

# 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.

## DEPARTMENT OF ENERGY

### 10 CFR Part 1016

[Docket No. DOE-HQ-2015-0029-0001]

RIN 1992-AA46

#### Safeguarding of Restricted Data by Access Permittees

**AGENCY:** Department of Energy.

**ACTION:** Notice of proposed rulemaking and public hearings.

**SUMMARY:** The Department of Energy (DOE or Department) proposes to revise its regulations governing the standards for safeguarding Restricted Data by access permittees. The existing version of this regulation was promulgated in 1983, which transferred the regulation (originally promulgated in 1976). Since 1983, changes in organizations, terminology, and DOE and national policies render portions of the existing regulation outdated. The proposed revisions would update existing requirements.

**DATES:** Written comments must be received by DOE on or before December 16, 2016.

A public meeting will be held if one is requested by November 23, 2016.

**ADDRESSES:** Written comments should be addressed to: Mr. Matthew B. Moury, Associate Under Secretary for Environment, Health, Safety and Security, Office of Environment, Health, Safety and Security, AU-1/Forrestal Building, Department of Energy, Docket No. DOE-HQ-2015-0029-0001, 1000 Independence Avenue SW., Washington, DC 20585 or via email at [1992-AA46@hq.doe.gov](mailto:1992-AA46@hq.doe.gov). Questions concerning submitting written comments should be addressed to: Ms. Linda Ruhnow, Office of Security Policy, Office of Environment, Health, Safety and Security, Department of Energy, AU-51/Germantown Building, 1000 Independence Avenue SW., Washington, DC 20585-1290, (301) 903-4053 or via email at [1992-AA46@hq.doe.gov](mailto:1992-AA46@hq.doe.gov). Requests to hold a public

meeting should be submitted by phone or email to Ms. Ruhnow at the number or email address provided. You may submit comments, identified by [DOE-HQ-2015-0029-0001 and/or 1992-AA46], by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* [1992-AA46@hq.doe.gov](mailto:1992-AA46@hq.doe.gov).

Include [DOE-HQ-2015-0029-0001 and/or 1992-AA46] in the subject line of the message.

- *Mail:* Mailing Address for paper, disk, or CD-ROM submissions: Department of Energy, Office of Security Policy, (AU-51, Attn: Linda Ruhnow), 1000 Independence Ave. SW., Washington, DC 20585-1290.

- *Hand Delivery/Courier:* Street Address: Department of Energy, Office of Security Policy, (AU-51, Attn: Linda Ruhnow), 1000 Independence Ave. SW., Washington, DC 20585-1290.

As a result of potential delays in the receipt and processing of mail sent through the U.S. Postal Service, DOE encourages respondents to submit comments electronically to ensure timely receipt.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to [http://www.regulations.gov/#!docketDetail;D=DOE-HQ-2015-0008](http://www.regulations.gov/) or contact Linda Ruhnow at (301) 903-4053 prior to visiting Department of Energy, Office of Security Policy, (AU-51), 19901 Germantown Rd., Germantown, MD 20874.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Ruhnow, Office of Security Policy at (301) 903-4053; [Linda.Ruhnow@hq.doe.gov](mailto:Linda.Ruhnow@hq.doe.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Section by Section Analysis
- III. Regulatory Review and Procedural Requirements
  - A. Review Under Executive Order 12866
  - B. Review Under the Regulatory Flexibility Act
  - C. Review Under Paperwork Reduction Act
  - D. Review Under the National Environmental Policy Act

- E. Review Under Executive Order 13132
- F. Review Under Executive Order 12988
- G. Review Under the Unfunded Mandates Reform Act of 1995
- H. Review Under Executive Order 13211
- I. Review Under the Treasury and General Government Appropriations Act of 1999
- IV. Opportunity for Public Comment

#### I. Background

The U.S. Department of Energy may issue an access permit to any person, as set forth in 10 CFR part 725, who requires access to Restricted Data applicable to civil uses of atomic energy for use in his/her business, trade or profession. 10 CFR part 725 specifies the terms and conditions under which the Department will issue an access permit and provides for the amendment, renewal, suspension, termination and revocation of an access permit.

The regulations in 10 CFR part 1016 establish requirements for the safeguarding of Secret and Confidential Restricted Data received or developed under an access permit. This part does not apply to Top Secret information because no such information may be provided to an access permittee within the scope of this regulation. The regulations in this part apply to all persons who may require access to Restricted Data used, processed, stored, reproduced, transmitted, or handled in connection with an access permit.

The original regulations for the safeguarding of Restricted Data were Atomic Energy Commission regulations that were transferred to the Energy Research and Development Administration (ERDA) upon its formation in 1974 (Energy Reorganization Act of 1974; Pub. L. 93-438). The regulations were subsequently revised to conform to ERDA's organization (41 FR 56775, 56785-56788, Dec. 30, 1976). The regulations were updated and transferred from 10 CFR part 795 to 10 CFR part 1016 in 1983. (48 FR 36432 (Aug. 10, 1983). DOE has developed the proposed modifications to 10 CFR part 1016 to reflect organizational, terminology and policy changes that have occurred since the regulations were last revised.

The proposed modifications to the sections of 10 CFR part 1016 that DOE proposes to amend are described in the Section by Section Analysis in section II.

## II. Section by Section Analysis

The heading for this part would be revised to *Safeguarding of Restricted Data by Access Permittees*. The revision is intended to more accurately reflect the contents of the regulation.

### Subpart A—General

In § 1016.3, Definitions, DOE proposes to delete the term “Authorized classifier”. Instead, 10 CFR part 1045 would be referenced as the source of classification requirements.

The terms “Document”, “Material” and “Matter” would be deleted because they are not used in any unique way in this regulation.

The access authorization terms Q, Q(X), L and L(X) would be updated to specify the type of background investigation required. For example, single scope background investigations are required for Q access authorizations.

The term “classified mail address” would be revised for better grammar.

The term “classified matter” would be revised to include all documents, material, electronic media and other physical forms that reveal or contain classified information.

The term “infraction” would be revised to include non-compliance with DOE approvals.

The term “intrusion alarm” would be revised to “intrusion detection system” and updated for more accurate usage consistent with current DOE policy.

The term “National Security Information” would be revised for consistency with Executive Order 13526, *Classified National Security Information*.

The term “Security Plan” would be revised to clarify that matter refers to classified matter.

Proposed changes for § 1016.4 would revise the addressee from the “Chief Health, Safety and Security Officer”, to the “Associate Under Secretary of Environment, Health, Safety and Security” to address a recent reorganization.

Proposed changes for § 1016.5 would require that procedures submitted pursuant to this section ensure that access permit holder employees are informed about classification and declassification requirements in 10 CFR part 1045.

DOE proposes to change the title of § 1016.8 to clarify the section topic.

The proposed changes for § 1016.9 and § 1016.10 revise grammar.

The proposed changes for § 1016.11 would revise “DOE Operations Office” to “the cognizant DOE office” to direct notification to the relevant DOE Element.

The proposed changes for § 1016.12 would update reference to reflect the proposed renumbering of current § 1016.39.

DOE proposes to renumber §§ 1016.21—1016.44 to eliminate the gaps in section numbering that exist in the current version of this regulation.

The renumbered § 1016.13, currently § 1016.21, would be revised to maintain consistency with current national and U.S. Department of Energy policies that no longer allows storage of classified matter in a locked steel file cabinet.

Proposed changes to the renumbered § 1016.14, currently § 1016.22, would clarify that a person must have need-to-know in addition to the appropriate access authorization. This revision does not change the intent of the requirement for protecting Restricted Data that is in use.

Proposed changes to the renumbered § 1016.15, currently § 1016.23, would update intrusion detection system terminology consistent with DOE policy and delete the word “may”.

Proposed changes to the renumbered § 1016.17, currently § 1016.25, would update the weapon specification to match current DOE policy. DOE Order 473.3, Protection Program Operations lists DOE-authorized firearms.

Proposed changes to the renumbered § 1016.18, currently § 1016.31, would apply the need-to-know criterion for Confidential as well as Secret Restricted Data.

Proposed changes to the renumbered § 1016.19, currently § 1016.32, would align requirements and terminology with 10 CFR part 1045, *Nuclear Classification and Declassification*. Also, the title would be changed to more accurately reflect the section and the “Office of Health, Safety and Security” would be replaced with “Office of Environment, Health, Safety and Security”.

Proposed changes to the renumbered § 1016.20, currently § 1016.33, would specify need-to-know as a basic criteria for determining access; indicate required approvals and remove the telephone statement because it is a subset of the telecommunication statement.

Proposed changes to the renumbered § 1016.21, currently § 1016.34, would reflect that classified matter (including matter in electronic format) containing Secret Restricted Data requires accountability.

Proposed changes to the renumbered § 1016.23, currently § 1016.36, would make changes in classification subject to the requirements in 10 CFR part 1045, *Nuclear Classification and Declassification*.

Proposed changes to the renumbered § 1016.24, currently § 1016.37, would amend the title to replace “documents or material” with “classified matter” and would delete provisions that are duplicative with the renumbered § 1016.21 regarding accountability of classified matter that contains Restricted Data.

Proposed new § 1016.25, Storage, use, processing, transmission and destruction of classified information on computers, computer networks, electronic devices/media, and mobile devices, would be added to include additional direction regarding newer forms of media (electronic) that may contain Restricted Data.

Proposed changes to the renumbered § 1016.27, currently § 1016.39 would clarify that termination of the security facility approval will be in accordance with the requirements in this part.

Proposed changes to the renumbered § 1016.31, currently § 1016.43, would update the reference to Executive Order 13526.

Throughout the proposed changes, the term “classified matter” is used so as to include documents and material.

## III. Rulemaking Requirements

### A. Review Under Executive Order 12866

This action does not constitute a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, “Regulatory Planning and Review” (58 FR 51735).

### B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking” (67 FR 53461, Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. DOE has made its procedures and policies available on the Office of the General Counsel’s Web site ([www.gc.doe.gov](http://www.gc.doe.gov)).

DOE has reviewed this proposed rule under the Regulatory Flexibility Act and certifies that, if adopted, the rule would not have a significant impact on a substantial number of small entities. This proposed action would amend an existing rule which establishes

safeguarding of Restricted Data by persons granted an Access Permit according to 10 CFR part 725. The rule would only apply to Access Permittees, of which there are historically very few (e.g., between zero and five), and the proposed changes are administrative changes (such as renumbering of several parts and changing office names to reflect a recent reorganization), updates to enable consistency with current policies and practices, and clarification of requirements.

Because these standards and requirements consist of clarifications and updates to existing standards and requirements, DOE does not expect that the impact on any Access Permittees would be significant. DOE seeks comment on its estimate of the number of small entities and the expected effects of this proposed rule.

For the above reasons, DOE certifies that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

#### *C. Review Under Paperwork Reduction Act*

This proposed rule does not contain a collection of information subject to OMB approval under the Paperwork Reduction Act.

#### *D. Review Under the National Environmental Policy Act*

This proposed rule amends existing policies and procedures establishing safeguarding of Restricted Data standards and requirements for Access Permittees and has no significant environmental impact. Consequently, the Department has determined that this rule is covered under Categorical Exclusion A-5, of Appendix A to Subpart D, 10 CFR part 1021, which applies to a rulemaking that addresses amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

#### *E. Review Under Executive Order 13132*

Executive Order 13132, "Federalism," (64 FR 43255, August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to develop a formal process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have "federalism implications." Policies that

have federalism implications are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." On March 7, 2011, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735, March 14, 2000).

DOE has examined the proposed and revised rule and has determined that it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

#### *F. Review Under Executive Order 12988*

Section 3 of Executive Order 12988, (61 FR 4729, February 7, 1996), instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in section 3(a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation describes any administrative proceeding to be available prior to judicial review and any provisions for the exhaustion of administrative remedies. The Department has determined that this regulatory action meets the requirements of section 3(a) and (b) of Executive Order 12988.

#### *G. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory action on state, local and tribal governments and the private sector. For proposed regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. UMRA also requires Federal agencies to develop an effective process to permit timely input by elected

officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate." In addition, UMRA requires an agency plan for giving notice and opportunity for timely input to small governments that may be affected before establishing a requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820, March 18, 1997). (This policy is also available at <http://www.gc.doe.gov>). This proposed rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of \$100 million or more in any year, so these requirements do not apply.

#### *H. Review Under Executive Order 13211*

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternates to the action and their expected benefits on energy supply, distribution, and use.

This proposed rule is not a significant energy action, nor has it been designated as such by the Administrator of OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

#### *I. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as

an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

#### IV. Opportunity for Public Comment

##### A. Participation in Rulemaking

DOE encourages the maximum level of public participation in this rulemaking. Interested persons are encouraged to participate in the public hearings at the times and places indicated at the beginning of this proposed rulemaking.

DOE has established a period of thirty days following publication of this proposed rulemaking for persons and organizations to comment. All public comments, hearing transcripts, and other docket material will be available for review and copying at the DOE offices at each of the hearing sites. The docket material will be filed under "DOE-HQ-2015-0029-0001."

##### B. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this proposed rulemaking. Instructions for submitting written comments are set forth at the beginning of this notice and below. Where possible, comments should identify the specific section they address.

Comments should be labeled both on the envelope and on the documents, "Docket No. DOE-HQ-2015-0029-0001" and must be received by the date specified at the beginning of this proposed rulemaking. All comments and other relevant information received by the date specified at the beginning of this proposed rulemaking will be considered by DOE in the subsequent stages of the rulemaking process.

Pursuant to the provisions of 10 CFR part 1004, any person submitting information or data that is believed to be confidential and exempt by law from public disclosure should submit one complete copy of the document and three copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

##### C. Public Hearings

The dates, times and places of the public hearings are indicated at the beginning of this proposed rulemaking. DOE invites any person or organization who has an interest in these proceedings to make a request to make an oral

presentation at one of the public hearings. Requests can be phoned in advance to the telephone number indicated at the beginning of this proposed rulemaking. The person making the request should provide a telephone number where he or she may be contacted.

DOE reserves the right to schedule the presentations, and to establish the procedures governing the conduct of the hearings.

A DOE official will be designated to preside at the hearings and ask questions. Any necessary procedural rules regarding proper conduct of the hearings will be determined by the presiding official.

Transcripts of the hearings will be made and the entire record of this rulemaking, including the transcripts, will be retained by DOE and made available for inspection and copying as provided at the beginning of this proposed rulemaking as well as being posted on [www.regulations.gov](http://www.regulations.gov) under Docket Number DOE-HQ-2015-0029-0001. Any person may also purchase a copy of a transcript from the transcribing reporter.

#### List of Subjects in 10 CFR Part 1016

Classified information, Nuclear energy, Reporting and recordkeeping requirements, Security measures.

Issued in Washington, DC, on November 1, 2016.

##### Matthew B. Moury,

*Associate Under Secretary for Environment, Health, Safety and Security.*

For the reasons set out in the preamble, DOE proposes to amend part 1016 of title 10 of the Code of Federal Regulations as set forth below:

#### PART 1016—SAFEGUARDING OF RESTRICTED DATA BY ACCESS PERMITTEES

■ 1. The authority citation for part 1016 continues to read as follows:

**Authority:** Sec. 161i of the Atomic Energy Act of 1954, 68 Stat. 948 (42 U.S.C. 2201).

- 2. The part heading for part 1016 is revised as set forth above.
- 3. Section 1016.3 is amended by:
  - a. Revising paragraph (a).
  - b. Removing paragraphs (c).
  - c. Redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.
  - d. Revising newly designated paragraphs (c) and (d).
  - e. Redesignating paragraphs (f) and (g) as paragraphs (e) and (f), respectively.
  - f. Removing paragraph (h).
  - g. Redesignating paragraphs (i) through (k) as paragraphs (g) through (i), respectively.

- h. Revising newly designated paragraphs (h) and (i).
- i. Removing paragraphs (l) and (m).
- j. Redesignating paragraphs (n) through (z) as paragraphs (j) through (v), respectively.
- k. Revising newly designated paragraphs (k) and (u).

The revisions read as follows:

#### § 1016.3 Definitions.

(a) *Access authorization.* An administrative determination by DOE that an individual who is either a DOE employee, applicant for employment, consultant, assignee, other Federal department or agency employee (or other persons who may be designated by the Secretary of Energy), or a DOE contractor or subcontractor employee, or an access permittee is eligible for access to Restricted Data. Access authorizations granted by DOE are designated as "Q," "Q(X)," "L," or "L(X)."

(1) "Q" access authorizations are based upon single scope background investigations as set forth in applicable DOE and national-level directives. They permit an individual who has "need to know" access to Top Secret, Secret and Confidential Restricted Data, Formerly Restricted Data, National Security Information, or special nuclear material in Category I or II quantities as required in the performance of duties, subject to additional determination that permitting this access will not endanger the common defense or national security of the United States. There may be additional requirements for access to specific types of RD information.

(2) "Q(X)" access authorizations are based upon the same level of investigation required for a Q access authorization when "Q" access authorizations are granted to access permittees they are identified as "Q(X)" access authorizations and, as need-to-know applies, authorize access only to the type of Secret Restricted Data as specified in the permit and consistent with appendix A, 10 CFR part 725, "Categories of Restricted Data Available."

(3) "L" access authorizations are based upon National Agency Check with Local Agency Checks and Credit Check background investigation as set forth in applicable DOE and national-level directives. They permit an individual who has "need to know" access to Confidential Restricted Data, Secret and Confidential Formerly Restricted Data, or Secret and Confidential National Security Information, required in the performance of duties, provided such information is not designated

“CRYPTO” (classified cryptographic information), other classified communications security (“COMSEC”) information, or intelligence information and subject to additional determination that permitting this access will not endanger the common defense or national security of the United States. There may be additional requirements for access to specific types of RD information.

(4) “L(X)” access authorizations are based upon the same level of investigation required for an L access authorization. When “L” access authorizations are granted to access permittees, they are identified as “L(X)” access authorizations and, as need to know applies, authorize access only to the type of Confidential Restricted Data as specified in the permit and consistent with appendix A, 10 CFR part 725, “Categories of Restricted Data Available.”

\* \* \* \* \*

(c) *Classified mail address.* A mail address established for each access permittee and approved by the DOE to be used when sending Restricted Data to the permittee.

(d) *Classified matter.* Anything in physical form (including, but not limited to documents and material) that contains or reveals classified information.

\* \* \* \* \*

(h) *Infraction.* An act or omission involving failure to comply with DOE safeguards and security orders, directives, or approvals and may include a violation of law.

(i) *Intrusion detection system.* A security system consisting of sensors capable of detecting one or more types of phenomena, signal media, annunciators, energy sources, alarm assessment systems, and alarm reporting elements including alarm communications and information display equipment.

\* \* \* \* \*

(k) *National Security Information.* Information that has been determined pursuant to Executive Order 13526, as amended “Classified National Security Information” or any predecessor or successor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

(u) *Security Plan.* A written plan by the access permittee, and submitted to the DOE for approval, which outlines the permittee’s proposed security procedures and controls for the protection of Restricted Data and which includes a floor plan of the area in which the classified matter is to be

used, processed, stored, reproduced, transmitted, or handled.

\* \* \* \* \*

■ 4. Section 1016.4 is revised to read as follows:

**§ 1016.4 Communications.**

Communications concerning rulemaking, *i.e.*, petition to change part 1016, should be addressed to the Associate Under Secretary, Office of Environment, Health, Safety and Security, AU–1/Forrestal Building, Office of Environment, Health, Safety and Security, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All other communications concerning the regulations in this part should be addressed to the cognizant DOE or National Nuclear Security Administration (NNSA) office.

■ 5. Section 1016.5 is revised to read as follows:

**§ 1016.5 Submission of procedures by access permit holder.**

No access permit holder shall have access to Restricted Data until he has submitted to the DOE a written statement of his procedures for the safeguarding of Restricted Data and for the security education of his employees, and DOE shall have determined and informed the permittee that his procedures for the safeguarding of Restricted Data are in compliance with the regulations in this part and that his procedures for the security education of his employees, who will have access to Restricted Data, are informed about and understand the regulations in this part. These procedures must ensure that employees with access to Restricted Data are informed about and understand who is authorized or required to classify and declassify RD and FRD information and classified matter as well as how documents containing RD or FRD are marked (see 10 CFR part 1045) and safeguarded.

■ 6. The section heading for § 1016.8 is revised to read as follows:

**§ 1016.8 Request for security facility approval.**

■ 7. Section 1016.9 is revised to read as follows:

**§ 1016.9 Processing security facility approval.**

Following receipt of an acceptable request for security facility approval, the DOE will perform an initial security survey of the permittee’s facility to determine that granting a security facility approval would be consistent with the national security. If DOE makes such a determination, security facility approval will be granted. If not, security

facility approval will be withheld pending compliance with the security survey recommendations or until a waiver is granted pursuant to § 1016.6 of this part.

■ 8. Section 1016.10 is revised to read as follows:

**§ 1016.10 Granting, denial, or suspension of security facility approval.**

Notification of the DOE’s granting, denial, or suspension of security facility approval will be furnished the permittee in writing, or orally with written confirmation. This information may also be furnished to representatives of the DOE, DOE contractors, or other Federal agencies having a need to transmit Restricted Data to the permittee.

■ 9. Section 1016.11 is revised to read as follows:

**§ 1016.11 Cancellation of requests for security facility approval.**

When a request for security facility approval is to be withdrawn or cancelled, the cognizant DOE Office will be notified by the requester immediately by telephone and confirmed in writing so that processing of this approval may be terminated.

■ 10. Section 1016.12 is revised to read as follows:

**§ 1016.12 Termination of security facility approval.**

Security facility approval will be terminated when:

(a) There is no longer a need to use, process, store, reproduce, transmit, or handle Restricted Data at the facility; or

(b) The DOE makes a determination that continued security facility approval is not in the interest of common defense and security.

The permittee will be notified in writing of a determination to terminate facility approval, and the procedures outlined in § 1016.27 of this part will apply.

**§§ 1016.21 through 1016.23 [Redesignated as §§ 1016.13 through 1016.15]**

■ 11. Sections 1016.21 through 1016.23 are redesignated as §§ 1016.13 through 1016.15 and revised to read as follows:

**§ 1016.13 Protection of Restricted Data in storage.**

(a) Persons who possess Restricted Data pursuant to an Access Permit shall store the Restricted Data classified matter when not in use in a locked storage container or DOE-approved vault to which only persons with appropriate access authorization and a need to know the information contained have access. Storage containers used for storing classified matter must conform to U.S. General Services Administration (GSA) standards and specifications.

(b) Changes of combination: Each permittee shall change the combination on locks of his safekeeping equipment whenever such equipment is placed in use, whenever an individual knowing the combination no longer requires access to the repository as a result of change in duties or position in the permittee's organization, or termination of employment with the permittee or whenever the combination has been subjected to compromise, and in any event at least once a year. Permittees shall classify records of combinations no lower than the highest classification of the classified matter authorized for storage in the safekeeping equipment concerned.

**§ 1016.14 Protection of Restricted Data while in use.**

While in use, classified matter containing Restricted Data shall be under the direct control of a person with the appropriate access authorization and need to know. Unauthorized access to the Restricted Data shall be precluded.

**§ 1016.15 Establishment of security areas.**

(a) When, because of their nature or size, it is impracticable to safeguard classified matter containing Restricted Data in accordance with the provisions of §§ 1016.13 and 1016.14, a security area to protect such classified matter shall be established.

(b) The following controls shall apply to security areas:

(1) Security areas shall be separated from adjacent areas by a physical barrier designed to prevent entrance into such areas, and access to the Restricted Data within the areas, by unauthorized individuals.

(2) During working hours, admittance shall be controlled by an appropriately cleared individual posted at each unlocked entrance.

(3) During nonworking hours, admittance shall be controlled by protective personnel on patrol, with protective personnel posted at unlocked entrances, or by such intrusion detection system as DOE approves.

(4) Each individual authorized to enter a security area shall be issued a distinctive badge or pass when the number of employees assigned to the area exceeds thirty.

**§ 1016.24 [Redesignated as § 1016.16]**

■ 12. Section 1016.24 is redesignated as § 1016.16.

**§ 1016.25 [Redesignated as § 1016.17]**

■ 13. Section 1016.25 is redesignated as § 1016.17 and revised to read as follows:

**§ 1016.17 Protective personnel.**

Whenever armed protective personnel are required in accordance with § 1016.15, such protective personnel shall:

(a) Possess a "Q" or "L" access authorization or "Q(X)" or "L(X)" access authorization if the Restricted Data being protected is classified Confidential, or a "Q" access authorization or "Q(X)" access authorization if the Restricted Data being protected is classified Secret.

(b) Be armed with sidearms of 9mm or greater.

**§§ 1016.31 through 1016.34 [Redesignated as §§ 1016.18 through 1016.21]**

■ 14. Sections 1016.31 through 1016.34 are redesignated as §§ 1016.18 through 1016.21 and revised to read as follows:

**§ 1016.18 Access to Restricted Data.**

(a) Except as DOE may authorize, no person subject to the regulations in this part shall permit any individual to have access to Restricted Data in his possession unless the individual has an appropriate access authorization granted by DOE, or has been certified by DOD or NASA through DOE, and;

(1) The individual is authorized by an Access Permit to receive Restricted Data in the categories involved and the permittee determines that such access is required in the course of his duties, or

(2) The individual needs such access in connection with such duties as a DOE employee or DOE contractor employee, or as certified by DOD or NASA.

(b) Inquiries concerning the access authorization status of individuals, the scope of Access Permits, or the nature of contracts should be addressed to the cognizant DOE or NNSA office.

**§ 1016.19 Review, classification and marking of classified information.**

(a) *Classification.* Restricted Data generated or possessed by an Access Permit holder must be appropriately classified and marked in accordance with 10 CFR part 1045 or its successor. CG-DAR-2, "Guide to the Declassified Areas of Nuclear Energy Research U 08/98," will be furnished each permittee. In the event a permittee originates classified information which falls within the definition of Restricted Data or information for which the permittee is not positive that the information is outside of that definition and CG-DAR-2 does not provide positive classification guidance for such information, the permittee shall designate the information as Confidential, Restricted Data and request classification guidance from the DOE through the Classification Officer

at the cognizant DOE or NNSA office. If the DOE Classification Officer does not have authority to provide the guidance, he will refer the request to the Director, Office of Classification, AU-60/ Germantown Building, Office of Environment, Health, Safety and Security, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585-1290.

(b) *Challenges.* If a person receives a document or other classified matter which, in his opinion, is not properly classified, or omits the appropriate classification markings, he is encouraged to challenge the classification and there shall be no retribution for submitting a challenge. Challenges shall be submitted in accordance with 10 CFR part 1045.

(c) *Classification markings.* Restricted Data generated or possessed by an individual approved for access must be appropriately identified and marked in accordance with 10 CFR part 1045, Nuclear Classification and Declassification. Questions and requests for additional direction or guidance regarding the marking of classified matter may be submitted to the Director, Office of Classification, AU-60/ Germantown Building, Office of Environment, Health, Safety and Security, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585-1290

**§ 1016.20 External transmission of Restricted Data.**

(a) *Restrictions.* (1) Restricted Data shall be transmitted only to persons who possess appropriate access authorization, need to know, and are otherwise eligible for access under the requirements of § 1016.18.

(2) In addition, such classified matter containing Restricted Data shall be transmitted only to persons who possess approved facilities for their physical security consistent with this part. Any person subject to the regulations in this part who transmits such Restricted Data containing Restricted Data shall be deemed to have fulfilled his obligations under this subparagraph by securing a written certification from the prospective recipient that such recipient possesses facilities for its physical security consistent with this part.

(3) Restricted Data shall not be exported from the United States without prior authorization from DOE.

(b) *Preparation of documents.* Documents containing Restricted Data shall be prepared for transmission outside an individual installation in accordance with the following:

(1) They shall be enclosed in two sealed, opaque envelopes or wrappers.

(2) The inner envelope or wrapper shall be addressed in the ordinary manner and sealed with tape, the appropriate classification shall be marked on both sides of the envelope, and any additional marking required by 10 CFR part 1045 shall be applied.

(3) The outer envelope or wrapper shall be addressed in the ordinary manner. No classification, additional marking, or other notation shall be affixed which indicates that the document enclosed therein contains classified information or Restricted Data.

(4) A receipt which identifies the document, the date of transfer, the recipient, and the person transferring the document shall accompany the document and shall be signed by the recipient and returned to the sender whenever the custody of a document containing Secret Restricted Data is transferred.

(c) *Preparation of other classified matter.* Classified matter, other than documents, containing Restricted Data shall be prepared for shipment outside an individual installation in accordance with the following:

(1) The classified matter shall be so packaged that the classified characteristics will not be revealed.

(2) A receipt which identifies the classified matter, the date of shipment, the recipient, and the person transferring the classified matter shall accompany the classified matter, and the recipient shall sign such receipt whenever the custody of classified matter containing Secret Restricted Data is transferred.

(d) *Methods of transportation.* (1) Secret classified matter shall be transported only by one of the following methods:

(i) By messenger-courier system specifically created for that purpose and approved for use by DOE.

(ii) Registered mail.

(iii) By protective services provided by United States air or surface commercial carriers under such conditions as may be preserved by the DOE.

(iv) Individuals possessing appropriate DOE access authorization who have been given written authority by their employers.

(2) Confidential classified matter may be transported by one of the methods set forth in paragraph (d)(1) of this section or by U.S. first class, express, or certified mail.

(e) *Telecommunication of classified information.* There shall be no telecommunication of Restricted Data unless the secure telecommunication system has been approved by the DOE.

#### **§ 1016.21 Accountability for Secret Restricted Data.**

Each permittee possessing classified matter (including classified matter in electronic format) containing Secret Restricted Data shall establish accountability procedures and shall maintain logs to document access to and record comprehensive disposition information for all such classified matter that has been in his custody at any time.

#### **§ 1016.35 [Redesignated as § 1016.22]**

■ 15. Section 1016.35 is redesignated as § 1016.22.

#### **§§ 1016.36 and 1016.37 [Redesignated as §§ 1016.23 and 1016.24]**

■ 16. Sections 1016.36 and 1016.37 are redesignated as §§ 1016.23 and 1016.24 and revised to read as follows:

#### **§ 1016.23 Changes in classification.**

Classified matter containing Restricted Data shall not be downgraded or declassified except as authorized by DOE and in accordance with 10 CFR part 1045.

#### **§ 1016.24 Destruction of classified matter containing Restricted Data.**

Documents containing Restricted Data may be destroyed by burning, pulping, or another method that assures complete destruction of the information which they contain. Restricted Data contained in classified matter, other than documents, may be destroyed only by a method that assures complete obliteration, removal, or destruction of the Restricted Data.

■ 17. Add § 1016.25 to read as follows:

#### **§ 1016.25 Storage, use, processing, transmission and destruction of classified information on computers, computer networks, electronic devices/media and mobile devices.**

Storage, use, processing, and transmission of Restricted Data on computers, computer networks, electronic devices/media and mobile devices must be approved by DOE. DOE-approved methods must be used when destroying classified information that is in electronic format.

#### **§ 1016.38 [Redesignated as § 1016.26]**

■ 18. Section 1016.38 is redesignated as § 1016.26.

#### **§ 1016.39 [Redesignated as § 1016.27]**

■ 19. Section 1016.39 is redesignated as § 1016.27 and revised to read as follows:

#### **§ 1016.27 Termination, suspension, or revocation of security facility approval.**

(a) In accordance with § 1016.12, if the need to use, process, store, reproduce, transmit, or handle classified

matter no longer exists, the security facility approval will be terminated. The permittee may deliver all Restricted Data to the DOE or to a person authorized to receive them; or the permittee may destroy all such Restricted Data. In either case, the facility must submit a certification of non-possession of Restricted Data to the DOE.

(b) In any instance where security facility approval has been suspended or revoked based on a determination of the DOE that further possession of classified matter by the permittee would endanger the common defense and national security, the permittee shall, upon notice from the DOE, immediately deliver all Restricted Data to the DOE along with a certificate of non-possession of Restricted Data.

#### **§§ 1016.40 through 1016.42 [Redesignated as §§ 1016.28 through 1016.30]**

■ 20. §§ 1016.40 through 1016.42 are redesignated as §§ 1016.28 through 1016.30.

#### **§ 1016.43 [Redesignated as § 1016.31]**

■ 21. Section 1016.43 is redesignated as § 1016.31 and revised to read as follows:

#### **§ 1016.31 Inspections.**

The DOE shall make such inspections and surveys of the premises, activities, records, and procedures of any person subject to the regulations in this part as DOE deems necessary to effectuate the purposes of the Act, Executive Order 13526, and DOE orders and procedures.

#### **§ 1016.44 [Redesignated as § 1016.32]**

■ 22. Section 1016.44 is redesignated as § 1016.32.

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 71**

[Docket No. FAA-2016-9193; Airspace Docket No. 16-AGL-26]

#### **Proposed Establishment of Class E Airspace; Wessington Springs, SD**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to establish Class E airspace at Wessington Springs, SD. Controlled airspace is necessary to accommodate new Standard Instrument Approach