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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 150 and 170

RIN 3150-AF49

**Recognition of Agreement State Licenses in Areas Under
Exclusive Federal Jurisdiction Within an Agreement State**

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to clarify that Agreement State licensees can seek reciprocal recognition of their license from the NRC when they are working within areas of exclusive Federal jurisdiction in Agreement States. The amendment also clarifies NRC regulatory requirements for reciprocity and the appropriate fees and filing procedures applicable to Agreement State licensees operating under reciprocity.

February 27, 1997

EFFECTIVE DATE: (45 days from date of publication in the Federal Register).

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SUPPLEMENTARY INFORMATION:

Background

On June 18, 1996 (61 FR 30839), the NRC published a proposed rule in the Federal Register that would clarify that Agreement State licensees could seek reciprocal recognition of their license from the NRC when they are working within areas of exclusive Federal jurisdiction in Agreement States. Current regulations, subject to certain restrictions, allow any person who holds a specific license from an Agreement State to conduct activities permitted by that license in non-Agreement States and offshore waters using an NRC general license. The general license is granted under the authority contained in 10 CFR 150.20, "Recognition of Agreement State Licenses." To meet the requirements of § 150.20, a licensee must submit an NRC Form 241 at least 3 days before engaging in the activities (subject to some exceptions as noted in § 150.20). If an Agreement State licensee does not qualify for a general license under § 150.20, the licensee must apply for and obtain a specific license to work in areas of NRC jurisdiction.

Need for Regulatory Action

The NRC believes that there are several problems with the current regulations in § 150.20 that necessitated this rulemaking action. First, the current regulation does not include provisions to allow Agreement State licensees to qualify for an NRC general license when operating in areas of

exclusive Federal jurisdiction within Agreement States. Second, there has been some confusion regarding the NRC regulations applicable to Agreement State licensees operating in areas of NRC jurisdiction pursuant to § 150.20. Third, § 150.20 does not reference the appropriate fee requirements applicable to Agreement State licensees who file an NRC Form 241, "Report of Proposed Activities in Non-Agreement States." Finally, there has been some confusion regarding the filing procedures for this form.

Comments on the Proposed Rule

The Commission received one letter commenting on the proposed rule. A copy of the letter is available for public inspection and copying for a fee at the Commission's Public Document Room, located at 2120 L Street, NW (Lower Level), Washington, DC.

Comment. The commenter indicated that NRC's overall system of reciprocity is flawed because state regulatory agencies do not have meaningful investigatory or enforcement powers to regulate licensees operating under reciprocity. In addition, the commenter believes that the current reciprocity system reduces the participation of citizens in the regulatory process because the regulatory agency in this commenter's state does not, in the commenter's view, exert adequate regulatory authority over licensees operating under reciprocity.

The commenter also had several specific objections to the proposed rule. The commenter indicated that this rulemaking will reduce recordkeeping requirements because of certain language changes proposed regarding recordkeeping at the licensee's Agreement State office. In addition, the

commenter believes that the rule will remove a variety of requirements including existing fee requirements, the existing 3-day advance deadline for filing with the Commission, and existing reporting and compliance requirements applicable to radiographers. Finally, the commenter believes that the rulemaking inappropriately broadens the authority of NRC Regional Administrators to grant, by telephone, a waiver of the 3-day filing requirement before starting work under the general license.

Response. The NRC has full enforcement and inspection authority to regulate the activities of Agreement State licensees operating under reciprocity in areas of NRC jurisdiction. Agreement State licensees operating under reciprocity must comply with all of NRC's regulatory requirements. As such, the Commission believes that an appropriate avenue for citizen access in addressing issues of reciprocity is the NRC itself. If an individual has safety concerns about the conduct of a licensee operating under reciprocity, that individual should contact NRC and their concerns will be addressed through NRC's allegation review process.

Contrary to the commenter's claims that this rulemaking involves more than a clarification, it is noted that the proposed rule either codifies current NRC regulatory practice (with respect to reciprocity in areas of exclusive Federal jurisdiction) or clarifies existing requirements applicable to licensees operating under reciprocity in areas of NRC jurisdiction. While this rulemaking may facilitate increased use of this general license provision, the Commission does not view this as a concern given the full regulatory power that NRC has over these licensees with respect to activities conducted under reciprocity.

As to the commenter's specific concerns, the Commission notes that this rulemaking will not effect the reporting requirements in § 150.20. Language in § 150.20(a) has been clarified to indicate that, in order to qualify for the general license, a person must have a specific license from an Agreement State where the licensee maintains an office for directing the licensed activity and for retaining radiation safety records. These editorial changes clarify, but do not alter any existing recordkeeping requirements. The addition of language in this rulemaking related to fees simply serves to provide additional notice to licensees that certain fee requirements in 10 CFR Part 170 apply to Agreement State licensees operating under reciprocity. This rulemaking does not remove or alter existing fee requirements.

Similarly, this rulemaking does not involve any change to the current time requirements for reciprocity filings. In most cases, licensees must file the NRC Form 241 at least 3 days before engaging in activities under reciprocity. However, as the proposed rule explained in more detail, the Regional Administrator may waive the 3-day requirement, because of an emergency or other reasons, provided the licensee receives authorization and files the appropriate information within 3 days. In addition, this rule does not broaden the authority for telephone waivers of the 3-day filing requirement. While this rulemaking does add language to indicate that a waiver may be given "because of an emergency or other reasons," this addition simply provides an example of an instance when a waiver may be appropriate. As such, this rulemaking does not expand or otherwise change the Regional Administrators' current discretion to grant waivers to the 3-day filing requirement.

Finally, contrary to the commenter's assertions, this rulemaking does not eliminate any existing requirements applicable to radiographers operating under reciprocity in areas of NRC jurisdiction. However, the reference to a Part 71 requirement applicable to radiographers in the proposed rule has been eliminated in the final rule because it is not necessary. The present rule does not alter the requirements applicable to radiographers operating under reciprocity.

No changes in the rule have been made in response to this comment. Minor editorial changes have been made to the rule (e.g., in § 150.20(b) the word "valid" in the proposed rule has been changed to "applicable" and other changes have been made in this section for clarification or grammatical purposes).

Regulatory Action

Exclusive Federal Jurisdiction.

The current wording of § 150.20 has created confusion for Agreement State licensees operating in areas of exclusive Federal jurisdiction within Agreement States. An area of exclusive Federal jurisdiction is an area over which the Federal Government exercises legal control without interference from the jurisdiction and administration of State law. Areas of exclusive Federal jurisdiction exist in both Agreement and non-Agreement States. Because the Federal Government has sole authority over areas of exclusive Federal jurisdiction in Agreement States, the NRC has jurisdiction over Atomic Energy Act activities conducted in those areas. Section 150.20 contains the

notification procedures (use of an NRC Form 241) regarding general licenses for Agreement State licensees seeking to operate in areas of NRC jurisdiction (e.g., non-Agreement States and offshore waters).

However, § 150.20 does not indicate that the NRC may grant reciprocity to Agreement State licensees to conduct activities in areas of exclusive Federal jurisdiction within an Agreement State. The current regulation only authorizes a general license for activities conducted in non-Agreement States, whether or not in an area of exclusive Federal jurisdiction within that non-Agreement State, and offshore waters. Despite the omission in the regulation, the NRC staff, under current practice, permits an Agreement State licensee to operate in an area of exclusive Federal jurisdiction within the Agreement State if the licensee submits an acceptable NRC Form 241.

The lack of a specific reference to areas of exclusive Federal jurisdiction has caused confusion for licensees, Agreement States, and, occasionally, the NRC staff in interpreting the coverage of the reciprocity provisions in § 150.20. This rulemaking amends § 150.20 to provide a specific reference to areas of exclusive Federal jurisdiction.

Regulatory Requirements Applicable to § 150.20 Licensees.

The specific references to other NRC regulatory requirements in § 150.20 has also been a source of confusion. According to § 150.20(b), persons operating under the general license must comply with a variety of specific NRC regulatory requirements. However, § 150.20 does not specifically reference all NRC regulations that are applicable to materials licensees. The revised § 150.20 clearly indicates that licensees operating

pursuant to the rule's provisions must comply with all NRC regulations applicable to materials licensees.

This amendment is consistent with the original intent of the rule. When originally issued in 1962 (27 FR 1351; February 14, 1962), § 150.20 required Agreement State licensees to comply with "the appropriate provisions of 10 CFR Parts 20, 30, 31, 40, and 70" of the Commission's regulations. The rule required compliance with all NRC regulations applicable to NRC materials licensees at that time. In 1965, many of the requirements in 10 CFR Part 30 were relocated to newly created regulatory provisions in 10 CFR Parts 32, 33, 34, 35, and 36 (30 FR 8185; June 26, 1965). A conforming amendment to § 150.20 was not made in response to this change. Since 1965, specific requirements have been added to § 150.20 that may have created the impression that certain NRC requirements otherwise applicable to materials licensees are not applicable to general licensees under § 150.20. This is not the case. It is NRC's position that Agreement State licensees operating in areas of NRC jurisdiction pursuant to § 150.20 must comply with those regulations applicable to NRC licensees. This amendment will clarify the applicable requirements.

Fees Imposed on Agreement State Licensees Operating Under Reciprocity.

The amendment adds appropriate references to § 150.20 regarding the relevant fee requirements in 10 CFR Part 170. The fee schedule in 10 CFR Part 170 is being updated to indicate that there will be a charge for licensee revisions to an NRC Form 241 in addition to the initial filing fee. A clarification to an NRC Form 241 does not require a fee. The NRC Form 241 is

being revised to include, in the instructions on the form, information concerning revisions and clarifications.

In addition, this amendment involves a minor conforming change to the schedule for materials fees in § 170.31, "Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections, and Import and Export Licenses," to clarify that the fee requirement applies to activities conducted under reciprocity pursuant to § 150.20 regardless of the location of the activities.

Filing Procedures.

The amendment also clarifies the procedures for filing an NRC Form 241 for reciprocity described in § 150.20(b). The clarifications include identifying what needs to be submitted, specifying the procedure to use when an emergency filing is necessary, and making revisions to the initial filing. These clarifications do not impose any additional requirements on the Agreement State licensee.

Enforcement.

If an Agreement State licensee fails to notify the NRC before conducting work in an area of exclusive Federal jurisdiction, the NRC is denied an opportunity to inspect the activity to determine that it is being conducted safely and in accordance with NRC requirements. The current NRC Enforcement Policy ("General Statement of Policy and Procedures for NRC Enforcement Actions", NUREG 1600) contains an example in Supplement VI.C.9 of failure to

submit an NRC Form 241 in accordance with 10 CFR 150.20. Under the Enforcement Policy, this violation is categorized at Severity Level III, which constitutes escalated enforcement action. However, absent extraordinary circumstances, the NRC will not take enforcement action against an Agreement State licensee for such a violation if the licensee has evidence that it received a determination, before beginning work, from a Federal Agency that the area of work is not under exclusive Federal jurisdiction. This evidence may be a written statement from the Federal Agency that provided the determination and the date that it was provided, or a written record made by the licensee with the name and title of the person at the Federal Agency who provided the determination and the date that it was provided.

Compatibility of Agreement State Regulations

The provisions in § 150.20 will continue to be a Division 1 item of compatibility. The Commission recognizes that portions of the rule apply to matters under NRC's jurisdiction (e.g., offshore waters and areas of exclusive Federal jurisdiction). The Agreement States should fashion their own rules implementing this provision in a manner consistent with their authority. The Commission is currently developing implementing procedures for a new Adequacy and Compatibility Policy that was approved by the Commission on June 29, 1995. The Commission will continue to apply the current compatibility designation to § 150.20 until it gives its final approval to the implementing procedures for the new Policy.

Environmental Impact: Categorical Exclusion

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

Paperwork Reduction Act Statement

This rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0032.

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

This final rule does not impose any new requirements or additional costs to licensees because the rulemaking codifies current practice that allows Agreement State licensees to work under an NRC general license. Because the rulemaking improves the clarity and consistency of the NRC's regulations, it

will benefit Agreement State licensees operating in areas of exclusive Federal jurisdiction.

This rule will result in a minor reduction in NRC resources (estimated to be one-sixth of a staff year per year) currently being expended to explain our fee schedule and to clarify for licensees and Agreement States the conditions under which an Agreement State licensee can operate within an area of exclusive Federal jurisdiction. NRC resources to amend § 150.20 are estimated to be about one-half of a staff year, which is a cost effective, one-time use of resources. This constitutes the regulatory analysis for this 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 rule does not have a significant economic impact upon a substantial number of small entities.

The final rule does not impose any new requirements or additional costs to licensees because the rule codifies current practice that allows Agreement State licensees to work under an NRC general license. Because this rule improves the clarity and consistency of NRC's regulations, it will benefit Agreement State licensees operating in areas of exclusive Federal jurisdiction.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Backfit Analysis

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

List of Subjects

10 CFR Part 150

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

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, 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 150 and 170.

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

1. 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).

2. Section 150.20 is amended by revising paragraphs (a), the introductory text of (b), (b)(1), and the introductory text of (c), redesignating paragraphs (b)(2) through (b)(4) as paragraphs (b)(3) through (b)(5), revising redesignated paragraphs (b)(3) and (b)(4), and adding a new paragraph (b)(2) to read as follows:

§ 150.20 Recognition of Agreement State licenses.

(a)(1) Provided that the provisions of paragraph (b) of this section have been met, any person who holds a specific license from an Agreement State, where the licensee maintains an office for directing the licensed activity and retaining radiation safety records, is granted a general license to conduct the same activity in --

- (i) Non-Agreement States;
- (ii) Areas of exclusive Federal jurisdiction within Agreement States; and
- (iii) Offshore waters.

(2) The provisions of paragraph (a)(1) of this section do not apply if the specific Agreement State license limits the authorized activity to a specific installation or location.

(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, in an area of exclusive Federal jurisdiction within an Agreement State, or in offshore waters under the general licenses provided in this section, the general licenses provided in this section are subject to all the provisions of the Act, now or hereafter in effect, and to all applicable rules, regulations, and orders of the Commission including the provisions of §§ 30.7(a) through (f), 30.9, 30.10, 30.14(d), 30.34, 30.41, 30.51 to 30.63, inclusive, of Part 30 of this chapter; §§ 40.7(a) through (f), 40.9, 40.10, 40.41, 40.51, 40.61, 40.63 inclusive, 40.71 and 40.81 of Part 40 of this chapter; §§ 70.7(a) through (f), 70.9, 70.10, 70.32, 70.42, 70.51 to 70.56, inclusive, 70.60 to 70.62, inclusive, and to the provisions of 10 CFR Parts 19, 20, and 71 and subpart B of Part 34, §§ 39.15 and 39.31 through 39.77,

inclusive, of Part 39 of this chapter. In addition, any person engaging in activities in non-Agreement States, in areas of exclusive Federal jurisdiction within Agreement States, or in offshore waters under the general licenses provided in this section:

(1) Except as specified in paragraph (c) of this section, shall, at least 3 days before engaging in each activity for the first time in a calendar year, file a submittal containing an NRC Form 241, "Report of Proposed Activities in Non-Agreement States," 4 copies of its Agreement State specific license, and the appropriate fee as prescribed in § 170.31 of this chapter with the Regional Administrator of the U.S. Nuclear Regulatory Commission Regional Office listed on the NRC Form 241 and in Appendix D of Part 20 of this chapter for the Region in which the Agreement State that issued the license is located. If a submittal cannot be filed 3 days before engaging in activities under reciprocity, because of an emergency or other reason, the Regional Administrator may waive the 3-day time requirement provided the licensee:

(i) Informs the Region by telephone, facsimile, an NRC Form 241, or a letter of initial activities or revisions to the information submitted on the initial NRC Form 241;

(ii) Receives oral or written authorization for the activity from the Region; and

(iii) Within 3 days after the notification, files an NRC Form 241, 4 copies of the Agreement State license, and the fee payment.

(2) Shall file an amended NRC Form 241 or letter and the appropriate fee as prescribed in § 170.31 of this chapter with the Regional Administrator to request approval for changes in work locations, radioactive material, or

work activities different from the information contained on the initial NRC Form 241.

(3) Shall not, in any non-Agreement State, in an area of exclusive Federal jurisdiction within an Agreement State, or in offshore waters, transfer or dispose of radioactive material possessed or used under the general licenses provided in this section, except by transfer to a person who is --

(i) Specifically licensed by the Commission to receive this material; or

(ii) Exempt from the requirements for a license for material under § 30.14 of this chapter.

(4) Shall not, under the general license concerning activities in non-Agreement States or in areas of exclusive Federal jurisdiction within Agreement States, possess or use radioactive materials, or engage in the activities authorized in paragraph (a) of this section, for more than 180 days in any calendar year, except that the general license in paragraph (a) of this section concerning activities in offshore waters authorizes that person to possess or use radioactive materials, or engage in the activities authorized, for an unlimited period of time.

* * * * *

(c) A person engaging in activities in offshore waters under the general license provided for that purpose in paragraph (a) of this section need not file an NRC Form 241 with the Commission under paragraph (b)(1) of this section provided that:

* * * * *

PART 170--FEES FOR FACILITIES, MATERIALS, IMPORT
AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES
UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

3. The authority citation for Part 170 continues to read as follows:

AUTHORITY: 31 U.S.C. 9701, sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec 205, Pub L. 101-576, 104 Stat 2842, (31 U.S.C. 902).

4. Section 170.31 is amended by revising the introductory text of Category 16 of the Schedule of Materials Fees to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

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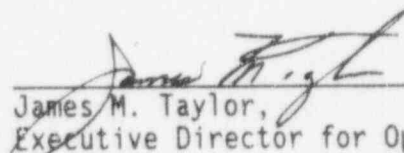
16. Reciprocity:

Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20:

* * * * *

Dated at Rockville, Maryland, this 30th day of December, 1996.

For the Nuclear Regulatory Commission.


James M. Taylor,
Executive Director for Operations.