

AF43-2

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From: Stephen Lewis
To: TWD2.TWP9(MLA)
Date: 11/17/95 12:54pm
Subject: Draft Direct Final Rule Parts 2 & 51 -Reply

I have been ill this week and this is my first day back, so I did not see your draft until today. I may, therefore, need slightly more time to complete the OGC review than 11/20. I will complete my review no later than 11/22.

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(14)

*Docketing Cont's
comment incorporated*

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[7590-01]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2 and 10 CFR Part 51

Deletion of Outdated Reference and Minor Clarification

RIN 3150-_____

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to delete outdated references in parts 2 and 51. Furthermore, the NRC is clarifying in part 2 that the NRC may use discretion to not require a written statement from a licensee in response to a notice of violation if the NRC believes that the licensee had already adequately addressed all the issues contained in that notice. Because these amendments are administrative in nature, ~~it is~~ **they are** not expected to have any impact on licensees.

DATE: This final rule is effective on [insert date 75 days after publication] unless someone submits adverse comments. Submit comments by [insert date 30 days after publication]. If the effective date is delayed, timely notice will be published in the Federal Register.

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

Hand deliver comments to: 11555 Rockville Pike, Rockville, MD, 20852, between 7:45 am and 4:15 pm Federal workdays.

Examine copies of comments received at: The NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: M. L. Au, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-6181. E-Mail: INTERNET:MLA@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Background

The NRC has recently deleted Appendix C to 10 CFR Part 2, entitled "General Statement of Policy and Procedure for NRC Enforcement Actions," because the Enforcement Policy is not a regulation (60 FR 34380; June 30, 1995). The information in Appendix C to part 2 has been published as a policy statement entitled "General Statement of Policy and Procedures for NRC Enforcement Actions -- Enforcement Policy," NUREG-1600, July 1995.

However, there are two sections in 10 CFR (§§ 2.8(b) and 51.10(d)) where Appendix C to Part 2 ~~are~~ is still referenced. This rulemaking ~~is to delete~~ both outdated references. Furthermore, this rulemaking is to clarify § 2.201, entitled "Notice of Violation," that the NRC may use discretion to not require a written statement from a licensee in response to a notice of violation if

the NRC believes that the licensee had already adequately addressed all the issues contained in that notice.

Because the amendments are minor and administrative in nature, good cause exists for the NRC to use a direct final rule process. If the NRC receives any public comment letters during the 30-day public comment period ~~stating that they have~~ expressing adverse comments, the NRC will ~~transform~~ ~~change~~ this direct final rule to a proposed rule, consider the comments, and publish a final rule. Otherwise, the direct final rule will become effective on [insert date 75 days after publication].

Discussion

A. Deleting outdated references

§ 2.8 Information collection requirements: OMB approval.

Paragraph (a) of this section states that the Office of Management and Budget (OMB) has approved the information collection requirements. Paragraph (b) further states that the approved information collection requirements appear in Appendix C.

Because Appendix C ~~has~~ been deleted from Part 2, there ~~is~~ ~~are~~ no longer any information collection requirements contained in this part. Thus, § 2.8 will be amended to state that there ~~is~~ ~~are~~ no information collection requirements contained in this part. It should be noted that the burden for

the information collection requirements still remains except that the burden is currently associated with the policy statement, rather than with part 2.

§ 51.10 Purpose and scope of subpart; application of regulations of Council on Environmental Quality.

Paragraph (d) of this section states: "----. These actions include issuance of notices, orders, and denials of requests for action pursuant to subpart B of part 2 of this chapter, matters covered by part 15 and part 160 of this chapter, and any other matters covered by Appendix C to part 2 of this chapter."

Because Appendix C to part 2 has been deleted, this sentence is no longer correct. Thus, paragraph (d) will be amended to delete the reference to Appendix C to part 2. Furthermore, the actions ~~contained in~~ covered by the former Appendix C to part 2, such as confirmatory action letters, bulletins, generic letters, will be added to the list of actions stated in paragraph (d).

B. Clarifying § 2.201

§ 2.201 Notice of violation.

Paragraph (a) of this section states that, in response to an alleged ~~notice of~~ violation, licensees will be required to submit a written statement in reply including corrective steps that have been taken, corrective steps that will be taken, and the date full compliance will be achieved. However,

when a licensee has already adequately addressed the issues contained in the notice of violation, such a written statement may become unnecessary. To clarify this position, paragraph (a) will be amended to replace the existing phrase "will be required" by a new phrase "may be required." This change will clarify that the NRC may use discretion to not require a written statement if the NRC believes that the licensee had already adequately addressed all the issues contained in that notice.

Electronic Access

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board (BBS) on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the rulemaking are also available, as practical, for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number (800) 303-9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT-100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and data bases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, (703) 321-3339, or by using Telnet via Internet: fedworld.gov. If using (703) 321-3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has an option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing "/go nrc" at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules Menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FedWorld also can be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules Menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555, telephone (301) 415-5780; e-mail AXD3@nrc.gov.

Environmental Impact: Categorical Exclusion

The NRC has determined that this direct final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(14). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements, and therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements that have been approved by the Office of Management and Budget, approval number 3150-0136, have been transferred to NUREG-1600, General Statement of Policy and Procedures for NRC Enforcement Actions -- Enforcement Policy.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Analysis

A regulatory analysis has not been prepared for this direct final rule because it is not expected to have any impact on licensees subject to this direct final rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this direct final rule does not have a significant economic impact on a substantial number of small entities.

Backfit Analysis

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

List of Subjects

Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping requirements.

For 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 2 and 51.

PART 2 - RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDING
AND ISSUANCE OF ORDERS

1. The authority citation for Part 2 ~~continues~~ is revised to read as follows:

AUTHORITY: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948-951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs.

135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).
Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K 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). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

§ 2.8 ~~{Amended}~~ Information collection requirements

3. Section 2.8 is revised to read as follows:

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

§ 2.201 ~~{Amended}~~ Notice of violation

4. Section 2.201(a) is revised to read as follows:

(a) In response to an alleged violation of any provision of the Act or this chapter or the conditions of a license or an order issued by the

Commission, the Commission may serve on the licensee or other person subject to the jurisdiction of the Commission a written notice of violation; a separate notice may be omitted if an order pursuant to § 2.202 or demand for information pursuant to § 2.204 is issued that otherwise identifies the apparent violation. The notice of violation will concisely state the alleged violation and may require that the licensee or any other person submit, within twenty (20) days of the date of the notice or other specified time, a written explanation or statement in reply including:

- (1) Corrective steps which have been taken by the licensee or other person and the results achieved;
- (2) Corrective steps which will be taken; and
- (3) The date when full compliance will be achieved.

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PART 51 - ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

5. AUTHORITY: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953, (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853-854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95-604, Title II, 92 Stat. 3033-3041; and sec. 193, Pub. L. 101-575, 104 Stat. 2835 42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80. and 51.97 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232,

2241, and sec. 148, Pub. L. 100-203, 101 Stat. 1330-223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036-3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also under Nuclear Waste Policy Act of 1982, sec 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

§ 51.10 ~~[Amended]~~ Purpose and scope of subpart; Application of regulations of Council on Environmental Quality

6. Section 51.10(d) is revised to read as follows:

(d) Commission actions initiating or relating to administrative or judicial civil or criminal enforcement actions or proceedings are not subject to section 102(2) of NEPA. These actions include issuance of notices, orders, and denials of requests for action pursuant to subpart B of part 2 of this chapter; matters covered by part 15 and part 160 of this chapter; and issuance of confirmatory action letters, bulletins, generic letters, notices of deviation, and notices of nonconformance.

Date at Rockville, Maryland, this ____ day of _____, 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.