UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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AFFIRMATION/DISCUSSION AND VOTE

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PUBLIC MEETING

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Thursday, February 15, 1990

The Commission met in open session, pursuant to notice, at 11:30 a.m., Kenneth M. Carr, Chairman, presiding.

COMMISSIONERS PRESENT:

KENNETH M. CARR, Chairman of the Commission
THOMAS M. ROBERTS, Commissioner
KENNETH C. ROGERS, Commissioner
JAMES R. CURTISS, Commissioner
FORREST J. REMICK, Commissioner

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STAFF SEATED AT THE COMMISSION TABLE:

SAMUEL J. CHILK, Secretary

WILLIAM C. PARLER, General Counsel

P-R-O-C-E-E-D-I-N-G-S

11:33 p.m.

CHAIRMAN CARR: Good morning, ladies and gentlemen.

This is an affirmation session. We have one item to come before us this morning.

Before I ask the Secretary to lead us through the item for affirmation, do any of my fellow Commissioners have any opening comments they would like to make?

COMMISSIONER ROBERTS: I just have a brief comment. I voted against this rule, but I don't want anybody to get the notion or think that I don't think the Commission ought to have all relevant safety information.

CHAIRMAN CARR: Any other comments?

Mr. Secretary?

SECRETARY CHILK: The subject matter of the affirmation is SECY-90-13. It's a final rule to prohibit agreements related to employment that would restrict the free flow of information of the Commission.

The Commission is being asked in this paper to act on a final rule, which would prohibit agreements related to the employment that would

prohibit, restrict, or discourage employees who have performed or are performing work related to license activities from bringing safety information to the Commission.

Chairman Carr, Commissioners Rogers, Curtiss, and Remick have approved the rule as attached to our memorandum of February the 14th. Commissioner Roberts has disapproved the rule. Commissioner Curtiss has provided additional comments to be published with the rule.

Would you please affirm your votes?

CHAIRMAN CARR: Aye.

COMMISSIONER ROGERS: Aye.

COMMISSIONER CURTISS: Aye.

COMMISSIONER REMICK: Aye.

SECRETARY CHILK: I have nothing else.

CHAIRMAN CARR: Nothing else to come before us today? If not, we stand adjourned.

(Whereupon, at 11:35 a.m., the above-entitled matter was adjourned.)

CERTIFICATE OF TRANSCRIBER

This is to certify that the attached events of a meeting of the United States Nuclear Regulatory Commission entitled:

TITLE OF MEETING: AFFIRMATION/DISCUSSION AND VOTE

PLACE OF MEETING: ROCKVILLE, MARYLAND

DATE OF MEETING: FEBRUARY 15, 1990

were transcribed by me. I further certify that said transcription is accurate and complete, to the best of my ability, and that the transcript is a true and accurate record of the foregoing events.

Reporter's name: Peter Lynch

January 11, 1990 **RULEMAKING ISSUE** SECY-90-013
(Affirmation)

For: The Commissioners

From: William C. Parler
General Counsel

Subject: FINAL RULE TO PROHIBIT AGREEMENTS RELATED TO EMPLOYMENT THAT WOULD RESTRICT THE FREE FLOW OF INFORMATION TO THE COMMISSION

Purpose: To request approval of final revisions to the Commission's regulations which would prohibit agreements related to employment that would prohibit, restrict or discourage employees who have performed or are performing work related to licensed activities from bringing safety information to the Commission.

Background: In SECY-89-157, OGC provided a detailed background of the events leading up to the drafting of a proposed rule on the free flow of information to the Commission. After Commission review and approval, the Commission, on July 18, 1989, published the proposed rule in the Federal Register (54 Fed. Reg. 30049). The Commission has received 43 comments on the proposed rule. Of these comments, 36 opposed the proposed rule and 7 favored the proposed rule subject to some modifications. Although no commenters were satisfied with the proposed rule as drafted, virtually all comments voiced support for the goal of assuring safety information was brought to the Commission.

Subsequent to the Commission's approval of the publication of the proposed rule, two events occurred which have direct bearing on the form of the final rule.

First, on July 18, 1989, the Secretary of Labor issued a decision in a case filed under Section 210 of the Energy Reorganization Act which addressed restrictive settlement agreements. See Pollizi v. Gibbs & Hill, Inc., 87-ERA-38 (July 18, 1989). In that decision, the Secretary of Labor found a restrictive clause in a settlement agreement unenforceable because it had the effect of drying-up channels of communication which were essential for Government agencies to carry out their responsibilities. Specifically of significance

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Stuart A. Treby, OGC
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for this rulemaking, the Secretary found that Department of Labor Administrative Law Judges had a duty to review parties' settlement agreements before dismissing cases and that a restriction on voluntary appearance as a witness in an NRC proceeding was against public policy and, therefore, unenforceable. Particularly notable is the fact that the Secretary declared the restrictive provision of the Pollizi settlement agreement unenforceable as against public policy, in spite of the fact that the provision in question explicitly stated that, other than appearing voluntarily as a witness in an NRC proceeding, Mr. Pollizi could bring all his safety concerns to the NRC.

The second event of significance to this rulemaking is that the Commission received the replies of various licensees to the Commission's April 27, 1989, letter to nuclear power plant licensees, their contractors, and major nuclear materials and fuel cycle facility licensees concerning the existence of other settlement agreements with restrictive clauses. Although some licensees were expanding the scope of their reviews and may identify additional agreements in the future, initially more then a dozen agreements were identified that contained restrictive language or questionable language concerning providing information to the NRC. The responses included not only agreements settling Section 210 complaints, but also other agreements settling law suits in State and Federal Courts.

The attached Federal Register notice contains a summary of the comments received and Commission responses to those comments. While those comments were important in deciding on the final form of the rule, the above two events were significant in drafting the modifications to the proposed rule. The modifications to the proposed rule are discussed below.

A. The requirement that licensees have procedures to assure that contractors and subcontractors do not have improper agreements with their employees.

Commenters that exhibited the most concern for the rule's requirement that procedures be developed to monitor contractors and subcontractors were materials licensees, such as hospitals, whose overall activities involve only a small percentage of licensed activities. Their concern was that, as written, the rule would require that they have procedures to oversee employee/employer agreements for hundreds of contractors and subcontractors that had nothing to do with their limited licensed activities.

It is well established in Commission precedent that an applicant or licensee cannot avoid responsibility for compliance

with the Atomic Energy Act or the Commission's regulations by delegation of performance of license related activities to independent agents or contractors. (See Virginia Electric and Power Company, (North Anna Power Station, Units 1 and 2) ALAB-324, 3 NRC 347 (April 15, 1976); Illinois Power Company, (Clinton Power Station, Unit 1) LBP-81-61, 14 NRC 1735 (December 16, 1981)). In fact, the Commission has specifically noted the responsibility of licensees for the conduct of their contractors with respect to cases of harassment by contractors of contractor employees. Metropolitan Edison Company et. al., (Three Mile Island Station, Unit 1) CLI-85-2, 21 NRC 282, 329 (February 25, 1985). Therefore, it is not necessary for the Commission to specifically require licensees to have procedures for assuring their contractors and subcontractors comply with the Commission's regulations. Enforcement actions can be, and have been, taken against licensees for the misconduct of their contractors and subcontractors which results in violations of the Commission's regulations.

The staff does not believe it was the Commission's intent in proposing the draft rule to create an unwieldy system where some licensees performing limited licensed activities would be required to establish a system to monitor the employer/employee relations of hundreds of contractors and subcontractors who are not involved in licensed activities. Accordingly, the final rule has been modified to directly prohibit agreements which prohibit, restrict, or otherwise discourage an employee from engaging in protected activity. The final rule has not retained the requirement that licensees develop specific procedures to assure compliance by contractors or subcontractors. However, the Statement of Considerations for the final rule reemphasizes the precedent noted above with respect to licensees' responsibilities for their contractors and subcontractors and notes that the Commission will hold licensees responsible for violations of NRC regulatory requirements by contractors and subcontractors related to the activities which are the responsibility of the licensee under the applicable statutes, regulations, orders, or licenses.

B. The requirement that licensees be informed of the filing of Section 210 cases against contractors and that licensees review proposed settlement agreements in those cases.

A number of commenters raised problems with the requirements in the proposed rule that contractors and subcontractors inform licensees of each Section 210 complaint filed against the contractor or subcontractor, and that the licensee or license applicant have prior review of Section 210 settlement agreements in those cases. Commenters generally felt that this procedure was unnecessary and would make it more difficult to

settle cases. They believed that, given that it is generally to the benefit of all parties to a dispute to settle the issues of concern short of full litigation of the issues, a rule which discouraged agreements would be detrimental to all parties to a dispute.

It is the staff's view that, as a result of the Secretary of Labor's decision in the Pollizi case, these requirements should be dropped. This recommendation results from two parts of the Pollizi decision. First, the Secretary in that case reiterated a decision in Funcko and Yunker v. Georgia Power Co., 89-ERA-9, 10, (Secretary's Order to Submit Settlement Agreement issued March 23, 1989, at 2), that it was error for an Administrative Law Judge in a Department of Labor case to dismiss a case without reviewing a proposed settlement agreement. Pollizi slip op. at 2. In addition, the Secretary found that an agreement that restricted voluntary participation in NRC proceedings, even though it specifically noted that Mr. Pollizi was not in any manner restricted from providing information to the Commission on safety concerns, was against public policy and would not be enforceable. Pollizi slip op. at 7. As a result of these two findings it is evident that the Department of Labor will be giving close scrutiny to these settlement agreements. Therefore, it does not appear that the administrative burden of having contractors report on, and licensees monitor, the filing and settlement of Section 210 cases is necessary to achieve the purposes of the proposed rule. These provisions have been dropped from the final rule.

C. Application of the rule to all settlement agreements.

Although a number of commenters believed that the rule was either unnecessary or should be restricted to Section 210 agreements, OGC does not believe either of these positions is correct. This conclusion results from the responses to the staff's April 27, 1989, letter to various licensees, which inquired as to the existence of any additional agreements containing restrictive clauses. Those responses not only identified more than a dozen agreements which contained language that could be interpreted as restricting the free flow of safety information to the Commission, they also included several settlement agreements outside of Section 210 proceedings before the Department of Labor. This indicates both that the current rules are not adequate to prevent these agreements from being executed, and that the scope of the prohibition on such agreements should be broader than just Section 210 settlement agreements.

Coordination: The Executive Director for Operations has reviewed this paper and concurs with it.

Recommendation: That the Commission:

1. Approve for publication in the Federal Register the final rule, attached to this paper, on Preserving the Free Flow of Information to the Commission.

2. Certify that these amendments will not have any significant economic impact on a substantial number of small entities. This certification is necessary in order to satisfy the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(a).

3. Note:

   a. The NRC has determined that this final rule falls within the scope of the actions described in categorical exclusion 10 CFR 51.22(d). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

   b. As amended, the final rule does not contain any information collection requirements that would be subject to the requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et. seq.

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

   d. In publishing the proposed rule, revisions to Part 61 were inadvertently not included. Part 61 does contain, in §§ 61.9, comparable employee protection provisions to those being modified in other Parts of the regulations. Accordingly, the final rule includes the appropriate revisions to Part 61.

   e. The Senate Committee on Environment and Public Works, the House Committee on Interior and Insular Affairs, and the House Committee on Energy and Commerce will be informed of the Commission's action concerning this final rule.

f. The Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification and reason for it as required by the Regulatory Flexibility Act.

g. Copies of the final rule will be distributed to affected licensees and other interested parties.

William C. Parler 1/11/90
William C. Parler
General Counsel

Attachment:
Federal Register Notice containing
Final Rule on Preserving the Free
Flow of Information to the Commission

Commissioners' comments should be provided directly to the Office of the Secretary by COB Friday, January 26, 1990.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Friday, January 19, 1990, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of January 29, 1990. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 60, 61, 70, 72 and 150

RIN: 3150-AD21

Preserving the Free Flow of Information to the Commission

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Nuclear Regulatory Commission is revising its rules governing the conduct of all Commission licensees and license applicants. The final rule prohibits the imposition of conditions in settlement agreements under Section 210 of the Energy Reorganization Act, or in other agreements affecting employment, that would prohibit, restrict, or otherwise discourage any employee from providing the Commission with information on potential violations or other hazardous conditions. This rule is necessary to prohibit the use of provisions which would inhibit the free flow of information to the Commission in agreements related to employment.

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

FOR FURTHER INFORMATION CONTACT: Stuart A. Treby, Assistant General Counsel, Rulemaking and Fuel Cycle Division, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone (301) 492-1636.

SUPPLEMENTARY INFORMATION:

Background

Section 210 of the Energy Reorganization Act of 1974, as amended, was added as a new section to that Act in 1978 (Pub. L. 95-601). Section 210 offers protection to employees of a Commission licensee, or of a contractor or a subcontractor of a Commission licensee or applicant. The protection afforded is to those who have been fired or discriminated against as a result of the fact that, among other things, they have testified or given evidence on potential violations, or brought suit under Section 210 of the Energy Reorganization Act. Employees who have been discriminated against for raising safety or other issues have the right to file complaints with the Department of Labor for the purpose of obtaining a remedy for the personal harm caused by the discrimination. Following the filing of a complaint, the Department of Labor performs an investigation. If either the employee or the employer is not

satisfied with the outcome of the investigation, a hearing can be held before an Administrative Law Judge, with review by the Secretary of Labor. The Secretary of Labor can issue an order for the employee to be rehired, or otherwise compensated if the employee's case is justified.

In many cases, the employee and the employer reach settlement of the issues raised in the Department of Labor proceeding before completion of the formal process and a finding by the Secretary of Labor. In general the Commission supports settlements as they provide remedies to employees without the need for litigation. However, a recent case has brought to the Commission's attention the potential for settlement agreements negotiated under Section 210 to impose restrictions upon the freedom of employees or former employees protected by Section 210 to testify or participate in NRC licensing and regulatory proceedings or to otherwise provide information on potential violations or other hazardous conditions to the Commission or the NRC staff. (See Texas Utilities Electric Co., (Comanche Peak Steam Electric Station Units 1 and 2), CLI-88-12, 28 NRC 605 (1988); Texas Utilities Electric Co., (Comanche Peak Steam Electric Station Units 1 and 2), CLI-89-06, ___ NRC ___ (1989)). The Commission's follow-up to the above case has confirmed that other instances of questionable restrictions do exist in a variety of settlement agreements, not limited to Section 210 proceedings.

The Commission has concluded that a Section 210 settlement agreement, or any other agreement affecting employment, which restricts the freedom of an employee or former employee from freely and fully communicating with the

Nuclear Regulatory Commission about potential violations or other hazards falling within NRC's regulatory responsibility is unacceptable. These provisions may have a chilling effect on communications about nuclear safety security, or other matters, and would restrict, impede, or frustrate full and candid disclosure to the Nuclear Regulatory Commission about matters of regulatory significance. Any such agreement under which a person contracts to withhold safety significant information or testimony from the Nuclear Regulatory Commission could itself be a threat to safety and therefore jeopardize the execution of the Agency's overall statutory duties. And the same would be true of other information bearing on NRC's regulatory responsibilities, for example information regarding security or safeguards issues.

Accordingly, on July 18, 1989 (54 FR 30049), the Commission published a proposed rule amending its regulations to require licensees and license applicants to ensure that neither they, nor their contractors or subcontractors, impose conditions in settlement agreements under Section 210 of the Energy Reorganization Act, or in other agreements affecting employment, that would prohibit, restrict, or otherwise discourage an employee from providing the Commission with information on potential violations or hazardous conditions.

The NRC has received 43 comments on the proposed rule from a variety of Commission licensees, private individuals, and industry organizations. A summary of those comments and the Commission's responses to those comments follows. Before discussing those comments, however, two additional events

have occured which, along with the comments, have resulted in changes in the content of the final rule.

First, on July 18, 1989, the Secretary of Labor issued a decision in a case filed under Section 210 of the Energy Reorganization Act which addressed restrictive settlement agreements. See Pollizi v. Gibbs & Hill, Inc., 87-ERA-38 (July 18, 1989). In that decision, the Secretary of Labor found unenforceable a clause in a settlement agreement which had the effect of drying-up channels of communication which were essential for Government agencies to carry out their responsibilities. Specifically of significance for this rulemaking, the Secretary found that Department of Labor Administrative Law Judges had a duty to review parties' settlement agreements before dismissing cases and that a restriction on voluntary appearance as a witness in an NRC proceeding was against public policy and, therefore, unenforceable. Particularly notable is the fact that the Secretary found the restrictive provision of the Pollizi settlement agreement unenforceable in spite of the fact that the provision in question explicitly stated that, other than appearing voluntarily as a witness in an NRC proceeding, Mr. Pollizi could bring all his safety concerns to the NRC.

The second event of significance to this rulemaking is that the Commission has received the replies of various licensees to the Commission's April 27, 1989, letter to nuclear power plant licensees, their contractors, and major nuclear materials and fuel cycle facility licensees concerning the existence of other settlement agreements with restrictive clauses. Although

some licensees were expanding the scope of their reviews and may identify additional agreements in the future, initially more than a dozen agreements were identified that contained either restrictive language or questionable language concerning the provision of information to the NRC. The responses included not only agreements settling Section 210 complaints, but also other agreements settling law suits in State and Federal Courts.

As will be discussed in responding to specific comments and suggested changes, the above two events, in combination with the comments received by the Commission, have resulted in modifications to the proposed rule, while at the same time confirming the Commission's view that a specific rule concerning settlement agreements should be adopted.

Summary of Public Comments

Of the 43 comments received by the Commission on the proposed rule, no one indicated satisfaction with the rule as written. Thirty-six commenters specifically opposed the rule for a variety of reasons. Seven commenters favored the rule subject to certain modifications. It is noteworthy that virtually all commenters indicated their support for the Commission's goal of assuring the free flow of information to the Commission. A summary of comments with the Commission's responses appears below.

1. The Proposed Rule As Drafted Is Much Too Broad In Scope.

Almost half the commenters complained that the scope of the rule was much too broad, rendering its implementation both unnecessary and impractical. The two areas most frequently mentioned as being too broadly written were the rule's reference to "contractors and subcontractors" and the application of the rule to "all settlement agreements." Each of those issues is individually addressed below.

a. Application of the rule to contractors and subcontractors.

Commenters that exhibited the most concern for the application of the rule to contractors and subcontractors were materials licensees, such as hospitals, whose overall activities involve only a small percentage of licensed activities. Given the extensive use of contractors in the conduct of licensed activities, a rule that applied only to licensees, and not to their contractors or subcontractors, would be of little value. Accordingly, the rule prohibition is broadly worded to cover all persons.

A separate but related concern is that, as proposed, the rule would require that licensees have procedures to oversee employee/employer agreements for hundreds of contractors and subcontractors that had nothing to do with their limited licensed activities. It is well established in Commission precedent that an applicant or licensee cannot avoid responsibility for compliance with the Atomic Energy Act or the Commission's regulations by

delegation of performance of license related activities to independent agents or contractors. (See Virginia Electric and Power Company, (North Anna Power Station, Units 1 and 2) ALAB-324, 3 NRC 347 (April 15, 1976); Illinois Power Company, (Clinton Power Station, Unit 1) LBP-81-61, 14 NRC 1735 (December 16, 1981)). In fact, the Commission has specifically noted the responsibility of licensees for the conduct of their contractors with respect to cases of harassment by contractors of contractor employees. Metropolitan Edison Company et. al. (Three Mile Island Station, Unit 1) CLI-85-2, 21 NRC 282, 329 (February 25, 1985).

Therefore, it is not necessary for the Commission to specifically require licensees to have procedures for assuring that their contractors and subcontractors comply with the Commission's regulations. Enforcement actions can be, and have been, taken against licensees for the misconduct of their contractors and subcontractors which results in violations of the Commission's regulations, including violation by contractors of employee discrimination regulations. Thus, the Commission need not require that formal procedures be developed to monitor contractor and subcontractor activity in order for licensees to be responsible for their contractors' and subcontractors' actions.

The Commission did not intend to create an unwieldy system which would require some licensees performing limited licensed activities to establish a system to monitor the employer/employee relations of hundreds of contractors and subcontractors who are not directly involved in licensed activities.

Accordingly, the final rule has been modified to directly prohibit agreements which prohibit, restrict, or otherwise discourage an employee from engaging in protected activity as defined in the Commission's employee protection regulations. Although the final rule requires that licensees notify contractors and subcontractors of this regulation's restrictions, the final rule has not retained the requirement that licensees develop specific procedures to assure compliance by contractors or subcontractors. However, the Commission reemphasizes the precedent noted above with respect to licensees' responsibilities for their contractors and subcontractors. The Commission will hold licensees responsible for violations of NRC regulatory requirements by contractors and subcontractors performing work related to the activities which are the responsibility of the licensee under the applicable statutes, regulations, orders, or licenses. The selection of means to ensure that violations do not occur, which could include development of written procedures, will be left to licensees.

b. Application of the rule to all settlement agreements.

The second area in which commenters were concerned with the scope of the proposed rule was in its application to all "agreements affecting the compensation, terms, conditions and privileges of employment." A number of commenters believe that the rule should be limited to settlement of complaints alleging violations of Section 210 of the Energy Reorganization Act. The Commission finds no merit in this criticism of the proposed rule.

On April 27, 1989, the NRC staff requested nuclear power plant licensees and their contractors, and major nuclear materials and fuel cycle facility licensees, to review all settlement agreements or other agreements related to compensation, terms, conditions, and privileges of employment to which they were a party for potentially improper restrictive clauses. Although several of the licensees had not fully completed their review of all such agreements, initial responses to the Commission's inquiry identified more then a dozen agreements that contained language that was either restrictive in nature or was at least questionable concerning the provision of information to the NRC. These agreements were not, in fact, limited to Section 210 complaints. They contained several settlements of cases filed on a variety of grounds before State and Federal Courts. The Commission has concluded that these agreements adequately demonstrate the potential for impeding the flow of information to the Commission through avenues other than Section 210 agreements. The Commission is, therefore, maintaining in the final rule the application of its prohibitions to all agreements affecting the compensation, terms, conditions, and privileges of employment.

2. The Rule Is Unnecessary Because It Is Redundant.

Commenters advancing this position generally cited the already existing restrictions in the Commission's regulations concerning Section 210 of the Energy Reorganization Act. These include the requirement in 10 CFR Part 19 that a "Form 3" be posted at all work sites informing employees of their right

to bring safety concerns to the NRC and the requirement in 10 CFR Part 21 creating an obligation on directors and responsible officers of licensees and vendors to report defects to the NRC. The commenters believe that it would be redundant to add a restriction on settlement agreements to the regulations.

The courts have not explicitly addressed the issue of whether Section 210 of the Energy Reorganization Act would prohibit restrictive settlement agreements and the Commission's own regulations do not specifically address the issue either. In the Pollizi case the Secretary of Labor did not specifically find that the restrictive provisions in the settlement agreements violated Section 210. Rather, the Secretary indicated that the agreement's provisions were invalid because the provision was against public policy and was, therefore, unenforceable. See Pollizi v. Gibbs & Hill, Inc., 87-ERA-38, Slip Opinion at 7 (July 18, 1989). In addition, based on the number of agreements already identified which contain questionable provisions, it would not appear that current regulations have prevented potentially improper agreements from being executed.

Rather than relying on the judgment of a variety of individuals attempting to determine which clauses might violate public policy, the Commission believes it is prudent to specifically prohibit by regulation all settlement agreements or other agreements affecting the compensation, terms, conditions and privileges of employment from restricting employees from bringing safety concerns to the attention of the NRC.

3. Comments Concerning The Reporting And Monitoring Aspects Of The Proposed Rule.

A number of commenters raised problems with the requirements in the proposed rule that contractors and subcontractors inform licensees of each Section 210 complaint filed against the contractor or subcontractor, and that the licensee or license applicant have prior review of Section 210 settlement agreements. Commenters generally felt that this procedure was unnecessary and would make it more difficult to settle cases. Given that settlements are generally encouraged, actions making it more difficult to settle cases would be detrimental to all parties involved in these disputes.

The Commission has determined that, as a result of the Secretary of Labors' decision in the Pollizi case, these requirements should be dropped. The reason for the Commission dropping this aspect of the proposed rule primarily results from two parts of the Pollizi decision. First, the Secretary in that case reiterated a decision in Funcko and Yunker v. Georgia Power Co., 89-ERA-9, 10, (Secretary's Order to Submit Settlement Agreement issued March 23, 1989, at 2), that it was error for an Administrative Law Judge in a Department of Labor case to dismiss a case without reviewing a proposed settlement agreement. Pollizi slip op. at 2. In addition, the Secretary found that an agreement that restricted voluntary participation in NRC proceedings, even though it specifically noted that Mr. Pollizi was not in any manner restricted from providing information to the Commission on safety concerns, was against public policy and would not be enforceable. As a result

of these two findings it is evident that the Department of Labor will be giving close scrutiny to Section 210 settlement agreements. Licensees will be held responsible for contractor violations of the rule. All settlement agreements by contractors will be subject to the restrictions the Commission is adopting today. Licensees may use a variety of methods, such as notification to licensees of all contractor settlement agreements, placing requirements in contracts with individual contractors to prohibit restrictive agreements, or other procedural mechanisms to assure that their contractors comply with this requirement. The Commission is not specifying the method or methods that licensees should use. The Commission emphasizes, however, that licensees will be held responsible for violations associated with their licensed activities, whether or not they are specifically aware of a contractor's failure to comply with regulatory requirements. The Commission does not believe that the rule needs to prescribe procedures whereby contractors will report on, and licensees will monitor, the filing and settlement of Section 210 cases.

Although the primary motive for these modifications to the proposed rule results from the Pollizi decision, a number of commenters identified additional problems created by the proposed requirement which supports the modifications to the proposed rule. The Commission is including below a brief summary of those comments.

a. The administrative burden to monitor hundreds of contractors and subcontractors is onerous.

b. Small contractors may cease nuclear work rather than taking on the additional administrative burden.

The Commission has removed the most burdensome administrative aspects of the proposed rule. Although the Commission does not necessarily agree with some commenters views of the magnitude and affect of the burden that would have been imposed under the proposed rule, the Pollizi decision undermines the need to impose a monitoring burden on licensees and license applicants, or a reporting requirement on contractors and subcontractors, with respect to Section 210 settlement agreements. However, the Commission reminds licensees and license applicants that the final rule will prohibit all agreements which restrict the bringing of safety or other concerns to the NRC. They are still responsible for assuring that regulated activity is performed in accordance with Commission regulatory requirements. The hiring of contractors or subcontractors to perform work will not relieve licensees or license applicants of that burden.

c. The NRC is exceeding its authority by forcing licensees to become involved in third party contracts.

d. The requirement that licensees and license applicants become involved in third party contracts will result in licensees fully litigating claims rather then settling claims. This will be detrimental to the employee.

e. It is inappropriate to require licensees to intrude into contractor employee negotiations.

The Commission does not agree that it is beyond its authority or it is improper to require licensees to be responsible for the actions of third parties, which they directly or indirectly cause to be involved in licensed activity. As noted previously, it is well established that licensees and license applicants cannot delegate away their responsibility to comply with Commission requirements for performance of licensed activities. The Commission does not believe that the final rule intrudes into third party activities such that it will significantly, if at all, affect the ability of employees to obtain settlements in Section 210 or similar cases.

f. Contractors and subcontractors who are also licensees should not be covered by the rule's monitoring requirements because they will already be covered by the principal licensee.

The Commission does not agree that contractors or subcontractors who are also licensees should have a reduced burden by virtue of the fact that they are being employed by another licensee. The final rule has eliminated the requirements for licensees to review settlement agreements in Section 210 cases prior to their being executed. Nevertheless, licensees are responsible for assuring that regulated activities they are performing under their license are in accordance with NRC regulatory requirements and this responsibility

cannot be delegated away. The fact that several entities within the chain of responsibility may be licensees does not relieve any of them from the responsibility of assuring that activities performed under their licenses are performed in accordance with NRC regulatory requirements.

g. Contractor working for multiple licensees might require multiple approvals to execute a settlement agreement.

The Commission agrees that, as originally drafted, the proposed rule could have resulted in a contractor having to obtain multiple reviews of proposed settlement agreements. This could have been a hinderance to an employee obtaining a satisfactory settlement. The Commission's desire was not to restrict the ability of employees to reach satisfactory settlement agreements with their employers. The Commission believes the objective of assuring that settlement agreements do not contain improper restrictions on employees bringing information to the NRC can be obtained without the need for multiple entities reviewing Section 210 settlement agreements. The final rule has eliminated the requirement that licensees have a prior review of their contractors' Section 210 settlement agreements.

4. One Instance Is Not A Sufficient Basis For Adopting A Rule.

Several commenters believed that the one instance that was noted by the Commission in the proposed rulemaking was not sufficient to justify modifying

the regulations. In fact, at the time the proposed regulation was published, the Commission had already learned that other agreements, apparently containing restrictive clauses, might have been executed. Concurrently with the proposed rulemaking, nuclear power plant licensees, their contractors, and major nuclear materials and fuel cycle licensees were requested pursuant to an April 27, 1989, letter from the NRC staff to review existing agreements to determine if they contained possibly impermissible restrictions. As a result of that review licensees initially identified more than a dozen additional agreements with language which could be interpreted as restricting communications with the NRC.

The Commission believes that the information received as a result of the staff's April 27, 1989, letter confirms the Commission's original belief that the problem of restrictive settlement agreements is serious enough to be directly addressed in our regulations.

5. The Proposed Rule Could Abrogate Proprietary Agreements.

The Commission understands this comment to have been concerned with the rule's provisions requiring licensees to review proposed settlement agreements of their contractors and with concerns about employee communications with the NRC. The NRC has regulations to specifically protect proprietary information received by the Commission. See 10 CFR §§2.790, 9.17, and 9.104. Thus, the Commission sees little merit to the concern that employees must be made to

follow certain procedures before they can bring proprietary information to the Commission. In fact, such a restriction would be likely to inhibit an employee from coming to the NRC. With respect to communications with the NRC, employers should do no more than require employees to inform the NRC that information being provided may be proprietary so that the NRC can appropriately handle the information to prevent any inappropriate public disclosure.

With respect to concern over licensees reviewing contractor/employee settlement agreements that may contain proprietary information, the final rule has eliminated the specific requirement for such reviews. But, to the extent that, in a licensee's judgment, compliance with the rule requires that it obtain access to proprietary information from its contractors, then access must be provided. In NRC's view, assuring free flow of safety information overrides commentors concerns about disclosure of proprietary information to licensees.

6. A Backfit Analysis Is Required.

As originally drafted, the proposed rule specifically required that licensees develop procedures to ensure that licensees' contractors and subcontractors did not place in settlement agreements any restrictions on employees coming to the NRC with information. This included specifically requiring that licensees have procedures to require contractors to notify them if a Section 210 complaint was filed with the Department of Labor and that any

proposed settlement be forwarded to the licensee prior to its execution. Several commenters believed that this requirement for changes in procedures amounted to a backfit requiring a backfit analysis. Given the Secretary of Labor's decision in the Pollizi case that such agreements are against public policy, there is some question as to whether the proposed regulation would have imposed a new requirement on licensees or contractors. In any event, the final rule has eliminated any specific requirement for procedural changes.

The final rule declares, consistent with the Pollizi decision, that agreements which place restrictions on employees communicating information with the NRC are prohibited. Licensees may or may not choose to modify existing procedures to assure compliance with the final rule's requirements. Some licensees may, in fact, already have procedures in place addressing these issues as a result of the staff's April 27, 1989, letter notifying them of the NRC's concerns. But, in any event, it is for licensees themselves to decide how the prohibition on restrictive agreements is to be implemented (except for the requirement to notify contractors, which is mandatory).

With the requirement to develop procedures removed, the rule merely prohibits potential barriers to communication with NRC. As such it does not fall within the definition of backfit in 50.109. The backfit rule does not apply to NRC information requests (see 50.54(f)) and it would be anomalous to apply the backfit rule to similar NRC measures to ensure that information is brought to its attention.

7. The Commission Should Issue A Policy Statement Instead Of A Rule.

One commenter suggested that a policy statement was sufficient to accomplish the Commission's purposes and that the rule was unnecessary. The Commission does not agree that a policy statement would be appropriate in this instance. This is not an area in which the Commission needs to gain experience with application of a policy statement before a final rule can be developed. The Commission is not aware of any other reason that might make a policy statement preferable to a rule in this case. The Commission concludes that it is appropriate to proceed with formal rulemaking to address this issue.

8. Add Language To The NRC Form 3 Concerning Settlement Agreements.

Under 10 CFR Part 19, licensees are required to post an NRC Form 3 at all work sites. This form informs employees of their rights and protections in bringing safety information to the NRC. One commenter has suggested that the NRC add language to this form telling workers that settlement agreements may not impose restrictions on their bringing safety information to the NRC. The NRC will consider adding such language to the NRC Form 3 in future revisions of the form to reflect the restrictions contained in this rulemaking.

9. The Proposed Rule Would Interfere With The Duty Of Employees To Inform Their Management Of Safety Issues.

The Commission believes it is preferable for employees to bring safety or other concerns to the attention of their management. It is the employees' management that can most promptly act to address these issues. Thus, if an employee lacks confidence in his management and feels compelled to come to the NRC first, a delay in addressing a safety issue will inevitably result. However, in those cases where employees do not feel that they can talk about a safety problem with their management, they must be free of any restriction which would prevent their raising the issue with the NRC. The proposed rule does not introduce any unwarranted intrusion into the employer/employee relationship. The rule does not prohibit employees from going to management first with their safety concerns. It is up to licensees to create a work atmosphere in which employees feel confident in bringing safety concerns directly to their management.

10. Responses To The Questions In The Proposed Rule.

The majority of commenters did not specifically comment on the two questions posed by the Commission in the proposed rule. To a large extent their comments on the proposed rule itself superseded any need to specifically

address the questions proposed. The Commission summarizes below the specific comments that were received on the questions presented in the proposed rule.

a. Should the rule prohibit all restrictions on information to the Commission, or should limitations on an individual appearing before a Commission adjudicatory board (e.g., requiring an individual to resist a subpoena) be permissible as long as other avenues for providing information to the Commission are available?

Five commenters believed that some restrictions should be allowed if there is at least one avenue open to communicate with the NRC. Four commenters believed that no restrictions on communications should be allowed.

The Commission believes that no restrictions on bringing information to the Commission should be allowed. In the Pollizi decision the Secretary of Labor noted that, even when a provision specifically included a statement that safety information could be brought to the NRC's attention, restrictions on voluntarily appearing as a witness in NRC proceedings would be against public policy. Given the numerous possible restrictions that could be put into settlement agreements, it would be difficult, if not impossible, to design guidance which could differentiate between a "good" restriction and a "bad" restriction, even if the Commission were inclined to do so. The Commission has chosen to ban all restrictions on coming to the NRC with information bearing on its regulatory responsibilities rather than engaging in that attempt.

b. Should the rule impose an additional requirement that licensees and license applicants must ensure that all agreements affecting employment, including those of their contractors or subcontractors, contain a provision stating that the agreement in no way restricts the employee from providing information to the Commission?

Of the comments received on this question, four commenters opposed requiring an affirmative statement in all settlement agreements and four commenters favored requiring such a statement. For the most part, those opposing the requirement felt it was unduly burdensome and would unnecessarily interfere with the employee/employer relationship. Those in favor of this requirement felt that it would be beneficial in clarifying for employees what their rights were and it would also remove any ambiguity caused by other parts of the settlement agreement.

The Commission has decided not to require a specific clause in settlement agreements. The utility of such a clause is somewhat suspect given that a clause specifically providing that the employee had the right to bring safety concerns to the NRC was not sufficient to make the restrictive clause in the Pollizi case acceptable. In addition, given that the Commission already requires that employees be notified through the posting of an NRC Form 3 that they have the right to come to the NRC, it is not evident that the benefit to be gained by requiring such a clause in settlement agreements would justify this type of intrusion into the employer/employee relationship.

12. Additional Comments And Revisions.

One commenter provided a detailed discussion of the Commission's policies with respect to enforcement of the current NRC regulations on employee protection. Those comments, although related, go beyond the scope of the specific action being considered in this rulemaking. However, those specific comments have been forwarded to the NRC Office of Enforcement for its consideration.

In addition, comments included suggestions to file all settlement agreements in the docket for the facility in question; to require that the ban on restrictions apply to communications by an employee with anyone, not just NRC; and to require that all future contracts by a licensee with contractors or subcontractors contain contractual obligations to prohibit restrictive agreements.

The Commission has considered these suggestions and has concluded that the most efficient method of achieving the goal of the rulemaking, which involves the minimum necessary intrusion on the employee/employer relationship and the relationship between licensees and their contractors or subcontractors, is to simply prohibit provisions in a settlement agreement with an employee which would in any way restrict that employee from coming to the NRC with safety information bearing on NRC regulatory responsibilities. The Commission is not convinced that requiring the filing of agreements in the NRC docket files, prohibiting restrictions on communications with entities other

than the NRC, or requiring specific clauses in licensee/contractor contracts would significantly improve the Commission's ability to achieve the goals of this rulemaking.

The last line of the first paragraph being added to Parts 30, 40, 50, 60, 61, 70, and 72 of the regulations has been modified by referencing the definition of "protected activity" which appears in each part of the regulations. This was done to assure that the employee protection provisions consistently protect the same employee conduct.

Finally, in publishing the proposed rule, comparable revisions to 10 CFR Part 61 were inadvertently not included in the proposed rule. Part 61 contains, at §61.9, comparable restrictions with respect to employee protections as appear in the other Parts of the Commission's regulations.

Accordingly, the appropriate revisions to Part 61 are included in this final rulemaking.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule falls within the scope of the actions described in categorical exclusion 10 CFR 51.22(d). This amendment provides the Commission with the ability to take enforcement action for agreements which have already been declared to be against public policy.

Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

The final rule prohibits provisions in agreements affecting employment that restrict employees from providing information to the Commission. The objectives of the final rule are to ensure that such agreements do not restrict the free flow of safety or other information to the Commission and that the intent of Section 210 of the Energy Reorganization Act is not frustrated. The Commission believes that the clearest and most effective method of achieving these objectives, and avoiding potential uncertainty and conflict regarding the interpretation of specific provisions, is to prohibit provisions in these agreements that in any way restrict the flow of information to the Commission, the Commission's adjudicatory boards, or the NRC staff. The alternative of imposing an additional requirement on licensees and license applicants to require any agreement affecting employment to include a provision stating that the agreement in no way restricts the

employee from providing information to the Commission was rejected as unnecessary to achieve the objectives of the rule. The final rule will not impose any substantial costs on licensees or license applicants.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. Although the proposed rule would have imposed procedural requirements on a wide range of Commission licensees of varying size, the final rule prohibits agreements that restrict employees who are performing or have performed work related to licensed activities from providing information to the Commission on potential violations or hazards. The final rule does not require licensees to develop detailed procedures for review of all contractor and subcontractor settlement agreements. The Commission believes that the final rule does not impose a significant economic impact on Commission licensees who would be considered "small entities."

Backfit Analysis

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

List of Subjects

10 CFR Part 30

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

10 CFR Part 40

Government contracts, Hazardous materials - transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 60

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

10 CFR Part 61

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

10 CFR Part 70

Hazardous materials - transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

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

10 CFR Part 150

Hazardous materials - transportation, Intergovernmental relations, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 30, 40, 50, 60, 61, 70, 72 and 150.

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

1. The authority citation for Part 30 is revised to read as follows:

AUTHORITY: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 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); §§30.3, 30.7(g), 30.34(b), (c) and (f), 30.41(a) and (c), and 30.53 are issued under secs. 161b, 161i, and 161o, 68 Stat. 948, as amended (42 U.S.C.

2201(b)); and §§30.6, 30.9, 30.36, 30.51, 30.52, 30.55, and 30.56(b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 30.7, the introductory portion of paragraph (c) is amended and a new paragraph (g) is added to read as follows:

§ 30.7 Employee protection.

* * * * *

(c) A violation of paragraph (a) or paragraph (g) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for-- * * *

* * * * *

(g) No agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to Section 210 of the Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage, an employee from participating in protected activity as defined in paragraph (a)(1) of this section, including, but not limited to, providing information to the NRC on potential violations or other matters within NRC's regulatory responsibilities.

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).

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, as amended (42 U.S.C. 2201(b)); and §§40.5, 40.9, 40.25(c), (d)(3), and (4), 40.26(c)(2), 40.35(e), 40.42, 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 § 40.7, the introductory portion of paragraph (c) is amended and a new paragraph (g) is added to read as follows:

§ 40.7 Employee protection.

* * * * *

(c) A violation of paragraph (a) or paragraph (g) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for-- * * *

* * * * *

(g) No agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to Section 210 of the Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage, an employee from participating in protected activity as defined in paragraph (a)(1) of this section, including, but not limited to, providing information to the NRC on potential violations or other matters within NRC's regulatory responsibilities.

PART 50 - DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

5. The authority citation for Part 50 is revised 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 through 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); §§50.7(f), 50.46(a) and (b), and 50.54(c) are issued under sec. 161b, 161i, and 161o, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§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), 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)).

6. In § 50.7, the introductory portion of paragraph (c) is amended and a new paragraph (f) is added to read as follows:

§ 50.7 Employee protection.

* * * * *

(c) A violation of paragraph (a) or paragraph (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for-- * * *

* * * * *

(f) No agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to Section 210 of the

Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage, an employee from participating in protected activity as defined in paragraph (a)(1) of this section, including, but not limited to, providing information to the NRC on potential violations or other matters within NRC's regulatory responsibilities.

PART 60 - DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

7. The authority citation for Part 60 is revised to read as follows:

AUTHORITY: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95-601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97-425, 96 Stat. 2213g, 2228, as amended (42 U.S.C. 10134, 10141).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§60.9(f), 60.10, 60.71 to 60.75 are issued under secs. 161i and 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

8. In § 60.9, the introductory portion of paragraph (c) is amended and a new paragraph (f) is added to read as follows:

§ 60.9 Employee protection

* * * * *

(c) A violation of paragraph (a) or paragraph (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for-- * * *

* * * * *

(f) No agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to Section 210 of the Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage, an employee from participating in protected activity as defined in paragraph (a)(1) of this section, including, but not limited to, providing information to the NRC on potential violations or other matters withn NRC's regulatory responsibilities.

PART 61 - LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

9. The authority citation for Part 61 is revised to read as follows:

AUTHORITY: Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95-601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273; Tables 1 and 2, §§61.3, 61.9(f), 61.24, 61.25, 61.27(a), 61.41 through 61.43, 61.52, 61.53, 61.55, 61.56, and 61.61 through 61.63 are issued under secs. 161b, 161i and 161o, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§61.9a, 61.10 through 61.16, 61.24 and 61.80 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201 (o)).

10. In § 61.9, the introductory portion of paragraph (c) is amended and a new paragraph (f) is added to read as follows:

§ 61.9 Employee protection.

* * * * *

(c) A violation of paragraph (a) or paragraph (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for-- * * *

* * * * *

(f) No agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to Section 210 of the Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage, an employee from participating in protected activity as defined in paragraph (a)(1) of this section, including, but not limited to, providing information to the NRC on potential violations or other matters within NRC's regulatory responsibilities.

PART 70 - DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

11. 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).

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), 70.19(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 secs. 161b, 161i, and 161o, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§70.7, 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, 70.51(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)).

12. In § 70.7, the introductory portion of paragraph (c) is amended and a new paragraph (g) is added to read as follows:

§ 70.7 Employee protection.

* * * * *

(c) A violation of paragraph (a) or paragraph (g) of this section by a Commission licensee, an applicant for a Commission license, or a contractor

or subcontractor of a Commission licensee or applicant may be grounds for-- * * *

* * * * *

(g) No agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to Section 210 of the Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage, an employee from participating in protected activity as defined in paragraph (a)(1) of this section, including, but not limited to, providing information to the NRC on potential violations or other matters within NRC's regulatory responsibilities.

PART 72 - LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

13. The authority citation for Part 72 is revised to read as follows:

AUTHORITY: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201,

as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 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). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§72.6, 72.10(f), 72.22, 72.24, 72.26, 72.28(d), 72.30, 72.32, 72.44(a), (b)(1), (4), (5), (c), (d)(1), (2), (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.72(b), (c), 72.74(a), (b), 72.76, 72.78, 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140(b), (c), 72.148, 72.154, 72.156, 72.160, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.184, 72.186 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§72.10(a), (e), 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44(a), (b)(1), (4), (5), (c), (d)(1), (2), (e), (f), 72.48 (a), 72.50(a), 72.52(b), 72.90(a)-(d), 72.92, 72.94, 72.98, 72.100, 72.102(c), (d), (f), 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140(b), (c),

72.142, 72.144, 72.146, 72.148, 72.150, 72.152, 72.154, 72.156, 72.158, 72.160, 72.162, 72.164, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.182, 72.184, 72.186, 72.190, 72.192, 72.194 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§72.10(e), 72.11, 72.16, 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44(b)(3), (c)(5), (d)(3), (e), (f), 72.48(b), (c), 72.50(b), 72.54(a), (b), (c), 72.56, 72.70, 72.72, 72.74(a), (b), 72.76(a), 72.78(a), 72.80, 72.82, 72.92(b), 72.94(b), 72.140(b), (c), (d), 72.144(a), 72.146, 72.148, 72.150, 72.152, 72.154(a), (b), 72.156, 72.160, 72.162, 72.168, 72.170, 72.172, 72.174, 72.176, 72.180, 72.184, 72.186, 72.192 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

14. In § 72.10, the introductory portion of paragraph (c) is amended and a new paragraph (f) is added to read as follows:

§ 72.10 Employee protection.

* * * * *

(c) A violation of paragraph (a) or paragraph (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for-- * * *

* * * * *

(f) No agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to Section 210 of the Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage, an employee from participating in protected activity as defined in paragraph (a)(1) of this section, including, but not limited to, providing information to the NRC on potential violations or other matters withn NRC's regulatory responsibilities.

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

15. The authority citation for Part 150 continues 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).

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)-(4) and 150.21 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §150.14 is 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)).

16. In § 150.20, the introductory text of paragraph (b) is revised to read as follows:

§ 150.20 Recognition of Agreement State licenses

* * * * *

(b) Notwithstanding any provision to the contrary in any specific license issued by an Agreement State to a person engaging in activities in a non-Agreement State or in offshore waters under the general licenses provided in this section, the general licenses provided in this section are subject to the provisions of §§ 30.7(a) through (f), 30.9, 30.14(d) and §§ 30.34, 30.41, and §§30.51 to 30.63, inclusive, of Part 30 of this chapter; §§ 40.7(a) through (f), 40.9, and §§ 40.41, 40.51, 40.61, 40.63 inclusive, §§ 40.71 and 40.81 of Part 40 of this chapter; and § 70.7(a) through (f), § 70.9, and §§ 70.32, 70.42, 70.51 to 70.56, inclusive, §§ 70.60 to 70.62, inclusive, and § 70.7 of Part 70 of this chapter; and to the provisions of Parts 19, 20 and 71 and Subpart B of Part 34 of this chapter. In addition, any person engaging in activities in non-Agreement

States or in offshore waters under the general licenses provided in this section:

* * * * *

Dated at Rockville, MD, this day of , 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.