

NOTATION VOTE

RELEASED TO THE PDR

RESPONSE SHEET

9/2/91
date

initials

TO: SAMUEL J. CHILK, SECRETARY OF THE COMMISSION

FROM: COMMISSIONER CURTISS

SUBJECT: SECY-91-219 - PROPOSED RULEMAKING -
CONFORMING AMENDMENTS TO TITLE 10 OF THE
CODE OF FEDERAL REGULATIONS FOR URANIUM
ENRICHMENT REGULATION

APPROVED X/with comment DISAPPROVED _____ ABSTAIN _____

NOT PARTICIPATING _____ REQUEST DISCUSSION _____

COMMENTS:

See attached comments.

James R. Linton
SIGNATURE

RELEASE VOTE X

August 6, 1991

DATE

WITHHOLD VOTE

ENTERED ON "AS" YES X No _____

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PDR COMMS NRCC
CORRESPONDENCE PDR

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Commissioner Curtiss' comments on SECY-91-219:

I approve the proposed amendments recommended by the staff, with the following comments:

- 1) Since we are incorporating by reference certain requirements that will be set forth in 10 CFR Part 140 that the applicant will be required to meet (i.e., 140.13b), I would suggest that the "Purpose" and "Scope" provisions of Part 140 be modified to make it clear that uranium enrichment facilities will fall within the scope of this Part. Suggested edits to accomplish this are attached.
- 2) Staff should clarify that the OMB paper work resource estimates are for the entire licensing process, including preparation of the application and environmental report, and that the 60,000 hour estimate is not due to the minor conforming changes being proposed here. In fact, it is my understanding that the changes that we are approving here should serve to reduce the burden on applicants.
- 3) The reference to the 100 percent fee recovery rulemaking on page 5 should be updated.

UNITED STATES NUCLEAR REGULATORY COMMISSION
RULES and REGULATIONS

TITLE 10, CHAPTER 1, CODE OF FEDERAL REGULATIONS — ENERGY

140.1

140.2(c)

**PART
140**

**FINANCIAL PROTECTION REQUIREMENTS
AND INDEMNITY AGREEMENTS**

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140.109 Appendix I

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 575, as amended [42 U.S.C. 2201, 2210]; secs. 201, as amended, 202, 68 Stat. 1242, as amended, 1244 [42 U.S.C. 5841, 5842].

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 § 140.8 is issued under sec. 161c, 68 Stat. 950, as amended [42 U.S.C. 2201(c)].

Subpart A—General Provisions

§ 140.1 Purpose.

The regulations in this part are issued to provide appropriate procedures and requirements for determining 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 (68 Stat. 919), as amended, and the Solar, Wind, Waste

and Geothermal Power Production Incentives Act of 1990 (PL 101-575).

§ 140.2 Scope.

(a) The regulations in this part apply

(1) To each persons who is an applicant for or holder of a license issued pursuant to Part 50 of this chapter to operate a nuclear reactor, and

(2) With respect to extraordinary nuclear occurrences, to each person who is an applicant for or holder of a license to operate a production facility or a utilization facility, and to other persons indemnified with respect to such facility.

(3) To each person licensed pursuant to Part 70 of this chapter to possess and use plutonium in a plutonium processing and fuel fabrication plant.

(4) To each person licensed pursuant to Parts 90 and 70 of this chapter.

(b)(1) Subpart B of this part does not apply to any person subject to Subpart C or Subpart D of this part. Subpart C of this part applies only to persons found by the Commission to be Federal agencies. Subpart D of this part applies only to persons found by the Commission to be nonprofit educational institutions with respect to licenses and applications for licenses for the conduct of educational activities.

(2) Any applicant or licensee subject to this part may apply for a finding that such applicant or licensee is subject to the provisions of Subpart C or D of this part. The application should state the grounds for the requested finding. Any application for a finding pursuant to this paragraph may be included in an application for license.

(c) Subpart E of this part sets forth the procedures the Commission will follow and the criteria the Commission will apply in making a determination as to whether or not there has been an extraordinary nuclear occurrence. The form of nuclear energy li-

liability policy for facilities (Appendix A) and the forms of indemnity agreements with licensees (Appendices B, C, D, and E) include provisions requiring the waiver of certain defenses with respect to an extraordinary nuclear occurrence. These provisions and Subpart E are incorporated in this part pursuant to Public Law 89-645 (80 Stat. 891). They provide additional assurance of prompt compensation under available indemnity and underlying financial protection for injury or damage resulting from the hazardous properties of radioactive materials or radiation, and they in no way detract from the protection to the public otherwise provided under this part.

§ 140.3 Definitions.

As used in this part,

(a) "Act" means the Atomic Energy Act of 1954 (68 Stat. 919) including any amendments thereto.

(b) "Commission" means the Nuclear Regulatory Commission or its duly authorized representative.

(c) "Federal agency" means a Government agency such that any liability in tort based on the activities of such agency would be satisfied by funds appropriated by the Congress and paid out of the United States Treasury.

(d) "Financial protection" means the ability to respond in damages for public liability and to meet the cost of investigating and defending claims and settling suits for such damages.

(e) "Government agency" means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.

(f) "Nuclear reactor" means any apparatus, other than an atomic weapon, designed or used to sustain nuclear fission in a self-supporting chain reaction.

(g) "Person" means: (1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission or the Department, except that the Department shall be considered a person within the meaning of the regulations in this part to the extent that its facilities and activities are subject to the licensing and related regulatory authority of the Commission pursuant to section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

(h) "Plutonium processing and fuel fabrication plant" means a plant in which the following operations or activities are conducted:

(1) Operations for manufacture of reactor fuel containing plutonium, where the license or licenses authorize the possession of either five or more kilograms of plutonium, excluding that contained in sealed sources and welded or otherwise sealed unirradiated or irradiated fuel rods, at the site of the plant or authorize the processing of one or more kilograms of plutonium, excluding that contained in sealed sources and welded or otherwise sealed unirradiated or irradiated fuel rods, at the plant, including any of the following processes: (i) Preparation of fuel material; (ii) Formation of fuel material into desired shapes; (iii) Application of protective cladding; (iv) Recovery of scrap material; and (v) Storage associated with such operations; or

(2) Research and development activities involving any of the operations described in paragraph (h)(1) of this section, except for research and development activities where the operator is licensed to possess or use plutonium in amounts less than those specified in paragraph (h)(1).

(i) "Source material" means source material as defined in the regulations contained in Part 40 of this chapter.

(j) "Special nuclear material" means: (1) Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51 of the Act, determines to be special nuclear material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(k) "Testing reactor" means a nuclear reactor which is of a type described in § 50.21(c) of this chapter and for which an application has been filed for a license authorizing operation at:

(1) A thermal power level in excess of 10 megawatts; or

(2) A thermal power level in excess of 1 megawatt, if the reactor is to contain:

(i) A circulating loop through the core in which the applicant proposes to conduct fuel experiments; or

(ii) A liquid fuel loading; or

(iii) An experimental facility in the core in excess of 16 square inches in cross-section.

(l) "Uranium enrichment facility" means...

(l) "Department" means the Department of Energy established by the Department of Energy Organization Act (Pub. L. 95-91, 91 Stat. 565, 42 U.S.C. 7101 et seq.), to the extent that the Department, or its duly authorized representative, exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof pursuant to sections 104 (b), (c) and (d) of the Energy Reorganization Act of 1974 (Pub. L. 93-438, 88 Stat. 1233 at 1237, 42 U.S.C. 5814) and retransferred to the Secretary of Energy pursuant to section 301(a) of the Department of Energy Organization Act (Pub. L. 95-91, 91 Stat. 565 at 577-578, 42 U.S.C. 7151).

§ 140.4 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretations of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

§ 140.5 Communications.

Except where otherwise specified in this part, all communications and reports concerning the regulations in this part should be addressed to the Director of Nuclear Reactor Regulation, or Director of Nuclear Material Safety and Safeguards as appropriate, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Communications and reports may be delivered in person at the Commission's offices at 2120 L Street NW, Washington, DC, or at 11555 Rockville Pike, Rockville, Maryland.

§ 140.6 Reports.

(a) In the event of bodily injury or property damage arising out of or in connection with the possession or use of the radioactive material at the location or in the course of transportation or in the event any claim is made therefor, written notice containing particulars sufficient to identify the licensee and reasonably obtainable information with respect to the time, place, and circumstances thereof, or the nature of the claim shall be furnished by or for the licensee to the Director of Nuclear Reactor Regulation, or Director of Nuclear Material Safety and Safeguards, as appropriate, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 as promptly as practicable. The terms "the radioac-