

October 29, 2010

ALL AGREEMENT STATES, MICHIGAN

OPPORTUNITY TO COMMENT ON PROPOSED RULE TO AMEND 10 CFR PARTS 30, 36, 39, 40, 51, 70 AND 150 – LICENSES, CERTIFICATIONS, AND APPROVALS FOR MATERIAL LICENSEES; REOPENING OF COMMENT PERIOD (FSME-10-092)

Purpose: To notify the Agreement States that a proposed rule to amend requirements in Title 10 of the Code of Federal Regulation (CFR) Parts 30, 36, 39, 40, 51, 70, and 150 was published in the Federal Register for comment.*

Background: On January 8, 2009, the Commission issued a Staff Requirements Memorandum (ML090080206) directing staff to provide the Commission with a proposed rulemaking to revise 10 CFR 40.32, “General requirements for issuance of specific licenses,” to determine whether limited work authorization provisions are appropriate for uranium in-situ recovery facilities. Currently, 10 CFR 40.32(e) prohibits an applicant for a license for a uranium enrichment facility or for a license to possess and use source and byproduct materials for uranium milling, production of uranium hexafluoride, or for any other activity requiring U.S. Nuclear Regulatory Commission (NRC) authorization from commencing construction of that plant or facility in which the activity will be conducted before the NRC’s decision to issue the proposed license. Similar prohibitions on construction also exist with respect to 10 CFR Parts 30, 36, and 70. Although the exemption process has been utilized in the past to allow site preparation activities prior to licensing, and that appropriate exemptions continue to be an available alternative for applicants, the Commission noted that this manner of regulation was inappropriate for long-term resolution of the issue.

Discussion: The NRC is proposing to amend its regulations in Parts 30, 36, 39, 40, 51, 70, and 150 of 10 CFR, to revise the provisions applicable to the licensing and approval processes for byproduct, source and special nuclear material licensee and irradiators. The proposed change would clarify the definitions of “construction” and “commencement of construction” with respect to materials licensing actions instituted under the NRC’s regulations. In addition, this action also contains a correction to a typographical error. The NRC is undertaking this rulemaking action to conform its regulations to the scope of its regulatory authority under the Atomic Energy Act of 1954, as amended, to improve the effectiveness and efficiency of the licensing and approval processes for future applications, as well as resolve certain inconsistencies that currently exist within the NRC’s regulations with respect to the use and definition of the terms “construction” or “commencement of construction” for certain materials licensees.

* This information request has previously been approved by OMB 3150-0029 and was resubmitted to OMB for review of continued approval of information collection. The estimated burden per response to comply with this voluntary collection is approximately 8 hours. Send comments regarding the burden estimate to the Records and FOIA/Privacy Services Branch (T-5F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet e-mail to infocollects@nrc.gov, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0029), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the *Federal Register* on September 3, 1997 (62 FR 46517), this rule involves regulations that have been assigned compatibility categories "C," "D," "H&S," and "NRC." Section-specific compatibility designations are found in the "Agreement State Compatibility" section of the *Federal Register* notice.

The proposed rule was initially published in the *Federal Register* (75 FR 43865) on July 27, 2010. **The comment period for the proposed rule is reopened and will remain open until November 29, 2010.** The reopened comment period is published in the *Federal Register* (75 FR60341). The rule is posted at <http://www.regulations.gov> under Docket ID NRC-2010-0075. Please send your comments to the contact individual listed in the enclosure.

If you have any questions regarding this communication, please contact me at 301-415-3340 or the individual named below.

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Division of Materials Safety and State Agreements
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and Environmental Management Programs

Enclosures:

1. *Federal Register* Notice (75 FR 43865)
2. *Federal Register* Notice (75 FR 60341)

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