

FEB 27 1992

PDR
AD 90-2 010

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

FROM: Eric S. Beckjord, Director
Office of Nuclear Regulatory Research

SUBJECT: FINAL RULE ENTITLED - URANIUM ENRICHMENT REGULATIONS

The subject rulemaking package is enclosed for your action. The rulemaking was initiated as high priority per your approval dated March 7, 1991, (WITS No. 9100067). With the exception of nonsubstantive changes, this final rule text is as proposed and published for comment in the Federal Register on September 16, 1991, (56 FR 46739).

The resources to conduct this rulemaking are included in the FY 1992-1996 Five-Year Plan (FYP). Note that the staff believes that this rulemaking action should not be affected by the President's recent announcement of a moratorium of 90 days for rulemaking because it is an action to conform to previously enacted legislation, a category specially excluded from the moratorium.

The Commission paper and final rule, as enclosed, have been reviewed, and appropriate concurrences have been obtained from the Offices of the Administration, and Nuclear Material Safety and Safeguards. The Office of the General Counsel has no legal objections. The Office of the Controller provided the resources statement.

/s/
Eric S. Beckjord, Director
Office of Nuclear Regulatory Research

Enclosure:
Rulemaking Package

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RETURN ORIGINAL TO:

C.W. Nilsen, Res.

For: The Commissioners

From: James M. Taylor, Executive Director for Operations

Subject: FINAL RULE ENTITLED "URANIUM ENRICHMENT REGULATIONS"

Purpose: To obtain Commission approval for publication of a notice of final rulemaking in the Federal Register.

Background: On November 15, 1990, the President signed the "Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990," Public Law 101-575, which, among other things, amended the Atomic Energy Act (the Act) with respect to regulating uranium enrichment facilities. The principal amendment to the Act made by Public Law 101-575 provides that the licensing of uranium enrichment plants will be a single license issued pursuant to 10 CFR Parts 40 and 70, rather than a two-part license issued under 10 CFR Part 50. SECY-91-219, dated July 22, 1991, discussed the proposed rule implementing Public Law 101-575. Following Commission approval, the proposed rule was published in the Federal Register on September 16, 1991 (56 FR 46739). The public comment period expired on December 2, 1991.

Discussion: This final rulemaking will incorporate into the Commission's regulations the amendments to 10 CFR Parts 2, 40, 50, 51, 70, 75, 110, 140, 150, and 170 necessary to implement the amendments made to the Act by Public Law 101-575. The NRC received one comment letter on the proposed rule from Winston

CONTACT:
C. W. Nilsen, RES
492-3834

& Strawn, on behalf of Louisiana Energy Services (LES). Based on that comment, the staff made a nonsubstantive clarification. The proposed wording "financial protection" and "public liability insurance" was replaced with "liability insurance" to remove any perceived requirement for "Price-Anderson protection" which is not intended. With the exception of this nonsubstantive change in wording, the final rule is as proposed. The Environmental Protection Agency responded with no comments. The resources to conduct this rulemaking are included in the FY 1992-1996 Five-Year Plan.

Coordination: The Office of the General Counsel has reviewed this final rulemaking and has no legal objection.

Recommendation: That the Commission:

- (1) Approve the final rule amending 10 CFR Parts 2, 40, 50, 51, 70, 75, 110, 140, 150, and 170 for publication in the Federal Register (Enclosure 1).
- (2) Certify that this rule does not have a significant economic impact on a substantial number of small entities in order to satisfy the requirements of the Regulatory Flexibility Act (5 U.S.C. 605(b)).
- (3) Note:
 - (a) That a regulatory analysis has been prepared for this rulemaking action and will be made available in the NRC Public Document Room (Enclosure 2).
 - (b) That neither an environmental impact statement nor an environmental assessment and finding of no significant impact has been prepared for this final rule because it meets the criteria for a categorical exclusion under § 51.22 (c)(1).
 - (c) That the Subcommittee on Nuclear Regulation of the Senate Committee on Environment and Public Works, the Subcommittee on Energy and Power of the House Committee on Energy and Commerce, and the Subcommittee on Energy and the Environment of the House Committee on Interior and Insular Affairs will be informed of this rulemaking action (Enclosure 3).
 - (d) That the final rule amends information collection requirements subject to the Paperwork

Reduction Act. These requirements were approved by the Office of Management and Budget.

- (e) That the Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification and the reasons for it as required by the Regulatory Flexibility Act.
- (f) That a public announcement will be issued (Enclosure 4).
- (g) That a copy of the final rule will be distributed to all affected licensees and other interested persons.
- (h) Note that the staff believes that this rulemaking action should not be affected by the President's recent announcement of a moratorium of 90 days for rulemaking because it is an action to conform to previously enacted legislation, a category specially excluded from the moratorium.

James M. Taylor
Executive Director
for Operations

Enclosures:

1. FR Notice of Final Rulemaking
2. Regulatory Analysis
3. Congressional Letters
4. Public Announcement

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ENCLOSURE 1

Federal Register Notice

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 40, 50, 51, 70, 75, 110, 140, 150, and 170

RIN 3150-AD90

Uranium Enrichment Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations concerning the licensing of uranium enrichment facilities to reflect changes made to the Atomic Energy Act of 1954, as amended (the Act) by the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990. The principal effect of these amendments is that uranium enrichment facilities will be licensed subject to the provisions of the Act pertaining to source material and special nuclear material rather than under the provisions pertaining to a production facility.

EFFECTIVE DATE: [Insert a date 30 days following the date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Mr. C. W. Nilsen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3834.

SUPPLEMENTARY INFORMATION:

Background

On November 15, 1990, the President signed the "Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990," Pub. L. 101-575, which, among other things, amended the Atomic Energy Act (the Act) with respect to the licensing of uranium enrichment facilities. The principal effect of these changes is that uranium enrichment facilities will be licensed pursuant to the provisions of the Act pertaining to source material and special nuclear material rather than the provisions pertaining to a production facility. Under the new provisions, licensing of uranium enrichment facilities will be a single step licensing process with one license issued pursuant to 10 CFR Parts 40 and 70 rather than a two-part licensing process under 10 CFR Part 50. The amendments to the Act which address the licensing of uranium enrichment facilities also mandate an environmental review, adjudicatory hearing, inspection before operation, and third party liability insurance. However, uranium enrichment facilities remain production facilities for other purposes of the Act such as controlling the export of specially designed or prepared uranium enrichment equipment and preservation of Federal authority in Agreement States.

On September 16, 1991 (56 FR 46739), the Commission published a proposed rule, which was essentially conforming in nature, to amend 10 CFR Parts 2, 40, 50, 51, 70, 75, 110, 140, 150, and 170 as required to implement Section 5 of Pub. L. 101-575 as it pertains to the licensing of uranium enrichment facilities.

Public Comment and NRC Response

The NRC received one comment letter on the proposed rule. Based on that comment, the Commission has made a nonsubstantive clarification in the wording of the regulation text. The proposed wording "financial protection" and "public liability insurance" has been replaced with "liability insurance" in order to remove any perceived requirement for "Price-Anderson protection" which is not the intent of this amendment. This wording change was made to §§ 40.31(l), 70.22(m), 140.1(b), and 140.13b.

Final Rule Text

With the exception of these nonsubstantive changes, the text of the final rule is as proposed and published for comment in the Federal Register on September 16, 1991 (56 FR 46739).

To reflect the requirements of Pub. L. 101-575, a definition for uranium enrichment facility is added that includes both (1) a facility used for separating the isotopes of uranium or enriching uranium in the isotope 235 and (2) any equipment or device capable of such action. The new definition continues to exclude laboratory scale facilities designed or used for

experimental or analytical purposes from licensing as a uranium enrichment facility as was the case prior to enactment of Pub. L. 101-575. However, commercial laboratory scale enrichment would be a licensed activity, and licensees are required to have appropriate source material and special nuclear material licenses and to comply with all applicable regulations.

Uranium enrichment facilities remain production facilities for chapters other than Chapter 10, "Atomic Energy Licenses," and Chapter 16, "Judicial Review and Administrative Procedure," of the Act. Therefore, there is no change for purposes of controlling the export of specially designed or prepared uranium enrichment equipment and the preservation of Federal authority over uranium enrichment licensing in Agreement States.

Changes added to the Act by Pub. L. 101-575 contain five (5) new licensing requirements specific to the licensing of uranium enrichment facilities. The amendments to 10 CFR Chapter I to implement these requirements include:

The requirement to conduct a single adjudicatory hearing before issuance of a license for construction and operation (§§ 40.33 and 70.23a);

The requirement prohibiting issuance of a license to allow construction and operation until a hearing is completed and a decision issued (§§ 40.32(g) and 70.31(e));

The requirement that an Environmental Impact Statement (EIS) be prepared in accordance with the National Environmental Policy Act before the licensing hearing is completed (§§ 40.31(k), 51.97(c), and 70.21(h));

The requirement that the Commission verify by inspection prior to commencement of operation that the facility has been constructed in accordance

with the license, and publish a notice of the inspection results in the Federal Register (§§ 40.41(g) and 70.32(k)); and

The requirement that the licensee carry liability insurance against bodily injury, sickness, disease, death, loss of or damage to property, and loss of use of property arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of chemical compounds containing source material or special nuclear material. The insurance requirement specifically includes the chemical toxicity risks (§§ 40.32(g), 70.23(a)(12), and 140.13b).

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1) and (3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval number 3150-0020, -0021, -0009, -0039.

The public reporting burden for this collection of information is estimated to average 60,000 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and

maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (NMBB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-3019, (3150-0020, -0021, -0009, -0039), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission prepared a regulatory analysis on this final rule. The analysis examines the costs and benefits of the alternatives considered by the Commission.

The Commission requested public comments on the draft regulatory analysis, but no comments were received. The final regulatory analysis is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. The final rule will affect only persons who build or operate enrichment facilities for producing enriched uranium. The owners of enrichment facilities do not fall within the scope of

the definition of "small entities" set forth in Section 601(3) of the Regulatory Flexibility Act, 15 U.S.C. 632, or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule. Thus, a backfit analysis is not required for these amendments because they do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 2 - Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 40 - Criminal penalty, Government contracts, Hazardous materials - transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50 - Antitrust, Classification information, Criminal penalty, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 51 - Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 70 - Criminal penalty, Hazardous materials - transportation, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 75 - Criminal penalty, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 110 - Administrative practice and procedure, Classified information, Criminal penalty, Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 140 - Criminal penalty, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 150 - Criminal penalty, Hazardous materials - transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

10 CFR Part 170 - Byproduct material, Non-payment penalty, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set forth 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 Commission is adopting the following amendments to 10 CFR Parts 2, 40, 50, 51, 70, 75, 110, 140, 150, and 170.

PART 2--RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

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

AUTHORITY: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 68 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721, also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.104 also issued under sec. 193, Pub. L. 101-575, 104 Stat. 2835 (42 U.S.C. 2243). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948-951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201(b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (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 secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (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 sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. In § 2.104, paragraph (b)(2) is revised to read as follows:

§ 2.104 Notice of hearing.

* * * * *

(b) * * *

(2) That, if the proceeding is not a contested proceeding, the presiding officer will determine (i) without conducting a de novo evaluation of the application, whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's staff has been adequate to support affirmative findings on (b)(1)(i) through (iii) specified in this section and a negative finding on (b)(1)(iv) specified in this section proposed to be made and the issuance of

the construction permit proposed by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, and (ii) if the application is for a construction permit for a nuclear power reactor, a testing facility, a fuel processing plant, a uranium enrichment facility, or other facility whose construction or operation has been determined by the Commission to have a significant impact on the environment, whether the review conducted by the Commission pursuant to the National Environmental Policy Act (NEPA) has been adequate.

* * * * *

PART 40--DOMESTIC LICENSING OF SOURCE MATERIAL

3. The authority citation for Part 40 is revised to read as follows:

AUTHORITY: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835 (42 U.S.C. 2243).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as

amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.7(g), 40.25(d)(1)-(3), 40.35(a)-(d) and (f), 40.41(b) and (c), 40.46, 40.51(a) and (c), and 40.63 are issued under sec. 161b, 161i, and 161o, 68 Stat. 948, 949, and 950, as amended (42 U.S.C. 2201(b), 2201(i), and 2201(o)); and §§ 40.5, 40.9, 40.25(c), (d)(3), and (4), 40.26(c)(2), 40.35(e), 40.42, 40.60, 40.61, 40.62, 40.64, and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 40.4, the term "Uranium Enrichment Facility" is added to read as follows:

§ 40.4 Definitions.

* * * * *

Uranium enrichment facility means:

(1) Any facility used for separating the isotopes of uranium or enriching uranium in the isotope 235, except laboratory scale facilities designed or used for experimental or analytical purposes only; or

(2) Any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235.

* * * * *

5. Section 40.5 is amended by adding paragraph (b)(1)(vi) to read as follows:

§ 40.5 Communications.

* * * * *

- (b) * * *
- (1) * * *
- (vi) Uranium enrichment facilities.

* * * * *

6. Section 40.31 is amended by adding paragraphs (k) and (l) to read as follows:

§ 40.31 Applications for specific licenses.

* * * * *

(k) A license application for a uranium enrichment facility must be accompanied by an Environmental Report required under Subpart A of Part 51 of this chapter.

(1) A license application that involves the use of source material in a uranium enrichment facility must include the applicant's provisions for liability insurance.

* * * * *

7. Section 40.32 is amended by revising paragraph (e) and adding paragraph (g) to read as follows:

§ 40.32 General requirements for issuance of specific licenses.

* * * * *

(e) In the case of an application for a license for a uranium enrichment facility, or for a license to possess and use source and byproduct material for uranium milling, production of uranium hexafluoride, or for the conduct of any other activity which the Commission determines will significantly affect the quality of the environment, the Director of Nuclear Material Safety and Safeguards or his designee, before commencement of construction of the plant or facility in which the activity will be conducted, on the basis of information filed and evaluations made pursuant to Subpart A of Part 51 of this chapter, has concluded, after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. Commencement of construction prior to this conclusion

is grounds for denial of a license to possess and use source and byproduct material in such plant or facility. As used in this paragraph, the term "commencement of construction" means any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. The term does not mean site exploration, roads necessary for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

* * * * *

(g) If the proposed activity involves use of source material in a uranium enrichment facility, the applicant has satisfied the applicable provisions of Part 140 of this chapter.

8. A new § 40.33 is added to read as follows:

§ 40.33 Issuance of a license for a uranium enrichment facility.

(a) The Commission will hold a hearing pursuant to 10 CFR Part 2, Subparts A, G, and I, on each application with regard to the licensing of the construction and operation of a uranium enrichment facility. The Commission will publish public notice of the hearing in the Federal Register at least 30 days before the hearing.

(b) A license for a uranium enrichment facility may not be issued before the hearing is completed and a decision issued on the application.

9. Section 40.41 is amended by adding paragraph (g) to read as follows:

§ 40.41 Terms and conditions of licenses.

* * * * *

(g) No person may commence operation of a uranium enrichment facility until the Commission verifies through inspection that the facility has been constructed in accordance with the requirements of the license. The Commission shall publish notice of the inspection results in the Federal Register.

10. In § 40.65, the introductory text of paragraph (a) is revised to read as follows:

§ 40.65 Effluent monitoring reporting requirements.

(a) Each licensee authorized to possess and use source material in uranium milling, in production of uranium hexafluoride, or in a uranium enrichment facility shall:

* * * * *

PART 50--DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

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

AUTHORITY: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 - 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.5, 50.46(a) and (b), and 50.54(c) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.5, 50.7(a), 50.10(a)-(c), 50.34(a)

and (e), 50.44(a)-(c), 50.46(a) and (b), 50.47(b), 50.48(a), (c), (d), and (e), 50.49(a), 50.54(a), (i), (i)(1), (1)-(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a), (c)-(e), (g), and (h), 50.59(c), 50.60(a), 50.62(c), 50.64(b), 50.65, and 50.80(a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.49(d), (h), and (j), 50.54(w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71(a)-(c) and (e), 50.72(a), 50.73(a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

12. In § 50.2, paragraph (2) of the term "Production Facility" is revised to read as follows:

§ 50.2 Definitions.

As used in this part,

* * * * *

Production facility means:

* * * * *

(2) Any facility designed or used for the separation of the isotopes of plutonium, except laboratory scale facilities designed or used for experimental or analytical purposes only; or

* * * * *

13. In § 50.33a, paragraph (e) is revised to read as follows:

§ 50.33a Information requested by the Attorney General for antitrust review.

* * * * *

(e) Any person who applies for a class 103 construction permit for a fuel reprocessing plant shall submit the information requested by the Attorney General for antitrust review, as a separate document, as soon as possible and in accordance with § 2.101 of this chapter.

PART 51--ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC
LICENSING AND RELATED REGULATORY FUNCTIONS

14. The authority citation for Part 51 is revised to read as follows:

AUTHORITY: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853-854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95-604, Title II, 92 Stat. 3033-3041; and sec. 193, Pub. L. 101-575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.61, 51.80, and 51.97, also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100-203, 101 Stat. 1330-223 (42 U.S.C.

10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036-3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

15. In § 51.14, the term "Uranium enrichment facility" is added to read as follows:

§ 51.14 Definitions.

(a) As used in this subpart,

* * * * *

Uranium enrichment facility means:

(1) Any facility used for separating the isotopes of uranium or enriching uranium in the isotope 235, except laboratory scale facilities designed or used for experimental or analytical purposes only; or

(2) Any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235.

* * * * *

16. Section 51.20 is amended by adding paragraph (b)(10) to read as follows:

§ 51.20 Criteria for and identification of licensing and regulatory actions requiring environmental impact statements.

* * * * *

(b) * * *

(10) Issuance of a license for a uranium enrichment facility.

* * * * *

17. Section 51.60 is amended by adding paragraph (b)(1)(vii) to read as follows:

§ 51.60 Environmental report - materials licenses.

* * * * *

(b) * * *

(1) * * *

(vii) Construction and operation of a uranium enrichment facility.

* * * * *

18. Section 51.97 is amended by adding paragraph (c) to read as follows:

§ 51.97 Final environmental impact statement - materials license.

* * * * *

(c) Uranium enrichment facility. As provided in Section 5(e) of the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 (104 Stat. 2834 at 2835, 42 U.S.C. 2243), a final environmental impact statement must be prepared before the hearing on the issuance of a license for a uranium enrichment facility is completed.

PART 70--DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

19. The authority citation for Part 70 is revised to read as follows:

AUTHORITY: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846); sec. 193, 104 Stat. 2835 (42 U.S.C. 2243).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section

70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.7(g), 70.10, 70.19(c), 70.21(c), 70.22(a), (b), (d)-(k), 70.24(a) and (b), 70.32(a)(3), (5), (6), (d), and (i), 70.36, 70.39(b) and (c), 70.41(a), 70.42(a) and (c), 70.56, 70.57(b), (c), and (d), 70.58(a)-(g)(3), and (h)-(j) are issued under sec. 161b, 161i, and 161o, 68 Stat. 948, 949, and 950, as amended (42 U.S.C. 2201(b), 2201(i), and 2201(o)); §§ 70.7, 70.10, 70.20a(a) and (d), 70.20b(c) and (e), 70.21(c), 70.24(b), 70.32(a)(6), (c), (d), (e), and (g), 70.36, 70.51(c)-(g), 70.56, 70.57(b) and (d), and 70.58 (a)-(g)(3) and (h)-(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.5, 70.9, 70.20b(d) and (e), 70.38, 70.50, 70.51(b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58(g)(4), (k), and (l), 70.59, and 70.60(b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

20. In § 70.4, the term "Uranium enrichment facility" is added to read as follows:

§ 70.4 Definitions.

* * * * *

Uranium enrichment facility means:

(1) Any facility used for separating the isotopes of uranium or enriching uranium in the isotope 235, except laboratory scale facilities designed or used for experimental or analytical purposes only; or

(2) Any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235.

21. Section 70.5 is amended by adding paragraph (b)(1)(vii) to read as follows:

§ 70.5 Communications.

(b) ★ ★ ★

(1) * * *

(vii) Uranium enrichment facilities.

22. In § 70.8, paragraph (b) is revised to read as follows:

§ 70.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 70.19, 70.20a, 70.20b, 70.21, 70.22, 70.24, 70.25, 70.32, 70.33, 70.34, 70.38, 70.39, 70.42, 70.50, 70.51, 70.52, 70.53, 70.57, 70.58, 70.59, and 70.60.

* * * * *

23. Section 70.21 is amended by revising paragraph (a)(1) and adding paragraph (h) to read as follows:

§ 70.21 Filing.

(a)(1) A person may apply for a license to possess and use special nuclear material in a plutonium processing or fuel fabrication plant, or for a uranium enrichment facility license by filing 25 copies of the application with the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

* * * * *

(h) A license application for a uranium enrichment facility must be accompanied by an Environmental Report required under Subpart A of Part 51 of this chapter.

24. Section 70.22 is amended by adding paragraph (n) to read as follows:

§ 70.22 Contents of applications.

* * * * *

(n) A license application that involves the use of special nuclear material in a uranium enrichment facility must include the applicant's provisions for liability insurance.

25. Section 70.23 is amended by revising paragraphs (a)(7) and (a)(11) and by adding paragraph (a)(12) to read as follows:

§ 70.23 Requirements for the approval of applications.

(a) * * *

(7) Where the proposed activity is processing and fuel fabrication, scrap recovery, conversion of uranium hexafluoride, uranium enrichment facility construction and operation, or any other activity which the Commission determines will significantly affect the quality of the environment, the Director of Nuclear Material Safety and Safeguards or his designee, before commencement of construction of the plant or facility in which the activity will be conducted, on the basis of information filed and evaluations made pursuant to Subpart A of Part 51 of this chapter, has concluded, after weighing the environmental, economic, technical, and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. Commencement of

construction prior to this conclusion is grounds for denial to possess and use special nuclear material in such plant or facility. As used in this paragraph, the term "commencement of construction" means any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. The term does not mean site exploration, roads necessary for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

* * * * *

(11) Where the proposed activity is processing and fuel fabrication, scrap recovery, conversion of uranium hexafluoride, or involves the use of special nuclear material in a uranium enrichment facility, the applicant's proposed emergency plan is adequate.

(12) Where the proposed activity is use of special nuclear material in a uranium enrichment facility, the applicable provisions of Part 140 of this chapter have been satisfied.

26. A new § 70.23a is added to read as follows:

§ 70.23a Hearing required for uranium enrichment facility.

The Commission will hold a hearing under 10 CFR Part 2, Subparts A, G, and I, on each application for issuance of a license for construction and

operation of a uranium enrichment facility. The Commission will publish public notice of the hearing in the Federal Register at least 30 days before the hearing.

27. Section 70.25 is amended by revising paragraph (a) to read as follows:

§ 70.25 Financial assurance and recordkeeping for decommissioning.

(a) Each applicant for a specific license of the types described in paragraphs (a)(1) and (2) of this section shall submit a decommissioning funding plan as described in paragraph (e) of this section.

(1) A specific license for a uranium enrichment facility;

(2) A specific license authorizing the possession and use of unsealed special nuclear material in quantities exceeding 10^5 times the applicable quantities set forth in Appendix C to §§ 20.1 - 20.601 of 10 CFR Part 20. A decommissioning funding plan must also be submitted when a combination of isotopes is involved if R divided by 10^5 is greater than 1 (unity rule), where R is the sum of the ratios of the quantity of each isotope to the applicable value in Appendix C to §§ 20.1 - 20.601 of 10 CFR Part 20.

* * * * *

28. Section 70.31 is amended by adding paragraph (e) to read as follows:

§ 70.31 Issuance of licenses.

* * * * *

(e) No license to construct and operate a uranium enrichment facility may be issued until a hearing pursuant to 10 CFR Part 2, Subparts G and I, is completed and a decision issued on the application.

29. Section 70.32 is amended by adding paragraph (k) to read as follows:

§ 70.32 Conditions of licenses.

* * * * *

(k) No person may commence operation of a uranium enrichment facility until the Commission verifies through inspection that the facility has been constructed in accordance with the requirements of the license. The Commission shall publish notice of the inspection results in the Federal Register.

30. Section 70.59 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 70.59 Effluent monitoring reporting requirements.

(a) Each licensee authorized to possess and use special nuclear material for processing and fuel fabrication, scrap recovery, conversion of uranium hexafluoride, or in a uranium enrichment facility shall:

* * * * *

PART 75--SAFEGUARDS ON NUCLEAR MATERIAL--IMPLEMENTATION
OF US/IAEA AGREEMENT

31. The authority citation for Part 75 is revised to read as follows:

AUTHORITY: Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 5, Pub. L. 101-575, 104 Stat. 2835 (42 U.S.C. 2243).

Section 75.4 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); the provisions of this part are issued under sec. 1610, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

* * * * *

32. In § 75.4, paragraph (k)(6) is added to read as follows.

§ 75.4 Definitions.

* * * * *

(k) * * *

(6) Any facility used for separating the isotopes of uranium or enriching uranium in the isotope 235, except laboratory scale facilities designed or used for experimental or analytical purposes only; or any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235.

* * * * *

PART 110--EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

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

AUTHORITY: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092-2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154-2158, 2201, 2231-2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 5, Pub. L. 101-575, 104 Stat. 2835 (42 U.S.C. 2243).

Section 110.1(b)(2) also issued under Pub. L. 96-92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d., 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99-440. Section

110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153).
Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80-110.113 also issued under 5 U.S.C. 552, 554. Sections 110.30-110.35 also issued under 5 U.S.C. 553.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 110.20-110.29, 110.50, and 110.120-110.129 also issued under secs. 161b and i, 68 Stat. 948, 949, as amended (42 U.S.C. 2201(b) and (i)); and §§ 110.7a, 110.7b, and 110.53 also issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

34. In § 110.2, the term "Uranium enrichment facility" is added to read as follows:

§ 110.2 Definitions.

* * * * *

Uranium enrichment facility means:

(1) Any facility used for separating the isotopes of uranium or enriching uranium in the isotope 235, except laboratory scale facilities designed or used for experimental or analytical purposes only; or

(2) Any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235.

* * * * *

35. Section 110.9 is amended by adding paragraph (e) to read as follows:

§ 110.9 List of nuclear equipment and material under AEC import licensing authority.

* * * * *

(e) Uranium enrichment facilities.

PART 140--FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

36. The authority citation for Part 140 is revised to read as follows:

AUTHORITY: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Section 140.13b is issued under sec. 193(d), 104 Stat. 2835 (42 U.S.C. 2243).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 140.11(a), 140.12(a), 140.13, and 140.13a are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and § 140.6 is issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

* * * * *

37. Section 140.1 is revised to read as follows:

§ 140.1 Purpose.

The regulations in this part are issued to provide appropriate procedures and requirements for determining:

(a) The financial protection required of licensees and for the indemnification and limitation of liability of certain licensees and other persons pursuant to section 170 of the Atomic Energy Act of 1954, as amended; and

(b) The liability insurance required of uranium enrichment facility licensees pursuant to section 193 of the Atomic Energy Act of 1954, as amended.

38. In § 140.2, paragraph (a)(4) is added to read as follows:

§ 140.2 Scope.

(a) The regulations in this part apply

* * * * *

(4) To each person licensed pursuant to Parts 40 and 70 of this chapter to construct and operate a uranium enrichment facility.

* * * * *

39. Section 140.3 is amended by adding a new paragraph (m) to read as follows:

§ 140.3 Definitions.

As used in this part:

* * * * *

(m) Uranium enrichment facility means:

(1) Any facility used for separating the isotopes of uranium or enriching uranium in the isotope 235, except laboratory scale facilities designed or used for experimental or analytical purposes only; or

(2) Any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235.

40. In § 140.9a, paragraph (b) is revised to read as follows:

§ 140.9a Information collection requirements: OMB approval.

(b) The approved information collection requirements contained in this part appear in §§ 140.6, 140.7, 140.13b, 140.15, 140.17, 140.20, 140.21 and 140.22.

41. A new § 140.13b is added to read as follows:

§ 140.13b Amount of liability insurance required for uranium enrichment facilities.

Each holder of a license issued under Parts 40 or 70 of this chapter for a uranium enrichment facility that involves the use of source material or special nuclear material is required to have and maintain liability insurance. Such liability insurance must be the type and in the amounts the Commission considers appropriate to cover liability claims arising out of any occurrence within the United States that causes, within or outside the United States, bodily injury, sickness, disease, death, loss of or damage to property, or loss of use of property arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of chemical compounds containing source material or special nuclear material. Proof of liability insurance must be filed with the Commission as required by § 140.15 before issuance of a license for a uranium enrichment facility under Parts 40 and 70 of this chapter.

PART 150--EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN
AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

42. The authority citation for Part 150 is revised to read as follows:

AUTHORITY: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 5, Pub. L. 101-575, 104 Stat. 2835 (42 U.S.C. 2243).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 150.20(b)(2)-(5) and 150.21 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § 150.14 and 150.20(b)(3) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 150.16-150.19 and 150.20(b)(1) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

43. In § 150.3, paragraph (h) is revised and paragraph (m) is added to read as follows:

§ 150.3 Definitions.

* * * * *

(h) "Production facility" means:

(1) Any equipment or device determined by rule of the Commission to be capable of the production of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public, including a uranium enrichment facility; or

(2) Any important component part especially designed for such equipment or device as determined by the Commission.

* * * * *

(m) "Uranium enrichment facility" means:

(1) Any facility used for separating the isotopes of uranium or enriching uranium in the isotope 235, except laboratory scale facilities designed or used for experimental or analytical purposes only; or

(2) Any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235.

PART 170--FEES FOR FACILITIES AND MATERIALS LICENSES AND OTHER
REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

44. The authority citation for Part 170 continues to read as follows:

AUTHORITY: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

45. In § 170.3, paragraph (2) of the term production facility is revised and a new term "Uranium enrichment facility" is added to read as follows:

§ 170.3 Definitions.

* * * * *

Production facility means:

* * * * *

(2) Any facility designed or used for the separation of the isotopes of plutonium, except laboratory scale facilities designed or used for experimental or analytical purposes only; or

* * * * *

Uranium enrichment facility means:

(1) Any facility used for separating the isotopes of uranium or enriching uranium in the isotope 235, except laboratory scale facilities designed or used for experimental or analytical purposes only; or

(2) Any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235.

* * * * *

§ 170.21 [Amended]

46. In § 170.21, the table "Schedule of Facility Fees" is amended by removing and reserving Category E, Uranium Enrichment Plant.

47. In § 170.31, the table "Schedule of Materials Fees" is revised by adding 1E to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections and import and export licenses.

* * * * *

SCHEDULE OF MATERIALS FEES

(See footnotes at the end of table)

<u>Category of materials licenses and type of fees^{1/}</u>					Fee ^{2/} , ^{3/}
1.	Special nuclear material:				
	*	*	*	*	*
E.	Licenses for construction and operation of a uranium enrichment facility.				
	Application				\$125,000
	License, Renewal, Amendment				Full Cost
	Inspection:				
	Routine				Full Cost
	Nonroutine				Full Cost
	*	*	*	*	*

^{1/}Types of fees - Separate charges as shown in the schedule will be assessed for preapplication consultations and reviews, applications for new licenses and approvals, issuance of new licenses and approvals, amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and inspections. The following guidelines apply to these charges:

(a) Application fees - Applications for new materials licenses and approvals; applications to reinstate expired licenses and approvals except those subject to fees assessed at full cost; and applications filed by Agreement State licensees to register under the general license provisions of

10 CFR 150.20, must be accompanied by the prescribed application fee for each category, except that: 1) applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category; and 2) applications for licenses under fee Category 1E must be accompanied by an application fee of \$125,000.

(b) License/approval/review fees - Fees for applications for new licenses and approvals and for preapplication consultations and reviews subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b), (e), and (f).

(c) Renewal/reapproval fees - Applications for renewal of licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that fees for applications for renewal of licenses and approvals subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(d).

(d) Amendment fees - (1) Applications for amendments to licenses and approvals, except those subject to fees assessed at full cost, must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category applies. For those licenses and approvals subject to full costs (fee

are due upon notification by the Commission in accordance with § 170.12(c).

(2) An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category. (3) An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category. (4) Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedures are required, are not subject to fees.

(e) Inspection fees - Separate charges will be assessed for each routine and nonroutine inspection performed, including inspections conducted by the NRC of Agreement State licensees who conduct activities in non-Agreement States under the reciprocity provisions of 10 CFR 150.20. Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. If a licensee holds more than one materials license at a single location, a fee equal to the highest fee category covered by the licenses will be assessed if the inspections are conducted at the same time, unless the inspection fees are based on the full cost to conduct the inspection. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 to which any applicable contractual support services costs incurred will be added. Licenses covering more than one category will be charged a fee equal to the highest fee category covered by the license. Inspection fees are due upon

notification by the Commission in accordance with § 170.12(g). See Footnote 5 for other inspection notes.

^{2/}Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.104 nor for amendments resulting specifically from such Commission orders. However, fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., §§ 30.11, 40.14, 70.14, 73.5, and any other sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Category 9A through 9D.

^{3/}Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984, January 30, 1989, and July 2, 1990, rules, as appropriate. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990 rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed \$50,000. Costs

which exceed \$50,000 for each topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, to the effective date of this rule will not be billed to the applicant. Any professional hours expended on or after the effective date of this rule will be assessed at the rate established in § 170.20. In no event will the total review costs be less than twice the hourly rate shown in § 170.20.

* * * * *

Dated at Rockville, Maryland, this ____ day of _____, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.

ENCLOSURE 2

Regulatory Analysis

REGULATORY ANALYSIS

Uranium Enrichment Regulation; Final Rulemaking-Conforming 10 CFR Parts 2, 40, 50, 51, 70, 75, 110, 140, 150, and 170 to the Requirements of Pub. L. 101-575

1. Statement of Problem

On November 15, 1990, the President signed the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990, which amended the Atomic Energy Act (the Act) with respect to regulating uranium enrichment. The principal effect of these changes is that uranium enrichment facilities will be licensed subject to the provisions of the Act pertaining to source material and special nuclear material rather than provisions pertaining to a production facility. Thus, licensing of uranium enrichment plants will be performed pursuant to 10 CFR Parts 40 and 70 rather than 10 CFR Part 50. A new Section 193 of the Act contains revised requirements for enrichment facilities with respect to environmental review, adjudicatory hearings, inspection before operation, liability insurance, and decommissioning. A number of conforming changes have been made to 10 CFR Chapter I to implement the amendments to the Act. The Parts that are amended include 2, 40, 50, 51, 70, 75, 110, 140, 150, and 170.

2. Objective

Conforming amendments to the pertinent parts of 10 CFR Chapter I will be published in the Federal Register.

3. Alternatives

There appear to be no alternatives to the codification of the conforming regulations, since they are required by statute.

4. Benefits and Costs

The chief benefit to the public, industry, and NRC will be derived from the codification of the Commission's regulations to conform to the changes to the Atomic Energy Act in accordance with Pub. L. 101-575. Codification will facilitate the process for review of any license application for an enrichment facility and provide the final regulatory base for health and safety review of the application.

The principal cost will be the expenditure of staff resources in codifying the requirements, which is estimated at 0.5 staff years. Codification of the requirements should also result in a better understanding of the procedures and requirements for licensing of enrichment facilities, and thereby reduce the litigation burden that might result from not having the provisions of the Act codified in regulation.

5. Decision Rationale and Conclusion

Public Law 100-575, by amending the Atomic Energy Act of 1954, changes the way uranium enrichment facilities are licensed and adds different procedural requirements. The Commission's regulations must conform to these changes.

A rule providing the necessary amendments to the Commission's regulations should be published for public comment and codified through the formal rulemaking process.

6. Implementation

6.1 Schedule for Implementing the Proposed Requirements

The rule will be effective 30 days after publication in the Federal Register. There are no current NRC licensees which will be covered under the rule. Accordingly, there are no issues pertaining to implementation for existing facilities.

6.2 Relationship to Other Existing or Proposed Requirements

There are no known impacts on or conflicts with other existing or proposed requirements.

ENCLOSURE 3

Congressional Letters

The Honorable Bob Graham, Chairman
Subcommittee on Nuclear Regulation
Committee on Environmental and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In a few days, the Nuclear Regulatory Commission (NRC) will publish in the Federal Register the final proposed amendments to the NRC's regulations concerning uranium enrichment facilities. This final rule is being promulgated by the Commission to change its rules for regulation of uranium enrichment facilities to conform to amendments made to the Atomic Energy Act of 1954 (the Act) by the "Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990," signed by the President on November 15, 1990. The final conforming amendments are to 10 CFR Parts 2, 40, 50, 51, 70, 75, 110, 140, 150, and 170.

The principal effect of these conforming changes is that uranium enrichment facilities will be licensed subject to the provisions of the Act for source and special nuclear material rather than the provisions for a production facility. The conforming changes include the specific requirements for environmental review, adjudicatory hearings, inspection before operation, and liability insurance. The changes apply to the licensing of "any equipment or device (or important component part especially designed for such equipment or device) capable of separating the isotopes of uranium or enriching uranium in the isotope 235," as defined in the amended Act.

The rule will become effective 30 days after publication in the Federal Register.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Senator Alan K. Simpson

Identical letters sent to:

The Honorable Peter H. Kostmayer, Chairman cc: Representative John J. Rhodes
The Honorable Philip R. Sharp, Chairman cc: Representative Carlos J. Moorhead

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

The Honorable Bob Graham, Chairman
Subcommittee on Nuclear Regulation
Committee on Environmental and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In a few days, the Nuclear Regulatory Commission (NRC) will publish in the Federal Register the final proposed amendments to the NRC's regulations concerning uranium enrichment facilities. This final rule is being promulgated by the Commission to change its rules for regulation of uranium enrichment facilities to conform to amendments made to the Atomic Energy Act of 1954 (the Act) by the "Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990," signed by the President on November 15, 1990. The final conforming amendments are to 10 CFR Parts 2, 40, 50, 51, 70, 75, 110, 140, 150, and 170.

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The rule will become effective 30 days after publication in the Federal Register.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Senator Alan K. Simpson



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

The Honorable Peter H. Kostmayer, Chairman
Subcommittee on Energy and the Environment
Committee on Interior and Insular Affairs
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

In a few days, the Nuclear Regulatory Commission (NRC) will publish in the Federal Register the final proposed amendments to the NRC's regulations concerning uranium enrichment facilities. This final rule is being promulgated by the Commission to change its rules for regulation of uranium enrichment facilities to conform to amendments made to the Atomic Energy Act of 1954 (the Act) by the "Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990," signed by the President on November 15, 1990. The final conforming amendments are to 10 CFR Parts 2, 40, 50, 51, 70, 75, 110, 140, 150, and 170.

The principal effect of these conforming changes is that uranium enrichment facilities will be licensed subject to the provisions of the Act for source and special nuclear material rather than the provisions for a production facility. The conforming changes include the specific requirements for environmental review, adjudicatory hearings, inspection before operation, and liability insurance. The changes apply to the licensing of "any equipment or device (or important component part especially designed for such equipment or device) capable of separating the isotopes of uranium or enriching uranium in the isotope 235," as defined in the amended Act.

The rule will become effective 30 days after publication in the Federal Register.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Representative John J. Rhodes



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

The Honorable Philip R. Sharp, Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

In a few days, the Nuclear Regulatory Commission (NRC) will publish in the Federal Register the final proposed amendments to the NRC's regulations concerning uranium enrichment facilities. This final rule is being promulgated by the Commission to change its rules for regulation of uranium enrichment facilities to conform to amendments made to the Atomic Energy Act of 1954 (the Act) by the "Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990," signed by the President on November 15, 1990. The final conforming amendments are to 10 CFR Parts 2, 40, 50, 51, 70, 75, 110, 140, 150, and 170.

The principal effect of these conforming changes is that uranium enrichment facilities will be licensed subject to the provisions of the Act for source and special nuclear material rather than the provisions for a production facility. The conforming changes include the specific requirements for environmental review, adjudicatory hearings, inspection before operation, and liability insurance. The changes apply to the licensing of "any equipment or device (or important component part especially designed for such equipment or device) capable of separating the isotopes of uranium or enriching uranium in the isotope 235," as defined in the amended Act.

The rule will become effective 30 days after publication in the Federal Register.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Representative Carlos J. Moorhead

ENCLOSURE 4

Public Announcement

Public Announcement

NRC AMENDS REGULATIONS FOR
URANIUM ENRICHMENT FACILITIES

The Nuclear Regulatory Commission is changing its regulations to conform its requirements regarding regulation of uranium enrichment facilities to recent amendments to the Atomic Energy Act.

Prior to the amendments to the Act, uranium enrichment facilities would have been licensed under the same part of the Commission's regulations as nuclear power plants. Under the amended Act they will be licensed under the portions dealing with other uses of nuclear materials.

Uranium must be enriched in the isotope uranium-235, whose atoms readily undergo fission and are therefore suitable for a chain reaction, before it can be used as a fuel in the type of nuclear power plants commonly used in the United States.

There are no NRC-licensed enrichment plants in the country at the present time. All U.S. enrichment facilities are owned by the Department of Energy and are not subject to NRC regulation. However, on January 31, 1991, the NRC received an application from Louisiana Energy Services for a license to construct and operate a facility for enrichment of uranium using the gas centrifuge process. There is also a possibility, over a longer term, that legislation will be enacted that would put all or part of the Department of Energy's enrichment facilities under the jurisdiction of NRC regulations.

A proposed rule on this subject was published in the Federal Register for comment on September 16, 1991. No substantive changes were made as a result of the comments received.

The final rule will be effective on _____ (30 days after publication in the Federal Register on _____).