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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 150 and 170

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OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

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

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

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

*September 3, 1996*  
DATE: The comment period expires ~~(75 days after publication)~~. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Attention: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 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, DC. These same documents may also be viewed and downloaded electronically via the Electronic Bulletin Board established by NRC for this rulemaking as discussed under Electronic Access in the Supplementary Information Section.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-1623, e-mail HHN@nrc.gov or Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6196, e-mail MFH@nrc.gov.

**SUPPLEMENTARY INFORMATION:**

Background

Currently, subject to certain restrictions, any person who holds a specific license from an Agreement State may conduct activities permitted by that license in non-Agreement States and offshore waters using an NRC general

license. The general license is granted under the authority contained in 10 CFR 150.20, "Recognition of Agreement State Licenses." To meet the requirements of § 150.20, licensees must submit an NRC Form 241 at least 3 days before engaging in the activities (subject to some exceptions as noted in § 150.20). If an Agreement State licensee does not qualify for a general license under § 150.20, the licensee must apply for and obtain a specific license to work in areas of NRC jurisdiction.

#### Need for Proposed Regulatory Action

The NRC believes that there are several problems with the current regulations in § 150.20 that necessitate a rulemaking. First, the current regulation does not include provisions to allow Agreement State licensees to qualify for an NRC general license when operating in areas of exclusive Federal jurisdiction within Agreement States. Second, there has been some confusion regarding the NRC regulations applicable to Agreement State licensees operating in areas of NRC jurisdiction pursuant to § 150.20. Third, § 150.20 does not reference the appropriate fee requirements applicable to Agreement State licensees who file an NRC Form 241. Finally, there has been some confusion regarding the filing procedures for an NRC Form 241.

## Proposed Regulatory Action

### Exclusive Federal Jurisdiction.

The current wording of § 150.20 has created confusion for Agreement State licensees operating in areas of exclusive Federal jurisdiction within Agreement States. An area of exclusive Federal jurisdiction is an area over which the Federal Government exercises legal control without interference from the jurisdiction and administration of State law. Areas of exclusive Federal jurisdiction exist in both Agreement and non-Agreement States. Because the Federal Government has sole authority over areas of exclusive Federal jurisdiction in Agreement States, the NRC has jurisdiction over Atomic Energy Act activities conducted in those areas. The notification procedures (use of an NRC Form 241) regarding general licenses for Agreement State licensees seeking to operate in areas of NRC jurisdiction (i.e., non-Agreement States and offshore waters) are in § 150.20.

There is, however, no specific provision in § 150.20 to indicate that the NRC may grant reciprocity to Agreement State licensees to conduct activities in areas of exclusive Federal jurisdiction within an Agreement State. The current regulation only authorizes a general license for activities conducted in non-Agreement States, whether or not in an area of exclusive Federal jurisdiction within that non-Agreement State, and offshore waters. Despite the omission in the regulation, the NRC staff, under current practice, permits an Agreement State licensee to operate in an area of exclusive Federal jurisdiction within the Agreement State if the licensee submits an acceptable NRC Form 241.

The lack of a specific reference to areas of exclusive Federal jurisdiction has caused confusion for licensees, Agreement States, and, occasionally, the NRC staff in interpreting the coverage of the reciprocity provisions in § 150.20. To alleviate these concerns, this rulemaking would amend § 150.20 to provide a specific reference to areas of exclusive Federal jurisdiction.

#### Regulatory Requirements Applicable to § 150.20 Licensees.

The specific references to other NRC regulatory requirements in § 150.20 also constitute a source of confusion. According to § 150.20(b), persons operating under the general license must comply with a variety of specific NRC regulatory requirements. However, § 150.20 does not specifically reference all NRC regulations that are applicable to materials licensees. To alleviate any potential confusion, the new § 150.20 would indicate clearly that licensees operating pursuant to the rule's provisions must comply with all NRC regulations applicable to materials licensees.

This amendment would be consistent with the original intent of the rule. When originally issued in 1962 (27 FR 1351; February 14, 1962), § 150.20 required Agreement State licensees to comply with "the appropriate provisions of 10 CFR Parts 20, 30, 31, 40, and 70" of the Commission's regulations. The rule required compliance with all NRC regulations applicable to NRC materials licensees at that time. In 1965, many of the requirements in 10 CFR Part 30 were relocated to newly created regulatory provisions in 10 CFR Parts 32, 33, 34, 35, and 36 (30 FR 8185; June 26, 1965). A conforming amendment to § 150.20 was not made in response to this change. Since 1965, specific



requirements have been added to § 150.20 that may have created the impression that certain NRC requirements otherwise applicable to materials licensees are not applicable to general licensees under § 150.20. This is not the case. It is NRC's position that Agreement State licensees operating in areas of NRC jurisdiction pursuant to § 150.20 must comply with those regulations applicable to NRC licensees. This proposed amendment would clarify the applicable requirements.

#### Fees Imposed on Agreement State Licensees Operating Under Reciprocity.

The proposed amendment would add appropriate references to § 150.20 regarding the relevant fee requirements in 10 CFR Part 170. The fee schedule in 10 CFR Part 170 was updated to indicate that there will be a charge for licensee revisions to an NRC Form 241 in addition to the initial filing fee. A clarification to an NRC Form 241 does not require a fee. Specific definitions for a revision versus a clarification will be provided in the instructions to the NRC Form 241.

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

## Filing Procedures.

The proposed amendment would also clarify the procedures for filing an NRC Form 241 for reciprocity described in § 150.20(b). The clarifications include identifying what needs to be submitted, specifying the procedure to use when an emergency filing is necessary, making revisions to the initial filing, and for radiography licensees, emphasizing the need for a transportation quality assurance program. These clarifications will not impose any additional requirements on the Agreement State licensee.

## Compatibility of Agreement State Regulations

The provisions in § 150.20 would continue to be a Division 1 matter of compatibility. The Commission is currently developing implementing procedures for a new Adequacy and Compatibility Policy that was approved by the Commission on June 29, 1995. The Commission expects that the approach to these matters in the new procedures will be consistent with the approach discussed here.

## Electronic Access

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

rulemaking are also available, as practical, for downloading and viewing on the bulletin board.

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

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

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules Menu. Although you will be able to download



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

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

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555-0001, telephone (301) 415-5780; e-mail AXD3@nrc.gov.

#### Environmental Impact: Categorical Exclusion

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

#### Paperwork Reduction Act Statement

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

## Public Protection Notification

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

## Regulatory Analysis

This rulemaking would not impose any new requirements or additional costs to licensees because the rulemaking would codify current practice that allows Agreement State licensees to work under an NRC general license. Because the rulemaking would improve the clarity and consistency of the NRC's regulations, it could benefit Agreement State licensees operating in areas of exclusive Federal jurisdiction.

Implementation of this rule should result in a minor reduction in NRC resources (estimated to be one-sixth of a staff year per year) continually being expended to explain our fee schedule and to clarify for licensees and Agreement States the conditions under which an Agreement State licensee can operate within an area of exclusive Federal jurisdiction. Because NRC resources to amend § 150.20 are estimated to be about one-half of a staff year, this is a cost effective one-time use of resources. This constitutes the regulatory analysis for this proposed rule.

## Regulatory Flexibility Certification

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

The rulemaking would not impose any new requirements or additional costs to licensees because the rulemaking would codify current practice that allows Agreement State licensees to work under an NRC general license. Because this proposed rulemaking would improve the clarity and consistency of NRC's regulations, it could benefit Agreement State licensees operating in areas of exclusive Federal jurisdiction.

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 proposed regulation would result in a significant economic burden upon the licensee as compared to the economic burden on a larger licensee.

(b) How the proposed 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 proposed regulations were modified as suggested by the licensee.

(d) How the proposed 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 proposed regulation, as modified, would still adequately protect public health and safety.

#### Backfit Analysis

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

#### List of Subjects

##### 10 CFR Part 150

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

##### 10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974,

as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 150 and 170.

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

1. The authority citation for Part 150 continues to read as follows:

**AUTHORITY:** Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

2. Section 150.20 is amended by revising paragraphs (a), the introductory text of (b), (b)(1), and the introductory text of (c), redesignating paragraphs (b)(2) through (b)(4) as paragraphs (b)(4) through (b)(6), revising redesignated paragraphs (b)(4) and (b)(5), and adding new paragraphs (b)(2) and (b)(3) to read as follows:



§ 150.20 Recognition of Agreement State licenses.

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

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

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

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

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

(1) Except as specified in paragraph (c) of this section, shall, at least 3 days before engaging in each such activity for the first time in a calendar year, file an NRC Form 241, "Report of Proposed Activities in Non-Agreement States," 4 copies of its Agreement State specific license, and the appropriate fee as prescribed in § 170.31 of this chapter with the Regional Administrator of the U.S. Nuclear Regulatory Commission Regional Office listed on the NRC Form 241 and in Appendix D of Part 20 of this chapter for the Region in which the Agreement State that issued the license is located. If an acceptable method for filing 3 days before engaging in activities under reciprocity is not available to the licensee, because of an emergency or other reasons, the Regional Administrator may waive the 3-day time requirement provided the Agreement State licensee informs the Region by telephone, facsimile, an NRC Form 241, or letter of initial activities or revisions to the information submitted on the initial NRC Form 241, receives oral or written authorization for the activity from the Region, and files an NRC Form 241, 4 copies of the Agreement State license, and the fee payment within 3 days after the notification.

(2) Licensees that seek changes in work locations, radioactive material, or work activities different from the information contained on the initial NRC Form 241 must file an amended NRC Form 241 or letter and the appropriate fee as prescribed in § 170.31 of this chapter with the Regional Administrator.

(3) Licensees engaging in radiography activities must comply with § 71.12 of this chapter, including quality assurance program requirements for transportation.

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

(i) Specifically licensed by the Commission to receive such material, or

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

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

**AUTHORITY:** 31 U.S.C. 9701, sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1247, as amended (42 U.S.C. 5841); sec 205, Pub L. 101-576, 104 Stat 2842, (31 U.S.C. 902).

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

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

\* \* \* \* \*

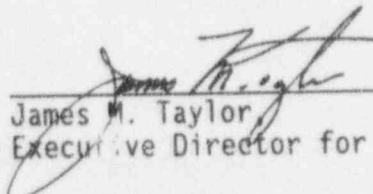
16. Reciprocity:

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

\* \* \* \* \*

Dated at Rockville, Maryland, this 7<sup>th</sup> day of June, 1996.

For the Nuclear Regulatory Commission.

  
James M. Taylor  
Executive Director for Operations.