

### 5.35 Regulatory text: Headings.

(a) General. Each CFR unit larger than a paragraph is given a brief heading that describes the content of that unit. Each heading must be brief, accurate, and useful to an individual seeking specific information. A good heading describes the content of a unit in a manner that allows the user to readily identify needed information.

(b) Part headings. The part heading is a concise statement that describes the content or effect of the regulatory program contained in the part. The NRC should use subject terms in the part heading that are consistent with terms used by other agencies to identify similar material. NRC drafters may consult NRC's list of subject index terms or the Federal Register Thesaurus of Indexing Terms to identify subject terms appropriate for use in a part heading.

(c) Section headings. Descriptive section headings function as signposts by helping the user identify particular regulatory provisions that apply to him or her.

(1) Section headings combine with part and subpart headings to provide an overall picture of the regulation. The headings in the following example allow a person to find information necessary to complete an application and prepare a package of radioactive material for shipment. Note particularly that the description of package standards begins with the general requirements applicable to all packages and then provides the particular requirements that specific types of packages must meet.

Example:

Part 71 - PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

\* \* \* \* \*

Subpart D - Application for Package Approval

71.31 Contents of application.

- 71.33 Package description.
- 71.35 Package evaluation.
- 71.37 Quality assurance.
- 71.39 Additional information.
- Subpart E - Package Standards
- 71.41 Demonstration of compliance.
- 71.43 General standards for all packages.
- 71.45 Lifting and tie-down standards for all packages.
- 71.47 External radiation standards for all packages.
- 71.49 Additional requirements for Type B packages.
- 71.51 Fissile material categorization and exemptions.
- 71.53 General requirements for all fissile material packages.
- 71.55 Specific standards for a Fissile Class I package.
- 71.57 Specific standards for a Fissile Class II package.
- 71.59 Specific standards for a Fissile Class III shipment.
- \* \* \* \* \*

(2) Section headings may be constructed to indicate that material in a series of sections is related. The strategic repetition of the key or common term followed by a specific description of unit content is a technique for showing the unified relationship of different requirements in a simple style.

Example:

Subpart C - General Licenses

- 71.12 General license: NRC approved package.
- 71.14 General license: DOT specification container.
- 71.16 General license: IAEA package.
- 71.18 General license: Type A, Fissile Class II package.
- 71.20 General license: Restricted, Fissile Class II package.
- 71.22 General license: Type A package, Fissile Class III shipment.
- 71.24 General license: Restricted, Fissile Class III shipment.

(d) Paragraph headings. Headings may be used at the paragraph level to identify significant material within a section. If paragraph headings are used, they are underscored in the document submitted for publication. Paragraph headings are printed in italics in the Federal Register and the CFR. Paragraph headings are not listed in a table of contents; they appear only in the text of the regulation.

Example:

§2.730 Motions.

(a) Presentation and disposition. All motions must be addressed to the Commission or, when a proceeding is pending before a presiding officer, to the presiding officer. All written motions must be filed with the Secretary, and served on all parties to the proceeding.

(b) Form and content. Unless made orally on the record during a hearing, or the presiding officer directs otherwise, a motion must be in writing, specifically state the grounds and the relief sought, and be accompanied by any affidavits or other evidence relied on, and, as appropriate, a proposed form or order.

(c) Answers to motions. Within 10 days after service of a written motion, or any other period the Secretary or the Assistant Secretary specifies....

\* \* \* \* \*

**5.37 Form of amendment: Section level.**

(a)(1) Each amendment made at the section level requires three elements. These elements must appear in the following order--

- (i) Proper amendatory language;
- (ii) The section heading of the section being changed; and
- (iii) The regulatory text of the section being changed.

(2) In addition to these elements, the part heading and authority citation of each part affected must be set out and the words of issuance for the document must precede the amendments contained in the document.

(b) If the full text of the section being changed is set out, the following format must be used.

Example:

Words of issuance

For the reasons set out in the preamble and under 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 35.

Part heading

PART 35 - HUMAN USES OF BYPRODUCT MATERIAL

Unchanged authority citation

1. The authority citation for Part 35 continues to read as follows:

AUTHORITY: 42 U.S.C. 2111, 2201, 2232, 2233, 42 U.S.C. 5841.

Amendatory language

2. Section 35.2 is revised to read as follows:

Section heading

§35.2 License requirements.

Regulatory text

A person subject to these regulations may not receive, possess, use, or transfer byproduct material for any human use unless in accordance with a specific or general license issued under the regulations in this part and Parts 30 and 32 or 33 of this chapter.

(c) If the entire section is not being revised, the NRC may set out the full text of only the paragraphs being amended by using asterisks in place of unchanged material. The asterisks in regulatory text indicate the codified material within the section that is not altered by the amendments. The asterisks provide a CFR format in which only the full text of the amended paragraph is presented. This format may be used to present several changes within a section without setting out the complete text of the section.

(1) Five asterisks in a row indicate that one or more entire paragraphs are not being amended.

(2) Three asterisks in a row represent text within a paragraph that is not being amended. Three asterisks are used with the paragraph designator to indicate levels of designation that are not affected by an amendment to a paragraph below the first level of designation. (See Sections 5.31(b)(4) and (5) of this handbook concerning paragraph designation.)

(d) A document may present a series of section-level amendments within one or more CFR parts. If a document makes a series of section-level amendments within one or more parts, the following elements must be included.

(1) The heading of each part in which an amendment is made must be set out in capital letters.

(2) The complete authority citation for each part in which an amendment is made is placed under the part heading. If the authority citation is revised, the amendatory instruction necessary to indicate the revision is placed as the first item in the list of amendments for the part.

(3) The proper amendatory language is included for each change. Amendatory instructions, including the instruction for a revised authority citation, are numbered consecutively throughout the document.

(4) The section heading and amended text for each changed section follows the amendatory language.

Example:

This example serves two purposes. It illustrates --

(1) The proper method of presenting a series of section-level amendments within a document; and

(2) The correct use of asterisks to indicate unchanged text within a section.

Words of Issuance

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 Parts 20 and 21.

Part heading

PART 20 - STANDARDS FOR  
PROTECTION AGAINST RADIATION

Unchanged authority  
citation

1. The authority citation for Part 20 continues to read as follows:

AUTHORITY: 42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 5841, 5842, 5846).

Amendatory language

2. In §20.1101, paragraph (b) is revised to read as follows:

Section heading

§20.1101 Radiation protection programs.

Indicates that paragraph

\* \* \* \* \*

(a) is unchanged

Revised text

(b) The licensee shall use, to the extent practicable, procedures and engineering controls based on sound radiation protection principles to achieve occupational doses and doses to members of the public that are as low as is reasonably achievable (ALARA).

Indicates that the rest of  
the section is unchanged

\* \* \* \* \*

Amendatory language

3. In §20.1204, paragraph (c)(1)

is revised to read as follows:

Section heading

§20.1204 Determination of internal exposure.

Indicates that paragraphs

\* \* \* \* \*

(a) and (b) are unchanged

Indicates that the introductory text of paragraph (c) is unchanged

(c) \* \* \*

Revised text of paragraph (c)(1)

(1) Use that information to calculate the committed effective dose equivalent, and, if used, the licensee shall document that information in the individual's record; and

Indicates that the rest of the section is unchanged

\* \* \* \* \*

Amendatory language

4. Section 20.2201 is amended by revising paragraph (b)(1)(iii) and adding paragraph (b)(1)(vi) to read as follows:

Section heading

§20.2201 Reports of theft or loss of licensed material.

Indicates that paragraph (a) is unchanged

\* \* \* \* \*

Indicates that the introductory text of paragraphs (b)(1) and (b)(1)(i) and (ii) are unchanged.

(b) \* \* \*  
(1) \* \* \*

The paragraph designation and three asterisks are necessary to place this amendment within paragraph (b)(1)

Revised text of paragraph (b)(1)(iii)

(iii) A statement of disposition or probable disposition of the licensed material involved;

Indicates that paragraphs (b)(1)(iv) and (b)(v) are unchanged

\* \* \* \* \*

Added text of paragraph (b)(1)(vi)

(vi) Procedures or measures which have been or will be adopted to prevent a recurrence of the loss or theft of licensed material.

Indicates that the rest of the section is unchanged

\* \* \* \* \*

Part heading

PART 21 - REPORTING OF DEFECTS AND NONCOMPLIANCE

Amendatory language

5. The authority citation for Part 21 is revised to read as follows:

Revised authority citation

AUTHORITY: 42 U.S.C. 2201, 2282, 5846.

Amendatory language

6. In §21.21, paragraph (c) is revised to read as follows:

Section heading

§21.21 Notification of failure to comply or existence of a defect.

Indicates that paragraphs (a) and (b) are unchanged

\* \* \* \* \*

Revised text of paragraph (c)

(c) Individuals subject to paragraph (b) of this section may be required by the Commission to supply additional information related to the defect or failure to comply.

No asterisks. Indicates that there is no more text in §21.21

**5.39 Form of amendment: Part and subpart level.**

(a) Each amendment made at the part level requires the following elements. The elements must appear in the following order--

- (1) Proper amendatory language;
- (2) The part heading;
- (3) A table of contents for the part;
- (4) The authority citation; and
- (5) Regulatory text.

Example:

Amendatory language

1. Part 160 is revised to read as follows:

Part heading

PART 160 - TRESPASSING ON COMMISSION PROPERTY

Table of contents

Sec.  
160.1 Purpose.  
160.2 Scope.  
160.3 Trespass.  
160.4 Unauthorized introduction of weapons or dangerous material.  
160.5 Violations.  
160.6 Posting.  
160.7 Effective date of prohibition on designated locations  
160.8 Effect on other laws.

Authority citation

AUTHORITY: 42 U.S.C. 2278a, 5841.

Regulatory text

§160.1 Purpose.

The purpose of this regulation is to protect and secure Nuclear Regulatory Commission property.

Note: The complete text of any revised part must be set out in its entirety. The remainder of Part 160 is not necessary for the purpose of this example.

(b) Amendments also may be made at the subpart level. An amendment at the subpart level follows the same format and content requirements as an amendment at the part level.

(c) The table of contents at the part level lists section numbers and headings contained in a part presented in numerical order. A table of contents is required in a document that --

- (1) Adds a new part or subpart;
- (2) Revises an existing part or subpart; or
- (3) Adds or revises two or more sections grouped under a centered heading.

#### 5.41 Proper cross-referencing techniques.

(a) A "cross-reference" is a reference from one unit of the CFR to another unit. A cross-reference only may be used to reference an existing unit of CFR text. Cross-referencing is not to be confused with incorporation by reference, a legal device that may be used to give material the force and effect of law without printing the material in the Federal Register (See Section 5.43 of this handbook, Incorporation by reference).

(b) The OFR requires that each agency publish the full text of its regulations (1 CFR 21.21(c)). Therefore, the OFR generally prohibits an agency from using a cross-reference to the regulations of another agency as a substitute for publishing the regulations in full text in its regulations. The OFR may permit an agency to cross-reference the regulations of another if the OFR finds that --

(1) The reference is required by court order, statute, Executive order, or reorganization plan;

(2) The reference is to regulations promulgated by an agency with the exclusive legal authority to regulate in a subject matter area, but the referencing agency needs to apply these regulations to its own programs;

(3) The reference is informational or improves clarity and does not impose a requirement;

(4) The reference is to test methods or consensus standards produced by a Federal agency that have replaced or preempted private or voluntary test methods or consensus standards in a subject matter area; or

(5) The reference is to the department level from a subagency.

(c) Identify the CFR unit being cited by the proper CFR unit designation in each cross-reference. A nonspecific reference, such as "herein," "above," or "below," requires interpretation by the user and may result in ambiguity.

(d) The following table covers the most common cross-reference situations and illustrates the proper style for each cross-reference.

#### HOW TO WRITE A CROSS-REFERENCE IN CFR TEXT

---

##### References to a different TITLE

---

<u>When referencing</u>	<u>Write</u>
A Chapter	1 CFR Chapter I
A Part	1 CFR Part 2
A Section	1 CFR 2.7
A Paragraph	1 CFR 2.7(a)(2)

---

##### References within the same CHAPTER

---

<u>When referencing</u>	<u>Write</u>
A Part	Part 30 of this chapter
A Section	§30.19 of this chapter
A Paragraph	§30.19(a) of this chapter

---

##### References within the same PART

---

<u>When referencing</u>	<u>Write</u>
A Section	§20.15
A Paragraph	§20.15(a)

---

##### References within the same SECTION

---

<u>When referencing</u>	<u>Write</u>
A Paragraph	Paragraph (b) of this section
A subdivision within a paragraph	Paragraph (b)(1)(i) of this section

#### 5.41 Incorporation by reference.

(a) Incorporation by reference was established by statute as a means of allowing an agency to meet the requirement to publish regulations in the Federal Register by referring to materials already published outside of the Federal Register publishing system. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register. This material, like any other properly issued regulation, has the force of law.

(b) For an incorporation by reference to be valid, it must be approved by the Director of the Federal Register.

(1) Material is eligible for incorporation by reference if it meets the following criteria:

(i) Material is eligible for incorporation by reference if it is published data, criteria, standards, specifications, techniques, illustrations, or similar material.

(ii) Material is eligible for incorporation by reference if it does not detract from the legal or practical attributes of the Federal Register publishing system established by the Federal Register Act, the Administrative Procedure Act, and 1 CFR Chapter I. This means that the appropriate method for issuing agency rules is the publication of the full text of the rule in the Federal Register for codification in the CFR. The Director of the Federal Register will normally subject any request by an agency to incorporate by reference any material that the agency generates to greater scrutiny than material that is generated by an independent standard setting organization.

(iii) Material is eligible for incorporation by reference if it benefits the Federal Government and members of affected classes by substantially reducing the volume of matter printed in the Federal Register. Generally, the

material must be the equivalent to at least 10 pages in the Federal Register or contain highly specialized, technical matter that may pose difficulties in composition or printing.

(iv) Material is eligible for incorporation by reference if it is reasonably available to and useable by the class of people affected by it. This means that, to the extent necessary to ensure fairness and uniformity in the administrative process, the material is available to the public for purchase or inspection. Generally material is considered available if the public may purchase or inspect it with minimum effort. To meet this criterion, a person must be able to --

(A) Inspect the material at the OFR, the agency's central and regional offices, or in depository libraries; and

(B) Purchase the material from the publisher or the agency at reasonable cost.

(2) Statements of incorporation by reference contained in regulatory text must meet specific drafting standards. Each statement of incorporation by reference must -

(i) Include the words "incorporation by reference";

(ii) Identify the standard and/or material to be incorporated by title, date, edition, author, publisher, and identification number;

(iii) Contain a brief subject description;

(iv) Contain a statement of availability; and

(v) Refer to 5 U.S.C. 552(a) and 1 CFR Part 51 and include a statement indicating that date the Director of the Federal Register approves the incorporation by reference.

Example: A statement of incorporation by reference that meets OFR requirements.

(b) The ASME Boiler and Pressure Vessel Code, which is referenced in the following paragraphs, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. A notice of any changes made to the material incorporated by reference will be published in the Federal Register. Copies of the ASME Boiler and Pressure Vessel Code may be purchased from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, NY 10017. It is also available for inspection at the NRC Library, 11545 Rockville Pike, Rockville, Maryland 20852-2738.

(1) As used in this section, references to Section III of the ASME Boiler and Pressure Vessel Code refer to Section III, Division 1, and include editions through the 1977 Edition and addenda through the Summer 1979 Addenda.

(2) As used in this section, references to Section XI of the ASME Boiler and Pressure Vessel Code refer to Section XI, Division 1, and include editions through the 1977 Edition and addenda through the Summer 1979 Addenda subject to the following limitations and modifications:

(c) Any questions on the suitability of material for incorporation by reference and the requirements necessary to obtain OFR approval should be directed to the RDB (415-7163). RDB will coordinate each request for incorporation by reference with the OFR.

(d) In each final rule document that contains an incorporation by reference that has been approved by the Director of the Office of the Federal Register, the NRC shall include the--

(1) Term "incorporation by reference" in the list of subject index terms for the part that contains the incorporation by reference; and

(2) Following language under the DATES caption of the preamble to the final rule:

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of (insert the effective date of the document).

(e) The OFR requires that a written request for each incorporation by reference approval be submitted to the Director of the Federal Register. The request must be submitted at least 30 working days before the final rule is submitted for publication. Each request for approval must contain --

- (1) A letter requesting approval of the incorporation;
- (2) A copy of the material to be incorporated; and
- (3) A copy of the draft final rule document that uses proper language of incorporation.

**PART 7 - ADVANCE NOTICES OF PROPOSED RULEMAKING**

	<u>Page</u>
7.1 Description.....	216
7.3 Headings.....	219
7.5 Preamble format requirements.....	221
7.7 List of subject index terms.....	223
7.9 Authority citations.....	224
7.11 Document text.....	225

## 7.1 Description.

(a) The Nuclear Regulatory Commission (NRC) may choose to begin a rulemaking proceeding by publishing an advance notice of proposed rulemaking (ANPRM). However, the publication of an ANPRM does not represent a commitment by the NRC to issue a proposed or final rule on the matter in question. This remains a matter of agency discretion. Public response to the ANPRM is a factor in determining whether or not the rulemaking proceeding continues beyond this preliminary stage.

(b) In an ANPRM, the NRC generally describes a problem or situation and may present an outline of the anticipated regulatory response to the problem. An ANPRM is an appropriate beginning for a rulemaking proceeding when the NRC desires information concerning --

- (1) The extent and seriousness of the problem under consideration;
- (2) Whether a regulation is an appropriate solution to the problem;
- (3) The merits of NRC's anticipated regulatory response to the problem;
- (4) Information concerning possible solutions to the problem that NRC may not have considered; and
- (5) The effects that the anticipated regulatory response or any other solution may have in related areas.

(c) The NRC may propose several alternative solutions in an ANPRM and request public comment on each alternative. Although regulatory text is not essential in an ANPRM, the NRC may choose to present its anticipated action as an amendment to the regulations in 10 CFR Chapter I to direct public attention to and encourage public comment on the changes under consideration. If regulatory text is not presented, NRC may describe its intended approach in narrative fashion and present a list of questions and issues for comment to

direct public attention to the type and nature of the changes under consideration.

(d) In addition to an ANPRM, the NRC has used a number of other vehicles to solicit public comment in advance of developing a proposed rule.

(1) Negotiated rulemaking. Negotiated rulemaking is a formal process that is used to bring interested parties into the drafting process at an early stage under circumstances that encourage cooperation to solve regulatory problems. The interested parties are brought together under the direction of a facilitator and attempt to reach consensus on the text of a proposed rule that is acceptable to each party. The sponsoring agency is represented by a senior official that is authorized to speak on behalf of the agency.

(2) RuleNet. The NRC undertook a project designed to use state-of-the-art computer technology to maximize communication between the NRC and the public on a particular safety issue. The RuleNet concept was designed to make it possible for participants in a particular NRC proceeding, in this case fire protection, to communicate both with the NRC and among themselves to define issues, eliminate misunderstandings, and find areas of common ground.

(3) Rulemaking Forum. The Rulemaking Forum is a World Wide Web Site developed by the NRC to further public access to and participation in its rulemaking actions. The site contains information on proposed rules that have been published in the Federal Register, petitions for rulemaking that have been received and documented by the NRC, and rulemaking plans that indicate intended rulemaking actions. The public may submit formal comments on any action posted to this site.

(4) Requests for comment or participation. The NRC frequently requests public comment or participation in a particular rulemaking action through a more informal medium than an ANPRM. In these instances, the NRC publishes a

document in the Federal Register that explains NRC's anticipated action and requests public comment on its intent. In the proposed revision of NRC's medical licensing regulations, the NRC has solicited informal public input on the development of proposed rule language and associated documents.

(5) Meetings or workshops. The NRC may conduct a series of public meetings or workshops to obtain public input on a regulatory issue or an area of the regulations that may be a candidate for rulemaking.

(e) Because an ANPRM or the other types of actions that solicit public input on a regulatory area serves as the first public notice that a rulemaking proceeding is anticipated, the Office of the Federal Register (OFR) classifies these documents as proposed rules and publishes them in the Proposed Rule section of the Federal Register. As a result, each of these documents prepared by the NRC must meet certain format requirements for proposed rules set out in Part 3 of this handbook. If the ANPRM presents contemplated regulatory text, the document must meet requirements for proposed rule concerning amendatory language and codification. This part discusses the particular requirements of Part 3 as they apply to an ANPRM.

### 7.3 Headings.

(a) Each ANPRM the NRC submits for publication in the Federal Register begins with a series of headings that--

- (1) Identify NRC as the agency issuing the document;
- (2) Indicate the parts within 10 CFR Chapter I that the document would affect;
- (3) Indicate the unique Regulation Identifier Number (RIN) of the ANPRM; and
- (4) Indicate the subject matter of the document.

Example:

NUCLEAR REGULATORY COMMISSION

10 CFR Part 34

RIN 3150-CC33

Certification of Industrial Radiographers

(b) The "CFR Part" heading must contain the number of each part that would be affected by the action considered in the ANPRM. If the ANPRM does not include regulatory text, this heading must present the number of the CFR part that the subject matter of the document most closely matches. If no CFR part is appropriate, the CFR chapter designation may be used (10 CFR Chapter I).

(c) The "RIN" heading indicates the unique number assigned to the rulemaking action. This number is used to identify the rulemaking action in the Unified Agenda of Federal Regulatory and Deregulatory Actions. The Office of Management and Budget has requested that this number be included in the heading of each rulemaking document published in the Federal Register. The Rules and Directives Branch (RDB) assigns a RIN to each regulatory action.

For assistance in determining whether a RIN has been assigned to an ANPRM, contact RDB (415-6863).

(d) The "Subject" heading is a brief statement that describes the content of the document. The CFR part heading may be sufficient for this purpose. However, more specific information may be needed if the part heading is too general or too different between multiple documents amending the same part or parts.

(e) Occasionally, a follow-up document is necessary to supplement a previously published ANPRM. To emphasize the relationship between the documents, the OFR requires that the later document repeat the headings of the earlier document. In addition, a word or phrase identifying the action or type of the second document must be added to the subject heading.

Example:

NUCLEAR REGULATORY COMMISSION

10 CFR Part 34

RIN 3150-CC33

Certification of Industrial Radiographers; Public Meeting

## 7.5 Preamble format requirements.

Because an ANPRM is classified for publication in the Proposed Rule section of the Federal Register, each ANPRM prepared by the NRC must comply with the preamble format requirements of the OFR in 1 CFR 18.12. These requirements arrange basic information in a uniform format that allows a user to scan the document for essential information. The OFR will not print an ANPRM that does not meet these format requirements. These format requirements are discussed, in detail, in Section 3.7 of this handbook. The following example illustrates how the format requirements are applied to an ANPRM.

### Example:

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: In this advance notice of proposed rulemaking, the Commission is presenting an alternative to the present system of permitting a radiography licensee to train and designate individuals as radiographers. The suggested alternative would require that each individual who uses byproduct material in industrial radiography be certified by a third party approved by the NRC. This action is intended to ensure that all radiographers possess adequate training and experience to operate radiographic equipment safely. This action is taken in response to a petition for rulemaking and continuing Commission concern over the problem of radiography overexposures.

DATES: Comment period expires \_\_\_\_\_. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Send comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, D.C.

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

FOR FURTHER INFORMATION CONTACT: (Name of contact person), Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415-1357.

## 7.7 List of subject index terms.

The OFR, in accordance with 1 CFR 18.20, requires each agency to include a list of subject index terms for each part affected in an ANPRM. The list of subject index terms is intended to identify, in a standard fashion, the major topics of the ANPRM and the categories of persons affected by it. The NRC shall place the list of subject index terms for each affected Code of Federal Regulations (CFR) part as the last item in the Supplementary Information section of each ANPRM. A list of the approved subject index terms for each part in 10 CFR Chapter I appears in Appendix C to this handbook. The NRC shall present the list of subject index terms in alphabetical order as follows.

### Example:

#### List of Subjects in 10 CFR Part 34

Criminal penalties, Packaging and containers, Radiation protection, Radiography, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

## 7.9 Authority citations.

(a) Each ANPRM must contain a citation of the legal authority under which the NRC is issuing the document. Because of the explanatory and tentative nature of an ANPRM, it is generally sufficient to cite NRC's basic rulemaking authority as the authority for issuing the ANPRM. If the ANPRM does not present regulatory text, the NRC shall present the authority citation in an ANPRM directly after the "List of Subjects" entry in the document. The NRC shall present the authority citation in this fashion.

Example:

The authority citation for this document is: 42 U.S.C. 2201, 5841).

(b) If the ANPRM presents contemplated regulatory text, the ANPRM must present the authority citation for each affected part in the same manner as in a proposed rule. See Section 3.29 of this handbook for the content and placement requirements applicable to authority citations.

## 7.11 Document text.

The principles of clarity and style discussed in Part 13, "Writing Techniques," of this handbook apply to an ANPRM in the same manner as they would apply to a proposed rule or a final rule.

(a) The explanatory text of an ANPRM is generally presented under the "Supplementary Information" heading. In the explanatory text of an ANPRM, the NRC shall include a discussion of --

(1) Any background or historical information relevant to the proceeding;

(2) The issues under consideration;

(3) The features that may be included in any proposed rule;

(4) The alternative solutions that are under consideration;

(5) Any potential alternative solutions that have already been considered and rejected and the reasons for the decision;

(6) Specific areas where the NRC needs further information or where NRC is requesting public comment; and

(7) Any opportunities afforded to the public and Agreement States for their early and substantive participation in the development of the ANPRM.

(b) If the NRC is presenting alternative approaches or solutions in the ANPRM, each alternative must be clearly identified as an alternative and labeled. This facilitates public comment on the ANPRM as well as NRC analysis and response to public comment.

Example:

Alternative 1: Certification of industrial radiographers by a third party.

(c) The NRC may include a list of questions for public comment. This practice channels public response to an ANPRM into areas most useful in evaluating the rulemaking action.

Example:

In light of the previous discussion, the NRC is particularly interested in receiving comments concerning the following:

1. Is the training provided to radiographers under the present system adequate?
2. Would a third-party certification program reduce the number of overexposures in the radiographic industry?
3. Would a third-party certification program motivate radiographers to work more safely?
4. What elements in the present system or in the suggested alternative are particularly desirable or undesirable? Why?
5. If a third-party certification is adopted, what items should be included in the standard for determining the competence of individuals to act as radiographers?
6. If a third-party certification program is adopted, should it apply to individuals presently working as radiographers or only to new radiographers?
7. If a third-party certification program is adopted, should certificates be issued to individuals for life or should there be periodic renewals of the certification?
8. Would a third-party certification program affect the ability of a licensee to respond to variable manpower needs?
9. A third-party certification program would likely be based on a cost recovery fee system. Would the cost to licensees of the program be warranted?
10. Which alternative of the two discussed (present system, third-party system) is preferable? Why? Are there other better alternatives? If so, please explain.
11. With respect to the two alternatives, what kind of enforcement action could and should be taken against radiographers who do not operate equipment safely or follow established procedures? What rights should radiographers have with respect to enforcement actions?

12. Would a small licensee, because of its size, bear a disproportionate economic impact under a third-party system?

13. For those organizations interested in a third-party certification program, what would be the estimated cost in implementing the program?

(d) If the NRC is encouraging public participation through electronic means, the ANPRM must contain instructions on how the public may obtain or submit information electronically.

Example:

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 or connecting to the NRC interactive rulemaking web site, "Rulemaking Forum." 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 also are available for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC 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 rulemaking 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 databases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld also can be accessed by a direct-dial telephone number for the main FedWorld BBS: 703-321-3339; Telnet via Internet: fedworld.gov (192.239.93.3); File Transfer Protocol (FTP) via

Internet:ftp:fedworld.gov (192.239.92.205); and World Wide Web using: <http://www.fedworld.gov> (this is the Uniform Resource Locator (URL)).

If using a method other than the toll-free number to contact FedWorld, access the NRC subsystem from the main FedWorld menu by selecting "F - Regulatory, Government Administration and State Systems," then selecting "A - Regulatory Information Mall." At that point, take the "A - U.S. Nuclear Regulatory Commission" from the displayed menu to the NRC Online Main Menu. An alternative is to go directly to the NRC Online area by typing "/go nrc" at the FedWorld command line. Accessing NRC from FedWorld's Main Menu allows the user to return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, accessing NRC at FedWorld by using NRC's toll-free number provides the user with full access to all NRC systems, but does not provide access to the main FedWorld system.

To see the NRC area and menus, including the Rules Menu, contact FedWorld using Telnet. Although this will enable the user to download documents and leave messages, the user will not be able to write comments or upload files (comments). FedWorld may be contacted using FTP; although all files can be accessed and downloaded, uploads are not allowed; all that is visible 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 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.

The NRC's interactive rulemaking web site may be accessed through the NRC home page (<http://www.nrc.gov>). This site provides the same access as the FedWorld bulletin board, including the facility to upload comments as files (any format), if the user's web browser supports that function.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Telephone: 301-415-5730; e-mail: [AXD3@nrc.gov](mailto:AXD3@nrc.gov). For information about the interactive rulemaking site, contact Ms. Carol Gallagher, Telephone: 301-415-6215; e-mail: [CAG@nrc.gov](mailto:CAG@nrc.gov).

(e) If the NRC presents regulatory text in an ANPRM, the NRC shall meet the requirements applicable to regulatory text in a proposed rule document. These requirements are outlined in Part 3 of this handbook.

- (1) Amendatory language (Section 3.27).
- (2) Regulatory text: CFR codification (Section 3.31).
- (3) Regulatory text: Headings (Section 3.33).
- (4) Form of amendment: Section level or Part level (Section 3.35 or Section 3.37).

**PART 9 - NOTICES AND CORRECTIONS**

**9.1 Writing a notice document..... 232**  
**9.3 Submitting a notice document for publication..... 237**  
**9.5 Writing a correction document..... 239**

## 9.1 Writing a notice document.

(a) General description. Each document the Nuclear Regulatory Commission (NRC) submits for publication in the Federal Register that does not contain regulatory text, impose requirements with general applicability and legal effect, or affect a rulemaking proceeding is classified as a notice document and published in the Notices section of the Federal Register. NRC notice documents usually deal with a particular aspect of the agency's licensing activities. NRC documents frequently affect a named party, usually the licensee or a prospective licensee. Although many NRC notice documents are required by law to be published, others are published voluntarily by the NRC to provide the public with general information of interest to a wider audience than that usually served by the agency. The NRC types of notice documents the NRC publishes in the Federal Register include --

- (1) Application for a new, renewed, or amended license;
- (2) The issuance of a new, renewed, or amended license;
- (3) Announcement of a license suspension or revocation;
- (4) The granting of an exemption to a particular licensing requirement;
- (5) Announcement of an enforcement action;
- (6) Announcement of environmental determinations and the availability of certain environmental statements;
- (7) Abnormal occurrence reports;
- (8) Committee meeting announcements;
- (9) Memoranda of understanding between the NRC and another organization;
- (10) Announcement of actions necessary to comply with the Paperwork Reduction Act concerning Office of Management and Budget review and requests for public comment;

- (11) The issuance of a generic communication between the NRC and a particular segment of its licensees;
- (12) Announcement of site reclamation and decommissioning actions;
- (13) The issuance and availability of regulatory guides; and
- (14) The availability of documents in the NUREG series or other technical reports.

(b) Headings. The headings of a notice document must identify the NRC as the agency issuing the document and indicate the subject matter of the document.

(1) If the document involves a licensing matter that relates to a named party, the named party must be included as part of the subject heading.

(2) The NRC may include an "Agency number" heading on a notice document. This heading, usually the NRC Docket Number, identifies the document within NRC's internal filing and reference system. The "Agency number" may be keyed to a specific licensing proceeding. If the "Agency number" is used, the NRC shall insert the "Agency number" heading above the subject heading.

Example:

NUCLEAR REGULATORY COMMISSION	Agency
[Docket Nos. 50-324 and 50-325]	Agency Number (optional)
Carolina Power & Light Co.;	Subject
Consideration of Amendments To Facility Operating Licenses, No Significant Hazards Considerations	

(c) Text. The principles of clarity and style discussed in Part 13, "Writing Techniques," of this handbook apply to notice documents as well as rulemaking documents.

(1) The format requirements for preambles (1 CFR 18.12) do not apply to notice documents. However, because this format presents information in a concise manner, the writer should use this format in constructing a notice document. If the NRC uses this format in a notice document, it may omit captions of the format that are not applicable. However, the remaining captions must be presented in the proper sequence. The NRC may not create new captions for the format or vary the standard order in which the captions are presented. Material not identified by the prescribed captions must be placed under the Supplementary Information caption.

Example:

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

NRC Requirements Regarding the Environmental Qualification of Safety-  
Related Electrical Equipment; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The NRC staff will discuss the content of Safety Evaluations, which are being issued to power reactor licensees, regarding the qualifications requirements for their safety related electrical equipment.

DATES: July 7, 8, 9, and 10, 1999.

ADDRESS: Holiday Inn of Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20014.

FOR FURTHER INFORMATION CONTACT: (Name of contact person), Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415-1357.

SUPPLEMENTARY INFORMATION:

The purpose of this meeting is to further the licensee's understanding of the NRC requirements regarding the Qualification of Safety-Related Electrical Equipment. The meeting will serve as a mechanism to address industry concerns and answer questions on the subject.

The meeting will be divided into sessions for the NRC presentations and sessions for licensee questions. In order to allow more efficient use of question sessions, those who attend will be grouped by NSSS affiliation. The tentative agenda is as follows:

July 7, 1999

- Identification of Systems
- (Remainder of agenda included)

Persons other than NRC Staff and Licensee Representatives may observe the meeting but will be permitted to participate in the discussions only as time allows.

Registration will be conducted prior to the meeting.

Dated at Rockville, Maryland, this 3rd day of June, 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins, Director,  
Office of Nuclear Reactor Regulation.

(2) If a notice is issued under statutory authority, the NRC may cite this authority in narrative form in the text of the document.

Example:

In accordance with the purposes of sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on June 4-6 1999, in room T-4 ???, 11545 Rockville Pike, Rockville, Maryland.

(3) If a notice document requires an effective date, the NRC shall include a statement of the effective date in the text of the document.

Example:

This license modification is effective October 31, 1997.

(4) If a notice document relates to or references a previously published Federal Register document, it must contain a precise reference to the earlier document.

(i) A reference to a document published in the Federal Register should identify the volume number, page number, and the date of the issue where the document appears.

Example:

The NRC has made a determination, based on criteria published in the Federal Register (61 FR 10905; February 24, 1996), that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and byproduct materials are abnormal occurrences.

(ii) A reference to material contained in the Code of Federal Regulations (CFR) should identify the CFR title and the part or section number where the referenced provision appears.

Examples:

1. Accordingly, under section 161 of the Atomic Energy Act, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that, effective immediately, Facility Operating License No. DPR-23 is modified by the addition of the following requirements:....

2. If a hearing is requested by a person other than the licensee, that person shall describe, in accordance with 10 CFR 2.714(a)(2), the manner in which his or her interest is affected by this Order.

### 9.3 Submitting a notice document for publication.

(a) The Rules and Directives Branch (RDB) is responsible for certifying and transmitting the NRC's general notice documents for publication in the Federal Register. The staff office that originates the notice document is responsible for preparing a complete publication package and submitting the package to RDB. The complete publication package must be submitted to RDB by 8:30 am to ensure that final processing may be completed before the 9:00 am courier pick-up for delivery to the Office of the Federal Register (OFR).

(b) The publication package for each general notice document must contain the following items:

(1) The package should be transmitted under cover of a memorandum or form that identifies a contact person for the document and specifies any special handling desired such as a request for emergency publication, the confirmation of a publication or comment closing date, or the computation and insertion of a specific date. If the computation and insertion of a specific date is desired, the memorandum or form must indicate the number of days after publication in the Federal Register for that date.

(2) The package must include the signed document, with the signature to be handwritten in ink. The name and title of the person signing the document must be typed directly beneath the handwritten signature.

(i) The OFR does not accept a document where the signature and the typed name are not identical such as where one official signs "for" another. In such an instance, the name of the person who signs the document must be typed in the signature block and the person's title giving as "Acting xxx."

(ii) The NRC recommends that the signer use blue ink. It is difficult to distinguish an original signature from a photocopy if black ink is used.

(3) The package must include five copies of the signed document.

(4) The package must include a 3.5-inch diskette that contains a copy of the document in WordPerfect (preferably 5.1). The diskette must have a label that identifies NRC as the issuing agency, the file name of the document, and WordPerfect as the software used to create the document. RDB will forward the diskette to the OFR and the Government Printing Office for their use in typesetting the document. The diskette must contain only the document to be published and reflect only the text that is to appear in the Federal Register. Transmittal memoranda, letters to licensees, and concurrence pages may not be included on the diskette.

(c) The following document format requirements are applicable to each general notice submitted for publication in the Federal Register.

(1) The NRC billing code, [7590-01-P], must appear in the upper right-hand corner on the first page of the document.

(2) Document text must be double-spaced.

(3) Document text may appear on only one side of the page.

## 9.5 Writing a correction document.

(a) The NRC is responsible for verifying the completeness and accuracy of each document it publishes in the Federal Register. The office that originates the document has the primary responsibility for proofreading the published document and identifying and correcting any errors that may have occurred during the printing process.

(b) The NRC may not use a correction document as a vehicle for writing in second thoughts or to "fine-tune" a published document. Changes of this nature are amendments, not corrections, and may not be presented in the guise of a correction document.

(c) If the error occurred in the publication process, the OFR is responsible for making any correction necessary to accurately reflect the content of the original document. The originating office may correct printing errors by contacting RDB (415-7163) and identifying the Federal Register issue in which the document was published and the errors to be corrected.

(1) If the error is significant or substantive, the OFR will prepare a correction and publish it in a future issue of the Federal Register.

(2) If a typographical or punctuation error does not affect the substance of the document, the OFR will correct the regulatory text when it is printed in the Code of Federal Regulations (CFR).

(d) If the error appeared in the original document submitted to the OFR for printing, the NRC is responsible for correcting the error. Unless prior arrangements have been made with the RDB, the originating office shall prepare the correction document. Each correction document must be prepared, signed, and submitted to the OFR as a document for publication. The correction

document must refer to the document containing the error and clearly identify each error that is being corrected.

(1) The headings of a correction document must repeat the headings of the document containing the error. The word "correction" is added to the subject heading. The CFR heading identifies only the parts affected by the correction. If the preamble to a rulemaking document is being corrected, list all CFR parts affected by the original document.

(2) If a correction is to a proposed or final rule document, the correction document must comply with the preamble requirements of 1 CFR 18.12 (See Sections 3.7 or 5.7 of this handbook).

(3) The complete Federal Register citation of the document being corrected, including page and date of publication, must be presented.

(4) The location of the error being corrected must be identified as clearly as possible.

(i) In codified text, cite the CFR unit that contains the error.

(ii) In non-codified text or tabular material, specify the Federal Register page number and column containing the error.

(5) The actual change must be described as briefly and accurately as possible. If necessary, present the incorrect material first. Then present the corrected text.

(e) Sample correction documents appear at Section 15.9 of this handbook.

## PART 11 - PETITIONS FOR RULEMAKING

	<u>Page</u>
11.1	Legal and procedural background..... 242
11.3	Minimum content requirements..... 244
11.5	Providing additional information with a petition..... 245
11.7	Contacts with the NRC before a petition is filed..... 246
11.9	Filing a petition with the NRC..... 248
11.11	Preliminary processing and threshold determination..... 249
11.13	Petitions that do not meet threshold requirements..... 250
11.15	NRC staff priority for action on a petition..... 251
11.17	Petitions eligible for "fast-track" processing..... 253
11.19	Fast-track processing..... 255
11.21	Routine processing..... 256
11.23	Processing after publication for public comment..... 258
11.25	Completing action on a petition..... 260

## 11.1 Legal and procedural background.

(a) The Administrative Procedure Act provides any interested person with the right to petition an agency for the issuance, amendment, or repeal of a rule (5 U.S.C. 553(e)). This statute expands on the traditional "right to petition" provided by the First Amendment to the Constitution and imposes on Federal agencies the obligation to receive, consider, and act upon petitions that are submitted to them.

(b) The Nuclear Regulatory Commission (NRC) implements this statute in regulations that establish the procedures by which any interested person may file a petition for rulemaking with the Commission (10 CFR 2.802). Section 2.802 presents basic information concerning how an interested person submits a petition to the NRC, the minimum information a petition must contain to be acceptable for processing, and the procedures the NRC uses in processing petitions.

(c) In addition to 10 CFR 2.802, the NRC developed and issued Regulatory Guide 10.12 "Preparation of Petitions for Rulemaking Under 10 CFR 2.802 and Preparation and Submission of Proposals for Regulatory Guidance Documents."

(1) Regulatory Guide 10.12 provides an alternative within the petition process that encourages the petitioner to submit more detailed supporting information in the petition than what is minimally required for acceptance. The submittal of more detailed information would allow the NRC to make more expeditious decisions on the merits of the petition. The provisions of Regulatory Guide 10.12 do not change any previously existing procedure, right, or obligation. For additional information, see Section 11.5 of this handbook.

(2) Regulatory Guide 10.12 also clarifies procedures by which an interested person may submit proposals to change existing guidance documents. These guidance documents include regulatory guides, bulletins, generic letters, and portions of standard review plans that do not have the force and effect of a regulation but serve to identify or clarify methods or positions acceptable to the NRC staff for compliance with NRC regulations.

### 11.3 Minimum content requirements.

(a) Paragraph (c) of § 2.802 presents the minimum content requirements a petition for rulemaking must meet for the NRC to find it acceptable for processing. The type of information required is considered the minimum threshold necessary for the NRC to understand the petitioner's concerns and suggested solution and respond to the request in a meaningful way.

(b) As set out in 10 CFR 2.802(c), to meet the minimum threshold requirements, a petition for rulemaking must --

(1) Set forth a general solution to the problem or present the substance or text of any proposed regulation or amendment or specify the regulation that is to be revoked or amended;

(2) State clearly and concisely the petitioner's grounds for and interest in the action requested; and

(3) Include a statement in support of the petition that sets forth the specific issues involved; the petitioner's views or arguments with respect to those issues; relevant technical, scientific, or other data involved that is reasonably available to the petitioner; and any other pertinent information necessary to support the action sought. Where possible, the petitioner should note any specific cases where the current requirements are unduly burdensome, deficient, or need to be strengthened. This information may prove to be extremely important when the NRC considers the merits of the petitioner's suggested amendments.

## 11.5 Providing additional information with a petition.

(a) In addition to the basic information required by 10 CFR 2.802(c), Regulatory Guide 10.12 encourages the petitioner to provide more detailed supporting information. The NRC believes that this would allow petitions to be treated more expeditiously and facilitate the submittal of petitions with strong technical merit. In addition, the submittal of additional information may improve the priority for processing the petition by the NRC staff.

(b) Regulatory Guide 10.12 specifies the additional supporting information that a petitioner should submit in addition to the minimum threshold requirement. The sufficient supporting information for the petition should include --

- (1) The suggested regulatory text necessary to accomplish the petitioner's desired amendment;
- (2) The statement of considerations (preamble) for the suggested regulatory change;
- (3) Material necessary to indicate compliance with applicable legal requirements such as the National Environmental Policy Act, the Paperwork Reduction Act, and the Regulatory Flexibility Act;
- (4) A regulatory analysis;
- (5) Material necessary to indicate compliance with the Commission's backfit regulations (10 CFR 50.109, 72.62, or 76.76); and
- (6) A guidance document, usually in the form of a Regulatory Guide, when applicable. A Regulatory Guide usually accompanies a performance-based regulation.

## 11.7 Contacts with the NRC before the petition is filed.

(a) A prospective petitioner may consult with the NRC before filing a petition for rulemaking by writing to the Director, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Rules and Directives Branch. A prospective petitioner may also telephone the Rules and Directives Branch (RDB) on (301) 415-7158 or on the toll-free number for inquiries concerning NRC regulations: (800) 368-5642.

(b) In any consultation prior to the filing of a petition for rulemaking, the assistance that may be provided a prospective petitioner by a member of the NRC staff is limited to --

(1) Describing the procedure and process for filing and responding to a petition for rulemaking;

(2) Clarifying an existing NRC regulation and the basis for the regulation; and

(3) Assisting the prospective petitioner to clarify a potential petition so that the Commission is able to understand the nature of the issues of concern to the petitioner.

(c) The extent to which a member of the NRC staff may assist a prospective petitioner is limited by 10 CFR 2.802(b). This means that the NRC staff may not --

(1) Write or assist in the writing of a petition for rulemaking to amend 10 CFR Chapter I for an external party;

(2) Negotiate wording for a specific revision to 10 CFR Chapter I with a petitioner or prospective petitioner; or

(3) Encourage a prospective petitioner to submit a petition for rulemaking in order to bypass normal agency procedures for the initiation and development of a rulemaking action.

(d) NRC employees may not discourage a prospective petitioner from submitting a petition for rulemaking.

(e) Informing an individual of the option to petition the Commission or to contact the agency for assistance with the petition process is not considered prohibited assistance. Neither is the NRC staff prohibited from consulting with external parties to assemble necessary information to clarify regulatory deficiencies and evaluate their health and safety significance. If a prospective petitioner needs guidance regarding the submission and processing of petitions for rulemaking, refer the individual to the RDB.

(f) Should any NRC staff assistance be provided to a prospective petitioner regarding technical or substantive issues, that assistance must be disclosed to the Commission in the paper forwarding the rulemaking action for approval. NRC staff assistance must also be disclosed in any public notice regarding the petition and in any rulemaking that may result from the petition that is published in the Federal Register.

### **11.9 Filing a petition with the NRC.**

A prospective petitioner may file the petition with the NRC by addressing it to: The Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff. If any other NRC employee receives a petition for rulemaking or a document that may qualify as a petition, the employee shall forward the document immediately to the Rulemakings and Adjudications Staff, Office of the Secretary (SECY).

### 11.11 Preliminary processing and threshold determination.

(a) When SECY receives a petition for rulemaking or a document that may qualify as a petition for rulemaking, it records the date of receipt of the document and sends a copy of the document to RDB. RDB, together with the Office of the General Counsel (OGC) and the offices responsible for the regulations subject to the petition, determines whether or not the document meets the threshold requirements for a petition for rulemaking set out in 10 CFR 2.802(c) (See Section 11.3 of this handbook). OGC shall respond to a determination request within 20 working days.

(b) If the document meets the requirements for a petition for rulemaking, RDB assigns a docket number to the petition, informs SECY of the assigned docket number, and forwards a copy of the petition to the Public Document Room and to the appropriate NRC staff office. Within 10 working days, RDB forwards a formal request for a decision from the appropriate NRC staff office on whether the petition should be processed routinely or handled as a "fast-track" petition. A "fast-track" petition is initially published for comment in the Federal Register as a proposed rule in accordance with §2.802(e). RDB prepares a draft notice of receipt of the petition and forwards it with the "fast-track" request. If the NRC staff office determines that the petition for rulemaking is not suitable for "fast-track" processing, the NRC staff office is requested to comment or concur on the draft notice of receipt and return it to RDB for publication in the Federal Register.

(c) After a petition has been submitted and the NRC staff has reviewed the merits of the petition, discussions between the NRC staff and petitioner regarding the wording for specific provisions of the regulations must occur in an open, public forum.

### 11.13 Petitions that do not meet threshold requirements.

(a) If a petition does not include sufficient information to meet the threshold requirements for a petition for rulemaking (see Section 11.3 of this handbook), the Executive Director for Operations (EDO) will make a determination that a petition is deficient. This determination, based upon the recommendation of the appropriate NRC staff office, OGC, or RDB, should be made within 30 days from the date of receipt of the petition by SECY. RDB prepares a memorandum to the EDO containing this recommendation. The memorandum includes a draft letter to the petitioner pointing out the aspects in which the petition is deficient.

(b) The petitioner is informed as to how the petition is deficient and is given an opportunity to submit additional information. If a petitioner does not correct the deficiency within 90 days from the date of notification by the EDO that the petition is incomplete, the petition is returned to the petitioner without prejudice to the petitioner's right to file a new petition. When this occurs, RDB drafts the appropriate letter to the petitioner, obtains the necessary concurrences, and forwards the letter to the EDO for signature.

(c) The Commissioners are placed on distribution for any letter to a petitioner that states that a petition is deficient or that returns a petition to a petitioner because it is incomplete.

### 11.15 NRC staff priority for action on petitions.

(a) Regulatory Guide 10.12 presents guidelines that the NRC staff should use in establishing priorities to resolve and complete action on a petition for rulemaking. The NRC staff considers the merits of each petition in its evaluation and scheduling. The degree to which information submitted in support of a petition is complete, accurate, and thorough affects how rapidly the NRC staff is able to make a determination. A petition for rulemaking submitted under 10 CFR 2.802 is generally either a --

(1) Petition related to safety significance pertaining to adequate protection of public health and safety, the environment, and the common defense and security; or

(2) Petition that would reduce the regulatory burden by eliminating requirements that are marginal to safety.

(b) The NRC staff should use the following guidelines in establishing priorities for staff action on a petition.

(1) The safety significance of a petition is the first criterion used in scheduling NRC staff action on a petition. Petitions concerning adequate protection of public health and safety, the environment and the common defense and security would receive immediate NRC staff attention and be given the first priority for NRC staff action. In assessing the safety significance of a petition, the NRC staff considers the technical information submitted in support of the petition, other information available to the NRC staff, and whether the suggested amendments meet the backfit criteria of 10 CFR 50.109, 72.62, or 76.76, if applicable.

(2) If a petition is safety-neutral, that is its implementation would have an insignificant effect on the level of protection provided to public health and safety, and the petition is supported by the type of additional

information described in Regulatory Guide 10.12 and Section 11.5 of this handbook, the petition would be given the second priority for NRC staff action.

(3) If a petition is safety-neutral and is not supported by the type of additional information described in Regulatory Guide 10.12 and Section 11.5 of this handbook but meets the threshold requirements of 10 CFR 2.802(c) as described in Section 11.3 of the handbook, the petition would be given the third priority for NRC staff action.

### **11.17 Petitions eligible for "fast-track" processing.**

(a) Occasionally, the NRC receives a petition for rulemaking that requests an obviously meritorious amendment to the regulations. To expedite the rulemaking process, these petitions may be published initially for public comment as a proposed rule. This type of action constitutes "fast-track" processing and eliminates the usual step of publishing a notice of receipt of a petition that invites public comment when this additional procedural step is unnecessary. "Fast-track" petitions are processed by the staff according to the procedures specified in this section and in Section 11.19 of this handbook. The "fast-track" procedure may not be used for the expeditious denial of a petition.

(b) Following a determination that a petition meets the threshold requirements of 10 CFR 2.802(c), RDB assigns the petition to the appropriate NRC staff office to determine whether the petition is eligible for "fast-track" processing. The NRC staff office assigns a contact person to handle the petition and makes the "fast-track" determination within 10 working days.

(c) The NRC may consider a petition eligible for "fast-track" processing if it --

(1) Proposes action granting or recognizing an exemption from requirements in 10 CFR Chapter I or granting relief from restrictions while not imposing additional burdens upon or increasing the risks to the health and safety of any segment of industry or the public;

(2) Proposes action involving interpretive rules, rules of agency organization, procedure, or practice, and rules for the orderly conduct of Commission business;

(3) Proposes action involving an amendment to 10 CFR Chapter I that is corrective or of a minor or non-policy nature and that does not substantially modify existing regulations;

(4) Proposes action involving --

(i) A minor safety, safeguards, or environmental issue;

(ii) An increase in NRC efficiency; or

(iii) A reduction in the regulatory burden on licensees.

(5) Proposes action involving a request already under consideration in an ongoing rulemaking proceeding (Note, however, that NRC consideration of a request already included in an ongoing rulemaking depends on the status of the rulemaking proceeding);

(6) Proposes other action that is clearly meritorious and will not adversely affect the rights of other licensees or persons; or

(7) Contains the type of additional supporting information described in Regulatory Guide 10.12 and Section 11.5 of this handbook.

(d) The NRC normally will not consider a petition eligible for "fast-track" processing if the proposed action will --

(1) Require the preparation of an Environmental Impact Statement;

(2) Impose new or increased reporting, application, or recordkeeping requirements subject to clearance by the Office of Management and Budget;

(3) Have a significant economic impact on a substantial number of small entities (see discussion of Regulatory Flexibility Act requirements in Sections 3.19 and 5.19 of this handbook),

(4) Have a significant impact on NRC staff and resource commitments; or

(5) Result in denial of the petition for rulemaking.

### **11.19 Fast-track processing.**

(a) If the assigned office determines that the "fast-track" process is appropriate for a petition for rulemaking, the assigned office shall inform RDB of this decision. The assigned office begins processing the petition under "fast-track" procedures by developing a notice of proposed rulemaking that addresses the issues in the petition.

(b) Under "fast-track" procedures, the assigned office shall develop the proposed rule for transmittal to the Commission, the EDO, the CFO, or the CIO for approval within 90 days after the assigned office informs RDB that the "fast-track" process is appropriate.

(c) The assigned office is responsible for implementing Commission, EDO, CFO, or CIO action for a proposed rule (see Part 1 of this handbook and MD 6.3 "The NRC Rulemaking Process").

## 11.21 Routine processing.

(a) If the assigned office determines that the "fast-track" process is not appropriate for a petition for rulemaking, the assigned office shall inform RDB of this decision. The assigned office shall also concur or provide comment on the draft notice of receipt of petition for rulemaking prepared by RDB for publication in the Federal Register. The notice of receipt describes the contents of the petition and allows at least 75 days for public comment.

(b) The assigned office shall establish a schedule with intermediate milestones, as appropriate, and a target date for resolution of the petition. The schedule and target date are intended to cover the period from the date the notice of receipt is published in the Federal Register to the date on which the response indicating resolution of the petition is transmitted to the EDO.

(1) A petition is considered resolved when the assigned office has determined what regulatory decision will be made concerning the petition. A petition may be resolved by deciding to grant the petition (all or in part) and to proceed with a rulemaking action or by deciding to deny the petition. However, the resolution of a petition does not complete action on the petition. The resolution of a petition consists of the decision on the course of action the NRC will follow to complete action on the petition by either granting or denying it.

(2) Action on a petition is completed and the petition is "closed" when the NRC formally grants the petition by completing and publishing the final rule necessary to grant the petitioner's request or when the NRC denies the petition by publishing a notice of this action in the Federal Register and by advising the petitioner of this action in writing. In addition, action on a petition may be completed if the petition is withdrawn by the petitioner. For

additional information on the closure of a petition, see Section 11.25 of this handbook.

(c) The EDO has established procedures to ensure that the resolution of a petition for rulemaking is accomplished on a timely basis. (See the Memoranda from the EDO to Office Directors dated August 13, 1986 and April 6, 1988). These procedures require that the resolution of a petition occur within twelve months from the date the notice of receipt of the petition is published in the Federal Register.

(1) The assigned office shall report the status of each petition for which it is responsible. These status reports are to coincide with the updating of the NRC Regulatory Agenda (NUREG-0936). The schedule for the resolution of each petition will be included in the Regulatory Agenda.

(2) Any proposed extension of the resolution date of a petition must be approved by the EDO in advance. The EDO reviews proposed extensions of resolution concurrently with the review of completion of rulemaking dates. RDB forwards a report to the EDO that indicates the status of each petition. The status report includes the reason for any extension of the resolution date for a petition and the proposed new resolution date.

(d) The NRC staff should note that in approving SECY-77-526, "Procedures for Petitions," in November 1977, the Commission stated:

Schedules for responding to specific petitions should be set individually, taking into account the priority and difficulty of the issues. However, the Commission believes that the time for response should seldom exceed 6 months for minor petitions or 12 months for major ones. When the response is rulemaking, the 6 and 12 month schedule limits can be interpreted as applying to the date of publication of the proposed rule in the Federal Register.

On petitions of substantial policy significance, the staff should submit an information paper or present a briefing to the Commission, about three months after receipt of the petition, identifying issues and options, and any preliminary staff views.

### 11.23 Processing after publication for public comment.

(a) "Fast-track" petition (published as proposed rule). At the conclusion of the comment period specified in the proposed rule, the contact person in the assigned office sends a letter to the petitioner enclosing copies of any comments that were received in response to the publication of the proposed rule in the Federal Register. The letter also states the initial target date for completion of NRC staff review of the comments received and development of a final rule. The assigned office is responsible for notifying the petitioner of any subsequent changes in the target date or of the contact person to whom the petition is assigned.

(b) Routine petition (notice of receipt published for comment).

(1) At the conclusion of the comment period specified in the Federal Register notice of receipt of petition (normally 75 days), RDB sends a letter to the petitioner enclosing copies of any comments that have been received concerning the petition. The letter also states the initial target date for completion of NRC staff review of the petition and the name and telephone number of the contact person responsible for the petition.

(2) The assigned office is responsible for notifying the petitioner of any subsequent changes in the target date for completion of NRC staff review and of the contact person to whom the petition is assigned. The contact person should make an initial contact with the petitioner and periodic contacts until action is completed on the petition to advise the petitioner of the disposition of the petition and any significant changes in the status of the petition. Routine correspondence to the petitioner may be signed by an appropriate official in the responsible office. The assigned office shall send copies of correspondence sent to a petitioner to RDB and to the official docket file maintained by SECY.

(3) Any meeting between the NRC staff and the petitioner to resolve issues raised by the petition or to negotiate wording for revisions to specific provisions of the regulations in question must be publicly noticed. The assigned office is responsible for the publication of the notice of the meeting in the Federal Register.

(4) If an assigned office determines that action on the petition has been completed through administrative measures other than publication of a Federal Register notice, it should consult with RDB and OGC for a final determination. After it reviews actions taken during the processing of the petition, RDB will notify the assigned office if all necessary action on the petition has been completed and describe how the proceeding is to be terminated.

(c) Assistance during processing.

(1) RDB will assist with the preparation and review of Federal Register notices required during the processing of petitions for rulemaking.

(2) OGC will provide legal advice to the staff during the processing of petitions for rulemaking.

(d) NRC staff response to significant actions. The contact person for a petition for rulemaking is responsible for notifying RDB and OGC of any significant action or change that occurs during the processing of the petition. Negotiations or understandings reached with a petitioner can materially affect the handling and disposition of a petition. Coordination of staff plans with RDB is necessary for actions such as the potential or actual withdrawal of a petition to enable RDB to keep the EDO informed of the status of petitions for rulemaking and to describe the status of petitions accurately in the Regulatory Agenda.

## 11.25 Completing action on a petition.

Action on a petition for rulemaking is considered complete or "closed" when the petition, or each of its parts, has been withdrawn, denied, or granted.

### (a) Withdrawal of petition for rulemaking.

(1) Only the petitioner may withdraw a petition or part of a petition.

If the withdrawal is made by telephone, the contact person should request that the petitioner submit an official letter of withdrawal to provide a record of the request. If the petitioner does not submit a written request for withdrawal, the contact person should make a record of the conversation noting the date, name, and position of the person claiming to represent the petitioner. The assigned office shall send a follow-up letter to the petitioner that confirms the withdrawal.

(2) If the petition is withdrawn, RDB, after consultation with the contact person, prepares a Federal Register notice that informs the public of the action. The Federal Register notice is circulated to the assigned office and OGC for concurrence before it is submitted to the EDO for signature.

### (b) Denial of petition for rulemaking.

(1) A petition or part of a petition is denied through the publication of a Federal Register notice and official written notification to the petitioner. If part of a petition is denied, the assigned office is responsible for processing the remaining parts of the petition until each remaining part has been withdrawn, denied, or granted.

(2) The assigned office prepares the following documents in the case of a denial of a petition:

(i) A memorandum to the EDO or a Commission paper.

(ii) A Federal Register notice of denial (to be signed by either the EDO or the Secretary of the Commission). The EDO has the authority to deny petitions for rulemaking concerning issues of a minor or non-policy nature where the grounds for denial do not substantially modify existing precedent (10 CFR 1.31(c)). Petitions that address major or policy issues require action by the Commission.

(iii) A letter to the petitioner to be sent to the petitioner before publication of the notice of denial in the Federal Register (to be signed by either the EDO or the Secretary of the Commission).

(iv) Congressional letters to be signed by the Director, Office of Congressional Affairs.

(v) A draft public announcement, if appropriate.

(3) In preparing the Federal Register notice of denial of a petition, the assigned office shall ensure that each of the issues raised by the petitioner has been addressed. The NRC's response to each of the issues raised and the reasoning presented for denying the petition must be presented in a manner and with sufficient detail to indicate that the NRC has adequately considered each of the petitioner's requests. Each Federal Register notice of denial of a petition must include --

- (i) A complete summary of each of the issues raised in the petition;
- (ii) A summary and analysis of any public comment received;
- (iii) NRC's response to each of the issues raised; and
- (iv) NRC's reasons for denying the petition.

(4) When preparing a Federal Register notice of denial of a petition, the following format items are omitted from the Commission Paper and Federal Register notice --

(i) The standard statements concerning the regulatory analysis, Paperwork Reduction Act, Regulatory Flexibility Act, and National Environmental Policy Act;

(ii) The authority citation; and

(iii) The list of subject index terms.

(5) See Section 15.13 of this handbook for a sample denial of a petition for rulemaking.

(c) Granting a petition for rulemaking. A petition or part of a petition is granted through issuance of a final rule that responds to the petitioner's request or other Commission action acceptable to the petitioner. Other acceptable actions may include the issuance of a Regulatory Guide, Policy Statement, or legal interpretation. See Section 15.12 of this handbook for a sample of a final rule that grants a petition for rulemaking.

(d) Incorporation of petition for rulemaking. When similar or related issues are involved, a petition or part of a petition may be incorporated into an ongoing rulemaking if three factors are taken into consideration. If any of the three following factors exist, the petition or the part of a petition under review should be treated separately.

(1) Incorporation of the petition or part of the petition into an ongoing rulemaking may delay the completion of the rulemaking to an extent that is undesirable given the Commission's established priorities.

(2) Incorporation of the petition or part of the petition into an ongoing rulemaking could delay the resolution of the petitioner's request to the point that the delay in reaching a final decision on the merits of the petition amounts to a denial of the petition.

(3) The action to incorporate the petition occurs at a stage in the rulemaking that does not permit adequate consideration of the issue involved.

(e) Actions that do not complete action on a petition for rulemaking.

The administrative or procedural steps discussed in this paragraph do not grant, deny, or complete action on a petition for rulemaking or any of its parts. Action on a petition for rulemaking is completed only when the steps set out in paragraphs (a), (b), or (c) of this section have been accomplished for the petition or each of its parts.

(1) The resolution of a petition does not complete action on the petition. The resolution of a petition for rulemaking consists of a decision on the course of action the NRC will follow to complete action on the petition by either granting or denying it.

(2) Incorporation of a petition or part of a petition into an ongoing rulemaking does not cause the petition or its parts to lose the identity of a discrete agency action item that must eventually be withdrawn, denied, or granted. Incorporation, by itself, does not "grant" or "complete" action on a petition for rulemaking.

(3) The intermediate procedural or administrative steps and milestones used by NRC offices to control the processing of petitions for rulemaking (e.g., review, analysis, reports, studies, position papers, issuance of publications in the NUREG series) do not "grant", "deny", or "complete" action on a petition or its parts.

(f) Dockets and files.

(1) SECY maintains the official docket file on a petition for rulemaking. The assigned office should send a copy of all petition-related documents for inclusion in the official docket. The assigned office should also send a copy of petition-related documents to RDB so that RDB can monitor the current status of each ongoing action.

(2) A file of currently active petitions for rulemaking that have been filed with the NRC is maintained in RDB. Documents concerning current petitions and petitions that have been completed through EDO or Commission action are published in the NRC Rules and Regulations. Questions concerning the status of any petition for rulemaking may be directed to the RDB (415-7158).

**PART 13 - WRITING TECHNIQUES**

	<u>Page</u>
13.1 Before writing.....	266
13.3 Use a logical arrangement.....	268
13.5 Make the regulation easy to use.....	269
13.7 Plan for the future.....	273
13.9 Structure of a typical NRC part.....	274
13.11 Short paragraphs.....	278
13.13 Short sentences.....	279
13.15 Sentence construction.....	281
13.17 Listing.....	282
13.19 Stating conditions.....	284
13.21 Use verbs effectively.....	285
13.23 Impose an obligation or prohibition properly.....	287
13.25 Choose words carefully.....	288
13.27 Be concise.....	289
13.29 Use jargon sparingly.....	291
13.31 Avoid legalisms.....	292
13.33 Avoid ambiguity.....	294

### 13.1 Before writing.

(a) Organization and presentation are important to a successful regulation. A well-organized regulation allows the user to process the information presented quickly and understand its requirements easily. The organizational structure of a regulation helps determine whether it --

- (1) Effectively accomplishes its intended objective;
- (2) Is complete and accurate; and
- (3) Is easy to use, amend, and cite.

(b) Careful planning is essential. The time spent in planning saves time and effort in writing and results in a better product.

(c) The writer must determine --

- (1) The need for the regulation;
- (2) The intended effect of the regulation;
- (3) The basic message of the regulation;
- (4) The different audiences being addressed by the regulation; and
- (5) The way the primary audience will use the regulation.

(d) The Nuclear Regulatory Commission's (NRC) primary responsibility is to ensure that licensing and regulatory actions are conducted in a manner that protects the public health and safety and the environment. Therefore, the writer must consider the potential safety impact of the regulation, such as any change in --

- (1) The probability of an accident;
- (2) Equipment failure which may contribute to the possibility or severity of an accident;
- (3) Occupational exposure to radiation;
- (4) Routine or unplanned radioactive releases;

- (5) The probability of any offsite exposure to radiation;
- (6) Operator response time;
- (7) Emergency planning factors;
- (8) Maintenance;
- (9) Facility security or materials control and accountability; and
- (10) Environmental considerations.

(e) Because the licensee is the primary audience in NRC regulations, the writer must consider the potential effects of the regulation on the licensee.

The writer should consider --

- (1) The number, type, and size of the licensees affected;
- (2) The effects that the regulation will have on the licensee's operations;
- (3) The resources available to the licensee; and
- (4) The manner in which the licensee conducts business and incorporates regulatory requirements into its operations.

### 13.3 Use a logical arrangement.

(a) A well-organized regulation presents the information contained in it logically. The structure should emphasize the key elements of the regulation and the relationship between these elements. The writer should answer the following questions.

- (1) What factors are most important?
- (2) What factors should come first?
- (3) How do different factors affect one another?

(b) The most common classification used to organize material in NRC regulations is to proceed from the general to the specific. This method is often used in technical writing because it allows complex, interlocking requirements to be presented in a manner that is most easily understood. A regulation organized by this method begins with basic information and overall requirements and procedures. This material is followed by more specific requirements and technical procedures that are necessary to cover particular subjects adequately. The following guidelines, applicable at each level within the regulation, help a writer present information logically using general to specific classification principles.

- (1) Place general provisions before specific provisions.
- (2) Place more important provisions before less important provisions.
- (3) Place more frequently used provisions before less frequently used provisions.
- (4) Place permanent provisions before temporary provisions.
- (5) Place reporting, recordkeeping, inspection, and penalty provisions at the end.

### 13.5 Make the regulation easy to use.

(a) General. A well-organized regulation allows the user to find needed information without having to read the entire regulation. A user generally approaches the regulation with a specific problem or question. The writer should organize and label the regulation so that a user is able to locate the answers to his or her questions. A regulation is easy to use when it --

- (1) Features short sections and paragraphs;
  - (2) Uses descriptive headings;
  - (3) Includes a road map provision (see paragraph (d) of this section);
- and
- (4) Answers frequently asked questions quickly and accurately.

(b) Short sections. Each section should be a short, well-defined presentation of a single topic. Limiting each section to a single regulatory proposition reduces the amount of material the user must read to determine needed information.

(c) Descriptive headings. Provide each unit within the regulation with a brief heading that accurately describes the content of the unit.

(1) Descriptive section headings are particularly effective sign posts for the user that help identify particular portions of the regulation.

(2) Section headings, combined with part and subpart headings, should provide the user with an overall picture of the regulation. Properly used, these headings illustrate the logic and arrangement of the regulation. The headings in the following example allow a person to find the information necessary to complete an application and prepare a package of radioactive material for shipment. Note that the description of package standards begins

with the general requirements applicable to all packages and then provides the requirements that specific types of packages must meet.

Example:

PART 71 - PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

\* \* \* \* \*

Subpart D - Application for Package Approval

71.31 Contents of application.

71.33 Package description.

71.35 Package evaluation.

71.37 Quality assurance.

71.39 Additional information.

Subpart E - Package Standards

71.41 Demonstration of compliance.

71.43 General standards for all packages.

71.45 Lifting and tie-down standards for all packages.

71.47 External radiation standards for all packages.

71.49 Additional requirements for Type B packages.

71.51 Fissile material categorization and exemptions.

71.53 General requirements for all fissile material packages.

71.55 Specific standards for a Fissile Class I package.

71.57 Specific standards for a Fissile Class II package.

71.59 Specific standards for a Fissile Class III shipment.

\* \* \* \* \*

(3) Strategic repetition, that is repeating key words or phrases in section headings, is a device used to illustrate certain relationships within regulatory material. Strategic repetition signals the reader that material in a number of sections deals with different aspects of the same topic. Strategic repetition may also serve to make the organizational pattern of the regulation clearer.

Example:

Subpart C - General Licenses

71.12 General license: NRC approved package.

71.14 General license: DOT specification container.

71.16 General license: IAEA package.

71.18 General license: Type A, Fissile Class II package.

71.20 General license: Restricted, Fissile Class II package.

71.22 General license: Type A package, Fissile Class III shipment.

71.24 General license: Restricted, Fissile Class III shipment.

(d) Road maps.

(1) A well written introductory provision makes a regulation more accessible to the user. A good introduction not only outlines the content of the regulation, but also pinpoints the provisions of the regulation that may be applicable to particular groups or in certain situations. Descriptive headings, along with good introductory provisions, give the user a road map that directs him or her to needed information.

(2) The concepts section (§61.7) contained in Part 61 is a good example of a "road map" provision. This section outlines the substantive content of the entire part and explains the key terms that are used in the regulation. To conserve space, the following example presents only paragraph (a) of §61.7. The section continues with an explanation of waste classification and near-surface disposal (paragraph (b)) and the licensing process (paragraph (c)).

Example:

§61.7 Concepts.

(a) The Disposal facility. (1) Part 61 is intended to apply to land disposal of radioactive waste and not to other methods such as sea or extraterrestrial disposal. In its present form, Part 61 contains procedural requirements and performance objectives applicable to any method of land disposal. It contains specific technical requirements for near-surface disposal of radioactive waste which involves disposal in the uppermost 15 to 20 meters of the earth. Technical requirements for alternative methods will be added in the future.

(2) Near-surface disposal of radioactive waste takes place at a near-surface disposal facility, which includes all of the land and buildings necessary to carry out the disposal. The disposal site is that portion of the facility which is used for disposal of waste and consists of disposal units and a buffer zone. A disposal unit is a discrete portion of the disposal site into which waste is placed for disposal. For near-surface disposal, the disposal unit is usually a trench. A buffer zone is a portion of the disposal site that is controlled by the licensee and that lies between the boundary of the disposal site and any

disposal unit. It provides controlled space to establish monitoring locations which are intended to provide an early warning of radionuclide movement, and to take mitigative measures if needed.

\* \* \* \* \*

(e) Test your structure. A simple test enables a writer to determine the accessibility of information contained in the regulation. Develop a list of common questions concerning the material. Give the regulation to a person not familiar with its content and determine how long it takes the person to locate the answers and how much of the material he or she must read to obtain the answers. If the questions are answered quickly and accurately, the regulation is probably well organized.

(f) Use cross-references sparingly. A cross-reference is occasionally necessary to avoid repeating a long passage of text. However, excessive cross-referencing indicates organizational problems and creates added burdens for the reader. A reader should be able to understand the meaning and intent of each section without having to thumb back and forth through the regulation. If a cross-reference is necessary, include a brief description of the referenced provision with the cross-reference. This brief description allows a reader to determine whether or not he or she needs to turn to the referenced provision.

Example:

SAY: See 10 CFR 9.7 for a description of the records that NRC routinely makes available to the public in the Public Document Room.

DON'T SAY: See 10 CFR 9.7.

### **13.7 Plan for the future.**

(a) Leave room new material. A regulation is rarely static. Requirements that are adequate and appropriate now may need to be adjusted or supplemented to meet future conditions. The organizational structure must allow changes to be made easily and permit new material to be added in appropriate locations.

(b) The writer can leave room for future growth by skipping every other number in designating parts and sections (Note the numbering sequence used in the examples appearing in Section 13.5 of this handbook) and by leaving a few slots vacant at the end of each subpart or group of related sections. This provides greater flexibility in revising or adding to a regulation.

### 13.9 Structure of a typical NRC part.

(a) NRC's primary purpose is to license and regulate the uses of nuclear energy to protect the health and safety of the public. As a result, most of the parts contained in 10 CFR Chapter I establish regulations appropriate to an aspect of NRC's licensing activities. The typical NRC licensing part begins with a subpart or group of parts entitled "general provisions" and ends with a subpart or group of parts that specify any recordkeeping or reporting requirements and contain any inspection or penalty provisions. The requirements applicable to the specific license covered by the part constitute the remainder of the material.

(b) The first 10 sections of each part are normally reserved for use in the general provisions subpart. This subpart presents the basic explanatory material necessary to provide context for the regulatory and licensing requirements that are contained in the part. The following example presents the most common sections in their usual order of appearance in the general provisions subpart. Each listed section need not appear in each part, and certain parts may require additional sections that contain information unique to that part.

Example:

Subpart A - General Provisions

- 1 Purpose and scope.
- 2 Definitions.
- 3 License requirements.
- 4 Exemptions.
- 5 Communications.
- 6 Interpretations.
- 8 Information collection requirements: OMB approval.
- 9 Employee protection.

(c) The regulatory requirements of a part are generally presented in a series of subparts or a series of related sections grouped under a descriptive center heading. The number of subparts or section groups in a part varies with the extent and complexity of the regulation. The regulatory requirements set out in a licensing part are usually presented in the following sequence.

(1) A general description of the license including scope, coverage, and application procedures.

(2) General requirements for obtaining a license.

(3) General requirements for compliance with the terms of the license.

(4) Specific requirements applicable to certain classes of licensees or types of licensed activities.

(5) Specialized or technical information applicable to specific licensed activities.

(6) Any additional procedural information that may be needed.

(d) The concluding portion of the part contains information concerning reporting and recordkeeping requirements, inspections, and penalty provisions. This material may be presented in a single subpart or in a series of subparts.

Example: An NRC licensing part.

PART 61 - LICENSING REQUIREMENTS FOR LAND  
DISPOSAL OF RADIOACTIVE WASTE

Subpart A - General Provisions

	Sec.
General provisions appear first	61.1 Purpose and scope.
	61.2 Definitions.
	61.3 License required.
	61.4 Communications.
	61.5 Interpretations.
	61.6 Exemptions
Good road map section describes key elements of the regulation	61.7 Concepts.
	61.8 Information collection requirements: OMB approval.
	61.9 Employee protection.

### Subpart B - Licenses

#### General license information

- 61.10 Content of application.
- 61.11 General information.
- 61.12 Specific technical information.
- 61.13 Technical analyses.
- 61.14 Institutional information.
- 61.15 Financial information.
- 61.16 Other information.
- 61.20 Filing and distribution of application.
- 61.21 Elimination of repetition.
- 61.22 Updating of application and environmental report.
- 61.23 Standards for issuance of a license.
- 61.24 Conditions of licenses.
- 61.25 Changes.
- 61.26 Amendment of licenses.
- 61.27 Application for renewal or closure.
- 61.28 Contents of application for closure.
- 61.29 Post-closure observation and maintenance.
- 61.30 Transfer of license.
- 61.31 Termination of license.

Gap in numbering between subparts leaves room for future expansion

### Subpart C - Performance Objectives

#### General requirements

- 61.40 General requirement.
- 61.41 Protection of the general population from releases of radioactivity.
- 61.42 Protection of individuals from inadvertent intrusion.
- 61.43 Protection of individuals during operations.
- 61.44 Stability of the site after closure.

### Subpart D - Technical Requirements for Disposal Facilities

#### Technical requirements

- 61.50 Disposal site suitability requirements for land disposal.
- 61.51 Disposal site design for land disposal.
- 61.52 Land disposal facility operations and disposal site closure.
- 61.53 Environmental monitoring.
- 61.54 Alternative requirements for design and operations.
- 61.55 Waste classification.
- 61.56 Waste characteristics.
- 61.57 Labeling.
- 61.59 Institutional requirements.

### Subpart E - Financial Assurances

- 61.61 Applicant qualifications and assurances.
- 61.62 Funding for disposal site closure and stabilization.

61.63 Financial assurances for institutional controls.

Added considerations

Subpart F - Participation by State Governments and Indian Tribes

61.70 Scope.

61.71 State and Tribal government consultation.

61.72 Filing of proposals for State and Tribal participation.

61.73 Commission approval of proposals.

Recordkeeping, inspection, and penalty provisions at the end

Subpart G - Records, Reports, Tests, and Inspections

61.80 Maintenance of records, reports, and transfers.

61.81 Tests at land disposal facilities.

61.82 Commission inspections of land disposal facilities.

61.83 Violations.

### 13.11 Short paragraphs.

Short paragraphs improve clarity. Each paragraph should deal with a single, unified topic. Lengthy, complex, or technical discussions should be presented in a series of related paragraphs.

(a) A long, complicated paragraph increases the potential for reader error and frustration. A reader may be forced to read a paragraph several times to understand its content. Short paragraphs reduce the demands on the reader and avoid information overloads that frequently result in errors in understanding and interpreting requirements.

(b) The content of a short paragraph that is limited to a single topic can easily be described in a catch-line heading consisting of a word or phrase. A paragraph heading reveals important information within a section and aids a reader by pointing to relevant material. Paragraph headings may also reveal the logical flow of material within a section and highlight related material within the regulation.

### 13.13 Short sentences.

(a) The long, run-on sentence is a basic flaw in any type writing that is meant to inform or instruct. Long sentences, like long paragraphs, often blur the concepts being communicated. A series of long sentences requires greater effort on the reader's part. As a result, the rights and duties of the regulated party may not be effectively communicated.

(b) Brevity alone does not guarantee clear writing because of the many other factors involved. However, sentence length is the greatest single factor affecting the ability of a reader to understand the sentence. The writer should strive for short, direct sentences because they communicate more effectively. Sentences may be shortened by --

- (1) Dividing a long sentence into two or three shorter sentences;
- (2) Removing unnecessary words; or
- (3) Changing the structure of the sentence to a simpler form.

(See Section 13.15 of this handbook for a discussion of sentence structure.)

(c) Many sentences are easily shortened by dividing them into two or three shorter sentences. Compound or compound-complex sentences that contain conjunctions (such as "but", "for", "because", "or", "and") may be divided by changing clauses into complete sentences. Other methods for shortening a long sentence include --

- (1) Using a parallel listing structure (see Section 13.17 of this handbook); and
- (2) Stating conditions, including exemptions and exceptions, in an organized manner (see Section 13.19 of this handbook).

(d) Sentence and clause length may be reduced by eliminating unnecessary words. When eliminating words, focus on the content words, for example,

nouns, adjectives, and verbs. Word pairs, redundancies, and unnecessary qualifiers are the best targets. (See Section 13.27 of this handbook for help in trimming excess words.) A simple sentence structure reduces sentence length by eliminating excess words without removing necessary words. A simple sentence structure requires fewer connecting words to convey the meaning of the sentence effectively.

### 13.15 Sentence structure.

The simple, active, affirmative, declarative sentence is the easiest sentence structure to understand. The more a sentence deviates from this structure, the harder the sentence is to understand. Each transformation from this basic sentence structure requires the reader to mentally translate the sentence to understand its meaning and increases the possibility of reader error. The more complex the sentence, the greater the possibility for difficulty in determining the intended meaning.

(a) Affirmative/negative. An affirmative statement is easier to understand than a negative statement. Positive constructions are verified more quickly and accurately than negative constructions. This is especially true in the double negative and negative type constructions frequently found in regulatory writing. Negative constructions, including exemptions, exceptions, or prohibitions, greatly increase the burden placed on the reader.

(b) Active/passive. A sentence in the active voice is easier to understand, verify, and recall than a similar sentence in the passive voice. In addition, the active voice generally forces the writer to identify the actor and the action required in a sentence. This is especially important in a regulation that imposes certain requirements on specific parties (see also Section 13.21 of this handbook).

### 13.17 Listing.

- (a) Listing simplifies regulatory writing by --
  - (1) Shortening sentences and paragraphs;
  - (2) Making sentences or sentence fragments that are parallel in thought parallel in form;
  - (3) Breaking the solid print of a block paragraph into visual chunks that aid in grouping information logically; and
  - (4) Emphasizing the relationships between the concepts presented.

Example: Listing technique.

#### Before

§ \_\_\_\_\_ Violations.

An injunction or other court order may be obtained prohibiting any violation of any provision of the Atomic Energy Act of 1954, as amended, or Title II of the Energy Reorganization Act of 1974, or any regulation or order issued thereunder. A court order may be obtained for the payment of a civil penalty imposed pursuant to section 234 of the Act for violation of section 53, 57, 62, 81, 82, 101, 103, 104, 107, or 109 of the Act or section 206 of the Energy Reorganization Act of 1974, or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license issued thereunder, or for any violation for which a license may be revoked under section 186 of the Act. Any person who willfully violates any provision of the Act or any regulation or order issued thereunder may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both, as provided by law.

#### After

§ \_\_\_\_\_ Violations.

- (a) The Commission may obtain an injunction or other court order to prevent a violation of any provision of --
  - (1) The Atomic Energy Act of 1954, as amended;
  - (2) Title II of the Energy Reorganization Act of 1974; or
  - (3) A regulation issued under the requirements of the Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act for violation --

(1) Of sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Act;

(2) Of any rule, regulation, or order issued under the requirements of the Act;

(3) Of any term, condition, or limitation of any license issued under the Act; or

(4) For which a license may be revoked under section 186 of the Act.

(c) Any person who willfully violates any provision of the Atomic Energy Act or any regulation or order issued under the requirements of the Act may be guilty of a crime and, upon conviction, be punished by fine or imprisonment or both, as provided by law.

(b) Follow these guidelines when using the listing technique:

(1) Each item in a list must belong to the same classification.

(2) Each item in a list must correspond to the introductory language for the list in substance and form.

(3) If the introductory language for the list is a complete sentence follow these instructions:

(i) End the introduction with a colon.

(ii) Make each item in the list a separate sentence.

(4) If the introductory language for the list is not a complete sentence --

(i) End the introduction with a dash;

(ii) End each item in the list except the last with a semicolon;

(iii) After the semicolon in the next-to-last item write "and" or "or" as appropriate; and

(iv) End the last item in the list with a period.

### 13.19 Stating conditions.

State the conditions in a regulation in a manner that most easily allows regulated parties to determine the its impact on them. If a provision contains a cause-and-effect or an if-then relationship, or if a requirement is dependent on certain factors, the method of presentation should clearly indicate these relationships.

(a) If one or two simple conditions must be met before a rule applies, state the condition first and then state the rule.

Example:

If a debt is paid in one lump sum after the due date, the Commission shall impose a late payment charge.

(b) If two complex conditions or more than two conditions must be met before a rule applies, state the rule first then list the conditions.

Example:

(a) The Commission may withhold a sum equal to the amount of the alleged indebtedness from the amounts accruing to the individual on termination if --

(1) Amounts accruing to the debtor on termination are available for offset to satisfy the alleged indebtedness;

(2) The amounts would not be available for offset after termination; and

(3) The time before termination does not permit a preoffset hearing.

### 13.21 Use verbs effectively.

- Use verbs in the active voice
- Use action verbs
- Use verbs in the present tense

(a) Active voice/passive voice. The active voice is almost always preferable to the passive voice in regulatory writing.

(1) A sentence written in the active voice identifies the subject performing the action. However, in a sentence written in the passive voice, the subject is acted upon. A regulation imposes a duty upon someone who is responsible for compliance. Enforcement is more difficult if the duty to act is not clearly imposed on a specific party. A sentence in the passive voice may result in ambiguity or doubt.

Example:

Active: The licensee shall prepare and circulate an environmental impact statement before the Commission may issue a permit to construct a nuclear power plant.

Passive. An environmental impact statement must be prepared and circulated before a permit to construct a nuclear power plant may be issued.

(2) In addition to naming the actor, sentences written in the active voice are generally shorter and more direct. The passive voice, especially a complete passive construction, requires more words to express the same thought clearly.

(b) Action verbs. Avoid the tendency to substitute a nominal, that is, a phrase using a noun made from a verb or a noun substitute such as a gerund or infinitive phrase, for the base verb.

Example:

Say

consider  
provide for  
authorize  
state

Don't say

give consideration to  
make provision for  
grant authorization for  
make a statement

(c) Present tense. Write a regulation in the present tense. A regulation is of continuing effect and speaks as of the time it is applied; not as of the time it is drafted or becomes effective. Writing in the present tense also helps avoid awkward and complicated verb forms.

Example:

Say: The fine for a license violation is \$10,000.

Don't say: The fine for a license violation will be \$10,000.

### 13.23 Impose an obligation or prohibition properly.

- ° Proper use of shall, may, must
- ° Proper use of may not

A regulation usually requires or prohibits the performance of certain specified actions by an individual or class of persons. This section discusses one of the standard conventions used in regulatory writing to impose an obligation, indicate discretionary action, and express a prohibition.

(a) Shall. Use "shall" to impose an obligation on an individual or legal entity capable of performing the required action.

(b) Must. Use "must" as the proper mandatory form when the subject is an inanimate object. Must is also used to indicate a precondition.

(c) May. Use "may" to indicate that an individual or entity has the discretion to take a specific action but is not required to do so.

(d) May not. Use "may not" to indicate that a person or entity is prohibited from taking a specific action.

#### Examples:

Each licensed institution shall establish a Radiation Safety Committee. At least one member of the committee must be a physician specializing in nuclear medicine. (Precondition.)

The required records must be readily accessible. (Inanimate object.)

The Commission may request any additional information necessary to ensure that adequate protection systems have been established.

The licensee may not use byproduct material in any manner not specified in the license.

### 13.25 Choose words carefully.

- Use words consistently
- Use concrete words
- Use familiar words

(a) Consistency. Use words consistently throughout a regulation.

- (1) Do not use the same word or phrase to denote different things.
- (2) Do not use different words or phrases to denote the same thing.
- (3) Do not use a synonym to denote differences in substance.

(b) Concrete words. Using concrete words instead of abstract words makes writing more readable and more precise. Words are symbols with degrees of abstraction and shades of meaning. Concrete words are more likely to create a vivid mental image. Concrete words, particularly those with a sensory base, produce sharper images and foster more precise communication.

Example:

Say: The operator must be able to see the entire control panel.

Don't say: The systems integration specialist must be able to visually perceive the entire directional response module.

(c) Familiar words. Words frequently used in normal communication are more easily recognized and understood. Always choose a familiar word over an unfamiliar word and a simple word over a stuffy word.

Example:

<u>Say</u>	<u>Don't say</u>
end	terminate
use	utilize
explain	elucidate

### 13.27 Be concise.

- Avoid redundancies
- Remove compound prepositions
- Trim word clusters

Do not use more words than necessary to convey the intended meaning of the regulation. Careful editing removes surplus words. This creates shorter sentences without affecting content words or the connecting or function words necessary to convey meaning.

(a) Avoid redundancies. Do not repeat words or ideas.

(1) Do not present both the positive and negative statements of an idea when one alone is sufficient. The positive statement is usually preferable.

(2) Avoid word pairs if the words have the same effect or where the meaning of one includes the other.

Examples: Word pairs to avoid.

any and all

authorized and empowered

each and every

full and complete

order and direct

sole and exclusive

authorize and direct

means and includes

necessary and desirable

(b) Prepositions. Avoid compound prepositions and roundabout prepositional phrases when the same meaning can be conveyed with a single word. These phrases bloat a sentence with needless words that tend to obscure the intended meaning.

Examples:

Say

then  
today  
now  
by  
for  
because  
for  
concerning  
to  
in  
if  
like  
by  
because  
before  
after  
about

Don't say

at that point in time  
as of this date  
at the present time  
by means of  
for the purpose of  
for the reason that  
from the point of view of  
in connection with  
in order to  
in terms of  
in the event that  
in the nature of  
on the basis of  
on the grounds that  
prior to  
subsequent to  
with reference to/with regard to

(c) Word Clusters. Most word clusters are bad habits. Trimming these "throat clearing" constructions is good editorial practice.

Examples:

Say

during  
for  
by, under  
often  
sometimes  
doubtless  
until

Don't say

during the time that  
for the period of  
in accordance with  
in many cases  
in some instances  
there is no doubt that  
until such time as

### 13.29 Use jargon sparingly.

- Use jargon only where necessary
- Explain key terms or concepts

Jargon is the technical language used by people in the same field to communicate. Normally, most writers weed out jargon in editing their work. However, some jargon is inescapable in NRC's highly technical environment. Use jargon only when the language is appropriate to communicate technical concepts to the party being regulated. Explain key technical words or concepts that may be unfamiliar to the nontechnical reader. The explanation may appear the first place the term is used in regulatory text, in the definitions or concepts section, or in the preamble to the document.

#### Examples:

1. Anticipated Transients Without Scram (ATWS). An ATWS event takes place if an abnormal operating condition (anticipated transient) occurs at a nuclear power plant which could cause the reactor protection system to initiate a rapid shutdown (scram) of the reactor but the reactor shutdown system fails to function.

2. Byproduct material used by a specific licensee is contained in a sealed capsule, held between layers of nonradioactive metal foil, or firmly fixed to a nonradioactive surface by electroplating or other means. The byproduct material with its capsule or other confining barrier is termed a sealed source. The confining barrier prevents dispersion of the byproduct material under normal and most accident conditions under which the source is used.

### 13.31 Avoid legalisms.

- ° Avoid legal word pairs
- ° Eliminate legalisms

(a) Legal word pairs. These redundancies are the lawyer's version of the word pairs discussed in Section 13.27 (a) of this handbook. Legal word pairs stem from periods in English history when the English lawyer had two languages to choose from. The lawyer frequently used a word from each language, joined in a pair, to express a single meaning. This doubling enabled persons of each language to understand the intent of the law. This practice became traditional and has persisted long after the need for it ended. Replace a needless string of words having the same meaning with one of the words or a new word.

Examples: Avoid these legal word pairs.

alter or change  
cease and desist  
force and effect  
full and complete  
order and direct  
perform and discharge  
unless and until

(b) Legalisms. Substitute simple everyday words for legalisms. Legalisms may create a false sense of precision that often obscures gaps in analysis.

(1) Do not use "such" or "said" as adjectives to refer back to things already mentioned. The extra precision supposedly gained in preferring these terms to the more commonly used "the" or "this" is illusory. If only one reactor is mentioned, there is no danger of anyone mistaking "the" reactor or

"this" reactor for any other. If more than one reactor is mentioned, "such" reactor or "said" reactor does not indicate which of several is meant.

(2) Avoid vague legalistic references such as "aforementioned," "hereby," "herein," "hereinafter," "hereinabove," and "therein." Identify the intended reference precisely.

(3) Other legalisms to avoid in regulation drafting are identified in the following examples.

Examples:

Say

postpone action  
allow, permit  
end, conclude  
completely  
carry out  
issue  
under  
end  
use  
verify

Don't say

abeyance  
afford an opportunity  
finalize  
fullest possible extent  
implement  
promulgate  
pursuant to  
terminate  
utilize  
verification

### 13.33 Avoid ambiguity.

- Word order
- Word meaning

(a) Word order. Ambiguity resulting from word order can be avoided by keeping related sentence elements together and unrelated sentence elements apart.

(1) Place modifiers as close to the words they are intended to modify as possible. A modifier will tend to attach itself to the nearest word eligible for modification.

Example:

Don't say: Appeals of fines, which may not exceed \$1,000, must be made within 30 days. (What may not exceed \$1,000, the appeal or the fine?)

Say: Appeals of fines may not exceed \$1,000. An appeal must be made within 30 days.

Unless you mean: Fines may not exceed \$1,000. Appeals of fines must be made within 30 days.

Don't say: The licensee may use the building only for storage.

Say: The licensee may use the building for storage only.

Unless you mean: Only the licensee may use the building for storage.

(2) Avoid using indefinite pronouns as references.

Example:

Say: After the shift supervisor appoints an assistant, the assistant shall supervise.....

Don't say: After the shift supervisor appoints an assistant, he or she shall supervise..... (Does the shift supervisor or the assistant supervise?)

(b) Word meaning. The most common source of ambiguity in word meaning results from the use of plural nouns. Using a singular noun instead of a plural noun avoids the problem of whether the rule applies separately to each member of a class or jointly to the class as a whole.

Example:

Don't say: The guard shall issue security badges to the employees who work in Building D and Building E.

Say: The guard shall issue a security badge to each employee who works in either Building D or Building E.

Unless you mean: The guard shall issue a security badge to each employee who works in both Building D and Building E.



**PART 15 - SAMPLE DOCUMENTS**

	<u>Page</u>
15.1 Advance notice of proposed rulemaking.....	298
15.2 Proposed rule.....	309
15.3 Final rule.....	325
15.4 Package prepared for EDO, CFO, or CIO signature.....	342
15.5 Direct final rule.....	358
15.6 Extension of comment period.....	376
15.7 Withdrawal of proposed rule.....	378
15.8 Withdrawal of advance notice of proposed rulemaking.....	380
15.9 Corrections.....	385
15.10 Notice of availability.....	388
15.11 Notice of meeting.....	392
15.12 Final rule that grants a petition for rulemaking.....	394
15.13 Denial of a petition for rulemaking.....	402
15.14 Policy statement.....	414

**15.1 Advance notice of proposed rulemaking.**

[7590-01-P]

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 50**

**RIN 3150-AA11**

**Financial Assurance Requirements  
for Decommissioning Nuclear Power Reactors**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Nuclear Regulatory Commission is considering amending its financial assurance requirements for decommissioning nuclear power plants. Potential deregulation of the power generating industry has created uncertainty as to whether current NRC regulations concerning decommissioning funds and the financial mechanisms require modification to account for utility reorganizations not contemplated when current financial assurance requirements were issued. This advance notice of proposed rulemaking invites public comment on issues pertaining to the form and content of the NRC's nuclear power reactor decommissioning financial assurance requirements relating to electric utility deregulation.

**DATE:** Submit comments by (75 days after publication in the Federal Register). Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** Mail comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 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, D.C.

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

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-1111, e-mail xxx@nrc.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

Requirements pertaining to financial assurance for the decommissioning of nuclear power reactors are contained in §50.75. Under §50.75(e)(3), the NRC allows power reactor licensees, who are defined as "electric utilities"<sup>1</sup> under §50.2, to set aside funds annually over the estimated life of the reactor for decommissioning. The NRC provided more flexibility to its electric utility licensees than other licensees because electric utilities have existed in a highly structured environment regulated by State public utility commissions (PUCs) or the Federal Energy Regulatory Commission (FERC). Under §50.75(e)(2), the NRC requires licensees other than electric utilities to set aside an external sinking fund coupled with a surety method or insurance for any unfunded balance. However, deregulation may reduce or

---

<sup>1</sup>"Electric utility means any entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority. Investor-owned utilities, including generation or distribution subsidiaries, public utility districts, municipalities, rural electric cooperatives, and State and Federal agencies, including associations of any of the foregoing, are included within the meaning of 'electric utility.'"

eliminate the distinction between electric utility licensees and other licensees. The NRC needs to clarify the definition of "electric utility" and to require additional assurance of those licensees whose power reactor costs are no longer regulated.

Typically, power reactor licensees place decommissioning funds in external trust or escrow accounts that are reserved for decommissioning activities.<sup>2</sup> Under the definition of external sinking fund, power reactor licensees must accumulate all the funds estimated to be needed for decommissioning by the time their facilities are permanently shut down. Although §50.75(e) also allows power reactor licensees to use surety bonds, letters of credit, and prepayment to provide funding assurance, virtually all power reactor licensees use the external sinking fund method of assurance.

Under §50.75(e)(3)(iv), an electric utility that is a Federal Government licensee need only provide assurance in the form of a statement of intent indicating that decommissioning funds will be obtained when necessary.

The intent of §50.75 is to provide reasonable assurance that funds for decommissioning will be available when necessary. The inability of the licensee to provide funding for decommissioning may adversely affect protection of public health and safety. A lack of decommissioning funds is a financial risk to taxpayers. If the licensee cannot pay for decommissioning, taxpayers would ultimately pay the bill.

---

<sup>2</sup> Note: Many licensees that have established decommissioning trust funds for their power reactors are making deposits into their trust accounts both for decommissioning costs as defined under § 50.2 and for other decommissioning-associated costs such as interim spent fuel management and storage and "green field" costs. The NRC allows licensees to deposit funds in the same trust account as long as the trust has sub-accounts that clearly delineate the purposes of the sub-account. A trust or sub-account established to provide assurance of NRC-defined decommissioning costs should be stipulated to cover NRC-defined decommissioning costs before any other purpose.

The Commission believed that an external reserve account collected over the estimated remaining reactor life would provide reasonable assurance for a regulated electric utility. As a conservatism built into the rule, the NRC decided not to allow licensees to take credit for earnings on their trust funds while their reactors were in extended safe storage. The NRC assumed that during safe storage the rate of return on external decommissioning trust funds would equal the decommissioning cost escalation rate. Thus, the after-tax, after-inflation earnings rate effectively would be zero.

The 1988 decommissioning rule did not require licensees to report the status of their decommissioning funds. NRC viewed licensee compliance with the funding assurance requirements as a matter to be determined through the inspection process. The NRC recognized the PUCs' and FERC's authority to set annual contribution rates to decommissioning funds and to establish investment and other management criteria for the funds. The PUCs and FERC also actively monitor these decommissioning funds as part of their rate regulatory responsibility. The Financial Accounting Standards Board (FASB), a national organization that sets accounting standards, recently initiated a review of reporting of decommissioning obligations on electric utility financial statements. Although FASB has not established a final standard, it appears that it will increase the level of detail on power reactor licensees' financial statements. This standard would give the NRC and others additional information on decommissioning fund status. The advent of deregulation and less oversight by FERC or by PUCs, makes it imperative that the NRC have a source of information to monitor the status of decommissioning funds.

#### Specific Proposal

The Commission is considering amending §§50.2, 50.75, and 50.82 to require that electric utility reactor licensees provide assurance that the full

estimated cost of decommissioning will be available through an acceptable guarantee mechanism if the licensees are no longer subject to rate regulation by PUCs or FERC, and do not have a guaranteed source of income. The amendment would also allow licensees to assume a positive real rate of return on decommissioning funds during the safe storage period. Lastly, a periodic reporting requirement would be established.

### Specific Considerations

The NRC invites advice and recommendations on a proposed rule reflecting the these and any other pertinent points from all interested persons. Comments and supporting reasons are particularly requested on the following questions:

#### A. Timing and Extent of Electric Utility Industry Deregulation.

A.1. What is the likely timetable for industry restructuring and deregulation?

A.2. Will the electric utility industry go through several phases as it responds to deregulation and other competitive pressures? If so, what will be the likely major changes in business structure that may occur in each phase? Will rates remain regulated at the retail distribution level, with deregulation occurring for generation and transmission? Will retail wheeling become widespread and lead to deregulation of all sectors of the electric utility industry? Or will rates remain regulated at the retail distribution level, with deregulation occurring within the generation and transmission sectors? What will likely be the final structure of the electric utility industry, assuming either partial or full deregulation?

A.3. Some States appear to oppose deregulation. Will they be able to maintain their opposition if neighboring States deregulate? What will be the

industry structure if some States deregulate more than others? Can a "hybrid" system exist effectively?

**B. Stranded Costs.**

B.1. How will restructuring affect large baseload plants that currently receive rate relief to cover construction costs or have a portion yet to be phased into the rate base? Specifically, what is the probability that and degree to which these costs will be recoverable should a nuclear power plant be deemed to be non-competitive because of high construction costs? What will be the source of operating, maintenance, and capital improvement funds should such a nuclear generator decide to continue operations? What will be the source of funds to prematurely and safely shut down an uneconomic plant? Are transmission access or other surcharges to cover stranded costs likely?

**C. Nuclear Financial Qualifications and Decommissioning Funding Assurance.**

C.1. If nuclear plants are shut down prematurely, how will licensees who can no longer pass costs through to ratepayers provide for a shortfall of decommissioning funds?

C.2. At what point does an operator of a nuclear power plant cease to be a "utility" as defined in §50.2?

C.3. If an electric utility reorganizes itself, including divesting parts of itself, so that the remaining entity operating a reactor is no longer regulated by a rate-setting State or Federal body, or will cease to be regulated by a rate-setting State or Federal body if the reactor ceases operation, would it be appropriate to require financial assurance for the decommissioning costs in full before NRC approval of the reorganizations? The assurance could take the form of self-guarantee, parent company guarantee, certification by the rate-regulating entity, or other financial surety

mechanism to cover the unfunded decommissioning costs. Should the NRC require additional assurance for adequate funds for safe operation and decommissioning in anticipation of deregulation? Should the NRC require, as a condition of approval of certain reorganizations involving the transfer of control of a nuclear power plant, that newly created organizations or holding companies sign a binding agreement that holds them jointly liable for decommissioning costs associated with that nuclear power plant? What would be the impact of such actions?

C.4. Should the NRC require a licensee to provide a reasonable assurance of the availability of funds for decommissioning by imposing a minimum level of net worth, cash flow, or other financial measure (similar to 10 CFR Part 30, Appendices A and B)? If below the minimum levels, the licensee would no longer be allowed to accumulate decommissioning costs over remaining facility life, but would need a guarantee that funds would be available for decommissioning through various financial measures. What financial measures would be effective and reasonable?

C.5. Would PUCs and FERC be willing to certify that licensees under their jurisdictions, both electric utility and Part 50 licensees other than electric utilities, would be allowed to collect sufficient revenues through rates to complete decommissioning funding?

C.6. What would be the impact if the NRC required licensees to accelerate collection of decommissioning funds such that decommissioning funding for all plants would be complete within 10 years (or some other time period)?

C.7. Assume that licensees have accumulated funds that are determined to be adequate based on current estimates of decommissioning costs. If these estimates turn out to be low far in the future (for example, if final dismantlement occurs after a 50-year safe-storage period), how will underfunding be remedied? What measures should the NRC consider for obtaining

assurance of funds for such situations? Should the NRC require larger contingency factors in estimates to cover such situations?

C.8. Would it be feasible for the nuclear industry to develop a captive insurance pool to pay for decommissioning funding shortfalls that result from premature decommissioning? Could such a pool be structured similarly to Nuclear Mutual Limited (NML) and Nuclear Electric Insurance Limited (NEIL), who currently insure on-site property damage and replacement power of member utilities?

C.9. If PUC or FERC oversight is either substantially limited or eliminated, are there any other options for financial assurance of decommissioning that the NRC should consider?

D. Decommissioning Funding Assurance and a Federal Government Licensee.

D.1 Section 50.75(e)(3)(iv) provides that an electric utility which is a Federal Government licensee need only provide assurance in the form of a statement of intent indicating that decommissioning funds will be obtained when necessary. Since a Federal utility licensee will likely be confronted with many of the same new competitive pressures as non-Federal utilities, the question arises, should the regulations continue to permit the provision of a statement of intent as the method by which these licensees provide financial assurance for decommissioning. No Federal law clearly provides that the Federal Government would pay the Tennessee Valley Authority's financial decommissioning obligations should TVA be unable to do so. Does this fact or any other factor militate for or against allowing Federal utility licensees to continue to use statements of intent as the method by which financial assurance for decommissioning is provided?

E. Status of Decommissioning Trust Funds During Safe Storage Period.

E.1 What real rate(s) of return should the NRC allow licensees to use as credit for earnings on the decommissioning trust funds during the extended safe storage period?

E.2 What time period(s) should the NRC allow licensees to use in estimating the credit for earnings on the decommissioning trust funds during the extended safe storage period?

F. Reporting on the Status of Decommissioning Funds.

F.1 What information should the NRC require in the periodic reporting requirements?

F.2 How often should the NRC require licensees to report on the status of decommissioning funding?

There will be another opportunity for additional public comment in connection with any proposed rule that may be developed by the Commission.

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 or connecting to the NRC interactive rulemaking web site, "Rulemaking Forum." 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 also are available for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC 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 rulemaking 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 databases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld also can be accessed by a direct-dial telephone number for the main FedWorld BBS: 703-321-3339; Telnet via Internet: fedworld.gov (192.239.93.3); File Transfer Protocol (FTP) via Internet:ftp:fedworld.gov (192.239.92.205); and World Wide Web using: <http://www.fedworld.gov> (this is the Uniform Resource Locator (URL)).

If using a method other than the toll-free number to contact FedWorld, access the NRC subsystem from the main FedWorld menu by selecting "F - Regulatory, Government Administration and State Systems," then selecting "A - Regulatory Information Mall." At that point, take the "A - U.S. Nuclear Regulatory Commission" from the displayed menu to the NRC Online Main Menu. An alternative is to go directly to the NRC Online area by typing "/go nrc" at the FedWorld command line. Accessing NRC from FedWorld's Main Menu allows the user to return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, accessing NRC at FedWorld by using NRC's toll-free number provides the user with full access to all NRC systems, but does not provide access to the main FedWorld system.

To see the NRC area and menus, including the Rules Menu, contact FedWorld using Telnet. Although this will enable the user to download documents and leave messages, the user will not be able to write comments or upload files (comments). FedWorld may be contacted using FTP; although all files can be accessed and downloaded, uploads are not allowed; all that is visible 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 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.

The NRC's interactive rulemaking web site may be accessed through the NRC home page (<http://www.nrc.gov>). This site provides the same access as the FedWorld bulletin board, including the facility to upload comments as files (any format), if the user's web browser supports that function.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Telephone: 301-415-5780; e-mail: AXD3@nrc.gov. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, Telephone: 301-415-6215; e-mail: CAG@nrc.gov.

#### List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

The authority citation for this document is: 42 U.S.C. 2201; 42 U.S.C. 5841.

Dated at Rockville, Maryland, this \_\_\_ day of \_\_\_\_\_, 1999.

For the Nuclear Regulatory Commission.

---

John C. Hoyle,  
Secretary of the Commission.

15.2 Proposed rule.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150 - BB11

Changes to Nuclear Power Plant Security Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to delete certain security requirements associated with an internal threat. This action follows NRC's examination of nuclear power plant physical security requirements to identify those that are marginal to safety, redundant, or no longer effective. This action would reduce the regulatory burden on licensees without compromising physical protection against radiological sabotage.

DATES: Submit comments by (insert date 75 days after publication in the Federal Register). Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Attention: Rulemakings and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

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

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, D.C. These same documents may also be viewed and downloaded electronically as discussed under Electronic Access in the Supplementary Information Section.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-2222, e-mail XXX@nrc.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

In a memorandum dated September 3, 1991 (COMFIR-91-005), the Commission requested that NRC staff re-examine the security requirements associated with an internal threat to nuclear power plants contained in 10 CFR Part 73. The NRC staff completed its re-examination and recommended some changes in 10 CFR Part 73 to the Commission (SECY-92-272, August 4, 1992). In a Staff Requirements Memorandum dated November 5, 1992, the Commission directed the NRC staff to work with the Nuclear Management and Resources Council (NUMARC) now known as the Nuclear Energy Institute (NEI). Following three public meetings with NUMARC, the NRC staff recommended additional changes to Part 73 that would provide significant relief to licensees without compromising the physical security of the plants (SECY-93-326, December 2, 1993). In a Staff Requirements Memorandum dated February 18, 1994, the Commission directed the NRC staff to proceed with a rulemaking.

##### Discussion

Seven areas in Part 73 were identified as candidates for modification. A recommended change relating to access of personnel and materials into reactor containments during periods of high traffic was adopted in a final rule published on September 7, 1995 (60 FR 46497). Six other changes originally considered for this rulemaking were the subject of Generic Letter 96-02, issued February 13, 1996. This generic letter identified certain areas in which licensees might choose to revise their physical security plans without having to wait for the issuance of a rule. One of these changes, an option to leave vital area doors unlocked provided certain compensatory measures are taken, was reconsidered in light of recent tampering events and is not included in this proposed rule.

The five remaining changes are addressed in this proposed rule.

1. Search requirements for on-duty guards, §73.55(d)(1).
2. Requirements for vehicle escort, §73.55(d)(4).
3. Control of contractor employee badges, §73.55(d)(5).
4. Maintenance of access lists for each vital area, §73.55(d)(7)(i)(A).
5. Key controls for vital areas, §73.55(d)(8).

1. Search Requirements for On-duty Guards (§73.55(d)(1)).

Under current regulations, armed security guards who leave the protected area as part of their duties must be searched for firearms, explosives, and incendiary devices upon re-entry into the protected area. Requiring a guard to go through an explosives detector or searching packages carried by the guard protects against the introduction of contraband. Because an armed guard carries a weapon on site, passage of the guard through the metal detector, the principal purpose of which is to detect firearms, serves little purpose. The guard has to either remove the weapon while passing through the detector or be subject to a hand search. Either approach makes little sense for the guard

who is authorized to carry a weapon on site. Furthermore, removing and handling the guard's weapon could present a personnel safety risk.

This proposed rule would allow armed security guards who are on duty and have exited the protected area on official business to reenter the protected area without being searched for firearms (by a metal detector). Unarmed guards and watchpersons would continue to be subject to all search requirements. All guards would continue to be searched for explosives and incendiary devices because they are not permitted to carry these devices into the plant.

2. Requirements for Vehicle Escort (§73.55(d)(4)).

The present requirement for a searched, licensee-owned vehicle within the protected area to be escorted by a member of the security organization, even when the driver is badged for unescorted access, does not contribute significantly to the security of the plant. Under the current regulations, all vehicles must be searched before entering the protected area except under emergency conditions. Furthermore, all vehicles must be escorted by a member of the security organization upon entry into the protected area except for "designated licensee vehicles" that are used for onsite plant functions and remain in the protected area except for operational, maintenance, repair, security, and emergency purposes. Licensee-owned vehicles that are not "designated licensee vehicles" must be escorted at all times while in the protected area even when they are driven by personnel with unescorted access.

This proposed rule would eliminate the requirement for escort of licensee-owned vehicles entering the protected area for work-related purposes if the vehicles are driven by licensee employees who have unescorted access. (This amendment would still preclude periodic entry of a delivery truck without an escort.) This change would relieve the burden on licensees without significantly increasing the level of risk to the plant.

3. Control of Contractor Employee Badges (§73.55(d)(5)).

Contractor employees with unescorted access are required to return their badges when leaving the protected area. Current regulatory practice allows licensee employees to leave the protected area with their badges if adequate safeguards are in place to ensure that the security of the badge is not jeopardized. Because contractors and licensees are subject to the same programs required for unescorted access, there is no reason to employ more stringent badge control requirements for contractor employees.

This proposed rule would allow contractor employees to take their badges offsite under the same conditions that apply to licensee employees.

4. Maintenance of Access Lists for Each Vital Area (§73.55(d)(7)(i)(A)).

Maintaining separate access lists for each vital area and reapproval of these lists on a monthly basis is of marginal value. At many sites, persons granted access to one vital area also have access to most or all vital areas. Licensees derive little additional benefit from maintaining discrete lists of individuals allowed access to each separate vital area in the facility. Licensee managers or supervisors are required to update the access lists at least once every 31 days and reapprove the list every 31 days. Reapproval of all individuals on the lists at least every 31 days to validate that the lists have been maintained in an accurate manner is unnecessarily burdensome.

This proposed rule would replace separate access authorization lists for each vital area of the facility by a single listing of all persons who have access to any vital area.

The proposed rule would also change the requirement that the list must be reapproved from at least once every 31 days to quarterly. The reapproval consists of a review to ensure that the list is current and that only those individuals requiring routine access to a vital area are included. Because of the requirement for a manager or supervisor to update the list at least every

31 days, conducting a comprehensive reapproval every 31 days is of marginal value.

5. Key Controls for Vital Areas (§73.55(d)(8)).

Licensees currently change or rotate all keys, locks, combinations, and related access control devices at least once every twelve months. Because the rule also requires that these be changed whenever there is a possibility of their being compromised, requiring change at least every 12 months has been determined by the NRC to be only marginal to security.

This proposed rule would remove the requirement for change every 12 months and retain the requirement to change for cause, when an access control device has been compromised or there is a suspicion that it may be compromised.

Locking of Vital Areas

Generic Letter 96-02, described conditions under which licensees could leave vital areas unlocked. Specifically, the licensee would have had to --

- (1) Ensure that the area is equipped with an alarmed access control system that will alarm on unauthorized entry;
- (2) Ensure that the doors to the area can be locked remotely;
- (3) Continue to maintain a record of personnel access;
- (4) Examine for explosives, with equipment specifically designed for that purpose, all hand-carried packages entering any protected area within which there is an unlocked vital area; and
- (5) Demonstrate a capability to protect against an external adversary.<sup>1</sup>

This change was considered for inclusion in this proposed rule but was rejected because of recent events. If vital areas are unlocked but alarmed,

---

<sup>1</sup> Generic Letter 96-02 (February 13, 1996) identified those areas in which licensees might choose to revise their security plans without having to wait for the issuance of the rule changes. One change would have provided the option of not locking the doors to a vital area provided that the security of the plant would not be compromised.

the response to an entry by an unauthorized individual could require a considerable time and level of effort to assure that important equipment was not damaged. Maintaining VA doors locked limits the number of people who have access to the area and ensures that personnel who enter are identified.

Recent tampering events were discovered within vital areas of a reactor. The first search missed significant tampering with safety-related switches. If vital areas are unlocked but alarmed, an entry by an unauthorized individual, deliberate or inadvertent, could require a considerable level of effort to assure that important equipment was not damaged. Alarms may not always initiate the level of response needed to evaluate the safety systems within the impacted vital area. In addition, most safety equipment is automatic and rapid access to vital areas is generally not required. The option of leaving a vital area unlocked is no longer being considered.

#### 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 or connecting to the NRC interactive rulemaking web site, "Rulemaking Forum." 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 also are available for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC 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 rulemaking 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 databases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld also can be accessed by a direct-dial telephone number for the main FedWorld BBS: 703-321-2339; Telnet via Internet: fedworld.gov (192.239.93.3); File Transfer Protocol (FTP) via Internet:ftp:fedworld.gov (192.239.92.205); and World Wide Web using: <http://www.fedworld.gov> (this is the Uniform Resource Locator (URL)).

If using a method other than the toll-free number to contact FedWorld, access the NRC subsystem from the main FedWorld menu by selecting "F - Regulatory, Government Administration and State Systems," then selecting "A - Regulatory Information Mail." At that point, take the "A - U.S. Nuclear Regulatory Commission" from the displayed menu to the NRC Online Main Menu. An alternative is to go directly to the NRC Online area by typing "/go nrc" at the FedWorld command line. Accessing NRC from FedWorld's Main Menu allows the user to return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, accessing NRC at FedWorld by using NRC's toll-free number provides the user with full access to all NRC systems, but does not provide access to the main FedWorld system.

To see the NRC area and menus, including the Rules Menu, contact FedWorld using Telnet. Although this will enable the user to download documents and leave messages, the user will not be able to write comments or upload files (comments). FedWorld may be contacted using FTP; although all files can be accessed and downloaded, uploads are not allowed; all that is visible 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 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.

The NRC's interactive rulemaking web site may be accessed through the NRC home page (<http://www.nrc.gov>). This site provides the same access as the FedWorld bulletin board, including the facility to upload comments as files (any format), if the user's web browser supports that function.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Telephone: 301-415-5780; e-mail: AXD3@nrc.gov. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, Telephone: 301-415-6215; e-mail: CAG@nrc.gov.

#### Environmental Impact: Categorical Exclusion

The Commission has determined that this proposed rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(3)(i). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

#### Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Because the rule will reduce existing information collection requirements, the public burden for this collection of information is expected to be decreased by 102 hours per licensee. This reduction includes the time required for reviewing instructions, searching existing data sources,

gathering and maintaining the data needed, and completing and reviewing the collection of information. The NRC is seeking public comment on the potential impact of the collection of information contained in the proposed rule and on the following issues:

1. Is the proposed collection of information necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the collection of information be minimized, including the use of automated collection techniques?

Send comments on any aspect of this proposed collection of information, including suggestions for further reducing the burden, to the Information and Records Management Branch (T-6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0002), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the collections of information or on the above issues should be submitted by (insert date 30 days after publication in the Federal Register). Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

#### 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 discussion of each of the five changes proposed in this rule is provided in the supplementary information section. The costs and benefits for each of the changes proposed in this rulemaking are as follows:

1. Search Requirements for On-duty Guards (§73.55(d)(1)).

The regulatory burden on licensees would be reduced by eliminating unnecessary weapon searches of guards who are already allowed to carry a weapon, which would result in better utilization of licensee resources. There would be no reduction in plant security because the potential for reduction in security personnel hours does not impact the total size of the security force. The potential safety risk to personnel caused by removing and handling a guard's weapon would be eliminated.

2. Requirements for Vehicle Escort (§73.55(d)(4)).

The regulatory burden on licensees would be reduced by requiring fewer vehicle escorts which would allow personnel to be utilized more effectively. Resources could be redirected to areas in which they would be more cost effective. The decrease in security would be marginal because unescorted access would be restricted to vehicles owned by the licensee and driven by licensee employees with unescorted access.

Assuming the number of entries by licensee-owned vehicles driven by personnel having unescorted access is 10-per-day per-site, the average time needed for escort is 3 hours, and the cost per hour for security personnel is \$30 (loaded), a rough estimate of the potential savings per site per year is about \$330,000 (10 escorts/day/site x 365 days/year x 3 hrs/escort x \$30/hr). With 75 sites, the savings to the industry per year would be approximately \$24,000,000.

3. Control of Contractor Employee Badges (§73.55(d)(5)).

The regulatory burden on licensees would be reduced by more effective use of security personnel. There would be no reduction in plant security because adequate safeguards would be in place to ensure that the security of the badge is not jeopardized.

Assuming that one security person per working day (8 hours) is relieved from the duties of controlling contractor employees badges and that the cost per hour for security personnel is \$30 (loaded), a rough estimate of the potential savings per site per year is about \$88,000 (8 hours/day x 365 days/year x \$30 hr). With 75 sites, the savings to the industry per year would be approximately \$6,600,000.

4. Maintenance of Access Lists for Each Vital Area (§73.55(d)(7)(i)(A)).

The regulatory burden on licensees would be reduced because licensees would have to keep only one access list for all vital areas and reapprove it quarterly, rather than keep individual access lists for each vital area that must be reapproved monthly.

Assuming that the time to reapprove each of the individual lists is 1 hour per month, that a combined list would take 1.5 hours per month, that the average number of vital areas per site is 10, and that the cost of a clerk including overhead is \$30 per hour (loaded), a rough estimate of the potential savings per site per year is about \$3,420 [(1 x 10 vital areas/month x 12 months/yr - 1.5 x 1 combined vital area/quarter x 4 quarters/yr) x \$30/hr]. With 75 sites, the savings to the industry per year would be approximately \$256,500.

5. Key Controls for Vital Areas (§73.55(d)(8)).

The regulatory burden on the licensees would be reduced because fewer resources would be needed to maintain the system.

Assuming that of the approximately 60 locks per year, half of them had been changed for cause, leaving 30 locks unchanged which would take a

locksmith one day to change at a cost(including overhead) of \$45 per hour. A rough estimate of the potential savings per site per year is about \$360 (8 hrs/year x \$45/hr). With 75 sites, the savings to the industry per year would be approximately \$27,000.

#### Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act, as amended, 5 U.S.C. 605(b), the Commission certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect only licensees authorized to operate nuclear power reactors. These licensees do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act, or the Size Standards established by the Nuclear Regulatory Commission (10 CFR 2.810).

#### Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed amendment because this amendment would not impose new requirements on existing 10 CFR Part 50 licensees. The proposed changes to physical security are voluntary and would be a burden reduction if the licensee decides to implement this amendment. Therefore, a backfit analysis has not been prepared.

#### List of Subjects in 10 CFR Part 73

Criminal penalties, Hazardous materials transportation, Export, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

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 73

PART 73 -- PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 42 U.S.C. 2073, 2167, 2201, 42 U.S.C. 5841, 5844, 2297f.

Section 73.1 also issued under 42 U.S.C. 10155, 10161. Section 73.37(f) also issued under 42 U.S.C. 5841 note. Section 73.57 is issued under 42 U.S.C. 2169.

2. Section 73.55 is amended by revising paragraphs (d)(1), (d)(4), (d)(5), (d)(7)(i)(A), and (d)(8) to read as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

\* \* \* \* \*

(d) \* \* \*

(1) The licensee shall control all points of personnel and vehicle access into a protected area. Identification and search of all individuals, unless otherwise provided, must be made and authorization must be checked at these points. The search function for detection of firearms, explosives, and incendiary devices must be accomplished through the use of both firearms and explosive detection equipment capable of detecting those devices. The licensee shall subject all persons except bona fide Federal, State, and local law enforcement personnel on official duty to these equipment searches upon entry into a protected area. Armed security guards who are on duty and have exited the protected area on official business may reenter the protected area without being searched for firearms.

\* \* \* \* \*

(4) All vehicles, except under emergency conditions, must be searched for items which could be used for sabotage purposes prior to entry into the protected area. Vehicle areas to be searched must include the cab, engine compartment, undercarriage, and cargo area. All vehicles, except as indicated below, requiring entry into the protected area must be escorted by a member of the security organization while within the protected area and, to the extent practicable, must be off loaded in the protected area at a specific designated materials receiving area that is not adjacent to a vital area. Escort is not required for designated licensee vehicles or licensee-owned vehicles entering the protected area and driven by licensee employees having unescorted access.

(5) A numbered picture badge identification system must be used for all individuals who are authorized access to protected areas without escort. Badges must be displayed by all individuals while inside the protected area. An individual not employed by the licensee but who requires frequent and extended access to protected and vital areas may be authorized access to such areas without escort provided that he or she displays a licensee-issued picture badge upon entrance into the protected area which indicates:

- (i) Non-employee-no escort required;
- (ii) Areas to which access is authorized; and
- (iii) The period for which access has been authorized.

\* \* \* \* \*

(7) \* \* \*

(i) \* \* \*

(A) Establish a current authorization access list for all vital areas.

The access list must be updated by the cognizant licensee manager or supervisor at least once every 31 days and must be reapproved at least quarterly. The licensee shall include on the access list only individuals

whose specific duties require access to the vital areas during non emergency conditions.

\* \* \* \* \*

(8) All keys, locks, combinations, and related access control devices used to control access to protected areas and vital areas must be controlled to reduce the probability of compromise. Whenever there is evidence or suspicion that any key, lock, combination, or related access control devices may have been compromised, it must be changed or rotated. The licensee shall issue keys, locks, combinations and other access control devices to protected areas and vital areas only to persons granted unescorted facility access. Whenever an individual's unescorted access is revoked due to his or her lack of trustworthiness, reliability, or inadequate work performance, keys, locks, combinations, and related access control devices to which that person had access must be changed or rotated.

\* \* \* \* \*

Dated at Rockville, Maryland, this \_\_\_\_\_ day of \_\_\_\_\_,  
1999.

For the Nuclear Regulatory Commission.

\_\_\_\_\_  
John C. Hoyle,  
Secretary of the Commission.

15.3 Final rule.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150 - CC33

Specific Licensing of Exports of Certain  
Alpha-Emitting Radionuclides and Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to establish specific licensing controls on the export of bulk tritium, transuranic isotopes americium-242m, californium-249, californium-251, curium-245, curium-247, and certain specified alpha-emitting radionuclides; revise and establish new general licenses for tritium and the specified alpha-emitting radionuclides which are keyed to the recipient country's membership in the Nuclear Suppliers Group; remove Argentina, Brazil, and Chile from the list of restricted destinations; and revise the general license for exports of Canadian-origin uranium. The amendments are necessary to conform the export controls of the United States to international export control guidelines and a treaty obligation of the U.S. under the U.S.-Canada Agreement for Cooperation.

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

FOR FURTHER INFORMATION CONTACT: (Name of contact person), Office of International Programs, Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-3333.

## SUPPLEMENTARY INFORMATION:

### I. Background

On March 17, 1993 (57 FR 14344), the NRC published a proposed rule in the Federal Register that would have amended NRC's regulations in 10 CFR Part 110 pertaining to the export of nuclear material and equipment. The proposed amendments would have revoked the current general licenses for bulk tritium and alpha-emitting radionuclides having an alpha half-life of 10 days or greater but less than 200 years to conform NRC's regulations to the export control guidelines of the Nuclear Suppliers Group (NSG) for nuclear-related, dual-use items contained in IAEA INFCIRC/254/Revision 1/Part 2 and approved in 1992. The alpha-emitting radionuclides that would be subject to this rule are plutonium-236, plutonium-238, thorium-227, thorium-228, uranium-230, uranium-232, actinium-225, actinium-227, californium-248, californium-250, californium-252, curium-240, curium-241, curium-242, curium-243, curium-244, einsteinium-252, einsteinium-253, einsteinium-254, einsteinium-255, fermium-257, gadolinium-148, mendelevium-258, polonium-208, polonium-209, polonium-210, and radium-223 (specified alpha-emitting radionuclides). Consistent with the NSG guidelines, new general licenses would be established to permit the export of the specified alpha-emitting radionuclides and dispersed tritium to countries that are members of the NSG dual-use guidelines and to permit the export of the specified alpha-emitting radionuclides to most other countries when in a device, or a source for use in a device, containing less than 100 millicuries (3.7 GBq) of alpha activity per device (10 CFR Part 71, Appendix A, provides specific activities in curies per gram).

The general license for source material would be revised to reduce the annual limit of Canadian-origin natural uranium that can be exported to any single country from 1,000 kilograms to 500 kilograms to help assure U.S. compliance with provisions of the U.S.-Canada Agreement for Cooperation.

The current general licenses for transuranic isotopes americium-242m, californium-249, californium-251, curium-245, and curium-247 would be revoked to conform NRC's regulations to the International Atomic Energy List of the Coordinating Committee on Multilateral Export Controls (COCOM). Although COCOM was dissolved in March 1994, the NRC is placing specific licensing controls on these isotopes because the U.S. and other COCOM member countries agreed to retain export controls on the existing COCOM list of items. Steps are now being taken by former COCOM member countries to propose that the NSG control most, if not all, of the nuclear commodities on the COCOM list.

The proposed amendment to restructure Appendix A, which describes the nuclear reactor equipment subject to NRC licensing authority, will be addressed in a separate rulemaking proceeding.

## II. Comments on the Proposed Rule

The Commission received six letters commenting on the proposed rule. Copies of the letters are 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, D.C. Five of the letters, two of which were from the same company, came from U.S. manufacturers that utilize sources containing the specified alpha-emitting radionuclides. These commenters strongly objected to the revocation of the general licenses for the specified alpha-emitting radionuclides, particularly californium-252 (Cf-252). The commenters indicated that the specific licensing requirements could result in serious economic disadvantage to their export business. They believed that specific licenses would be disruptive to their businesses and cause them to lose potential business because of the higher expenses of license application fees, the additional paperwork burden, time delays, and uncertainties in delivery. One commenter believed the current general license regulations in Part 40 provided sufficient documentation to identify the supplier, quantity exported,

and end user/end use. Several commenters argued that the revisions were unnecessary and were without any benefit to the stated objective of nonproliferation of nuclear weapons.

In view of these adverse comments, the NRC asked the companies to provide specific sales data on their exports to better understand the implications of the new regulation. After reviewing the responses, the NRC continues to believe that the economic impact on these companies is not significant because of the steps we have taken to address their concerns. First, the new general licenses permit the export of the specified alpha-emitters in quantities up to 100 millicuries to most countries, even when they are shipped separately from the equipment in which they are to be used. This understanding reduced much of their concerns. The final rule was revised to clarify this point. Other new general licenses permit the export of unlimited quantities (except as limited by existing general licenses) of the specified alpha-emitting radionuclides to NSG member countries. These new general licenses will allow the companies to export a significant quantity of their Cf-252 sources, including replenishment sources, without obtaining specific licenses. The companies are encouraged to apply for broad, long-term licenses to export their Cf-252 sources. These kinds of applications could include customers in a number of friendly, non-NSG countries and in sufficient quantities to cover replenishment sources for six years.

Several commenters questioned whether a source containing less than 100 millicuries (186 micrograms) of Cf-252, if shipped separately from the device in which it is to be used, could be exported under the proposed new general license. One commenter noted that in the NRC materials licensing regulations, a "source" is not defined as a "device". For the purpose of Part 110, the export of a Cf-252 source for use in a specified device qualifies for this general license. The new general licenses are revised to clarify this point.

One commenter requested that the effective date of the rule be delayed or that exports under contract be exempted by a "grandfather" clause to avoid possible forced defaults in currently existing contracts that are now subject to specific licensing controls. In response to this concern, the effective date of this rule is 45 days after publication. This should be sufficient time for exports that are "in process" to be accomplished without default. The NRC did not consider a "grandfather" clause in the rule to cover committed contracts. One commenter has committed contracts to deliver Cf-252 sources to the year 1999. The NRC believes these sources should not be excluded from the new regulation for more than another few weeks. The applicable export control guidelines were agreed to by the U.S. and other NSG member countries in 1992 and should be implemented by the NRC without an extended delay.

A commenter representing a major U.S. vendor stated that the proposed restructuring of Appendix A and the new language still did not clearly delineate which minor reactor components required NRC licenses and which fall within the jurisdiction of the Department of Commerce. The commenter believed that the proposed amendment could result in increased confusion for exporters. Therefore, the Commission defers consideration of the revision of Appendix A.

The same commenter was concerned that service tooling contaminated with residual byproduct, source, or special nuclear material may be subject to specific licensing controls under the proposed rule. It is not the intent of the NRC to place new controls on these types of nuclear materials.

### III. The Final Rule

Under current NRC regulations, bulk tritium in quantities up to 100 curies, the specified alpha-emitting radionuclides in unlimited quantities, and transuranic isotopes americium-242m, californium-249, californium-251, and curium-245 in unlimited quantities can be exported to most countries under general licenses. The final rule amends the general license provisions in

§§ 110.21-110.23 for the export of special nuclear, source, and byproduct material to revoke the general licenses for these materials. Specific licensing controls are established on these materials. Although some of the specified alpha-emitting radionuclides inadvertently were not specifically identified in the proposed rule, they are included in the general license revocation implemented by this rule.

Argentina, Brazil, and Chile are removed from the list of restricted destinations in § 110.29. Since publication of the proposed rule, Argentina and Brazil have ratified and begun implementation of the Argentina/Brazil/IAEA full-scope safeguards agreement and Chile has waived into force the Treaty of Tlatelolco.

Section 110.30 is a list of the other member countries of the NSG. Exports of the specified alpha-emitting radionuclides in unlimited quantities (except as limited by the existing general licenses) and dispersed tritium in quantities up to 40 curies per device are permitted to NSG member countries under the new general licenses established for them. Subsequent to the publication of the proposed rule, Argentina has become a member of the NSG and is included in the list.

Three items covered in this final rule were not specifically identified in the proposed rule: (1) the general licenses in §110.23 for einsteinium-252 - 253 -254 -255, fermium-257, gadolinium-148, and mendeleevium-258 are revoked; (2) Argentina, Brazil, and Chile are removed from the restricted destination list in §110.29; and (3) Argentina is added to the NSG member list in §110.30. Although the NRC did not publish these changes for comment in the proposed rule, the NRC is merely codifying international obligations of the United States. The NRC is proceeding to final rule because these changes involve a foreign affairs function of the United States. Therefore, solicitation of public comment is not required under the Administrative

Procedure Act (5 U.S.C. 553(a)(1)) and 10 CFR 110.132(e) and §110.134. The solicitation of public comments would delay U.S. conformance with its international obligations and therefore would not be in the public interest.

#### Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described as a categorical exclusion under 10 CFR 51.22(c)(1) and (c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

#### Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval numbers 3150-0036 and 3150-0027.

The public reporting burden for this information collection is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of this information collection, including suggestions for reducing the burden, to the Information and Records Management Branch (T-6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs NEOB-10202, (3150- ), Office of Management and Budget, Washington, DC 20503.

#### Public Protection Notification

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

### Regulatory Analysis

See the discussion in the Regulatory Flexibility Certification for the final regulatory analysis for this rule.

### Regulatory Flexibility Certification

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

Based on the information available to the Commission at the time the proposed rule was published, the Commission certified that the proposed rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities. The information to support this was obtained from the Department of Energy's national laboratories and some industry sources. The Commission also invited any small entity that determined that it is likely to bear a disproportionate economic impact because of its size to notify the Commission.

The Commission received four comments on the proposed rule from U.S. manufacturers that utilize radioactive sources containing Cf-252. Two of the companies qualify as small entities. Through their comments, the Commission became aware of the potentially detrimental economic impact that the revocation of the general licenses under which they were permitted to export Cf-252 would have. In view of these adverse comments, the NRC asked the companies to provide sales data on their exports to better reflect the implications of the new regulation. Based on a review of this summary data,

the NRC, in cooperation with the companies, found that the impact of the rule changes on future sales will be much less than they had feared.

First, new general licenses are established to permit the export of Cf-252 sources in quantities up to 100 millicuries to most countries, even when they are shipped separately from the equipment in which they are to be used. This understanding, in itself, reduces much of their concerns. Furthermore, other new general licenses are established to permit the export of unlimited quantities (except as limited by existing general licenses) of Cf-252 sources to NSG member countries. These new general licenses will allow the companies to export a significant quantity of their Cf-252 sources, including replenishment sources, without obtaining specific licenses. In addition, the companies may submit broad, long-term licenses to export their Cf-252 sources to their medical, scientific, industrial, and reactor-related customers in friendly, non-NSG countries, thereby eliminating case-by-case review. These licenses could authorize exports of Cf-252 sources in sufficient quantities to cover start-up sources and replenishment sources for Taiwan and South Korean power reactors for a number of years. The anticipated value of the exports under such licenses would range from \$260,000 to over \$2 million. Other licenses of this type could authorize exports of Cf-252 sources and replenishment sources to medical, industrial, and scientific customers, with total export values under such licenses ranging from \$100,000 to over \$500,000. The current fee would be \$1300 for each specific license application submitted. These steps will greatly reduce the financial burden of the license application fees and additional paperwork. The processing of an export license application of this type normally takes less than 45 days for final action. The annual burden imposed by the rule is estimated to average less than 3 hours for an exporter for each specific application. The staff expects less than 10 new applications a year as a result of this rule.

The NRC also consulted with Department of Energy technical specialists to determine if any adjustments could be made for the specified alpha-emitting radionuclides, particularly Cf-252, to lessen the burden on U.S. exporters that export these materials to non-NSG member countries (exports to NSG countries would still be under general licenses). However, no acceptable adjustments were identified. We confirmed with U.S. nuclear weapons design experts that all of the specified alpha-emitting radionuclides, including Cf-252, could have some utility in nuclear explosive devices and that the 100 millicurie threshold for control was appropriate for the specified alpha-emitting radionuclides.

There are no alternatives for achieving the stated objective. This rule is necessary to conform NRC's export controls to the international export guidelines of the NSG. The United States and other NSG member countries have formally agreed to control these materials because of their utility in nuclear explosive weapons. The regulation is required to satisfy an international obligation of the United States. This discussion constitutes the regulatory flexibility analysis and the regulatory analysis for this final rule.

#### Backfit Analysis

The NRC has determined that a backfit analysis is not required for this final rule because these amendments do not include any provisions that would require backfits as defined in 10 CFR Chapter I.

#### Small Business Regulatory Enforcement Fairness 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.

## List of Subjects in 10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

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 110.

### PART 110 - EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

1. The authority citation for Part 110 is revised to read as follows:

AUTHORITY: 42 U.S.C. 2071, 2073, 2074, 2077, 2092-2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154-2158, 2201, 2231-2233, 2237, 2239, 2243, 5841.

Sections 110.1(b)(2) and 110.1(b)(3) also issued under 22 U.S.C. 2403. Section 110.11 also issued under 42 U.S.C. 2152 and 2074. Section 110.27 also issued under sec. 309(a), Pub. L. 99-440. Section 110.50(b)(3) also issued under 42 U.S.C. 2153. Section 110.51 also issued under 42 U.S.C. 2234. Section 110.52 also issued under 42 U.S.C. 2236. Sections 110.80-110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130-110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42(a)(9) also issued under 42 U.S.C. 2151 et seq.

2. In § 110.2, a definition for Specific Activity is added to read as follows:

#### § 110.2 Definitions.

\* \* \* \* \*

Specific Activity (millicuries per gram) equals  $3.575 \times 10^8$  divided by  
(the atomic weight times the half-life in years)

\* \* \* \* \*

#### § 110.4 [Amended]

3. In 110.4, first sentence, remove the words "Assistant Director for Exports, Security, and Safety Cooperation", and add in their place the words "Director for Nonproliferation, Exports, and Multilateral Relations".

§ 110.7 [Amended]

4. In § 110.7, second sentence, the reference to "§ 110.30", where it appears twice, is revised to read "§ 110.31" and the reference to "§ 110.31" is revised to read "§ 110.32".

§ 110.20 [Amended]

5. In § 110.20, paragraph (a), the reference to "110.29" is revised to read "110.30" and the reference to "§§ 110.30-110.31" is revised to read "§§ 110.31-110.32", and in the first sentence of paragraph (f), the phrase "§§ 110.21 through 110.26, 110.28, and 110.29" is revised to read "§§ 110.21 through 110.26, 110.28, 110.29, and 110.30".

6. In § 110.21, paragraphs (a)(3) and (b)(1) are revised and new paragraphs (a)(4) and (c) are added to read as follows:

§ 110.21 General license for the export of special nuclear material.

(a) \* \* \*

(3) Special nuclear material, other than Pu-236 and Pu-238, in sensing components in instruments, if no more than 3 grams of enriched uranium or 0.1 gram of Pu or U-233 are contained in each sensing component.

(4) Pu-236 and Pu-238 when contained in a device, or a source for use in a device, in quantities of less than 100 millicuries of alpha activity (189 micrograms Pu-236, 5.88 milligrams Pu-238) per device or source.

(b) \* \* \*

(1) Special nuclear material, other than Pu-236 and Pu-238, in individual shipments of 0.001 effective kilograms or less (e.g., 1.0 gram of plutonium, U-233 or U-235, or 10 kilograms of 1 percent enriched uranium), not to exceed 0.1 effective kilogram per year to any one country.

\* \* \* \* \*

(c) A general license is issued to any person to export Pu-236 or Pu-238 to any country listed in § 110.30 in individual shipments of 1 gram or less, not to exceed 100 grams per year to any one country.

7. In § 110.22, paragraphs (a)(1), (2), (b), and (c) are revised and new paragraphs (a)(3) and (d) are added to read as follows:

§ 110.22 General license for the export of source material.

(a) \* \* \*

(1) Uranium or thorium, other than U-230, U-232, Th-227, and Th-228, in any substance in concentrations of less than 0.05 percent by weight.

(2) Thorium, other than Th-227 and Th-228, in incandescent gas mantles or in alloys in concentrations of 5 percent or less.

(3) Th-227, Th-228, U-230, and U-232 when contained in a device, or a source for use in a device, in quantities of less than 100 millicuries of alpha activity (3.12 micrograms Th-227, 122 micrograms Th-228, 3.7 micrograms U-230, 4.7 milligrams U-232) per device or source.

(b) A general license is issued to any person to export uranium or thorium, other than U-230, U-232, Th-227, or Th-228, in individual shipments of 10 kilograms or less to any country not listed in § 110.28 or § 110.29, not to exceed 1,000 kilograms per year to any one country or 500 kilograms per year to any one country when the uranium or thorium is of Canadian origin.

(c) A general license is issued to any person to export uranium or thorium, other than U-230, U-232, Th-227, or Th-228, in individual shipments of 1 kilogram or less to any country listed in § 110.29, not to exceed 100 kilograms per year to any one country.

(d) A general license is issued to any person to export U-230, U-232, Th-227, or Th-228 in individual shipments of 10 kilograms or less to any country

listed in § 110.30, not to exceed 1,000 kilograms per year to any one country or 500 kilograms per year to any one country when the uranium or thorium is of Canadian origin.

8. Section 110.23 is revised to read as follows:

§ 110.23 General license for the export of byproduct material.

(a) A general license is issued to any person to export the following to any country not listed in § 110.28:

(1) All byproduct material (see Appendix F to this part), except actinium-225, actinium-227, americium-241, americium-242m, californium-248, californium-249, californium-250, californium-251, californium-252, curium-240, curium-241, curium-242, curium-243, curium-244, curium-245, curium-246, curium-247, einsteinium-252, einsteinium-253, einsteinium-254, einsteinium-255, fermium-257, gadolinium-148, mendelevium-258, neptunium-237, polonium-208, polonium-209, polonium-210, radium-223, and tritium unless authorized in paragraphs (a)(2) through (a)(6), (b), or (c) of this section.

(2) Actinium-225, actinium-227, californium-248, californium-250, californium-252, curium-240, curium-241, curium-242, curium-243, curium-244, einsteinium-252, einsteinium-253, einsteinium-254, einsteinium-255, fermium-257, gadolinium-148, mendelevium-258, polonium-208, polonium-209, polonium-210, and radium-223 when contained in a device, or a source for use in a device, in quantities of less than 100 millicuries of alpha activity (see § 110.2 for specific activity) per device or source, except that exports of polonium-210 when contained in static eliminators may not exceed 100 curies (22 grams) per individual shipment.

(3) Americium-241, except that exports exceeding one curie (308 milligrams) per shipment or 100 curies (30.8 grams) per year to any country listed in § 110.29 must be contained in industrial process control equipment

or petroleum exploration equipment in quantities not to exceed 20 curies (6.16 grams) per device or 200 curies (61.6 grams) per year to any one country.

(4) Neptunium-237 in individual shipments of less than 1 gram, not to exceed 10 grams per year to any one country.

(5) Tritium in any dispersed form (e.g., luminescent light sources and paint, accelerator targets, calibration standards, labeled compounds) in quantities of 10 curies (1.03 milligrams) or less per item, not to exceed 1,000 curies (103 milligrams) per shipment or 10,000 curies (1.03 grams) per year to any one country. This general license does not authorize exports for tritium recovery or recycle purposes.

(6) Tritium in luminescent safety devices installed in aircraft when in quantities of 40 curies (4.12 milligrams) or less per light source.

(b) A general license is issued to any person to export to the countries listed in § 110.30 tritium in any dispersed form (e.g., luminescent light sources and paint, accelerator targets, calibration standards, labeled compounds) in quantities of 40 curies (4.12 milligrams) or less per item, not to exceed 1,000 curies (103 milligrams) per shipment or 10,000 curies (1.03 grams) per year to any one country. This general license does not authorize exports for tritium recovery or recycle purposes.

(c) A general license is issued to any person to export to the countries listed in § 110.30 actinium-225, actinium-227, californium-248, californium-250, californium-252, curium-240, curium-241, curium-242, curium-243, curium-244, einsteinium-252, einsteinium-253, einsteinium-254, einsteinium-255, fermium-257, gadolinium-148, mendelevium-258, polonium-208, polonium-209, polonium-210, and radium-223, except that polonium-210 when contained in static eliminators must not exceed 100 curies (22 grams) per individual shipment.

§ 110.29 [Amended]

9. In § 110.29 remove footnote 1 and the countries of "Argentina", "Brazil", and "Chile".

§§ 110.30 and 110.31 [Redesignated]

10. Sections 110.30 and 110.31 are redesignated as § 110.31 and § 110.32.

11. A new § 110.30 is added to read as follows:

§ 110.30 Members of the Nuclear Suppliers Group.

Argentina	Italy
Australia	Japan
Austria	Luxembourg
Belgium	Netherlands
Bulgaria	Norway
Canada	Poland
Czech Republic	Portugal
Denmark	Romania
Finland	Russia
France	Slovak Republic
Germany	Spain
Greece	Sweden
Hungary	Switzerland
Ireland	United Kingdom

§110.31 [Amended]

12. In § 110.31, paragraph (a), remove the words "Assistant Director for Exports, Security, and Safety Cooperation", and add in their place the words "Director for Nonproliferation, Exports, and Multilateral Relations", paragraph (d), the reference to "§ 110.31" is revised to read "§ 110.32".

13. In § 110.43, paragraph (a) is revised to read as follows:

§ 110.43 Physical security standards.

(a) Physical security measures in recipient countries must provide protection at least comparable to the recommendations in the current version of IAEA publication INFCIRC/225/Rev.2, December 1989, "The Physical Protection of Nuclear Material," and is incorporated by reference in this part. This incorporation by reference was approved by the Director of the Federal

Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Notice of any changes made to the material incorporated by reference will be published in the Federal Register. Copies of INFCIRC/225/Rev.2 may be obtained from the Director for Nonproliferation, Exports, and Multilateral Relations, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and are available for inspection at the NRC library, 11545 Rockville Pike, Rockville, Maryland 20852-2738. A copy is on file at the library of the Office of the Federal Register, 800 N. Capitol Street, NW, Suite 700, Washington, D.C.

§ 110.50 [Amended]

14. In § 110.50, paragraph (b)(3), sentences one, two, and three, remove the words "Assistant Director for Exports, Security, and Safety Cooperation", and add in their place the words "Director for Nonproliferation, Exports, and Multilateral Relations".

Appendix F [Amended]

15. Appendix F to Part 110 is amended to add, in alphabetical order, curium-240, curium-241, einsteinium-252, einsteinium-253, einsteinium-254, einsteinium-255, fermium-257, gadolinium-148, and mendeleevium-148.

Dated in Rockville, Maryland, this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

For the Nuclear Regulatory Commission.

---

John C. Hoyle,  
Secretary of the Commission.

**15.4 Package prepared for EDO, CFO, or CIO signature.**

EDO Rulemaking Authority. The Executive Director for Operations (EDO) has certain rulemaking authority delegated by the Commission (See the final rule published in the Federal Register on March 19, 1982 (47 FR 11816). Subject to general policy guidance from the Commission, the EDO has the authority to issue all proposed or final rules except those involving --

- (1) A significant question of policy; or
- (2) 10 CFR Parts 7, 8, 9 (Subpart C) concerning matters of policy.

A rule involves a "significant question of policy" and must be submitted to the Commission for issuance if it --

- (1) Represents a major change in existing Commission policy;
- (2) Represents a major new issue; or
- (3) Will result in a major commitment of resources by a class of licensee.

The EDO shall obtain a determination that the Chief Financial Officer (CFO) has no resource related objection to the rulemaking and concurrence from the Chief Information Officer (CIO) concerning the rulemaking's information technology impacts. The EDO shall notify the Commission before forwarding a final rule for publication in the Federal Register.

CFO Rulemaking Authority. The CFO has certain rulemaking authority delegated by the Chairman (See the memorandum from the Chairman to the Acting Chief Financial Officer dated February 18, 1997). The CFO has the authority to develop and issue rules needed to carry out his or her responsibilities, including the revisions to the annual fee regulations in Parts 170 and 171.

The CFO's rulemaking authority does not extend to the promulgation of proposed or final rules that involve significant questions of policy. The CFO shall consult with the Commission or, in cases involving the Chairman's

rulemaking authority the Chairman, concerning rules that raise policy issues. For rules that are issued by the CFO, the CFO is required to obtain EDO and CIO concurrence, as appropriate, and a determination from OGC that it has no legal objection to the action. The CFO shall notify the Commission before forwarding a final rule for publication in the Federal Register.

CIO Rulemaking Authority. The CIO has certain rulemaking authority delegated by the Chairman (See the memorandum from the Chairman to the Chief Information Officer dated June 13, 1997). The CIO has the authority to develop and issue rules needed to carry out his or her responsibilities.

The CIO's rulemaking authority does not extend to the promulgation of proposed or final rules that involve significant questions of policy. The CIO shall consult with the Commission or, in cases involving the Chairman's rulemaking authority the Chairman, concerning rules that raise policy issues. For rules that are issued by the CIO, the CIO is required to obtain EDO and CFO concurrence, as appropriate, and a determination from OGC that it has no legal objection to the action. The CIO shall notify the Commission before forwarding a final rule for publication in the Federal Register.

Sample package for EDO, CFO, or CIO signed rules. This sample package presents, in proper format, the elements required when submitting a proposed or final rule to the EDO, CFO, or CIO for approval and issuance. The person who drafts the Federal Register document is responsible for preparing the other elements required to complete the rulemaking package. The sample package consists of three parts.

(1) The memorandum to the EDO, CFO, or CIO requesting that the EDO, CFO, or CIO issue the document.

(2) The Federal Register document.

(3) The note to be inserted in the Weekly Report to the Commission for a proposed rule or the Daily Staff Notes for a final rule.

Documents that are to be issued by the Commission are prepared for the signature of the Secretary of the Commission. Documents that are to be issued by the EDO are prepared for the EDO's signature. Documents that are to be issued by the CFO are prepared for the CFO's signature. Documents that are to be issued by the CIO are prepared for the CIO's signature.

Part 1 - Memorandum to the EDO, CFO, or CIO.

MEMORANDUM TO: L. Joseph Callan  
Executive Director for Operations

FROM: Patricia G. Norry  
Deputy Executive Director for  
Management Services

SUBJECT: REVISION OF THE NRC'S SIZE STANDARDS

Attached for your signature is a final rule that amends the size standards used to qualify an NRC licensee as a "small entity" under the Regulatory Flexibility Act (Attachment 1). This action establishes a separate standard to be used to determine whether a licensee who is a manufacturer would qualify as a small entity; adjusts the receipts-based standard to account for the effects of inflation since 1985; and eliminates the separate \$1 million size standard for private practice physicians and applies the revised receipts-based standard of \$5 million to this class of licensee.

Background: The NRC established its size standards on December 9, 1985, after consulting with the Small Business Administration (SBA) and soliciting public comment. The size standards were developed after an exhaustive review of NRC materials licensees, including a survey to determine their sizes and categories of operation. On November 6, 1991, the NRC restated its size standards to include the Regulatory Flexibility Act definition of small governmental jurisdiction and to conform the presentation of the size standards to the listing of the definitions of small entities in the Act.

The NRC received a number of comments in response to its rulemakings on fee schedules, especially concerning its failure to promulgate a size standard that differentiates between manufacturing entities and service providers. The NRC recently completed a survey to update its economic profile of materials licensees and to obtain more specific information concerning the manufacturers among NRC's licensing community. Approximately 20 percent of the licensees who responded indicated that manufacturing was a primary line of their business.

On April 7, 1994 (59 FR 16513), the SBA published a final rule that increased its receipts-based size standard levels to mitigate the effects of inflation since the last revision of its size standards in 1984.

The NRC published a proposed rule requesting comment on the amended size standards on November 30, 1994 (59 FR 61293) (Attachment 3). The NRC received two letters of comment on the proposed rule. The statement of considerations for the final rule contains a discussion of the comments received.

This final rule establishes a separate NRC size standard for manufacturers, adjusts the receipts-base standard to conform to the SBA final rule, and eliminates the separate \$1 million size standard for private practice physicians in order to mirror the SBA standard of \$5 million for all medical practitioners.

The NRC has submitted its size standards to the Administrator, SBA, for his review and approval as required by recent amendments to the Small Business Act (Attachment 4). The SBA found these size standards to be satisfactory and indicated its approval on March 24, 1995 (Attachment 5).

Notices: A notice to the Commission that the EIO has signed the enclosed Federal Register notice is attached for inclusion in the Daily Staff Notes (Attachment 6). Appropriate congressional committees will also be notified (Attachment 7).

Coordination: The Office of the General Counsel has no legal objection. The Office of the Chief Financial Officer has no resources-related objection to this rulemaking. The Chief Information Officer concurs that there will be no information technology impacts.

Attachments:

1. Federal Register Notice of Final Rulemaking
2. Approved for Publication
3. Federal Register Notice of Proposed Rulemaking
4. Request for SBA Review
5. SBA Approval
6. Daily Staff Notes
7. Draft Congressional letter

Attachment 2

Approved for Publication

The Commission has delegated to the EDO (10 CFR 1.31(c)) the authority to develop and promulgate rules as defined in the APA (5 U.S.C. 551(4)), subject to the limitations specified in NRC Management Directive 9.17, "Organization and Functions, Office of the Executive Director for Operations," paragraphs 0213, 038, 039, and 0310.

The attached final rule entitled "NRC Size Standards; Revision" amends the size standards that apply to whether an NRC licensee would qualify as a "small entity" under the Regulatory Flexibility Act. This action establishes a separate standard to be used to determine whether a licensee who is a manufacturer would qualify as a small entity; adjusts the receipts-based standard to account for the effects of inflation since 1985; and eliminates the separate \$1 million size standard for private practice physicians and applies the revised receipts-based standard of \$5 million to this class of licensee.

This final rule does not constitute a significant question of policy, nor does it amend regulations contained in 10 CFR Parts 7, 8, or 9 Subpart C concerning matters of policy. I therefore find that this rule is within the scope of my rulemaking authority and am proceeding to issue it.

\_\_\_\_\_  
Date

\_\_\_\_\_  
L. Joseph Callan,  
Executive Director for Operations.

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 2**

**RIN 3150-DD44**

**NRC Size Standards Revision**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending the NRC's size standards used to qualify an NRC licensee as a "small entity" under the Regulatory Flexibility Act. This action is necessary to establish a separate standard to be used to determine whether a licensee who is a manufacturer would qualify as a small entity, to adjust the receipts-based standard to account for the effects of inflation since 1985, and to eliminate the separate \$1 million size standard for private practice physicians and apply the revised receipts-based size standard of \$5 million to this class of licensees.

**EFFECTIVE DATE:** (30 days after publication in the Federal Register).

**FOR FURTHER INFORMATION CONTACT:** (Name of Contact Person), Rules and Directives Branch, Division of Administrative Services, Office of Administration, telephone (301) 415-4444.

**SUPPLEMENTARY INFORMATION:**

**Background**

In 1983, the NRC surveyed its materials licensees to create an economic profile sufficient to consider regulatory alternatives tailored to the size of the licensee. After analyzing the data and consulting with the Small Business Administration (SBA), the NRC developed a proposed size standard that would be appropriate to use in determining which of its licensees would qualify as small entities for the purposes of compliance with the Regulatory Flexibility

Act. The NRC published its proposed size standard for notice and comment in the Federal Register of May 21, 1985 (50 FR 20913). After considering the comments received, the NRC adopted its final size standards as noted in the Federal Register of December 9, 1985 (50 FR 50241). In the Federal Register of November 6, 1991 (56 FR 56671), the NRC restated the size standards to include the Regulatory Flexibility Act's definition of small governmental jurisdiction. To further improve clarity, the NRC changed the presentation of the size standards to conform to the listing of definitions of small entities in the Regulatory Flexibility Act.

#### The Proposed Rule

On November 30, 1994 (59 FR 61293), the NRC published a proposed rule to amend the NRC's size standards. The NRC proposed to establish a separate standard to be used to determine whether a licensee who is a manufacturer would qualify as a small entity and to adjust the receipts-based standard to account for the effects of inflation since 1985. In addition, the NRC proposed to eliminate the separate \$1 million size standard for private practice physicians and apply the revised receipts-based size standard of \$5 million to this class of licensees. By amending the size standards through rulemaking, the NRC indicated its intent to codify NRC's size standards in 10 CFR Part 2. As discussed in the preamble to the proposed rule, these amendments were developed after several factors indicated that some adjustments to the NRC's size standards were desirable.

The NRC received a number of comments concerning its size standards and the failure of the NRC to promulgate a size standard that differentiates between manufacturing entities and service providers in response to the final rule implementing Public Law 101-508 (56 FR 31472; July 10, 1991, and subsequent years). These commenters indicated that applying a gross receipts standard to a manufacturing concern resulted in an adverse impact on a

manufacturer. The SBA size standards for manufacturers are prescribed in terms of a maximum number of employees rather than in terms of gross receipts.

The NRC conducted a survey to update the economic profile of its materials licensees. The purpose of this survey was to evaluate the continued efficacy of NRC's size standards and to obtain the information needed to determine the necessity and effect of a separate standard for manufacturers within the context of the nuclear industry.

The SBA adjusted its receipts-based size standard levels to mitigate the effects of inflation from 1984 to the present in a final rule published in the Federal Register of April 7, 1994 (59 FR 16513).

#### Public Comment

The comment period on the proposed rule closed December 30, 1994. The NRC received two letters of public comment on this action.

One commenter objected to the inclusion of a size standard based on the number of employees for qualification of a manufacturing concern as a small entity in the NRC's regulatory programs and the assessment of reduced annual fees. The commenter stated that the total employee population of a manufacturer has little bearing on revenue potential and revenue has little bearing on the risk to public health and safety. The commenter believes that although employee population may be a consideration, it must be considered in conjunction with revenue produced and with the complexity of the operation in determining size standards. The commenter also asserts that because manufacturers are authorized to possess significant quantities of multiple isotopes, both as sealed sources and loose material for use in the manufacture and distribution of products, they present a much higher risk than entities that hold a license for possession and use of sealed sources. The commenter states that the loss of revenue from manufacturers categorized as small

entities will have to be made up by small licensees who may have only one or two devices on site.

The NRC is retaining a separate standard based on the number of employees for manufacturers in the final rule because this standard is required by the Small Business Act (15 U.S.C. 632 (a)(2)). This provision prohibits a Federal department or agency from prescribing a size standard for categorizing a business concern as a small business concern unless the standard provides for determining the size of a manufacturing concern based upon employment.

One commenter was pleased to see that the NRC raised the size standard for private practice physicians from \$1 million to \$5 million. However, the commenter indicated that this action did not go far enough in addressing the assessment of user fees. The commenter suggested that the NRC consider evaluating the gross receipts of departments within a medical facility that utilize NRC services and not the overall receipts of the facility. The commenter contends that if the NRC focused on the smaller entity within the license, many licensees would qualify for the small business exemptions and would pay fees based on the actual revenue generated under the license.

The NRC notes that the Small Business Act establishes criteria for a small business concern. To qualify as a small business concern, the concern must be independently owned and operated and not dominant in its field of operation (15 U.S.C. 632 (a)(1)). A department of a medical facility does not meet this criterion. The NRC has included language in the final rule to address this type of situation.

In response to each of the comments, the NRC further emphasizes that the purpose of this rule is to amend the size standards used by the NRC to qualify an NRC licensee as a "small entity" under the Regulatory Flexibility Act. The application of these standards in the fee schedule rulemaking, or any other rulemaking proceeding, is beyond the scope of this rule.

## The Final Rule

The NRC is adopting a size standard of 500 or fewer employees for business concerns that are manufacturing entities. This standard is the most commonly used SBA employee standard and would be the standard applicable to the types of manufacturing industries that would hold an NRC license. Under this standard, approximately 48 percent of the licensees who indicated that they were manufacturers would qualify as small entities.

The NRC is adjusting its receipts-based size standard to accommodate inflation and to conform to the SBA final rule. The NRC is raising its receipts-based small business size standard from \$3.5 million to \$5 million. The NRC also is eliminating the separate \$1 million size standard for private practice physicians and applying the revised receipts-based size standard of \$5 million to this class of licensees. This mirrors the revised SBA standard of \$5 million for medical practitioners. For greater clarity, the NRC has included a definition of the term receipts in the final rule.

The survey of materials licensees indicated that 26 percent qualified as small entities under the NRC standards being replaced by this rule. Under the size standards adopted in this document, 35 percent of these licensees would qualify as small entities, an increase of 9 percent. When NRC adopted its size standards in 1985, the NRC staff estimated that approximately 35 percent of the materials licensees would qualify as small entities.

The Small Business Credit and Business Opportunity Enhancement Act of 1992 (Pub. L. 102-366) amended the Small Business Act concerning the establishment of agency-specific small business size standards. The NRC size standards were developed so as to meet the criteria specified in Pub. L. 102-366. As required by Pub. L. 102-366, the NRC size standards were approved by the Administrator, SBA.

This final rule also codifies NRC's size standards in Part 2 of the Commission's regulations. Previously, NRC's size standards had been published in the notices section of the Federal Register.

#### 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 regulation.

#### Paperwork Reduction Act Statement

This 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 requirements were approved by the Office of Management and Budget, approval number 3150-0136.

#### 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 final rule because the final rule is administrative in that it amends the criteria the NRC uses for determining which of its licensees qualify as small entities for the purposes of compliance with the Regulatory Flexibility Act. The amended size standards conform to SBA's revised standards and result in an increase in the number of NRC licensees that qualify as small entities.

#### 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 on a substantial number of small entities. The final rule is

administrative in that it amends the criteria the NRC uses in determining which of its licensees qualify as small entities for the purposes of compliance with the Regulatory Flexibility Act. The amended size standards conform to SBA's revised standards and result in an increase in the number of NRC licensees that would qualify as small entities.

#### Backfit Analysis

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

#### Small Business Regulatory Enforcement Fairness 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.

#### List of Subjects in 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.

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 amendment to 10 CFR Part 2.

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

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

AUTHORITY: 42 U.S.C. 2201, 2231, 42 U.S.C. 2241, 5841); 5 U.S.C. 552. Section 2.101 also issued under 42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135, 4332, 5871, 10134(f)). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239. Section 2.105 also issued under 42 U.S.C. 2239. Sections 2.200-2.206 also issued under 42 U.S.C. 2236, 2282, 5846. Sections 2.600-2.606 also issued under 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 42 U.S.C. 10155, 10161. Section 2.790 also issued under 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 42 U.S.C. 2039. Subpart K also issued under 42 U.S.C. 2239, 10154). Subpart L also issued under 42 U.S.C. 2239. Appendix A also issued under 42 U.S.C. 2135. Appendix B also issued under 42 U.S.C. 2021b et seq.).

2. Section 2.810 is added to read as follows:

§ 2.810 NRC Size Standards.

The NRC shall use the size standards contained in this section to determine whether a licensee qualifies as a small entity in its regulatory programs.

(a) A small business is a for-profit concern and is a --

(1) Concern that provides a service or a concern not engaged in manufacturing with average gross receipts of \$5 million or less over its last 3 completed fiscal years; or

(2) Manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months.

(b) A small organization is a not-for-profit organization which is independently owned and operated and has annual gross receipts of \$5 million or less.

(c) A small governmental jurisdiction is a government of a city, county, town, township, village, school district, or special district with a population of less than 50,000.

(d) A small educational institution is one that is --

(1) Supported by a qualifying small governmental jurisdiction; or

(2) Not state or publicly supported and has 500 or fewer employees.

(e) For the purposes of this section, the NRC shall use the Small Business Administration definition of receipts (13 CFR 121.402(b)(2)). A licensee who is a subsidiary of a large entity does not qualify as a small entity for purposes of this section.

Dated at Rockville, Maryland this        day of        , 1999.

For the Nuclear Regulatory Commission.

L. Joseph Callan,  
Executive Director for Operations.

Part 3 - Note for the Daily Staff Notes (final rule) or the Weekly Report (proposed rule).

FOR A FINAL RULE:

DAILY STAFF NOTES  
OFFICE OF ADMINISTRATION

Final Rule Signed by the EDO

On \_\_\_\_\_, 1999, the Executive Director for Operations approved a final rule that amends the size standards that apply to whether an NRC licensee would qualify as a small entity under the Regulatory Flexibility Act. This action establishes a separate standard to be used to determine whether a licensee who is a manufacturer would qualify as a small entity; adjusts the receipts-based standard to account for the effects of inflation since 1985; and eliminates the separate \$1 million size standard for private practice physicians and applies the revised receipts-based standard of \$5 million to this class of licensee.

This notice informs the Commission that in accordance with the rulemaking authority delegated to the EDO, the EDO has signed this final rule and proposes to forward it on \_\_\_\_\_ to the Office of the Federal Register for publication, unless otherwise directed by the Commission.

FOR A PROPOSED RULE:

WEEKLY REPORT TO THE COMMISSION  
OFFICE OF ADMINISTRATION

Proposed Rule to be Signed by EDO

On \_\_\_\_\_, 1999, the Executive Director for Operations approved a proposed rule that would amend the size standards that apply to whether an NRC licensee would qualify as a small entity under the Regulatory Flexibility Act. This action would establish a separate standard to be used to determine whether a licensee who is a manufacturer would qualify as a small entity; adjust the receipts-based standard to account for the effects of inflation since 1985; and eliminate the separate \$1 million size standard for private practice physicians and applies the revised receipts-based standard of \$5 million to this class of licensee.

This constitutes notice to the Commission that, in accordance with the rulemaking authority delegated to the EDO, the EDO has signed this proposed rule for publication in the Federal Register.

## 15.5 Direct final rule.

NOTES: A direct final rule is a regulatory document that is used for noncontroversial, routine regulatory amendments. A direct final rule becomes effective in a certain number of days, usually 60 days after publication, unless the NRC receives significant adverse comments within a prescribed comment period, usually 30 days after publication. The NRC publishes a companion proposed rule with each direct final rule and announces in the direct final rule that any significant adverse comments received will be considered as comments on the companion proposed rule and that the NRC will not initiate a separate comment period on the action. If significant adverse comments are received, the direct final rule does not take effect and the NRC publishes a document in the Federal Register that withdraws the direct final rule.

Each direct final rule and the companion proposed rule must be submitted for publication in the Federal Register as a package. The two documents are published contiguously in a separate part of the Federal Register.

Part 1 - The Direct Final Rule.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19, 30, 40, 50, 60, 61, 70, and 72

RIN: 3150-EE55

EMPLOYEE PROTECTION POLICIES; MINOR AMENDMENTS

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations related to notices to workers and to employee protection policies. This action is necessary to require the use of an updated NRC Form 3, update a telephone number, and to clarify the applicability of employment discrimination policies.

EFFECTIVE DATE: The final rule is effective (60 days after publication in the Federal Register), unless significant adverse comments are received by (30 days after publication in the Federal Register). If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff.

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

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

Copies of any comments received may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, D.C.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-5575, e-mail XXX@NRC.GOV.

**SUPPLEMENTARY INFORMATION:**

Because NRC considers this action noncontroversial and routine, the NRC is publishing it in final form without seeking public comments on the amendments in a proposed rule. 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), 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. Any significant adverse comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

**Background**

The purpose of these amendments to 10 CFR Part 19 and related sections is to reference the most recent revision of NRC Form 3, update a telephone number, and clarify the applicability of employment discrimination policies to 10 CFR Parts 61 and 76.

NRC regulations in § 19.11, "Posting of notices to workers," specify the June 1993 revision of NRC Form 3, "Notice to Employees," and an old NRC telephone number for obtaining NRC Form 3. A new version of the form was

issued in January 1996, and because licensees and applicants are required to prominently post the most current version of NRC Form 3, § 19.11 is being updated. Related sections in Parts 30, 40, 50, 60, 61, 70, and 72 also have the old NRC telephone number and are being updated.

The primary differences between the old and new NRC Form 3 are related to reporting violations and safety concerns, the addition of an NRC Safety Hotline and other NRC toll-free numbers, what constitutes discrimination, the realignment of NRC Regions, and the actions NRC will take for allegations of harassment, intimidation, or discrimination.

NRC regulations in § 19.20, "Employee protection," were adopted in July 1982. Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste," was adopted in 1982 (47 FR 57446; December 27, 1982); and Part 76, "Certification of Gaseous Diffusion Plants," was adopted in 1994 (59 FR 48944; September 23, 1994). Both Parts 61 and 76 adopted the July 1982 employee protection provisions incorporated into Parts 30, 40, 50, 60, 70, and 72. Section 19.20 is being updated to refer to Parts 61 and 76 for consistency and clarification of employee protection policies.

#### 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 or connecting to the NRC interactive rulemaking web site, "Rulemaking Forum." 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 also are available for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC 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 rulemaking 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 catabases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld also can be accessed by a direct-dial telephone number for the main FedWorld BBS: 703-321-3339; Telnet via Internet: fedworld.gov (192.239.93.3); File Transfer Protocol (FTP) via Internet:ftp:fedworld.gov (192.239.92.205); and World Wide Web using: <http://www.fedworld.gov> (this is the Uniform Resource Locator (URL)).

If using a method other than the toll-free number to contact FedWorld, access the NRC subsystem from the main FedWorld menu by selecting "F - Regulatory, Government Administration and State Systems," then selecting "A - Regulatory Information Mall." At that point, take the "A - U.S. Nuclear Regulatory Commission" from the displayed menu to the NRC Online Main Menu. An alternative is to go directly to the NRC Online area by typing "/go nrc" at the FedWorld command line. Accessing NRC from FedWorld's Main Menu allows the user to return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, accessing NRC at FedWorld by using NRC's toll-free number provides the user with full access to all NRC systems, but does not provide access to the main FedWorld system.

To see the NRC area and menus, including the Rules Menu, contact FedWorld using Telnet. Although this will enable the user to download documents and

leave messages, the user will not be able to write comments or upload files (comments). FedWorld may be contacted using FTP; although all files can be accessed and downloaded, uploads are not allowed; all that is visible 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 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.

The NRC's interactive rulemaking web site may be accessed through the NRC home page (<http://www.nrc.gov>). This site provides the same access as the FedWorld bulletin board, including the facility to upload comments as files (any format), if the user's web browser supports that function.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Telephone: 301-415-5780; e-mail: AXD3@nrc.gov. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, Telephone: 301-415-6215; e-mail: CAG@nrc.gov.

#### Environmental Impact: Categorical Exclusion

The Commission has determined that this final rule is the type of action described in categorical exclusions 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 1995 (44 U.S.C. 3501 et

seq.). Existing requirements were approved by the Office of Management and Budget, approval 3150-0044, 10 CFR Part 19; 3150-0017, 10 CFR Part 30; 3150-0020, 10 CFR Part 40; 3150-0011, 10 CFR Part 50; 3150-0127, 10 CFR Part 60; 3150-0135, 10 CFR Part 61; 3150-0009, 10 CFR Part 70; and 3150-0132, 10 CFR Part 72.

#### 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 this rule is considered a minor, nonsubstantive amendment; it has no economic impact on NRC licensees or the public.

#### 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.

Any small entity subject to this regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this in a comment that indicates the following:

(a) The licensee's size and how the regulation would result in a significant economic burden upon the licensee as compared to the economic burden on a larger licensee.

(b) How the regulations could be modified to take into account the licensee's differing needs or capabilities.

(c) The benefits that would accrue, or the detriments that would be avoided, if the regulations were modified as suggested by the licensee.

(d) How the regulation, as modified, would more closely equalize the impact of regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individual or group.

(e) How the regulation, as modified, would still adequately protect public health and safety.

#### Backfit Analysis

The NRC has determined that the backfit rule does not apply to this 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 Chapter I.

#### Small Business Regulatory Enforcement Fairness 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.

#### List of Subjects

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.

**10 CFR Part 30**

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

**10 CFR Part 40**

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Special nuclear material.

**10 CFR Part 50**

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

**10 CFR Part 60**

Criminal penalties, High-level waste, Nuclear power plants and reactors, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

**10 CFR Part 61**

Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

**10 CFR Part 70**

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

**10 CFR Part 72**

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

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 19, 30, 40, 50, 60, 61, 70, and 72.

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

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

AUTHORITY: 42 U.S.C 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282, 2297f, 5841, 5851.

2. In § 19.11, the note following paragraph (c) is removed and paragraph (c) is revised to read as follows:

§ 19.11 Posting of notices to workers.

\* \* \* \* \*

(c)(1) Each licensee and each applicant for a specific license shall prominently post NRC Form 3 (Revision dated January 1996), "Notice to Employees."

(2) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D to Part 20 of this chapter or by calling the NRC Information and Records Management Branch at (301) 415-7230.

\* \* \* \* \*

3. Section 19.20 is revised to read as follows:

§ 19.20 Employee protection.

Employment discrimination by a licensee (or a holder of a certificate of compliance issued pursuant to Part 76) or a contractor or subcontractor of a licensee (or a holder of a certificate of compliance issued pursuant to Part 76) against an employee for engaging in protected activities under this

part or Parts 30, 40, 50, 60, 61, 70, 72, 76, or 150 of this chapter is prohibited.

**PART 30--RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING  
OF BYPRODUCT MATERIAL**

4. The authority citation for Part 30 continues to read as follows:

**AUTHORITY:** 42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282, 5841, 5842, 5846).

Section 30.7 also issued under 42 U.S.C. 5851. Section 30.34(b) also issued under 42 U.S.C. 2234. Section 30.61 also issued under 42 U.S.C. 2237.

5. In § 30.7, the note to paragraph (e)(2) is redesignated as paragraph (e)(3) and revised to read as follows:

§ 30.7 Employee protection.

\* \* \* \* \*

(e) \* \* \*

(3) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D to Part 20 of this chapter or by calling the NRC Information and Records Management Branch at (301) 415-7230.

\* \* \* \* \*

**NOTE:** Amendments similar to that made to 10 CFR Part 30 were also presented for 10 CFR Parts 40, 50, 60, 61, 70, and 72.

Dated at Rockville, Maryland this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

For the Nuclear Regulatory Commission.

\_\_\_\_\_  
L. Joseph Callan,  
Executive Director for Operations.

Part 2 - The Companion Proposed Rule.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19, 30, 40, 50, 60, 61, 70, and 72

RIN: 3150-EE55

EMPLOYEE PROTECTION POLICIES; MINOR AMENDMENTS

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations related to notices to workers and to employee protection policies. This action is necessary to require the use of an updated NRC Form 3, update a telephone number, and to clarify the applicability of employment discrimination policies.

DATES: Comments on the proposed rule must be received on or before (30 days after publication in the Federal Register).

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

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

Copies of any comments received may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, D.C.

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

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-5555, e-mail XXX@NRC.Gov .

SUPPLEMENTARY INFORMATION:

For additional information see the Direct Final Rule published in the Rules and Regulations section of this Federal Register.

Because NRC considers this action noncontroversial and routine, we are publishing this proposed rule concurrently as a direct final rule. The direct final rule will become effective on (60 days after publication in the Federal Register). However, if the NRC receives significant adverse comments on the direct final rule by (30 days after publication in the Federal Register), then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. The NRC will not initiate a second comment period for this action in the event the direct final rule is withdrawn.

#### 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 or connecting to the NRC interactive rulemaking web site, "Rulemaking Forum." 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 also are available for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC 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 rulemaking 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 databases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld also can be accessed by a direct-dial telephone number for the main FedWorld BBS: 703-321-3339; Telnet via Internet: fedworld.gov (192.239.93.3); File Transfer Protocol (FTP) via Internet:ftp:fedworld.gov (192.239.92.205); and World Wide Web using: <http://www.fedworld.gov> (this is the Uniform Resource Locator (URL)).

If using a method other than the toll-free number to contact FedWorld, access the NRC subsystem from the main FedWorld menu by selecting "F - Regulatory, Government Administration and State Systems," then selecting "A - Regulatory Information Mail." At that point, take the "A - U.S. Nuclear Regulatory Commission" from the displayed menu to the NRC Online Main Menu. An alternative is to go directly to the NRC Online area by typing `/go nrc` at the FedWorld command line. Accessing NRC from FedWorld's Main Menu allows the user to return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, accessing NRC at FedWorld by using NRC's toll-free number provides the user with full access to all NRC systems, but does not provide access to the main FedWorld system.

To see the NRC area and menus, including the Rules Menu, contact FedWorld using Telnet. Although this will enable the user to download documents and leave messages, the user will not be able to write comments or upload files (comments). FedWorld may be contacted using FTP; although all files can be accessed and downloaded, uploads are not allowed; all that is visible 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 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.

The NRC's interactive rulemaking web site may be accessed through the NRC home page (<http://www.nrc.gov>). This site provides the same access as the FedWorld bulletin board, including the facility to upload comments as files (any format), if the user's web browser supports that function.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Telephone: 301-415-5780; e-mail: [AXD3@nrc.gov](mailto:AXD3@nrc.gov). For information about the interactive rulemaking site, contact Ms. Carol Gallagher, Telephone: 301-415-6215; e-mail: [CAG@nrc.gov](mailto:CAG@nrc.gov).

#### List of Subjects

##### 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.

##### 10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

##### 10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Special nuclear material.

##### 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 60

Criminal penalties, High-level waste, Nuclear power plants and reactors, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 61

Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

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 Parts 19, 30, 40, 50, 60, 61, 70, and 72.

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

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

AUTHORITY: 42 U.S.C 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282, 2297f, 5841, 5851).

2. In § 19.11, the note following paragraph (c) is removed and paragraph (c) is revised to read as follows:

§ 19.11 Posting of notices to workers.

\* \* \* \* \*

(c)(1) Each licensee and each applicant for a specific license shall prominently post NRC Form 3 (Revision dated January 1996), "Notice to Employees."

(2) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D to Part 20 of this chapter or by calling the NRC Information and Records Management Branch at (301) 415-7230.

\* \* \* \* \*

3. Section 19.20 is revised to read as follows:

§-19.20 Employee protection.

Employment discrimination by a licensee (or a holder of a certificate of compliance issued pursuant to Part 76) or a contractor or subcontractor of a licensee (or a holder of a certificate of compliance issued pursuant to Part 76) against an employee for engaging in protected activities under this part or Parts 30, 40, 50, 60, 61, 70, 72, 76, or 150 of this chapter is prohibited.

PART 30--RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING  
OF BYPRODUCT MATERIAL

4. The authority citation for Part 30 continues to read as follows:

AUTHORITY: 42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282, 42 U.S.C. 5841, 5842, 5846.

Section 30.7 also issued under 42 U.S.C. 5851. Section 30.34(b) also issued under 42 U.S.C. 2234. Section 30.61 also issued under 42 U.S.C. 2237.

5. In § 30.7, the note to paragraph (e)(2) is redesignated as paragraph (e)(3) and revised to read as follows:

§ 30.7 Employee protection.

\* \* \* \* \*

(e) \* \* \*

(3) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D to Part 20 of this chapter or by calling the NRC Information and Records Management Branch at (301) 415-7230.

\* \* \* \* \*

NOTE: Amendments similar to that made to 10 CFR Part 30 were also presented for 10 CFR Parts 40, 50, 60, 61, 70, and 72.

Dated at Rockville, Maryland this \_\_\_\_ day of \_\_\_\_\_, 1999.

For the Nuclear Regulatory Commission.

\_\_\_\_\_  
L. Joseph Callan,  
Executive Director for Operations.

**15.6 Extension of comment period.**

[7590-01-P]

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Parts 2 and 72**

**RIN 3150-FF66**

**Hybrid Hearing Procedures for Expansion of Onsite Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors: Extension of Comment Period.**

**AGENCY: Nuclear Regulatory Commission.**

**ACTION: Proposed rule: Extension of comment period.**

**SUMMARY:** On December 5, 1998, (63 FR 54499), the NRC published for public comment two versions of a proposed rule to implement the hybrid hearing process established by Section 134 of the Nuclear Waste Policy Act of 1982. The comment period for this proposed rule was to have expired on January 5, 1999. The Utility Nuclear Waste Management Group (UNWGM) has requested a 60-day extension of the comment period. In view of the importance of the proposed rule, the amount of time that the UNWGM suggests is required in order to provide meaningful comments on behalf of its 43 member utilities, and the desirability of developing a final rule as soon as practicable, the NRC has decided to extend the comment period for an additional 45 days. The extended comment period now expires on February 20, 1999.

**DATES:** The comment period has been extended and now expires February 20, 1999. Comments received after this date will be considered if it is practical to do so but the Commission is able to ensure consideration only for comments received before this date.

**ADDRESSES:** Send written comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** (Name of contact person), Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6666.

Dated at Rockville, Maryland, this 28th day of December, 1998.

For the Nuclear Regulatory Commission.

---

John C. Hoyle,  
Secretary of the Commission.

## 15.7 Withdrawal of proposed rule.

[7590-01-P]

### NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 31, and 32

RIN 3150-GG77

#### Static Elimination Devices and Ion Generating Tubes

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule: Withdrawal.

**SUMMARY:** The Nuclear Regulatory Commission is withdrawing a proposed rule that solicited comments on an amendment to establish a class exemption from licensing requirements for the possession and use of tritium, krypton-85, or polonium-210 in static elimination devices and ion generating tubes. Because of the length of time since public comments were requested on the proposed rule and because it will be a year before a regulatory analysis recommends the course of action that should be taken on static elimination devices and ion generating tubes, the Commission is withdrawing the proposed rule.

**FOR FURTHER INFORMATION CONTACT:** (Name of contact person), Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-7777.

**SUPPLEMENTARY INFORMATION:**

On April 1, 1987 (52 FR 5432), the Nuclear Regulatory Commission published in the Federal Register proposed amendments to 10 CFR Parts 30, 31, and 32 that would establish a class exemption from licensing requirements for the possession and use of tritium, krypton-85, or polonium-210 in static elimination devices and ion generating tubes manufactured, processed, produced, imported, or transferred in accordance with a specific license issued by the NRC authorizing transfer for use under the exemption, establish requirements for the issuance of specific licenses authorizing the

distribution of the static elimination devices and ion generating tubes to persons for use under the class exemption, exempt those static elimination devices and ion generating tubes distributed for use under general license in §31.3 before a specified date, and revoke §31.3 as of that date.

A number of comments were received, some of which suggested that proposed new §32.30 may have been too restrictive in requiring a specific license for the incorporation of static elimination devices or ion generating tubes into products for commercial distribution.

The Nuclear Regulatory Commission took no further action on this rulemaking and the NRC staff began studies (including a generic environmental impact statement on consumer products) that eventually should result in Commission decisions on criteria for approval of consumer products and policy on the use of general licenses that might have a bearing on the regulatory control of statement on consumer products) that eventually should result in Commission decisions on criteria for approval of consumer products and policy on the use of general licenses that might have a bearing on the regulatory control of static elimination devices and ion generating tubes containing byproduct materials.

The Commission believes it premature to exempt additional products containing radioactive material for consumer use. Because of the elapsed time since public comments were requested and because it will be a year before an assessment recommends a course of action for static elimination devices and ion generating tubes, the Commission has decided to withdraw the proposed rule.

Dated at Rockville, Maryland, this \_\_\_\_ day of \_\_\_\_\_, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,  
Secretary of the Commission.

**15.8 Withdrawal of advance notice of proposed rulemaking.**

[7590-01-P]

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 2**

**RIN 3150-HH88**

**Role of NRC Staff in Adjudicatory Licensing Hearings**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Advance notice of proposed rulemaking: Withdrawal.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is withdrawing an advance notice of proposed rulemaking that presented possible changes to the NRC staff's role as a full party in adjudicatory hearings in initial licensing proceedings for nuclear power reactors. The Commission has decided that the staff's role as an advocate in these proceedings should not be changed.

**FOR FURTHER INFORMATION CONTACT:** (Name of contact person), Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-8888.

**SUPPLEMENTARY INFORMATION:**

On November 2, 1993 (58 FR 50550), the Commission published an advance notice of proposed rulemaking (ANPRM) on the role of the NRC staff in adjudicatory licensing proceedings. The Commission was considering a change the NRC staff's role as a full party in initial licensing hearings for nuclear power reactors. The Commission requested advice and recommendations on several proposals and related questions designed to assist the Commission in deciding whether and to what extent the NRC staff's role should be changed.

Option 1 would have limited the NRC staff's participation to controverted factual issues on which the staff disagreed with the technical bases, rationale, or conclusions of another party. NRC staff participation as a

party would have been discretionary. The NRC staff could have acted as an amicus, advising the presiding officer on the record regarding matters on controversy, either on the its initiative or at the presiding officer's request.

Option 2 would have required the NRC staff to participate as a party with respect to all substantive issues raised but would have eliminated NRC staff advocacy and participation with respect to procedural issues.

Option 3 would have retained the NRC staff's existing role as a full party and could have been implemented without any modification of existing practice and coupled with measures designed to improve public perception of the NRC staff's role or to allow greater Commission access to NRC staff expertise.

Option 4 would have expanded the opportunity for public involvement in the early stages of initial licensing proceedings, before issuance of a notice of opportunity for hearing.

The comment period expired January 3, 1994. The Commission received twenty-eight letters of comment. Twelve from nuclear utilities or their counsel, nine from intervenors or their counsel, four from individuals, and three from nuclear engineering firms or industry groups. A detailed summary of the comments may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, D.C. The comments indicated support for all four options. Following a review of the comments, and advice supplied by its legal office, the Commission decided that the NRC staff's existing role as an advocate in initial licensing proceedings should not be changed. Accordingly, the Commission is withdrawing the ANPRM.

Several concerns prompted the Commission's publication of the ANPRM. First, in a proceeding for the issuance of a license to construct or to operate a nuclear power reactor, the applicant has the burden of showing that it can construct and operate the plant safely. Because the NRC staff has no

real stake in the issuance of the license, the need for its participation as a full party in the licensing hearing could be questioned. Second, the NRC staff's advocacy of a particular position could have the effect of lending support to the case in favor of the license applicant and; therefore, could create the impression that the NRC staff is advocating the applicant's case. Third, NRC staff participation as a full party in licensing hearings might not represent the most efficient use of resources. Fourth, changes in the NRC staff's role as an advocate might mitigate the legal constraints placed on Commission access to its expertise in contested cases.

Further examination of these concerns reveals that no change to the NRC staff's existing role is warranted. On the first point, the Commission has concluded that the NRC staff's participation on all substantive issues is necessary to assist in the development of a sound record. It therefore has decided to reject Option 1. The Commission and the adjudicatory boards rely heavily on the NRC staff's expertise in determining whether an applicant has met the requirements for issuance of a license and what conditions the license should contain. The Commission also believes that the NRC staff is the representative of the public interest in these proceedings and that the it should continue to present and defend the results of its evaluation of the application at the hearing for the benefit of the public. The NRC staff's participation on procedural issues is desirable because it could reduce or eliminate some of the substantive issues to be heard. In addition, the NRC staff is often the best source of guidance for adjudicatory boards on procedural matters. The Commission believes that the NRC staff should continue to participate as a full party and has decided to reject Option 2 as well. Of course, this does not preclude the NRC staff from declining to take a position on matters which do not affect the NRC staff's interests in the proceeding.

Concerning the matter of public perception, the Commission agrees with comments that public perception is difficult to assess and that it is important to distinguish between members of the public in general and those who are familiar with NRC proceedings. The Commission is not convinced that there is a problem with respect to public perception of the NRC staff's role. To the extent that a problem exists, however, it is attributable not to bias on the NRC staff's part but to the nature of the its extensive prehearing review of the application. The applicant often makes changes in the application in order to secure NRC staff approval, so that by the time the hearing begins, many of the NRC staff's concerns have been accommodated. Intervenors might otherwise have had to argue for these changes in the application during the hearing.

The Commission considered providing an opportunity for expanded public involvement before issuing a notice of opportunity for hearing (Option 4) as a possible means of increasing public understanding of the NRC staff's role. The Commission also sought comment on this option as a possible means of providing useful information about local and site-related concerns in a non-adversarial setting. The Commission has concluded that there is no need to adopt this proposal, either alone or in combination with any of the other options. A copy of an application for a nuclear facility is made available for public inspection at the NRC Public Document Room (PDR) in Washington, D.C., as well as at the Local Public Document Room (LPDR) which the Commission has established near the site of the proposed facility. After completing its review of the acceptability of the application for docketing, the NRC staff holds an initial management meeting with the applicant to discuss the review process and schedule. Notice of this meeting is published and members of the public may attend. After the application is docketed, the NRC staff's licensing review process is accessible to the public through open meetings and

the placement of formal correspondence in the PDR and LPDR. The NRC staff also holds informal meetings with potential intervenors and members of the public near the plant site. The Commission believes that these measures provide an adequate opportunity for public information and involvement in the early stages of the licensing process. In addition, the Commission has concluded that NRC staff resources that would have to be expended for increased public involvement before issuing a notice of opportunity for hearing would outweigh any improvement that might result in public perception of the NRC staff's role.

The Commission does not believe that NRC staff resources committed to litigation of admitted contentions in individual licensing proceedings could better be used to study, analyze, or resolve other important uncontested matters involved in particular proceedings or generic safety questions common to one or more classes of light water reactors. The Commission believes that effort should be made to improve the effectiveness and efficiency of the hearing process to benefit all parties.

Finally, the Commission has concluded that the appropriate role for the NRC staff should be determined independently of any consideration of legal constraints on Commission access to the NRC staff in contested cases.

For these reasons, the Commission has concluded that it has not identified a problem with the NRC staff's existing role in reactor licensing proceedings that any of the suggested options would resolve. Accordingly, the Commission is adopting Option 3 and withdrawing the ANPRM.

Dated at Rockville, Maryland, this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

For the Nuclear Regulatory Commission.

---

John C. Hoyle,  
Secretary of the Commission.

**15.9 Corrections.**

**Correction 1 - Substantive correction to a rulemaking document.**

[7590-01-P]

**NUCLEAR REGULATORY COMMISSION**

**10 CFR PART 50**

**RIN 3150-II99**

**Emergency Planning and Preparedness for Production  
and Utilization Facilities; Correction**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule: Correction.

**SUMMARY:** This document corrects a proposed rule appearing in the Federal Register on September 21, 1998 (63 FR 46587), that would extend the date by which prompt public notification systems must be operational around all nuclear power plants. The action is necessary to correct a printing error and resolve an inconsistent reference to a deadline date.

**FOR FURTHER INFORMATION CONTACT:** (Name of contact person), Director, Division of Emergency Preparedness, Office Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-9999.

1. On page 46588, in the second sentence of the first full paragraph in the second column, the word "insignificant" should read "significant."

2. In the second line of §50.74(a), "one year" should read "seven months."

Dated at Rockville, Maryland, this \_\_\_\_ day of \_\_\_\_\_, 1998.

For the Nuclear Regulatory Commission.

---

L. Joseph Callan,  
Executive Director for Operations.

Correction 2 - Nonsubstantive correction to a rulemaking document.

[7590-01-P]

Nuclear Regulatory Commission

10 CFR Parts 2 and 13

RIN 3150-II77

Adjustment of Civil Monetary Penalties for Inflation; Correction

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule; Correction.

**SUMMARY:** This document corrects a final rule appearing in the Federal Register on October 11, 1998 (63 FR 53554), that adjusts the maximum Civil Monetary Penalties under statutes within the jurisdiction of the NRC. This action is necessary to correct an erroneous Regulation Identifier Number (RIN).

**FOR FURTHER INFORMATION CONTACT:** (Name of Contact Person), Federal Register Liaison Officer, telephone (301) 415-9999.

**SUPPLEMENTARY INFORMATION:**

On page 53554, in the first column, in the heading, the fourth line from the top, the RIN number is corrected to read, "RIN 3150-II77".

Dated at Rockville, Maryland, this                      day of October 1998.

For the Nuclear Regulatory Commission.

(Name),  
Federal Register Liaison Officer.

Correction 3 - Correction to a general notice document.

[7590-01-P]

Nuclear Regulatory Commission

Oconee Nuclear Station, Units 1, 2, and 3; Notice of Consideration  
of Issuance of Amendments to Facility Operating Licenses, Proposed  
No Significant Hazards Consideration Determination,  
and Opportunity for a Hearing; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance; Correction.

SUMMARY: This document corrects a notice appearing in the Federal Register on December 18, 1998 (63 FR 66699), that considers issuance of amendments to Facility Operating License Nos. DPR-38, DPR-47, and DPR-55, issued to the Duke Power Company. This action is necessary to correct an erroneous date.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Project Manager, Office of Nuclear Reactor Regulation, telephone (301) 415-9999.

SUPPLEMENTARY INFORMATION:

On page 66701, in the first column, in the second complete paragraph, the date is changed from "January 2, 1999," to read "January 17, 1999."

Dated at Rockville, Maryland, this            day of December 1998.

For the Nuclear Regulatory Commission.

(Name),  
Federal Register Liaison Officer.

**15.10 Notice of availability.**

[7590-01-P]

**NUCLEAR REGULATORY COMMISSION**

**Consolidated Guidance about Materials Licenses: Program-Specific Guidance  
about Portable Gauge Licenses, Availability of NUREG**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**SUMMARY:** The Nuclear Regulatory Commission is announcing the completion and availability of NUREG-1556, Vol. 1. "Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Portable Gauge Licenses," dated May 1997.

**ADDRESSES:** Copies of NUREG-1556, Vol. 1, may be obtained by writing to the Superintendent of Documents, U. S. Government Printing Office, P. O. Box 37082, Washington, DC 20402-9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy of the document is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555-0001.

**NOTE:** For a draft NUREG use the following language:

**ADDRESSES:** Draft NUREG-1556, Vol.1 is available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington DC 20555-0001. A free single copy of Draft NUREG-1556, Vol. 1, to

the extent of supply, may be requested by writing to U.S. Nuclear Regulatory Commission, Printing and Graphics Branch, Washington, DC 20555-0001.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Division of Industrial and Medical Nuclear Safety, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.  
Telephone: 301-415-1010.

**SUPPLEMENTARY INFORMATION:**

On October 3, 1996 (61 FR 51729), NRC announced the availability of draft NUREG-1556, Volume 1, "Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Portable Gauge Licenses," dated September 1996 and requested comments on it. This draft NUREG report is the first program-specific guidance developed to support an improved materials licensing process. On December 6, 1996 (61 FR 64768), NRC requested volunteers to participate in a January 1997 pilot test to evaluate the document's content, format, and usefulness. Most of the public comments and those of the participants in the pilot test were positive. The NRC staff considered all of the comments, including constructive suggestions to improve the document, in the preparation of the final NUREG report.

The final version of NUREG-1556, Volume 1, is now available for use by applicants, licensees, NRC license reviewers, and other NRC staff. It supersedes the guidance for applicants and licensees previously found in Draft Regulatory Guide DG-0008, "Applications for the Use of Sealed Sources in Portable Gauging Devices," dated May 1995, and the guidance for licensing staff now found in Policy and Guidance Directive PG 2-07, "Standard Review Plan for Applications for the Use of Sealed Sources in Portable Gauging Devices," dated September 1994.

The performance-based approach in NUREG-1556, Volume 1, gives portable gauge licensees greater flexibility than previously permitted under licenses based on applications prepared according to DG-0008. This permits licensees to make more changes in their radiation safety program without amending their licenses, thus reducing the regulatory burden on licensees and the NRC staff. Accordingly, existing portable gauge licensees have the option of submitting a complete application using NUREG-1556, Vol. 1, at the time they file an amendment request. Portable gauge licensees choosing this option should incorporate the requested change into the complete application, submit it with the appropriate amendment fee, and indicate that the complete application is an amendment request to take advantage of the new guidance. When the NRC staff has reviewed the request and resolved any outstanding issues, the NRC staff will amend the license in its entirety without changing the expiration date.

Portable gauge licensees wishing to renew their licenses should submit a complete application according to NUREG-1556, Vol. 1. The NRC staff's action will be similar to that described for amendments, but will include an extension of the license's expiration date. By following this procedure, the staff expects all existing portable gauge licenses to be converted to the more performance-based format within a few years.

#### Electronic Access

NUREG-1556, Volume 1, is also available electronically by visiting NRC's Home Page (<http://www.nrc.gov>) and choosing "Nuclear Materials," then "Business Process Redesign project," then "Library," and then "NUREG-1556, Volume 1."

#### 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 of the Office of Management and Budget.

NOTE: The Small Business Regulatory Enforcement Fairness Act statement is not used for draft NUREGs. The law applies only to final agency actions.

Dated at Rockville, Maryland, this \_\_\_ day of \_\_\_\_\_, 1999.

For the Nuclear Regulatory Commission.

\_\_\_\_\_  
(Name), Director,  
Division of Industrial and Medical  
Nuclear Safety,  
Office of Nuclear Material Safety  
and Safeguards.

**15.11 Notice of meeting.**

[7590-01-P]

**NUCLEAR REGULATORY COMMISSION**

**Industry Presentation on the Fabrication  
of Mixed Oxide Fuel; Meeting**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** Representatives from the nuclear industry make a presentation relating to the fabrication of mixed oxide (MOX) fuel for uses in commercial nuclear reactors. This meeting is a follow-up to an earlier meeting where the Nuclear Energy Institute (NEI) presented material concerning the use of MOX fuel in nuclear reactors. The meeting is open to the public and all interested parties may attend.

**DATES:** March 27, 1999, from 8:30 am to 1:00 pm.

**ADDRESSES:** Nuclear Regulatory Commission, Two White Flint North Auditorium, 11545 Rockville Pike, Rockville, Maryland.

**FOR FURTHER INFORMATION CONTACT:** (Name of Contact Person), Mail Stop T8-Axx, U.S. Nuclear Regulatory Commission, Washington, DC 20005-0001. Telephone: (301) 415-1012); FAX: (301) 415-3237; Internet: xxx@NRC.GOV.

For material related to the meeting, please contact U.S. NRC Public Affairs Office (301) 415-8200.

**SUPPLEMENTARY INFORMATION:**

On January 4, 1997, the Department of Energy issued the Record of Decision (ROD) on the Storage and Disposition of Weapons-Usable Fissile Materials. One of DOE's approaches is to dispose of the surplus plutonium is to burn it as MOX fuel in existing domestic commercial reactors.

NEI has requested the opportunity to present information on the use and fabrication of MOX fuel for nuclear reactors to the NRC staff. This meeting is a follow-up to an earlier meeting where NEI presented material concerning the use of MOX fuel in nuclear reactors. A preliminary agenda for the meeting is as follows:

1. Technology Confirmation Around the World, presented by National Laboratories.
2. MOX Fabrication and Licensing Experience, presented by British Nuclear Fuels, Inc.
3. MOX Fabrication and Licensing Experience, presented by Belgonucleaire.
4. MOX Fabrication and Licensing Experience, presented by Cogema.
5. MOX Fabrication and Licensing Experience, presented by Siemens.

Attendees are requested to notify (name of contact person) at (301) 415-1012 of their planned attendance if special services, such as for the hearing impaired, are necessary.

The NRC is accessible to the White Flint Metro Station. Visitor parking near the NRC buildings is limited.

Dated at Rockville, Maryland, this 28th day of February, 1999.

For the Nuclear Regulatory Commission.

-----  
(Name), Director,  
Division of Fuel Cycle Safety  
and Safeguards,  
Office of Nuclear Material Safety  
and Safeguards.

**15.12 Final rule that grants a petition for rulemaking.**

**[7590-01-P]**

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 32**

**RIN: 3150-FF66**

**License Applications for Certain Items  
Containing Byproduct Material**

**AGENCY: Nuclear Regulatory Commission.**

**ACTION: Final rule.**

**SUMMARY: The Nuclear Regulatory Commission (NRC) is granting a petition for rulemaking submitted by mb-microtec, Inc. (PRM-32-4) by amending its regulations to permit the distribution of timepieces containing gaseous tritium light sources (GTLS) and regulate them under the same requirements as timepieces containing tritium paint. The final rule removes specific requirements for prototype testing of products containing tritium and provides guidance for prototype testing in a separate document. The final rule simplifies the licensing process for distribution of timepieces containing tritium and allows the use of a new technology in self-illuminated timepieces.**

**EFFECTIVE DATE: (Insert the date 30 days after publication in the Federal Register).**

**FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-1012, e-mail xxx@nrc.gov.**

**SUPPLEMENTARY INFORMATION:**

**The Petition for Rulemaking**

**In a letter dated July 30, 1993, mb-microtec, Inc. petitioned the NRC to amend its regulations "to include timepieces containing gaseous tritium light sources (GTLS) on the same regulatory basis as those with tritium paint in regard to their distribution exempt from the requirements of 10 CFR 32.14(d)."**

In the petition, the petitioner stated the following:

With new technology greater illumination could be achieved with less radioactivity than needed for a painted watch but that the additional requirements to get a GTLS watch approved for distribution results in manufacturers not using this technology.

On August 9, 1993, the NRC docketed the letter as a petition for rulemaking (Docket No. PRM-32-4). A notice of receipt of petition for rulemaking was published for public comment in the Federal Register on October 29, 1993 (58 FR 52670). No public comments were received on the notice of receipt concerning the petition.

Revising the testing requirements of 10 CFR 32.14(d) to accommodate GTLS containing no more than 25 millicuries of tritium would permit simplification of the licensing process for watches containing GTLS. The provisions of 10 CFR 32.22 would allow those vendors who desire to continue marketing self-luminous watches that contain GTLS with greater than 25 millicuries of tritium to do so.

Watches using GTLS can be produced without exceeding the quantities of tritium specified in 10 CFR 30.15(a)(1).

### The Regulations

Section 30.15(a)(1) states that if a timepiece containing byproduct material is to be distributed to persons exempt from the NRC's licensing requirements, it may not contain more than 5 millicuries per hand, not more than 15 millicuries in the dial, and not more than 25 millicuries of tritium in total. Section 32.14(d)(1) contains overall performance requirements for the binding of tritium to watch hands, pointers, and dials, as well as specific prototype testing requirements for tritium-painted watch hands, pointers, and dials. Although 10 CFR 30.15(a)(1) does not specify a form for tritium in timepieces, the prototype testing requirements in 10 CFR

32.14(d)(1) -- the section of the NRC's regulations under which a specific license to distribute watches exempt under 10 CFR 30.15(a)(1) is granted -- are only applicable to timepieces employing tritium paint.

Watches containing greater than 25 millicuries of tritium in GTLSs may be distributed to persons exempt from licensing requirements in accordance with 10 CFR 30.19, "Self-luminous products containing tritium, krypton-85, or promethium-147," which, unlike 10 CFR 30.15(a)(1), specifies neither a limit on the amount of tritium that may be incorporated into self-luminous products nor the end use of the product. However, to distribute a self-luminous watch containing tritium to persons exempt from licensing requirements in 10 CFR 30.19, a specific license must be obtained in accordance with 10 CFR 32.22. To manufacture, process, produce, or initially transfer self-luminous products containing unrestricted amounts of tritium under 10 CFR 32.22(a)(2), the applicant must submit detailed information and analyses concerning the particular product in order to obtain approval for distribution. The information required by 10 CFR 32.22 must be sufficient to demonstrate that the product meets a number of specific safety criteria, including dose criteria for use and disposal. The application must include proposed prototype testing procedures approved by the NRC. The evaluations conducted by both the licensee and the NRC staff, as well as the prototype testing proposed, apply to the entire product rather than its components. Conversely, approval for distribution of timepieces containing less than 25 millicuries of tritium to persons exempt from licensing requirements in 10 CFR 30.15(a)(1)(i) requires a specific license under 10 CFR 32.14, but only requires satisfaction of the prototype testing requirements contained in 10 CFR 32.14(d). Consequently, it is less burdensome upon a licensee to distribute watches employing tritium illumination under 10 CFR 32.14 than under 10 CFR 32.22.

## The Proposed Amendments

The NRC carefully reviewed the arguments presented by the petitioner published a proposed rule (63 FR 45678; October 14, 1997). The proposed rule incorporated the petition in part, and modified the petitioner's suggested language to amend the regulations in 10 CFR Part 32 by removing the prototype testing requirements for hands, dials, and pointers containing tritium-paint, which are primarily used in timepieces.

Rather than revise the specific testing requirements in the regulations as proposed by the petitioner to accommodate both tritium paint and GTLSs, the NRC decided to take a more performance-based approach by removing the existing specific testing procedures from the regulations. Guidance on specific prototype testing procedures is provided in NUREG-1562, "Standard Review Plan for Applications for Licenses to Distribute Byproduct Material to Persons Exempt from the Requirements for an NRC License."<sup>1</sup>

The proposed rule did not change the intent of the existing general performance standard. This standard states that the method of containment or binding of the byproduct material in the product is such that the radioactive material will not be released or be removed from the product under the most severe conditions which are likely to be encountered in normal use and handling. The planned action does not change the level of radiation protection provided to users of tritium illuminated timepieces.

The NRC received no public comment on the proposed rule.

---

<sup>1</sup> Requests for single copies of draft NUREG-1562 should be made in writing to the U.S. Nuclear Regulatory Commission, Printing and Graphics Branch, Washington, DC 20555-0001.

## Rationale

The licensing process is more burdensome to potential distributors of timepieces under 10 CFR 30.19 than with an application to distribute timepieces for use under 10 CFR 30.15(a)(1). Changing the prototype testing requirements in 10 CFR 32.14(d)(1) would simplify the licensing process for distributors of timepieces containing GTLSs by allowing them to apply to distribute these timepieces for use under 10 CFR 30.15(a)(1). Thus, timepieces using GTLSs would be distributed and used under the same requirements of the regulations as timepieces using tritium paint.

## Effect of the Amendments

By allowing distribution of a new technology in self-illuminated timepieces, the final rule grants the petition for rulemaking submitted by mb-microtec (PRM-32-4). This final rule completes action on this petition.

## Agreement State Compatibility

Under the Atomic Energy Act, certain regulatory functions are reserved to the NRC. Among these are the distribution of products to persons exempt from licensing, as discussed in 10 CFR Part 150. The final rule is a Division 4 matter of compatibility with regard to the manufacture and initial distribution of watches and other products for use.

## Environmental Impact: Categorical Exclusion

The NRC has determined that the final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

## Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval number 3150-0001.

The public reporting burden for this information collection is estimated to average 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of this information collection, including suggestions for reducing the burden, to the Information and Records Management Branch (T-6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0001), Office of Management and Budget, Washington, DC 20503.

## Public Protection Notification

If a document does not display a currently valid OMB control number the NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information.

## Regulatory Analysis

The NRC has prepared a regulatory analysis for the final rule. The analysis examines the benefits and impacts considered by the NRC. The regulatory analysis is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, D.C. Single copies may be obtained from (Name), Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 2055-0001, telephone 301-415-1357 or e-mail at xxx@nrc.gov.

## 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 permits the distribution of a new technology in self-illuminated timepieces and simplifies the licensing process for distributors of timepieces containing GTLSs. This action will reduce regulatory compliance costs for these distributors and facilitates their ability to conduct business economically.

## Backfit Analysis

The NRC has determined that the backfit rule does not apply to this 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 Chapter I.

## List of Subjects in 10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

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 amendment to 10 CFR Part 32.

## PART 32 - SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

1. The authority citation for Part 32 continues to read as follows:

AUTHORITY: 42 U.S.C. 2111, 2201, 2232, 2233, 5841.

2. In § 32.14, paragraph (d) is revised to read as follows:

§ 32.14 Certain items containing byproduct material; requirements for license to apply or initially transfer.

\* \* \* \* \*

(d) The Commission determines that:

(1) The method of containment or binding of the byproduct material in the product is such that the radioactive material will not be released or be removed from the product under the most severe conditions which are likely to be encountered in normal use and handling. Tritium, in the form of paint, will be considered to be properly bound to dials, hands, and pointers if there is no visible flaking or chipping and the total loss of tritium, in the form of paint, does not exceed 5 percent of the total tritium, in the form of paint, contained in the product.

(2) Prototype tests for automobile lock illuminators are prescribed by 10 CFR 32.40, Schedule A.

Dated at Rockville, Maryland, this 15th day of May, 1998.

For the Nuclear Regulatory Commission.

---

John C. Hoyle,  
Secretary of the Commission.

**15.13 Denial of a petition for rulemaking.**

[7590-01-P]

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 61**

**[Docket No. PRM-61-2]**

**New England Coalition on Nuclear Pollution, Inc.; Denial  
of Petition for Rulemaking**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by the New England Coalition on Nuclear Pollution, Inc. (PRM-61-2). The petitioner requested that the NRC amend its regulations regarding waste classification of low-level radioactive waste (LLW) to restrict the number and types of waste streams which can be disposed of in near-surface disposal facilities and prepare a supplemental Environmental Impact Statement (EIS). The NRC is denying the petition because the "new information" presented by the petitioner is not sufficient to invalidate the existing classification system or justify that NRC prepare a supplemental EIS.

**ADDRESSES:** Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** (Name of contact person), Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001, Telephone: (301) 415-1011.

## SUPPLEMENTARY INFORMATION:

### The Petition

On July 23, 1992 (57 FR 32743), the NRC published a notice of receipt of a petition for rulemaking filed by the New England Coalition on Nuclear Pollution, Inc. The petitioner requested that the NRC amend 10 CFR Part 61 concerning the classification of low-level radioactive waste for near-surface disposal to restrict the number and types of waste streams which may be disposed of in these disposal facilities. The petitioner believes the requested changes are necessary because of significant new information concerning intrusion into LLW disposal facilities that was not available at the time the original EIS was developed. The petitioner argues that the NRC must prepare a supplemental EIS since the premises leading to the conclusions reached in the original EIS have substantially changed.

The petition is based on three purported changes that the petitioner believes have occurred since the rule was promulgated. The petitioner asserts that these changes affect the basis used to promulgate 10 CFR Part 61.

1. The petitioner argues that the original EIS was based on a 500 mrem per year dose to "inadvertent intruders." Revised guidance by international organizations has reduced dose limits for individual members of the public to 100 mrem per year and this new criterion has been incorporated into 10 CFR Part 20. The petitioner presumes that the intruder and public dose limits are integrally linked. The petitioner asserts that this revised dose limit should also be incorporated into the waste classification system and that this would impact waste streams allowed to be disposed of in LLW facilities.

2. The petitioner states that the three intrusion scenarios that the NRC considered in the development of 10 CFR Part 61 do not define a broad enough spectrum of possible events. Of particular concern is that the NRC used regulatory discretion, rather than scientific data, to exclude deliberate

intrusion. The petitioner states that recent studies conducted at the behest of the State of Vermont show that, when intrusion is deliberate, the ability of near-surface facilities to properly provide isolation for all of the currently classified LLW streams is questionable.

3. The petitioner states that because most currently planned LLW facilities use an engineered structure to isolate the waste, the cost differential between shallow-land burial facilities, assumed in the EIS, and a geologic repository (for high-level waste) has changed since promulgation of 10 CFR Part 61. Because cost considerations were a factor in the development of the waste classification system, a supplemental EIS is needed.

#### Public Comments on the Petition

The notice of receipt of petition for rulemaking invited interested persons to submit comments. The NRC received 14 comment letters: Three from States (two from Vermont), three from private organizations, three from associated industries (including one disposal site operator), three from private individuals, one from a university, and one from the Department of Energy. The comments focussed on the main elements of the petition -- revision of the 10 CFR Part 61 waste classification system and the petitioner's rationale for this change. The Commission received responses from the petitioner on many of the points raised by the commenters. The comments and responses were reviewed and considered in the development of NRC's decision on this petition.

Four of the commenters supported this petition for rulemaking. They supported the concept of changing the classification system to restrict the more hazardous components of currently defined LLW, although not necessarily in the same way as proposed in the petition.

One commenter stated that the definitions of LLW and high-level radioactive waste should be changed to essentially require that waste which presents a potential hazard after 100 years be defined as high-level radioactive waste. Disposal of such newly defined high-level radioactive waste would be the responsibility of the Federal government.

A second commenter believes that the bases for developing the Part 61 classification system are not conservative and the petition should be accepted to protect the public from disposal of waste having long-lived radionuclides.

A third commenter believes that restricting the longevity hazard (long-lived radionuclides) would increase public acceptance of LLW disposal facilities and eliminate program delays.

The fourth commenter, the Vermont Department of Public Service, believes that the classification system should be revised to reclassify non-fuel reactor components as greater than Class C. It is stated that these components, in Vermont, produce 99 percent of the activity, while comprising less than one-half of one percent of the volume. These components are easily segregated and can be stored in spent fuel pools. The commenter believes the reclassification "could assist the State processes established by the Low-Level Radioactive Waste Policy Amendments Act of 1985."

The other 10 commenters believe that granting the petition would not only be unwarranted, as the petitioner has not made a justifiable case for changing the waste classification system, but would also cause significant and unnecessary problems for the disposal of LLW. Problems cited include major uncertainty and delay while the NRC was developing a new rule, the creation of "orphan" wastes that would not be acceptable at LLW sites, and the inaccurate use of existing information. For example, the petitioner refers to a study by Rogers and Associates Engineering Corporation prepared for the Vermont Low-Level Radioactive Waste Authority. Several commenters, including Rogers and

Associates Engineering Corporation and the Vermont Low-Level Radioactive Waste Authority, commented that the petitioner has incorrectly used the results of this study to assess facility performance and that this study does not support the petitioner's request.

The commenters argued that 10 CFR Part 61 and supporting documentation provide a sound regulatory basis for protection of public health and safety and that the petitioner has not provided any new significant information to justify changing the current rules. These commenters further argued that the petitioner is inappropriately applying requirements in 10 CFR Part 20 to potential intruder exposures at a closed disposal site. They noted that Part 20 limits, and the international recommendations upon which they are based, are regulatory dose limits for routine exposures and are not uniquely pertinent to accidents, inadvertent intrusion, or other hypothetical events.

Some commenters also took exception to the petitioner's goal of protecting against willful, purposeful, or intentional intrusion instead of the inadvertent intruder. They stated that to protect against deliberate misuse of disposed waste would be unnecessarily conservative and unwarranted. One commenter noted that mining activities on a previously closed LLW disposal site (an activity postulated by the petitioner) would constitute possession of source, byproduct, or special nuclear material and would be regulated under the statutory basis of the Atomic Energy Act of 1954, as amended.

Several commenters were concerned that a revised classification system would generate an "orphan" class of waste. These wastes would not be accepted at an LLW site and would have to be stored, pending disposal at a high-level waste or other appropriate facility, resulting in additional radiation exposure due to the extra handling and storage required. These commenters stated that the current classification system provides an adequate level of protection of public health and safety.

Other commenters believe that revising the classification system unnecessarily would be extremely disruptive until new regulations were finalized.

Finally, several commenters did not see a need to develop a supplemental EIS because in their view no significant new information has been provided.

#### Reasons for Denial

The NRC is denying the petition for the following reasons:

1. The NRC believes that the petitioner is incorrect in asserting that recommendations by international and national standards organizations (the International Committee on Radiological Protection (ICRP) and the National Council on Radiation Protection and Measurements (NCRP)) on public dose limits applicable to licensee operations should also be applied to hypothetical inadvertent intrusion at a closed LLW facility. The ICRP<sup>1</sup> distinguishes between limits for the conduct of operations where exposures might be expected and the approach to be taken for "potential exposures," which are hypothetical or postulated. The 10 CFR Part 20 limit was adopted to impose restrictions on the releases from currently operating licensed facilities or on the ways that current licensees conduct operations. The LLW classification system specifically addressed limiting potential exposures to an inadvertent intruder who might hypothetically pursue activities at a closed LLW disposal facility following loss of institutional control. Inadvertent intrusion is a hypothetical exposure scenario evaluated in the EIS to support the concentration limits for classifying radioactive wastes. It is a separate and different evaluation from the evaluation performed under § 61.41 to

---

<sup>1</sup> Annals of the ICRP, ICRP Publication 60, "1990 Recommendations of the International Commission on Radiological Protection," Volume 21, pages 25-49 and 70-77.

demonstrate protection of the general population from releases of radioactivity. The NRC's calculations, based on conservative assumptions about intrusion activities, demonstrated that if inadvertent intrusion were to occur, the one or few individuals involved might receive radiation exposure of the order of 200 mrem, well below 500 mrem per year goal selected as the dose rate limitation guideline.

In its final EIS, the NRC summarized the rationale for retaining the 500 mrem limitation guideline as follows:

"NRC's selection of the 500 mrem limit was based on (1) public opinion gained through the four regional workshops held on the preliminary draft of Part 61; (2) its acceptance by national and international standards organizations (e.g., ICRP) as an acceptable exposure limit for members of the public; and (3) the results of analyses presented in Chapter 4 of the draft EIS.<sup>2</sup>"

However, a fuller explanation for having selected this dose limitation guideline can be found in the Draft Environmental Impact Statement (DEIS) on 10 CFR Part 61 (NUREG-0782, Vol. 1)<sup>3</sup>. At that time, three candidate values of different order of magnitude were under consideration; 25 mrem per year, 500 mrem per year, and 5000 mrem per year. While noting the similarity of the selected value to the then current effective public dose limit in 10 CFR Part 20, the DEIS went on to explain the considerations for selection. Selection of the 25 mrem per year value would likely have resulted in considerably more costs, more changes in existing practices and greater reduction in disposal efficiency than the other two candidates. This was

---

<sup>2</sup> Final Environmental Impact Statement on 10 CFR Part 61 "Licensing Requirements for Land Disposal of Radioactive Waste," November 1992, NUREG-0945, Vol. 2, page B-41, (response to issue C-4).

<sup>3</sup> Copies of NUREGs may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P. O. Box 37082, Washington, DC 20402-9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Va. 22161. A copy is also available for inspection and/or copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555-0001.

cited as "especially important considering the hypothetical nature of the intrusion event." The 5000 mrem per year alternative was seen to involve approximately the same costs and impacts as the 500 mrem per year alternative. The higher value was considered to potentially result in allowing disposal of larger quantities of long-lived isotopes, which could result in moderately higher intruder hazards extending for long time periods. Therefore, 500 mrem per year was selected as a general dose rate limitation guideline for the inadvertent intruder.

In the final EIS, the NRC noted that the EPA, in commenting on the DEIS and the proposed 10 CFR Part 61, stated that it was not appropriate to include a dose limit for intrusion in the regulations because the licensee would not be able to monitor or demonstrate compliance with a dose limit related to an event which might occur hundreds of years in the future. Consequently, the final rule for 10 CFR Part 61 did not include a dose limit for inadvertent intrusion. However, provisions, including waste classification, were included in the final rule to reduce the likelihood and magnitude of exposures to potential intruders.

Finally, ICRP distinguishes between limits for the conduct of operations where exposures might be expected and the approach to be taken for "potential exposures," which are hypothetical or postulated. In the former case, the ICRP proposed imposition of dose limits but in the latter case recommended that the probability of postulated events or scenarios be considered along with their consequences. The ICRP noted that the initial focus in controlling the consequences of potential or postulated events should be "prevention," that is, by incorporating provisions to reduce the probability of the postulated events which may lead to radiation exposures. The existence of multiple controls in the final rule to reduce the likelihood of exposures to postulated inadvertent intruders at closed LLW sites was, and continues to be,

wholly consistent with the ICRP perspective. These multiple controls are specifically identified or included in §§ 61.7, 61.12, 61.14, 61.42, 61.52, and 61.59 and are intended to prevent inadvertent intrusion and to reduce potential exposure if intrusion were to occur.

For these reasons, the NRC does not believe that the current ICRP or NCRP recommendation that the public dose limit be 100 mrem per year constitutes new information which would warrant modifying these regulations. The NRC believes that the provisions of 10 CFR Part 61 provide an acceptable level of protection to the public and the inadvertent intruder.

2. The NRC believes that the petitioner has not provided adequate information to justify considering "deliberate" intrusion scenarios. The NRC believes that to protect against deliberate intrusion would be unnecessarily conservative and unwarranted. The NRC regulations currently include provisions to protect against intrusion by, for example, requiring government land ownership, records, and the use of markers. In order to deliberately intrude into the LLW site, an individual will have to break the law and overlook the hazard. In the development of 10 CFR Part 61, the NRC stated, "...it would appear to be difficult to establish regulations designed to protect a future individual who recognizes a hazard but then chooses to ignore the hazard."<sup>4</sup>

The NRC also believes the likelihood of deliberate intrusion is very small. Deliberate intruders would have to ignore the hazard information on markers. The future value of LLW as a material can not be accurately assessed, but the NRC believes that its value would be unlikely to warrant illegal actions that in themselves would be hazardous, and would require a

---

<sup>4</sup> Draft Environmental Impact Statement on 10 CFR Part 61 "Licensing Requirements for Land Disposal of Radioactive Waste," September 1981, NUREG-0782, Volume 2, page 4-3.

significant amount of time and effort. If the value of LLW were to become significant, then it is likely that responsible institutions would assess risks and would make rational decisions regarding use or control of the site. Although the NRC is not relying on institutional controls beyond 100 years, the NRC believes that relevant records will be preserved, and remain accessible for hundreds of years after closure. This would reduce the likelihood and level of exposure of inadvertent or deliberate intrusion. If intrusion did not occur until 500 years after closure, the exposure would be limited to a few mrem as calculated in the EIS. The NRC believes that its current treatment of intrusion continues to reflect a rational and acceptable approach. Current regulations provide reasonable assurance of protection against an inadvertent intruder. While not directly protecting against the deliberate intruder, the NRC believes that such an intrusion is unlikely to happen, therefore, the risk is very small.

3. The NRC believes that the petitioner's request for a supplemental EIS, due to increased costs of current disposal plans (including engineered structures), is not valid for several reasons. First, the NRC considered a range of different disposal options and costs, including the use of engineered barriers and structures, in the development of 10 CFR Part 61. Shallow-land burial, as had been practiced at commercial disposal sites, was considered as the base case for analysis. Two improved shallow-land disposal alternatives were also considered. The use of engineered barriers was anticipated and included in cost impact analyses as the upper bound alternative. Second, although the petitioner is correct in stating that LLW disposal costs for new facilities have significantly increased since promulgation of the rule, so have the expected costs for other potential methods of waste disposal, including geologic disposal, referred to by the petitioner. Third, as noted by one of the commenters, much of the increased cost for new LLW disposal

facilities is independent of the disposal technology used. That is, the increased costs for site characterization, licensing, public involvement, and administration for all disposal sites would tend to minimize long-term cost differentials between shallow-land burial with and without engineered structures. The petitioner is erroneously asserting that costs were a prime consideration in the selection of the waste classification system. Although costs were considered in the EIS, the NRC principally looked to identify and implement improvements in the disposal of LLW, such as the development of the waste classification system, to help ensure adequate protection of the public health and safety and the environment. The costs of developing and constructing a facility were not the prime consideration.

In addition, the NRC has also qualitatively considered the effect of imposing a classification system as indicated in the petition. The benefit would be to reduce the potential radiation exposure of a very small number of individuals after the end of the institutional control period. A realistic estimate of the benefit, as shown in the EIS, would be a 100 mrem reduction in dose (from 200 mrem to 100 mrem per year) to one or a few individuals per site, 100 years after closure. To maximize the benefit, the intrusion would need to occur relatively shortly after the end of the institutional control period, since the 100 mrem difference between the existing classification system and that suggested by the petitioner becomes smaller with time. As discussed earlier, as the time period increases beyond 100 years to 500 years, potential exposures reduce to only a few mrem for the existing classification system.

Not only are the perceived benefits exceedingly small, but if a revised classification system were imposed, the NRC believes that it would result in significant negative impacts. First, it would take years to revise the waste classification regulations. During this time, current efforts by the States

and compact organizations to develop LLW facilities could be severely impacted as they would not know what waste would be acceptable in a LLW facility. Second, as provided in the Low-Level Radioactive Waste Policy Amendments Act of 1985, States will continue to be responsible to provide for disposal of waste that is classified A, B, and C under the existing classification system in 10 CFR Part 61. If a new classification system were developed that resulted in some currently acceptable waste being unacceptable for a LLW facility, either Congressional action would be necessary to change the Act to make the Federal Government responsible for the waste or the States would be forced to develop alternative methods to dispose of this new class of waste. And third, additional operational exposures could be expected to occur as specific waste would need to be segregated, handled, treated, stored, and transported while awaiting alternative disposal facilities.

In sum, no new significant information has been provided by the petitioner that would call into question the basis for, or conclusion of, the final EIS. On the other hand, in a qualitative analysis, it is clear that granting the petition would result in significant negative impacts relative to the small potential reduction in intruder exposures. Therefore, a supplemental EIS is not needed.

For reasons cited in this document, the NRC denies the petition.

Dated at Rockville, Maryland, this \_\_\_\_ day of \_\_\_\_\_, 1999.

For the Nuclear Regulatory Commission.

---

L. Joseph Callan,  
Executive Director for Operations.

**15.14 Policy statement.**

[7590-01-P]

**NUCLEAR REGULATORY COMMISSION**

**Handling of Late Allegations; Policy Statement**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Policy statement.

**SUMMARY:** This policy statement presents the criteria the Commission will follow in addressing late allegations received from sources outside the Commission in the context of licensing reviews. It also directs that the Nuclear Regulatory Commission (NRC) staff's procedures for notifying Atomic Safety and Licensing Boards, Atomic Safety and Licensing Appeal Boards, and the Commission of the receipt of allegations be revised to provide for an initial, coarse screening prior to issuance of a Board Notification. The Commission is adopting this policy to ensure that all allegations important to safety are considered while preventing unnecessary delay in the licensing process.

**EFFECTIVE DATE:** (Date of publication in the Federal Register).

**FOR FURTHER INFORMATION CONTACT:** (Name of Contact Person), Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 504-1012.

**SUPPLEMENTARY INFORMATION:**

**Statement of Policy**

This policy statement explains how the Commission expects to treat late allegations received from sources outside the Commission in operating license

reviews and in the board notification process. The focus of this statement is on NRC staff and Commission pre-licensing safety reviews of uncontested issues and Commission pre-licensing immediate effectiveness reviews of contested issues. The treatment of allegations in informal adjudicatory licensing proceedings will continue to be governed by the Rules of Practice in 10 CFR Part 2. The Commission has initiated a rulemaking to codify NRC case law criteria for reopening a closed evidentiary record in a formal licensing proceeding and to specify further the documentary bases for motions to reopen, including those which may be based on allegations.

The most fundamental tenet flowing from the NRC's statutory mandate under the Atomic Energy Act is that a license may be issued only if it can be found that there is reasonable assurance that the activity to be authorized presents no undue risk to the health and safety of the public. There can be no abdication of the responsibility to make this determination and if there is a serious question as to the ability to make this finding, a license may not be issued and the time necessary to resolve the question must and will be taken. Therefore, in the context of late allegations, it is necessary that appropriate criteria be applied to enable the decision maker, be it the NRC's staff or the Commission itself, to expeditiously determine the significance, in terms of safe operation of the facility, of any allegations made.

In connection with its review of a number of recent cases, the NRC has been confronted with the task of addressing large numbers of allegations which were brought to its attention very shortly before, and in some cases on the eve of, the date on which a decision on whether to authorize the issuance of an operating license was to be made. Some of these allegations related to matters in controversy and others related to previously uncontested issues not under consideration by a particular adjudicatory tribunal. Significant commitments of resources often must be diverted at the last minute to address

large numbers of late allegations, many of which have proven to be unsubstantiated or of little, if any, safety significance.

Ideally, all allegations concerning a particular facility will be resolved before any license is authorized. If, however, because of the number of allegations or their tardy submission, all allegations cannot be resolved in a time frame consistent with reasonable and responsible licensing action, it may be necessary to give priority to those allegations which, because of the potential impact on safety, must be resolved before licensing action can be taken.

#### Initial Screening of Allegations

Any concerns bearing on the safety of a facility should be brought promptly to the attention of the applicant or licensee.<sup>1</sup> If, however, this approach is unsatisfactory, any person is free to bring these concerns directly to the NRC. Any person who has an allegation concerning the design, construction, operation, or management of a nuclear power plant has a duty to bring the information to the Commission's attention as promptly as possible. All allegations should be specific and documented to the fullest extent possible. Those submitting allegations in good faith should be aware that appropriate protection against retaliatory action by an applicant or licensee (including its contractors and subcontractors) is afforded by Section 210 of the Energy Reorganization Act of 1974 (42 U.S.C. 5851). All parties and persons are reminded that Federal law imposes penalties upon any person who intentionally makes any false statement or representation to any agency of the United States.

---

<sup>1</sup> The Commission encourages the establishment of programs by utilities for the purpose of identifying and resolving allegations affecting safety in a timely manner as design and construction of a nuclear facility proceeds.

The appropriate NRC staff office will first determine whether, if true, the allegations are material to the licensing decision in that they would require denial of the license sought, the imposition of additional conditions on the license, or further analysis or investigation. Allegations which, even if true, are not material to any licensing decision or which on their face or after initial inquiry are determined to be frivolous or too vague or general in nature to provide sufficient information for the NRC staff to investigate will receive no further consideration.

If an allegation is material to the licensing decision, the NRC staff next determines whether the information presented is new in the sense of raising a matter not previously considered or tending to corroborate previously received but not yet resolved allegations. In making this determination, all information available to the Commission will be considered, including that previously provided by an applicant or licensee and that obtained by the Commission in the course of its review and inspection efforts or from its investigation of prior allegations. In some cases, information already available to the NRC may be sufficient to resolve certain allegations. If an allegation is found to be both material and new, the NRC staff will investigate the allegation further.

#### Further Review

If the NRC staff determines that full consideration of all allegations cannot be accomplished consistent with responsible and timely Commission action, the NRC staff will further screen the allegations to determine their

safety significance and the priority they should be assigned.<sup>2</sup> The following screening criteria will be considered.

1. The likelihood that the allegation is correct, considering available information including the apparent level of knowledge, expertise, and reliability of the individual submitting the allegation in terms of the allegation submitted and the possible existence of more credible contrary information.

2. The need for prompt consideration of the allegation recognizing the public interest in avoiding undue delay. If the NRC staff determines that an allegation raises a significant safety concern regarding, for example, the design, construction, or operation of a facility or about quality assurance or control or management conduct, which brings into question the safe operation of the facility at a given stage of operation, the allegation must be addressed before authorizing that stage. An allegation is safety significant if the allegation would, if true, raise a significant question about the ability of a structure, system, or component to perform its intended safety function or raise a significant question of management competence, integrity, or conduct or about implementation of the quality assurance program sufficient to raise a legitimate doubt as to the ability to operate the plant safely. Allegations which are not safety significant will be resolved in the normal course of business independent of license issuance.

#### Board Notification Procedures

---

<sup>2</sup> As a general matter, the Commission has authorized issuance of operating licenses for low power testing (up to 5% of rated power) and subsequently for full power operation (operation above 5% of rated power). In some cases these steps have been further refined, for example, into fuel load, hot system testing, criticality and zero power testing. Other refinements are possible and may be authorized.

Parties to ongoing adjudicatory proceedings have an obligation to bring allegations to the attention of the presiding board. All parties have an obligation to inform boards promptly of relevant and material information that may affect the decisionmaking process.

The Commission's staff, under its obligations for board notification has in the past submitted allegations to boards without awaiting their resolution or determination of significance relative to the decisionmaking process. This practice is consistent with the Commission-approved board notification policy. However, it has resulted, on occasion, in presenting boards with new information, the significance of which is not readily apparent. Consequently, in the future, board notifications of allegations will not be made until an initial screening of the allegations is made. Only those allegations that are found not to be frivolous, are relevant and material to the decisionmaking process (as determined under existing board notification procedures), and are determined to warrant further scrutiny will be submitted to the presiding tribunal. Board notification should still be made promptly, consistent with the need and time required for screening. The board notification procedures should be revised accordingly.

Dated at Rockville, Maryland, this            day of            , 1999.

For the Nuclear Regulatory Commission.

---

John C. Hoyle,  
Secretary of the Commission.