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NUCLEAR REGULATORY COMMISSION

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10 CFR Parts 2 and 51

RIN 3150-AF43

OFFICE OF THE SECRETARY
DOCKET

Deletion of Outdated References and Minor Change

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to delete all references to Appendix C, of 10 CFR Part 2. Appendix C "General Statement of Policy and Procedures for Enforcement Actions," was removed from the Code of Federal Regulations because it is a Policy Statement, not a regulation, and the enforcement policy was published as a Policy Statement on June 30, 1995. This direct final rule also provides that the NRC may use discretion when determining whether to require a written explanation or statement in reply to a notice of violation. When the NRC believes that the licensee or other person who receives the notice of violation has already adequately addressed all the issues contained in that notice, at the discretion of the NRC, further written responses may not be required.

10/21/96

DATE: This final rule is effective on [insert date 60 days after publication] unless significant adverse comments are received by the NRC. Comments should be submitted by [insert date 30 days after publication]. If the effective date is delayed, timely notice will be published in the Federal Register.

9/23/96
L-4-1PT2
L-4-1PT51

Pub. 8/22/96

(61FR43406)

DS11 0/1

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, 20555-0001. ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 pm Federal workdays.

For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information Section.

Copies of comments received may be examined or copies for a fee, 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 20555-0001, telephone (301) 415-6181. E-Mail: INTERNET:MLA@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Background

The NRC has removed Appendix C, "General Statement of Policy and Procedures for NRC Enforcement Actions," from 10 CFR Part 2 (60 FR 34380; June 30, 1995) inasmuch as the Enforcement Policy is a Policy Statement, not a regulation. The enforcement policy, "General Statement of Policy and Procedures for NRC Enforcement Actions -- Enforcement Policy," was published as a Policy Statement on June 30, 1995 (60 FR 34381). It was also published as NUREG-1600 in July 1995. There are two sections (10 CFR 2.8(b) and 51.10(d)) in the Commission's regulations that still reference Appendix C to Part 2. This rulemaking deletes both outdated references.

This rulemaking also amends § 2.201, "Notice of Violation," to provide that the NRC may use discretion when determining whether to require a written explanation or statement in reply to a notice of violation. When the NRC believes that the licensee or other person who received the notice of violation has already adequately addressed all the issues contained in that notice, further written responses may not be required.

Discussion

I. Deletion of outdated reference to Appendix C to 10 CFR Part 2

Section 2.8 Information collection requirements: OMB approval.

Section 2.8(a) currently states that the Office of Management and Budget (OMB) has approved the information collection requirements contained in Part 2. Section 2.8(b) states that the approved information collection requirements appear in Appendix C to 10 CFR Part 2. Because Appendix C has been removed from Part 2, there are no longer any information collection requirements in this part. Thus, § 2.8 is amended to state that there are no information collection requirements contained in this part. It should be noted that any burden for the information collections related to enforcement actions is currently associated with the policy statement (June 30, 1995; 60 FR 34380), rather than with Part 2.

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

Section 51.10(d) currently 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 10 CFR Part 2 has been deleted, this sentence is incorrect. Thus, § 51.10(d) is amended by deleting the reference to Appendix C to 10 CFR Part 2. Enforcement-related actions identified in the former Appendix C to 10 CFR Part 2 will be added as examples to the list of actions in § 51.10(d).

II. Grant of discretion to Commission to require a written explanation
in reply to a notice of violation

Section 2.201 Notice of violation.

Section 2.201(a) states that, in response to a notice of violation, a licensee or other person subject to the jurisdiction of the Commission to whom a notice of violation has been sent will be required to submit a written statement in reply, including corrective steps that have been taken, and the date when full compliance will be achieved. However, when a licensee or other person has already adequately addressed the issues contained in the notice of violation in writing, the licensee or other person has already, in effect, responded to the violation and a further written statement may be unnecessary. Therefore, § 2.201(a) is amended to replace the existing phrase "will require" with "may require." This change grants the NRC discretion when determining whether to require the submittal of a written explanation or statement when

the NRC believes that a licensee or other person has already adequately addressed all the issues contained in that notice of violation.

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.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number 1-800-303-9672. 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 NUREGs and RegGuides for Comment subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." For further information about options available for NRC at FedWorld, consult the "Help/Information Center" 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 Rule 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 included. There is a 15-minute limit for FTP access.

Although FedWorld 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.

Procedural Background

Because NRC considers this action noncontroversial and routine, we are approving it without seeking public comments on proposed amendments. This action will become effective on (60 days after publication in the Federal Register). However, if the NRC receives significant adverse comments by (30 days after publication in the Federal Register), then the NRC will publish a document that withdraws this action and will address the comments received in response to the requested revisions which have been proposed for approval and are being concurrently published in the proposed rules section of this Federal Register. Comments will be addressed in the final rule on this proposal. The NRC will not initiate a second comment period on this action.

Environmental Impact: Categorical Exclusion

The NRC has determined that this direct final rule is the type of action described as a categorical exclusion in §§ 51.22(c)(1) and 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this direct final rule.

Paperwork Reduction Act Statement for Direct Final Rule

This direct final 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 information collections were approved by the Office of Management and Budget, approval numbers 3150-0136 and 3150-0021.

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 direct final rule deletes outdated references to an appendix which previously has been deleted from the Commission regulations and provides that the NRC may use discretion regarding the submittal of a written response from a licensee if the NRC believes that the licensee or other person has already adequately addressed all the issues contained in a notice of violation. Deleting the outdated references will have no impact on licensees, the NRC, or the public. The NRC's discretion on requiring reports responding to a notice of violation will reduce the burdens of preparing unnecessary reports by licensees and of reviewing these reports by the NRC without compromising the public health and safety. However, it is impossible to quantify the amount of reduction in burden because the number of discretions to be authorized cannot be estimated. Therefore, the burden under the direct final rule would be at most equal, but probably less than, the burden under the existing regulations. This constitutes the regulatory analysis for the direct final rule.

Small Business Regulatory Enforcement Act

In accordance with the Small Business Regulatory Enforcement Fairness 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 of OMB.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, because these amendments do not involve any provisions that 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

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 51

Administrative practice and procedure, Environmental Impact statement, Nuclear power plants and reactors, 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 PROCEEDINGS
AND ISSUANCE OF ORDERS

1. The authority citation for part 2 is revised 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. 5841). 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 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. Section 2.8 is revised to read as follows:

§ 2.8 Information collection requirements: OMB approval.

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.).

3. In § 2.201, paragraph (a) is revised to read as follows:

§ 2.201 Notice of violation.

(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 other person submit, within 20 days of the date of the notice or other specified time, a written explanation or statement in reply if the Commission believes that the licensee has not already addressed all the issues contained in the notice of violation, 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.

* * * * *

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

4. The authority citation for Part 51 continues to read as follows:

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)).

5. In § 51.10, paragraph (d) is revised to read as follows:

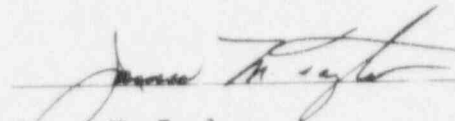
§ 51.10 Purpose and scope of subpart: Applications of regulations of Council on Environmental Quality

* * * * *

(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 of violation, 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.

Dated at Rockville, Maryland, this 8th day of August, 1996.
For the Nuclear Regulatory Commission.


James M. Taylor,
Executive Director for Operations.