to be used,

§ 95.17

processed, stored, reproduced, transmitted, transported or handled; and Foreign Ownership, Control or Influence information.

(c) NRC will promptly inform applicants of the acceptability of the request for further processing and will notify the licensee or other person of their decision in writing.

[45 FR 14483, Mar. 5, 1980, as amended at 48 FR 24321, June 1, 1983; 50 FR 36984, Sept. 11, 1985; 59 FR 48974, Sept. 23, 1994; 62 FR 17691, Apr. 11, 1997; 64 FR 15650, Apr. 1, 1999]

§ 95.17 Processing facility clearance.

(a) Following the receipt of an acceptable request for facility clearance, the NRC will either accept an existing facility clearance granted by a current CSA and authorize possession of license or certificate related classified information, or process the facility for a facility clearance. Processing will include—

(1) A determination based on review and approval of a Standard Practice Procedures Plan that granting of the Facility Clearance would not be inconsistent with the national interest, including a finding that the facility is not under foreign ownership, control, or influence to such a degree that a determination could not be made. An NRC finding of foreign ownership, control, or influence is based on factors concerning the foreign intelligence threat, risk of unauthorized technology transfer, type and sensitivity of the information that requires protection, the extent of foreign influence, record of compliance with pertinent laws, and the nature of international security and information exchange agreements. The licensee, certificate holder, or other person must advise the NRC within 30 days of any significant events or changes that may affect its status concerning foreign ownership, control, or influence (e.g., changes in ownership; changes that affect the company's answers to original FOCI questions; indebtedness; and changes in the required form that identifies owners, officers, directors, and executive personnel).

(2) An acceptable security review conducted by the NRC;

(3) Submitting key management personnel for personnel clearances (PCLs); and

10 CFR Ch. I (1–1–05 Edition)

(4) Appointing a U.S. citizen employee as the facility security officer.

(b) An interim Facility Clearance may be granted by the CSA on a temporary basis pending completion of the full investigative requirements.

[62 FR 17692, Apr. 11, 1997, as amended at 64 FR 15650, Apr. 1, 1999]

§ 95.18 Key personnel.

The senior management official and the Facility Security Officer must always be cleared to a level commensurate with the Facility Clearance. Other key management officials, as determined by the CSA, must be granted an access authorization or be excluded from classified access. When formal exclusion action is required, the organization's board of directors or similar executive body shall affirm the following, as appropriate.

(a) Officers, directors, partners, regents, or trustees (designated by name) that are excluded may not require, may not have, and can be effectively excluded from access to all classified information disclosed to the organization. These individuals also may not occupy positions that would enable them to adversely affect the organization's policies or practices in the performance of activities involving classified information. This action will be made a matter of record by the organization's executive body. A copy of the resolution must be furnished to the CSA.

(b) Officers, directors, partners, regents, or trustees (designated by name) that are excluded may not require, may not have, and can be effectively denied access to higher-level classified information (specify which higher level(s)). These individuals may not occupy positions that would enable them to adversely affect the organization's policies or practices in the protection of classified information. This action will be made a matter of record by the organization's executive body. A copy of the resolution must be furnished to the CSA.

[62 FR 17692, Apr. 11, 1997]