of the proposed rule on small business entities. However, section 604(b) of the Regulatory Flexibility Act provides that section 603 "shall not apply to any proposed * * * rule if the head of the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA believes that the proposed changes, as promulgated, would tend to ease the regulatory burdens associated with provisions of the existing final rule. Therefore, this rule will have no adverse effect on small businesses. For the preceding reasons, I certify that this rule will not have significant economic impact on a substantial number of small entities. This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA written response to those comments are available for public inspection at Docket A-91-51.

List of Subjects for 40 CFR Part 61

Air pollution control, Radionuclides, Reporting and recordkeeping requirements.

Dated: December 13, 1991.

William K. Reilly,

Administrator.

PART 61—[AMENDED]

Part 61 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 61 continues to read as follows:

Authority: Secs. 101, 112, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

Subpart K—National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants

2. Subpart K is amended by revising § 61.122 to read as follows:

§ 61.122 Emission standard.

Emissions of polonium-210 to the ambient air from all calciners and nodulizing kilns at an elemental phosphorus plant shall not exceed a total of 2 curies a year; except that compliance with this standard may be conclusively shown if the elemental phosphorus plant:

(a) Installs a Hydro-Sonic® Tandem Nozzle Fixed Throat Free-Jet Scrubber System including four scrubber units,

(b) All four scrubber units are operated continuously with a minimum average over any 6-hour period of 40 inches (water column) of pressure drop across each scrubber during calcining of phosphate shale,

(c) The system is used to scrub emissions from all calciners and/or nodulizing kilns at the plant, and

(d) Total emissions of polonium-210 from the plant do not exceed 4.5 curies per year.

Alternative operating conditions, which can be shown to achieve an overall removal efficiency for emissions of polonium-210 which is equal to or greater than the efficiency which would be achieved under the operating conditions described in paragraphs (a), (b), and (c) of this section, may be used with prior approval of the Administrator. A facility shall apply for such approval in writing, and the Administrator shall act upon the request within 30 days after receipt of a complete and technically sufficient application.

3. Subpart K is amended by revising § 61.126 to read as follows:

§ 61.126 Monitoring of operations.

(a) The owner or operator of any source subject to this subpart using a wet-scrubbing emission control device shall install, calibrate, maintain, and operate a monitoring device for the continuous measurement and recording of the pressure drop of the gas stream across each scrubber. The monitoring device must be certified by the manufacturer to be accurate within ±250 pascal (±1 inch of water). The owner or operator of any source subject to this subpart using a wet-scrubbing emission control device shall also install, calibrate, maintain, and operate a monitoring device for the continuous measurement and recording of the scrubber fluid flow rate. These continuous measurement recordings shall be maintained at the source and made available for inspection by the Administrator, or his authorized representative, for a minimum of 5 years.

(b) The owner or operator of any source subject to this subpart using an electrostatic precipitator control device shall install, calibrate, maintain, and operate a monitoring device for the continuous measurement and recording of the primary and secondary current and the voltage in each electric field. These continuous measurement recordings shall be maintained at the source and made available for inspection by the Administrator, or his authorized representative, for a minimum of 5 years.

[FR Doc. 91-30307 Filed 12-18-91; 2:25 pm]

BILLING CODE 6560-50-M

federal register

Thursday
December 19, 1991

Part III

Department of Education

Fund for Improvement and Reform of Schools and Teaching, The Family-School Partnership Program; Notice Inviting Applications for New Awards for Fiscal Year 1992

DEPARTMENT OF EDUCATION

[CFDA No: 84.212A]

Fund for the Improvement and Reform of Schools and Teaching: The Family-School Partnership Program; Notice Inviting Applications for New Awards for Fiscal Year 1992

Purpose of Program: To increase the involvement of families in improving the educational achievement of their children.

Eligible Applicants: Local educational agencies eligible to receive a grant under chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as amended.

Deadline for Transmittal of Applications: 3/6/92.

Deadline for Intergovernmental Review: 5/6/92.

Applications Available: 1/14/92.

Available Funds: $2,500,000 (est.)

Estimated Range of Awards: $50,000–$200,000.

Estimated Average Size of Awards: $135,000.

Estiamted Number of Awards: 19.

Note: The Department is not bound by any estimates in this notice.

Budget Period: 12 months.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 758.

Priorities—Absolute Priority: Under 34 CFR 75.105(c)(3), 34 CFR 758.4(d) and 34 CFR 758.5 (a) and (b), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that provide training for families on the family's educational responsibilities at the preschool level.

Invitational Priorities: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1), an application that meets one or more of the following invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—

Projects that will increase the involvement of families in improving the educational achievement of at-risk children;

Invitational Priority 2—

Projects that assist families in their efforts to prepare at-risk children to enter school ready to learn;

Invitational Priority 3—

Projects that form family-school partnerships designed around the accomplishment of the National Education Goals.

Supplementary Information: This program and these priorities complement AMERICA 2000, the President's strategy for moving the nation toward achievement of the National Education Goals. By assisting families in preparing their children to enter school ready to learn, and increasing the family's involvement in the educational achievement of their children, this program will enhance the ability of schools to improve the academic performance of students.

The Secretary is also interested in projects that have the potential to be disseminated by the National Diffusion Network (NDN). The NDN is a dissemination system through which proven exemplary education programs and processes are made available to interested school systems or other educational institutions around the country. In order to become eligible for dissemination by NDN, a project must be proven to be effective. Evidence of project effectiveness must be collected and presented to the Department's Program Effectiveness Panel (PEP). Projects that are judged effective by PEP become eligible to compete for dissemination funds from the NDN. Therefore, the Secretary encourages applicants who are interested in having their projects disseminated by the NDN to include an evaluation plan that will assess effectiveness and impact of project activities with emphasis upon changes in school practices and student performance.

For Applications or Information Contact: Diane Hill, U.S. Department of Education, Fund for the Improvement and Reform of Schools and Teaching, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone: (202) 219–1496. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800–877–8339 (in the Washington DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 4821–4823.

Dated: December 13, 1991.

Diane Ravitch,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 91-30370 Filed 12-18-91; 8:45 am]

BILLING CODE 4000-01-M

Thursday
December 19, 1991

Part IV

Nuclear Regulatory Commission

10 CFR Part 19

Exclusion of Attorneys From Interviews Under Subpoena; Rule and Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Part 19

RIN 3150-AE09

Exclusion of Attorneys From Interviews Under Subpoena

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revoking its regulations pertaining to exclusion of attorneys from interviews under subpoena. These regulations were vacated upon judicial review by the United States Court of Appeals for the District of Columbia Circuit.

EFFECTIVE DATE: January 21, 1992.

FOR FURTHER INFORMATION CONTACT: Roger K. Davis, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555, telephone (301) 492-1606.

SUPPLEMENTARY INFORMATION: Upon judicial review, the United States Court of Appeals for the District of Columbia Circuit vacated the attorney exclusion portion of the rule, titled "Sequestration of Witnesses Under Subpoena/ Exclusion of Attorneys," which was published by the Commission on January 4, 1990 (55 FR 243). *Professional Reactor Operator Society* v. *United States Nuclear Regulatory Commission*, 939 F.2d 1047 (DC Cir. 1991). Consequently, the NRC is revoking and removing the definition of "exclusion" appearing in 10 CFR 19.3, and the standard and procedures for attorney exclusion appearing in 10 CFR 19.18(b)–(e).

Since this action implements the ruling of the appeals court, the NRC has determined that there is "good cause" for publication of this final rule without a general notice of proposed revocation for comment. See 5 U.S.C. 553(b). However, the NRC is concurrently publishing for comment a proposed rule that would replace the vacated attorney exclusion provisions with a rule that conforms to the guidance of the court.

Environmental Impact: Categorical Exclusion

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

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0044.

Regulatory Analysis

This regulatory action is taken in response to the decision of the United States Court of Appeals for the District of Columbia in *Professional Reactor Operator Society* v. *United States Nuclear Regulatory Commission*, 939 F.2d 1047 (D.C. Cir. 1991). The appeals court vacated the attorney exclusion portion of 10 CFR part 19. Consequently, the NRC is revoking the attorney exclusion provisions reported in 10 CFR part 19.

Backfit Analysis

The NRC has determined that a backfit analysis is not required because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

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 Part 19.

PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

1. The authority citation for part 19 continues to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 19.11 (a), (c), (d), and (e) and 19.12 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 19.13 and 19.14(a) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§ 19.3 [Amended]

2. In § 19.3, the definition of "Exclusion" is removed.

§ 19.18 [Amended]

3. In § 19.18, paragraphs (b)–(e) are removed and reserved.

Dated at Rockville, Maryland this 13th day of December 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91–30313 Filed 12–18–91; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 19

RIN 3150-AE11

Exclusion of Attorneys From Interviews Under Subpoena

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to provide for the exclusion of counsel from interviews of a subpoenaed witness when that counsel represents multiple interests and there is concrete evidence that such representation would obstruct and impede the investigation. The proposed amendments are designed to ensure the integrity and efficacy of the investigative and inspection process. The proposed amendments are not expected to have any economic impact on the NRC or its licensees. Concurrently, the NRC is publishing a final rule revoking its previously-published attorney exclusion regulations. Those regulations were vacated upon judicial review.

DATES: Comment period expires February 18, 1992. Comments received after this date will be considered if it is practical to do so, but the Commission can only assure consideration of those comments received on or before that date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Servicing Branch.

Deliver comments to: 2120 L Street, NW., Washington, DC, between 7:30 am and 4:15 pm, Monday through Friday.

Comments received may be examined at the NRC Public Document Room, at 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roger K. Davis, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492-1606.

SUPPLEMENTARY INFORMATION: On January 4, 1990 (55 FR 243), the Nuclear Regulatory Commission (NRC) published in the **Federal Register** amendments to its regulations found at 10 CFR Part 19. The NRC published the proposed rule on November 14, 1988 (53 FR 45768). These amendments provided for the sequestration of witnesses compelled by subpoena to appear in connection with NRC investigations or inspections. These amendments also provided for the exclusion of counsel for a subpoenaed witness when that counsel represented multiple interests and there was reasonable basis to believe that such representation would prejudice, impede, or impair the integrity of the inquiry. In addition, the amendments specified responsibilities of the NRC and rights of individual witnesses, licensees and attorneys when exclusion authority was to be exercised.

Both the sequestration provision and the attorney exclusion portion of the rule were challenged in a petition to the United States Court of appeals for the District of Columbia Circuit for judicial review. On July 23, 1991, the court of appeals upheld the sequestration portion of the Commission's rule, vacated the portion on attorney exclusion, and remanded the matter to the Commission for further consideration consistent with the court's opinion. *Professional Reactor Operator Society* v.*United States Nuclear Regulatory Commission*, 939 F.2d 1047 (D.C. Cir. 1991). The provisions of the rule relating to attorney exclusion were the definition of "exclusion" appearing in 10 CFR 19.3 and the standard and procedures for attorney exclusion appearing in 10 CFR 19.18(b)–(e).

The court of appeals found that the "reasonable basis" part of the standard for exclusion of counsel infringed to an impermissible degree on the right to counsel guarantee of the Administrative Procedure Act (APA), 5 U.S.C. 555(b). The court reasoned that it was not free, without express Congressional direction, to expand or contract the right to counsel at investigatory interviews depending on the mission of a particular agency. In a prior interpretation of the APA right to counsel guarantee, the court had ruled that the Securities and Exchange Commission could not exclude an attorney from representing a subpoenaed witness during an interview unless the agency came forward with "concrete evidence" that the counsel's presence would obstruct and impede its investigation. *SEC* v. *Csapo*, 533 F.2d 7, 11 (D.C. Cir. 1976). Since the NRC's "rational basis" standard was less rigorous than the "concrete evidence" requirement stated in *Csapo*, the court vacated the attorney exclusion portion of the NRC rule.

These proposed amendments are, in essence, a logical outgrowth of the court's guidance in *Professional Reactor Operator Society* v. *NRC*, *supra*. In response to the appeals court decision, the Commission has determined that its statutory responsibilities would be served by adoption of an attorney exclusion rule containing a "concrete evidence" standard. The Commission notes that a number of the commenters on the NRC's earlier proposed rule (53 FR 45768) expressed the view that the proper standard for exclusion of counsel by the NRC was the *Csapo* "concrete evidence" standard.

It is clear that one important means by which the Commission implements its responsibility for ensuring public health and safety is by investigation of unsafe practices and potential violations of the Atomic Energy Act and NRC regulations. *See* 10 CFR Part 19; 10 CFR 1.36. NRC investigators must often interview licensees, their employees, and other individuals having possible knowledge of matters under investigation. Effective identification and correction of unsafe practices or regulatory violations through an investigative or inspection process may depend upon the willingness of individuals having possible knowledge of the practices or violations to speak openly and candidly to Commission officials. In many cases, investigating officials must also conduct extensive and difficult inquiries to determine whether violations were willful and/or whether licensee's management engaged in wrongdoing.

As specified in 10 CFR 19.2, the rule would apply to all interviews under subpoena within the jurisdiction of the Nuclear Regulatory Commission other than those which focus on NRC employees or its contractors. The rule does not apply, however, to subpoenas issued pursuant to 10 CFR 2.720. Although in the discussion that follows we use the terms "licensee" or "licensee's counsel," the rule and its rationale apply as well to "non-licensees" whose activities fall within the jurisdiction of the Commission. Similarly, while much of the discussion most directly concerns interviews conducted under subpoena by the NRC's Office of Investigations, the proposed rule would also apply to NRC inspections and investigations conducted under subpoena by other NRC officials.

The Commission's principal concerns relate to cases in which licensee's counsel or counsel retained by the licensee represent both the licensee or licensee's officials under investigation and other employees who are to be witnesses. In these contexts, the Commission believes that there is potential for inhibiting the candor of witnesses who may be hesitant or unwilling to divulge information against the interests of the licensee or its officials in the presence of the licensee's counsel or counsel retained by the licensee. The concern about potential inhibition may be heightened where the counsel intends to tell the employer everything that was said during an interview. It also may be heightened where the matter under investigation concerns whether licensee's employees have been, or are being, harassed or intimidated for raising safety issues. Multiple representation can also raise the concern that a subject of the investigation may learn facts, theories or strategies that are revealed in an interview and then act in ways that would obstruct further steps in the investigation. Consequently, the Commission has had a long-standing concern [1] that, in some instances of multiple representation, the Commission's ability to identify and correct unsafe practices and regulatory violations may be seriously impaired.

The Commission recognizes that neither mere multiple representation nor speculation about a potential for obstruction of an investigation is a sufficient basis to exclude counsel. The Commission does not presume that a witness's retention of counsel who also represents the licensee or other employees necessarily will inhibit that witness from providing information to an NRC inspector or investigator during an interview. It also does not view vigorous advocacy by competent counsel as improper.

Rather, the proposed rule provides direction for handling cases in which there is concrete evidence that the presence of counsel for multiple interests at a witness's interview would obstruct and impede the investigation. The Commission cannot predict in detail what manner of circumstances will arise in particular investigations that will lead to consideration of application of the exclusion rule. However, invocation of the rule would obviously be supported by concrete evidence that the witness would be more forthcoming or candid during the interview if the witness were not represented by counsel who also represents the licensee or other employees. This might involve evidence that the witness would answer in greater detail if there were not an understanding that the counsel would, or might, report the substance of the interview to the licensee or other witness. For instance, evidence that the employee had a concern that his employment would be jeopardized by transmittal of information from the interview to the licensee would surely be relevant. It would also be relevant if there were evidence that the multiple representation would lead to disclosure of the substance of an interview to a future interviewee or subject in the investigation and that this disclosure would have an adverse impact on the investigation.

While there have been particular cases raising questions about means of addressing the perceived impairment of investigations as a result of multiple representation,[2] this rulemaking does not require, or rest upon, a determination of whether past cases have involved concrete evidence of obstruction. The principal bases of this rule are the Commission's policy judgments that: (1) Cases may arise where there will be concrete evidence that the presence of counsel representing multiple interests during an NRC interview would seriously obstruct the NRC investigation; (2) The remedy of exclusion of the counsel from that interview should be available; and (3) The rule should facilitate expeditious and satisfactory consideration of many questions concerning multiple representation during the course of NRC investigations. The Commission notes that the propriety and utility of such a rule, however rarely invoked and applied, was recognized in both *Csapo* and a previous circuit court decision involving the SEC's sequestration rule, although the facts of those cases did not warrant exclusion. *SEC* v. *Csapo*, 533 F.2d 7; *SEC*. v. *Higashi*, 359 F.2d 550, 552 (9th Cir. 1966).

Environmental Impact: Categorical Exclusion

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

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0044.

Regulatory Analysis

The APA affords individuals compelled to submit to agency inquiry under subpoena the right to be accompanied by counsel or other representative of choice. 5 U.S.C. 555(b). Although the right to counsel guarantee of section 555(b) is not to be lightly disturbed, it is not absolute and may be circumscribed within permissible limits when justice requires as when there is concrete evidence that the presence of counsel during an investigative interview would impede and obstruct the agency's investigation.

Questions concerning the scope of the right to counsel have arisen in the context of NRC investigative interviews of licensee employees when the employee is represented by counsel who also represents the licensee or other witnesses or parties in the investigation. Although this arrangement is not improper on its face, the Commission believes that such multiple representation has the potential in some cases of inhibiting the candor of the witnesses and seriously impairing the integrity or efficacy of the NRC investigation. The proposed rule, which delineates NRC responsibilities concerning the availability of the remedy of exclusion of counsel, as well as rights of witness and counsel concerning the presence of counsel during the conduct of interviews, is intended to further expeditious and satisfactory resolution of NRC's inquiry into public health and safety matters. Guidance in this area should reduce delay and uncertainty in the completion of an investigation when certain questions of multiple representation arise. The foregoing discussion constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule, if promulgated, would not have a significant impact on a substantial number of small entities. The proposed rule, which sets forth rights and limitations on the choice of counsel of licensee employees and other individuals who are compelled to appear before NRC representatives under subpoena, would have no significant economic impact on a substantial number of small entities.

Backfit Analysis

The NRC has determined that a backfit analysis is not required because these amendments do not involve any

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[1] *See, e.g.*, Report of the Advisory Committee for Review of the Investigation Policy on Rights of Licensee Employees Under Investigation, Sept. 13, 1983. This Report is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

[2] *See, e.g.*, Memorandum dated August 7, 1989, from Ben B. Hayes, Director, Office of Investigations, to James L. Blaha, Assistant for Operations, Office of the Executive Director for Operations. This memorandum is available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discriminations.

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. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 19.

PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

1. The authority citation for part 19 continues to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 19.11(a), (c), (d), and (e) and 19.12 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 19.13 and 19.14(a) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 19.3, the definition of "Exclusion" is added to read as follows:

§ 19.3 Definitions.

* * * * *

Exclusion means the removal of counsel from an interview whenever the NRC official conducting the interview has concrete evidence that counsel's representation of multiple interests will obstruct and impede the particular investigation, inspection or inquiry.

* * * * *

3. In § 19.18, paragraphs (b)-(e) are added to read as follows:

§ 19.18 Sequestration of witnesses and exclusions of counsel in interviews conducted under subpoena.

* * * * *

(b) Any witness compelled by subpoena to appear at an interview during an agency inquiry may be accompanied, represented, and advised by counsel of his or her choice. However, when the agency official conducting the inquiry determines, after consultation with the office of the General Counsel, that the agency has concrete evidence that the investigation or inspection will be obstructed and impeded, directly or indirectly, by an attorney's representation of multiple interests, the agency official may prohibit that attorney from being present during the interview.

(c) The interviewing official is to provide a witness whose counsel has been excluded under paragraph (b) of this section and the witness's counsel a written statement of the reasons supporting the decision to exclude. This statement, which must be provided no later than five working days after exclusion, must explain the basis for the counsel's exclusion.

(d) Within five days after receipt of the written notification required in paragraph (c) of this section, a witness whose counsel has been excluded may appeal the exclusion decision by filing a motion to quash the subpoena with the Commission. The filing of the motion to quash will stay the effectiveness of the subpoena pending the Commission's decision on the motion.

(e) If a witness's counsel is excluded under paragraph (b) of this section, the interview may, at the witness's request, either proceed without counsel or be delayed for a reasonable period of time to permit the retention of new counsel. The interview may also be rescheduled to a subsequent date established by the NRC.

Dated at Rockville, Maryland this 13th day of December, 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91-30312 Filed 12-18-91; 8:45 am]

BILLING CODE 7590-01-M