

PART 17 - WRITING TECHNIQUES

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17.1 Plain language.

(a) A Presidential memorandum entitled "Plain Language in Government Writing" was published in the *Federal Register* on June 1, 1998 (63 FR 31883). This action directed that the Government's writing, including rulemaking actions, be in plain language. The NRC's Plain Language Action Plan Website, <http://www.internal.nrc.gov/NRC/PLAIN/index.htm>, provides guidance, examples, and links to external plain language Websites that are designed to help the NRC staff comply with the plain language initiative in preparing regulatory and other documents.

(b) The material in this part comprises a basic regulatory style manual that is intended to assist the NRC staff develop regulatory documents that meet the plain language initiative. It is a compilation of proven legal and regulatory drafting conventions that have been espoused by the Office of the Federal Register, the Department of Transportation, and the American Bar Association.

17.3 Before writing.

(a) Organization and presentation are important to a successful regulation. A well-organized regulation allows the user to process the information presented quickly and understand its requirements easily. The organizational structure of a regulation helps determine whether it --

- (1) Effectively accomplishes its intended objective;
- (2) Is complete and accurate; and
- (3) Is easy to use, amend, and cite.

(b) Careful planning is essential. The time spent in planning saves time and effort in writing and results in a better product. The writer must determine --

- (1) The need for the regulation;
- (2) The intended effect of the regulation;
- (3) The basic message of the regulation;
- (4) The different audiences being addressed by the regulation; and
- (5) The way the primary audience will use the regulation.

(c) The NRC's primary responsibility is to ensure that licensing and regulatory actions are conducted in a manner that protects the public health and safety and the environment. Therefore, the writer must consider the potential safety impact of the regulation, such as any change in --

- (1) The probability of an accident;
- (2) Equipment failure that may contribute to the possibility or severity of an accident;
- (3) Occupational exposure to radiation;
- (4) Routine or unplanned radioactive releases;
- (5) The probability of any offsite exposure to radiation;

- (6) Operator response time;
- (7) Emergency planning factors;
- (8) Maintenance;
- (9) Facility security or materials control and accountability; and
- (10) Environmental considerations.

(d) Because the licensee is the primary audience in NRC regulations, the writer must consider the potential effects of the regulation on the licensee. The writer should consider --

- (1) The number, type, and size of the licensees affected;
- (2) The effects that the regulation will have on the licensee's operations;
- (3) The resources available to the licensee; and
- (4) The manner in which the licensee conducts business and incorporates regulatory requirements into its operations.

(e) The NRC's primary statutory responsibility is to protect public health and safety. Therefore, to the extent possible, the NRC should ensure that its regulations are readily understandable by both its licensees and the public. Clearly written regulations increase the probability of licensee compliance and help to improve public confidence in the manner in which the NRC fulfills its statutory responsibility.

17.5 Use a logical arrangement.

(a) A well-organized regulation presents the information it contains logically. The structure should emphasize the key elements of the regulation and the relationship between these elements. The writer should answer the following questions.

- (1) What factors are most important?
- (2) What factors should come first?
- (3) How do different factors affect one another?

(b) NRC regulations are most commonly organized by proceeding from general requirements to more specific requirements. This classification method is commonly used in technical writing because it allows complex, interlocking requirements to be presented in a manner that is most easily understood. A regulation organized by this method begins with basic information and overall requirements and procedures. This material is followed by more specific requirements and technical procedures that are necessary to cover particular subjects adequately. A writer should use the following guidelines, which are applicable at each level within the regulation, to present information logically.

- (1) Place general provisions before specific provisions.
- (2) Place more important provisions before less important provisions.
- (3) Place more frequently used provisions before less frequently used provisions.
- (4) Place permanent provisions before temporary provisions.
- (5) Place reporting, recordkeeping, inspection, and penalty provisions at the end.

17.7 Make the regulation easy to use.

(a) **Common features.** A well-organized regulation allows the user to find needed information without having to read the entire regulation. Users generally approach a regulation with a specific problem or question. The writer should organize and label the regulation so that a user is able to locate the answers to his or her questions. Common features found in an easy-to-use regulation are --

- (1) Short sections and paragraphs;
- (2) Descriptive headings;
- (3) Road maps (see paragraph (d) of this section); and
- (4) Quick and accurate answers for frequently asked questions.

(b) **Short sections.** Each section should be a short, well-defined presentation of a single topic. Limiting each section to a single regulatory proposition reduces the amount of material the user must read to determine needed information.

(c) **Descriptive headings.** Provide each unit within the regulation with a brief heading that accurately describes the content of the unit.

(1) Descriptive section headings are particularly effective signposts for the user that help identify particular portions of the regulation.

(2) Section headings, combined with part and subpart headings, should provide the user with an overall picture of the regulation. Properly used, these headings illustrate the logic and arrangement of the regulation. The headings in the following example allow a person to find the information necessary to complete an application and prepare a package of radioactive material for shipment. Note that the description of package standards begins with the general requirements applicable to all packages and then provides the requirements that specific types of packages must meet.

Example:

PART 71 - PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

* * * * *

Subpart D - Application for Package Approval

71.31 Contents of application.

71.33 Package description.

71.35 Package evaluation.

71.37 Quality assurance.

71.39 Additional information.

Subpart E - Package Standards

71.41 Demonstration of compliance.

71.43 General standards for all packages.

71.45 Lifting and tie-down standards for all packages.

71.47 External radiation standards for all packages.

71.49 Additional requirements for Type B packages.

71.51 Fissile material categorization and exemptions.

71.53 General requirements for all fissile material packages.

71.55 Specific standards for a Fissile Class I package.

71.57 Specific standards for a Fissile Class II package.

71.59 Specific standards for a Fissile Class III shipment.

* * * * *

(3) Strategic repetition, that is repeating key words or phrases in section headings, is a device used to illustrate certain relationships within regulatory material. Strategic repetition signals the reader that material in a number of sections deals with different aspects of the same topic. Strategic repetition may also serve to make the organizational pattern of the regulation clearer.

Example:

Subpart C - General Licenses

71.12 General license: NRC-approved package.

71.14 General license: DOT specification container.

71.16 General license: IAEA package.

71.18 General license: Type A, Fissile Class II package.

71.20 General license: Restricted, Fissile Class II package.

71.22 General license: Type A package, Fissile Class III shipment.

71.24 General license: Restricted, Fissile Class III shipment.

(d) **Road maps.**

(1) A well-written introductory provision makes a regulation more accessible to the user.

A good introduction not only outlines the content of the regulation but also pinpoints the

provisions of the regulation that may be applicable to particular groups or in certain situations. Descriptive headings, along with good introductory provisions, give the user a road map that directs him or her to needed information.

(2) The concepts section (§61.7) contained in Part 61 is a good example of a "road map" provision. This section outlines the substantive content of the entire part and explains the key terms that are used in the regulation. To conserve space, the following example presents only paragraph (a) of §61.7. The section continues with an explanation of waste classification and near-surface disposal (paragraph (b)) and the licensing process (paragraph (c)).

Example:

§61.7 Concepts.

(a) *The Disposal facility.*

(1) Part 61 is intended to apply to land disposal of radioactive waste and not to other methods such as sea or extraterrestrial disposal. In its present form, Part 61 contains procedural requirements and performance objectives applicable to any method of land disposal. It contains specific technical requirements for near-surface disposal of radioactive waste which involves disposal in the uppermost 15 to 20 meters of the earth. Technical requirements for alternative methods will be added in the future.

(2) Near-surface disposal of radioactive waste takes place at a near-surface disposal facility, which includes all of the land and buildings necessary to carry out the disposal. The disposal site is that portion of the facility which is used for disposal of waste and consists of disposal units and a buffer zone. A disposal unit is a discrete portion of the disposal site into which waste is placed for disposal. For near-surface disposal, the disposal unit is usually a trench. A buffer zone is a portion of the disposal site that is controlled by the licensee and that lies between the boundary of the disposal site and any disposal unit. It provides controlled space to establish monitoring locations which are intended to provide an early warning of radionuclide movement, and to take mitigative measures if needed.

* * * * *

(e) **Test your structure.** Use this simple test to determine if a regulation is easy to use.

Develop a list of common questions concerning the material. Give the regulation to a person

not familiar with its content and determine how long it takes the person to locate the answers and how much of the material he or she must read to obtain the answers. If the questions are answered quickly and accurately, the regulation is probably well organized.

(f) **Use cross-references sparingly.** A cross-reference is occasionally necessary to avoid repeating a long passage of text. However, excessive cross-referencing may indicate basic structural problems. A reader should be able to understand the meaning and intent of each section without having to thumb back and forth through the regulation. If a cross-reference is necessary, include a brief description of the referenced provision with the cross-reference. This brief description allows a reader to determine whether or not he or she needs to turn to the referenced provision.

Example:

SAY: See 10 CFR 9.7 for a description of the records that NRC routinely makes available to the public in the Public Document Room.

DON'T SAY: See 10 CFR 9.7.

17.9 Plan for the future.

(a) Leave room for new material. Requirements that are adequate and appropriate now may need to be adjusted or supplemented to meet future conditions. The organizational structure must allow changes to be made easily and permit new material to be added in appropriate locations.

(b) The writer can leave room for future growth by skipping every other number in designating parts and sections (note the numbering sequence used in the examples appearing in Section 17.7 of this handbook) and by leaving a few slots vacant at the end of each subpart or group of related sections. This practice provides greater flexibility in revising or adding to a regulation.

17.11 Structure of a typical NRC licensing part.

(a) NRC's primary purpose is to license and regulate the uses of nuclear energy to protect the health and safety of the public. As a result, most of the parts contained in 10 CFR Chapter I establish regulations appropriate to an aspect of NRC's licensing activities. The typical NRC licensing part begins with a subpart or a group of parts entitled "general provisions" and ends with a subpart or a group of parts that specify any recordkeeping or reporting requirements and contain any inspection or penalty provisions. The requirements applicable to the specific license covered by the part constitute the remainder of the material.

(b) The first 10 sections of each part are normally reserved for use in the general provisions subpart. This subpart presents the basic explanatory material necessary to provide context for the regulatory and licensing requirements that are contained in the part. The following example presents the most common sections in their usual order of appearance in the general provisions subpart. Each listed section need not appear in each part, and certain parts may require additional sections that contain information unique to that part.

Example:

Subpart A - General Provisions

- 1 Purpose and scope.
- 2 Definitions.
- 3 License requirements.
- 4 Exemptions.
- 5 Communications.
- 6 Interpretations.
- 8 Information collection requirements: OMB approval.
- 9 Employee protection.

(c) The regulatory requirements of a part are generally presented in a series of subparts or a series of related sections grouped under a descriptive center heading. The number of

subparts or section groups in a part varies with the extent and complexity of the regulation. The regulatory requirements set out in a licensing part are usually presented in the following sequence.

- (1) A general description of the license, including scope, coverage, and application procedures.
- (2) General requirements for obtaining a license.
- (3) General requirements for compliance with the terms of the license.
- (4) Specific requirements applicable to certain classes of licensees or types of licensed activities.
- (5) Specialized or technical information applicable to specific licensed activities.
- (6) Any additional procedural information that may be needed.

(d) The concluding portion of the part contains information concerning reporting and recordkeeping requirements, inspections, and penalty provisions. This material may be presented in a single subpart or in a series of subparts.

Example: An NRC licensing part.

PART 61 - LICENSING REQUIREMENTS FOR LAND
DISPOSAL OF RADIOACTIVE WASTE

Subpart A - General Provisions

	Sec.
General provisions appear first	61.1 Purpose and scope. 61.2 Definitions. 61.3 License required. 61.4 Communications. 61.5 Interpretations. 61.6 Exemptions.
Good road map section describes key elements of the regulation	61.7 Concepts. 61.8 Information collection requirements: OMB approval. 61.9 Employee protection.

Subpart B - Licenses

General license	61.10 Content of application.
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information

- 61.11 General information.
- 61.12 Specific technical information.
- 61.13 Technical analyses.
- 61.14 Institutional information.
- 61.15 Financial information.
- 61.16 Other information.
- 61.20 Filing and distribution of application.
- 61.21 Elimination of repetition.
- 61.22 Updating of application and environmental report.
- 61.23 Standards for issuance of a license.
- 61.24 Conditions of licenses.
- 61.25 Changes.
- 61.26 Amendment of licenses.
- 61.27 Application for renewal or closure.
- 61.28 Contents of application for closure.
- 61.29 Post-closure observation and maintenance.
- 61.30 Transfer of license.
- 61.31 Termination of license.

Gap in numbering
between subparts
leaves room for
future expansion

Subpart C - Performance Objectives

General requirements

- 61.40 General requirement.
- 61.41 Protection of the general population from releases of radioactivity.
- 61.42 Protection of individuals from inadvertent intrusion.
- 61.43 Protection of individuals during operations.
- 61.44 Stability of the site after closure.

Subpart D - Technical Requirements for Disposal Facilities

Technical requirements

- 61.50 Disposal site suitability requirements for land disposal.
- 61.51 Disposal site design for land disposal.
- 61.52 Land disposal facility operations and disposal site closure.
- 61.53 Environmental monitoring.
- 61.54 Alternative requirements for design and operations.
- 61.55 Waste classification.
- 61.56 Waste characteristics.
- 61.57 Labeling.
- 61.59 Institutional requirements.

Subpart E - Financial Assurances

- 61.61 Applicant qualifications and assurances.
- 61.62 Funding for disposal site closure and stabilization.
- 61.63 Financial assurances for institutional controls.

Added considerations

Subpart F - Participation by State Governments and Indian Tribes

- 61.70 Scope.

- 61.71 State and Tribal government consultation.
- 61.72 Filing of proposals for State and Tribal participation.
- 61.73 Commission approval of proposals.

Recordkeeping,
inspection, and
penalty provisions
at the end

Subpart G - Records, Reports, Tests, and
Inspections

- 61.80 Maintenance of records, reports, and transfers.
- 61.81 Tests at land disposal facilities.
- 61.82 Commission inspections of land disposal facilities.
- 61.83 Violations.

17.13 Structure of a typical NRC licensing section.

A section is the short presentation of a single regulatory proposition. A licensing section contains requirements that directly relate to the issuance, amendment, or revocation of a license. A licensing section may either present a single regulatory requirement in a specific program area or one aspect of a regulatory requirement that is presented in a series of related sections under a subpart. In existing NRC licensing parts, most notably 10 CFR Parts 30, 40, and 70, a new section generally contains the independent presentation of a new regulatory requirement relating to that type of license. The regulatory requirements in a typical NRC licensing section are generally presented in a specific sequence. However, individual sections may not necessarily require the type of information specified in a particular paragraph. If a particular type of information is not needed in a section, a paragraph need not be reserved for that information. Simply continue with the appropriate sequential paragraph designation. The standard sequence for information in an NRC licensing section is as follows.

(a) *Applicability.* This paragraph specifies the scope of the requirements that are imposed by the section.

(b) *Definitions.* Most definitions are presented at the part level. However, if a term that requires a definition is vital to a specific section and is used only within that section, the term may be defined at the section level within the second paragraph.

(c) *Requirements.* This paragraph contains the specific requirements imposed by the section. If a number of different requirements are presented, they may appear in either a series of subordinate paragraphs designated as (c)(1), (c)(2), and so on, or in additional first-level paragraphs such as (d), (e), and so on, as necessary.

(d) *Reporting or recordkeeping.* This paragraph contains any reporting or recordkeeping requirements imposed by the specifications of the section. If reporting and recordkeeping requirements for a part are presented in a separate subpart or section, this paragraph may contain a cross-reference to the applicable provisions.

(e) *Implementation.* This paragraph presents information related to the implementation of the imposed requirement, such as compliance schedules.

Example:

§ 50.62 Requirements for reduction of risk from anticipated transients without scram (ATWS) events for light-water-cooled nuclear power plants.

(a) *Applicability.* The requirements of this section apply to all commercial light-water-cooled nuclear power plants, other than nuclear power reactor facilities for which the certifications required under § 50.82(a)(1) have been submitted.

(b) *Definition.* For purposes of this section, *Anticipated Transients Without Scram (ATWS)* means an anticipated operational occurrence as defined in Appendix A to this part followed by the failure of the reactor trip portion of the protection system specified in General Design Criterion 20 of Appendix A to this part.

(c) *Requirements.* (1) Each pressurized-water reactor must have equipment from sensor output to final actuation device that is diverse from the reactor trip system to initiate the auxiliary (or emergency) feedwater system automatically and initiate a turbine trip under conditions indicative of an ATWS. This equipment must be designed to perform its function in a reliable manner and be independent from the existing reactor trip system from sensor output to final actuation device.

(2) Each pressurized-water reactor manufactured by Combustion Engineering or Babcock and Wilcox must have a diverse scram system from the sensor output to the interruption of power to the control rods. This scram system must be designed to perform its function in a reliable manner and be independent from the existing reactor trip system from sensor output to the interruption of power to the control rods.

(3) Each boiling-water reactor must have an alternate rod injection (ARI) system that is diverse from the reactor trip system from sensor output to the final actuation device. The ARI system must have redundant scram air header exhaust valves. The ARI system must be designed to perform its function in a reliable manner and be

independent from the existing reactor trip system from sensor output to final actuation device.

(4) Each boiling-water reactor must have a standby liquid control system (SLCS) with the capability of injecting a borated water solution into the reactor pressure vessel at such a flow rate, level of boron concentration and boron-10 isotope enrichment, and accounting for reactor pressure volume, that the resulting reactivity control is at least equivalent to that resulting from the injection of 86 gallons per minute of 13-weight-percent sodium pentaborate decahydrate solution at the natural boron-10 isotope abundance into a 51-inch inside-diameter reactor pressure vessel for a given core design. The SLCS and its injection location must be designed to perform its function in a reliable manner. The SLCS initiation must be automatic and must be designed to perform its function in a reliable manner for plants granted a construction permit after July 26, 1984, and for plants that have been granted a construction permit before July 26, 1984, that have already been designed and built to include this feature.

(5) Each boiling-water reactor must have equipment to trip the reactor coolant recirculating pumps automatically under conditions indicative of an ATWS. This equipment must be designed to perform its function in a reliable manner.

(d) *Reporting requirement.* Each licensee shall submit information sufficient to demonstrate the adequacy of the systems identified in paragraph (c) of this section. The information must be submitted as specified in § 50.4.

(e) *Implementation.* By 180 days after the issuance of the QA guidance for non-safety-related components, each licensee shall develop and submit a proposed schedule for meeting the requirements of paragraph (c) of this section. The schedule must be submitted to the NRC as indicated in § 50.4. The submittal must include an explanation of the schedule and a justification if the schedule calls for implementation later than the second refueling outage after July 26, 1984, or the date of issuance of a license authorizing operation above 5 percent of full power. The Commission and the licensee shall mutually agree on a final schedule.

17.15 Short paragraphs.

Short paragraphs improve clarity. Each paragraph should deal with a single, unified topic. Lengthy, complex, or technical discussions should be presented in a series of related paragraphs.

(a) A long, complicated paragraph increases the potential for reader error and frustration. A reader may be forced to read a paragraph several times to understand its content. Short paragraphs reduce the demands on the reader and avoid information overloads that frequently result in errors in understanding and interpreting requirements.

(b) The content of a short paragraph that is limited to a single topic can easily be described in a catch-line heading consisting of a word or phrase. A paragraph heading reveals important information within a section and aids a reader by pointing to relevant material. Paragraph headings may also reveal the logical flow of material within a section and highlight related material within the regulation.

17.17 Short sentences.

(a) The long, run-on sentence is a basic flaw in any of type writing that is meant to inform or instruct. Long sentences, like long paragraphs, blur the concepts being communicated. A series of long sentences requires greater effort on the reader's part. As a result, the rights and duties of the regulated party may not be communicated effectively.

(b) Brevity alone does not guarantee clear writing because of the many other factors involved. However, sentence length is the greatest single factor affecting the ability of a reader to understand the sentence. The writer should strive for short, direct sentences because they communicate more effectively. Sentences may be shortened by --

- (1) Dividing a long sentence into two or three shorter sentences;
- (2) Removing unnecessary words; or
- (3) Changing the structure of the sentence to a simpler form.

(See Section 17.19 of this handbook for a discussion of sentence structure.)

(c) Many sentences are easily shortened by dividing them into two or three shorter sentences. Compound or compound-complex sentences that contain conjunctions (such as "but," "for," "because," "or," "and") may be divided by changing clauses into complete sentences. Other methods for shortening a long sentence include --

- (1) Using a parallel listing structure (see Section 17.21 of this handbook); and
- (2) Stating conditions, including exemptions and exceptions, in an organized manner (see Section 17.23 of this handbook).

(d) Sentence and clause length may be reduced by eliminating unnecessary words. When eliminating words, focus on content words, for example, nouns, adjectives, and verbs. Word pairs, redundancies, and unnecessary qualifiers are the best targets. (See Section 17.31 of this handbook for help in trimming excess words.) A simple sentence structure reduces

sentence length by eliminating excess words without removing necessary words. A simple sentence structure requires fewer connecting words to convey the meaning of the sentence effectively.

17.19 Sentence structure.

The simple, active, affirmative, declarative sentence is the easiest sentence structure to understand. The more a sentence deviates from this structure, the harder the sentence is to understand. Each transformation from this basic sentence structure requires the reader to mentally translate the sentence to understand its meaning and increases the possibility of reader error. The more complex the sentence, the greater the possibility of difficulty in determining the intended meaning.

(a) **Affirmative/negative.** An affirmative statement is easier to understand than a negative statement. Positive constructions are verified more quickly and accurately than negative constructions. This fact is especially true in the double negative and negative type constructions frequently found in regulatory writing. Negative constructions, including exemptions, exceptions, or prohibitions, greatly increase the burden placed on the reader.

(b) **Active/passive.** A sentence in the active voice is easier to understand, verify, and recall than a similar sentence in the passive voice. The active voice forces the writer to identify the actor and the action required in a sentence. This identification is especially important in a regulation that imposes certain requirements on specific parties (see also Section 17.25 of this handbook).

17.21 Listing.

- (a) Listing simplifies regulatory writing by --
- (1) Shortening sentences and paragraphs;
 - (2) Making sentences or sentence fragments that are parallel in thought parallel in form;
 - (3) Breaking the solid print of a block paragraph into visual chunks that aid in grouping information logically; and
 - (4) Emphasizing the relationships between the concepts presented.

Example: Listing technique.

Before

§ _____ Violations.

An injunction or other court order may be obtained prohibiting any violation of any provision of the Atomic Energy Act of 1954, as amended, or Title II of the Energy Reorganization Act of 1974, or any regulation or order issued thereunder. A court order may be obtained for the payment of a civil penalty imposed pursuant to Section 234 of the act for violation of Section 53, 57, 62, 81, 82, 101, 103, 104, 107, or 109 of the act or Section 206 of the Energy Reorganization Act of 1974, or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license issued thereunder, or for any violation for which a license may be revoked under Section 186 of the act. Any person who willfully violates any provision of the Act or any regulation or order issued thereunder may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both, as provided by law.

After

§ _____ Violations.

- (a) The Commission may obtain an injunction or other court order to prevent a violation of any provision of --
- (1) The Atomic Energy Act of 1954, as amended;
 - (2) Title II of the Energy Reorganization Act of 1974; or
 - (3) A regulation issued under the requirements of the acts.
- (b) The Commission may obtain a court order for the payment of a civil penalty imposed under Section 234 of the Atomic Energy Act for violation --

- (1) Of Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the act;
- (2) Of any rule, regulation, or order issued under the requirements of the act;
- (3) Of any term, condition, or limitation of any license issued under the act;

or

- (4) For which a license may be revoked under Section 186 of the act.

(c) Any person who willfully violates any provision of the Atomic Energy Act or any regulation or order issued under the requirements of the act may be guilty of a crime and, upon conviction, be punished by fine or imprisonment or both, as provided by law.

(b) Follow these guidelines when using the listing technique:

- (1) Each item in a list must belong to the same classification.

(2) Each item in a list must correspond to the introductory language for the list in substance and form.

(3) If the introductory language for the list is a complete sentence, follow these instructions:

- (i) End the introduction with a colon.

- (ii) Make each item in the list a separate sentence.

(4) If the introductory language for the list is not a complete sentence --

- (i) End the introduction with a dash;

- (ii) End each item in the list, except the last, with a semicolon;

(iii) After the semicolon in the next-to-last item write "and" or "or" as appropriate; and

- (iv) End the last item in the list with a period.

17.23 Stating conditions.

State regulatory conditions in a manner that most easily allows regulated parties to determine the impact of the conditions on them. If a provision contains a cause-and-effect or an if-then relationship, or if a requirement is dependent on certain factors, the method of presentation should clearly indicate these relationships.

(a) If one or two simple conditions must be met before a rule applies, state the condition first, then state the rule.

Example:

If a debt is paid in one lump sum after the due date, the Commission shall impose a late payment charge.

(b) If two complex conditions or more than two conditions must be met before a rule applies, state the rule first, then list the conditions.

Example:

(a) The Commission may withhold a sum equal to the amount of the alleged indebtedness from the amounts accruing to the individual on termination if --

(1) Amounts accruing to the debtor on termination are available for offset to satisfy the alleged indebtedness;

(2) The amounts would not be available for offset after termination; and

(3) The time before termination does not permit a preoffset hearing.

17.25 Use verbs effectively.

(a) **Active voice/passive voice.** The active voice is almost always preferable to the passive voice in regulatory writing.

(1) A sentence written in the active voice identifies the subject performing the action. However, in a sentence written in the passive voice, the subject is acted upon. A regulation imposes a duty upon someone who is responsible for compliance. Enforcement is more difficult if the duty to act is not clearly imposed on a specific party. A sentence in the passive voice may result in ambiguity or doubt.

Example:

Active: The licensee shall prepare and circulate an environmental impact statement before the Commission may issue a permit to construct a nuclear power plant.

Passive. An environmental impact statement must be prepared and circulated before a permit to construct a nuclear power plant may be issued.

(2) In addition to naming the actor, sentences written in the active voice are generally shorter and more direct. The passive voice, especially a complete passive construction, requires more words to express the same thought clearly.

(b) **Action verbs.** Avoid the tendency to substitute a nominal, that is, a phrase using a noun made from a verb or a noun substitute such as a gerund or infinitive phrase, for the base verb.

Example:

Say

consider
provide for
authorize
state

Don't say

give consideration to
make provision for
grant authorization for
make a statement

(c) **Present tense.** Write a regulation in the present tense. A regulation is of continuing effect and speaks as of the time it is applied, not as of the time it is drafted or becomes effective. Writing in the present tense also helps avoid awkward or complicated verb forms.

Example:

Say: The fine for a license violation is \$10,000.

Don't say: The fine for a license violation will be \$10,000.

17.27 Impose an obligation or prohibition properly.

A regulation usually requires or prohibits the performance of certain specified actions by an individual or a class of persons. This section discusses one of the standard conventions used in regulatory writing to impose an obligation, indicate discretionary action, or express a prohibition.

(a) **Shall.** Use "shall" to impose an obligation on an individual or legal entity capable of performing the required action.

(b) **Must.** Use "must" as the proper mandatory form when the subject is an inanimate object. Must is also used to indicate a precondition.

(c) **May.** Use "may" to indicate that an individual or entity has the discretion to take a specific action but is not required to do so.

(d) **May not.** Use "may not" to indicate that a person or entity is prohibited from taking a specific action.

Examples:

Each licensed institution shall establish a Radiation Safety Committee.

At least one member of the committee must be a physician specializing in nuclear medicine. (Precondition.)

The required records must be readily accessible. (Inanimate object.)

The Commission may request any additional information necessary to ensure that adequate protection systems have been established.

The licensee may not use byproduct material in any manner not specified in the license.

17.29 Choose words carefully.

(a) **Consistency.** Use words consistently throughout a regulation.

(1) Do not use the same word or phrase to denote different things.

(2) Do not use different words or phrases to denote the same thing.

(3) Do not use a synonym to denote differences in substance.

(b) **Concrete words.** Using concrete words instead of abstract words makes writing more readable and more precise. Words are symbols with degrees of abstraction and shades of meaning. Concrete words are more likely to create a vivid mental image. Concrete words, particularly those with a sensory base, produce sharper images and foster more precise communication.

Example:

Say: The operator must be able to see the entire control panel.

Don't say: The systems integration specialist must be able to visually perceive the entire directional response module.

(c) **Familiar words.** Words used in normal communication are more easily understood.

Choose a familiar word over an unfamiliar word and a simple word over a stuffy word.

Example:

Say

end

use

explain

Don't say

terminate

utilize

elucidate

17.31 Be concise.

Do not use more words than necessary to convey the intended meaning of the regulation. Carefully edit the regulation to remove surplus words. This practice creates shorter sentences without affecting content words or the connecting or function words necessary to convey meaning.

(a) **Avoid redundancies.** Do not repeat words or ideas.

(1) Do not present both the positive and negative statements of an idea when one alone is sufficient. The positive statement is usually preferable.

(2) Avoid word pairs if the words have the same effect or if the meaning of one includes the other.

Examples: Word pairs to avoid.

any and all
authorized and empowered
each and every
full and complete
order and direct
sole and exclusive
authorize and direct
means and includes
necessary and desirable

(b) **Prepositions.** Avoid compound prepositions and roundabout prepositional phrases when the same meaning can be conveyed with a single word. These phrases bloat a sentence with needless words that often obscure the intended meaning.

Examples:

Say

then

today

now

Don't say

at that point in time

as of this date

at the present time

by	by means of
for	for the purpose of
because	for the reason that
concerning	in connection with
to	in order to
in	in terms of
if	in the event that
like	in the nature of
by	on the basis of
because	on the grounds that
before	prior to
after	subsequent to
about	with reference to/with regard to

(c) **Word Clusters.** Most word clusters are bad habits. Trimming these "throat clearing" constructions is good editorial practice.

Examples:

Say

during
for
by, under
often
sometimes
doubtless
until

Don't say

during the time that
for the period of
in accordance with
in many cases
in some instances
there is no doubt that
until such time as

17.33 Use jargon sparingly.

Jargon is the technical language used by people in the same field to communicate. Normally most writers weed out jargon in editing their work; however, some jargon is inescapable in NRC's highly technical environment. Use jargon only when the language is appropriate to communicate technical concepts to the party being regulated. Explain key technical words or concepts that may be unfamiliar to the nontechnical reader. The explanation may appear the first place the term is used in regulatory text, in the definitions or concepts section, or in the preamble to the document.

Examples:

1. Anticipated Transient Without Scram (ATWS). An ATWS event takes place if an abnormal operating condition (anticipated transient) occurs at a nuclear power plant which could cause the reactor protection system to initiate a rapid shutdown (scram) of the reactor but the reactor shutdown system fails to function.

2. Byproduct material used by a specific licensee is contained in a sealed capsule, held between layers of nonradioactive metal foil, or firmly fixed to a nonradioactive surface by electroplating or other means. The byproduct material with its capsule or other confining barrier is termed a sealed source. The confining barrier prevents dispersion of the byproduct material under normal and most accident conditions under which the source is used.

17.35 Avoid legalisms.

(a) **Legal word pairs.** These redundancies are the lawyer's version of the word pairs discussed in Section 17.31 (a) of this handbook. Legal word pairs stem from periods in English history when the English lawyer had two languages to choose from. The lawyer frequently used a word from each language, joined in a pair, to express a single meaning. This doubling enabled persons of each language to understand the intent of the law. This practice became traditional and has persisted long after the need for it ended. Replace a needless string of words having the same meaning with one of the words or a new word.

Examples: Avoid these legal word pairs.

alter or change

cease and desist

force and effect

full and complete

order and direct

perform and discharge

unless and until

(b) **Legalisms.** Substitute simple everyday words for legalisms. Legalisms may create a false sense of precision that often obscures gaps in analysis.

(1) Do not use "such" or "said" as adjectives to refer back to things already mentioned. The extra precision supposedly gained in preferring these terms to the more commonly used "the" or "this" is illusory. If only one reactor is mentioned, there is no danger of anyone mistaking "the" reactor or "this" reactor for any other. If more than one reactor is mentioned, "such" reactor or "said" reactor does not indicate which of several is meant.

(2) Avoid vague legalistic references such as "aforementioned," "hereby," "herein," "hereinafter," "hereinabove," and "therein." Identify the intended reference precisely.

(3) Other legalisms to avoid in regulation drafting are identified in the following examples.

Examples:

Say

postpone action
allow, permit
end, conclude
completely
carry out
issue
under
end
use
verify

Don't say

abeyance
afford an opportunity
finalize
fullest possible extent
implement
promulgate
pursuant to
terminate
utilize
verification

17.37 Avoid ambiguity.

(a) **Word order.** Ambiguity resulting from word order can be avoided by keeping related sentence elements together and unrelated sentence elements apart.

(1) Place modifiers as close to the words they are intended to modify as possible. A modifier will tend to attach itself to the nearest word eligible for modification.

Example:

Don't say: Appeals of fines, which may not exceed \$1,000, must be made within 30 days.
(What may not exceed \$1,000, the appeal or the fine?)

Say: Appeals of fines may not exceed \$1,000. An appeal must be made within 30 days.

Unless you mean: Fines may not exceed \$1,000. Appeals of fines must be made within 30 days.

Don't say: The licensee may use the building only for storage.

Say: The licensee may use the building for storage only.

Unless you mean: Only the licensee may use the building for storage.

(2) Avoid using indefinite pronouns as references.

Example:

Say: After the shift supervisor appoints an assistant, the assistant shall supervise.....

Don't say: After the shift supervisor appoints an assistant, he or she shall supervise.....

(Does the shift supervisor or the assistant supervise?)

(b) **Word meaning.** The most common source of ambiguity in word meaning results from the use of plural nouns. Using a singular noun instead of a plural noun avoids the problem of whether the rule applies separately to each member of a class or jointly to the class as a whole.

Example:

Don't say: The guard shall issue security badges to the employees who work in Building D and Building E.

Say: The guard shall issue a security badge to each employee who works in either Building D or Building E.

Unless you mean: The guard shall issue a security badge to each employee who works in both Building D and Building E.

PART 19 - SAMPLE DOCUMENTS

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19.1 Rulemaking plan.

Draft Rulemaking Plan

DOMESTIC LICENSING OF URANIUM AND THORIUM RECOVERY FACILITIES - 10 CFR PART 41

REGULATORY PROBLEM

Under the Atomic Energy Act of 1954, as amended (AEA), and the Uranium Mill Tailings Radiation Control Act of 1978, as amended (UMTRCA), the U.S. Nuclear Regulatory Commission (NRC) is responsible for regulating the production of source material from uranium and thorium mills, including conventional and in-situ leach (ISL) facilities. In addition, NRC must ensure that uranium mills that are no longer operating are reclaimed and the 11e.(2) byproduct material ¹ is stabilized consistent with applicable requirements before the site-specific licenses are terminated and the sites are taken over by a long-term custodian (in most cases the Department of Energy (DOE)).

The NRC has used 10 CFR Part 40, "Domestic Licensing of Source Material" (which also covers other source material licensees), and 10 CFR Part 40, Appendix A, "Criteria Relating To the Operation of Uranium Mills and the Disposition of Tailings or Wastes Produced by the Extraction or Concentration of Source Material From Ores Processed Primarily for Their Source Material Content," to regulate uranium recovery and thorium recovery facilities for nearly 20 years. NRC staff and industry experience in using these requirements has led the NRC to conclude that these regulations should be revised. The NRC has found that the regulation of ISLs under existing 10 CFR Part 40 requirements is becoming increasingly problematic.

In addition, in April 1998, the National Mining Association (NMA) submitted a report, "Recommendations for a Coordinated Approach to Regulating the Uranium Recovery Industry" (White Paper), to the Commission that covered four issues related to uranium recovery facilities. These issues are (1) jurisdiction of non-Agreement States over non-radiological components of 11e.(2) byproduct material, (2) scope of NRC jurisdiction over ISLs, (3) disposal of non-11e.(2) byproduct material in tailings impoundments, and (4) NRC's alternate feed policy. The NRC agrees that these issues should be discussed within this rulemaking plan.

EXISTING REGULATORY FRAMEWORK

Background

The requirements in 10 CFR Part 40 were developed for all licensees authorized to possess, use, transfer, or deliver source or byproduct material (as defined in 10 CFR Part 40). Many of the requirements in 10 CFR Part 40 fall into one of three categories: (1) those that apply to all source material licensees, (2) those that apply to source material licensees other than uranium and thorium recovery facilities, and (3) those that apply only to uranium and thorium recovery facilities. The current 10 CFR Part 40 requirements that apply to uranium recovery facilities appear in Appendix A and essentially addresses conventional uranium mills, where ore is crushed and processed to concentrate the uranium and thorium source material.

¹ The AEA defines 11e.(2) byproduct material as the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

When the price of uranium fell in the early 1980s, conventional uranium mining production in the United States dropped precipitously. Many conventional mills ceased operations or closed permanently and began decommissioning and reclamation. The principal technology used to recover uranium changed from conventional mills to ISL facilities. Originally, ISL facilities extracted ore that was not economical to conventionally mine and mill. Subsequently, because they have proven to have continuing commercial viability, ISL facilities have become the predominant source of uranium production and are now responsible for most of the uranium production in the United States today. Since the requirements in 10 CFR Part 40 were issued, there has been no corresponding regulatory change addressing this emerging technology.

At ISL facilities, uranium is extracted by injecting processing fluid (lixiviant) through wells into uranium-bearing aquifers where the uranium is leached in place underground. The uranium-bearing solution is then pumped through other wells to the surface for processing into yellowcake. Some of the issues of regulatory concern at ISL facilities are similar to those for conventional mills. The NRC regulates the radiation safety program at processing plant operations of ISL facilities like it does at conventional mills because these facilities concentrate the uranium into source material through identical processes. The applicable requirements for either facility covering this aspect of their operations are primarily found in 10 CFR Part 20.

However, some of the regulatory issues at ISL facilities are quite different from those at conventional mills, for example, groundwater requirements. At conventional mills, groundwater requirements are codified in 10 CFR Part 40. However, there are no requirements in 10 CFR Part 40 for ISL facilities that cover the protection of groundwater or establish standards for assuring that the water quality in the impacted aquifers is restored after uranium extraction operations are completed. NRC's uranium recovery program has regulated the ISL facilities by using generically applicable requirements in 10 CFR Part 40 and by drawing on applicable groundwater standards from the U.S. Environmental Protection Agency (EPA) or States. Much of the regulation for ISL facilities has been imposed by the NRC through license conditions.²

Although conventional mills will continue to contribute to the supply of uranium, it is likely that ISL facilities will be the predominant source of domestic uranium production in the foreseeable future for both economic reasons and because of reduced surface environmental impacts. Within the non-Agreement States (NRC-licensed facilities), there is currently one operating conventional mill and two mills that have ceased operation but expect to resume operation in the future. There are six ISL facilities that are operating or are licensed to operate. In addition, there are 14 conventional mills that have ceased operations and are in reclamation, 2 that have been reclaimed and transferred to DOE under the general licensing provisions in 10 CFR 40.28, and 1 operating 11e.(2) byproduct material disposal cell. Based on discussion with the industry, the NRC expects a considerable increase in licensing activity for both types of uranium recovery facilities into the foreseeable future.

Difficulties With Regulating ISL Facilities

Regulating ISL facilities in the absence of specific applicable regulations is becoming increasingly problematic and more complicated for the NRC. In November 1995, the NRC completed the Draft Environmental Impact Statement (DEIS) for the Hydro Resources, Inc. (HRI), ISL project in Crownpoint, New Mexico. When the NRC announced the availability of the

² In an April 1980 memorandum, the Office of the Executive Legal Director concluded that under the UMTRCA, the Commission had the authority to protect groundwater at ISL facilities through the imposition of groundwater protection conditions in ISL licenses.

DEIS, it also provided an opportunity for a hearing. Seven petitions for leave to intervene were filed, and the Presiding Officer decided to hold the hearing in abeyance until the NRC completed its review. Examples of the issues that were raised in the petitions include (1) the impacts on the environment of groundwater from the uranium extraction operation, (2) the application of 10 CFR Part 40 by the NRC to ISL facilities, and (3) the use of performance-based licenses. In the absence of codified requirements for ISL facilities, the ultimate decision of this proceeding would establish NRC policy in this area with the possible result of overturning longstanding NRC uranium recovery practices.

The industry also continues to raise concerns about the NRC guidance dealing with effluent discharge from ISL facilities. The NMA White Paper lays out the concerns that the industry has with NRC's regulation of ground water at ISL facilities. Industry argues that NRC regulation of ground water duplicates the groundwater protection programs required by the Safe Drinking Water Act. For the most part, the EPA, or EPA-permitting States, conducts many of the same types of reviews that the NRC currently does. In addition, licensees must obtain underground-injection-control (UIC) permits from EPA or the permitting State before mining can begin. Because both the NRC and the EPA oversee the ground water at ISL facilities, the industry believes that the NRC's activities duplicate EPA's.

In a July 26, 2000, staff requirements memorandum (SRM), the Commission approved the staff's continuing discussions with EPA and appropriate States to determine the extent that NRC can rely on EPA's UIC program and potentially minimize NRC review of groundwater protection issues at ISL facilities.

The NRC received some comments on the dual regulation of ground water at ISL facilities during its recent public meetings on the NMA White Paper and 10 CFR Part 41. The Southwest Research Information Center (SRIC), an environmental organization, recommended that the NRC not eliminate its review of ground water at ISL facilities. SRIC argued that the NRC regulation was complementary, not duplicative of the UIC program. The State of Wyoming believed that NRC's efforts on ground water at ISL facilities was not needed. Industry representatives advocated that the NRC adopt the position in the White Paper.

Problems With Current Requirements Relating to Uranium and Thorium Recovery Facilities

There are several other significant problems with the current requirements in 10 CFR Part 40 as they are applied to conventional mills specifically and to all uranium and thorium recovery facilities in general. The regulations need to be updated because changes in the NRC uranium recovery program have resulted in inconsistencies within regulations in 10 CFR Part 40 itself, as well as between these regulations and other NRC regulations. For example, 10 CFR Part 40, Appendix A, Criterion 4, contains specific requirements covering the long-term stabilization of mill tailings impoundments that are more restrictive than the performance objective for long-term stabilization in Criterion 6. Criterion 4(c) requires that slopes should not be steeper than 5 horizontal to 1 vertical and requires justification for steeper slopes. However, Criterion 6 requires closure of the waste disposal area in accordance with a design to provide reasonable assurance of control of radiological hazards to be effective for 1000 years to the extent reasonably achievable and, in any case, for at least 200 years. Such a design must consider runoff on slopes and the potential for erosion. The specific steepness requirement should be deleted since the performance requirements in Criterion 6 are sufficient to protect the waste.

Other requirements should be revised or added to capture regulatory decisions that have been developed for uranium recovery facilities since 10 CFR Part 40 was originally issued. The

NRC has identified the use of a performance-based license as a way uranium recovery licensees could be provided regulatory flexibility in operating their facilities. Performance-based licensing has never been established through regulation as an agency policy for uranium recovery licensees, yet the NRC is currently issuing performance-based licenses. This is one of the issues addressed in the HRI Crownpoint application. The NRC believes this approach to regulating uranium recovery facilities is worth continuing and should be codified.

The NRC strategic planning process has identified the use of mill tailings impoundments for disposal of materials resulting from the reclamation of other fuel cycle facilities and Site Decommissioning Management Plan sites as a cost-effective way to help ensure that fuel cycle facilities receive the desired cleanup and decommissioning. This approach was identified in Option 7 of the Direction-Setting Issue Paper 9 - Decommissioning of Non-Reactor Facilities. In the April 24, 1996, SRM for SECY-96-058, the Commission directed the staff to proceed with Option 7, that is, to "take an aggressive position to develop regulatory frameworks for lower cost decommissioning waste disposal options." The staff believes that codifying criteria for such disposal in uranium recovery regulations would be an important part of developing the framework.

The staff conducted a review of the current guidance used to evaluate the acceptability of applications to dispose of material other than 11e.(2) byproduct material in tailings impoundments. Commission guidance (the July 26, 2000, SRM) is to allow more flexibility in the disposal capacity for mill tailings impoundments for materials that are radiologically, physically, and chemically similar to and compatible with materials already being disposed of in mill tailings impoundments subject to the additional considerations noted below.

The disposal of material other than 11e.(2) byproduct material, which may include listed hazardous wastes, in mill tailings impoundments would be allowed only if (1) there is adequate protection of the public health, safety, and the environment, (2) the long-term custodian of the site has indicated its willingness to accept responsibility for maintenance of the site before NRC approves the disposal, and (3) necessary approvals of other affected regulators (e.g., States, EPA) have been obtained. Consideration would be given to requiring written confirmation from DOE or the State that it would accept responsibility for the maintenance of the site before NRC approves the disposal of non-11e.(2) material. In addition, the rulemaking would pursue the use of a generic exemption to Part 61 requirements that would eliminate the need for individual exemptions for each proposed disposal.

Part 40 does not currently address the situation of processing material, other than natural ore, at uranium mills. This omission has created problems when licensees request NRC approval to process alternate feed material in uranium mills. Commission guidance (the July 26, 2000, SRM) is that alternate feed material can be processed for uranium without any inquiry into a licensee's economic "motives" in determining whether the processed materials fall in the 11e.(2) category since no such inquiry is compelled by the UMTRCA. In addition, because the Commission has approved disposal of certain other than 11e.(2) materials in a tailings impoundment, such material also should be allowed in the proposed feed so long as (1) the alternate feed is primarily processed for the extraction or concentration of uranium or thorium, (2) there is adequate protection of the public health and safety and the environment, (3) the long-term custodian of the site has indicated its willingness to accept responsibility for maintenance of the site, and (4) necessary approvals of other affected regulators have been obtained.

CONCLUSION

These problems will continue to complicate the uranium recovery facility licensing process for both the NRC and licensees and detract from an effective and consistent regulatory program for uranium recovery facilities. The NRC recognizes that these problems should be addressed in order to facilitate the most effective regulation possible for uranium recovery facilities.

HOW THE PROPOSED RULEMAKING WILL RESOLVE THE REGULATORY PROBLEM

The NRC recognizes that the regulatory framework for uranium and thorium recovery facilities in 10 CFR Part 40 should be changed. Two principal options have been considered for dealing with the regulatory problem.

Some of the more significant specific changes that the NRC would make to improve, clarify, update, and make consistent the regulatory requirements as they apply to uranium and thorium recovery facilities are discussed in Attachment 1 of this rulemaking plan. The NRC also has a contract with the Center for Nuclear Waste Regulatory Analyses (CNWRA) that will be used to provide additional support in developing this rulemaking.

Options Considered

Two principal options were considered. Option 2 has two suboptions, Options 2a and 2b.

- Option 1 - Make no changes -- continue to use existing 10 CFR Part 40, including guidance documents and license conditions, for regulating uranium and thorium recovery facilities.
- Option 2 - Amend the existing regulations to specifically address uranium and thorium recovery facility issues.
 - Option 2a - Revise requirements in 10 CFR Part 40 related to uranium and thorium recovery facilities.
 - Option 2b - Issue a new Part 41 that would regulate uranium and thorium recovery facilities.

Option 1: Make no changes -- continue to use existing 10 CFR Part 40 for regulating uranium and thorium recovery facilities.

The NRC could continue to use the applicable regulations of 10 CFR Part 40 in conjunction with Appendix A and supplemental guidance and precedent. Although not ideal, the NRC has fulfilled its statutory mandate by using a combination of somewhat fragmented 10 CFR Part 40 requirements, other applicable NRC regulatory requirements, and relevant regulatory and policy guidance and directives to make licensing decisions. However, without codified requirements, regulating ISL facilities is becoming increasingly problematic. Codifying the requirements provides a greater opportunity for public input on the appropriateness of the proposed requirements. Continuing this regulatory approach for ISL facilities will likely result in continued challenges to the NRC's program, guidance, and decisions from industry and environmental groups. Given that numerous changes are needed, regulating without revised requirements raises questions as to whether in some areas the content of the regulation is appropriate or desired.

No additional resources are needed to continue with this option. In the short term, it would not require expenditure of resources. Embarking on any effort to revise the regulations for uranium recovery facilities will be a major undertaking that will require significant amounts of limited agency resources. In the long term, regulating the uranium recovery industry under the current framework is likely to be more costly than under new regulations. The NRC is likely to be involved in repeated hearings or industry debates to resolve controversial regulatory decisions. Depending on the complexity of the issues and the number and sophistication of the parties, hearings may represent a significant drain on agency resources for fairly prolonged periods of time. Because hearings are not fee-recoverable and are included in the overhead for the agency, the cost of prolonged hearings for individual licensees must ultimately be spread to all uranium recovery licensees and could result in increases to the fee base.

The NRC has already expended considerable resources to address the industry concerns. The lack of a clearly codified position on such issues as the disposal of commingled evaporation pond residues has led to extensive industry criticism. Industry has become more proactive in disputing NRC's authority. Addressing these issues takes considerable effort. Continuing the ambiguous regulatory environment could cost the agency more than the cost of rulemaking.

Option 2: Amend the existing regulations to address uranium and thorium recovery facility issues. Option 2 has two suboptions, Options 2a and 2b.

Under either Option 2a or Option 2b, several of the changes that would be made to the regulations through rulemaking would address problems raised in the NMA White Paper regarding the current regulatory requirements. Amending existing regulations would also provide an opportunity for the current licensing process to be codified through the rulemaking review and comment process. This step should reduce the extent of challenges to NRC's regulatory program. In addition, the rule amendments would clearly set forth the requirements that each licensee must meet in order to obtain a license.

Option 2a: Revise requirements in 10 CFR Part 40 related to uranium recovery facilities.

This option is supported by the Commission's decision which rescinded the advanced notice of proposed rulemaking proposing to revise 10 CFR Part 40. The Commission directed that changes to 10 CFR Part 40 associated with the uranium recovery licensees could proceed separately. However, this option would require extensive revisions to 10 CFR Part 40 and, because of the interconnected nature of many of the 10 CFR Part 40 provisions, it would be difficult to make these revisions without disrupting the regulatory requirements for the approximately 200 other materials licensees licensed under 10 CFR Part 40. Such a revision would require a considerable effort to assess what effect the changes in regulatory requirements for uranium recovery facilities would have on the other various types of licensees regulated under 10 CFR Part 40.

Option 2b: Promulgate a new part, 10 CFR Part 41, that would be dedicated to the regulation of uranium and thorium recovery facilities.

Such a regulation would draw out all of the requirements from 10 CFR Part 40 and 10 CFR Part 40, Appendix A, that are applicable to licensing of uranium and thorium recovery facilities. These regulations would be revised and updated as necessary but without the need to address how the change would impact other 10 CFR Part 40 licensees. Relevant

regulatory requirements from other NRC regulations, uncodified decisions, and guidance would also be included in order to develop a set of uranium recovery license requirements that address both conventional and ISL facilities. In addition, development of a new 10 CFR Part 41 will help avoid future situations where changes made to 10 CFR Part 40 to cover other licensees could inadvertently impact uranium recovery facilities.

Developing 10 CFR Part 41 should increase regulatory efficiency, reduce regulatory uncertainty, and facilitate the licensing and enforcement process for the NRC and licensees. Having a single part that consolidates, updates, and clarifies the regulatory requirements for uranium and thorium recovery facilities should reduce administrative costs both for licensees and NRC. This improved licensing and enforcement situation should also benefit the public.

Preferred Option:

The level of protection afforded public health and safety is essentially the same for all the options being considered. However, the staff recommends Option 2b, promulgating a new 10 CFR Part 41 for uranium and thorium recovery facilities because it (1) allows for the broad, sweeping changes that are needed in the uranium recovery regulatory framework and (2) should be less costly in terms of resources, require less time to develop than Option 2a, and cause the least amount of disruption to other 10 CFR Part 40 licensing actions. In the SRM dated July 13, 2000, the Commission approved the recommendation to provide a draft rulemaking plan to the Agreement States for comment, including the identification of a new 10 CFR Part 41 dedicated to the regulation of uranium and thorium recovery facilities.

As part of the development of a new 10 CFR Part 41, conforming amendments would be made to 10 CFR Part 40 to remove references to uranium recovery facilities. Conforming changes would also be made to any other parts of Title 10 which require modification to make appropriate reference to a new 10 CFR Part 41.

OGC ANALYSIS

The Office of the General Counsel (OGC) has reviewed the draft rulemaking plan proposing to amend the requirements for uranium and thorium recovery facilities by adding a new Part 41 to Title 10 of the *Code of Federal Regulations* entitled "Domestic Licensing of Uranium and Thorium Recovery Facilities." This proposed rulemaking would be undertaken because the NRC staff believes that the current regulations in 10 CFR Part 40 and Appendix A to 10 CFR Part 40 have made licensing and enforcement of uranium mining increasingly more complicated and problematic, particularly as these requirements apply to ISL uranium recovery facilities.

The proposed rule will require preparation of an environmental assessment (EA). The proposed rule is not subject to the backfit considerations of 10 CFR 50.109; therefore, a backfit analysis is not required.

The determination of whether the rule is a "major rule" (having an impact of over \$100 million to uranium recovery facilities) under the Small Business Regulatory Enforcement Fairness Act of 1996 will be made during the development of the Regulatory Analysis prepared for the proposed rule. If the rule is not a major rule, then the mandated 60-day period before a major rule becomes effective is not applicable.

The proposed rule will require licensees to generate and maintain records related to their operations. Accordingly, the change will require OMB review and approval for the purpose of the Paperwork Reduction Act.

AGREEMENT STATE IMPLEMENTATION ISSUES

The compatibility of the 10 CFR Part 41 rule parts will be determined in accordance with the NRC Policy Statement on Adequacy and Compatibility of Agreement State Programs. Agreement States will be notified of the availability of the plan on the Technical Conferencing Forum on NRC's Website and their comments will be solicited and considered in the development of the final plan.

MAJOR RULE

The determination of whether this is a major rule, having an impact of over \$100 million, will be based on the accompanying Regulatory Analysis that would be prepared if a new 10 CFR Part 41 is developed. The staff believes that the costs of implementation of this rule would not result in any major costs to NRC or Agreement State licensees. Much of what is proposed codifies existing practice or makes modifications that could reduce licensees' burden. Changes that could increase licensees' burden deal with reporting and recordkeeping requirements.

SUPPORTING DOCUMENTS

This rulemaking would require a Regulatory Analysis that would estimate the cost impacts on both the NRC and licensees for a new 10 CFR Part 41. It is expected that the CNWRA work will provide a basis for preparation of the Regulatory Analysis. The information provided in the Regulatory Analysis for each proposed change concerning the impact on small entities would be sufficient to support a Regulatory Flexibility Analysis or certification that the proposed rule would not have a significant economic impact on a substantial number of small entities.

An EA and finding of no significant impact would be needed to show, as previous environmental analyses have indicated and as experience has demonstrated, that the revised requirements would not result in a significant adverse impact to public health and safety and the environment. This proposed rulemaking would codify many requirements that are already existing practice. The NRC is currently using regulations, guidance documents, and licensing conditions to regulate uranium recovery facilities. A new 10 CFR Part 41 would incorporate in one place appropriate existing requirements, current practice, and some proposed changes. In addition, changing some of NRC's prescriptive requirements with more performance-based regulations will provide flexibility but should not impact safety.

An Office of Management and Budget (OMB) Clearance Package will be needed because the rulemaking could increase, or at least change, the reporting or recordkeeping requirements for some of the affected licensees. A backfit analysis is not needed because the rulemaking would not affect 10 CFR Part 50 or 10 CFR Part 72 licensees.

Licensing and inspection guidance documents are either currently in use or are in preparation. Existing licensing guidance documents include regulatory guides that were issued previously for uranium mill licensing, two manual chapters and inspection procedures that were issued in July 1997, and a guidance document regarding the disposal of effluents at ISL facilities. In addition, the NRC is preparing a Standard Review Plan (SRP) for ISL facilities and recently completed an SRP for reclamation of conventional uranium and thorium mills. These

two SRPs represent an extensive part of the overall guidance covering the majority of the staff's uranium recovery licensing activities. These SRPs would be revised and completed in parallel to the 10 CFR Part 41 effort. Intermediate products related to the revisions to the SRPs would be made publicly available to the same extent as the proposed rule during the rulemaking effort.

RESOURCES

The resources estimated to complete this rulemaking and the associated support and guidance documents would be 3.0 full-time equivalent (FTE) positions (2.5 FTEs in the Office of Nuclear Material Safety and Safeguards (NMSS) and 0.5 FTE in other offices) and \$700,000 in contractual support, over approximately 3 years. This estimate is based on the rulemaking being completed in FY 2004.

STAFFING

<u>Staff Level Working Group</u>	<u>Concurring Official</u>
NMSS: Myron Fliegel Mark Haisfield	William Kane
STP: Tom O'Brien	Paul Lohaus
ADM: Alzonia Shepard	Mike Lesar
OGC: Maria Schwartz	Stuart Treby
CRCPD/OAS: TBD	

STEERING GROUP

A steering group is not needed for this rule.

PUBLIC PARTICIPATION

Rulemaking documents will be placed on NRC's Website to enhance public dialogue. The NRC Website allows users to review NRC documents, submit comments on the documents, and review comments and questions submitted by others. The rulemaking plan, the proposed rule and associated guidance documents, and the draft final rule and associated guidance documents would all be placed on NRC's Website.

To facilitate Agreement State and non-Agreement State review of the rulemaking plan, the Agreement States will be notified of the availability of the plan on the Technical Conferencing Forum and all States can review the plan on NRC's Website. Agreement and non-Agreement State comments will be solicited and considered in the development of the final plan. States will be given 45 days to comment.

The NRC has already profited from enhanced public participation for this rulemaking by holding public meetings in the western part of the country where most of the licensees of concern are located early in the rulemaking process. Transcripts have been provided to interested parties and have been placed in the Public Document Room. Essentially, the comments received at the meetings covered several areas. Members of the public asked for greater involvement in the process early and recommended that an advance notice of proposed rulemaking be published. To address this concern, the Commission is planning to use an approach for 10 CFR Part 41 similar to other recent rulemakings where during development of

the proposed rule the staff's proposal would be available on the NRC Website. Another public comment dealt with the elimination of NRC oversight of ground water at ISL facilities. This commenter noted that the NRC program complements, not duplicates, the EPA UIC program. The State of Wyoming, on the other hand, commented that it believed the NRC could remove itself from the regulation of ISL facility ground water. Several members of the public did not support the use of tailings impoundments for the disposal of material other than 11e.(2) byproduct material. Members of the public also opposed the processing of alternate feedstock material through mills. The industry generally did not believe that a rulemaking was needed, and suggested that the Commission need only adopt the recommendations in the NMA White Paper. The Rocky Mountain Low-Level Waste Compact opposed the removal of LLW compact approval from the disposal of material other than 11e.(2) byproduct material.

EDO OR COMMISSION ISSUANCE

Because the recommended action would result in a new Part, as well as implementing new Commission policy, it is recommended that the Commission issue the proposed and final rule.

SCHEDULE

Public meetings	August 1998
Commission Paper	January 1999
Draft rulemaking plan (RP) to the States (45 day comment period from receipt of NRC letter - October 25, 2000)	September 8, 2000
SECY Paper, including RP, with disposition of State comments for office concurrence (20 days)	December 8, 2000
Final RP for approval to EDO, with SECY Information paper	January 26, 2001
Proposed rule to the Commission (Will include draft guidance documents and OMB package)	Fifteen months after approval of the RP
Final rule to the Commission (Will include final guidance documents)	Fifteen months after publication of the proposed rule

Note: Attachment 1, which presents some of the more significant specific changes that the NRC would make to improve, clarify, update, and make consistent the regulatory requirements as they apply to uranium and thorium recovery facilities, is not needed for purposes of this example and is not included as part of this sample document.

19.2 Advance notice of proposed rulemaking.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION
10 CFR Part 50
RIN 3150-AA11
Financial Assurance Requirements
for Decommissioning Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering amending its financial assurance requirements for decommissioning nuclear power plants. Because of the potential deregulation of the power generating industry, current NRC decommissioning funding regulations may require modification to account for utility reorganizations not contemplated when current financial assurance requirements were issued. This advance notice of proposed rulemaking invites public comment on issues pertaining to the form and content of the NRC's nuclear power reactor decommissioning financial assurance requirements relating to electric utility deregulation.

DATE: Submit comments by (insert date 75 days after publication in the *Federal Register*). Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm Federal workdays.

You may also provide comments via the NRC's interactive rulemaking Website at <http://ruleforum.inl.gov>. This site provides the capability to upload comments as files (any format), if your Web browser supports that function. For information about the interactive rulemaking Website, contact Ms. Carol Gallagher, (301) 415-5905 (e-mail: CAG@nrc.gov).

Certain documents related to this rulemaking, including comments received, may be examined in the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. These same documents may also be viewed and downloaded electronically via the rulemaking Website.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-1111, e-mail xxx@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

NRC's requirements for financial assurance for the decommissioning of nuclear power reactors appear in §50.75. Under §50.75(e)(3), the NRC allows power reactor licensees, defined as "electric utilities" under §50.2, to set aside funds annually over the estimated life of the reactor for decommissioning. Electric utility licensees were given more flexibility than other licensees because they have existed in a highly structured environment regulated by State public utility commissions (PUCs) or the Federal Energy Regulatory Commission (FERC). Under §50.75(e)(2), the NRC requires licensees other than electric utilities to set aside an external sinking fund coupled with a surety method or insurance for any unfunded balance. Deregulation may reduce or eliminate the distinction between electric utility licensees and other licensees. The NRC needs to clarify the definition of "electric utility" and to require additional assurance from licensees whose power reactor costs are no longer regulated.

Typically, power reactor licensees place decommissioning funds in external trust or escrow accounts that are reserved for decommissioning activities. Under the definition of external

sinking fund, power reactor licensees must accumulate all the funds estimated to be needed for decommissioning by the time their facilities are permanently shut down. Although §50.75(e) also allows power reactor licensees to use surety bonds, letters of credit, and prepayment to provide funding assurance, virtually all power reactor licensees use the external sinking fund.

Under §50.75(e)(3)(iv), an electric utility that is a Federal Government licensee need only provide assurance in the form of a statement of intent indicating that decommissioning funds will be obtained when necessary.

The intent of §50.75 is to provide reasonable assurance that funds for decommissioning will be available when necessary. The inability of the licensee to provide funding for decommissioning may adversely affect protection of public health and safety. A lack of decommissioning funds is a financial risk to taxpayers. If the licensee cannot pay for decommissioning, taxpayers would ultimately pay the bill.

The Commission believed that an external reserve account collected over the estimated remaining reactor life would provide reasonable assurance for a regulated electric utility. As a conservatism built into the rule, the NRC decided not to allow licensees to take credit for earnings on their trust funds while their reactors were in extended safe storage. The NRC assumed that during safe storage the rate of return on external decommissioning trust funds would equal the decommissioning cost escalation rate. Thus, the after-tax, after-inflation earnings rate effectively would be zero.

The 1988 decommissioning rule did not require licensees to report the status of their decommissioning funds. The NRC viewed licensee compliance with funding assurance requirements as a matter to be determined through the inspection process. The NRC recognized the authority of the PUCs and FERC to set annual decommissioning fund contribution rates and to establish investment and other management criteria for the funds. The PUCs and FERC also actively monitor these decommissioning funds as part of their rate regulatory responsibility. The Financial Accounting Standards Board (FASB), a national

organization that sets accounting standards, recently initiated a review of decommissioning obligation reporting on electric utility financial statements. Although FASB has not established a final standard, it appears that it will increase the level of detail on power reactor licensees' financial statements. This standard would give the NRC and others additional information on decommissioning fund status. The advent of deregulation and less oversight by FERC or by PUCs makes it imperative that the NRC have a source of information to monitor decommissioning fund status.

Specific Proposal

The Commission is considering amending §§50.2, 50.75, and 50.82 to require that electric utility reactor licensees provide assurance that the full estimated cost of decommissioning will be available through an acceptable guarantee mechanism if the licensees are no longer subject to rate regulation by PUCs or by FERC and do not have a guaranteed source of income. The amendment would also allow licensees to assume a positive real rate of return on decommissioning funds during the safe storage period. Lastly, a periodic reporting requirement would be established.

Specific Considerations

The NRC invites advice and recommendations on a proposed rule reflecting these and any other pertinent points from all interested persons. Comments and supporting reasons are particularly requested on the following questions:

A. Timing and Extent of Electric Utility Industry Deregulation.

A.1. What is the likely timetable for industry restructuring and deregulation?

A.2. Will the electric utility industry go through several phases as it responds to deregulation and other competitive pressures? If so, what will be the likely major changes in business structure that may occur in each phase? Will rates remain regulated at the retail

distribution level, with deregulation occurring for generation and transmission? Will retail wheeling become widespread and lead to deregulation of all sectors of the electric utility industry? Or will rates remain regulated at the retail distribution level, with deregulation occurring within the generation and transmission sectors? What will likely be the final structure of the electric utility industry, assuming either partial or full deregulation?

A.3. Some States appear to oppose deregulation. Will they be able to maintain their opposition if neighboring States deregulate? What will be the industry structure if some States deregulate more than others? Can a "hybrid" system exist effectively?

B. Stranded Costs.

B.1. How will restructuring affect large baseload plants that currently receive rate relief to cover construction costs or have a portion yet to be phased into the rate base? Specifically, what is the probability that and degree to which these costs will be recoverable should a nuclear power plant be considered noncompetitive because of high construction costs? What will be the source of operating, maintenance, and capital improvement funds should the licensee for such a nuclear generator decide to continue operations? What will be the source of funds to prematurely and safely shut down an uneconomic plant? Are transmission access or other surcharges to cover stranded costs likely?

C. Nuclear Financial Qualifications and Decommissioning Funding Assurance.

C.1. If nuclear plants are shut down prematurely, how will licensees that can no longer pass costs through to ratepayers provide for a shortfall of decommissioning funds?

C.2. At what point does an operator of a nuclear power plant cease to be a "utility" as defined in §50.2?

C.3. If an electric utility reorganizes itself, including divesting parts of itself, so that the remaining entity operating a reactor is no longer regulated by a rate-setting State or Federal body, or will cease to be regulated by a rate-setting State or Federal body if the reactor ceases operation, would it be appropriate to require financial assurance for the decommissioning costs

in full before NRC approval of the reorganizations? The assurance could take the form of self-guarantee, parent company guarantee, certification by the rate-regulating entity, or other financial surety mechanism to cover the unfunded decommissioning costs. Should the NRC require additional assurance for adequate funds for safe operation and decommissioning in anticipation of deregulation? Should the NRC require, as a condition of approval of certain reorganizations involving the transfer of control of a nuclear power plant, that newly created organizations or holding companies sign a binding agreement that holds them jointly liable for decommissioning costs associated with that nuclear power plant? What would be the impact of such actions?

C.4. Should the NRC require a licensee to provide a reasonable assurance of the availability of funds for decommissioning by imposing a minimum level of net worth, cash flow, or other financial measure (similar to 10 CFR Part 30, Appendices A and B)? If the decommissioning funds were below the minimum levels, the licensee would no longer be allowed to accumulate decommissioning costs over the remaining facility life but would need a guarantee that funds would be available for decommissioning through various financial measures. What financial measures would be effective and reasonable?

C.5. Would PUCs and FERC be willing to certify that licensees under their jurisdictions, both electric utility and Part 50 licensees other than electric utilities, would be allowed to collect sufficient revenues through rates to complete decommissioning funding?

C.6. What would be the impact if the NRC required licensees to accelerate collection of decommissioning funds such that decommissioning funding for all plants would be complete within 10 years (or some other time period)?

C.7. Assume that licensees have accumulated funds that are determined to be adequate based on current estimates of decommissioning costs. If these estimates turn out to be low far in the future (for example, if final dismantlement occurs after a 50-year safe storage period), how will underfunding be remedied? What measures should the NRC consider for obtaining

assurance of funds for such situations? Should the NRC require larger contingency factors in estimates to cover such situations?

C.8. Would it be feasible for the nuclear industry to develop a captive insurance pool to pay for decommissioning funding shortfalls that result from premature decommissioning? Could such a pool be structured similarly to Nuclear Mutual Limited and Nuclear Electric Insurance Limited which currently insure onsite property damage and replacement power of member utilities?

C.9. If PUC or FERC oversight is either substantially limited or eliminated, are there any other options for financial assurance of decommissioning that the NRC should consider?

D. Decommissioning Funding Assurance and a Federal Government Licensee.

D.1 Section 50.75(e)(3)(iv) provides that an electric utility that is a Federal Government licensee need only provide assurance in the form of a statement of intent indicating that decommissioning funds will be obtained when necessary. A Federal utility licensee will likely be confronted with many of the same new competitive pressures as non-Federal utilities. Should the regulations continue to permit the provision of a statement of intent as the method by which these licensees provide financial assurance for decommissioning? No Federal law clearly provides that the Federal Government would pay the Tennessee Valley Authority's (TVA's) financial decommissioning obligations should TVA be unable to do so. Does this fact or any other factor militate for or against allowing Federal utility licensees to continue to use statements of intent as the method by which financial assurance for decommissioning is provided?

E. Status of Decommissioning Trust Funds During Safe Storage Period.

E.1 What real rate(s) of return should the NRC allow licensees to use as credit for earnings on the decommissioning trust funds during the extended safe storage period?

E.2 What time period(s) should the NRC allow licensees to use in estimating the credit for earnings on the decommissioning trust funds during the extended safe storage period?

F. Reporting on the Status of Decommissioning Funds.

F.1 What information should the NRC require in the periodic reporting requirements?

F.2 How often should the NRC require a report on the status of decommissioning funding?

There will be another opportunity for additional public comment in connection with any proposed rule that may be developed by the Commission.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

The authority citation for this document is 42 U.S.C. 2201; 42 U.S.C. 5841.

Dated at Rockville, Maryland, this ____ day of _____, 2001.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.

19.3 Proposed rule.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150 - BB11

Changes to Nuclear Power Plant Security Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to delete certain security requirements associated with an internal threat. This action follows NRC's examination of nuclear power plant physical security requirements to identify those that are marginal to safety, redundant, or no longer effective. This action would reduce the regulatory burden on licensees without compromising physical protection against radiological sabotage.

DATES: Submit comments by (insert date 75 days after publication in the *Federal Register*). Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking Website at <http://ruleforum.llnl.gov>. This site provides the capability to upload comments as files (any format) if your Web browser supports that function. For information about the interactive rulemaking Website, contact Ms. Carol Gallagher, (301) 415-5905 (e-mail: CAG@nrc.gov).

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland.

These same documents may also be viewed and downloaded electronically via the rulemaking Website.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-2222, e-mail XXX@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Commission requested that NRC staff reexamine the security requirements associated with an internal threat to nuclear power plants in 10 CFR Part 73. After the NRC staff completed its reexamination and recommended some regulatory changes, the Commission directed the NRC staff to work with the Nuclear Energy Institute (NEI). Following three public meetings with NEI, the NRC staff recommended additional changes to Part 73 that would provide significant relief to licensees without compromising the physical security of the plants. The Commission directed the NRC staff to proceed with a rulemaking.

Discussion

The NRC staff identified seven areas in Part 73 as candidates for modification. A recommended change on the access of personnel and materials into reactor containments during high-traffic periods was adopted in a final rule dated September 7, 1995 (60 FR 46497). Six other changes originally considered for this rulemaking were the subject of Generic Letter 96-02, issued on February 13, 1996. This generic letter identified certain areas in which licensees might choose to revise their physical security plans without having to wait for the issuance of a rule. One of these changes, an option to leave vital area doors unlocked provided certain compensatory measures are taken, was reconsidered in light of recent tampering events and is not included in this proposed rule. The proposed rule addresses the five remaining changes.

1. Search requirements for on-duty guards, §73.55(d)(1).

2. Requirements for vehicle escort, §73.55(d)(4).
3. Control of contractor employee badges, §73.55(d)(5).
4. Maintenance of access lists for each vital area, §73.55(d)(7)(i)(A).
5. Key controls for vital areas, §73.55(d)(8).

1. Search Requirements for On-duty Guards (§73.55(d)(1)). Under current regulations, armed security guards who leave the protected area as part of their duties must be searched for firearms, explosives, and incendiary devices upon reentry into the protected area. Requiring a guard to go through an explosives detector or searching packages carried by the guard protects against the introduction of contraband. Because an armed guard carries a weapon on site, passage of the guard through the metal detector, the principal purpose of which is to detect firearms, serves little purpose. The guard has to either remove the weapon while passing through the detector or be subject to a hand search. Either approach makes little sense for the guard who is authorized to carry a weapon on site. Removing and handling the guard's weapon could also present a safety risk.

This proposed rule would allow armed security guards who are on duty and have exited the protected area on official business to reenter the protected area without being searched for firearms (by a metal detector). Unarmed guards and watch persons would continue to be subject to all search requirements. All guards would continue to be searched for explosives and incendiary devices because they are not permitted to carry these devices into the plant.

2. Requirements for Vehicle Escort (§73.55(d)(4)). The present requirement for a searched, licensee-owned vehicle within the protected area to be escorted by a member of the security organization, even when the driver is badged for unescorted access, does not contribute significantly to plant security. Under current regulations, all vehicles must be searched before entering the protected area except under emergency conditions. All vehicles must be escorted by a member of the security organization upon entry into the protected area, except for "designated licensee vehicles" that are used for onsite plant functions and remain in

the protected area except for operational, maintenance, repair, security, and emergency purposes. Licensee-owned vehicles that are not "designated licensee vehicles" must be escorted at all times while in the protected area even when they are driven by personnel with unescorted access.

This proposed rule would eliminate the requirement for escort of licensee-owned vehicles entering the protected area for work-related purposes if the vehicles are driven by licensee employees who have unescorted access. (This amendment would still preclude periodic entry of a delivery truck without an escort.) This change would relieve the burden on licensees without significantly increasing the level of risk to the plant.

3. Control of Contractor Employee Badges (§73.55(d)(5)). Contractor employees with unescorted access are required to return their badges when leaving the protected area. Current regulatory practice allows licensee employees to leave the protected area with their badges if adequate safeguards are in place to ensure that the security of the badge is not jeopardized. Because contractors and licensees are subject to the same programs required for unescorted access, there is no reason to employ more stringent badge control requirements for contractor employees. This proposed rule would allow contractor employees to take their badges off site under the same conditions that apply to licensee employees.

4. Maintenance of Access Lists for Each Vital Area (§73.55(d)(7)(i)(A)). Maintaining separate access lists for each vital area and reapproval of these lists on a monthly basis are of marginal value. At many sites, persons granted access to one vital area also have access to most or all vital areas. Licensees derive little additional benefit from maintaining discrete lists of individuals allowed access to each separate vital area in the facility. Licensee managers or supervisors are required to update the access lists at least once every 31 days and reapprove the list every 31 days. Reapproval of all individuals on the lists at least every 31 days to validate that the lists have been maintained in an accurate manner is unnecessarily

burdensome. This proposed rule would replace separate access authorization lists for each vital area of the facility by a single listing of all persons who have access to any vital area.

The proposed rule would also change the requirement that the list must be reapproved from at least once every 31 days to quarterly. The reapproval consists of a review to ensure that the list is current and that only those individuals requiring routine access to a vital area are included. Because of the requirement for a manager or supervisor to update the list at least every 31 days, conducting a comprehensive reapproval every 31 days is of marginal value.

5. Key Controls for Vital Areas (§73.55(d)(8)). Licensees currently change or rotate all keys, locks, combinations, and related access control devices at least once every 12 months. The rule also requires that these items be changed whenever there is a possibility of their being compromised. Therefore, the NRC determined that requiring change at least every 12 months is marginal to security.

This proposed rule would remove the requirement for change every 12 months and retain the requirement to change when an access control device has been compromised or the licensee suspects that it may be compromised.

Locking of Vital Areas

Generic Letter 96-02 described conditions under which licensees could leave vital areas unlocked. Specifically, the licensee would have had to --

(1) Ensure that the area is equipped with an alarmed access control system that will alarm on unauthorized entry;

(2) Ensure that the doors to the area can be locked remotely;

(3) Continue to maintain a record of personnel access;

(4) Examine for explosives, with equipment specifically designed for that purpose, all hand-carried packages entering any protected area within which there is an unlocked vital area; and

(5) Demonstrate a capability to protect against an external adversary.

This change was considered for inclusion in this proposed rule but was rejected because of recent events. If vital areas are unlocked but alarmed, the response to an entry by an unauthorized individual could require a considerable time and level of effort to ensure that important equipment was not damaged. Keeping vital area doors locked limits the number of people who have access to the area and ensures that personnel who enter are identified.

Recent tampering events were discovered within vital areas of a reactor. The first search missed significant tampering with safety-related switches. If vital areas are unlocked but alarmed, an entry by an unauthorized individual, deliberate or inadvertent, could require a considerable level of effort to ensure that important equipment was not damaged. Alarms may not always initiate the level of response needed to evaluate the safety systems within the impacted vital area. In addition, most safety equipment is automatic and rapid access to vital areas is generally not required. The option of leaving a vital area unlocked is no longer being considered.

Plain Language

The Presidential memorandum dated June 1, 1998, entitled "Plain Language in Government Writing" directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). In complying with this directive, editorial changes have been made in these proposed revisions to improve the organization and readability of the existing language of the paragraphs being revised. These types of changes are not discussed further in this document. The NRC requests comments on the proposed rule specifically with respect to the clarity and reflectiveness of the language used. Comments should be sent to the address listed under the ADDRESSES caption of the preamble.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with

applicable law or is otherwise impractical. The NRC is proposing to amend nuclear power security requirements to remove requirements that have little impact on plant safety. This action does not constitute the establishment of a standard that contains generally applicable requirements.

Environmental Impact: Categorical Exclusion

The Commission has determined that this proposed rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(3)(i). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget (OMB) for review and approval of the paperwork requirements.

Because the rule will reduce existing information collection requirements, the public burden for this collection of information is expected to be decreased by 102 hours per licensee. This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The NRC is seeking public comment on the potential impact of the collection of information contained in the proposed rule and on the following issues:

1. Is the proposed collection of information necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the collection of information be minimized, including the use of automated collection techniques?

Send comments on any aspect of this proposed collection of information, including suggestions for further reducing the burden, to the Information and Records Management Branch (T-6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail at BJS1@nrc.gov; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0002), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the collections of information or on the above issues should be submitted by (insert date 30 days after publication in the *Federal Register*). Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The five changes proposed in this rule are discussed in the supplementary information section. The costs and benefits for each of the proposed changes follow:

1. Search Requirements for On-duty Guards (§73.55(d)(1)). The regulatory burden on licensees would be reduced by eliminating unnecessary weapon searches of guards who are already allowed to carry a weapon, which would result in better use of licensee resources. There would be no reduction in plant security because the potential for reduction in security personnel hours does not impact the total size of the security force. The potential safety risk to personnel caused by removing and handling a guard's weapon would be eliminated.

2. Requirements for Vehicle Escort (§73.55(d)(4)). The regulatory burden on licensees would be reduced by requiring fewer vehicle escorts, which would allow personnel to be used more effectively. Resources could be redirected to areas in which they would be more cost-

effective. The decrease in security would be marginal because unescorted access would be restricted to vehicles owned by the licensee and driven by licensee employees with unescorted access.

Assuming the number of entries by licensee-owned vehicles driven by personnel having unescorted access is 10 per day per site, the average time needed for escort is 3 hours, and the cost per hour for security personnel is \$30 (loaded); a rough estimate of the potential savings per site per year is about \$330,000 (10 escorts/day/site x 365 days/year x 3 hrs/escort x \$30/hr). With 75 sites, the savings to the industry per year would be approximately \$24,000,000.

3. Control of Contractor Employee Badges (§73.55(d)(5)). The regulatory burden on licensees would be reduced by more effective use of security personnel. There would be no reduction in plant security because adequate safeguards would be in place to ensure that the security of the badge is not jeopardized.

Assuming that one security person per working day (8 hours) is relieved from the duties of controlling contractor employee badges and that the cost per hour for security personnel is \$30 (loaded), a rough estimate of the potential savings per site per year is about \$88,000 (8 hours/day x 365 days/year x \$30 hr). With 75 sites, the savings to the industry per year would be approximately \$6,600,000.

4. Maintenance of Access Lists for Each Vital Area (§73.55(d)(7)(i)(A)). The regulatory burden on licensees would be reduced because licensees would have to keep only one access list for all vital areas and reapprove it quarterly, rather than keep individual access lists for each vital area that must be reapproved monthly.

Assuming that the time to reapprove each of the individual lists is 1 hour per month, that a combined list would take 1.5 hours per month, that the average number of vital areas per site is 10, and that the cost of a clerk, including overhead, is \$30 per hour (loaded), a rough estimate of the potential savings per site per year is about \$3,420 [(1 x 10 vital areas/month x 12

months/yr - 1.5 x 1 combined vital area/quarter x 4 quarters/yr) x \$30/hr]. With 75 sites, the savings to the industry per year would be approximately \$256,500.

5. Key Controls for Vital Areas (\$73.55(d)(8)). The regulatory burden on the licensees would be reduced because fewer resources would be needed to maintain the system.

Assuming that of the approximately 60 locks per year, half of them had been changed for cause, leaving 30 locks unchanged, it would take a locksmith 1 day to change these 30 locks at a cost (including overhead) of \$45 per hour. A rough estimate of the potential savings per site per year is about \$360 (8 hrs/year x \$45/hr). With 75 sites, the savings to the industry per year would be approximately \$27,000.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act, as amended, 5 U.S.C. 605(b), the Commission certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect only licensees authorized to operate nuclear power reactors. These licensees do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act, or the Size Standards established by the Nuclear Regulatory Commission (10 CFR 2.810).

Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed amendment because this amendment would not impose new requirements on existing 10 CFR Part 50 licensees. The proposed changes to physical security are voluntary and would be a burden reduction if the licensee decides to implement this amendment. Therefore, a backfit analysis has not been prepared.

List of Subjects in 10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, 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. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 73

PART 73 -- PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 42 U.S.C. 2073, 2167, 2201, 42 U.S.C. 5841, 5844, 2297f.

Section 73.1 also issued under 42 U.S.C. 10155, 10161. Section 73.37(f) also issued under 42 U.S.C. 5841 note. Section 73.57 is issued under 42 U.S.C. 2169.

2. Section 73.55 is amended by revising paragraphs (d)(1), (d)(4), (d)(5), (d)(7)(i)(A), and (d)(8) to read as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

* * * * *

(d) * * *

(1) The licensee shall control all points of personnel and vehicle access into a protected area. Identification and search of all individuals, unless otherwise provided, must be made and authorization must be checked at these points. The search function for detection of firearms, explosives, and incendiary devices must be accomplished through the use of both firearms and explosive detection equipment capable of detecting those devices. The licensee shall subject all persons except bona fide Federal, State, and local law enforcement personnel on official duty to these equipment searches upon entry into a protected area. Armed security guards who are on duty and have exited the protected area on official business may reenter the protected area without being searched for firearms.

* * * * *

(4) All vehicles must be searched for items that could be used for sabotage before entering into the protected area except under emergency conditions. Vehicle areas that must

be searched include the cab, the engine compartment, the undercarriage, and the cargo area. All vehicles, except as indicated in this paragraph, entering a protected area must be escorted by a member of the security organization while in the protected area and, to the extent practicable, must be off loaded in the protected area at a specific designated materials receiving area that is not adjacent to a vital area. Escort is not required for designated licensee vehicles or licensee-owned vehicles entering the protected area and driven by licensee employees having unescorted access.

(5) A numbered picture badge identification system must be used for all individuals who are authorized access to protected areas without escort. Badges must be displayed by all individuals while inside the protected area. An individual not employed by the licensee but who requires frequent and extended access to protected and vital areas may be authorized access to the areas without escort if he or she displays a licensee-issued picture badge when entering the protected area that indicates--

- (i) Non-employee-no escort required;
- (ii) Areas to which access is authorized; and
- (iii) The period for which access has been authorized.

* * * * *

(7) * * *

(i) * * *

(A) Establish a current authorization access list for all vital areas. The access list must be updated by the cognizant licensee manager or supervisor at least once every 31 days and must be reapproved at least quarterly. The licensee shall include on the access list only individuals whose specific duties require access to the vital areas during non-emergency conditions.

* * * * *

(8) All keys, locks, combinations, and related access control devices used to control access to protected areas and vital areas must be controlled to reduce the probability of

compromise. Whenever there is evidence or suspicion that any key, lock, combination, or related access control devices may have been compromised, it must be changed or rotated. The licensee shall issue keys, locks, combinations, and other access control devices to protected areas and vital areas only to persons granted unescorted facility access. Whenever an individual's unescorted access is revoked due to his or her lack of trustworthiness, reliability, or inadequate work performance, these keys, locks, combinations, and related access control devices to which that person had access must be changed or rotated.

* * * * *

Dated at Rockville, Maryland, this ___ day of _____, 2001.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.

19.4 Final rule.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150 - CC33

Specific Licensing of Exports of Certain
Alpha-Emitting Radionuclides and Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to establish specific licensing controls on the export of bulk tritium, transuranic isotopes americium-242m, californium-249, californium-251, curium-245, curium-247, and certain specified alpha-emitting radionuclides; revise and establish new general licenses for tritium and the specified alpha-emitting radionuclides that are keyed to the recipient country's membership in the Nuclear Suppliers Group; remove Argentina, Brazil, and Chile from the list of restricted destinations; and revise the general license for exports of Canadian-origin uranium. The amendments conform the export controls of the United States to international export control guidelines and a treaty obligation under the U.S.-Canada Agreement for Cooperation.

EFFECTIVE DATE: (Insert date 45 days from date of publication in the *Federal Register*).

ADDRESSES: The final rule and any related documents are available on NRC's rulemaking Website at <http://ruleforum.llnl.gov>. For information about the interactive rulemaking Website, contact Ms. Carol Gallagher, (301) 415-5905 (e-mail: CAG@nrc.gov).

FOR FURTHER INFORMATION CONTACT: (Name of contact person), Office of International Programs, Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-3333.

SUPPLEMENTARY INFORMATION:

I. Background

On March 17, 1993 (57 FR 14344), the NRC proposed amending its regulations pertaining to the export of nuclear material and equipment. The proposed amendments would have revoked the current general licenses for bulk tritium and alpha-emitting radionuclides having an alpha half-life of 10 days or greater but less than 200 years to conform NRC's regulations to the export control guidelines of the Nuclear Suppliers Group (NSG) for nuclear-related, dual-use items contained in International Atomic Energy Agency (IAEA) INFCIRC/254/Revision 1/Part 2 and approved in 1992. The alpha-emitting radionuclides that would be subject to this rule are plutonium-236, plutonium-238, thorium-227, thorium-228, uranium-230, uranium-232, actinium-225, actinium-227, californium-248, californium-250, californium-252, curium-240, curium-241, curium-242, curium-243, curium-244, einsteinium-252, einsteinium-253, einsteinium-254, einsteinium-255, fermium-257, gadolinium-148, mendelevium-258, polonium-208, polonium-209, polonium-210, and radium-223 (specified alpha-emitting radionuclides). Consistent with NSG guidelines, new general licenses would be established to permit the export of the specified alpha-emitting radionuclides and dispersed tritium to countries that are members of the NSG dual-use guidelines and to permit the export of the specified alpha-emitting radionuclides to most other countries when in a device, or a source for use in a device, containing less than 100 millicuries (3.7 GBq) of alpha activity per device (10 CFR Part 71, Appendix A, provides specific activities in curies per gram).

The general license for source material would be revised to reduce the annual limit of Canadian-origin natural uranium that can be exported to any single country from 1,000 kilograms to 500 kilograms to help assure U.S. compliance with provisions of the U.S.-Canada Agreement for Cooperation.

The current general licenses for transuranic isotopes americium-242m, californium-249, californium-251, curium-245, and curium-247 would be revoked to conform NRC's regulations to the International Atomic Energy List of the Coordinating Committee on Multilateral Export

Controls (COCOM). Although COCOM was dissolved in March 1994, the NRC is placing specific licensing controls on these isotopes because the U.S. and other COCOM member countries agreed to retain export controls on the existing COCOM list of items. Steps are now being taken by former COCOM member countries to propose that the NSG control most, if not all, of the nuclear commodities on the COCOM list.

The proposed amendment to restructure Appendix A, which describes the nuclear reactor equipment subject to NRC licensing authority, will be addressed in a separate rulemaking.

II. Comments on the Proposed Rule

The Commission received six letters commenting on the proposed rule. Five of the letters, two of which were from the same company, came from U.S. manufacturers that utilize sources containing the specified alpha-emitting radionuclides. These commenters strongly objected to revoking the general licenses for the specified alpha-emitting radionuclides, particularly californium-252 (Cf-252). The commenters indicated that requiring specific licenses could result in serious economic disadvantage to their export business. They believed that specific licenses would disrupt their businesses and cause them to lose potential business because of the higher expenses of license application fees, the additional paperwork burden, time delays, and uncertainties in delivery. One commenter believed that the current general license regulations in Part 40 provided sufficient documentation to identify the supplier, the quantity exported, and the end user/end use. Several commenters argued that the revisions were unnecessary and were without any benefit to the stated objective of nonproliferation of nuclear weapons.

In view of these adverse comments, the NRC asked the companies to provide specific sales data on their exports to better understand the implications of the new regulation. After reviewing the responses, the NRC continues to believe that the economic impact on these companies is not significant because of the steps we have taken to address their concerns.

The new general licenses permit the export of the specified alpha-emitters in quantities up

to 100 millicuries to most countries, even when they are shipped separately from the equipment in which they are to be used. This understanding reduced many of their concerns. The final rule was revised to clarify this point. Other new general licenses permit the export of unlimited quantities (except as limited by existing general licenses) of the specified alpha-emitting radionuclides to NSG member countries. These new general licenses will allow the companies to export a significant quantity of their Cf-252 sources, including replenishment sources, without obtaining specific licenses. The companies are encouraged to apply for broad, long-term licenses to export their Cf-252 sources. These kinds of applications could include customers in a number of friendly, non-NSG countries and in sufficient quantities to cover replenishment sources for 6 years.

Several commenters questioned whether a source containing less than 100 millicuries (186 micrograms) of Cf-252, if shipped separately from the device in which it is to be used, could be exported under the proposed new general license. One commenter noted that in NRC materials licensing regulations, a "source" is not defined as a "device." For the purpose of Part 110, the export of a Cf-252 source for use in a specified device qualifies for this general license. The new general licenses are revised to clarify this point.

One commenter requested that the effective date of the rule be delayed or that exports under contract be exempted by a "grandfather" clause to avoid possible forced defaults in currently existing contracts that are now subject to specific licensing controls. In response to this concern, the effective date of this rule is 45 days after publication. This should be sufficient time for exports that are "in process" to be accomplished without default. The NRC did not consider a "grandfather" clause in the rule to cover committed contracts. One commenter has committed contracts to deliver Cf-252 sources for several years. The NRC believes these sources should not be excluded from the new regulation for more than another few weeks. The applicable export control guidelines were agreed to by the U.S. and other NSG member countries and should be implemented by the NRC without an extended delay.

A commenter representing a major U.S. vendor stated that the proposed restructuring of Appendix A and the new language still did not clearly delineate which minor reactor components required NRC licenses and which fall within the jurisdiction of the Department of Commerce. The commenter believed that the proposed amendment could result in increased confusion for exporters. Therefore, the Commission defers consideration of the revision of Appendix A.

The same commenter was concerned that service tooling contaminated with residual byproduct, source, or special nuclear material may be subject to specific licensing controls under the proposed rule. It is not the intent of the NRC to place new controls on these types of nuclear materials.

III. The Final Rule

Under current NRC regulations, bulk tritium in quantities up to 100 curies, the specified alpha-emitting radionuclides in unlimited quantities, and transuranic isotopes americium-242m, californium-249, californium-251, and curium-245 in unlimited quantities can be exported to most countries under general licenses. The final rule amends the general license provisions in §§ 110.21-110.23 for the export of special nuclear, source, and byproduct material to revoke the general licenses for these materials. Specific licensing controls are established on these materials. Although some of the specified alpha-emitting radionuclides inadvertently were not specifically identified in the proposed rule, they are included in the general license revocation implemented by this rule.

Argentina, Brazil, and Chile are removed from the list of restricted destinations in § 110.29. Since publication of the proposed rule, Argentina and Brazil have ratified and begun implementation of the Argentina/Brazil/IAEA full-scope safeguards agreement and Chile has waived into force the Treaty of Tlatelolco.

Section 110.30 is a list of the other member countries of the NSG. Exports of the specified alpha-emitting radionuclides in unlimited quantities (except as limited by the existing general

licenses) and dispersed tritium in quantities up to 40 curies per device are permitted to NSG member countries under the new general licenses established for them. Subsequent to the publication of the proposed rule, Argentina has become a member of the NSG and is included in the list.

Three items covered in this final rule were not specifically identified in the proposed rule: (1) the general licenses in §110.23 for einsteinium-252 -253 -254 -255; fermium-257; gadolinium-148; and mendelevium-258 are revoked; (2) Argentina, Brazil, and Chile are removed from the restricted destination list in §110.29; and (3) Argentina is added to the NSG member list in §110.30. Although the NRC did not publish these changes for comment in the proposed rule, the NRC is merely codifying international obligations of the United States. Because these changes involve a foreign affairs function of the United States, solicitation of public comment is not required under the Administrative Procedure Act (5 U.S.C. 553(a)(1)) and 10 CFR 110.132(e) and §110.134. The solicitation of public comment would delay U.S. conformance with its international obligations and therefore would not be in the public interest.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is amending its regulations to modify the types of licensing controls it imposes on the export of specified radionuclides. This action does not constitute the establishment of a standard that contains generally applicable requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described as a categorical exclusion under 10 CFR 51.22(c)(1) and (c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget (OMB), approval numbers 3150-0036 and 3150-0027.

The burden to the public for this information collection is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of this information collection, including suggestions for reducing the burden, to the Information and Records Management Branch (T-6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail at BJS1@nrc.gov; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, (3150-), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

See the discussion in the Regulatory Flexibility Certification for the final regulatory analysis for this rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities.

On the basis of information available to the Commission when the proposed rule was published, the Commission certified that the proposed rule, if adopted, would not have a

significant economic impact on a substantial number of small entities. The information to support this determination was obtained from the Department of Energy's national laboratories and some industry sources. The Commission also invited any small entity that determined that it is likely to bear a disproportionate economic impact because of its size to notify the Commission.

The Commission received four comments on the proposed rule from U.S. manufacturers that use radioactive sources containing Cf-252. Two of the companies qualify as small entities. Through their comments, the Commission became aware of the potentially detrimental economic impact that the revocation of the general licenses under which they were permitted to export Cf-252 would have. In view of these adverse comments, the NRC asked the companies to provide sales data on their exports to better reflect the implications of the new regulation. On the basis of a review of this summary data, the NRC, in cooperation with the companies, found that the impact of the rule changes on future sales will be much less than they had feared.

First, new general licenses are established to permit the export of Cf-252 sources in quantities up to 100 millicuries to most countries, even when they are shipped separately from the equipment in which they are to be used. This understanding reduces much of their concerns. Furthermore, other new general licenses are established to permit the export of unlimited quantities (except as limited by existing general licenses) of Cf-252 sources to NSG member countries. These new general licenses will allow the companies to export a significant quantity of their Cf-252 sources, including replenishment sources, without obtaining specific licenses. In addition, the companies may submit broad, long-term licenses to export their Cf-252 sources to their medical, scientific, industrial, and reactor-related customers in friendly, non-NSG countries, thereby eliminating case-by-case review. These licenses could authorize exports of Cf-252 sources in sufficient quantities to cover start-up sources and replenishment sources for Taiwan and South Korean power reactors for a number of years. The anticipated value of the exports under such licenses would range from \$260,000 to over \$2 million. Other

licenses of this type could authorize exports of Cf-252 sources and replenishment sources to medical, industrial, and scientific customers, with total export values under such licenses ranging from \$100,000 to over \$500,000. The current fee would be \$1300 for each specific license application submitted. These steps will greatly reduce the financial burden of the license application fees and additional paperwork. The processing of an export license application of this type normally takes less than 45 days for final action. The annual burden imposed by the rule is estimated to average less than 3 hours for an exporter for each specific application. The staff expects less than 10 new applications a year as a result of this rule.

The NRC also consulted with Department of Energy technical specialists to determine if any adjustments could be made for the specified alpha-emitting radionuclides, particularly Cf-252, to lessen the burden on U.S. exporters that export these materials to non-NSG member countries (exports to NSG countries would still be under general licenses). However, no acceptable adjustments were identified. We confirmed with U.S. nuclear weapons design experts that all of the specified alpha-emitting radionuclides, including Cf-252, could have some utility in nuclear explosive devices and that the 100-millicurie threshold for control was appropriate for the specified alpha-emitting radionuclides.

There are no alternatives for achieving the stated objective. This rule is necessary to conform NRC's export controls to the international export guidelines of the NSG. The United States and other NSG member countries have formally agreed to control these materials because of their utility in nuclear explosive weapons. The regulation is required to satisfy an international obligation of the United States. This discussion constitutes the regulatory flexibility analysis and the regulatory analysis for this final rule.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this final rule because these amendments do not include any provisions that would require backfits as defined in 10 CFR Chapter I.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

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 and 553, the NRC is adopting the following amendments to 10 CFR Part 110.

PART 110 - EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

1. The authority citation for Part 110 is revised to read as follows:

AUTHORITY: 42 U.S.C. 2071, 2073, 2074, 2077, 2092-2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154-2158, 2201, 2231-2233, 2237, 2239, 2243, 5841.

Sections 110.1(b)(2) and 110.1(b)(3) also issued under 22 U.S.C. 2403. Section 110.11 also issued under 42 U.S.C. 2152 and 2074. Section 110.27 also issued under Sec. 309(a), Pub. L. 99-440. Section 110.50(b)(3) also issued under 42 U.S.C. 2153. Section 110.51 also issued under 42 U.S.C. 2234. Section 110.52 also issued under 42 U.S.C. 2236. Sections 110.80-110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130-110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42(a)(9) also issued under 42 U.S.C. 2151 et seq.

2. In § 110.2, a definition for *Specific Activity* is added to read as follows:

§ 110.2 Definitions.

* * * * *

Specific Activity (millicuries per gram) equals 3.575×10^8 divided by (the atomic weight times the half-life in years)

* * * * *

§ 110.4 [Amended]

3. In 110.4, first sentence, remove the words "Assistant Director for Exports, Security, and Safety Cooperation", and add in their place the words "Director for Nonproliferation, Exports, and Multilateral Relations".

§ 110.7 [Amended]

4. In § 110.7, second sentence, the reference to "§ 110.30", where it appears twice, is revised to read "§ 110.31" and the reference to "§ 110.31" is revised to read "§ 110.32".

§ 110.20 [Amended]

5. In § 110.20, paragraph (a), the reference to "110.29" is revised to read "110.30" and the reference to "§§ 110.30-110.31" is revised to read "§§ 110.31-110.32", and in the first sentence of paragraph (f), the phrase "§§ 110.21 through 110.26, 110.28, and 110.29" is revised to read "§§ 110.21 through 110.26, 110.28, 110.29, and 110.30".

6. Section 110.21 is amended as follows:

- a. Paragraphs (a)(3) and (b)(1) are revised; and
- b. Paragraphs (a)(4) and (c) are added.

§ 110.21 General license for the export of special nuclear material.

(a) * * *

(3) Special nuclear material, other than Pu-236 and Pu-238, in sensing components in instruments, if no more than 3 grams of enriched uranium or 0.1 gram of Pu or U-233 are contained in each sensing component.

(4) Pu-236 and Pu-238 when contained in a device, or a source for use in a device, in quantities of less than 100 millicuries of alpha activity (189 micrograms Pu-236, 5.88 milligrams Pu-238) per device or source.

(b) * * *

(1) Special nuclear material, other than Pu-236 and Pu-238, in individual shipments of 0.001 effective kilogram or less (e.g., 1.0 gram of plutonium, U-233 or U-235, or 10 kilograms

of 1 percent enriched uranium), not to exceed 0.1 effective kilogram per year to any one country.

* * * * *

(c) A general license is issued to any person to export Pu-236 or Pu-238 to any country listed in § 110.30 in individual shipments of 1 gram or less, not to exceed 100 grams per year to any one country.

7. Section 110.22 is amended as follows:

- a. Paragraphs (a)(1), (a)(2), (b), and (c) are revised; and
- b. Paragraphs (a)(3) and (d) are added.

§ 110.22 General license for the export of source material.

(a) * * *

(1) Uranium or thorium, other than U-230, U-232, Th-227, and Th-228, in any substance in concentrations of less than 0.05 percent by weight.

(2) Thorium, other than Th-227 and Th-228, in incandescent gas mantles or in alloys in concentrations of 5 percent or less.

(3) Th-227, Th-228, U-230, and U-232 when contained in a device, or a source for use in a device, in quantities of less than 100 millicuries of alpha activity (3.12 micrograms Th-227, 122 micrograms Th-228, 3.7 micrograms U-230, 4.7 milligrams U-232) per device or source.

(b) A general license is issued to any person to export uranium or thorium, other than U-230, U-232, Th-227, or Th-228, in individual shipments of 10 kilograms or less to any country not listed in § 110.28 or § 110.29, not to exceed 1,000 kilograms per year to any one country or 500 kilograms per year to any one country when the uranium or thorium is of Canadian origin.

(c) A general license is issued to any person to export uranium or thorium, other than U-230, U-232, Th-227, or Th-228, in individual shipments of 1 kilogram or less to any country listed in § 110.29, not to exceed 100 kilograms per year to any one country.

(d) A general license is issued to any person to export U-230, U-232, Th-227, or Th-228 in individual shipments of 10 kilograms or less to any country listed in § 110.30, not to exceed 1,000 kilograms per year to any one country or 500 kilograms per year to any one country when the uranium or thorium is of Canadian origin.

8. Section 110.23 is revised to read as follows:

§ 110.23 General license for the export of byproduct material.

(a) A general license is issued to any person to export the following to any country not listed in § 110.28:

(1) All byproduct material (see Appendix F to this part), except actinium-225, actinium-227, americium-241, americium-242m, californium-248, californium-249, californium-250, californium-251, californium-252, curium-240, curium-241, curium-242, curium-243, curium-244, curium-245, curium-246, curium-247, einsteinium-252, einsteinium-253, einsteinium-254, einsteinium-255, fermium-257, gadolinium-148, mendelevium-258, neptunium-237, polonium-208, polonium-209, polonium-210, radium-223, and tritium, unless authorized in paragraphs (a)(2) through (a)(6), (b), or (c) of this section.

(2) Actinium-225, actinium-227, californium-248, californium-250, californium-252, curium-240, curium-241, curium-242, curium-243, curium-244, einsteinium-252, einsteinium-253, einsteinium-254, einsteinium-255, fermium-257, gadolinium-148, mendelevium-258, polonium-208, polonium-209, polonium-210, and radium-223 when contained in a device, or a source for use in a device, in quantities of less than 100 millicuries of alpha activity (see § 110.2 for specific activity) per device or source, except that exports of polonium-210 when contained in static eliminators may not exceed 100 curies (22 grams) per individual shipment.

(3) Americium-241, except that exports exceeding one curie (308 milligrams) per shipment or 100 curies (30.8 grams) per year to any country listed in § 110.29 must be contained in industrial process control equipment or petroleum exploration equipment in quantities not to

exceed 20 curies (6.16 grams) per device or 200 curies (61.6 grams) per year to any one country.

(4) Neptunium-237 in individual shipments of less than 1 gram, not to exceed 10 grams per year to any one country.

(5) Tritium in any dispersed form (e.g., luminescent light sources and paint, accelerator targets, calibration standards, labeled compounds) in quantities of 10 curies (1.03 milligrams) or less per item, not to exceed 1,000 curies (103 milligrams) per shipment or 10,000 curies (1.03 grams) per year to any one country. This general license does not authorize exports for tritium recovery or recycle purposes.

(6) Tritium in luminescent safety devices installed in aircraft when in quantities of 40 curies (4.12 milligrams) or less per light source.

(b) A general license is issued to any person to export to the countries listed in § 110.30 tritium in any dispersed form (e.g., luminescent light sources and paint, accelerator targets, calibration standards, labeled compounds) in quantities of 40 curies (4.12 milligrams) or less per item, not to exceed 1,000 curies (103 milligrams) per shipment or 10,000 curies (1.03 grams) per year to any one country. This general license does not authorize exports for tritium recovery or recycle purposes.

(c) A general license is issued to any person to export to the countries listed in § 110.30 actinium-225, actinium-227, californium-248, californium-250, californium-252, curium-240, curium-241, curium-242, curium-243, curium-244, einsteinium-252, einsteinium-253, einsteinium-254, einsteinium-255, fermium-257, gadolinium-148, mendelevium-258, polonium-208, polonium-209, polonium-210, and radium-223, except that polonium-210 when contained in static eliminators must not exceed 100 curies (22 grams) per individual shipment.

§ 110.29 [Amended]

9. In § 110.29, remove footnote 1 and the countries of "Argentina", "Brazil", and "Chile".

§§ 110.30 and 110.31 [Redesignated]

10. Sections 110.30 and 110.31 are redesignated as § 110.31 and § 110.32.

11. A new § 110.30 is added to read as follows:

§ 110.30 Members of the Nuclear Suppliers Group.

Argentina	Italy
Australia	Japan
Austria	Luxembourg
Belgium	Netherlands
Bulgaria	Norway
Canada	Poland
Czech Republic	Portugal
Denmark	Romania
Finland	Russia
France	Slovak Republic
Germany	Spain
Greece	Sweden
Hungary	Switzerland
Ireland	United Kingdom

§110.31 [Amended]

12. In § 110.31, paragraph (a), remove the words "Assistant Director for Exports, Security, and Safety Cooperation", and add in their place the words "Director for Nonproliferation, Exports, and Multilateral Relations", and in paragraph (d), the reference to "§ 110.31" is revised to read "§ 110.32".

13. In § 110.43, paragraph (a) is revised to read as follows:

§ 110.43 Physical security standards.

(a) Physical security measures in recipient countries must provide protection at least comparable to the recommendations in the current version of IAEA publication INFCIRC/225/Rev.2, December 1989, "The Physical Protection of Nuclear Material," and is incorporated by reference in this part. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Notice of any changes made to the material incorporated by reference will be published in the *Federal Register*. Copies of INFCIRC/225/Rev.2 may be obtained from the Director for Nonproliferation, Exports, and Multilateral Relations, Office of International Programs, U.S.

Nuclear Regulatory Commission, Washington, DC 20555-0001, and are available for inspection at the NRC library, 11545 Rockville Pike, Rockville, Maryland 20852-2738. A copy is on file at the library of the Office of the Federal Register, 800 N. Capitol Street, NW, Suite 700, Washington, D.C.

§ 110.50 [Amended]

14. In § 110.50, paragraph (b)(3), sentences one, two, and three, remove the words "Assistant Director for Exports, Security, and Safety Cooperation", and add in their place the words "Director for Nonproliferation, Exports, and Multilateral Relations".

Appendix F [Amended]

15. Appendix F to Part 110 is amended to add, in alphabetical order, curium-240, curium-241, einsteinium-252, einsteinium-253, einsteinium-254, einsteinium-255, fermium-257, gadolinium-148, and mendelevium-148.

Dated in Rockville, Maryland, this _____ day of _____, 2001.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.

19.5 Package prepared for the signature of the EDO or the CFO.

The Commission has delegated specific rulemaking authority to the Executive Director for Operations (EDO) and the Chief Financial Officer (CFO). For specific information on the rulemaking authority delegated to each of these officials see Sections 1.7 and 1.9 of this handbook.

Sample package for rules signed by the EDO or the CFO. This sample package presents, in proper format, the elements required when submitting a proposed or final rule to the EDO or CFO for approval and issuance. The person who drafts the *Federal Register* document is responsible for preparing the other elements required to complete the rulemaking package. The sample package consists of three parts.

- (1) The memorandum to the EDO or the CFO requesting that the EDO or the CFO issue the document.
- (2) The *Federal Register* document.
- (3) The note to be inserted in the Weekly Report to the Commission for a proposed rule or a Notice of Final Rule Signed by EDO for a final rule.

Note: In addition to the *Federal Register* document and the Weekly Report or Notice of Final Rule Signed by EDO, attachments to the memorandum include the Approved for Publication page and the Environmental Assessment /Environmental Impact Statement and the Regulatory Analysis if they were prepared as separate documents. The Congressional letters, including Small Business Regulatory Enforcement Fairness Act (SBREFA) forms for a final rule, and a press release are provided as part of a background section of the package

Documents that are to be issued by the EDO are prepared for the EDO's signature.
Documents that are to be issued by the CFO are prepared for the CFO's signature.

Part 1 - Memorandum to the EDO or the CFO.

MEMORANDUM TO: William D. Travers
Executive Director for Operations

FROM: Patricia G. Norry
Deputy Executive Director for
Management Services

SUBJECT: REVISION OF THE NRC'S SIZE STANDARDS

Attached for your signature is a final rule that amends the size standards used to qualify an NRC licensee as a "small entity" under the Regulatory Flexibility Act (Attachment 1). This action establishes a separate standard to be used to determine whether a licensee that is a manufacturer would qualify as a small entity, adjusts the receipts-based standard to account for the effects of inflation since 1985, and eliminates the separate \$1 million size standard for private practice physicians and applies the revised receipts-based standard of \$5 million to this class of licensee.

Background: The NRC established its size standards on December 9, 1985, after consulting with the Small Business Administration (SBA) and soliciting public comment. The size standards were developed after an exhaustive review of NRC materials licensees, including a survey to determine their sizes and categories of operation. On November 6, 1991, the NRC restated its size standards to include the Regulatory Flexibility Act definition of small governmental jurisdiction and to conform the presentation of the size standards to the listing of the definitions of small entities in the act.

The NRC received a number of comments in response to its rulemakings on fee schedules, especially concerning its failure to promulgate a size standard that differentiates between manufacturing entities and service providers. The NRC recently completed a survey to update its economic profile of materials licensees and to obtain more specific information concerning the manufacturers among NRC's licensing community. Approximately 20 percent of the licensees that responded indicated that manufacturing was a primary line of their business.

On April 7, 1994 (59 FR 16513), the SBA published a final rule that increased its receipts-based size standard levels to mitigate the effects of inflation since the last revision of its size standards in 1984.

The NRC published a proposed rule requesting comment on the amended size standards on November 30, 1994 (59 FR 61293) (Attachment 3). The NRC received two letters of comment on the proposed rule. The statement of considerations for the final rule contains a discussion of the comments received.

This final rule establishes a separate NRC size standard for manufacturers, adjusts the receipts-based standard to conform to the SBA final rule, and eliminates the separate \$1 million size standard for private practice physicians in order to mirror the SBA standard of \$5 million for all medical practitioners.

The NRC has submitted its size standards to the Administrator of the SBA for his review and approval as required by recent amendments to the Small Business Act (Attachment 4). The SBA found these size standards to be satisfactory and indicated its approval on March 24, 1995 (Attachment 5).

Notices: A notice to the Commission that the EDO has signed the attached final rule is attached (Attachment 6). Appropriate congressional committees will also be notified.

Coordination: The Office of the General Counsel has no legal objection to this rulemaking. The Office of the Chief Financial Officer has no resources-related objection to this rulemaking. The Chief Information Officer concurs that there will be no information technology impacts.

Attachments:

1. *Federal Register* Notice of Final Rulemaking
2. Approved for Publication
3. *Federal Register* Notice of Proposed Rulemaking
4. Request for SBA Review
5. SBA Approval
6. Notice of Final Rule Signed by EDO

Note: Attachments 4 and 5 are unique to the subject matter of this sample document.

Attachment 2

Approved for Publication

The Commission has delegated to the EDO (10 CFR 1.31(c)) the authority to develop and promulgate rules as defined in the APA (5 U.S.C. 551(4)), subject to the limitations specified in NRC Management Directive 9.17, "Organization and Functions, Office of the Executive Director for Operations," paragraphs 0213, 038, 039, and 0310.

The attached final rule entitled "NRC Size Standards; Revision" amends the size standards that apply to whether an NRC licensee would qualify as a "small entity" under the Regulatory Flexibility Act. This action establishes a separate standard to be used to determine whether a licensee that is a manufacturer would qualify as a small entity, adjusts the receipts-based standard to account for the effects of inflation since 1985, and eliminates the separate \$1 million size standard for private practice physicians and applies the revised receipts-based standard of \$5 million to this class of licensee.

This final rule does not constitute a significant question of policy, nor does it amend regulations contained in 10 CFR Parts 7, 8, or 9, Subpart C, concerning matters of policy. I therefore find that this rule is within the scope of my rulemaking authority and am proceeding to issue it.

Date

William D. Travers
Executive Director for Operations.

Part 2 - The Federal Register Document.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150-DD44

NRC Size Standards; Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the NRC's size standards used to qualify an NRC licensee as a "small entity" under the Regulatory Flexibility Act. This action is necessary to establish a separate standard to be used to determine whether a licensee that is a manufacturer would qualify as a small entity, to adjust the receipts-based standard to account for the effects of inflation since 1985, and to eliminate the separate \$1 million size standard for private practice physicians and apply the revised receipts-based size standard of \$5 million to this class of licensees.

EFFECTIVE DATE: (Insert date 30 days after publication in the Federal Register).

ADDRESSES: This final rule and any related documents are available on the NRC's rulemaking Website at <http://ruleforum.llnl.gov>. For information about the interactive rulemaking Website, contact Ms. Carol Gallagher, (301) 415-5905 (e-mail: CAG@nrc.gov).

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Rules and Directives Branch, Division of Administrative Services, Office of Administration, telephone (301) 415-4444.

SUPPLEMENTARY INFORMATION:

Background

In 1983, the NRC surveyed its materials licensees to create an economic profile sufficient to consider regulatory alternatives tailored to the size of the licensee. After analyzing the data and consulting with the Small Business Administration (SBA), the NRC developed a proposed size standard that would be appropriate to use in determining which of its licensees would qualify as small entities for the purposes of compliance with the Regulatory Flexibility Act. The NRC published its proposed size standard for notice and comment in the Federal Register of May 21, 1985 (50 FR 20913). After considering the comments received, the NRC adopted its final size standards as noted in the Federal Register of December 9, 1985 (50 FR 50241). In the Federal Register of November 6, 1991 (56 FR 56671), the NRC restated the size standards to include the Regulatory Flexibility Act's definition of small governmental jurisdiction. To further improve clarity, the NRC changed the presentation of the size standards to conform to the listing of definitions of small entities in the Regulatory Flexibility Act.

The Proposed Rule

On November 30, 1994 (59 FR 61293), the NRC published a proposed rule to amend the NRC's size standards. The NRC proposed to establish a separate standard to be used to determine whether a licensee that is a manufacturer would qualify as a small entity and to adjust the receipts-based standard to account for the effects of inflation since 1985. In addition, the NRC proposed to eliminate the separate \$1 million size standard for private practice physicians and apply the revised receipts-based size standard of \$5 million to this class of licensees. By amending the size standards through rulemaking, the NRC indicated its intent to codify NRC's size standards in 10 CFR Part 2. As discussed in the preamble to the proposed

rule, these amendments were developed after several factors indicated that some adjustments to the NRC's size standards were desirable.

The NRC received a number of comments concerning its size standards and the failure of the NRC to promulgate a size standard that differentiates between manufacturing entities and service providers in response to the final rule implementing Public Law 101-508 (56 FR 31472; July 10, 1991, and subsequent years). These commenters indicated that applying a gross receipts standard to a manufacturing concern resulted in an adverse impact on a manufacturer. The SBA size standards for manufacturers are prescribed in terms of a maximum number of employees rather than in terms of gross receipts.

The NRC conducted a survey to update the economic profile of its materials licensees. The purpose of this survey was to evaluate the continued efficacy of NRC's size standards and to obtain the information needed to determine the necessity and effect of a separate standard for manufacturers within the context of the nuclear industry.

The SBA adjusted its receipts-based size standard levels to mitigate the effects of inflation from 1984 to the present in a final rule published in the *Federal Register* of April 7, 1994 (59 FR 16513).

Public Comment

The comment period on the proposed rule closed December 30, 1994. The NRC received two letters of public comment on this action.

One commenter objected to the inclusion of a size standard based on the number of employees for qualification of a manufacturing concern as a small entity in the NRC's regulatory programs and the assessment of reduced annual fees. The commenter stated that the total employee population of a manufacturer has little bearing on revenue potential and revenue has little bearing on the risk to public health and safety. The commenter believes that although employee population may be a consideration, it must be considered in conjunction with revenue

produced and with the complexity of the operation in determining size standards. The commenter also asserts that because manufacturers are authorized to possess significant quantities of multiple isotopes, both as sealed sources and loose material for use in the manufacture and distribution of products, they present a much higher risk than entities that hold a license for possession and use of sealed sources. The commenter states that the loss of revenue from manufacturers categorized as small entities will have to be made up by small licensees that may have only one or two devices on site.

The NRC is retaining a separate standard based on the number of employees for manufacturers in the final rule because this standard is required by the Small Business Act (15 U.S.C. 632 (a)(2)). This provision prohibits a Federal department or agency from prescribing a size standard for categorizing a business concern as a small business concern unless the standard provides for determining the size of a manufacturing concern based upon employment.

One commenter was pleased to see that the NRC raised the size standard for private practice physicians from \$1 million to \$5 million. However, the commenter indicated that this action did not go far enough in addressing the assessment of user fees. The commenter suggested that the NRC consider evaluating the gross receipts of departments within a medical facility that utilize NRC services and not the overall receipts of the facility. The commenter contends that if the NRC focused on the smaller entity within the license, many licensees would qualify for the small business exemptions and would pay fees based on the actual revenue generated under the license.

The NRC notes that the Small Business Act establishes criteria for a small business concern. To qualify as a small business concern, the concern must be independently owned and operated and not dominant in its field of operation (15 U.S.C. 632 (a)(1)). A department of a medical facility does not meet this criterion. The NRC has included language in the final rule to address this type of situation.

In response to each of the comments, the NRC further emphasizes that the purpose of this rule is to amend the size standards used by the NRC to qualify an NRC licensee as a "small entity" under the Regulatory Flexibility Act. The application of these standards in the fee schedule rulemaking, or any other rulemaking proceeding, is beyond the scope of this rule.

The Final Rule

The NRC is adopting a size standard of 500 or fewer employees for business concerns that are manufacturing entities. This standard is the most commonly used SBA employee standard and would be the standard applicable to the types of manufacturing industries that would hold an NRC license. Under this standard, approximately 48 percent of the licensees that indicated that they were manufacturers would qualify as small entities.

The NRC is adjusting its receipts-based size standard to accommodate inflation and to conform to the SBA final rule. The NRC is raising its receipts-based small business size standard from \$3.5 million to \$5 million. The NRC also is eliminating the separate \$1 million size standard for private practice physicians and applying the revised receipts-based size standard of \$5 million to this class of licensees. This standard mirrors the revised SBA standard of \$5 million for medical practitioners. For greater clarity, the NRC has included a definition of the term "receipts" in the final rule.

The survey of materials licensees indicated that 26 percent qualified as small entities under the NRC standards being replaced by this rule. Under the size standards adopted in this document, 35 percent of these licensees would qualify as small entities, an increase of 9 percent. When NRC adopted its size standards in 1985, the NRC staff estimated that approximately 35 percent of the materials licensees would qualify as small entities.

The Small Business Credit and Business Opportunity Enhancement Act of 1992 (Pub. L. 102-366) amended the Small Business Act concerning the establishment of agency-specific small business size standards. The NRC size standards were developed so as to meet the

criteria specified in Pub. L. 102-366. As required by Pub. L. 102-366, the NRC size standards were approved by the Administrator of the SBA.

This final rule also codifies NRC's size standards in Part 2 of the Commission's regulations. Previously, NRC's size standards had been published in the general notices section of the *Federal Register*.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is amending the size standards used by the NRC to qualify an NRC licensee as a "small entity" under the Regulatory Flexibility Act. This action does not constitute the establishment of a standard that contains generally applicable requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

Paperwork Reduction Act Statement

This final rule does not contain a new or an amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150-0136.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

A regulatory analysis has not been prepared for this final rule because the final rule is administrative in that it amends the criteria the NRC uses for determining which of its licensees qualify as small entities for the purposes of compliance with the Regulatory Flexibility Act. The amended size standards conform to SBA's revised standards and result in an increase in the number of NRC licensees that qualify as small entities.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The final rule is administrative in that it amends the criteria the NRC uses in determining which of its licensees qualify as small entities for the purposes of compliance with the Regulatory Flexibility Act. The amended size standards conform to SBA's revised standards and result in an increase in the number of NRC licensees that would qualify as small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and, therefore, that a backfit analysis is not required for this final rule because these amendments do not impose any provisions that would impose backfits as defined in 10 CFR Chapter I.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

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 and 553, the NRC is adopting the following amendment to 10 CFR Part 2.

PART 2 - RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for Part 2 continues to read as follows:

AUTHORITY: 42 U.S.C. 2201, 2231, 2241, 5841; 5 U.S.C. 552.

Section 2.101 also issued under 42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135, 4332, 5871, 10134(f)). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239. Section 2.105 also issued under 42 U.S.C. 2239. Sections 2.200-2.206 also issued under 42 U.S.C. 2236, 2282, 5846. Sections 2.600-2.606 also issued under 42 U.S.C. 4332. Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under 42 U.S.C. 10155, 10161. Section 2.790 also issued under 42 U.S.C. 2133 and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and 42 U.S.C. 2039. Subpart K also issued under 42 U.S.C. 2239, 10154. Subpart L also issued under 42 U.S.C. 2239. Appendix A also issued under 42 U.S.C. 2135. Appendix B also issued under 42 U.S.C. 2021b et seq.

2. Section 2.810 is added to read as follows:

§ 2.810 NRC Size Standards.

The NRC shall use the size standards contained in this section to determine whether a licensee qualifies as a small entity in its regulatory programs.

(a) A small business is a for-profit concern and is a --

(1) Concern that provides a service or a concern not engaged in manufacturing with average gross receipts of \$5 million or less over its last 3 completed fiscal years; or

(2) Manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months.

(b) A small organization is a not-for-profit organization that is independently owned and operated and has annual gross receipts of \$5 million or less.

(c) A small governmental jurisdiction is a government of a city, county, town, township, village, school district, or special district with a population of less than 50,000.

(d) A small educational institution is one that is --

(1) Supported by a qualifying small governmental jurisdiction; or

(2) Not State or publicly supported and has 500 or fewer employees.

(e) For the purposes of this section, the NRC shall use the Small Business Administration definition of receipts (13 CFR 121.402(b)(2)). A licensee that is a subsidiary of a large entity does not qualify as a small entity for purposes of this section.

Dated at Rockville, Maryland, this day of , 2001.

For the Nuclear Regulatory Commission.

William D. Travers,
Executive Director for Operations.

Part 3 - Notice of Final Rule Signed By EDO (final rule) or the Weekly Report (proposed rule).

FOR A FINAL RULE:

NOTICE OF FINAL RULE SIGNED BY EDO

OFFICE OF ADMINISTRATION

On _____, 2001, the Executive Director for Operations approved a final rule that amends the size standards that apply to whether an NRC licensee would qualify as a small entity under the Regulatory Flexibility Act. This action establishes a separate standard to be used to determine whether a licensee that is a manufacturer would qualify as a small entity, adjusts the receipts-based standard to account for the effects of inflation since 1985, and eliminates the separate \$1 million size standard for private practice physicians and applies the revised receipts-based standard of \$5 million to this class of licensee.

This notice informs the Commission that in accordance with the rulemaking authority delegated to the EDO, the EDO has signed this final rule and proposes to forward it on (5 full working days from the date the rule is signed) to the Office of the Federal Register for publication, unless otherwise directed by the Commission.

This final rule does not constitute a significant question of policy, nor does it amend regulations contained in 10 CFR Parts 7, 8, or 9, Subpart C, concerning matters of policy.

The final rule can be found in ADAMS at ML_____.

FOR A PROPOSED RULE:

WEEKLY REPORT TO THE COMMISSION

OFFICE OF ADMINISTRATION

Proposed Rule To Be Signed by EDO

On _____, 2001, the Executive Director for Operations approved a proposed rule that would amend the size standards that apply to whether an NRC licensee would qualify as a small entity under the Regulatory Flexibility Act. This action would establish a separate standard to be used to determine whether a licensee that is a manufacturer would qualify as a small entity, adjust the receipts-based standard to account for the effects of inflation since 1985, and eliminate the separate \$1 million size standard for private practice physicians and applies the revised receipts-based standard of \$5 million to this class of licensee.

This action constitutes notice to the Commission that, in accordance with the rulemaking authority delegated to the EDO, the EDO has signed this proposed rule for publication in the *Federal Register*.

This proposed rule does not constitute a significant question of policy, nor would it amend regulations contained in 10 CFR Parts 7, 8, or 9, Subpart C, concerning matters of policy.

The proposed rule can be found in ADAMS at ML_____.

19.6 Direct final rule.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19, 30, 40, 50, 60, 61, 70, and 72

RIN: 3150-EE55

EMPLOYEE PROTECTION POLICIES; MINOR AMENDMENTS

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations related to notices to workers and to employee protection policies. This action is necessary to require the use of an updated NRC Form 3, update a telephone number, and clarify the applicability of employment discrimination policies.

EFFECTIVE DATE: The final rule is effective (insert date 75 days after publication in the *Federal Register*), unless significant adverse comments are received by (insert date 30 days after publication in the *Federal Register*). If the rule is withdrawn, timely notice will be published in the *Federal Register*.

ADDRESSES: Submit comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking Website at <http://ruleforum.llnl.gov>. This site provides the capability to upload comments as files (any format), if your Web browser supports that function. For information about the interactive rulemaking Website, contact Ms. Carol Gallagher, (301) 415-5905 (e-mail: CAG@nrc.gov).

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. These same documents may also be viewed and downloaded electronically via the rulemaking Website.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of Nuclear Material Safety and Safeguards, telephone (301) 415-5555, e-mail XXX@nrc.gov.

SUPPLEMENTARY INFORMATION:

Because NRC considers this action noncontroversial and routine, the NRC is using the direct final rule procedure for this rule. The amendments in this rule will become effective on (insert date 75 days after publication in the *Federal Register*). However, if the NRC receives significant adverse comments by (insert date 30 days after publication in the *Federal Register*), the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the *Federal Register*. These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

Background

The purpose of these amendments to 10 CFR Part 19 and related sections is to reference the most recent revision of NRC Form 3, update a telephone number, and clarify the applicability of employment discrimination policies to 10 CFR Parts 61 and 76.

NRC regulations in § 19.11, "Posting of notices to workers," specify the June 1993 revision of NRC Form 3, "Notice to Employees," and an old NRC telephone number for obtaining NRC Form 3. A new version of the form was issued in January 1996, and because licensees and applicants are required to prominently post the most current version of NRC Form 3, § 19.11 is being updated. Related sections in Parts 30, 40, 50, 60, 61, 70, and 72 also have the old NRC telephone number and are being updated.

The primary differences between the old and the new NRC Form 3 are related to reporting violations and safety concerns, the addition of an NRC Safety Hotline and other NRC toll-free numbers, what constitutes discrimination, the realignment of NRC regions, and the actions NRC will take for allegations of harassment, intimidation, or discrimination.

NRC regulations in § 19.20, "Employee protection," were adopted in July 1982. Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste," was adopted in 1982 (47 FR 57446; December 27, 1982), and Part 76, "Certification of Gaseous Diffusion Plants," was adopted in 1994 (59 FR 48944; September 23, 1994). Both Parts 61 and 76 adopted the July 1982 employee protection provisions incorporated in Parts 30, 40, 50, 60, 70, and 72. Section 19.20 is being updated to refer to Parts 61 and 76 for consistency and clarification of employee protection policies.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is requiring the use of an updated NRC Form 3, updating a telephone number, and clarifying the applicability of employment discrimination policies. These actions do not constitute the establishment of a standard that contains generally applicable requirements.

Environmental Impact: Categorical Exclusion

The Commission has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or an amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget (OMB), approval 3150-0044, 10 CFR Part 19; 3150-0017, 10 CFR Part 30; 3150-0020, 10 CFR Part 40; 3150-0011, 10 CFR Part 50; 3150-0127, 10 CFR Part 60; 3150-0135, 10 CFR Part 61; 3150-0009, 10 CFR Part 70; and 3150-0132, 10 CFR Part 72.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

A regulatory analysis has not been prepared for this direct final rule because this rule is considered a minor, nonsubstantive amendment; it has no economic impact on NRC licensees or the public.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact upon a substantial number of small entities.

Any small entity subject to this regulation that determines that because of its size it is likely to bear a disproportionate adverse economic impact should notify the Commission of this opinion in a comment that indicates the following:

(a) The licensee's size and how the regulation would result in a significant economic burden upon the licensee as compared to the economic burden on a larger licensee.

(b) How the regulations could be modified to take into account the licensee's differing needs or capabilities.

(c) The benefits that would accrue, or the detriments that would be avoided, if the regulations were modified as suggested by the licensee.

(d) How the regulation, as modified, would more closely equalize the impact of regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individual or group.

(e) How the regulation, as modified, would still adequately protect public health and safety.

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this rule, and, therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR Chapter I.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects

10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Special nuclear material.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 60

Criminal penalties, High-level waste, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 61

Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

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 and 553, the NRC is adopting the following amendments to 10 CFR Parts 19, 30, 40, 50, 60, 61, 70, and 72.

PART 19--NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

1. The authority citation for Part 19 continues to read as follows:

AUTHORITY: 42 U.S.C 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282, 2297f, 5841, 5851.

2. In § 19.11, the note following paragraph (c) is removed and paragraph (c) is revised to read as follows:

§ 19.11 Posting of notices to workers.

* * * * *

(c)(1) Each licensee and each applicant for a specific license shall prominently post NRC Form 3 (revision dated January 1996), "Notice to Employees."

(2) Copies of NRC Form 3 may be obtained by writing to the regional administrator of the appropriate U.S. Nuclear Regulatory Commission regional office listed in Appendix D to Part 20 of this chapter or by calling the NRC Records Management Branch at (301) 415-7230.

* * * * *

3. Section 19.20 is revised to read as follows:

§ 19.20 Employee protection.

Employment discrimination by a licensee (or a holder of a certificate of compliance issued pursuant to Part 76) or a contractor or a subcontractor of a licensee (or a holder of a certificate of compliance issued pursuant to Part 76) against an employee for engaging in protected activities under this part or Parts 30, 40, 50, 60, 61, 70, 72, 76, or 150 of this chapter is prohibited.

PART 30--RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING
OF BYPRODUCT MATERIAL

4. The authority citation for Part 30 continues to read as follows:

AUTHORITY: 42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282, 5841, 5842, 5846.
Section 30.7 also issued under 42 U.S.C. 5851. Section 30.34(b) also issued under 42
U.S.C. 2234. Section 30.61 also issued under 42 U.S.C. 2237.

5. In § 30.7, the note to paragraph (e)(2) is redesignated as paragraph (e)(3) and revised
to read as follows:

§ 30.7 Employee protection.

* * * * *

(e) * * *

(3) Copies of NRC Form 3 may be obtained by writing to the regional administrator of the
appropriate U.S. Nuclear Regulatory Commission regional office listed in Appendix D to Part 20
of this chapter or by calling the NRC Records Management Branch at (301) 415-7230.

* * * * *

NOTE: Amendments similar to those made to 10 CFR Part 30 were also presented for 10
CFR Parts 40, 50, 60, 61, 70, and 72.

Dated at Rockville, Maryland, this ___ day of _____, 2001.

For the Nuclear Regulatory Commission.

William D. Travers,
Executive Director for Operations.

19.7 Direct final rule: Companion proposed rule.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19, 30, 40, 50, 60, 61, 70, and 72

RIN: 3150-EE55

EMPLOYEE PROTECTION POLICIES; MINOR AMENDMENTS

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations related to notices to workers and to employee protection policies. This action is necessary to require the use of an updated NRC Form 3, update a telephone number, and clarify the applicability of employment discrimination policies.

DATES: Comments on the proposed rule must be received on or before (insert date 30 days after publication in the *Federal Register*).

ADDRESSES: Submit comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking Website at <http://ruleforum.llnl.gov>. This site provides the capability to upload comments as files (any format), if your Web browser supports that function. For information about the interactive rulemaking Website, contact Ms. Carol Gallagher, (301) 415-5905 (e-mail: CAG@nrc.gov).

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. These same documents may also be viewed and downloaded electronically via the rulemaking Website.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-5555, e-mail XXX@nrc.gov .

SUPPLEMENTARY INFORMATION:

For additional information see the direct final rule published in the Rules and Regulations section of this *Federal Register*.

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 (insert date 75 days after publication in the *Federal Register*). However, if the NRC receives significant adverse comments on the direct final rule by (insert date 30 days after publication in the *Federal Register*), then the NRC will publish a document that withdraws 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 in the event the direct final rule is withdrawn.

List of Subjects

10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Special nuclear material.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 60

Criminal penalties, High-level waste, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 61

Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

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. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 19, 30, 40, 50, 60, 61, 70, and 72.

PART 19--NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

1. The authority citation for Part 19 continues to read as follows:

AUTHORITY: 42 U.S.C 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282, 2297f, 5841, 5851.

2. In § 19.11, the note following paragraph (c) is removed and paragraph (c) is revised to read as follows:

§ 19.11 Posting of notices to workers.

* * * * *

(c)(1) Each licensee and each applicant for a specific license shall prominently post NRC Form 3 (revision dated January 1996), "Notice to Employees."

(2) Copies of NRC Form 3 may be obtained by writing to the regional administrator of the appropriate U.S. Nuclear Regulatory Commission regional office listed in Appendix D to Part 20 of this chapter or by calling the NRC Records Management Branch at (301) 415-7230.

* * * * *

3. Section 19.20 is revised to read as follows:

§ 19.20 Employee protection.

Employment discrimination by a licensee (or a holder of a certificate of compliance issued pursuant to Part 76) or a contractor or a subcontractor of a licensee (or a holder of a certificate of compliance issued pursuant to Part 76) against an employee for engaging in protected activities under this part or Parts 30, 40, 50, 60, 61, 70, 72, 76, or 150 of this chapter is prohibited.

PART 30--RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

4. The authority citation for Part 30 continues to read as follows:

AUTHORITY: 42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282, 42 U.S.C. 5841, 5842, 5846.

Section 30.7 also issued under 42 U.S.C. 5851. Section 30.34(b) also issued under 42 U.S.C. 2234. Section 30.61 also issued under 42 U.S.C. 2237.

5. In § 30.7, the note to paragraph (e)(2) is redesignated as paragraph (e)(3) and revised to read as follows:

§ 30.7 Employee protection.

* * * * *

(e) * * *

(3) Copies of NRC Form 3 may be obtained by writing to the regional administrator of the appropriate U.S. Nuclear Regulatory Commission regional office listed in Appendix D to Part 20 of this chapter or by calling the NRC Records Management Branch at (301) 415-7230.

* * * * *

NOTE: Amendments similar to those made to 10 CFR Part 30 were also presented for 10 CFR Parts 40, 50, 60, 61, 70, and 72.

Dated at Rockville, Maryland, this ___ day of _____, 2001.

For the Nuclear Regulatory Commission.

William D. Travers,
Executive Director for Operations.

19.8 Direct final rule: Confirmation of effective date.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN: 3150-EE77

List of Approved Spent Fuel Storage Casks: (VSC-24)
Revision, Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of a direct final rule that was published in the *Federal Register* on September 22, 1999 (64 FR 51187). This direct final rule amended the NRC's regulations to revise the Pacific Sierra Nuclear Associates (PSNA) VSC-24 cask listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 1 to the Certificate of Compliance.

EFFECTIVE DATE: The effective date of December 6, 1999, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. These same documents may also be viewed and downloaded electronically via the rulemaking Website (<http://ruleforum.llnl.gov>). For information about the interactive Website, contact Ms. Carol Gallagher (301) 415-5905; e-mail CAG@nrc.gov.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-7777, e-mail XXX@nrc.gov.

SUPPLEMENTARY INFORMATION:

On September 22, 1999 (64 FR 51187), the NRC published a direct final rule amending its regulations to revise the PSNA VSC-24 cask listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 1 to the Certificate of Compliance. In the direct final rule, the NRC stated that if no significant comments were received, the direct final rule would become effective on the date mentioned above. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will take effect as scheduled.

Dated at Rockville, Maryland, this ___ day of _____, 1999.

For the Nuclear Regulatory Commission.

Michael T. Lesar, Chief,
Rules and Directives Branch,
Division of Administrative Services,
Office of Administration.

19.9 Direct final rule: Delay of effective date.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN: 3150-EE77

**List of Approved Spent Fuel Storage Casks: (VSC-24)
Revision, Delay of Effective Date**

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Delay of effective date.

SUMMARY: On September 22, 1999 (64 FR 51187), the Nuclear Regulatory Commission (NRC) published a direct final rule amending its regulations to revise the Pacific Sierra Nuclear Associates VSC-24 cask listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 1 to the Certificate of Compliance. The direct final rule was to have become effective December 6, 1999, absent significant adverse comments. The NRC is delaying the effective date of this action for 30 days to allow it sufficient time to consider the issues raised by public comment.

EFFECTIVE DATE: The effective date of this final rule has been extended to January 5, 2000.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-7777, e-mail XXX@nrc.gov.

Dated at Rockville, Maryland, this ___ day of _____, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.

19.10 Direct final rule: Withdrawal.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN: 3150-EE77

List of Approved Spent Fuel Storage Casks: (VSC-24)
Revision, Withdrawal of Direct Final Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing a direct final rule that would have revised the Pacific Sierra Nuclear Associates (PSNA) VSC-24 cask listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 1 to the Certificate of Compliance. The NRC is taking this action because it has received significant adverse comments in response to an identical proposed rule that was published concurrently with the direct final rule.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-7777, e-mail XXX@nrc.gov.

SUPPLEMENTARY INFORMATION:

On September 22, 1999 (64 FR 51187), the NRC published a direct final rule in the *Federal Register* amending its regulations in 10 CFR 72.214 to revise the PSNA VSC-24 cask listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 1 to the Certificate of Compliance. Amendment No. 1 modifies the present cask system design to permit a licensee to store burnable poison rod assemblies in a VSC-24 cask along with spent fuel under the provisions of the general license issued under 10 CFR 72.210. The direct final rule was to become effective on December 9, 1999. The NRC also concurrently published an identical proposed rule on September 22, 1999 (64 FR 51270).

In the direct final rule of September 22, 1999, the NRC stated that if any significant adverse comments were received, a notice of timely withdrawal of the direct final rule would be published in the *Federal Register*. As a result, the direct final rule would not take effect.

On December 3, 1999 (64 FR 67700), the NRC published a document extending the effective date of the direct final rule from December 6, 1999, to January 5, 2000. The NRC received significant adverse comments on the direct final rule; therefore, the NRC is withdrawing the direct final rule. As stated in the direct final rule of September 22, 1999, the NRC will address the comments received on the companion proposed rule of September 22, 1999, in a subsequent final rule. The NRC will not initiate a second comment period on this action.

Dated at Rockville, Maryland, this ___ day of _____, 1999.

For the Nuclear Regulatory Commission.

William D. Travers,
Executive Director for Operations.

19.11 Direct final rule: Withdrawal and revocation of regulatory text.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 70

RIN: 3150-EE99

**Criticality Accident Requirements; Withdrawal of Direct
Final Rule and Revocation of Regulatory text**

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing a direct final rule that would have amended the Commission's regulations to provide light-water nuclear power reactor licensees with greater flexibility in meeting the requirements that licensees authorized to possess more than a small amount of special nuclear material (SNM) maintain a criticality monitoring system in each area in which the material is handled, used, or stored. The NRC is taking this action because it has received significant adverse comments in response to an identical proposed rule which was concurrently published in the *Federal Register*. Because the effective date for the direct final rule has passed, the NRC is removing the regulatory text codified in that action.

EFFECTIVE DATE: February 25, 1998.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-9999, e-mail XXX@nrc.gov.

SUPPLEMENTARY INFORMATION:

On December 3, 1997 (62 FR 63825), the Nuclear Regulatory Commission published a direct final rule in the *Federal Register* that amended its regulations to provide persons licensed to construct or operate light-water nuclear power reactors with the option of either meeting the criticality accident requirements of 10 CFR 70.24(a) in handling or storage areas

for SNM or electing to comply with the requirements that would be incorporated into 10 CFR 50.68. The direct final rule was to become effective on February 17, 1998. The NRC also concurrently published an identical proposed rule on December 3, 1997 (62 FR 63911). In these documents, the NRC indicated that if it received significant adverse comments in response to the action, the NRC would withdraw the direct final rule and would consider the comments received in response to the proposed rule and would address these comments in a subsequent final rule. Therefore, the Commission is withdrawing the direct final rule of December 3, 1997. The public comments received in a subsequent document issued as either a notice of final rulemaking or in a notice of withdrawal of the proposed rule.

Because this notice of withdrawal is being published after the effective date of February 17, 1998, for the direct final rule the regulatory text presented in the direct final rule of December 3, 1997, must be removed from the *Code of Federal Regulations*. Therefore, the provisions added at 10 CFR 50.68 are being removed and the text of §70.24 (d) is being restored to the text of the paragraph that was in effect before the amendment of that paragraph in the direct final rule of December 3, 1997.

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

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 and 553, the NRC is adopting the following amendments to 10 CFR Parts 50 and 70.

PART 50 - DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION OF FACILITIES

1. The authority citation for Part 50 continues to read as follows:

AUTHORITY: 42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2239, 5841, 5842, 5846.

Sec. 50.78 also issued under 42 U.S.C. 2152. Secs. 50.80-50.81 also issued under 42 U.S.C. 2234. Secs. 50.100-50.102 issued under 42 U.S.C. 2236.

§ 50.68 [Removed]

2. Section 50.68 is removed.

PART 70 - DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

3. The authority citation for Part 70 continues to read as follows:

AUTHORITY: 42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f, 5841, 5842, 5845, 5846.

Secs. 70.1 (c) and 70.20a(b) also issued under 42 U.S.C. 10155, 10161. Sec. 70.7 also issued under 42 U.S.C. 5851. Sec. 70.21 also issued under 42 U.S.C. 2152. Sec. 70.31 also issued under 42 U.S.C. 2077. Secs. 70.36 and 70.44 also issued under 42 U.S.C. 2234. Sec. 70.61 also issued under 42 U.S.C. 2236, 2237. Sec. 70.62 also issued under 42 U.S.C. 2138.

4. In §70.24, paragraph (d) is revised to read as follows:

§ 70.24 Criticality accident requirements.

* * * * *

(d) Any licensee who believes that good cause exists why he or she should be granted an exemption in whole or in part from the requirements of this section may apply to the Commission for the exemption. The application must specify the reason for the relief requested.

Dated at Rockville, Maryland, this ___ day of _____, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.

19.12 Direct final rule: Responses to comments.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50

RIN: 3150-HH99

Changes to Quality Assurance Programs: Responses to Comments

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Responses to comments.

SUMMARY: The Nuclear Regulatory Commission (NRC) issued a direct final rule that amends the Commission's regulations to permit power reactor licensees to implement certain quality assurance (QA) program changes without obtaining prior NRC approval of these changes. The NRC did not receive any significant adverse comments in response to an identical proposed rule that was concurrently published in the *Federal Register*. The public comments received, the NRC's reasons for determining that the comments are not significant adverse comments, and the responses to questions raised in the comments are discussed in this document.

EFFECTIVE DATE: The direct final rule became effective April 26, 1999.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-1010, e-mail xxx@nrc.gov.

SUPPLEMENTARY INFORMATION:

On February 23, 1999 (64 FR 9029), the NRC published a direct final rule in the *Federal Register* that amended its regulations to permit power reactor licensees to implement certain changes to its QA program changes without obtaining prior NRC approval of these changes. The NRC also concurrently published an identical proposed rule on February 23, 1999 (64 FR 9035). The direct final rule became effective on April 26, 1999, because no significant adverse comments were received by March 25, 1999. This direct final rule modifies

10 CFR 50.54(a) to provide six QA programmatic areas within which changes to the QA program will not be considered reductions in commitments and subject to prior NRC approval.

The NRC received comments from six respondents, comprising three power reactor licensees, one industry group, and two anonymous sources. Three of the commenters either supported or had no objections to the direct final rule. Two commenters asked for a clarification or interpretation of the direct final rule and did not explicitly object to the direct final rule. One commenter's issue pertained to portions of 10 CFR 50.54(a) that were not being changed by the direct final rule. The NRC does not consider any of the comments to be a significant adverse comment. Each of NRC's responses to the questions in the comment and the NRC's determination that the comment is not a significant adverse comment are discussed below:

1. *Comment.* We endorse this rulemaking effort and support promulgation of the final rule.

Response. No response necessary.

2. *Comment.* This rule change represents a small step, but certainly in the right direction. We have reviewed the comments submitted separately by the Nuclear Energy Institute on behalf of the nuclear industry and endorse those comments. Therefore, we have no adverse comments on the direct final rule.

Response. No response necessary.

3. *Comment.* It is clear from the section-by-section analysis that 10 CFR 50.54(a)(3)(i) of the direct final rule is intended to apply to programmatic quality assurance standards, such as the American National Standards Institute standard N45.2 and its daughter standards, endorsed by NRC regulatory guides. However, a licensee may have referred to other national codes or standards in its QA program, either as primary references or as approved alternatives, that contain specific QA guidance although they are not endorsed by regulatory guides. Are nonprogrammatic QA standards intended to come under the purview of 10 CFR 50.54 (a)(3)(i) of the direct final rule if earlier editions are presently included by reference in a licensee's approved QA program?

Response. The comment does not directly or indirectly oppose the direct final rule (and therefore does not constitute a significant adverse comment), but rather asks a question. The NRC's position is that the direct final rule does not distinguish between "programmatic" and "nonprogrammatic" QA commitments included by reference in the QA program described or referenced in the safety analysis report. Therefore, nonprogrammatic QA commitments contained in the approved QA program fall within the purview of 10 CFR 50.54 (a)(3)(i) of the direct final rule. Under the direct final rule, revising an existing commitment to reference a nonprogrammatic QA standard approved by the NRC, which is more recent than the nonprogrammatic standard in the licensee's QA program at the time of the change, is not considered to be a reduction in commitment.

4. *Comment.* In 10 CFR 50.54 (a)(3)(i) of the direct final rule, the Commission allows later editions of QA standards currently referenced in a licensee's QA program to be adopted by that licensee if they have been found acceptable by the NRC with respect to the requirements of 10 CFR Part 50, Appendix B. Does the inclusion of a later edition by reference in a licensee's approved licensing bases constitute acceptance by the NRC for adoption under the direct final rule 10 CFR 50.54 (a)(3)(i)?

Response. The comment does not directly or indirectly oppose the direct final rule (and therefore does not constitute a significant adverse comment), but rather asks a question. The NRC's position is that under 10 CFR 50.54 (a)(3)(i), a licensee may use later editions of QA standards under 10 CFR 50.54 (a)(3)(i) only if the NRC explicitly approved the later edition of the QA standard. NRC approval consists of the following:

- (1) Endorsement in a regulatory guide;
- (2) Approval of a plant-specific or topical report by the issuance of a safety evaluation report (SER), in which case, the limitations and conditions stated in the plant-specific or topical report must be followed; and

(3) Approval by issuance of an SER for a license amendment changing the QA program, in which case the limitations and conditions stated in the SER must be followed.

By contrast, there is no NRC approval if a licensee unilaterally changes its QA program to use a later standard under 10 CFR 50.54 (a)(3)(i) on the basis that the change did not constitute a "reduction in commitment." Accordingly, a second licensee could not use the later QA standard under 10 CFR 50.54 (a)(3)(i); nor could that licensee use the later standard under 10 CFR 50.54 (a)(3)(i) because the first licensee's change did not involve an NRC safety evaluation and approval.

5. *Comment.* The first and only page of a self-described two-page submittal was received from a commenter stating, "My main issues deal with not having the rule to address the use of old safety evaluations that may be general in nature as some were written in the 1970s and 1980s and (2) the other public comments provided in early March at the information conference [Regulatory Information Conference in March 1999] addresses my other issues."

Response. The envelope containing the letter, which was addressed to the Chief, Quality Assurance and Vendor Inspection, did not have a name or a return address. Therefore, the NRC is unable to contact the commenter to inquire about the substance of the comments. On the basis of the information submitted, it is unclear whether the commenter was simply asking if the rule permits the use of older QA standards approved by the NRC. However, assuming that the submittal was suggesting that the direct final rule should be modified to prohibit licensees from using an SER issued in the 1970s when a facility received its original license, the NRC disagrees with the comment. Section 50.54 (a)(3)(ii) allows licensees to adopt any QA alternative or exception approved by an NRC safety evaluation, provided that the bases of NRC approval are applicable to the licensee's facility. Licensees may use alternatives or exceptions approved for a facility during issuance of the operating licenses, if the bases of NRC approval are applicable. Alternatives and exceptions approved in SERs were approved in the context of the entire QA program. In all cases, it is the licensee's responsibility to ensure that the QA

program as revised contains all the elements that formed the bases of the NRC approval of alternatives or exceptions so that compliance with Appendix B to 10 CFR Part 50 is maintained. Therefore, the NRC does not consider this to be a significant adverse comment.

6. *Comment.* The NRC should consider clarifying or correcting the direct final rule, 10 CFR 50.54 (a)(4)(ii), with respect to the required content of submitted letters requesting NRC review of proposed reductions in QA program descriptions. Although the comment may not be directly related to the specific changes that are proposed, it is directly related to the correct functioning of the rule being changed.

6. *Response.* The comment is not directly related to the specific changes that are proposed, as recognized by the commenter. Therefore, the NRC does not consider this to be a significant adverse comment on the direct final rule and will not take any action to address the issue. However, the NRC is attempting to develop a performance-based option to 10 CFR 50.54 (a). During the development of the performance-based option, the NRC will carefully consider this issue.

Dated at Rockville, Maryland, this ___ day of _____, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.

19.13 Direct final rule: Subsequent final rule.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN: 3150-EE77

List of Approved Spent Fuel Storage Casks: (VSC-24) Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to revise the Pacific Sierra Nuclear Associates (PSNA) VSC-24 cask listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 1 to the Certificate of Compliance. Amendment No. 1 will modify the present cask design to permit a licensee to store burnable poison rod assemblies in the VSC-24 cask system with the spent fuel under a general license.

EFFECTIVE DATE: This final rule is effective May 30, 2000.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-7777, e-mail xxx@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 218 (a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary [of the department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the Nuclear Regulatory Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, that "[t]he

Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.”

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general licensing by publishing a final rule in 10 CFR Part 72 entitled “General License for the Storage of Spent Fuel at Power Reactor Sites” (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR Part 72 entitled “Approval of Spent Fuel Storage Casks” containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on April 7, 1993 (58 FR 17948), that approved the VSC-24 design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance Number (CoC No.) 1007.

Discussion

On December 30, 1998, the certificate holder (PSNA) submitted an application to the NRC to amend CoC No. 1007 to permit a Part 72 licensee to store burnable poison rod assemblies (BPRAs) with Babcock and Wilcox (B&W) 15x15 spent fuel assemblies in the VSC-24 system. A BPRA is a reactor core component that is inserted inside a fuel assembly during core refueling. BPRAs provide a means of controlling reactor power distribution and do not contain fissile material. No other changes to the VSC-24 system design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that the addition of BPRAs to the B&W 15x15 fuel assemblies does not reduce the VSC-24 safety margin. In addition, the NRC staff has determined that the storage of BPRAs in the VSC-24 does not pose any increased risk to public health and safety.

This final rule revises the VSC-24 design listing in § 72.214 by adding Amendment No. 1 to CoC No. 1007. The amendment consists of changes to the Technical Specifications (TS) for the VSC-24 design that will permit a Part 72 licensee to store BPRAs with B&W 15x15 spent fuel assemblies in a VSC-24 system. The particular TS that are changed are identified in the NRC staff’s Safety Evaluation Report (SER) for Amendment No. 1.

The title of the safety analysis report (SAR) will be changed from "Safety Analysis Report for the Ventilated Storage Cask System" to "Final Safety Analysis Report for the Ventilated Storage Cask System." This action is being taken to ensure that the SAR title is consistent with the approach taken in new § 72.248 recently approved by the Commission (64 FR 53582; October 4, 1999). Other minor, nontechnical changes have been made to CoC No. 1007 to ensure consistency with the NRC's new standard format and content for CoCs.

The NRC finds that the amended PSNA VSC-24 system, as designed and when fabricated and used under the conditions specified in the CoC, meets the requirements of Part 72, Subpart L. The use of the PSNA VSC-24 system, as approved by the NRC, continues to provide adequate protection of public health and safety and the environment. With this final rule, the NRC is approving the use of Amendment No. 1 to the PSNA VSC-24 system under the general license provisions of 10 CFR Part 72, Subpart K [holders of power reactor operating licenses under 10 CFR Part 50]. Simultaneously, the NRC is issuing a final SER and CoC that will be effective on May 30, 2000. Single copies of the CoC and SER are available for inspection and/or copying for a fee at the NRC Public Document Room, 11555 Rockville Pike, Room O-1 F21, Rockville, Maryland.

Summary of Public Comment on the Proposed Rule

The NRC received one comment letter on the proposed rule. A copy of the comment letter is available for review in the NRC Public Document Room. The NRC's responses to the issues raised by the commenter follow. As stated in the proposed rule (64 FR 51270; September 22, 1999), the NRC considered this amendment to add Amendment No. 1 to the VSC-24 system design to 10 CFR 72.214 to be a noncontroversial and routine action. Therefore, the NRC published a direct final rule concurrent with the proposed rule (64 FR 51187; September 22, 1999). The NRC indicated that if it received a "significant adverse comment" on the proposed rule, the NRC would publish a document withdrawing the direct final rule and subsequently publish a final rule that addressed comments made on the proposed rule. The NRC believes

that at least one of the issues raised by the commenter was a "significant adverse comment." Therefore, the NRC published a notice withdrawing the direct final rule (64 FR 72019; December 23, 1999). This subsequent final rule addresses the issues raised by the commenter that were within the scope of the proposed rule, including the issue that was determined to be a "significant adverse comment."

Comments on Amendment No. 1 to the VSC-24 System

The comments and responses have been grouped into five subject areas: general, weight considerations, radiation protection, design, and miscellaneous issues. The commenter provided specific comments on the draft CoC, the NRC staff's preliminary SER, and the TS. To the extent possible, all of the comments on a particular subject are grouped together. The VSC-24 system listing within 10 CFR 72.214 has not been changed because of public comment. A minor correction to the CoC was made in response to a comment, but no changes were made to the TS or the SER. A review of the comments and the NRC's responses follow:

A. General

Comment A.1: The commenter stated that the proposed action should be called an "amendment" rather than a "revision" of the List of Approved Spent Fuel Storage Casks.

Response: The NRC disagrees with the comment. The NRC is issuing Amendment No. 1 to CoC No. 1007 to allow for the storage of BPRAs in the VSC-24 system. Changes are required to the CoC and the TS. Because each approved Part 72 CoC is listed under 10 CFR 72.214, the NRC is also required to revise the language in § 72.214 to reflect the approval and the applicability of Amendment No. 1. Therefore, to promote clarity the NRC is using both the term "amendment to CoC No. 1007" and "revision to § 72.214" in this rule.

Comment A.2: The commenter stated that the *Federal Register* should not call this action a "Direct Final Rule." Streamlining the rulemaking process in this manner deemphasizes safety concerns. The commenter also disagreed with NRC's characterization of the amendment as

being “noncontroversial and routine” because this is the first amendment to a dry cask generic CoC and it raises many concerns.

Response: The NRC believed no new technical issues would arise from the storage of BPRAs coincident with spent fuel because (1) BPRAs are safely used within spent fuel in a reactor, (2) operating conditions within a reactor are harsher than storage conditions inside a VSC-24 system, and (3) the NRC has previously reviewed the technical issues associated with the operation and storage of BPRAs in dry casks. The proposed amendment to the CSV-24 design was not the first amendment to a Part 72 cask design. A proposed rule to amend the Transnuclear West cask design (CoC No. 1004) was published in the *Federal Register* before this proposed rule was published (see 64 FR 41050; July 29, 1999). Consequently, the NRC considered the storage of BPRAs with spent fuel to be a noncontroversial and routine action. The NRC continues to believe that the use of the direct final rule process was appropriate. The NRC also believes that the public’s opportunity to comment on the proposed amendment to the VSC-24 design was not adversely affected by the use of the direct final rule process. The withdrawal of the direct final rule – in response to a significant adverse comment – and publication of this final rule containing responses to all public comments demonstrate the NRC’s commitment to provide the public the opportunity to comment on direct final rules.

Comment A.3: The commenter objected “to the use of new § 72.48 as it muddies the waters as to all the change processes and just adds confusion as to how to keep documents current and who is supposed to do what and be liable for what.”

Response: This comment on the revised § 72.48 is beyond the scope of this rule, which is focused solely on whether to amend the VSC-24 cask design. The revision to § 72.48 was addressed in a separate rulemaking (64 FR 53582; October 4, 1999).

Comment A.4: The commenter asked for the regulatory justification for allowing the amendment of a CoC and renaming the SAR to FSAR (final SAR). The commenter also asked why the VSC-24 CoC was not amended to include a process for making amendments. The

commenter questioned why the "effective date" of the initial certificate was not included in the CoC "to begin with," which would have precluded the need to amend the CoC. The commenter questioned whether the VSC-24 has received "special treatment" since other CoCs (e.g., NUHOMS CoC Condition 9 have to be changed. The commenter stated that the SAR should not be renamed FSAR because it is not a "final" document if changes are continually allowed. The commenter further noted that the language in the CoC does not refer to the "final" SAR, nor does it contain the date or revision number of the SAR. This practice is inconsistent with NRC's objective to change the SAR to an FSAR.

Response: The authority to approve a CoC for a spent fuel storage cask is contained in Sections 218(a) and 133 of the NWPA. Inherent with the NRC's authority under the NWPA to approve a spent fuel storage cask design is the authority to amend a previously approved cask design. The NRC regulations on amending a Part 72 cask design are contained in §§ 72.244 and 72.246 (see 64 FR 53582). It is not necessary to add language to the CoC to include a process for amending the cask design because of the regulations contained in §§ 72.244 and 72.246. Furthermore, Condition No. 9 of CoC No. 1004 for the NUHOMS-24P and -52B cask design is intended to allow that certificate holder to make minor changes to the cask design without obtaining prior NRC approval. It was not intended to define a process for submitting an amendment to the certificate. Furthermore, this provision is not necessary for the VSC-24 CoC because the recent changes to § 72.48 included certificate holders.

The NRC has not previously added the effective date for a CoC to the list contained in § 72.214 because the NRC believed the public and the industry had adequate information on the effective date for a new CoC in the final rule as published in the *Federal Register* approving the cask design. However, with the issuance of the amendments, the NRC determined that it is necessary to identify the effective date of a CoC amendment because the CoC amendment may require certain changes, or may not permit certain actions, for casks that were put in service before the effective date of the amendment. An effective date in § 72.214 for both the

amendment and the original CoC will improve clarity and ensure that both the industry and the public understand the standard to which a specific cask has been manufactured or loaded. An amendment to a hypothetical cask design that changes a material specification or a welding detail in a fuel support basket would not be applied automatically to casks that have already been fabricated, loaded with spent fuel, and sealed because this action would impose an unreasonable burden on the licensees that are using the cask. For the VSC-24 design, the effective date of the amendment is listed. A licensee cannot use a VSC-24 cask under the Part 72 general license to store BPRAs before the effective date of Amendment No. 1.

NRC recently added a new regulation in § 72.248 on the submission and updating of the FSAR for each approved cask design (see 64 FR 53582). Consequently, the term “FSAR” is used in both § 72.214 and the CoC to ensure consistency with the language used in § 72.248. The NRC agrees with the commenter that the word “Final” was inadvertently omitted from the proposed CoC. However, the proposed rule text did include the term “final safety analysis report.” The final CoC has been corrected to include the term “Final Safety Analysis Report.”

The date of the FSAR and the revision number and date of issuance will not be included in the document itself, as required by § 72.248. However, the FSAR revision number and date of issuance will not be included in the CoC because § 72.248 requires the certificate holder to update the FSAR every 2 years. The NRC has chosen to omit this information from the CoC to prevent confusion between the rule language and the current FSAR. The NRC also notes that the certificate holder is required by § 72.248 to submit an updated FSAR within 90 days of the issuance of this amendment to reflect any changes to the CoC or the TS. For this certificate holder, the process will convert the current SAR into an FSAR.

Comment A.5: The commenter stated that the original rulemaking [approving the VSC-24 design] should have addressed the changes since the desire for these changes (e.g., inclusion of the BPRAs) was well known at the time. However, there was a “big push” allowed by the NRC to get the VSC-24 certified “as is” so this action was not taken.

Response: The specific design features of the VSC-24 system are within the purview of the applicant. The NRC's review of a cask design is intended to ensure that the submitted cask design provides reasonable assurance that the public health and safety and the environment will be protected. As such, the NRC's review is limited to the cask design submitted by the applicant and does not consider potential future optional features or different designs. Rather, the changes to the design (e.g., to store BPRAs) are considered by the NRC in subsequent amendments to the cask design, if and when they are submitted by the certificate holder.

Comment A.6: The commenter noted that the casks used at Palisades were built "by exemption" before the design was certified.

Response: Comments on previously built VSC-24 casks that do not identify any issues relative to the storage of BPRAs are beyond the scope of this rule.

Comment A.7: The commenter has favored the action the NRC is now taking to ensure that changes to the cask design be reflected in various documents, including the CoC.

Response: No response necessary.

Comment A.8: The commenter urged the NRC staff to think creatively about different problems, including the effects of added weight and added dose. The NRC staff should also "visualize" the potential for accidents by considering the entire process, from removal of BPRAs to their storage in Yucca Mountain.

Response: The NRC staff has evaluated the storage of BPRAs within B&W 15x15 Mark B fuel assemblies for storage in the VSC-24 system, including added weight and dose, and found it acceptable. Unloading of fuel containing BPRAs is not expected to be any more challenging than unloading of fuel without BPRAs. Use of the VSC-24 at Yucca Mountain is beyond the scope of this rule.

Comment A.9: The commenter disagreed with the assertion that it will cost utilities more time and money to pursue exemptions to permit storage of BPRAs. In the long run, these site-

specific actions will be more effective than “one big generic exemption” because they will result in fewer inspections and enforcements.

Response: The NRC disagrees. NRC regulates licensees by compliance with Federal regulations rather than exemptions to the regulations. Multiple exemption requests for the same issue are a cost and resource burden to both NRC and licensees. Because multiple licensees are expected to request storage of BPRAs, this provision is more effectively addressed by rulemaking to amend the CoC and the TS.

Comment A.10: The commenter recommended that the utilities remove the BPRAs and dispose of them in separate containers as low-level waste. Using casks to dispose of BPRAs is a waste of cask and repository space that should be used for high-level waste.

Response: The NRC disagrees. BPRAs are reactor core components that are inserted into fuel assemblies during core refueling. A BPRA is physically located within a fuel assembly. Therefore, no additional space is required to store or dispose of a spent fuel assembly with a BPRA also stored within the spent fuel assembly. Thus, the presence of BPRAs will not affect the number of spent fuel assemblies that can be stored in a spent fuel storage cask.

Comment A.11: The commenter asked why apparently no other agencies (e.g., the Department of Energy, the Nuclear Waste Technical Review Board) were apparently contacted for the environmental assessment. The commenter is concerned about the potential cumulative effect on the environment of many “insignificant” incremental changes.

Response: The agencies mentioned by the commenter are notified of the proposed rule in the same manner as the public. Therefore, the NRC did not believe it was necessary to specifically solicit their input. Furthermore, the environmental assessment covering the proposed rule, as well as the finding of no significant impact, prepared and published for this rulemaking, fully comply with the NRC’s environmental regulations in 10 CFR Part 51. These regulations implement the National Environmental Policy Act and are consistent with the guidelines of the Council on Environmental Quality.

Comment A.12: The commenter questioned whether the use of Regulatory Guide 3.61 is appropriate for this amendment since both the CoC and the SAR are being amended. The commenter also questioned the designation of LAR 98-01 (License Amendment Request) as a "supplemental document," and asks for whom it is supplemental. The commenter also asks how the NRC will ensure that LAR 98-01 will be considered with Revision 0 of the SAR.

Response: Regulatory Guide 3.61, "Standard Format and Content for a Safety Analysis Report for a Spent Fuel Dry Storage Cask," is incorporated in NUREG-1536, "Standard Review Plan for Dry Cask Storage Systems." The NRC staff used the guidance in NUREG-1536 for this amendment. LAR 98-01 was referred to as a supplemental document in the SER because it must be considered with the information provided in Revision 0 of the SAR. Revision 0 of the SAR will be revised to incorporate the information in LAR 98-01 in the FSAR submitted by the applicant upon completion of this rulemaking.

Comment A.13: The commenter disagreed that unloading procedures should "be left up to the licensees to do after the casks are certified." These procedures should be put in the Public Document Room (PDR) because they are of great interest and concern to the public. The commenter is specifically concerned about changes needed in the unloading procedures to address BPRAs.

Response: The NRC disagrees. NRC reviews a licensee's programs for compliance with the regulations by inspecting the adequacy and implementation of licensee procedures. Licensees are not required to submit implementing procedures to NRC on the public docket. Each licensee is required to review the adequacy of its procedures as a result of changes to the cask design or operational parameters. Further, BPRAs are integral to the fuel assembly and few, if any, changes should be needed in the unloading procedures.

Comment A.14: The commenter generally criticized the industry's (Nuclear Energy Institute's and the plants') waste management policy. Industry is interested in moving the waste into casks as fast as possible and shipping it for disposal. The commenter expressed concern

about the amounts of waste that are being generated, the potential need for more repositories, and the lack of sound science to justify the storage and disposal of waste.

Response: These comments are beyond the scope of this rule, which is focused solely on whether to amend the VSC-24 cask design.

Comment A.15: The commenter stated that the NRC should always look out for the workers and the public because it is the NRC's job.

Response: The NRC agrees with the comment. The NRC's highest priority is to protect the health and safety of both the public and workers at nuclear facilities.

Comment A.16: The commenter was sympathetic to the NRC staff who have to deal with problems caused by licensees, vendors, and subcontractors.

Response: No response necessary.

Comment A.17: The commenter stated that vendors are not responsible enough in quality assurance (QA) procedures and that licensees should be responsible.

Response: The NRC staff disagrees. The CoC holder is required to have and implement a QA program approved by the NRC as part of the CoC issuance process. This QA program must meet the requirements of 10 CFR Part 72, Subpart G, for cask design and fabrication activities. The cask user is ultimately responsible for ensuring that the fabricator's QA programs comply with 10 CFR Part 72, Subpart G. NRC inspects licensee performance and takes enforcement actions as appropriate.

B. Weight Considerations.

Comment B.1: The commenter stated that the added weight from BPRAs poses a big concern and should not be allowed.

Response: The NRC disagrees. The overall weight of the multi-assembly sealed basket (MSB), ventilated concrete cask (VCC), and the MSB transfer cask (MTC) with the BPRAs included remains below the weight discussed in the SAR. Revision 0 of the SAR specifies the

maximum design weight of the MSB as 118,630 lbs. The weight of the MSB with the BPRAs is 6130 lbs. less than the maximum weight.

Comment B.2: The commenter stated that the safety margin is being reduced because the (VCC maximum) 80-inch lift height is being reduced to 60 inches. This reduction (due to increased stress in vertical drop) will be difficult to enforce and will cause confusion and future problems.

Response: The NRC disagrees. The maximum lifting height of the VCC outside of the spent fuel pool building was reduced from 80 to 60 inches because all supporting calculations in the SAR were based on a 60-inch drop height. Consequently, use of an 80-inch drop height was inappropriate. Therefore, this reduction in the administratively controlled lift height will effectively increase the safety margin because the maximum lift height will now be lower.

Comment B.3: The commenter asked whether the additional 60 lbs. more weight per assembly means that there will be an additional $24 \times 60 = 1440$ lbs. per cask, which seems like a significant increment. The commenter further asked if this additional weight would have an effect on the pad, the loading area floor, the pool liner, the transport sling, and so on.

Response: The addition of a BPRA to a B&W Mark B 15x15 fuel assembly increases the weight of the fuel assembly from 1516 lbs. to 1576 lbs. For a cask fully loaded with 24 assemblies containing BPRAs, the cask weight would increase by 1440 lbs., approximately 4 percent of the cask weight. The increase in weight was found by the NRC to be acceptable for complying with the normal use and accident conditions evaluated under Part 72. Furthermore, each licensee using a VSC-24 cask is required by §§ 50.59, 72.48, and 72.212 to evaluate whether the additional weight of a cask will have an unacceptable adverse effect on structures, systems, or components, such as the independent spent fuel storage installation (ISFSI) pad, the loading floor area, or pool liner. The cask cannot be used if the licensee identifies an unacceptable adverse impact. (See also the response to Comment B.1.)

Comment B.4: The commenter stated that the proposed amendment reduces the VSC-24 safety margin and increases the risk to public and worker health and safety. The doses are higher, stresses are more, drop height is reduced, and weight is increased.

Response: The NRC disagrees in part with the comment. The reduction in drop height for a loaded VCC increases the safety margin by ensuring that the VCC is not able to fall more than 60 inches (rather than 80 inches) in the vertical orientation. Although the stresses associated with a vertical drop increase 6 percent, these stresses comply with ASME Code limits. Regarding the MTC, the shielding in the bottom doors of the MTC was reduced to compensate for the increased weight of the loaded MSB. The MTC weight reduction was required to maintain the lift load within a predetermined crane lift load capacity. Issues related to increased dose are discussed in response to Comment C.4.

C. Radiation Protection.

Comment C.1: The commenter stated that it is not acceptable to have an increase of 7.5 percent in the offsite and direct skyshine dose rate to the public, even if the resulting doses are within the limits. The commenter questioned whether the combined dose from a "full cask array" or several "full cask arrays" would be acceptable to the public or to workers. For workers, in particular, the NRC needs to take into account the future cumulative effect of years of worker exposure resulting from cask inspections. The commenter disagreed that the projected 13 percent in "potential cask dose rates" does not constitute an increased risk to health and safety. The commenter noted that the highest projected dose is at the "top center" of the cask and wanted to know what the real dose would be (from a full cask array right above the casks on the pad) for a surveillance worker who needs to check outlets at the top of the casks.

Response: The NRC disagrees. The increase in offsite dose at 1500 feet from an array of 68 VSC-24 casks with 5-year-cooled spent fuel represents a conservative bounding estimate of the effect of BPRAs on offsite doses. The actual offsite dose to the public from an ISFSI is

affected by many factors, including the number of casks, specific placement of fuel assemblies within each cask, cask positioning, whether the fuel is cooled beyond 5 years, and the presence of natural shielding features such as earthen berms and buildings that are not credited in design safety offsite dose calculations. Each ISFSI licensee is required to demonstrate that offsite public annual whole-body doses remain below the § 72.104 limit of 25 mrem/year.

The NRC determined that the addition of BPRAs will result in an increase of approximately 7.5 percent in the calculated offsite and skyshine dose rate to the public as calculated and presented in Revision 0 of the SAR. The potential annual dose to the public at 1500 feet from an array of 68 VSC-24s loaded with 5-year-cooled spent fuel would increase from 0.039 mSv/year to 0.042 mSv/year (3.9 mrem/year to 4.2 mrem/year), which remains well below the 0.25 mSv/year (25 mrem/year) limit in § 72.104. The estimated annual occupational exposure for routine activities such as visual surveillance of cask air inlets/outlets and radiation protection surveys on a cask filled to design capacity would be 7×10^{-6} person-Sv/year/cask (0.0007 person-rem/year/cask.) On the basis of the expected occupational activities, the NRC has reasonable assurance that individual exposures will be below the annual occupational limit of 0.005 Sv (5 rem) specified in § 20.1201.

Comment C.2: The commenter is concerned about where dosimeters are placed in relation to the height of the casks. They should be placed at the "top height" where the dose is expected to be the highest. If dosimeters are not placed in this position, the commenter would like an explanation.

Response: ISFSI licensees are required by § 72.104(a) to ensure that dose rates do not exceed 0.25 mSv/year (25 mrem/year) at the controlled area boundary. ISFSI licensees typically place radiation monitoring devices (dosimeters) at various locations around the ISFSI perimeter fence at approximately the chest height of the average worker standing at the ISFSI perimeter fence. This dosimetry is used to monitor the actual dose from the ISFSI and to determine the dose at the controlled area boundary. A dosimeter placed at the top of a cask

would not provide useful information for the determination of dose to a member of the public or a worker. A worker who is within the ISFSI perimeter fence and performing an activity at the top of a cask would be subject to the licensees' 10 CFR Part 20 Radiation Protection Program requirements, including controls to limit exposure and the wearing of personal dosimetry. (See also the response to Comment C.1.)

Comment C.3: The commenter questioned why the maximum increase of cask dose rate is evaluated at the air inlets rather than at the outlets and the top of the cask where the highest dose rate is expected. The commenter asked about the increase in reflected radiation "from cask to cask in full cask array" and whether it is still correct to assume a center-to-center distance of 15 feet.

Response: The maximum dose rate as a result of the inclusion of B&W 15x15 BPRAs in the VSC-24 was calculated for all locations in and around the storage cask, including the air outlets and the top of the cask. Although dose rates also increased at air outlets and the top of the cask, the SER specifically delineated the increase in dose rate at the air inlets because this was the largest percent increase and is a significant contributor to worker doses during required daily inlet/outlet surveillance of the VSC-24. The NRC determined that the increase in reflected radiation from cask to cask in a full 68 cask array was insignificant and that the existing center-to-center cask distance of 15 feet was acceptable.

Comment C.4: The commenter stated that to accommodate the added weight, changes have been made that reduce the safety margin and are inconsistent with the as low as is reasonably achievable (ALARA) principle. In particular, by reducing the MTC shielding, the potential occupational dose rate increases from 300 to 1932 mrem per hour. This increase should not be allowed because of the impact on workers. The commenter also questioned NRC's statement that workers are "not expected" to be in an area in which they could receive an occupational dose of 1932 mrem/hr.

Response: The NRC disagrees in part. Although there is some increase in the potential dose to workers, the likelihood of such exposure is very low. Operations for loading the MSB, placing it into the MTC, and loading the MSB into the VCC from the MTC do not involve the presence of workers in or around the bottom of the MTC. Under the requirements for movement of heavy loads such as the MTC, personnel are prohibited from the area directly below the load when it is lifted or being moved. ALARA practices implemented by licensees include sound radiation protection principles and procedures for monitoring actual dose rates, using additional temporary shielding (when appropriate), and restricting the location and time of workers in various radiation fields to minimize doses.

Comment C.5: The commenter asked how BPRAs in the cask and worker dose are affected by the fact that draindown is necessitated before UT (ultrasonic welding) of structural welds is finished.

Response: Draindown of the cask has no effect on the BPRAs. (See also Comment No. D.4.) The issue of the effect of draindown on worker dose during the performance of UT on a structured weld is beyond the scope of this rulemaking.

D. Materials.

Comment D.1: The commenter stated that a big concern is the interactions of the materials. Consequently, it is important to know what materials are present in the BPRAs and what interactions (chemical and physical) and what interactions they could have with materials in a VSC-24. In particular, the commenter would like to know what coating will be used in the sleeves holding the BPRA assemblies, the proximity of the coating to the materials in the BPRA, and the dimensions and density of the BPRA material versus regular fuel rods. The commenter asked for a full description of all the materials that comprise a BPRA because such a description does not exist in the documentation reviewed.

Response: BPRAs are composed of stainless steel hardware supporting sealed Zircaloy rods containing aluminum oxide and boron carbide pellets. During normal nuclear power plant

operation, some spent fuel assemblies operate with BPRAs inserted into their usually empty guide tubes. There are no coatings used in the Zircaloy guide tubes of the B&W 15x15 fuel assemblies that would interact with the BPRA. No adverse interactions between the materials in a BPRA and the VSC-24 are expected. Description of a fuel assembly and a BPRA, including relevant dimensions, is contained in the SAR and its reference documents. These materials are available in the PDR.

Comment D.2: The commenter questioned whether "all reactor BPRAs" are the same (materials, size, weight, susceptibility to corrosion, crack, pinhole leaks, etc.) and whether they should be treated generically. The commenter also asked what criteria (i.e., TS) have been established for determining which BPRAs are to be allowed in the cask. This question is based on concern about the storage of BPRAs that might be produced in the future. The commenter objected to the decision to accept BPRAs with cladding failures because of concerns about depressurization, including deterioration, collapse and "getting stuck," crumbling and clogging spaces in other sleeves, reactions of decayed BPRAs with other cask materials (coatings).

Response: The only BPRAs approved for storage under this rulemaking are those to be stored in B&W Mark B 15x15 fuel assemblies. BPRAs with cladding failures were analyzed and determined to be acceptable for loading in the VSC-24. A failed BPRA loaded in the VSC-24 would be depressurized and actually present a lower MSB accident pressure than that of an intact BPRA. Any release from a failed BPRA would not have an adverse effect on the internals of the MSB or the fuel assemblies stored in the MSB. (See also Comments D.1 and D.3.)

Comment D.3: The commenter expressed concern about the possibility of leaks from a BPRA that is inserted inside a fuel assembly. Since BPRAs cannot be observed, the commenter wondered how leaks can be detected, how they react to vacuum drying of fuel rods, and whether retainment of water (causing added weight and possible corrosion) could be a problem.

Response: The NRC evaluated the postulated accident assuming all 24 BPRAs in a VSC-24 MSB failed. This analysis showed that the maximum MSB pressure due to the simultaneous failure of all 24 BPRAs and all 24 stored spent nuclear fuel assemblies resulted in MSB stresses that remained below the ASME Code allowable values and, therefore, would not affect the MSB confinement boundary. A failed BPRA would release helium gas, which is already present, to the MSB internals. A BPRA would not present more problems in vacuum drying the MSB than the fuel assembly itself.

Comment D.4: The commenter asked how BPRAs change as they “dry out” and questioned whether any tests have been conducted regarding this issue. For example, could materials lose their structural integrity, which would cause a problem in unloading or shipping. This problem could be compounded by the effects of heat, radiation, and chemical reactions (e.g., with “pool water chemicals”).

Response: Vacuum drying will not reduce the structural integrity of a BPRA. The BPRA will continue to maintain the same structural integrity as the fuel assembly in which it is secured.

Comment D.5: The commenter recommended that the next amendment should prohibit the use of “flammable plastic tube” and “duct tape” to prevent the release of hydrogen. In addition, the commenter recommended additional criteria that require coatings that do not create hydrogen and stipulated the use of stainless steel. The commenter questioned how BPRAs could be affected by hydrogen generation.

Response: Comments on future amendments are beyond the scope of the proposed rule. (See Comment D.1 on the materials composition of BPRAs.) Regarding the question of hydrogen generation, the NRC staff determined that the potential presence of hydrogen gas during VSC-24 loading activities has an insignificant effect on the BPRAs.

Comment D.6: The commenter recommended the use of the term “carbon steel” rather than “steel” when appropriate.

Response: If there were different types of steel used in the VSC-24 design, the NRC would agree with the comment. The NRC typically specifies the variety or grade of steel when presenting information if there is a potential for misunderstanding. However, all of the steel used in the VSC-24 design is carbon steel. (See also Comment D.1.)

E. Design.

Comment E.1: The commenter stated that the amendment should be a site-specific design request and a technical evaluation from Entergy for the ANO ISFSI instead of a generic amendment. The commenter further stated that Entergy should be liable and responsible for future problems but that apparently BNF (British Nuclear Fuels Limited) wants to be responsible. Although the NWPA calls for approval of generic cask designs "to the maximum extent practicable," the commenter believes that the current action "calls for site-specific approval at each plant and is not practicable to be a generic amendment. A generic cask CoC should not have to be amended to suit the site-specific need of one licensee." In particular, the commenter is critical of the actions of the licensee for ANO with respect to its use of the changes process in § 72.48 and stated that ANO should have gotten [applied for] a site-specific license "right from the beginning."

Response: The NRC does not agree that a site-specific approval is needed to store BPRAs in the VSC-24 cask design. The VSC-24 cask design was approved in a final rule (58 FR 17948; April 7, 1003) under the Part 72 regulations that implement Sections 218(a) and 133 of the NWPA. Section 218(a) directed the NRC to approve one or more spent fuel dry storage technologies for use at civilian nuclear power reactors "without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Therefore, the NRC believes that the VSC-24 cask design, and any amendments to the cask design (i.e., storage of BPRAs), may be used by all Part 72 licensees without obtaining an additional NRC site-specific approval. (See also the response to Comment A.5.)

The NRC understands that ANO is expected to be the first Part 72 general licensee to use the provisions of Amendment No. 1 to store BPRAs in a VSC-24 cask. However, irrespective of which Part 72 general licensees may wish to use this provision to store BPRAs, the certificate holder is ultimately responsible for the cask design. In submitting such an application, the certificate holder must demonstrate to the NRC's satisfaction that the proposed amendment will not adversely affect public health and safety and the environment.

Comment E.2: The commenter questioned how the length of the B&W 15x15 assemblies fit in with BPRAs. In particular, if the cask design and procedures must accommodate a difference in length, what are the ramifications? The commenter also questioned whether there are any problems in unloading BPRAs and stated that perhaps there should be "tests for BPRAs before the first loading at the plant."

Response: A BPRA is secured [located] within a fuel assembly so no additional space is required in a VSC-24 cask to store a spent fuel assembly with a BPRA. Consequently, handling operations such as loading or unloading a spent fuel assembly containing a BPRA are not expected to present any more difficulty than that for a spent fuel assembly without a BPRA. Licensee users are required to perform dry runs and training exercises of the cask loading and unloading activities before performing the actual operation.

Comment E.3: The commenter recommended that the information on hydraulic roller skids and skid openings be removed [from the cask design] since nobody uses them.

Response: The NRC disagrees. The applicant did not request an amendment to the information in the hydraulic roller skids and skid openings. Therefore, this comment is beyond the scope of this rule and the information was not revised in this CoC amendment.

Comment E.4: The commenter asked whether the basket supports have been evaluated (over time and when dry) for extra weight, size, and stress.

Response: The NRC reviewed the structural integrity of the MSB, including basket supports, for the additional weight of the BPRAs and found that all stresses were less than the ASME Code allowable stress limits.

Comment E.5: The commenter asked whether the BPRAs can be drained effectively and whether tests have been done to confirm this point.

Response: Vacuum drying the BPRA is not expected to present any more difficulty than vacuum drying the MSB or the spent fuel assembly itself. The geometric features of BPRAs that could retain water are equivalent to or less complex than the fuel assemblies themselves.

F. Miscellaneous.

Comment F. 1: The commenter asked why the CoC, the environmental assessment, and the SER inconsistently reference the certificate holder. Is it SNC or PSNA?

Response: The entity that requested the CoC was Sierra Nuclear Corporation (SNC). SNC is owned by Pacific Sierra Nuclear Associates (PSNA). PSNA is the registered holder of the VSC-24 design. The documents have been modified for consistency.

Comment F.2: The commenter asked how a plant reports what is placed in each cask because this documentation may be crucial in the future.

Response: The VSC-24 users are required to document pertinent information on each fuel assembly stored in the cask (including whether it contains a BPRA) under §§ 72.76, 72.78, and 72.212(b)(8)(i). This information is required to be maintained by the licensee user until termination of the license.

Comment F.3: The commenter asked about the process for notifying manufacturers, users, and potential users of problems in storing BPRAs in casks. This is important so that the same mistakes are not repeated. The commenter stated that the CoC holder should not be held liable for not informing users of potential concerns.

Response: Certificate holders are required by the recently revised § 72.242(d) to notify the NRC of "a design or fabrication deficiency, for any spent fuel storage cask which has been

delivered to a licensee, when the design or fabrication deficiency affects the ability of the structures, systems, and components important to safety to perform their intended safety function" (64 FR 56114; October 15, 1999). The NRC expects that the certificate holder will provide a copy of this report to any affected licensee. If such a report is received by the NRC, the NRC can verify through inspections that all affected cask users are aware of the information.

Comment F.4: The commenter stated that the term "double-closure" weld, used in the EA, is not correct. In the commenter's opinion, it is not possible to count the shield lid as a closure weld because it is not UT tested. The CoC should be amended to indicate that there is only one closure weld (i.e., the structural lid weld).

Response: The NRC disagrees. VSC-24 cask users are required to perform nondestructive examination of both the shield lid to the MSB shell weld and the structural lid to the MSB shell weld. Both of these welds are considered closure welds. The CoC and the TS require cask users to perform liquid penetration examination of both of these welds.

Comment F.5: The commenter stated that the dry sabotage evaluations for dry casks are outdated and need to be redone because of the increased threat of terrorist activity.

Response: The comment is beyond the scope of the current rule.

Comment F.6: The commenter asked why the name of the valve manufacturer has now been deleted from the amendment and believes this step should have been taken long ago.

Response: The NRC agrees with the comment. The name of the valve manufacturer is not required for the operational activities of the VSC-24 and has been deleted.

Comment F.7: The commenter questioned whether there will be any specific "checks," documented in procedures, for boron concentration to eliminate potential confusion if a plant uses VSC casks to store both BPRAs and non-BPRAs.

Response: The storage of BPRAs in the VSC-24 cask does not require a change in the boron concentration of the water inside the MSB. TS 1.2.6 controls the boron concentration inside the MSB during loading and unloading operations.

Comment F.8: The commenter stated that “dry runs don’t seem to be effective in troubleshooting” and asked what other actions need to be taken.

Response: Changes to the requirement to conduct dry runs of cask operations are beyond the scope of the proposed rule.

Comment F.9: The commenter asked what “wet helium” is and how tests can be conducted for it.

Response: The NRC does not recognize the term “wet helium.” Consequently, this comment is not addressed.

Summary of Final Revisions

Section 72.214, List of Approved Spent Fuel Storage Casks

Certificate No. 1007 is revised by adding the effective date of the initial certificate, the effective date of Amendment No. 1, and revising the title of the SAR submitted by PSNA to “Final Safety Analysis Report for the Ventilated Storage Cask System.”

Agreement State Compatibility

Under the “Policy Statement in the Adequacy and Compatibility of Agreement State Programs” approved by the Commission on June 30, 1997, and published in the *Federal Register* on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category “NRC.” Compatibility is not required for Category “NRC” regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR Chapter I. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the

particular State's administrative procedure laws but does not confer regulatory authority on the State.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is revising the PSNA VSC-24 system design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that contains generally applicable requirements.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in 10 CFR Part 51, Subpart A, the NRC has determined that this final rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. This final rule amends the PSNA VSC-24 CoC and accordingly revises the VSC-24 system listing within the list of approved spent fuel storage casks in § 72.214. Power reactor licensees can use these approved casks to store spent fuel at reactor sites without additional site-specific approvals from the Commission. The amendment modifies the present cask system design to permit a Part 72 licensee to store BPRAs in the VSC-24 system design along with the spent fuel. The EA and finding of no significant impact on which this determination is based are available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Room O-1 F24, Rockville, Maryland. Single copies of the environment assessment and finding of no significant impact are available from the individual listed under FOR FURTHER INFORMATION CONTACT.

Paperwork Reduction Act Statement

This final rule does not contain a new or an amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150-0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR Part 72. The amendment provided for the storage of spent nuclear fuel in cask systems with the designs approved by the NRC under a general license. Any nuclear reactor licensee can use cask systems with designs approved by the NRC to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On April 7, 1993 (58 FR 17948), the NRC issued an amendment to Part 72 that approved the VSC-24 design, added it to the list of NRC-approved designs in § 72.214, and issued CoC No. 1007. On December 30, 1998, the certificate holder, PSNA, submitted an application to the NRC to amend CoC No. 1007 to permit a Part 72 licensee to store BPRAs with B&W 15x15 spent fuel assemblies in the VSC-24 system.

This final rule will permit the storage of certain reactor core components (i.e., BPRAs) that do not contain fissile material in the VSC-24 system. The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to each general licensee that proposes to use the casks to store BPRAs. This alternative would cost both the NRC and

the utilities more time and money because each utility would have to submit a request for an exemption and the NRC would have to review each request.

Approval of the final rule eliminates the problem described and is consistent with previous Commission actions. The final rule has no adverse effect on public health and safety. This final rule has no significant identifiable impact or benefit to other Government agencies. On the basis of this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the final rule are commensurate with the Commission's responsibilities for public health and safety and the common defense and security. No other alternative is believed to be satisfactory. Therefore, this action is recommended.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and PSNA. These entities do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the NRC's size standards (10 CFR 2.810).

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109 or 10 CFR 72.62, does not apply to this final rule and, therefore, that a backfit analysis is not required for this final rule because these amendments do not impose any provisions that would impose backfits as defined in 10 CFR Chapter I.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing

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 and 553, the NRC is adopting the following amendments to 10 CFR Part 72.

Part 72 - Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste

1. The authority citation for Part 72 continues to read as follows:

Authority: 42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282; 42 U.S.C. 2021; 42 U.S.C. 5841, 5842, 5846; 42 U.S.C. 5851; 42 U.S.C. 4332; 42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, and 10168.

Sec. 72.44(g) also issued under 42 U.S.C. 10162(c) and 10168(c), (d). Sec. 72.46 also issued under 42 U.S.C. 2239. Subparts K and L also issued under 42 U.S.C. 10153, 10198.

2. Section 72.214, Certificate of Compliance No. 1007 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1007.

Initial Certificate Effective Date: May 7, 1993.

Amendment Number 1 Effective Date: May 30, 2000.

SAR submitted by: Pacific Sierra Nuclear Associates.

SAR Title: Final Safety Analysis Report for the Ventilated Storage Cask System.

Docket Number: 72-1007

Certification Expiration Date: May 7, 2013.

Model Number: VSC-24.

* * * * *

Dated at Rockville, Maryland, this ___ day of _____, 2001.

For the Nuclear Regulatory Commission.

William D. Travers,
Executive Director for Operations.

19.14 Confirmation of final rule effective date.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN: 3150-HH12

Monitoring the Effectiveness of Maintenance at Nuclear Power Plants:
Confirmation of Effective Date and Availability of Guidance

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule: Confirmation of effective date and availability of guidance .

SUMMARY: The Nuclear Regulatory Commission (NRC) has amended its regulation concerning requirements for monitoring the effectiveness of maintenance at nuclear power plants on July 19, 1999 (64 FR 38551). The effective date of this amendment was deferred until guidance on assessing and managing increases in risk associated with maintenance activities was issued to nuclear power plant licensees. This document announces the availability of that guidance (Regulatory Guide 1.182, "Assessing and Managing Risk Before Maintenance Activities at Nuclear Power Plants") and specifies the effective date of July 19, 1999, for the amendment to the maintenance rule.

EFFECTIVE DATE: November 28, 2000.

ADDRESSES: Regulations, certain regulatory guides, and certain endorsed NUMARC documents are available for inspection or downloading at the NRC's Web site www.nrc.gov. Single copies of regulatory guides may be obtained free of charge by writing to the Office of the Chief Information Officer, Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or e-mail: DISTRIBUTION@nrc.gov, or facsimile: (301) 415-2289. A copy is also available for inspection and/or copying in the NRC Public Document Room, 11555 Rockville Pike, Room O-1 F23, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-7777, e-mail XXX@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission amended its maintenance rule, 10 CFR 50.65, "Requirements for monitoring the effectiveness of maintenance at nuclear power plants," on July 19, 1999 (64 FR 38551). This amendment requires nuclear power plant licensees to assess and manage the increase in risk that may result from proposed maintenance activities. The implementation date of this amendment was made dependent upon guidance being issued to nuclear power plant licensees on assessing and managing increases in risk associated with maintenance activities.

Rather than issue Revision 3 to Regulatory Guide 1.160, "Monitoring the Effectiveness of Maintenance at Nuclear Power Plants," the NRC staff decided to issue Regulatory Guide (RG) 1.182, "Assessing and Managing Risk Before Maintenance Activities at Nuclear Power Plants," as guidance to nuclear power plant licensees on assessing and managing risk before maintenance activities are conducted at the nuclear power plant. RG 1.182 is being issued as a companion guide to RG 1.160, which provides guidance on the structure of the licensees' maintenance effectiveness monitoring programs.

RG 1.160 endorses a document prepared by the Nuclear Energy Institute (formerly NUMARC), NUMARC 93-01, "Industry Guidelines for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants." RG 1.182 endorses a revised Section 11, "Assessment of Risk Resulting From Performance of Maintenance Activities," of NUMARC 93-01. RG 1.182 was published for public comment (64 FR 70098; December 15, 1999) as DG-1082, "Assessing and Managing Risk Before Maintenance Activities at Nuclear Power Plants." There were no public comments on the draft guide, and NEI addressed the comments on Section 11 of

NUMARC 93-01 with minor revisions; the NRC staff concurs in these revisions. Therefore, the effective date of the July 19, 1999, amendment to 10 CFR 50.65 is November 28, 2000.

Dated at Rockville, Maryland, this ___ day of _____, 2000.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.

19.15 Extension of comment period.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 72

RIN 3150-FF66

Hybrid Hearing Procedures for Expansion of Onsite Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors: Extension of Comment Period.

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Extension of comment period.

SUMMARY: On December 5, 2000 (66 FR 98765), the Nuclear Regulatory Commission (NRC) published for public comment two versions of a proposed rule to implement the hybrid hearing process established by Section 134 of the Nuclear Waste Policy Act of 1982. The comment period for this proposed rule was to have expired on March 5, 2001. The Utility Nuclear Waste Management Group (UNWGMG) has requested a 60-day extension of the comment period. In view of the importance of the proposed rule, the amount of time that the UNWGMG suggests is required in order to provide meaningful comments on behalf of its 43 member utilities, and the desirability of developing a final rule as soon as practicable, the NRC has decided to extend the comment period for an additional 45 days.

DATES: The comment period has been extended and now expires on April 20, 2001. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: Submit comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking Website at <http://ruleforum.llnl.gov>. This site provides the capability to upload comments as files (any format) if your Web browser supports that function. For information about the interactive rulemaking Website, contact Ms. Carol Gallagher, (301) 415-5905 (e-mail: CAG@nrc.gov).

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. These same documents may also be viewed and downloaded electronically via the rulemaking Website.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6666.

Dated at Rockville, Maryland, this 28th day of December, 2000.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.

19.16 Withdrawal of proposed rule.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 31, and 32

RIN 3150-GG77

Static Elimination Devices and Ion Generating Tubes

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing a proposed rule that solicited comments on an amendment to establish a class exemption from licensing requirements for the possession and use of tritium, krypton-85, or polonium-210 in static elimination devices and ion generating tubes. Because of the length of time since public comments were requested on the proposed rule and because it will be a year before a regulatory analysis recommends the course of action that should be taken on static elimination devices and ion generating tubes, the Commission is withdrawing the proposed rule.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-7777.

SUPPLEMENTARY INFORMATION:

On April 1, 1998 (63 FR 54321), the NRC published proposed amendments to 10 CFR Parts 30, 31, and 32 in the *Federal Register* that would establish a class exemption from licensing requirements for the possession and use of tritium, krypton-85, or polonium-210 in static elimination devices and ion generating tubes manufactured, processed, produced, imported, or transferred in accordance with a specific license issued by the NRC authorizing transfer for use under the exemption; establish requirements for the issuance of specific licenses authorizing the distribution of the static elimination devices and ion generating tubes to

persons for use under the class exemption; exempt static elimination devices and ion generating tubes distributed for use under general license in §31.3 before a specified date; and revoke §31.3 as of that date.

A number of comments were received, some of which suggested that proposed new §32.30 may have been too restrictive in requiring a specific license for the incorporation of static elimination devices or ion generating tubes into products for commercial distribution.

The NRC took no further action on this rulemaking and the NRC staff began studies (including a generic environmental impact statement on consumer products) that eventually should result in Commission decisions on criteria for approval of consumer products and policy on the use of general licenses that might have a bearing on the regulatory control of statements on consumer products that eventually should result in Commission decisions on criteria for approval of consumer products and policy on the use of general licenses that might have a bearing on the regulatory control of static elimination devices and ion generating tubes containing byproduct materials.

The Commission believes it premature to exempt additional products containing radioactive material for consumer use. Because of the elapsed time since public comments were requested and because it will be a year before an assessment recommends a course of action for static elimination devices and ion generating tubes, the Commission has decided to withdraw the proposed rule.

Dated at Rockville, Maryland, this ___ day of _____, 2001.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.

19.17 Withdrawal of advance notice of proposed rulemaking.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150-HH88

Role of NRC Staff in Adjudicatory Licensing Hearings

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking: Withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing an advance notice of proposed rulemaking that presented possible changes to the NRC staff's role as a full party in adjudicatory hearings in initial licensing proceedings for nuclear power reactors. The Commission has decided that the NRC staff's role as an advocate in these proceedings should not be changed.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-8888.

SUPPLEMENTARY INFORMATION:

On November 2, 1999 (64 FR 10202), the Commission published an advance notice of proposed rulemaking (ANPR) on the role of the NRC staff in adjudicatory licensing proceedings. The Commission was considering a change in the NRC staff's role as a full party in initial licensing hearings for nuclear power reactors. The Commission requested advice and recommendations on several proposals and related questions designed to assist the Commission in deciding whether and to what extent the NRC staff's role should be changed.

Option 1 would have limited the NRC staff's participation to controverted factual issues on which the staff disagreed with the technical bases, rationale, or conclusions of another party.

NRC staff participation as a party would have been discretionary. The NRC staff could have acted as an amicus, advising the presiding officer on the record regarding matters of controversy, either on its initiative or at the presiding officer's request.

Option 2 would have required the NRC staff to participate as a party with respect to all substantive issues raised but would have eliminated NRC staff advocacy and participation with respect to procedural issues.

Option 3 would have retained the NRC staff's existing role as a full party and could have been implemented without any modification of existing practice and coupled with measures designed to improve public perception of the NRC staff's role or to allow greater Commission access to NRC staff expertise.

Option 4 would have expanded the opportunity for public involvement in the early stages of initial licensing proceedings, before issuance of a notice of opportunity for hearing.

The comment period expired January 3, 2000. The Commission received 28 letters of comment: 12 from nuclear utilities or their counsel, 9 from interveners or their counsel, 4 from individuals, and 3 from nuclear engineering firms or industry groups. The comments indicated support for all four options. Following a review of the comments and advice supplied by its legal office, the Commission decided that the NRC staff's existing role as an advocate in initial licensing proceedings should not be changed. Accordingly, the Commission is withdrawing the ANPR.

Several concerns prompted the Commission's ANPR. First, in a proceeding for the issuance of a license to construct or to operate a nuclear power reactor, the applicant has the burden of showing that it can construct and operate the plant safely. Because the NRC staff has no real stake in the issuance of the license, the need for its participation as a full party in the licensing hearing could be questioned. Second, the NRC staff's advocacy of a particular position could have the effect of lending support to the case in favor of the license applicant and, therefore, could create the impression that the NRC staff is advocating the applicant's

case. Third, NRC staff participation as a full party in licensing hearings might not represent the most efficient use of resources. Fourth, changes in the NRC staff's role as an advocate might mitigate the legal constraints placed on Commission access to its expertise in contested cases.

Further examination of these concerns reveals that no change to the NRC staff's existing role is warranted. On the first point, the Commission has concluded that the NRC staff's participation on all substantive issues is necessary to assist in the development of a sound record and has decided to reject Option 1. The Commission and the adjudicatory boards rely heavily on the NRC staff's expertise in determining whether an applicant has met the requirements for issuance of a license and what conditions the license should contain. The Commission also believes that the NRC staff represents the public interest in the proceedings and that it should continue to present and defend its evaluation of the application at the hearing for the benefit of the public. The NRC staff's participation on procedural issues is desirable because it could reduce or eliminate some of the substantive issues to be heard. The NRC staff is often the best source of guidance for adjudicatory boards on procedural matters. The Commission believes that the NRC staff should continue to participate as a full party and has decided to reject Option 2 as well. This action does not preclude the NRC staff from declining to take a position on matters that do not affect its interests in the proceeding.

Concerning the matter of public perception, the Commission agrees with comments that public perception is difficult to assess and that it is important to distinguish between members of the public in general and those who are familiar with NRC proceedings. The Commission is not convinced that there is a problem with respect to public perception of the NRC staff's role. To the extent that a problem exists, it is attributable not to bias on the NRC staff's part but to the nature of its extensive prehearing review of the application. The applicant often makes changes in the application in order to secure NRC staff approval so that by the time the hearing begins, many of the NRC staff's concerns have been accommodated. Interveners might otherwise have had to argue for these changes in the application during the hearing.

The Commission considered providing an opportunity for expanded public involvement before issuing a notice of opportunity for hearing (Option 4) as a possible means of increasing public understanding of the NRC staff's role. The Commission sought comment on this option as a possible means of providing useful information about local and site-related concerns in a nonadversarial setting. The Commission has concluded that there is no need to adopt this proposal, either alone or in combination with any of the other options. A copy of an application for a nuclear facility is made available for public inspection at the NRC Public Document Room (PDR) in Rockville, Maryland. After completing its review of the acceptability of the application for docketing, the NRC staff holds an initial management meeting with the applicant to discuss the review process and schedule. Notice of this meeting is published and members of the public may attend. After the application is docketed, the NRC staff's licensing review process is accessible to the public through open meetings and the formal correspondence placed in the PDR. The NRC staff also holds informal meetings with potential interveners and members of the public near the plant site. The Commission believes that these measures provide an adequate opportunity for public information and involvement in the early stages of the licensing process. The Commission has concluded that NRC staff resources that would have to be expended for increased public involvement before issuing a notice of opportunity for hearing would outweigh any improvement that might result in public perception of the NRC staff's role.

The Commission does not believe that NRC staff resources committed to litigation of admitted contentions in individual licensing proceedings could better be used to study, analyze, or resolve other important uncontested matters involved in particular proceedings or generic safety questions common to one or more classes of light-water reactors. The Commission believes that effort should be made to improve the effectiveness and efficiency of the hearing process to benefit all parties.

Finally, the Commission has concluded that the appropriate role for the NRC staff should be determined independently of any consideration of legal constraints on Commission access to the NRC staff in contested cases.

For these reasons, the Commission has concluded that it has not identified a problem with the NRC staff's existing role in reactor licensing proceedings that any of the suggested options would resolve. Accordingly, the Commission is adopting Option 3 and withdrawing the ANPR.

Dated at Rockville, Maryland, this ____ day of _____, 2001.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.

19.18 Corrections.

Correction 1 - Substantive correction to a rulemaking document.

Note: Corrections to the preamble refer to the page, column, paragraph, and sentence in which the error occurred. Corrections to codified text refer to the section, paragraph, and sentence or line in which the error occurred.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR PART 50

RIN 3150-II99

Emergency Planning and Preparedness for Production
and Utilization Facilities; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule: Correction.

SUMMARY: This document corrects a final rule appearing in the *Federal Register* on September 21, 2000 (65 FR 46587), that extends the date by which prompt public notification systems must be operational around all nuclear power plants. The action is necessary to correct a printing error and resolve an inconsistent reference to a deadline date.

EFFECTIVE DATE: October 21, 2000.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-9999.

1. On page 46588, in the second sentence of the first full paragraph in the second column, the word "insignificant" should read "significant."

2. In the second line of §50.74(a), "one year" should read "seven months."

Dated at Rockville, Maryland, this ___ day of _____, 2000.

For the Nuclear Regulatory Commission.

William D. Travers,
Executive Director for Operations.

Correction 2 - Nonsubstantive correction to a rulemaking document.

[7590-01-P]

Nuclear Regulatory Commission

10 CFR Parts 2 and 13

RIN 3150-II77

Adjustment of Civil Monetary Penalties for Inflation; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; Correction.

SUMMARY: This document corrects a final rule appearing in the *Federal Register* on October 11, 2000 (65 FR 53554), that adjusts the maximum Civil Monetary Penalties under statutes within the jurisdiction of the NRC. This action is necessary to correct an erroneous regulation identifier number (RIN).

EFFECTIVE DATE: November 23, 2000.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Federal Register Liaison Officer, telephone (301) 415-9999.

SUPPLEMENTARY INFORMATION:

On page 53554, in the first column, in the heading, the fourth line from the top, the RIN number is corrected to read "RIN 3150-II77".

Dated at Rockville, Maryland, this day of October, 2000.

For the Nuclear Regulatory Commission.

(Name),
Federal Register Liaison Officer.

Correction 3 - Correction to a general notice document.

[7590-01-P]

Nuclear Regulatory Commission

Oconee Nuclear Station, Units 1, 2, and 3; Notice of Consideration
of Issuance of Amendments to Facility Operating Licenses, Proposed
No Significant Hazards Consideration Determination,
and Opportunity for a Hearing; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance; Correction.

SUMMARY: This document corrects a notice appearing in the *Federal Register* on December 18, 2000 (65 FR 69696), that considers issuance of amendments to Facility Operating License Nos. DPR-38, DPR-47, and DPR-55, issued to the Duke Power Company. This action is necessary to correct an erroneous date.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Project Manager,
Office of Nuclear Reactor Regulation, telephone (301) 415-9999.

SUPPLEMENTARY INFORMATION:

On page 66701, in the first column, in the second complete paragraph, the date is changed from "January 2, 2001," to read "January 17, 2001."

Dated at Rockville, Maryland, this day of December, 2000.

For the Nuclear Regulatory Commission.

(Name),
Federal Register Liaison Officer.

19.19 Notice of availability.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

**Consolidated Guidance About Materials Licenses: Program-Specific Guidance
About Portable Gauge Licenses, Availability of NUREG**

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the completion and availability of NUREG-1556, Volume 1. "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Portable Gauge Licenses," dated May 1997.

ADDRESSES: Copies of NUREG-1556, Volume 1, may be purchased from the Superintendent of Documents, U.S. Government printing Office, Mail Stop SSOP, Washington, DC 20402-0001; Internet:bookstore.gpo.gov; 202-512-1800, or The National Technical Information Service, Springfield, Virginia 22161-0002; www.ntis.gov; 1-800-553-6847 or, locally, 703-605-6000.

A copy of the document is also available for inspection and/or copying for a fee in the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. As of November 1, 1999, you may also electronically access NUREG-series publications and other NRC records at NRC's Public Electronic Reading Room at www.nrc.gov/NRC/ADAMS/index.html.

Some publications in the NUREG series that are posted at NRC's Web site address www.nrc.gov/NRC/NUREGS/indexnum.html are updated regularly and may differ from the last printed version.

NOTE: For a draft NUREG use the following language:

ADDRESSES: Draft NUREG-1556, Volume 1, is available for inspection and copying for a fee at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. As of November 1, 1999, you may also electronically access NUREG-series publications and other NRC records at NRC's Public Electronic Reading Room at www.nrc.gov/NRC/ADAMS/index.html.

A free single copy of Draft NUREG-1556, Volume 1, to the extent of availability, may be requested by writing to the Office of the Chief Information Officer, Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Printing and Graphics Branch, Washington, DC 20555-0001; facsimile: 301-415-2289; e-mail: DISTRIBUTION@nrc.gov.

Some publications in the NUREG series that are posted at NRC's Web site address www.nrc.gov/NRC/NUREGS/indexnum.html are updated regularly and may differ from the last printed version.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1010.

SUPPLEMENTARY INFORMATION:

On October 3, 1996 (61 FR 51729), NRC announced the availability of draft NUREG-1556, Volume 1, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Portable Gauge Licenses," dated September 1996, and requested comments on it. This draft NUREG report is the first program-specific guidance developed to support an improved materials licensing process. On December 6, 1996 (61 FR 64768), NRC requested volunteers to participate in a January 1997 pilot test to evaluate the document's content, format, and usefulness. Most of the public comments and those of the participants in the pilot test were

positive. The NRC staff considered all of the comments, including constructive suggestions to improve the document, in the preparation of the final NUREG report.

The final version of NUREG-1556, Volume 1, is now available for use by applicants, licensees, NRC license reviewers, and other NRC staff. It supersedes the guidance for applicants and licensees previously found in Draft Regulatory Guide DG-0008, "Applications for the Use of Sealed Sources in Portable Gauging Devices," dated May 1995, and the guidance for licensing staff now found in Policy and Guidance Directive PG 2-07, "Standard Review Plan for Applications for the Use of Sealed Sources in Portable Gauging Devices," dated September 1994.

The performance-based approach in NUREG-1556, Volume 1, gives portable gauge licensees greater flexibility than previously permitted under licenses based on applications prepared according to DG-0008. This approach permits licensees to make more changes in their radiation safety program without amending their licenses, thus reducing the regulatory burden on licensees and the NRC staff. Accordingly, existing portable gauge licensees have the option of submitting a complete application using NUREG-1556, Volume 1, at the time they file an amendment request. Portable gauge licensees choosing this option should incorporate the requested change in the complete application, submit it with the appropriate amendment fee, and indicate that the complete application is an amendment request to take advantage of the new guidance. When the NRC staff has reviewed the request and resolved any outstanding issues, the NRC staff will amend the license in its entirety without changing the expiration date.

Portable gauge licensees wishing to renew their licenses should submit a complete application according to NUREG-1556, Volume 1. The NRC staff's action will be similar to that described for amendments but will include an extension of the license's expiration date. By following this procedure, the staff expects all existing portable gauge licenses to be converted to the more performance-based format within a few years.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

NOTE: The Small Business Regulatory Enforcement Fairness Act statement is not used for draft NUREGs. The law applies only to final agency actions.

Dated at Rockville, Maryland, this ____ day of _____, 2001.

For the Nuclear Regulatory Commission.

(Name), Director,
Division of Industrial and Medical
Nuclear Safety,
Office of Nuclear Material Safety
and Safeguards.

19.20 Notice of meeting.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

**Industry Presentation on the Fabrication
of Mixed Oxide Fuel; Meeting**

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: Representatives from the nuclear industry make a presentation relating to the fabrication of mixed oxide (MOX) fuel for uses in commercial nuclear reactors. This meeting is a followup to an earlier meeting at which the Nuclear Energy Institute (NEI) presented material concerning the use of MOX fuel in nuclear reactors. The meeting is open to the public and all interested parties may attend.

DATES: March 27, 2001, from 8:30 am to 1:00 pm.

ADDRESSES: Nuclear Regulatory Commission, Two White Flint North Auditorium, 11545 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Mail Stop T-8 Axx, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone: (301) 415-1012; FAX: (301) 415-3237; Internet: xxx@nrc.gov.

For material related to the meeting, please contact U.S. NRC Public Affairs Office (301) 415-8200.

SUPPLEMENTARY INFORMATION:

On January 4, 1997, the Department of Energy (DOE) issued the Record of Decision on the Storage and Disposition of Weapons-Usable Fissile Materials, One of DOE's approaches to dispose of the surplus plutonium is to burn it as MOX fuel in existing domestic commercial reactors.

NEI has requested the opportunity to present information on the use and fabrication of MOX fuel for nuclear reactors to the NRC staff. This meeting is a followup to an earlier meeting at which NEI presented material concerning the use of MOX fuel in nuclear reactors. A preliminary agenda for the meeting is as follows:

1. Technology Confirmation Around the World, presented by National Laboratories.
2. MOX Fabrication and Licensing Experience, presented by British Nuclear Fuels, Inc.
3. MOX Fabrication and Licensing Experience, presented by Belgonucleaire.
4. MOX Fabrication and Licensing Experience, presented by Cogema.
5. MOX Fabrication and Licensing Experience, presented by Siemens.

Attendees are requested to notify (name of contact person) at (301) 415-1012 of their planned attendance if special services, such as for the hearing impaired, are necessary.

The NRC is accessible to the White Flint Metro Station. Visitor parking near the NRC buildings is limited.

Dated at Rockville, Maryland, this 28th day of February, 2001.

For the Nuclear Regulatory Commission.

(Name), Director,
Division of Fuel Cycle Safety
and Safeguards,
Office of Nuclear Material Safety
and Safeguards.

19.21 Final rule that grants a petition for rulemaking.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 32

RIN: 3150-FF66

License Applications for Certain Items
Containing Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is granting a petition for rulemaking submitted by mb-microtec, Inc. (PRM-32-4), by amending its regulations to permit the distribution of timepieces containing gaseous tritium light sources (GTLs) and regulating them under the same requirements as timepieces containing tritium paint. The final rule removes specific requirements for prototype testing of products containing tritium and provides guidance for prototype testing in a separate document. The final rule simplifies the licensing process for distribution of timepieces containing tritium and allows the use of a new technology in self-illuminated timepieces.

EFFECTIVE DATE: (Insert date 30 days after publication in the *Federal Register*).

ADDRESSES: This final rule and any related documents are available on the NRC's rulemaking Website at <http://ruleforum.llnl.gov>. For information about the interactive rulemaking Website, contact Carol Gallagher, (301) 415-5905 (e-mail: CAG@nrc.gov).

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-1012, e-mail xxx@nrc.gov.

SUPPLEMENTARY INFORMATION:

The Petition for Rulemaking

In a letter dated July 30, 1993, mb-microtec, Inc., petitioned the NRC to amend its regulations "to include timepieces containing gaseous tritium light sources (GTLs) on the same regulatory basis as those with tritium paint in regard to their distribution exempt from the requirements of 10 CFR 32.14(d)."

In the petition, the petitioner stated:

With new technology greater illumination could be achieved with less radioactivity than needed for a painted watch but that the additional requirements to get a GTLS watch approved for distribution results in manufacturers not using this technology.

On August 9, 1993, the NRC docketed the letter as a petition for rulemaking (Docket No. PRM-32-4). A notice of receipt of petition for rulemaking was published for public comment in the *Federal Register* on October 29, 1993 (58 FR 52670). No public comments were received.

Revising the testing requirements of 10 CFR 32.14(d) to accommodate GTLSs containing no more than 25 millicuries of tritium would permit simplification of the licensing process for watches containing GTLSs. The provisions of 10 CFR 32.22 would allow those vendors who desire to continue marketing self-luminous watches that contain GTLSs with greater than 25 millicuries of tritium to do so. Watches using GTLSs can be produced without exceeding the quantities of tritium specified in 10 CFR 30.15(a)(1).

The Regulations

Section 30.15(a)(1) states that if a timepiece containing byproduct material is to be distributed to persons exempt from the NRC's licensing requirements, it may not contain more than 5 millicuries per hand, not more than 15 millicuries in the dial, and not more than 25 millicuries of tritium in total. Section 32.14(d)(1) contains overall performance requirements for the binding of tritium to watch hands, pointers, and dials, as well as specific prototype testing requirements for tritium-painted watch hands, pointers, and dials. Although 10 CFR 30.15(a)(1) does not specify a form for tritium in timepieces, the prototype testing requirements in 10 CFR 32.14(d)(1) -- the section of the NRC's regulations under which a specific license to distribute

watches exempt under 10 CFR 30.15(a)(1) is granted -- are only applicable to timepieces employing tritium paint.

Watches containing more than 25 millicuries of tritium in GTLSs may be distributed to persons exempt from licensing requirements in accordance with 10 CFR 30.19, "Self-luminous products containing tritium, krypton-85, or promethium-147," which, unlike 10 CFR 30.15(a)(1), specifies neither a limit on the amount of tritium that may be incorporated into self-luminous products nor the end use of the product. However, to distribute a self-luminous watch containing tritium to persons exempt from licensing requirements in 10 CFR 30.19, a specific license must be obtained in accordance with 10 CFR 32.22. To manufacture, process, produce, or initially transfer self-luminous products containing unrestricted amounts of tritium under 10 CFR 32.22(a)(2), the applicant must submit detailed information and analyses concerning the particular product in order to obtain approval for distribution. The information required by 10 CFR 32.22 must be sufficient to demonstrate that the product meets a number of specific safety criteria, including dose criteria for use and disposal. The application must include proposed prototype testing procedures approved by the NRC. The evaluations conducted by both the licensee and the NRC staff, as well as the prototype testing proposed, apply to the entire product rather than its components. Conversely, approval for distribution of timepieces containing less than 25 millicuries of tritium to persons exempt from licensing requirements in 10 CFR 30.15(a)(1)(i) requires a specific license under 10 CFR 32.14, but only requires satisfaction of the prototype testing requirements contained in 10 CFR 32.14(d). Consequently, it is less burdensome upon a licensee to distribute watches employing tritium illumination under 10 CFR 32.14 than under 10 CFR 32.22.

The Proposed Amendments

The NRC reviewed the petitioner's arguments and published a proposed rule (63 FR 45678; October 14, 1997). The proposed rule incorporated the petition in part and modified the petitioner's suggested language to amend the regulations in 10 CFR Part 32 by removing the

prototype testing requirements for hands, dials, and pointers containing tritium paint, which are primarily used in timepieces.

Rather than revise the specific testing requirements in the regulations to accommodate both tritium paint and GTLSs, the NRC decided to take a more performance-based approach by removing the existing specific testing procedures from the regulations. Guidance on specific prototype testing procedures is provided in NUREG-1562, "Standard Review Plan for Applications for Licenses to Distribute Byproduct Material to Persons Exempt from the Requirements for an NRC License."

The proposed rule did not change the intent of the existing general performance standard. This standard states that the method of containment or binding of the byproduct material in the product is such that the radioactive material will not be released or removed from the product under the most severe conditions likely to be encountered in normal use and handling. The planned action does not change the level of radiation protection provided to users of tritium-illuminated timepieces. The NRC received no public comment on the proposed rule.

Rationale

The licensing process is more burdensome to potential distributors of timepieces under 10 CFR 30.19 than with an application to distribute timepieces for use under 10 CFR 30.15(a)(1). Changing the prototype testing requirements in 10 CFR 32.14(d)(1) would simplify the licensing process for distributors of timepieces containing GTLSs by allowing them to apply to distribute these timepieces for use under 10 CFR 30.15(a)(1). Timepieces using GTLSs would be distributed and used under the same requirements of the regulations as timepieces using tritium paint.

Effect of the Amendments

By allowing distribution of a new technology in self-illuminated timepieces, the final rule grants the petition for rulemaking submitted by mb-microtec (PRM-32-4). This final rule completes action on this petition.

Agreement State Compatibility

Under the Atomic Energy Act, certain regulatory functions are reserved to the NRC. Among these are the distribution of products to persons exempt from licensing, as discussed in 10 CFR Part 150. The final rule is a Division 4 matter of compatibility with regard to the manufacture and initial distribution of watches and other products for use.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is removing specific requirements for prototype testing of products containing tritium and provides guidance for prototype testing in a separate document in order to simplify the licensing process for distribution of timepieces containing tritium and allow the use of a new technology in self-illuminated timepieces. This action does not constitute the establishment of a standard that contains generally applicable requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that the final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget (OMB), approval number 3150-0001.

The burden to the public for this information collection is estimated to average 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information

collection. Send comments on any aspect of this information collection, including suggestions for reducing the burden, to the Information and Records Management Branch (T-6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail at BJS1@nrc.gov; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0001), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The NRC has prepared a regulatory analysis for the final rule. The analysis examines the benefits and impacts considered by the NRC. The regulatory analysis is available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. Single copies may be obtained from (Name), Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 2055-0001, telephone 301-415-1357, or e-mail at xxx@nrc.gov.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact upon a substantial number of small entities. The final rule permits the distribution of a new technology in self-illuminated timepieces and simplifies the licensing process for distributors of timepieces containing GTLSs. This action will reduce regulatory compliance costs for these distributors and facilitates their ability to conduct business economically.

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this rule, and therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR Chapter I.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

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 and 553, the NRC is adopting the following amendment to 10 CFR Part 32.

PART 32 - SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER

CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

1. The authority citation for Part 32 continues to read as follows:

AUTHORITY: 42 U.S.C. 2111, 2201, 2232, 2233, 5841.

2. In § 32.14, paragraph (d) is revised to read as follows:

§ 32.14 Certain items containing byproduct material; requirements for license to apply or initially transfer.

* * * * *

(d) The Commission determines that:

(1) The method of containment or binding of the byproduct material in the product is such that the radioactive material will not be released or removed from the product under the most severe conditions that are likely to be encountered in normal use and handling. Tritium, in the form of paint, will be considered to be properly bound to dials, hands, and pointers if there is no

visible flaking or chipping and the total loss of tritium, in the form of paint, does not exceed 5 percent of the total tritium, in the form of paint, contained in the product.

(2) Prototype tests for automobile lock illuminators are prescribed by 10 CFR 32.40, Schedule A.

Dated at Rockville, Maryland, this 15th day of May, 2001.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.

19.22 Denial of a petition for rulemaking.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

[Docket No. PRM-61-2]

New England Coalition on Nuclear Pollution, Inc.; Denial
of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking: Denial.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by the New England Coalition on Nuclear Pollution, Inc. (PRM-61-2). The petitioner requested that the NRC amend its regulations regarding waste classification of low-level radioactive waste (LLW) to restrict the number and types of waste streams that can be disposed of in near-surface disposal facilities and prepare a supplemental environmental impact statement (EIS). The NRC is denying the petition because the "new information" presented by the petitioner is not sufficient to invalidate the existing classification system or justify that NRC prepare a supplemental EIS.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. These same documents are also available on the NRC's rulemaking Website at <http://ruleforum.llnl.gov>. For information about the interactive rulemaking Website, contact Carol Gallagher, (301) 415-5905, e-mail:

CAG@nrc.gov.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001, Telephone: (301) 415-1011.

SUPPLEMENTARY INFORMATION:

The Petition

On July 23, 1992 (57 FR 32743), the NRC published a notice of receipt of a petition for rulemaking filed by the New England Coalition on Nuclear Pollution, Inc. The petitioner requested that the NRC amend 10 CFR Part 61 concerning the classification of LLW for near-surface disposal to restrict the number and types of waste streams that may be disposed of in these facilities. The petitioner believes that the requested changes are necessary because of significant new information concerning intrusion into LLW disposal facilities that was not available when the original EIS was developed. The petitioner argues that the NRC must prepare a supplemental EIS because the premises leading to conclusions reached in the original EIS have substantially changed.

The petition is based on three purported changes that the petitioner believes have occurred since the rule was promulgated. The petitioner asserts that these changes affect the basis used to promulgate 10 CFR Part 61.

1. The petitioner argues that the original EIS was based on a 500-mrem-per-year dose to "inadvertent intruders." Revised guidance by international organizations has reduced dose limits for individual members of the public to 100 mrem per year, and this new criterion has been incorporated into 10 CFR Part 20. The petitioner presumes that the intruder and public dose limits are integrally linked. The petitioner asserts that this revised dose limit should also be incorporated into the waste classification system and that this step would affect waste streams allowed to be disposed of in LLW facilities.

2. The petitioner states that the three intrusion scenarios that the NRC considered in the development of 10 CFR Part 61 do not define a broad-enough spectrum of possible events. Of particular concern is that the NRC used regulatory discretion, rather than scientific data, to exclude deliberate intrusion. The petitioner states that recent studies conducted at the behest of the State of Vermont show that when intrusion is deliberate, the ability of near-surface facilities to properly provide isolation for currently classified LLW streams is questionable.

3. The petitioner states that because most currently planned LLW facilities use an engineered structure to isolate the waste, the cost differential between shallow-land burial facilities, assumed in the EIS, and a geologic repository (for high-level waste) has changed since promulgation of 10 CFR Part 61. Because cost considerations were a factor in the development of the waste classification system, a supplemental EIS is needed.

Public Comments on the Petition

The notice of receipt of petition for rulemaking invited interested persons to submit comments. The NRC received 14 comment letters: three from States (two from Vermont), three from private organizations, three from associated industries (including one disposal site operator), three from private individuals, one from a university, and one from the Department of Energy. The comments focused on the main elements of the petition -- revision of the 10 CFR Part 61 waste classification system and the petitioner's rationale for this change. The Commission received responses from the petitioner on many of the points raised by the commenters. The NRC reviewed and considered the comments and responses in its decision.

Four commenters supported the petition. They supported the concept of changing the classification system to restrict the more hazardous components of currently defined LLW, although not necessarily in the same way as proposed in the petition.

One commenter stated that the definitions of LLW and high-level radioactive waste should be changed to require that waste presenting a potential hazard after 100 years be defined as

high-level radioactive waste. Disposal of this newly defined high-level radioactive waste would be the responsibility of the Federal Government.

A second commenter believes that the bases for developing the Part 61 classification system are not conservative and the petition should be accepted to protect the public from disposal of waste having long-lived radionuclides.

A third commenter believes that restricting the longevity hazard (long-lived radionuclides) would increase public acceptance of LLW disposal facilities and eliminate program delays.

The fourth commenter, the Vermont Department of Public Service, believes that the classification system should be revised to reclassify nonfuel reactor components as greater than Class C. It is stated that these components, in Vermont, produce 99 percent of the activity, while comprising less than one-half of one percent of the volume. These components are easily segregated and can be stored in spent fuel pools. The commenter believes that the reclassification "could assist the State processes established by the Low-Level Radioactive Waste Policy Amendments Act of 1985."

The other 10 commenters believe that granting the petition would not only be unwarranted because the petitioner has not made a justifiable case for changing the waste classification system, but that granting the petition would also cause significant and unnecessary problems for the disposal of LLW. Problems cited include major uncertainty and delay while the NRC develops a new rule, the creation of "orphan" wastes that would not be acceptable at LLW sites, and the inaccurate use of existing information. For example, the petitioner refers to a study by Rogers and Associates Engineering Corporation prepared for the Vermont Low-Level Radioactive Waste Authority. Several commenters, including Rogers and Associates Engineering Corporation and the Vermont Low-Level Radioactive Waste Authority, commented that the petitioner has incorrectly used the results of this study to assess facility performance and that this study does not support the petitioner's request.

The commenters argued that 10 CFR Part 61 and supporting documentation provide a sound regulatory basis for protection of public health and safety and that the petitioner has not provided any significant new information to justify changing the current rules. These commenters further argued that the petitioner is inappropriately applying requirements in 10 CFR Part 20 to potential intruder exposures at a closed disposal site. They noted that Part 20 limits, and the international recommendations on which they are based, are regulatory dose limits for routine exposures and are not uniquely pertinent to accidents, inadvertent intrusion, or other hypothetical events.

Some commenters also took exception to the petitioner's goal of protecting against willful, purposeful, or intentional intrusion instead of the inadvertent intruder. They stated that to protect against deliberate misuse of disposed waste would be unnecessarily conservative and unwarranted. One commenter noted that mining activities on a previously closed LLW disposal site (an activity postulated by the petitioner) would constitute possession of source, byproduct, or special nuclear material and would be regulated under the statutory basis of the Atomic Energy Act of 1954, as amended.

Several commenters were concerned that a revised classification system would generate an "orphan" class of waste. These wastes would not be accepted at an LLW site and would have to be stored, pending disposal at a high-level waste or other appropriate facility, resulting in additional radiation exposure due to the extra handling and storage required. These commenters stated that the current classification system provides an adequate level of protection of public health and safety.

Other commenters believe that revising the classification system unnecessarily would be extremely disruptive until new regulations were finalized.

Finally, several commenters did not see a need to develop a supplemental EIS because in their view no significant new information has been provided.

Reasons for Denial

The NRC is denying the petition for the following reasons:

1. The NRC believes that the petitioner is incorrect in asserting that recommendations by international and national standards organizations (the International Committee on Radiological Protection [ICRP] and the National Council on Radiation Protection and Measurements [NCRP]) on public dose limits applicable to licensee operations should also be applied to hypothetical inadvertent intrusion at a closed LLW facility. The ICRP distinguishes between limits for the conduct of operations where exposures might be expected and the approach to be taken for "potential exposures," which are hypothetical or postulated. The 10 CFR Part 20 limit was adopted to impose restrictions on the releases from currently operating licensed facilities or on the ways that current licensees conduct operations. The LLW classification system specifically addressed limiting potential exposures to an inadvertent intruder who might hypothetically pursue activities at a closed LLW disposal facility following loss of institutional control. Inadvertent intrusion is a hypothetical exposure scenario evaluated in the EIS to support the concentration limits for classifying radioactive wastes. It is a separate and different evaluation from the evaluation performed under § 61.41 to demonstrate protection of the general population from releases of radioactivity. The NRC's calculations, based on conservative assumptions about intrusion activities, demonstrated that if inadvertent intrusion were to occur, the one or few individuals involved might receive radiation exposure on the order of 200 mrem, well below 500-mrem-per-year goal selected as the dose rate limitation guideline.

In its final EIS, the NRC summarized the rationale for retaining the 500 mrem limitation guideline as follows:

"NRC's selection of the 500-mrem limit was based on (1) public opinion gained through the four regional workshops held on the preliminary draft of Part 61; (2) its acceptance by national and international standards organizations (e.g., ICRP) as an acceptable exposure limit for members of the public; and (3) the results of analyses presented in Chapter 4 of the draft EIS."

However, a fuller explanation for having selected this dose limitation guideline can be found in the Draft Environmental Impact Statement (DEIS) on 10 CFR Part 61 (NUREG-0782, Vol. 1). At that time, three candidate values of a different order of magnitude were under consideration; 25 mrem per year, 500 mrem per year, and 5000 mrem per year. While noting the similarity of the selected value to the then-current effective public dose limit in 10 CFR Part 20, the DEIS went on to explain the considerations for selection. Selection of the 25-mrem-per-year value would likely have resulted in considerably more costs, more changes in existing practices and greater reduction in disposal efficiency than the other two candidates. This choice was cited as "especially important considering the hypothetical nature of the intrusion event." The 5000-mrem-per-year alternative was seen to involve approximately the same costs and impacts as the 500 mrem per year alternative. The higher value was considered to potentially result in allowing disposal of larger quantities of long-lived isotopes, which could result in moderately higher intruder hazards extending for long time periods. Therefore, 500 mrem per year was selected as a general dose rate limitation guideline for the inadvertent intruder.

In the final EIS, the NRC noted that the Environmental Protection Agency, in commenting on the DEIS and the proposed 10 CFR Part 61, stated that it was not appropriate to include a dose limit for intrusion in the regulations because the licensee would not be able to monitor or demonstrate compliance with a dose limit related to an event that might occur hundreds of years in the future. Consequently, the final rule for 10 CFR Part 61 did not include a dose limit for inadvertent intrusion. However, provisions, including waste classification, were included in the final rule to reduce the likelihood and the magnitude of exposures to potential intruders.

Finally, ICRP distinguishes between limits for the conduct of operations where exposures might be expected and the approach to be taken for "potential exposures," which are hypothetical or postulated. In the former case, the ICRP proposed imposition of dose limits but in the latter case recommended that the probability of postulated events or scenarios be considered along with their consequences. The ICRP noted that the initial focus in controlling

the consequences of potential or postulated events should be "prevention," that is, by incorporating provisions to reduce the probability of the postulated events that may lead to radiation exposures. The existence of multiple controls in the final rule to reduce the likelihood of exposures to postulated inadvertent intruders at closed LLW sites was, and continues to be, wholly consistent with the ICRP perspective. These multiple controls are specifically identified or included in §§ 61.7, 61.12, 61.14, 61.42, 61.52, and 61.59 and are intended to prevent inadvertent intrusion and to reduce potential exposure if intrusion were to occur.

For these reasons, the NRC does not believe that the current ICRP or NCRP recommendation that the public dose limit be 100 mrem per year constitutes new information that would warrant modifying these regulations. The NRC believes that the provisions of 10 CFR Part 61 provide an acceptable level of protection to the public and the inadvertent intruder.

2. The NRC believes that the petitioner has not provided adequate information to justify considering "deliberate" intrusion scenarios. The NRC believes that to protect against deliberate intrusion would be unnecessarily conservative and unwarranted. NRC regulations currently include provisions to protect against intrusion by requiring Government land ownership, records, and the use of markers. In order to deliberately intrude into the LLW site, an individual will have to break the law and overlook the hazard. In the development of 10 CFR Part 61, the NRC stated, "it would appear to be difficult to establish regulations designed to protect a future individual who recognizes a hazard but then chooses to ignore the hazard."

The NRC believes that the likelihood of deliberate intrusion is very small. Deliberate intruders would have to ignore the hazard information on markers. The future value of LLW as a material cannot be accurately assessed, but the NRC believes that its value would be unlikely to warrant illegal actions that in themselves would be hazardous, and would require a significant amount of time and effort. If the value of LLW were to become significant, then it is likely that responsible institutions would assess risks and would make rational decisions regarding use or

control of the site. Although the NRC is not relying on institutional controls beyond 100 years, the NRC believes that relevant records will be preserved, and remain accessible, for hundreds of years after closure. This fact would reduce the likelihood and level of exposure of inadvertent or deliberate intrusion. If intrusion did not occur until 500 years after closure, the exposure would be limited to a few mrem as calculated in the EIS. The NRC believes that its current treatment of intrusion continues to reflect a rational and acceptable approach. Current regulations provide reasonable assurance of protection against an inadvertent intruder. While not directly protecting against the deliberate intruder, the NRC believes that such an intrusion is unlikely to happen; therefore, the risk is very small.

3. The NRC believes that the petitioner's request for a supplemental EIS, due to increased costs of current disposal plans (including engineered structures), is not valid for several reasons. First, the NRC considered a range of different disposal options and costs, including the use of engineered barriers and structures, in the development of 10 CFR Part 61. Shallow-land burial, as had been practiced at commercial disposal sites, was considered as the base case for analysis. Two improved shallow-land disposal alternatives were also considered. The use of engineered barriers was anticipated and included in cost impact analyses as the upper bound alternative. Second, although the petitioner is correct in stating that LLW disposal costs for new facilities have significantly increased since promulgation of the rule, so have the expected costs for other potential methods of waste disposal, including geologic disposal, referred to by the petitioner. Third, as noted by one of the commenters, much of the increased cost for new LLW disposal facilities is independent of the disposal technology used. That is, the increased costs for site characterization, licensing, public involvement, and administration for all disposal sites would tend to minimize long-term cost differentials between shallow-land burial with or without engineered structures. The petitioner is erroneously asserting that costs were a prime consideration in the selection of the waste classification system. Although costs were considered in the EIS, the NRC principally looked to identify and implement improvements

in the disposal of LLW, such as the development of the waste classification system, to help ensure adequate protection of the public health and safety and the environment. The cost of developing and constructing a facility was not the prime consideration.

In addition, the NRC has also qualitatively considered the effect of imposing a classification system as indicated in the petition. The benefit would be to reduce the potential radiation exposure of a very small number of individuals after the end of the institutional control period. A realistic estimate of the benefit, as shown in the EIS, would be a 100-mrem reduction in dose (from 200 mrem to 100 mrem per year) to one or a few individuals per site 100 years after closure. To maximize the benefit, the intrusion would need to occur relatively shortly after the end of the institutional control period, since the 100-mrem difference between the existing classification system and that suggested by the petitioner becomes smaller with time. As discussed earlier, as the time period increases beyond 100 years to 500 years, potential exposures reduce to only a few mrem for the existing classification system.

Not only are the perceived benefits exceedingly small, but if a revised classification system were imposed, the NRC believes that it would result in significant negative impacts. First, it would take years to revise the waste classification regulations. During this time, current efforts by the States and compact organizations to develop LLW facilities could be severely impacted as they would not know what waste would be acceptable in an LLW facility. Second, as provided in the Low-Level Radioactive Waste Policy Amendments Act of 1985, States will continue to be responsible for providing for disposal of waste that is classified A, B, and C under the existing classification system in 10 CFR Part 61. If a new classification system were developed that resulted in some currently acceptable waste being unacceptable for an LLW facility, either congressional action would be necessary to change the act to make the Federal Government responsible for the waste or the States would be forced to develop alternative methods to dispose of this new class of waste. And third, additional operational exposures

could be expected to occur as specific waste would need to be segregated, handled, treated, stored, and transported while awaiting alternative disposal facilities.

In sum, no new significant information has been provided by the petitioner that would call into question the basis for, or the conclusion of, the final EIS. In a qualitative analysis, it is clear that granting the petition would result in significant negative impacts relative to the small potential reduction in intruder exposures. Therefore, a supplemental EIS is not needed.

For reasons cited in this document, the NRC denies the petition.

Dated at Rockville, Maryland, this _____ day of _____, 2001.

For the Nuclear Regulatory Commission.

William D. Travers,
Executive Director for Operations.

19.23 Policy statement.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

Handling of Late Allegations; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: This policy statement presents the criteria the Commission will follow in addressing late allegations received from sources outside the Commission in the context of licensing reviews. It also directs that the Nuclear Regulatory Commission (NRC) staff's procedures for notifying Atomic Safety and Licensing Boards, Atomic Safety and Licensing Appeal Boards, and the Commission of the receipt of allegations be revised to provide for an initial, coarse screening before a board notification is issued. The Commission is adopting this policy to ensure that all allegations important to safety are considered while preventing unnecessary delay in the licensing process.

EFFECTIVE DATE: (Insert date of publication in the *Federal Register*).

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: (301) 504-1012.

SUPPLEMENTARY INFORMATION:

Statement of Policy

This policy statement explains how the Commission will treat late allegations received from sources outside the Commission in operating license reviews and in the board notification process. The focus of this statement is on NRC staff and Commission prelicensing safety reviews of uncontested issues and Commission prelicensing immediate effectiveness reviews of contested issues. The treatment of allegations in informal adjudicatory licensing proceedings is governed by the Rules of Practice in 10 CFR Part 2. The NRC has begun a rulemaking to codify NRC case law criteria for reopening a closed evidentiary record in a formal licensing

proceeding and to specify further the documentary bases for motions to reopen, including those that may be based on allegations.

The most fundamental tenet flowing from the NRC's statutory mandate under the Atomic Energy Act is that a license may be issued only if it can be found that there is reasonable assurance that the activity to be authorized presents no undue risk to the health and safety of the public. There can be no abdication of the responsibility to make this determination and if there is a serious question as to the ability to make this finding, a license may not be issued and the time necessary to resolve the question must be taken. Therefore, in the context of late allegations, appropriate criteria must be applied to enable the decision maker, be it the NRC's staff or the Commission, to determine the significance, in terms of safe operation of the facility, of any allegations made.

In reviewing a number of recent cases, the NRC has been confronted with the task of addressing large numbers of allegations that were brought to its attention very shortly before and, in some cases, on the eve of the date on which a decision on whether to authorize the issuance of an operating license was to be made. Some of these allegations related to matters in controversy and others related to previously uncontested issues not under consideration by a particular adjudicatory tribunal. Significant commitments of resources often must be diverted at the last minute to address large numbers of late allegations, many of which have proven to be unsubstantiated or of little, if any, safety significance.

Ideally, all allegations concerning a particular facility will be resolved before any license is authorized. If, however, because of the number of allegations or their tardy submission, all allegations cannot be resolved in a time frame consistent with reasonable and responsible licensing action, it may be necessary to give priority to those allegations that, because of their potential safety impact, must be resolved before licensing action can be taken.

Initial Screening of Allegations

Any concerns bearing on the safety of a facility should be brought promptly to the attention of the applicant or the licensee. If, however, this approach is unsatisfactory, any person is free to bring these concerns directly to the NRC.¹ Any person who has an allegation concerning the design, construction, operation, or management of a nuclear power plant has a duty to bring the information to the Commission's attention as promptly as possible. All allegations should be specific and documented to the fullest extent possible. Those submitting allegations in good faith should be aware that appropriate protection against retaliatory action by an applicant or a licensee (including its contractors and subcontractors) is afforded by Section 210 of the Energy Reorganization Act of 1974 (42 U.S.C. 5851). Federal law imposes penalties on a person who intentionally makes any false statement or representation to any agency of the United States.

The appropriate NRC staff office will first determine whether, if true, the allegations are material to the licensing decision in that they would require denial of the license sought, the imposition of additional conditions on the license, or further analysis or investigation. Allegations that, even if true, are not material to any licensing decision or that on their face or after initial inquiry are determined to be frivolous or too vague or general in nature to provide sufficient information for the NRC staff to investigate will receive no further consideration.

If an allegation is material to the licensing decision, the NRC staff next determines whether the information presented is new in the sense of raising a matter not previously considered or tending to corroborate previously received but not yet resolved allegations. In making this determination, all information available to the Commission will be considered, including that previously provided by an applicant or a licensee and that obtained by the Commission in the course of its review and inspection efforts or from its investigation of prior allegations. In some

¹The Commission encourages utilities to establish programs for the purpose of identifying and resolving allegations affecting safety in a timely manner as design and construction of a nuclear facility proceeds.

cases, information already available to the NRC may be sufficient to resolve certain allegations. If an allegation is found to be both material and new, the NRC staff will investigate the allegation further.

Further Review

If the NRC staff determines that full consideration of all allegations cannot be accomplished consistent with responsible and timely Commission action, the NRC staff will further screen the allegations to determine their safety significance and the priority they should be assigned.² The following screening criteria will be considered.

1. The likelihood that the allegation is correct, considering available information including the apparent level of knowledge, expertise, and reliability of the individual submitting the allegation in terms of the allegation submitted and the possible existence of more credible contrary information.

2. The need for prompt consideration of the allegation, recognizing the public interest in avoiding undue delay. If the NRC staff determines that an allegation raises a significant safety concern regarding the design, construction, or operation of a facility, or about quality assurance or control, or about management conduct, that brings into question the safe operation of the facility at a given stage of operation, the allegation must be addressed before authorizing that stage. An allegation is safety significant if the allegation would, if true, raise a significant question about the ability of a structure, system, or component to perform its intended safety function, about management competence, integrity, or conduct, or about implementation of the quality assurance program sufficient to raise a legitimate doubt as to the ability of the licensee.

² As a general matter, the Commission has authorized issuance of operating licenses for low-power testing (up to 5% of rated power) and subsequently for full-power operation (operation above 5% of rated power). In some cases these steps have been further refined, for example, into fuel load, hot system testing, criticality, and zero power testing. Other refinements are possible and may be authorized.

to operate the plant safely. Allegations that are not safety significant will be resolved in the normal course of business independent of license issuance.

Board Notification Procedures

Parties to ongoing adjudicatory proceedings have an obligation to bring allegations to the attention of the presiding board. All parties have an obligation to inform boards promptly of relevant and material information that may affect the decisionmaking process.

The Commission's staff, under its obligations for board notification, has in the past submitted allegations to boards without awaiting their resolution or determination of significance relative to the decisionmaking process. This practice is consistent with the Commission-approved board notification policy. However, it has resulted, on occasion, in presenting boards with new information, the significance of which is not readily apparent. Consequently, in the future, board notifications of allegations will not be made until an initial screening of the allegations is made. Only those allegations that are found not to be frivolous, are relevant and material to the decisionmaking process (as determined under existing board notification procedures), and are determined to warrant further scrutiny will be submitted to the presiding tribunal. Board notification should still be made promptly, consistent with the need and time required for screening. The board notification procedures should be revised accordingly.

Dated at Rockville, Maryland, this day of , 2001.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.

APPENDICES

- A - Submitting Rulemaking Documents or Policy Statements for Publication in the Federal Register
- B - The Administrative Procedure Act (5 U.S.C. 551-553)
- C - List of Subject Index Terms
- D - Regulatory History Procedures
- E - Consultation With the States During the Preparation of Rulemaking Environmental Assessment Documents
- F - Small Business Regulatory Enforcement Fairness Act Procedures
- G - Procedure for Assessment of Federal Regulations and Policies on Families Procedures
- H - Abbreviations Used in the NRC Regulations Handbook

Appendix A - Submitting Rulemaking Documents or Policy Statements for Publication in the Federal Register

This appendix describes the procedures for preparing and submitting the packages that are required when a rulemaking document or policy statement is readied for publication in the *Federal Register*. The packages necessary to ensure the prompt and complete implementation of Commission, Executive Director for Operations (EDO), and Chief Financial Officer (CFO) rulemaking actions and Commission policy statements are the *Federal Register* notice package and the congressional letter package.

The staff office originating the rulemaking action or policy statement is responsible for preparing the required packages. The originating office shall submit the packages required to complete action on a rulemaking action or policy statement to the Rules and Directives Branch (RDB), Office of Administration (ADM) (Mail Stop: T-6 D59). The required packages are normally submitted as follows:

(a) If the rulemaking action was approved by the Commission and is to be signed by the Secretary of the Commission, the packages are submitted to RDB at least 2 working days before the response date indicated in the staff requirements memorandum.

(b) If the rulemaking action was approved and signed by the EDO or the CFO under delegated rulemaking authority, the packages are submitted to RDB within 5 days of being signed by the EDO or the CFO.

(c) A policy statement is always signed by the Secretary of the Commission. Therefore, the procedures that apply to a rulemaking document signed by the Secretary also apply to each policy statement.

The Federal Register Notice Package

Each package submitted to RDB for the transmittal of a rulemaking document or policy statement for publication in the *Federal Register* must contain the following items.

(a) **Transmittal memorandum.**

The transmittal memorandum for the package is sent from the originating office to the Chief of RDB, ADM (see Sample 1). The memorandum should indicate, as appropriate --

- (1) The effective date for a final rule or a final policy statement;
- (2) The date by which comments must be received for an advance notice of proposed rulemaking, a proposed rule, or a draft policy statement;
- (3) Any places in the *Federal Register* notice (FRN) other than the "DATE" line in the preamble where an effective date, a comment period expiration date, or any other date must be inserted before publication;
- (4) The need for expedited publication, if applicable, and a letter to the Office of the Federal Register (OFR) requesting expedited publication and presenting the reason for the request;
- (5) The need for special publication services, such as printing the document as a separate part of the *Federal Register*, if applicable;
- (6) Whether RDB should dispatch congressional letters to the Office of Congressional Affairs (OCA);
- (7) Whether the Office of Public Affairs (OPA) has prepared a public announcement for the action or has determined that a public announcement is not appropriate (see Section 3.13 of this handbook).
- (8) Whether a marked-up copy of FRN or an errata sheet showing Commission-requested or other changes is enclosed for transmittal to the Office of the Secretary;

(9) Whether, in the case of a rule signed by the EDO or the CFO, a Notice of a Final Rule Signed by the EDO or the CFO or an item for the Weekly Information Report has been submitted.

(b) Federal Register notice (FRN).

(1) The appropriate number of paper copies of the FRN to be included in the package depends on who signs the notice.

(i) If the FRN is to be signed by the Secretary of the Commission, include the original and 2 copies.¹

(ii) If the FRN is signed by the EDO or the CFO, include the signed original and 11 copies of the notice.

(2) In addition to the paper copies of documents that are submitted to the OFR for publication, RDB will submit an electronic copy of the document. The originating office shall forward a 3.5-inch diskette that contains a copy of the complete FRN in WordPerfect for each rulemaking document or policy statement to be published in the *Federal Register*. RDB will forward the electronic copy of the document to the OFR and the Government Printing Office (GPO) for their use in typesetting the document.

(c) Public announcement.

If OPA has determined that a public announcement is necessary, the originating office shall submit two copies of the public announcement to RDB.

(d) Marked copy of rule or policy statement.

The originating office shall prepare and submit a marked-up copy of the FRN that indicates any changes made to the rule or policy statement after the Commission acted on it. The changes

¹ The Office of the Secretary makes additional copies of the Federal Register notice after it is signed.

may have been directed by the Commission or may have been necessary to include essential editorial and format corrections made after Commission consideration and approval.

(e) Letter requesting expedited publication.

A letter is sent to the OFR requesting and justifying expedited publication if because of exigent circumstances it is necessary. Each document received by the OFR before 2:00 pm that meets the requirements of 1 CFR Chapter I is assigned to the regular publication schedule. Documents assigned to this schedule are generally published 3 days after receipt by the OFR. The letter, which must fully indicate why expedited publication is necessary, is addressed to Raymond A. Mosley, Director, Office of the Federal Register, Washington, DC 20408. The letter must accompany the document for which expedited publication is requested.

The Congressional Letters Package

Congressional letters must be prepared for each NRC rule and policy statement in accordance with Section 303 of the Atomic Energy Act of 1954, as amended, to keep the Congress "fully and currently informed." (See Sample 2 for a list of the current standard addressees in Congress). The letters should state clearly --

- (a) How the rule affects licensees;
- (b) The impetus for the change; and
- (c) Why, from a safety perspective, the Commission supports the change.

The office preparing the rulemaking package is responsible for identifying the congressional oversight committees that must be notified of this action, preparing the congressional letters for the signature of the Director, OCA (see Sample 3), and providing RDB with the congressional letter package. RDB will forward the congressional letter package to OCA when the rule or policy

statement is forwarded for signature or publication. OCA will review, sign, date, and transmit the letters to appropriate Members of Congress. The congressional letter package for each rulemaking action forwarded for *Federal Register* publication must contain the following items:

(a) One original letter, ready for the signature of the Director of OCA, plus two copies of the enclosure² to the Chairman of each congressional committee with oversight responsibility for the rule;

(b) One original copy of the concurrence page for only one of the congressional committee letters. On the concurrence page type "Identical letters sent to (and list the remaining chairmen of the congressional committees and ranking minority members)."

(c) For each final rule or effective policy statement, the completed forms and enclosures necessary to comply with the congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (see Appendix F to the Handbook).

(d) A 3.5 inch diskette that contains the congressional letters, including the appropriate concurrence page.

² The enclosure usually consists of the FRN. The required copies are included in the copies of the FRN provided with the *Federal Register* package. However, if the FRN is to be signed by the Secretary of the Commission, copies of the FRN need not be included in the Congressional letters package transmitted to RDB.

Sample 1 - The transmittal memorandum

MEMORANDUM TO: Michael T. Lesar, Chief
Rules and Directives Branch
Division of Administrative Services
Office of Administration

FROM: Larry W. Camper, Chief
Medical, Academic, and Commercial Use
Safety Branch
Division of Industrial and Medical Nuclear Safety
Office of Nuclear Material Safety and Safeguards

SUBJECT: IMPLEMENTATION OF COMMISSION ACTION: PROPOSED
NEW 10 CFR PART 39

By memorandum dated February 28, 1999, the Secretary of the Commission indicated that the Commission (with all Commissioners agreeing) has approved the proposed rule on well-logging set out in SECY-99-11.

Please implement the Commission's action by arranging for publication of the attached proposed rule in the Federal Register allowing 90 days for public comment.

Attached is a marked-up copy of the Federal Register notice showing Commission-requested and other changes for transmittal to the Office of the Secretary.

Also attached is a congressional letter package for transmittal to the Office of Congressional Affairs and two copies of the public announcement for transmittal to the Office of Public Affairs.

Attachments:

1. FR Notice and 2 copies
2. Marked-up copy of FR Notice
3. Congressional letter package
4. Public announcement

Sample 2 - List of standard congressional addressees

The Honorable Joe Barton, Chairman
Subcommittee on Energy and Air Quality
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

cc: Representative Rick Boucher

The Honorable George V. Voinovich, Chairman
Subcommittee on Clean Air, Wetlands, Private
Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

cc: Senator Joseph I. Lieberman

Sample 3 - Congressional letter

The Honorable Joe Barton, Chairman
Subcommittee on Energy and Air Quality
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed for your information is a copy of a petition for rulemaking requesting that the Nuclear Regulatory Commission (NRC) amend its regulations to require that an individual report illegal payments to regulators if the individual has knowledge or evidence of the illegal payments. The petitioner requests that an individual who fails to make such a report not be issued a license or be allowed to retain a license. The petition has been docketed as PRM-30-63. The petition was filed with the NRC by Thomas B. Cochran on behalf of the Natural Resources Defense Council.

Also enclosed is a copy of the Federal Register notice for the petition that contains additional information concerning the petition. The notice will be published requesting public comment for a 75-day period.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosures:

1. PRM 30-63
2. Federal Register notice

cc: Rep. Rick Boucher

The Honorable George V. Voinovich, Chairman
Subcommittee on Clean Air, Wetlands, Private
Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

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2. Federal Register notice

cc: Senator Joseph I. Lieberman

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Subcommittee on Energy and Air Quality
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

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Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosures:

1. PRM 30-63
2. Federal Register notice

cc: Rep. Rick Boucher

IDENTICAL LETTER SENT TO: The Honorable George V. Voinovich
cc: Senator Joseph I. Lieberman

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Web Site: <http://www.nrc.gov/OPA>

No. 00-117

July 27, 2000

FINAL NRC SPENT FUEL CASK FABRICATION REGULATIONS TO PROVIDE ADDITIONAL FLEXIBILITY, EFFICIENCY AND CONSISTENCY

The Nuclear Regulatory Commission is amending its regulations for storage of spent fuel from nuclear power plants to allow cask manufacturers to begin fabrication, at their own risk, under an NRC-approved quality assurance program prior to issuance of an agency Certificate of Compliance.

The final amendments, contained in Part 72 of the Commission's regulations, also state that cask designs previously approved or currently under review cannot be challenged during a licensing hearing. The final rule will also eliminate confusion concerning which regulations apply to various types of licensees and certificate holders.

NRC has two processes for approving spent fuel storage: (1) a specific license for an independent spent fuel storage installation that requires the agency to conduct a detailed review of an application to build and operate the installation site; and (2) a general license that allows a nuclear power plant licensee to use storage casks previously approved by the NRC without having a specific license or a detailed review by the agency.

The NRC anticipates that it may receive applications for specific licenses for independent spent fuel storage installations that propose using casks already approved by the agency for use under a general license. Current regulations allow for the design of these previously approved casks to be re-reviewed at a licensing hearing.

The final rule states, however, that if a specific license application for an independent spent fuel storage installation incorporates information on the design of an NRC-approved spent fuel storage cask, any public hearing held to consider the application will not include cask design issues previously addressed or currently under review by the agency.

This change will eliminate the need for repetitious reviews by hearing boards. Members of the public will already have had the opportunity to comment on each cask design before approval under a certificate because the NRC issues a *Federal Register* notice seeking comments before deciding whether to incorporate an approved design into its regulations.

However, design interface issues between a referenced cask design and specific site characteristics, or changes to an approved cask design, are required to be included in an application and may be raised as potential issues in a licensing proceeding.

Regarding cask fabrication, current regulations prohibit a general licensee, its contractor, or an applicant seeking NRC approval of a cask design from beginning fabrication prior to the agency's issuing a certificate of compliance. By contrast, applicants seeking a specific license for an independent fuel storage installation are permitted to begin fabrication before a license is issued. The revised regulations eliminate these differences.

With the change in regulations, applicants who choose early fabrication will be at risk and would have to bear the costs of any actions needed to conform to the conditions within an NRC Certificate of Compliance.

A proposed rule on this subject was issued in the *Federal Register* for public comment on November 3, 1999. The Commission received eight comment letters on the proposed rule, including those from five NRC licensees, one applicant for an NRC license, one NRC Part 72 certificate holder, and the Nuclear Energy Institute representing the industry. Changes made as a result of the comments received are discussed in a *Federal Register* notice to be issued shortly.

Appendix B - The Administrative Procedure Act (5 U.S.C. 551-553)

Sec.

551. Definitions.

552. Public information; agency rules, opinions, orders, records, and proceedings - (Paragraph (a)(1)).

553. Rulemaking.

§551. Definitions.

For the purpose of this subchapter --

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include -

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia; or except as to the requirements of

section 552 of this title -

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; or sections 1622, 1884, 1891-1902, and former section 1641(B)(2), of title 50, appendix;

(2) "person" includes an individual, partnership, corporation, association, or public or private organization other than an agency;

(3) "party" includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes;

(4) "rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;

(5) "rule making" means agency process for formulating, amending, or repealing a rule;

(6) "order" means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, or an agency in a matter other than rule making but including licensing;

(7) "adjudication" means agency process for the formulation of an order;

(8) "license" includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission;

(9) "licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license;

(10) "sanction" includes the whole or a part of an agency--

(A) prohibition, requirement, limitation, or other condition affecting the freedom of a person;

(B) withholding of relief;

(C) imposition of penalty or fine;

(D) destruction, taking, seizure, or withholding of property,

(E) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;

(F) requirement, revocation, or suspension of a license; or

(G) taking other compulsory or restrictive action;

(11) "relief" includes the whole or a part of an agency--

(A) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;

(B) recognition of a claim, right, immunity, privilege, exemption, or exception; or

(C) taking of other action on the application or petition of, and beneficial to, a person;

(12) "agency proceeding" means an agency process as defined by paragraphs (5), (7), and (9) of this section; and

(13) "agency action" includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.

(14) "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this subchapter.

§552. Public information; agency rules, opinions, orders, records, and proceedings.

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public -

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules or procedure, descriptions of forms available or the places at which the forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing. Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

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§553. Rule making.

(a) This section applies, according to the provisions thereof, except to the extent that there is involved -

- (1) a military or foreign affairs function of the United States; or
- (2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include -

- (1) a statement of the time, place, and nature of public rule making proceedings;
- (2) reference to the legal authority under which the rule is proposed; and
- (3) either the terms or substance of the proposed rule or description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply -

(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except -

(1) a substantive rule which grants or recognizes an exemption or relieves a restriction;

(2) interpretative rules and statements of policy; or

(3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

Appendix C - List of Subject Index Terms

NOTE: The term Incorporation by reference is used only in documents that contain a new or revised incorporation by reference subject to approval by the Director, Office of the Federal Register. If a document contains a new or revised incorporation by reference, the term Incorporation by reference must be included in the list of subject index terms for the 10 CFR Part that contains the incorporation by reference.

Part 1 - Statement of Organization and General Information

Organization and functions (Government Agencies)

Part 2 - Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders

Administrative practice and procedure
Antitrust
Byproduct material
Classified information
Environmental protection
Nuclear materials
Nuclear power plants and reactors
Penalties
Sex discrimination
Source material
Special nuclear material
Waste treatment and disposal

Part 4 - Nondiscrimination in Federally Assisted Commission Programs

Administrative practice and procedure
Blind
Buildings
Civil rights
Employment
Equal employment opportunity
Federal aid programs
Grant programs
Handicapped
Loan programs
Reporting and recordkeeping requirements
Sex discrimination

Part 5 - Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving Federal Financial Assistance

Administrative practice and procedure
Buildings and facilities
Civil rights
Colleges and universities
Education
Education of individuals with disabilities
Educational facilities
Educational research
Educational study programs
Equal educational opportunity
Equal employment opportunity
Graduate fellowship programs
Grant programs-education
Individuals with disabilities
Investigations
Reporting and recordkeeping requirements
Sex discrimination
State agreement program
Student aid
Women

Part 7 - Advisory Committees

Advisory committees
Sunshine Act

Part 8 - Interpretations

Government contracts
Insurance
Intergovernmental relations
Inventions and patents
Nuclear power plants and reactors

Part 9 - Public Records

Criminal penalties
Freedom of information
Privacy
Reporting and recordkeeping requirements
Sunshine Act

Part 10 - Criteria and Procedures for Determining Eligibility for Access to Restricted Data or National Security Information or an Employment Clearance

Administrative practice and procedure
Classified information
Government employees
Security measures

Part 11 - Criteria and Procedures for Determining Eligibility for Access To or Control Over Special Nuclear Material

Hazardous materials - transportation
Investigations
Nuclear materials
Reporting and recordkeeping requirements
Security measures
Special nuclear material

Part 12 - Implementation of the Equal Access to Justice Act in Agency Proceedings

Adversary adjudications
Award
Equal Access to Justice Act
Final disposition
Net worth
Party

Part 13 - Program Fraud Civil Remedies

Claims
Fraud
Organization and function (government agencies)
Penalties

Part 14 - Administrative Claims Under Federal Tort Claims Act

Administrative practice and procedure
Tort claims

Part 15 - Debt Collection Procedures

Administrative practice and procedure
Debt collection

Part 16 - Salary Offset Procedures for Collecting Debts Owed by Federal Employees to the Federal Government

Administrative practice and procedure
Debt collection

Part 19 - Notices, Instructions and Reports to Workers; Inspection and Investigations

Criminal penalties
Environmental protection
Nuclear materials
Nuclear power plants and reactors
Occupational safety and health
Radiation protection
Reporting and recordkeeping requirements
Sex discrimination

Part 20 - Standards for Protection Against Radiation

Byproduct material
Criminal penalties
Licensed material
Nuclear materials
Nuclear power plants and reactors
Occupational safety and health
Packaging and containers
Radiation protection
Reporting and recordkeeping requirements
Source material
Special nuclear material
Waste treatment and disposal

Part 21 - Reporting of Defects and Noncompliance

Nuclear power plants and reactors
Penalties
Radiation protection
Reporting and recordkeeping requirements

Part 25 - Access Authorization for Licensee Personnel

Classified information
Criminal penalties
Investigations
Reporting and recordkeeping requirements
Security measures

Part 26 - Fitness for Duty Programs

Alcohol abuse
Alcohol testing
Appeals
Chemical testing
Drug abuse
Drug testing
Employee assistance programs
Fitness for duty
Management actions
Nuclear power reactors
Protection of information
Reporting and recordkeeping requirements

Part 30 - Rules of General Applicability to Domestic Licensing of Byproduct Material

Byproduct material
Criminal penalties
Government contracts
Intergovernmental relations
Isotopes
Nuclear materials
Radiation protection
Reporting and recordkeeping requirements

Part 31 - General Domestic Licenses for Byproduct Material

Byproduct material
Criminal penalties
Labeling
Nuclear materials
Packaging and containers
Radiation protection
Reporting and recordkeeping requirements
Scientific equipment

Part 32 - Specific Domestic Licenses to Manufacture or Transfer Certain Items
Containing Byproduct Material

Byproduct material
Criminal penalties
Labeling
Nuclear materials
Radiation protection
Reporting and recordkeeping requirements

Part 33 - Specific Domestic Licenses of Broad Scope for Byproduct Material

Byproduct material
Criminal penalties
Nuclear materials
Radiation protection
Reporting and recordkeeping requirements

Part 34 - Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations

Criminal penalties
Packaging and containers
Radiation protection
Radiography
Reporting and recordkeeping requirements
Scientific equipment
Security measures

Part 35 - Medical Use of Byproduct Material

Byproduct material
Criminal penalties
Drugs
Health facilities
Health professions
Medical devices
Nuclear materials
Occupational safety and health
Radiation protection
Reporting and recordkeeping requirements

Part 36 - Licenses and Radiation Safety Requirements for Irradiators

Byproduct material
Criminal penalties
Nuclear materials
Reporting and recordkeeping requirements
Scientific equipment
Security measures

Part 39 - Licenses and Radiation Safety Requirements for Well Logging

Byproduct material
Criminal penalties
Nuclear material
Oil and gas exploration - well logging
Reporting and recordkeeping requirements
Scientific equipment
Security measures
Source material
Special nuclear material

Part 40 - Domestic Licensing of Source Material

Criminal penalties
Government contracts
Hazardous materials transportation
Nuclear materials
Reporting and recordkeeping requirements
Source material
Uranium

Part 50 - Domestic Licensing of Production and Utilization Facilities

Antitrust
Classified information
Criminal penalties
Fire protection
Intergovernmental relations
Nuclear power plants and reactors
Radiation protection
Reactor siting criteria
Reporting and recordkeeping requirements

Part 51 - Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions

Administrative practice and procedure
Environmental impact statement
Nuclear materials
Nuclear power plants and reactors
Reporting and recordkeeping requirements

Part 52 - Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Plants

Administrative practice and procedure
Antitrust
Backfitting
Combined license
Early site permit
Emergency planning
Fees
Inspection
Limited work authorization
Nuclear power plants and reactors
Probabilistic risk assessment
Prototype
Reactor siting criteria
Redress of site
Reporting and recordkeeping requirements
Standard design
Standard design certification

Part 54 - Requirements for Renewal of Operating Licenses for Nuclear Power Plants

Administrative practice and procedure
Age-related degradation
Backfitting
Classified information
Criminal penalties
Environmental protection
Nuclear power plants and reactors
Reporting and recordkeeping requirements

Part 55 - Operators' Licenses

Criminal penalties
Manpower training programs
Nuclear power plants and reactors
Reporting and recordkeeping requirements

Part 60 - Disposal of High-Level Radioactive Wastes in Geologic Repositories

Criminal penalties
High-level waste
Nuclear materials
Nuclear power plants and reactors
Reporting and recordkeeping requirements
Waste treatment and disposal

Part 61 - Licensing Requirements for Land Disposal of Radioactive Waste

Criminal penalties
Low-level waste
Nuclear materials
Reporting and recordkeeping requirements
Waste treatment and disposal

Part 62 - Criteria and Procedures for Emergency Access to Non-Federal and Regional Low-Level Waste Disposal Facilities

Administrative practice and procedure
Denial of access
Emergency access to low-level waste disposal
Low-level radioactive waste
Low-level radioactive waste treatment and disposal
Low-level waste policy amendments act of 1985
Nuclear materials
Reporting and recordkeeping requirements

Part 63 - Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada

Criminal penalties
High-level waste
Nuclear power plants and reactors
Reporting and recordkeeping requirements
Waste treatment and disposal

Part 70 - Domestic Licensing of Special Nuclear Material

Criminal penalties
Hazardous materials transportation
Material control and accounting
Nuclear materials
Packaging and containers
Radiation protection
Reporting and recordkeeping requirements
Scientific equipment
Security measures
Special nuclear material

Part 71 - Packaging and Transportation of Radioactive Material

Criminal penalties
Hazardous materials transportation
Nuclear materials
Packaging and containers
Reporting and recordkeeping requirements

Part 72 - Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste

Administrative practice and procedure
Criminal penalties
Manpower training programs
Nuclear materials
Occupational safety and health
Penalties
Radiation protection
Reporting and recordkeeping requirements
Security measures
Spent fuel
Whistleblowing

Part 73 - Physical Protection of Plants and Materials

Criminal penalties
Export
Hazardous materials transportation
Import
Nuclear materials
Nuclear power plants and reactors
Reporting and recordkeeping requirements
Security measures

Part 74 - Material Control and Accounting of Special Nuclear Material

Accounting
Criminal penalties
Hazardous materials transportation
Material control and accounting
Nuclear materials
Packaging and containers
Radiation protection
Reporting and recordkeeping requirements
Scientific equipment
Special nuclear material

Part 75 - Safeguards on Nuclear Material - Implementation of US/IAEA Agreement

Criminal penalties
Intergovernmental relations
Nuclear materials
Nuclear power plants and reactors
Reporting and recordkeeping requirements
Security measures

Part 76 - Certification of Gaseous Diffusion Plants

Certification
Criminal penalties
Radiation protection
Reporting and record keeping requirements
Security measures
Special nuclear material
Uranium enrichment by gaseous diffusion

Part 81 - Standard Specifications for the Granting of Patent Licenses

Administrative practice and procedure
Inventions and patents

Part 95 - Facility Security Clearance and Safeguarding of National Security Information and Restricted Data

Classified information
Criminal penalties
Reporting and recordkeeping requirements
Security measures

Part 100 - Reactor Site Criteria

Nuclear power plants and reactors
Reactor siting criteria

Part 110 - Export and Import of Nuclear Equipment and Material

Administrative practice and procedure
Classified information
Criminal penalties
Export
Import
Intergovernmental relations

Nuclear materials
Nuclear power plants and reactors
Reporting and recordkeeping requirements
Scientific equipment

Part 140 - Financial Protection Requirements and Indemnity Agreements

Criminal penalties
Extraordinary nuclear occurrence
Insurance
Intergovernmental relations
Nuclear materials
Nuclear power plants and reactors
Reporting and recordkeeping requirements

Part 150 - Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274

Criminal penalties
Hazardous materials transportation
Intergovernmental relations
Nuclear materials
Reporting and recordkeeping requirements
Security measures
Source material
Special nuclear material

Part 160 - Trespassing on Commission Property

Federal buildings and facilities
Penalties
Security measures

Part 170 - Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended

Byproduct material
Import and export licenses
Intergovernmental relations
Non-payment penalties
Nuclear materials
Nuclear power plants and reactors
Source material
Special nuclear material

Part 171 - Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses,
Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program
Approvals and Government Agencies Licensed by NRC

Annual charges
Byproduct material
Holders of certificates, registrations, approvals
Intergovernmental relations
Nonpayment penalties
Nuclear materials
Nuclear power plants and reactors
Source material
Special nuclear material

Appendix D - Regulatory History Procedures

In a memorandum dated March 24, 2000, the Executive Director for Operations (EDO) updated the 1985 procedures for compiling a complete regulatory history for each rulemaking action. The regulatory history ensures that all documents of central relevance to a rulemaking proceeding are identified and accessible. The regulatory history is intended to facilitate the resolution of any issues that may arise concerning the interpretation of a particular regulation. These procedures apply to each proposed or final rule submitted for publication in the *Federal Register*.

(a) The lead office for a rulemaking action is responsible for identifying and maintaining the documents that will comprise the regulatory history. The lead office shall include all documents of central relevance to the factual basis, coverage, meaning, and historical development of the rulemaking action. The lead office is expected to use its judgment in determining whether a specific document is of central relevance to a rulemaking

(1) The lead office shall include the following types of documents in the regulatory history of a proposed or final rule:

(i) The rulemaking plan, including supporting documents relating to the rulemaking plan and its approval.

(ii) Drafts of the rulemaking package transmitted for office concurrence.

(iii) Formal office comments/concurrences, including e-mail concurrences, on the rulemaking packages submitted for office concurrence.

(iv) Source documents relied upon in preparing the draft rule (for example, research studies or consensus standards endorsed in the draft rule).

(v) Documents that synthesize or organize data in a form relied upon in the draft rule.

(vi) Supporting documentation such as the regulatory analysis, the Cost Analysis Group Report, the environmental assessment or the environmental impact statement, the regulatory flexibility analysis, and Office of Management and Budget clearance package.

(vii) Public comments submitted in response to a petition for rulemaking, an advanced notice of proposed rulemaking or other type action soliciting enhanced public participation, or a proposed rule.

(viii) Committee To Review Generic Requirements minutes and recommendations concerning the draft rule.

(ix) Advisory Committee on Reactor Safeguards, Advisory Committee on Nuclear Waste, Advisory Committee on the Medical Uses of Isotopes, or the Atomic Safety and Licensing Board Panel comments on the draft rule.

(x) The Commission paper transmitting the draft rule to the Commission or the memorandum transmitting the rule to the EDO or the Chief Financial Officer for approval.

(xi) The transcript or summary of the Commission meeting or briefing on consideration of the draft rule.

(xii) The staff requirements memorandum (SRM) containing Commission recommendations on the draft rule.

(xiii) The *Federal Register* document (petition for rulemaking, advance notice of proposed rulemaking, proposed rule, final rule, or any other *Federal Register* document issued concerning the rule).

(xiv) Any other documents of central relevance (for example, Agreement State correspondence or interagency correspondence).

(2) The lead office should be sure to check all attachments to each document to ensure that no documents to be withheld are inadvertently released. Some documents that may be withheld are sometimes attached to documents that are released routinely.

(i) SECY papers concerning rulemaking issues are generally released to the public. The SRM generally contains instructions from the Office of the Secretary that indicate when and if a SECY paper, the SRM, and the Commissioner vote sheets may be made available to the public.

(ii) Any questions concerning the release of a SECY paper, an SRM, or the Commissioner vote sheet must be coordinated with SECY.

(b) The regulatory history must be created in the Agencywide Documents Access and Management System (ADAMS).

(1) The lead office shall transfer all documents that are in WordPerfect to ADAMS.

(2) Documents that meet the criteria set out in paragraph (a)(1) of this section that are handwritten must be scanned for inclusion in ADAMS. Documents annotated with purely editorial handwritten comments need not be included.

(3) The regulation identifier number (RIN) should be used as the case/reference number in the profile of each document in the regulatory history. This unique RIN assists in identifying all documents comprising a regulatory history. To the extent possible, all the documents comprising a regulatory history should be placed in a folder in the ADAMS environment.

(4) Although earlier versions of a document are included in ADAMS, only the final version of a document must be made publicly available.

(c) After a proposed or final rule is published in the *Federal Register*, the lead office shall compile an index of the documents that comprise the regulatory history of the proceeding. The index itself must be included as part of the regulatory history.

(1) The lead office shall identify the source of access for each document listed.

(i) The lead office shall ascertain whether each internal document listed in the regulatory history index is available in ADAMS. If an internal document is not already available in ADAMS, the lead office is responsible for placing the document in ADAMS.

(ii) If the document is published separately, for example, documents in the NUREG series, National Technical Information Service publications, books, or articles, the originating office shall include the appropriate bibliographic citation for the document.

(2) Within 60 days after the proposed or final rule is published in the *Federal Register*, the lead office shall forward the completed index to the Rules and Directives Branch (RDB), Office of Administration. The lead office shall use the title of the rule and the applicable Code of Federal Regulations citation (for example, 10 CFR Part 50) appearing in the *Federal Register* notice as the title of the regulatory history index. The title must also include the complete *Federal Register* citation for the published proposed or final rule (for example, 65 FR 12345; February 20, 2000).

(d) RDB is responsible for ensuring that a completed index of documents comprising the regulatory history has been prepared for each proposed or final rule. RDB shall retain each completed index and disseminate copies of any index to interested NRC offices.

Appendix E - Consultation With the States During the Preparation of Rulemaking Environmental Assessment Documents

BACKGROUND

In a memorandum dated December 6, 1994, the Executive Director for Operations (EDO) directed the Office of Nuclear Regulatory Research to prepare procedures for consultations with the States before the issuance of environmental assessments (EAs) and to coordinate the development of these procedures with the Office of Nuclear Reactor Regulation and the Office of Nuclear Material Safety and Safeguards. These procedures respond to the NRC's commitment to the Council on Environmental Quality to consult with the States on environmental issues before issuing an EA and to document this consultation in the EA.

PROCEDURE

1. This procedure is intended only for EAs that are prepared for a rulemaking action. Not every rule requires preparation of an EA. Some rules fall under categorical exclusions listed in 10 CFR Part 51.22(c) (see Sections 5.15 and 7.15 of this handbook).
2. In addition to this procedure, the staff in all NRC offices who are assigned the responsibility of issuing a rule shall follow their internal office, division, or branch procedures, as appropriate, when preparing the EA in support of a rule.
3. After the proposed rule is signed by the Secretary, the EDO, or the Chief Financial Officer (CFO), and before its publication in the *Federal Register* for public comment, the staff shall prepare a generic cover letter with copies of the draft EA and the FRN. The letter must be addressed to "State Liaison Officers" and request States' comments on the FRN and the draft EA. This letter will serve to inform the States of the publication of the FRN and to actively solicit

their views, whether generic or site-specific, on any environmental issues discussed in the draft EA. This request for State comment on rulemaking EAs will be the vehicle for NRC consultation with the States on rulemaking EAs. The staff should request that States reply by a date that allows the same number of days that are allowed for public comments in the FRN. A sample generic cover letter to State Liaison Officers is attached to this appendix. The list of State Liaison Officers is maintained by the Office of State and Tribal Programs (OSTP).

4. The office issuing the proposed rule shall prepare the generic cover letter as a part of the rulemaking package that is signed by the Secretary, the EDO, or the CFO. After the proposed rule is approved, lead office shall forward the generic cover to the OSTP for signature and dispatch to the States.

5. The staff should allow the States to submit their comments by the three transmittal options provided in the draft generic letter. These options are --

- a. By regular mail to the Secretary;
- b. By fax to the Secretary; or
- c. Through the NRC rulemaking Web site (<http://ruleforum.llnl.gov>).

6. The staff should use this handbook for guidance in developing the proposed rule and the accompanying draft EA. This handbook contains a description of the legal requirements for rulemaking and NRC's basic internal procedures. Specifically, the staff shall use the language in Section 5.15 (f) and (g) that references the availability of the draft environmental statement or the draft EA. This language has been modified to reference the NRC's solicitation of comments from the States.

7. After the receipt of comments from the States and the public, the staff shall prepare the final rule and the final EA, as appropriate, on the basis of the comments received and the staff's response to these comments.

8. The staff shall include a separate section in the draft EA to state that the NRC mailed the draft EA to the States for their comment. This section must be entitled "STATES CONSULTED AND SOURCES USED." When the staff prepares the final EA, this section should be revised to state that the States were consulted, to summarize the States' comments, and to provide the staff's response to these comments.

9. The summary of comments discussion in the section entitled "STATES CONSULTED AND SOURCES USED" in the final EA may be brief if comments from the States are general agreement type comments. If significant or substantive comments are received, the summary must be more extensive. The level of detail of the comment analysis should be comparable to the level of detail used to discuss public comments received on a proposed rule.

10. The documentation of the States' comments in the final EA should include--

- a. Each State's agency or office (including the name of the official) and the date of receipt of the comments;
- b. A brief summary of the views or comments expressed by each State;
- c. The NRC staff's response to the comments; and
- d. A reference to publicly available documents containing additional information, if applicable.

11. The staff shall proceed with finalizing the EA and the FRN even if no comments are received from the States.

Attachment - Sample Generic Cover Letter

DATE

STATE LIAISON OFFICERS

SUBJECT: [TITLE OF THE RULE]

The United States Nuclear Regulatory Commission (NRC) has sent to the Office of the Federal Register for publication the enclosed proposed amendment to the Commission's rules in 10 CFR Part xxx. This amendment resulted from [insert here the reason(s) that prompted the development of the proposed rule].

This amendment would [summarize the amendment and use the sentences that appear in the Federal Register Notice]. This proposed rulemaking action will [describe the NRC or licensee action that will result from the amendment and its net effect on public health and safety].

Also enclosed is an environmental assessment (EA) that has been prepared in support of the proposed rule. The conclusion of the EA is the Commission's finding that no significant environmental impact will result from the proposed rule. The EA and the FRN are provided for your review and comment. If you have any comments on the rule and its environmental impact, please send them by [insert the date, using the same number of days allowed for public comments in the FRN]. Comments received after this date will be considered if it is practical to do so, but the [insert Commission if the Secretary signed the rule, insert NRC if the EDO or the CFO signed it] is able to assure consideration only for comments received on or before this date.

You can use the following methods to transmit your comments: (1) you can mail your written comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff; (2) you can fax your comments to [insert the Secretary fax number, including area code]; and (3) you may also provide comments via the NRC's interactive rulemaking Website at <http://ruleforum.llnl.gov>. This site provides the capability to upload comments as files (any format) if your Web browser supports that function. For information about the interactive rulemaking Website, contact Ms. Carol Gallagher, (301) 415-5905 (e-mail: CAG@nrc.gov).

For additional information on this action, contact [Project Manager], Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) xxx-xxxx, e-mail xxx@nrc.gov.

Sincerely,

Paul H. Lohaus, Director
Office of State and Tribal Programs

Enclosure: As stated

APPENDICES

E-4

MARCH 2001

Appendix F - Small Business Regulatory Enforcement Fairness Act Procedures

BACKGROUND

On March 29, 1996, the President signed the Small Business Regulatory Enforcement Fairness Act (Public Law 104-121). The act requires Federal agencies to provide Congress with an opportunity to review agency rules (5 U.S.C. Chapter 8). The act's definition of "rule" is broad enough to capture most of the NRC's generic, nonadjudicatory actions. However, compliance with the act should not be an onerous burden because most of the agency's generic actions can become effective as soon as they are sent to Congress for review.

For each final rule, an agency is required to submit a report to Congress containing a copy of the final rule, a concise general statement of the final rule (including a statement indicating whether the action is a "major" rule), and the effective date of the final rule. The report is to be submitted to each House of Congress and the Comptroller General before the rule takes effect. The report must be accompanied by any other relevant information required by another act or by an Executive order. This relevant information would include any cost-benefit analyses, regulatory flexibility analyses, Paperwork Reduction Act statements, and any environmental assessments or impact statements.

The effective date for all "major" rules¹ may be no earlier than 60 days after the date of congressional receipt of the required material or publication of the final rule in the *Federal Register*, whichever is later. The legislation also establishes special congressional procedures for the disapproval of agency rules. The requirements concerning major rules are applicable to all major final rules promulgated after March 1, 1996.

¹This term is defined in Part 2 of Attachment A to the Procedures for Complying With the Small Business Regulatory Enforcement Fairness Act at the end of this appendix.

With limited exceptions, all final agency rules, policy statements, and agency documents interpreting agency requirements are defined as "rules" for purposes of the act. The Office of the General Counsel (OGC) has prepared a preliminary list of NRC actions that meet the act's definition of "rule" (Attachment E to this appendix). Please note that the list is not exhaustive and that judgment may be necessary when determining whether an individual action is subject to the act. OGC also prepared a list of NRC actions that are not rules for purposes of the act (Attachment F to this appendix).

Under the act, the Office of Management and Budget (OMB) is responsible for the determination of whether a rule is "major." The NRC will review with OMB the types of regulatory actions that may be considered major rules under this act.

The following procedures are intended to ensure that NRC complies with the congressional review procedures established by the Small Business Regulatory Enforcement Fairness Act.

PROCEDURES FOR COMPLYING WITH THE
SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT

Determine if a final action is subject to the act's requirements

1. The lead office must exercise judgment in determining whether the final action is subject to the requirements of the Act. Please note that the preliminary lists of documents (Attachments E and F to this Appendix) are not exhaustive and that inclusion on the lists as either covered or not covered is merely presumptive, not definitive. Use Part 1 of the Record of Compliance with the Small Business Regulatory Enforcement Fairness Act (SBREFA) (Attachment A to this Appendix) to aid in making this decision.
2. If you determine that a final action is covered by the Act, follow the procedures under "OMB Review" below.
3. If you determine that a final action is not covered by the Act, include a copy of the Record of Compliance in the office subject file for the action. The Record of Compliance must be included in the regulatory history for the final rule and be included in the material concerning this rulemaking that is made available to the public.

OMB Review

1. Prepare a brief description of the action using the format presented in Attachment B to this appendix for each final action covered by the act. Forward the description to the person in your office designated as the point of contact. The description should include your office's recommendation as to whether the action is a "major rule" as defined by the act. The rulemaking plan and the draft regulatory analysis should provide sufficient information to make this determination. The determination must be included in the regulatory history for the final rule and in the material concerning this rulemaking that is made available to the public.
2. On the first work day of each month, the office contact shall forward a compilation of final actions for that office to the Rules and Directives Branch (RDB), Mail Stop T-6 D59. The submission must include a paper copy of the compilation and a disk that presents the compilation as a WordPerfect file.
3. RDB will give the Associate General Counsel for Licensing and Regulation a combined list of actions for the NRC at the same time RDB forwards the list to OMB for consideration.
4. RDB will coordinate with the OMB the determination of whether any action is considered a "major rule."
5. RDB will inform the office contact and the Associate General Counsel for Licensing and Regulation if OMB review of an action results in a change in the determination of an action as a "major rule."

6. If a Federal Register notice is either required or routinely prepared for an action covered by the act, the *Federal Register* notice must contain a statement as to whether the action is a major rule, and the notice must confirm that the NRC has verified this determination with OMB. The statement must be included whether the *Federal Register* notice publishes the text of the final action in its entirety or simply announces the availability of the final action.

Congressional notification

1. The staff shall prepare the standard forms for submittal to the Speaker of the House, the President of the Senate, and the General Counsel of the General Accounting Office (GAO) that transmit the required information for each action. The standard form is contained in INFORMS (GAO 001 SBREFA - Submission of Federal Rules Under the CRA [Congressional Review Act]). The standard form may also be accessed through either the GAO or the OMB Website. Attachment C to this appendix is the standard list of addressees. Attachment D to this appendix contains instructions for completing the form.
2. The forms for all rules must be prepared for the signature of the Director, Office of Congressional Affairs (OCA).
3. These standard forms are in addition to the standard notification letters to the Subcommittee on Energy and Air Quality, Committee on Energy and Commerce, United States House of Representatives and the Subcommittee on Clean Air, Wetlands, Private Property and Nuclear Safety, Committee on Environment and Public Works, United States Senate, prepared in accordance with Section 303 of the Atomic Energy Act.
4. Copies of the draft forms must be included in the concurrence package for the final action. Concurrence must be obtained at the appropriate level for the final action.
 - If the final action is approved at the level of the Commission, the Executive Director for Operations (EDO) or the Chief Financial Officer (CFO), draft forms must be included as background information to the Commission paper or the memorandum requesting action by the EDO or the CFO.
 - If the final action is approved at the staff level, the standard forms must receive concurrence at the same level at which the action is signed.
 - The final concurrence block should be prepared for the Director, OCA.

Transmitting the forms and issuing the final action

1. Final actions that are published or noticed in the *Federal Register*
 - **Final package** - When the final action is submitted for signature and publication, the submittal package must include completed forms ready for signature and three copies of each of the required enclosures.

- **Commission approval** - If the action is approved at the Commission level, RDB will forward the Senate, House, and GAO forms to OCA for signature and transmittal to Congress and the GAO at the same time RDB forwards the Federal Register notice to the Office of the Secretary for signature and transmittal for publication.
- **EDO or CFO approval** - If the action is approved at the level of the EDO, or the CFO, or at staff level, RDB will forward the Senate, House, and GAO forms to OCA for signature and transmittal to Congress and the GAO at the same time RDB forwards the Federal Register notice to the Office of the Federal Register for publication.

2. Final actions that are not published or noticed in the *Federal Register*

- The issuing official signs and dates the final action. However, the final action is not issued or distributed until the following actions are completed:
 - The issuing office forwards the Senate, House, and GAO forms to OCA for signature and transmittal to Congress and the GAO. The package must include three copies of the signed action as well as three copies of each required attachment.
 - When the issuing office transmits the completed forms to OCA, the final action may be issued and distributed.

Differences between a "major" rule and a "nonmajor" rule

For "major" rules:

1. A *Federal Register* notice of final action must be prepared.
2. The forms will be forwarded for the signature of the Director of OCA when the *Federal Register* notice for the final action is forwarded to the Office of the Secretary for signature.
3. A final action may become effective no earlier than 60 days after the date of congressional receipt of the required material or publication of the final action in the *Federal Register*, whichever is later.

For "nonmajor" rules:

1. A *Federal Register* notice of the final action may not be required or routinely prepared. Follow normal agency practice concerning the preparation of a *Federal Register* notice.
2. The forms will be forwarded for the signature of the Director of OCA when either a *Federal Register* notice for the final action is forwarded for signature and publication or when issuing office signs and dates the final action.
3. The NRC chooses an appropriate effective date. This effective date must be after the required submittals to Congress and the GAO.

ATTACHMENT A - RECORD OF COMPLIANCE WITH THE SMALL BUSINESS
REGULATORY ENFORCEMENT FAIRNESS ACT

TITLE OF ACTION:

RIN OR NRC ID NUMBER:

Part 1 - Applicability determination

Indicate whether, in your judgement, the act applies to this final action. If you indicate that the act does not apply, you must also indicate the reason for this determination.

_____ The requirements of the act are not applicable to this final action. Indicate the reason for this determination, sign and date this record, and retain a copy of this record in the subject file for this action.

_____ The action does not provide any new interpretation of law or policy

_____ The action applies to a specific licensee or individual.

_____ The action approves a product.

_____ The action is a rule of agency management or personnel.

_____ The action is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of external parties.

_____ The requirements of the act apply to this final action because it is the whole or part of a final agency action that has general applicability and future effect designed to implement, interpret, or prescribe law or policy. Continue with Parts 2-5.

Signed: _____

Dated: _____

Part 2 - Major rule determination

_____ The final action is not a "major rule" as defined in 5 U.S.C. 804(2).

_____ The final action is a "major rule" as defined in 5 U.S.C. 804 (2) because the final action has resulted or is likely to result in--

_____ An annual effect on the economy of \$100,000,000 or more

_____ A major increase in costs or prices for consumers; individual industries; Federal, State or local government agencies; or geographic regions

____ Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets

Signed: _____

Dated: _____

Part 3 - OMB confirmation of NRC determination

__(date)__ Summary of final action prepared

__(date)__ Summary of final action was forwarded to the RDB

__(date)__ OMB response received

____ OMB confirmed NRC determination

____ OMB overturned NRC determination

Signed: _____

Dated: _____

Part 4 - Congressional notification

__(date)__ Forms to the House, Senate, and GAO have been prepared and included in the concurrence package for the final action

__(date)__ Appropriate concurrences have been obtained for the forms

__(date)__ Final action submitted for publication or signed by issuing official

__(date)__ Forms submitted to OCA for signature

__(date)__ Forms transmitted to the House, Senate, and GAO

__(date)__ Final action published or issued

Signed: _____

Dated: _____

ATTACHMENT B - FORMAT FOR DESCRIBING FINAL RULES

AGENCY: Nuclear Regulatory Commission
TITLE OF ACTION: Import and Export of Radioactive Material
LEVEL OF SIGNIFICANCE: Not a major rule
UPCOMING ACTION: Final rule
RIN: 3150-AD66
ESTIMATED DATE OF ISSUANCE: July 1996
STATUTORY OR JUDICIAL DEADLINE: None

DESCRIPTION OF ACTION:

The final rule will strengthen the Commission's control over radioactive waste coming into and leaving the United States by requiring specific NRC licensing of radioactive waste imports and exports. The final rule will help to ensure that transactions involving the import and export of radioactive waste are subject to the approval of the U.S. Government and the consent of other involved parties. The new regulations will conform U.S. policies with the voluntary Code of Practice approved by the International Atomic Energy Agency, which was adopted to guide Nation States in the development of policies and laws on the transboundary shipments of radioactive wastes.

[Note: If the final action is not a final rule, substitute an agency identification number, such as the docket number or the regulatory guide number, for the regulation identifier number (RIN).]

ATTACHMENT C - ADDRESSEES FOR FORMS TRANSMITTING FINAL RULES FOR
CONGRESSIONAL REVIEW

The Honorable Donald Hastert
Speaker of the United States
House of Representatives
Washington, DC 20515

The Honorable Dick Cheney
President of the United
States Senate
Washington, DC 20510

Mr. Robert P. Murphy
General Counsel
General Accounting Office
Room 7175
441 G St., NW.
Washington, DC 20548

ATTACHMENT D - INSTRUCTIONS FOR COMPLETING THE STANDARD FORM FOR SUBMITTING FEDERAL RULES UNDER THE CONGRESSIONAL REVIEW PROVISIONS OF SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT (SBREFA).

A separate form must be provided for each required notification. Check the appropriate box to indicate that the form is directed to the Senate, the House, or the General Accounting Office.

Page 1

1. Insert the complete name of the agency - U.S. Nuclear Regulatory Commission.
2. Insert the name of the issuing office - Office of Nuclear Material Safety and Safeguards.
3. Insert the title of the rule - Medical Use of Byproduct Material.
4. Insert the complete regulation identifier number (RIN) as it appears on the first page of the final rule - RIN 3150-AG38.

If the submitted action is not a final rule, insert any other appropriate identifier - NUREG-1600.
5. Indicate whether the rule is a major rule or a nonmajor rule by filling in the appropriate circle. See Part 2 of Attachment A to this appendix for the definition of "major rule."
6. Indicate whether the action is a final rule or other type of action by filling in the appropriate circle. If the action is not a final rule, indicate the type of action in the space provided - Policy Statement.
7. Indicate whether or not public comment was solicited on the action by filling in the appropriate circle.
8. Indicate the priority category of the regulation by filling in the appropriate circle. The priority categories are those established by Executive Order 12866 and used by Office of Management and Budget (OMB) in the *Unified Agenda of Federal Regulatory and Deregulatory Actions*. For assistance in determining the appropriate priority category for a final action, contact the Rules and Directives Branch (RDB) (301) 415-6863. Please note that if the priority category is Routine and Frequent..., the second page of the form need not be completed.
9. Indicate the effective date. If the effective date is predicated on publication in the *Federal Register*, present the date as follows: (60 days after publication in the *Federal Register*).
10. Indicate whether a concise summary is attached or stated in the rule by filling in the appropriate circle. For a final rule, the concise summary is always indicated as stated in the rule.

SBREFA forms are always submitted by the Director of the Office of Congressional Affairs. Leave the "Submitted by" line vacant for the Director's signature and provide the Director's name and title on the indicated lines as follows:

Name: Dennis K. Rathbun
Title: Director, Office of Congressional Affairs.

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Note: If the action is not a final rule, the appropriate answer to questions B, C, and each of the listed actions under F is "N/A."

- A. Indicate whether an analysis of costs and benefits was prepared by filling in the appropriate circle. If a regulatory analysis was prepared, answer "yes."
- B. If the final rule contains a regulatory flexibility certification statement, answer B.1 "yes."
If a regulatory flexibility analysis was prepared for the final rule, answer B.2 "yes."
If the final rule was issued without being preceded by a proposed rule, answer B.1 and B.2 as "N/A."
- C. The appropriate answer is "N/A."
- D. If the action qualifies for a categorical exclusion under 10 CFR 51.22 (c), answer "no." If an Environmental Impact Statement or Environmental Assessment was prepared, answer "yes."
- E. If the rule contains an information collection forwarded for OMB approval, answer "yes."
- F. Answer each of the items listed in F "no." Actions that may be discussed in the supplementary information section of a final rule that should be listed under the "Other" bullet include –
- The National Technology Transfer and Advancement Act of 1995 concerning the use of voluntary consensus standards.
 - Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277), concerning family well-being.
 - SBREFA

ATTACHMENT E - AGENCY STATEMENTS THAT ARE RULES FOR PURPOSES OF THE
SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT
(SBREFA) *

Final rules that impose legal obligations on regulated parties, whether the rules are issued
after notice and public procedure or not

Final rules that impose legal obligations on regulated parties but which the President has
declared necessary under Sec. 801 of the act

Interpretive rules, like those in 10 CFR Part 8

NUREGs that interpret law

Regulatory guides

Small entity compliance guides required by Sec. 312 of the act

NRC endorsements of industry guidance

Policy statements

Bulletins and generic letters that provide new interpretations of law or policy

Guidance documents like Standard Review Plans

Agreements under Section 274b of the Atomic Energy Act

Branch technical positions/Technical positions

Topical reports

Any change to the following documents that "substantially affects" rights or obligations of non-
agency parties:

NRC Enforcement Manual

NRC Inspection Manual

OI Investigators' Manual

OIG Investigators' Manual

The following management directives:

3.1 Freedom of Information Act

3.2 Privacy Act

3.4 Release of Information to the Public

3.5 Public Attendance at Certain Meetings Involving the NRC Staff

3.10 Processing Proprietary Information Claims

3.53 NRC Records Management Program

5.1 Intergovernmental Consultation

5.2 Memoranda of Understanding With States

5.6 Integrated Materials Performance Evaluation Program (IMPEP)

5.7 Technical Assistance to Agreement States

6.3 The Rulemaking Process

7.1 Tort Claims Against the United States

7.2 Claims for Personal Property Loss or Damage

7.4 Reporting Suspected Wrongdoing and Processing OIG Referrals

8.1 Abnormal Occurrence Reporting Procedure

8.2 NRC Incident Response Program

8.3 NRC Incident Investigation Program

8.6 Systematic Assessment of Licensee Performance

8.7 NRC Diagnostic Evaluation Program

8.8 Management of Allegations

8.9 Accident Investigation

8.10 NRC Medical Event Assessment Program

8.11 Review Process for 10 CFR 2.206 Petitions

- 8.12 Decommissioning Financial Assurance Instrument Security Program
- 11.1 NRC Acquisition of Supplies and Services
- 11.4 NRC Small Business Program
- 11.6 Financial Assistance Program
- 11.7 NRC Procedures for Placement and Monitoring of Work With the U.S.
Department of Energy (DOE)
- 13.6 Public Use of the NRC Two White Flint North Auditorium

*This list is not exhaustive. Whether a given document is a "rule" under the act depends on its substance, not its name. Therefore, the distinctions drawn in Attachments 1 and 2 are not hard and fast, and these lists must be used with judgment. Under the act, a "rule" is the whole or a part of a final agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy; but the term excludes rules of particular applicability (including product approvals), rules of agency management or personnel, and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of external parties (Sec. 804(4)).

ATTACHMENT F - AGENCY STATEMENTS THAT ARE NOT RULES UNDER THE SBREFA*

Commission or Atomic Safety and Licensing Board Panel (ASLBP) adjudicatory rulings
Court briefs and pleadings
Orders, including those applicable to more than one party
Enforcement orders
Director's Decisions under 10 CFR 2.206
Licenses and license amendments
Design Certifications under 10 CFR Part 52
Preliminary and Final Design Approvals
Exemptions under 10 CFR 50.12 and analogous sections
Notices of Enforcement Discretion
Rules or statements of agency management and personnel, like 10 CFR Part 1
Management directives that do not "substantially affect" rights or obligations of nonagency parties
Internal Commission procedures
Any change to the following documents that does not "substantially affect" rights or obligations of non-agency parties:
 NRC Enforcement Manual
 NRC Inspection Manual
 OI Investigators' Manual
 OIG Investigators' Manual
 Committee to Review Generic Requirements (CRGR) Charter
 Bulletins and generic letters that do not provide new interpretations of law or policy
 Office letters
 Backfit analysis procedures
 Purely administrative issuances, such as corrective notices or compilations of previously issued materials
 Interagency Memoranda of Understanding (MOUs)
 Agreements under Section 274i of the Atomic Energy Act
 Management directives not listed in Attachment 1

*This list is not exhaustive. Whether a given document is a "rule" under the act depends on its substance, not its name. Therefore, the distinctions drawn in Attachments 1 and 2 are not hard and fast, and these lists must be used with judgment. Under the act, a "rule" is the whole or a part of a final agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy; but the term excludes rules of particular applicability (including product approvals), rules of agency management or personnel, and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of external parties (Sec. 80 (4)).

Appendix G - Procedures for Assessment of Federal Regulations and Policies on Families

BACKGROUND

On October 21, 1998, the President signed the Treasury and General Government Appropriations Act, 1999 (Appropriations Act or act). Section 654 of the act, "Assessment of Federal Regulations and Policies on Families," requires executive agencies to assess the impact of proposed agency actions on family well-being. The act presents a seven-factor assessment that an agency must perform before it implements policies and regulations "that may affect family well-being." The seven assessment factors are –

1. The action strengthens or erodes the stability or safety of the family and, particularly, the marital commitment;
2. The action strengthens or erodes the authority and rights of parents in the education, nurture, and supervision of their children;
3. The action helps the family perform its functions, or substitutes Government activity for the function;
4. The action increases or decreases disposable income or poverty of families and children;
5. The proposed benefits of the action justify the financial impact on the family;
6. The action may be carried out by State or local government or by the family; and
7. The action establishes an implicit or explicit policy concerning the relationship between the behavior and personal responsibility of youth and norms of society.

In addition to performing the assessment, the act requires that, for each proposed policy or regulation that may affect family well-being, the head of the agency certify to Congress and

the Office of Management and Budget that the proposed action has been assessed in accordance with the seven factors. The certification must also provide a rationale for the implementation of policies and regulations that may negatively impact family well-being.

Compliance with the act should not be an onerous burden because the vast majority of NRC regulations and policies do not pertain to families and are not likely to result in any impacts outlined in the act's seven assessment factors.

The procedures contained in this appendix are intended to ensure that the NRC complies with Section 654 of the Appropriations Act. These procedures specify a method for ensuring that each rulemaking or policy will be given a review that is sufficient to determine whether the proposed action may have any specific effect on families so as to require the seven-factor assessment. These procedures also provide a means for preparing an assessment and a certification for those infrequent NRC regulations and policies that may affect families.

PROCEDURES FOR COMPLYING WITH
"ASSESSMENT OF FEDERAL REGULATIONS AND POLICIES ON FAMILIES"

Determine if a final action is subject to the act's requirements

1. The lead office must exercise judgement in determining whether the final action is subject to the requirements of the act. Use the Record of Compliance with the Assessment of Federal Regulations and Policies on Families (Attachment A to this appendix) to aid in making this decision.
2. If you determine that a final action is covered by the act, follow the procedures under "Assessment" below.
3. If you determine that a final action is not covered by the act, forward a copy of the Record of Compliance and a brief description of the action to the Rules and Directives Branch (RDB), Office of Administration, Mail Stop T-6 D59. The determination must be included in the regulatory history for the final rule and in the material concerning this rulemaking that is made available to the public.

Assessment

1. Prepare the assessment using the format presented in Attachment B to this appendix for each proposed action covered by the act. Forward the description to the person in your office designated as the point of contact.
2. The office contact shall forward the proposed actions affected by the act for that office to RDB Mail Stop T-6 D59.
3. RDB will give the Associate General Counsel for Licensing and Regulation with a copy of the action at the same time RDB forwards it to the Office of Management and Budget and to Congress. The assessment must be included in the regulatory history for the

final rule and be included in the material concerning this rulemaking that is made available to the public.

Certification letters

1. The staff shall prepare letters to the Speaker of the House, the President of the Senate, and the Office of Management and Budget for each action that requires assessment under the act. Attachment C to this appendix is a sample letter providing the requisite certification.
2. The letters must be prepared for the Chairman's signature.
3. These letters are in addition to the standard notification letters to the Subcommittee on Energy and Air Quality, Committee on Energy and Commerce, United States House of Representatives, and the Subcommittee on Clean Air, Wetlands, Private Property and Nuclear Safety, Committee on Environment and Public Works, United States Senate, prepared in accordance with Section 303 of the Atomic Energy Act.
4. Copies of the proposed letters must be included in the concurrence package for the action. Concurrence must be obtained at the appropriate level for the action.
 - If the action is approved at the level of the Commission, the Executive Director for Operations (EDO), or the Chief Financial Officer (CFO), proposed letters must be included as background information to the Commission paper or the memorandum requesting action by the EDO or CFO.
 - If the action is approved at the staff level, the standard forms must receive concurrence at the same level at which the action is signed.
 - The final concurrence block should be prepared for the Director of the Office of Congressional Affairs (OCA).

Transmitting the forms and issuing the action.

1. Actions that are published or noticed in the *Federal Register*.

- **Final package** - When the action is submitted for signature and publication, the submittal package must include final letters ready for signature, a copy of the concurrence page for the letters, and three copies of each of the required enclosures.
- **Commission approval** - If the action is approved at the Commission level, RDB will forward the Senate, House, and Office of Management and Budget (OMB) letters for the Chairman's signature and transmittal to Congress and OMB at the same time RDB forwards the *Federal Register* notice the Office of the Secretary for signature and transmittal for publication.
- **EDO or CFO Approval** - If the action is approved at the level of the EDO, or the CFO, or staff level, RDB will forward the Senate, House, and OMB letters for the Chairman's signature and transmittal to Congress and OMB at the same time RDB forwards the *Federal Register* notice to the Office of the Federal Register for publication.
- **Concurrence page** - RDB will forward a copy of the completed concurrence page for the letters to the issuing office.

2. Final actions that are not published or noticed in the *Federal Register*.

- The issuing official signs and dates the action. However, the action is not issued or distributed until the following actions are completed:

- The issuing office forwards the Senate, House, and OMB letters for the Chairman's signature and transmittal to Congress and OMB. The package must include three copies of the signed action as well as three copies of each required attachment.
- OCA will forward a copy of the completed concurrence page for the letters to the issuing office.
- When the issuing office receives the completed concurrence page for the letters, the issuing office shall then issue and distribute the action.

ATTACHMENT A - RECORD OF COMPLIANCE WITH "ASSESSMENT OF FEDERAL REGULATIONS AND POLICIES ON FAMILIES"

TITLE OF ACTION:

RIN OR NRC ID NUMBER:

Indicate whether, in your judgment, the act applies to this action.

_____ The requirements of the act are not applicable to this action. Indicate the reason for this determination, sign and date this record, and retain a copy of this record in the subject file for this action.

_____ The action does not have any reasonably foreseeable effect on families, marriages, parenthood, children, or youth.

_____ The action was not based on considerations pertaining to families, marriages, parenthood, children, or youth.

_____ The action does not create, affirm, or negate social policy.

_____ The requirements of the act apply to this action because the action may affect family well-being.

Signed: _____

Dated: _____

ATTACHMENT B - ASSESSMENT OF FEDERAL REGULATIONS AND POLICIES ON FAMILIES

AGENCY: Nuclear Regulatory Commission

TITLE OF ACTION: Criteria for the Release of Individuals Administered Radioactive Material

UPCOMING ACTION: Final rule

RIN: 3150-AE41

ESTIMATED DATE OF ISSUANCE: January 1997

STATUTORY OR JUDICIAL DEADLINE: None

DESCRIPTION OF ACTION:

The final rule will amend the Commission's criteria for the release of patients administered radioactive material. The new criteria for patient release are based on the potential dose to other individuals exposed to the patient. The dose-based rule would, in some instances, permit the release of patients with activities greater than currently allowed.

POTENTIAL EFFECT ON FAMILIES:

The individuals exposed to the patient could receive higher doses than if the patient had been hospitalized longer. These higher doses are balanced by shorter stays and thus lower health care costs. In addition, shorter hospital stays may provide emotional benefits to patients and their families. Earlier reunion of families can improve the patient's state of mind.

ASSESSMENT:

1. The action strengthens or erodes the stability or safety of the family and, particularly, the marital commitment.

The action strengthens the stability of the family by permitting hospitalized family members to return to their families earlier following an administration of radioactive material.

2. The action strengthens or erodes the authority and rights of parents in the education, nurture, and supervision of their children.

3. The action helps the family perform its functions, or substitutes government activity for the function.

4. The action increases or decreases disposable income or poverty of families and children.

The action results in shorter hospital stays and thus lower health care costs. Shorter hospital stays may also result in less travel and meal expenses for visiting family members.

5. The proposed benefits of the action justify the financial impact on the family.

6. The action may be carried out by State or local government or by the family.

7. The action establishes an implicit or explicit policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society.

The action explicitly recognizes that earlier reunion of families can provide emotional benefit that may itself improve the outcome of treatment.

NEGATIVE EFFECTS:

The NRC has determined that the action will not negatively affect family well-being.

ATTACHMENT C - SAMPLE LETTER FOR CERTIFICATION

Mr. Jefferson Hill
Executive Office of the President
Office of Management and Budget
Room 10202
725 17th Street, NW.
Washington, DC 20503

SUBJECT: FAMILY ASSESSMENT CERTIFICATION

Dear Mr. Hill:

In accordance with Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277), the Nuclear Regulatory Commission (NRC) is hereby certifying that the Final Rule, "Criteria for the Release of Individuals Administered Radioactive Material," has been assessed in accordance with the seven criteria set forth in Section 654 of the Appropriations Act. The NRC has made a finding that the action will not negatively affect family well-being.

If you have any questions concerning this certification, please contact (Name of Contact Person), Office of Nuclear Material Safety and Safeguards, (301) 415-1357 or XXX@nrc.gov.

Sincerely,

[Chairman]

Enclosure: Final rule

Appendix H - Abbreviations Used in the NRC Regulations Handbook

ACUS	Administrative Conference of the United States
ADAMS	Agencywide Documents Access and Management System
ADM	Office of Administration (NRC)
ANPR	advance notice of proposed rulemaking
APA	Administrative Procedure Act of 1946
CFO	Chief Financial Officer
CFR	<i>Code of Federal Regulations</i>
CIO	Chief Information Officer
CRCPD	Conference of Radiation Control Program Directors
DEIS	draft environmental impact statement
DOE	Department of Energy
EA	environmental assessment
EDO	Executive Director for Operations
EIS	environmental impact statement
FRN	<i>Federal Register</i> notice
GEIS	generic environmental impact statement
GPO	Government Printing Office
LLW	low-level radioactive waste
MD	management directive
NEI	Nuclear Energy Institute
NEPA	National Environmental Policy Act

NMSS	Office of Nuclear Material Safety and Safeguards (NRC)
NRC	Nuclear Regulatory Commission
NRR	Office of Nuclear Reactor Regulation (NRC)
OCA	Office of Congressional Affairs (NRC)
OCIO	Office of the Chief Information Officer (NRC)
OE	Office of Enforcement (NRC)
OEDO	Office of the Executive Director for Operations (NRC)
OFR	Office of the Federal Register
OGC	Office of the General Counsel (NRC)
OIG	Office of the Inspector General (NRC)
OMB	Office of Management and Budget
OPA	Office of Public Affairs (NRC)
PDR	public document room
PRM	petition for rulemaking
RDB	Rules and Directives Branch (NRC)
RES	Office of Nuclear Regulatory Research (NRC)
RG	regulatory guide RDB Rules and Directives Branch
RIN	regulation identifier number
SBA	Small Business Administration
SBREFA	Small Business Regulatory Enforcement Fairness Act
SECY	Office of the Secretary (NRC)
SRM	staff requirements memorandum
STP	Office of State and Tribal Programs (NRC)

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