

June 9, 2008

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Madam Speaker:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am pleased to provide an NRC draft bill that would amend the Atomic Energy Act of 1954 (AEA) and the Energy Reorganization Act of 1974. These provisions are intended to enhance the efficiency of NRC operations, the security of NRC-regulated facilities, and compliance with NRC regulatory requirements.

More specifically, this legislation would accomplish the following objectives:

(1) Eliminate the requirement to hold uncontested hearings on applications to the NRC for granting a construction permit for a utilization or production facility, or for granting a combined construction and operating license under the AEA, or for issuance of a license under AEA sections 53 and 63 for the construction and operation of any uranium enrichment facility;

(2) Reduce the program briefings of the Commission on NRC's Equal Employment Opportunity program from two to one per year;

(3) Ensure that NRC certificate holders and their contractors and subcontractors will be subject to civil penalties for AEA violations and violations of certain provisions of the Nuclear Waste Policy Act of 1982; and

(4) Provide the Commission with authority to require fingerprinting of (a) individuals designated by licensees or certificate holders to review the trustworthiness and reliability of individuals who are already required to be fingerprinted under AEA section 149, (b) employees of licensees or certificate holders who have authority to grant unescorted access to a utilization facility, or to designated radioactive material or other property, and (c) principal operating officers (or their equivalent) of individuals and entities already required to conduct fingerprinting under AEA section 149.

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A draft bill and a legislative memorandum explaining the need for the provisions of the bill are enclosed with this letter.

Sincerely,

/RA/

Dale E. Klein

Enclosures:

1. Draft Bill
2. Legislative Memorandum

Identical letter sent to:

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, D.C. 20515

The Honorable Richard B. Cheney
President of the Senate
Washington, D.C. 20510

The Honorable Thomas R. Carper
Chairman, Subcommittee on Clean Air
and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510
cc: Senator George V. Voinovich

The Honorable Barbara Boxer
Chairman, Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510
cc: Senator James M. Inhofe

The Honorable Rick Boucher
Chairman, Subcommittee on Energy
and Air Quality
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515
cc: Representative Fred Upton

The Honorable John D. Dingell
Chairman, Committee on Energy
and Commerce
United States House of Representatives
Washington, D.C. 20515
cc: Representative Joe Barton

The Honorable Peter J. Visclosky
Chairman, Subcommittee on Energy
and Water Development
Committee on Appropriations
United States House of Representatives
Washington, D.C. 20515
cc: Representative David L. Hobson

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The Honorable Byron Dorgan
Chairman, Subcommittee on Energy
and Water Development
Committee on Appropriations
United States Senate
Washington, D.C. 20510
cc: Senator Pete V. Domenici

DRAFT BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the “Act to Streamline the Nuclear Regulatory Commission’s Licensing Process and Administrative Efficiency”.

SEC. 2. HEARINGS UNDER ATOMIC ENERGY ACT OF 1954.

(a) Section 189 a.(1)(A) of the Atomic Energy Act of 1954 (42 U.S.C. 2239(a)(1)(A)) is amended by--

(1) in the second sentence--

(i) deleting that portion of the sentence that begins with “The Commission” and ends with “Federal Register, on” and inserting “On”;

(ii) inserting “or an operating license” after “construction permit” each time “construction permit” is used in the sentence; and

(iii) deleting the period at the end of the sentence; and

(2) in the third sentence--

(i) deleting that portion of the sentence that begins with “In cases” and ends with “such a hearing”;

(ii) deleting “therefor” and inserting “for a hearing”; and

(iii) deleting “issue an operating license” and inserting “issue a construction permit, an operating license,”.

(b) Section 189 of the Atomic Energy Act of 1954 (42 U.S.C. 2239) is further amended by--

(1) in the second sentence of subsection a.(2)(A) (42 U.S.C. 2239(a)(2)(A)), deleting “required hearing” and inserting “hearing held by the Commission under this section”; and

(2) in subsection b. (42 U.S.C. 2239(b)), revising paragraph (2) by deleting “to begin operating” and inserting “to operate”.

(c) The first sentence of subsection b. of section 185 of the Atomic Energy Act of 1954 (42 U.S.C. 2235(b)) is amended by deleting “After holding a public hearing under section 189 a.(1)(A),” and inserting “After holding a hearing under section 189 a.(1)(A), or if the Commission has determined that no hearing is required to be held under section 189 a.(1)(A),”.

(d) Section 193(b) of the Atomic Energy Act of 1954 (42 U.S.C. 2243(b)) is amended by—

(1) in paragraph (1), deleting “on the record with regard to the licensing of the construction and operation of a uranium enrichment facility under sections 53 and 63” and inserting “, if a person whose interest may be affected by the construction and operation of a uranium enrichment facility under sections 53 and 63 has requested a hearing regarding the licensing of the construction and operation of the facility”; and

(2) in paragraph (2), deleting “Such hearing” and inserting, “If a hearing is held under paragraph (1), the hearing”.

(e) The amendments in this section shall apply to all applications and proceedings pending before the Commission on or after the date of enactment of this section.

SEC. 3 REPORT ON EQUAL EMPLOYMENT OPPORTUNITY PROGRAM.

Section 209(c) of the Energy Reorganization Act of 1974 (42 U.S.C. 5849(c)) is amended by deleting “semiannual public meetings” and inserting “an annual public meeting”.

SEC. 4. CIVIL MONETARY PENALTIES.

The first sentence of section 234 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2282(a)) is amended by—

(1) inserting “(including a contractor or subcontractor of a licensee or certificate holder of the Commission or of an applicant for a Commission license or certificate)” after “Any person”; and

(2) striking “any licensing or certification provision of section 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, 109, or 1701” and inserting: “any Commission regulatory requirement issued pursuant to or contained in this Act or section 133, 137, 180, or 218(a) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 *et seq.*)”.

SEC. 5. ENHANCED FINGERPRINTING REQUIREMENTS.

Section 149 a.(1) of the Atomic Energy Act of 1954 (42 U.S.C. 2169) is amended by adding the following new subparagraph after subparagraph (B):

“(C) In addition to the foregoing fingerprinting requirements of this paragraph, the Commission may require an individual or entity described in subparagraph (A)(ii) to fingerprint—

“(i) any individual who has been designated by the individual or entity described in subparagraph A(ii) (or by a contractor or subcontractor of such individual or entity) to determine the trustworthiness and reliability of an individual who is required to be fingerprinted under subparagraph (B).”

“(ii) any individual who is in the employ of the individual or entity described in subparagraph (A)(ii) (or a contractor or subcontractor of such individual or entity) and who has authority relating to provision of unescorted

access to a facility, radioactive material, or other property described in subparagraph (B)(i);" or

"(iii) any individual who is, or holds a position equivalent to, the principal operating officer, or alternate principal operating officer, of the individual or entity described in subparagraph (A)(ii)."

LEGISLATIVE MEMORANDUM

SEC. 2. HEARINGS UNDER ATOMIC ENERGY ACT OF 1954.

This section would eliminate the requirement of section 189 a. of the Atomic Energy Act of 1954 that the Commission hold a hearing in proceedings on each application for granting a construction permit for a nuclear reactor facility under section of 103 or 104 b. of the Act or for granting a construction permit for a testing facility under section 104 c. of the Act or for granting a combined construction and operating license under section 185 of the Act, even if no person whose interest is determined to be affected by the proceeding has requested a hearing or been granted intervention. Similarly, the requirement of section 193(b) of the Act that would require a hearing in an uncontested proceeding to license construction and operation of a uranium enrichment facility would be eliminated. In the latter case, the requirement that such hearings be on the record – the only such requirement with respect to an adjudicatory hearing contained in the Atomic Energy Act – would also be eliminated.

The Commission has found that there is not much added value in holding uncontested hearings. Over fifty years ago, a 1957 amendment added the requirement for mandatory hearings to the Atomic Energy Act of 1954. Since then, the means and methods for public access to the Commission's actions, both legally mandated and voluntarily undertaken, have become numerous and significant. Enactment of the Freedom of Information Act and the Government in the Sunshine Act, the advent of the internet, and web-based access to NRC's documented actions through the NRC's Agency-wide Documents Access and Management System (ADAMS) have all contributed to making NRC's actions transparent and accessible. Furthermore, even with the elimination of the mandatory hearing requirements, the agency staff

would continue to prepare a safety analysis report and an environmental statement, and the Advisory Committee on Reactor Safeguards would continue to provide an independent assessment of each power reactor application. The Commission could not issue a license until it had concluded that all regulatory requirements had been satisfied. And, of course, this would in no way affect the right of persons whose interest are affected from requesting a hearing on specific matters.

The changes in Commission licensing procedures addressed in this section would take effect upon enactment of the legislation, and would apply to new applications and proceedings, as well as any pending proceedings. This would obviate the need for the Commission to expend resources on uncontested proceedings.

These changes will streamline the Commission's licensing process under the Atomic Energy Act, saving time and scarce resources in a period in which a large number of reactor licensing applications are expected to be submitted to the Commission.

SEC. 3. REPORT ON EQUAL EMPLOYMENT OPPORTUNITY PROGRAM.

The Energy Reorganization Act of 1974 currently requires two annual program briefings of the Commission on the NRC's Equal Employment Opportunity (EEO) Program. These briefings involve extensive research and data-collection related to the agency's accomplishments, program assessments, and challenges, and are resource-intensive. History has demonstrated that the agency does not experience substantial changes in a six-month period and that annual briefings would be sufficient to keep the Commission apprised of the EEO and related programs.

To the Commission's knowledge, the NRC is the only Federal agency that is required to hold public briefings on the agency's EEO program. Holding only one briefing per year would not detract from the purpose of the EEO briefings, and would conserve agency resources.

Furthermore, this reduction would not negate the agency's efforts to ensure that equal employment opportunity is, as required by Executive Order 11478, an "integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees in the Federal Government."

SEC. 4. CIVIL MONETARY PENALTIES.

This section would expand the Nuclear Regulatory Commission's authority to issue civil penalties. The Commission currently has authority, under section 234 of the Atomic Energy Act of 1954 (AEA), to issue civil penalties to licensees and certificate holders of the Commission. However, that authority only extends to violations of licensing or certification provisions listed in section 234 of the AEA (or any rule, regulation, or order, or any term, condition, or limitation of a license or certificate issued thereunder). The amendment would also clarify that contractors and subcontractors of a Commission licensee or certificate holder, or of an applicant for a Commission license or certificate, are subject to civil penalties.

Congress amended section 234 of the AEA in the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104-134), to give the Commission authority to issue civil penalties for violations related to gaseous diffusion enrichment plants, which must receive a certificate of compliance from the Commission, rather than a license, under section 1701 of the AEA. That amendment made certificate holders subject to civil penalties, but only if the certificates were issued pursuant to one of the statutory provisions listed in section 234.

However, the current authority does not extend to all certificate holders. For example, certificates of compliance are also issued by the NRC for the design of spent fuel storage casks under provisions of the Nuclear Waste Policy Act of 1982 (NWPA). Since these provisions are not listed in section 234 of the AEA, the Commission does not currently have the authority under section 234 of the AEA to issue civil penalties based on these certificates of compliance.

Broadening the scope of section 234 of the AEA would authorize the Commission to assess civil penalties based on violation of any Commission regulatory requirement issued pursuant to, or contained in, the AEA or specified sections of the NWPA.

The proposed amendment is necessary to extend the Commission's civil penalty authority over holders of or applicants for certificates of compliance. There is no real basis to distinguish certificate holders from licensees for the purpose of allowing a civil penalty to be imposed as an enforcement sanction.

SEC. 5. ENHANCED FINGERPRINTING REQUIREMENTS.

Currently, NRC is required to direct certain individuals and entities (generally, those licensed or certified to engage in or who have filed an application for a license or certificate to engage in activities subject to NRC licensing or certification, or who have given written notice to the NRC of an intent to file an application for licensing, certification, permitting, or approval of a product or activity subject to NRC regulation) to require fingerprinting of individuals who have unescorted access to certain facilities or to designated materials or other property, or who are permitted access to safeguards information. This amendment would expand that authority with respect to certain other individuals who have security-related responsibilities.

For example, this amendment would authorize the Commission to extend fingerprinting requirements to any individual designated by a licensee or certificate holder to review the trustworthiness and reliability of individuals who are fingerprinted under section 149 a.(1) of the Atomic Energy Act of 1954, based on the results of the identification and criminal records check information obtained from the Attorney General. Because some licensees' reviewing officials or

Trustworthiness and Reliability Officials¹ do not have unescorted access to a utilization facility or to designated radioactive material or other property or access to safeguards information, the Commission currently is not able to require their fingerprinting.

Other examples of individuals in positions that may be subject to NRC fingerprinting requirements under this amendment are individuals who have authority relating to provision of unescorted access to a facility, radioactive material, or other designated property, and individuals who hold the position of principal operating officer or an equivalent position in an enterprise. It is obvious that individuals who are employed in these types of positions can be in a position to do considerable harm. This amendment would enhance security by authorizing fingerprinting and a subsequent FBI criminal history check of those individuals.

The proposed amendment does not direct the Commission to immediately require fingerprinting of the individuals covered, but gives the Commission discretion to determine which of those employees and officers need to be fingerprinted and when such a program should be implemented.

¹ In this context, the terms “reviewing official” and “Trustworthiness and Reliability Official” are used to designate individuals who are assigned the responsibility for analyzing the results of identification and background checks based on the fingerprints of employees currently required to be fingerprinted under section 149 of the Atomic Energy Act of 1954.