

March 7, 1996

AF-50-2 004
PDR

MEMORANDUM TO: Carl J. Paperiello, Director, NMSS
William J. Olmstead, Associate General
Counsel for Licensing and Regulation, OGC
David L. Meyer, Chief, ADM/RRDB

FROM: David L. Morrison, Director, RES /s/ Joseph A. Murphy for

SUBJECT: OFFICE REVIEW AND CONCURRENCE ON A FINAL RULE: 10 CFR PARTS
30, 40, 70, AND 72, "MINOR CORRECTIONS"

Your concurrence is requested on the attached Federal Register notice for the subject final rule.

1. Title: Minor Corrections - 10 CFR Parts 30, 40, 70, and 72
2. RES Task Leader: Jayne M. McCausland, 415-6219
3. Cognizant Individuals: NMSS - T. C. Johnson OGC - R. L. Fonner
ADM - M. Lesar S. H. Lewis
4. Requested Action: Review and provide office concurrence on the attached final rulemaking package.
5. Requested Completion Date: March 28, 1996
6. Background: As a result of several recent changes to the NRC's regulations affecting decommissioning, several erroneous cross references were noted in 10 CFR Parts 30, 40, 70, and 72. This final rule corrects the cross reference errors found in §§ 30.36, 40.42, 70.38, and 72.54, which are all titled "Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas."
7. No additional resources are anticipated to implement the rule. A copy of this concurrence package has been forwarded to the Office of the Controller for coordination of resource issues per the EDO memorandum of June 14, 1991.

Attachments: 1. Federal Register Notice
2. Congressional Letters
3. Daily Staff Notes Item
4. Approval for Publication

cc w/att: R. M. Scroggins, OC R. L. Fonner, OGC
J. Norton, IG S. H. Lewis, OGC
T. C. Johnson, NMSS M. Lesar, ADM

DISTRIBUTION: [O:\MCCAUSLA\30 40 70.OFF]
JEGlenn/RPHEB rf File Center PDR Yes/No FACostanzi
*see previous concurrences

RPHEB:DRA	RPHEB:DRA	RPHEB:DRA	DRA	RES
JMMcCausland*	CTrottier*	JGlenn*	BMMorris	DMorrison
02/13/96	02/15/96	02/15/96	3/16/96	3/17/96

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NUCLEAR REGULATORY COMMISSION

10 CFR PARTS: 30, 40, 70, 72

RIN 3150-

Minor Corrections

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule: Corrections.

SUMMARY: Several erroneous cross references have been noted in 10 CFR Parts 30, 40, 70, and 72. This final rule corrects the cross reference errors found in §§ 30.36, 40.42, 70.38, and 72.54, which are all titled "Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas."

EFFECTIVE DATE: Upon publication.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6219, email JMM2@nrc.gov.

SUPPLEMENTARY INFORMATION:

As a result of several recent changes to the NRC's regulations affecting decommissioning, the following cross reference errors were noted in 10 CFR parts 30, 40, 70, and 72:

(1) In 10 CFR 30.36(d) and (g)(3), the cross references to paragraph "(f)(1)" are corrected to read "(g)(1)."

(2) In 10 CFR 30.36(g)(3)(vi) and (h)(1) and (2), the cross references to paragraph "(h)" are corrected to read "(i)."

(3) In 10 CFR 40.42(d) and (g)(3), the cross references to paragraph "(f)(1)" are corrected to read "(g)(1)."

(4) In 10 CFR 40.42(g)(4)(vi) and (h)(1) and (2), the cross references to paragraph "(h)" are corrected to read "(i)."

(5) In 10 CFR 70.38(d) and (g)(3), the cross references to paragraph "(f)(1)" are corrected to read "(g)(1)."

(6) In 10 CFR 70.38(g)(4)(vii) and (h)(1) and (2), the cross references to "(h)" are corrected to read "(i)."

(7) In 10 CFR 72.54(j)(1) and (2), the cross references to "(j)" are corrected to read "(k)."

Because the changes are minor corrective amendments, the NRC has determined that good cause exists to dispense with the notice and comment provisions of the Administrative Procedure Act (APA) pursuant to 5 U.S.C. 553(b)(B). For the same reasons, the NRC has determined that good cause exists to waive the 30-day deferred effective date provisions of the APA (5 U.S.C. 553(d)).

Environmental Impact: Categorical Exclusion

The NRC has determined that this 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 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 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150-0009, 3150-0017, 3150-0020, and 3150-0132.

Regulatory Analysis

A regulatory analysis has not been prepared for this rule because it is administrative in that it corrects erroneous cross references in existing regulations and does not result in any substantive change.

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 rulemaking because these amendments do not involve any provision that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

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.

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 Nuclear Regulatory Commission is adopting the following amendments to 10 CFR Parts 30, 40, 70, and 72.

PART 30 - RULES OF GENERAL APPLICABILITY TO DOMESTIC
LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 continues to read as follows:

AUTHORITY: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2292); secs. 201 as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-485, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

§ 30.36 [Amended]

2. In § 30.36(d), change the cross reference "paragraph (f)(1)" to read "paragraph (g)(1)."

3. In § 30.36(g)(3), change the cross reference "paragraph (f)(1)" to read "paragraph (g)(1)."

4. In § 30.36(g)(4)(vi), change the cross reference "paragraph (h)" to read "paragraph (i)."

5. In § 30.36 (h)(1), change the cross reference "paragraph (h)" to read "paragraph (i)."

6. In § 30.36(h)(2), change the cross reference "paragraph (h)" to read "paragraph (i)."

PART 40 - DOMESTIC LICENSING OF SOURCE MATERIAL

7. The authority citation for Part 40 continues to read as follows:

AUTHORITY: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102-486, sec. 2902, 106 Stat. 3123 (41 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

§ 40.42 [Amended]

8. In § 40.42(d), change the cross reference "paragraph (f)(1)" to read "paragrapn (g)(1)."

9. In § 40.42(g)(3), change the cross reference "paragraph (f)(1)" to read "paragraph (g)(1)."

10. In § 40.42(g)(4)(vi), change the cross reference "paragraph (h)" to read "paragraph (i)."

11. In § 40.42(h)(1), change the cross reference "paragraph (h)" to read "paragraph (i)."

12. In § 40.42(h)(2), change the cross reference "paragraph (h)" to read "paragraph (i)."

PART 70 - DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

13. The authority citation for Part 70 continues to read as follows:

AUTHORITY: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f), secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95-601, sec. 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 137, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

§ 70.38 [Amended]

14. In § 70.38(d), change the cross reference "paragraph (f)(1)" to read "paragraph (g)(1)."

15. In § 70.38(g)(3), change the cross reference "paragraph (f)(1)" to read "paragraph (g)(1)."

16. In § 70.38(g)(4)(vii), change the cross reference "paragraph (h)" to read "paragraph (i)."

17. In § 70.38(h)(1), change the cross reference "paragraph (h)" to read "paragraph (i)."

18. In § 70.38(h)(2), change the cross reference "paragraph (h)" to read "paragraph (i)."

PART 72 - LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF
SPENT FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

19. The authority citation for Part 72 continues to read as follows:

AUTHORITY: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 295 as amended by Pub. L. 102-486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 935 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203; 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 96 Stat. 2230 (42 U.S.C. 10153) and 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

§ 72.54 [Amended]

20. In § 72.54(j)(1), change the cross reference "paragraph (j)" to read "paragraph (k)."

21. In § 72.54(j)(2), change the cross reference "paragraph (j)" to read "paragraph (k)."

Dated at Rockville, Maryland, this _____ day of _____, 1996.

For the Nuclear Regulatory Commission.

James M. Taylor,
Executive Director for Operations.

ATTACHMENT 2

CONGRESSIONAL LETTERS



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

The Honorable Lauch Faircloth, Chairman
Subcommittee on Clean Air, Wetlands,
Private Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In the near future, the Nuclear Regulatory Commission (NRC) intends to publish in the Federal Register the enclosed final amendments to the Commission's rules in 10 CFR Parts 30, 40, 70, and 72. The amendments correct erroneous cross references that were noted as a result of several recent changes to the NRC's regulations affecting decommissioning.

These changes will have no adverse impact on health and safety of workers or the public and are not expected to impose any significant burden on licensees.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Senator Bob Graham



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

The Honorable Dan Schaefer, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

In the near future, the Nuclear Regulatory Commission (NRC) intends to publish in the Federal Register the enclosed final amendments to the Commission's rules in 10 CFR Parts 30, 40, 70, and 72. The amendments correct erroneous cross references that were noted as a result of several recent changes to the NRC's regulations affecting decommissioning.

These changes will have no adverse impact on health and safety of workers or the public and are not expected to impose any significant burden on licensees.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Rep. Frank Pallone

DAILY STAFF NOTES

OFFICE OF NUCLEAR REGULATORY RESEARCH

Final Rule Signed by EDO

On _____, 1996, the Executive Director for Operations approved a final rule, "Minor Corrections," that amends 10 CFR Parts 30, 40, 70, and 72. This rule corrects cross reference errors found in §§ 30.36, 40.42, 70.38, and 72.54, which are all titled "Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas."

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 _____, 1996, to the Office of the Federal Register for publication, unless otherwise directed by the Commission.

Approved for Publication

The Commission delegated to the EDO (10 CFR 1.31(a)(3)) the authority to develop and promulgate rules as defined in the APA (5 U.S.C. 551 (4)) subject to the limitations in NRC Manual Chapter 0103, Organization and Functions, Office of the Executive Director for Operations, paragraphs 0213, 038, 039, and 0310.

The enclosed final rule, "Minor Corrections," would correct erroneous cross references in 10 CFR Parts 30, 40, 70, and 72 that resulted from several recent changes to the NRC's regulations affecting decommissioning.

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

James M. Taylor
Executive Director for Operations