

# 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 HOMELAND SECURITY

### Office of the Secretary

#### 6 CFR Part 5

[Docket No. DHS-2008-0096]

### Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security Accident Records

**AGENCY:** Privacy Office, DHS.

**ACTION:** Notice of Proposed Rule Making.

**SUMMARY:** The Department of Homeland Security is giving concurrent notice of a revised and updated system of records pursuant to the Privacy Act of 1974 for the Department of Homeland Security Accident Records system of records and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act in connection with providing protective services to the President of the United States and other individuals Section 3056 and 3056A of Title 18.

**DATES:** Comments must be received on or before December 26, 2008.

**ADDRESSES:** You may submit comments, identified by docket number DHS-2008-0096, by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 1-866-466-5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington DC 20528.

*Instructions:* All submissions received must include the agency name and docket number for this notice. 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>.

**FOR FURTHER INFORMATION CONTACT:** For general questions and privacy issues, please contact: Hugo Teufel III (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

#### SUPPLEMENTARY INFORMATION:

*Background:* Pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107-296, Section 1512, 116 Stat. 2310 (November 25, 2002), the Department of Homeland Security (DHS) and its components and offices have relied on preexisting Privacy Act systems of records notices for the collection and maintenance of records that concern accident records.

As part of its efforts to streamline and consolidate its Privacy Act record systems, DHS is establishing a new agency-wide system of records under the Privacy Act (5 U.S.C. 552a) for DHS accident records. This will ensure that all components of DHS follow the same privacy rules for collecting and handling accident records. DHS will use this system to collect and maintain accident records submitted by DHS personnel and others. In this notice of proposed rulemaking, DHS now is proposing to exempt Accident Records, in part, from certain provisions of the Privacy Act.

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description of the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals

regarding the uses to which personally identifiable information is put, and to assist individuals in finding such files within the agency.

The Privacy Act allows Government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemptions from certain requirements of the Privacy Act for Accident Records. Some information in Accident Records relates to the protective services to the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to safeguard records in connection with providing protective services to the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18.

In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A notice of system of records for Accident Records is also published in this issue of the **Federal Register**.

#### List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

#### PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for Part 5 continues to read as follows:

**Authority:** 6 U.S.C. 101 et seq.; Public Law 107-296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. Add at the end of Appendix C to Part 5, the following new paragraph 14:

#### Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

\* \* \* \* \*

14. The Department of Homeland Security Accident Records system of records consists of electronic and paper records and will be used by DHS and its components. Accident Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; national security and intelligence activities; and protection of the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18. Accident Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. Pursuant to 5 U.S.C. 552a(k)(3) this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a (d). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of information related to the protection of a President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18. Permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

Dated: November 18, 2008.

**Hugo Teufel III,**

*Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. E8-28061 Filed 11-24-08; 8:45 am]

**BILLING CODE 4410-10-P**

## **NUCLEAR REGULATORY COMMISSION**

### **10 CFR Part 50**

**[Docket No. PRM-50-84; NRC-2007-0013]**

#### **Mark Edward Leyse; Consideration of Petition in Rulemaking Process**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Resolution of petition for rulemaking and closure of petition docket.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) will consider the issues raised in a petition for rulemaking (PRM) submitted by Mark Edward Leyse in the NRC's rulemaking process. The petition was dated March 15, 2007, and was docketed as PRM-50-84. The petitioner requests that the NRC amend its regulations to require that nuclear power reactors be operated in a manner to limit the thickness of crud

layers and/or the thickness of oxide layers on fuel rod cladding surfaces to ensure that the facilities operate in compliance with the emergency core cooling system (ECCS) acceptance criteria. The petitioner also requests that the requirements pertaining to ECCS evaluation models be amended to explicitly require that the steady-state temperature distribution and stored energy in reactor fuel at the onset of a postulated loss-of-coolant accident (LOCA) be calculated by factoring in the role that the thermal resistance of crud and/or oxide layers on fuel cladding plays in increasing the stored energy of the fuel. Lastly, the petitioner requests that the acceptance criteria for analyses of ECCS cooling performance for light-water nuclear power reactors be amended to stipulate a maximum allowable percentage of hydrogen content in the cladding of fuel rods. The NRC will consider the petitioner's first two requests in PRM-50-84 because the underlying technical considerations regarding the effects of crud and oxide growth on ECCS analyses noted by the petitioner are sufficiently related to an ongoing NRC rulemaking activity on ECCS analysis acceptance criteria. The NRC will consider the petitioner's third request because the NRC has already initiated rulemaking activities that will address the petitioner's underlying technical concerns on fuel cladding embrittlement.

While the NRC will consider the issues raised in the petition in its rulemaking process, the petitioner's concerns may not be addressed exactly as the petitioner has requested. During the rulemaking process, the NRC will solicit comments from the public and will consider all comments before issuing a final rule.

**DATES:** The docket for the petition for rulemaking PRM-50-84 is closed on November 25, 2008.

**ADDRESSES:** You can access publicly available documents related to this petition for rulemaking using the following methods:

*Federal e-Rulemaking Portal:* Documents related to the evaluation of this petition are assigned to rulemaking docket ID: NRC-2006-0013. Further NRC action on the issues raised by this petition will be considered in the rulemaking to establish Performance-based ECCS Cladding Acceptance Criteria, (RIN 3150-AH42) which has been assigned rulemaking docket ID: NRC-2008-0332. Information on this petition and the related rulemaking can be accessed at the Federal rulemaking portal, <http://www.regulations.gov>; search on rulemaking docket ID: NRC-

2007-0013 and NRC-2008-0332. The NRC also tracks all rulemaking actions in the "NRC Regulatory Agenda: Semiannual Report (NUREG-0936)."

*NRC's Public Document Room (PDR):* The public may examine and have copied for a fee, publicly available documents at the NRC's PDR, Public File Area, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

*NRC's Agencywide Document Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/nrc/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are any problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to [PDR.resource@nrc.gov](mailto:PDR.resource@nrc.gov).

#### **FOR FURTHER INFORMATION CONTACT:**

Richard Dudley, Mail Stop O12-D3, Office of Nuclear Reactor Regulation, United States Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone (301) 415-1116, or e-mail [richard.dudley@nrc.gov](mailto:richard.dudley@nrc.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **The Petition**

The NRC received a petition for rulemaking (ADAMS Accession No. ML070871368) from Mark Edward Leyse (the petitioner) dated March 15, 2007, which was docketed as PRM-50-84. The petitioner requested that all holders of operating licenses for nuclear power plants be required to operate such plants at operating conditions (e.g., levels of power production, and light-water coolant chemistries) necessary to effectively limit the thickness of crud and/or oxide layers on fuel rod cladding surfaces. On May 23, 2007, the NRC published a notice of receipt for this petition in the **Federal Register** (72 FR 28902) and requested public comment. The public comment period ended on August 6, 2007.

##### **NRC Evaluation**

The NRC review of this petition and evaluation of public comments are based upon NRC's understanding of several terms used by the petitioner:

1. *Crud* is any foreign substance which may become deposited on the surface of fuel cladding. This layer can impede the transfer of heat. The NRC believes that the word "crud" originated as an acronym for "Chalk River