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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 93-137-4]

Importation of Ratites and Hatching Eggs of Ratites

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: We are correcting two paragraph references that appeared in the regulatory text of a final rule published in the **Federal Register** on September 15, 1994 (59 FR 47232-47235, Docket No. 93-137-3), and effective October 17, 1994. As part of a separate final rule published in the **Federal Register** on September 14, 1994 (59 FR 47063-47071, Docket No. 92-162-2), and effective October 14, 1994, we redesignated several paragraphs in our regulations regarding the importation of ratites and hatching eggs of ratites. Two references to one of those paragraphs were included in the regulatory text of the September 15, 1994, final rule; we are correcting those references to reflect the paragraph's new designation.

EFFECTIVE DATE: October 17, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Keith Hand, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 768, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-5907

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.101 [Corrected]

2. In the issue of September 15, 1994, in FR Doc. 94-22849, page 47235, first column, the sixteenth line of the revised text of § 92.101(b)(3)(i)(B), the reference "§ 92.103(a)(2)(iii)" is removed and the reference "§ 92.103(a)(2)(iv)" is added in its place.

3. In the same column, the seventh line of the revised text of the second sentence of § 92.101(b)(3)(i)(I), the reference "§ 92.103(a)(2)(iii)" is removed and the reference "§ 92.103(a)(2)(iv)" is added in its place.

Done in Washington, DC, this 30th day of November 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-30493 Filed 12-9-94; 8:45 am]

BILLING CODE 3410-34-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 1

RIN 3150-AE86

Statement of Organization and General Information; Agency Consolidation and Minor Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to reflect the completion of the NRC Headquarters consolidation effort, the merger of the Office of Administration and the Office of Consolidation, the reconstitution of the Office of the Licensing Support System Administrator as an organizational unit of the Office of Information Resources Management, and the transfer of the responsibility for administering the Licensing Support System from the Commission staff to the Office of the Executive Director for Operations (EDO). These amendments also reflect the change in the name of the Office of Small Business and Civil Rights, the deletion of the Uranium Recovery Field Office, and the change of the Region V office to a Region IV field office. This final rule corrects several minor typographical errors. The amendments are necessary to inform the public of these administrative changes to the NRC's regulations.

EFFECTIVE DATE: December 12, 1994.

FOR FURTHER INFORMATION CONTACT: Sarah N. Wigginton, Acting Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415-7164.

SUPPLEMENTARY INFORMATION:

Background

When the NRC began to consolidate its Headquarters offices, the NRC published a **Federal Register** notice on December 29, 1987 (52 FR 49100), that announced the relocation of several of its Headquarters offices to One White Flint North, 11555 Rockville Pike, Rockville, Maryland. On January 1, 1988 (53 FR 1744), the NRC amended its regulations to codify the relocation of those offices. The NRC has completed its consolidation effort by relocating its remaining Headquarters offices to the agency's new office building located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. This final rule is necessary to codify these consolidation changes. This final rule also reflects the merger of the NRC's Office of Administration and the Office of Consolidation and the reconstitution of the Office of the Licensing Support System Administrator (LSSA) as an organizational unit within the Office of Information Resources Management (IRM). IRM reports to the EDO.

This final rule also notifies the public of the name change of the Office of Small Business and Civil Rights, the deletion of the Uranium Recovery Field Office, and the change of the Region V office to a Region IV field office.

Because these amendments deal with agency practice and procedures, the notice and comment provisions of the

Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendments are effective upon publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in the effective date because these amendments are of a minor and administrative nature, dealing with the agency's reorganization.

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)(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 contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 10 CFR Part 1

Organization and functions (Government agencies).

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 1.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

Authority: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

2. Section 1.5 is revised to read as follows:

§ 1.5 Location of principal offices and Regional Offices.

(a) The principal NRC offices are located in the Washington, DC, area. Facilities for the service of process and papers are maintained within the District of Columbia at 2120 L Street NW., and in the State of Maryland at 11555 Rockville Pike, Rockville, Maryland 20852–2738. The agency's official mailing address is U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The locations of NRC offices in the Washington, DC area are as follows:

(1) Gelman Building, 2120 L Street NW., Washington, DC 20037.

(2) One White Flint North Building, 11555 Rockville Pike, Rockville, Maryland 20852–2738.

(3) Two White Flint North Building, 11545 Rockville Pike, Rockville, Maryland 20852–2738.

(b) The addresses of the NRC Regional Offices are as follows:

(1) Region I, USNRC, 475 Allendale Road, King of Prussia, PA 19406–1415.

(2) Region II, USNRC, 101 Marietta Street, NW., Suite 2900, Atlanta, GA 30323–0199.

(3) Region III, USNRC, 801 Warrenville Road, Lisle, IL 60532–4351.

(4) Region IV, USNRC, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011–8064.

(5) USNRC Region IV Walnut Creek Field Office, 1450 Maria Lane, Suite 300, Walnut Creek, CA 94596–5368.

3. In § 1.11, paragraph (c) is revised to read as follows:

§ 1.11 The Commission.

* * * * *

(c) The following staff units and officials report directly to the Commission: Atomic Safety and Licensing Board Panel, Office of the General Counsel, Office of the Secretary, Office of Commission Appellate Adjudication, Office of International Programs, and other committees and boards that are authorized or established specifically by the Act. The Advisory Committee on Reactor Safeguards and the Advisory Committee on Nuclear Waste also report directly to the Commission.

* * * * *

§ 1.26 [Removed]

4. Section 1.26 is removed.

5. In § 1.31, paragraph (b) is revised and a new paragraph (d) is added to read as follows:

§ 1.31 Office of the Executive Director for Operations.

* * * * *

(b) The EDO supervises and coordinates policy development and operational activities in the following line offices: The Office of Nuclear Reactor Regulation, the Office of Nuclear Material Safety and Safeguards, the Office of Nuclear Regulatory Research, and the NRC Regional Offices; and the following staff offices: The Office of Enforcement, the Office of Administration, the Office of Information Resources Management, the Office of the Controller, the Office of Investigations, the Office for Analysis and Evaluation of Operational Data, the Office of Small Business and Civil Rights, the Office of Personnel, the Office of State Programs, and other organizational units as shall be assigned by the Commission. The EDO is also responsible for implementation of the Commission's policy directives pertaining to these offices.

* * * * *

(d) The EDO reviews compliance of the Licensing Support System (LSS) participants with the applicable LSS rules, including DOE compliance with the document submission requirements in 10 CFR 2.1003.

6. In § 1.34, paragraph (c) is added to read as follows:

§ 1.34 Office of Information Resources Management.

* * * * *

(c) Provides oversight and quality assurance for the design and operation of the Licensing Support System (LSS) services and for the completeness and integrity of the LSS database, ensures that the LSS meets the requirements of 10 CFR Part 2, Subpart J, concerning the use of the LSS in the Commission's high-level waste licensing proceedings, and provides technical oversight of DOE in the design, development, and operation of the LSS.

7. In § 1.37, the heading and the introductory paragraph are revised to read as follows:

§ 1.37 Office of Small Business and Civil Rights.

The Office of Small Business and Civil Rights—

* * * * *

§ 1.40 [Removed]

8. Section 1.40 is removed.

Dated at Rockville, Maryland, this 30th day of November, 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 94–30337 Filed 12–9–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 1004

RIN 1901–AA62

Freedom of Information

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) amends its regulations

concerning its policies on disclosure of information. The purpose of this rulemaking is to state the agency's policy on contractor records requested under the Freedom of Information Act (FOIA).

EFFECTIVE DATE: January 11, 1995.

FOR FURTHER INFORMATION CONTACT: Abel Lopez, Office of General Counsel, GC–80, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8618.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986, Pub. L. No. 99–570, 100 Stat. 3207–49, requires that each agency promulgate regulations to establish procedures and guidelines to process requests received under FOIA. This final rule amends DOE's FOIA regulation and supersedes DOE Order 1700.1 to state the DOE policy on access to contractor records.

Under existing law, information becomes part of the agency's records only when the Government either created or obtained the information and has control over the information at the time of a FOIA request. See, *e.g.*, Department of Justice v. Tax Analysts, 492 U.S. 136, 142–145 (1989). The Supreme Court has reasoned that FOIA imposes no obligations on agencies to create or retain records and that use of federal funds and the Government's potential access to records do not necessarily transform records into "agency records" subject to FOIA, unless the agency in fact obtains the records. *Forsham* v. *Harris*, 445 U.S. 169, 180–186 (1980), *Kissinger* v. *Reporters Committee for Freedom of the Press*, 445 U.S. 136, 151–153 (1980).

Nonetheless, as reflected in DOE Order 1700.1, DOE's past policy, however, has been to disclose information owned by DOE, whether or not the Government has actual possession of the information at the time of the request. Under DOE Order 1700.1, moreover, records not owned by DOE pursuant to a contract are disclosed under FOIA only if the DOE has possession of them.

The court in *Committee to Bridge the Gap* v. *Department of Energy*, No. CV 90–3568–ER (C.D. Cal. Oct 15, 1991), held that the DOE's policy on contractor records constitutes a substantive rule under the Administrative Procedure Act, and, therefore, DOE's treatment of contractor records should be promulgated through formal notice and comment rulemaking. Thus, this final rule supersedes DOE Order 1700.1 and establishes DOE's policy to provide for more public access to information than is mandated by existing law.

On October 23, 1991, DOE published in the **Federal Register** (56 FR 55036), a proposal to amend the regulations that included a statement of the DOE policy on contractor records. The proposed policy provided that, with certain exceptions, contractor records that were the property of the Government were subject to disclosure under FOIA, whether or not DOE had possession of the documents at the time of a request. Forty-three comments were received by the agency on the proposed policy. The comments criticizing the proposed policy on contractor records broke into the two groups. One group of commentors took exception to the proposed DOE contractor records policy because it extended the scope of documents available under FOIA beyond that which is required by existing case law to include records not in the possession of DOE. These commentors stated that, regardless of ownership, DOE should apply FOIA only to records in the possession of DOE in order to protect the confidentiality of certain information. The second group of commentors opined that since government funds are expended to create contractor records, all such records should be made available to the public under FOIA.

DOE has reviewed all the comments and has determined to adopt the contractor records policy proposed in October 1991 as modified below as a final rule. Although DOE appreciates the views of both groups of commentors regarding access to contractor records, the contractor records policy adopted by DOE promotes openness in government and continues to provide the public access to DOE contractor records. Some members of the public commented that the proposed rule would subject the public's right of access to contractor records to the vicissitudes of DOE's policies regarding contractual provisions on ownership of records. However, DOE's management and operating contracts provide that most records acquired or generated by the contractor in its performance of the contract are the property of the government. Additionally, the government has a general right to inspect, copy, and audit records acquired or generated by the contractor in connection with contract performance, including those records not owned by the government. The new rule makes clear that even were a requested record not owned under the contract by the government, DOE can exercise its contractual rights to acquire possession of the record if necessary to maximize public disclosure of records concerning health, safety, and the environment.

The new policy also recognizes the necessity to maintain the confidentiality of certain privileged and commercially sensitive information to protect legitimate contractor interests and the integrity of the Government's operations. The contractor records policy adopted today is not intended to affect any records management responsibilities of a DOE contractor under the Records Disposal Act, 44 U.S.C. § 3301.

DOE expects to republish in the **Federal Register** the remainder of the revisions proposed as a Final Rule in the near future.

Procedural Information

Executive Order 12866

It has been determined that this action is not a "significant regulatory action" under the Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that executive order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Executive Order 12612

Executive Order 12612 requires that regulations or rules be reviewed for direct effects on States, on the relationship between the national government and the States, or in the distribution of power among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating or implementing a regulation or rule.

Today's regulatory action does not affect any traditional State function. There are therefore no substantial effects requiring evaluation or assessment under Executive Order 12612.

Regulatory Flexibility Analysis

This regulation was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which requires preparation of a regulatory flexibility analysis for any regulations that will have a significant economic impact on a substantial number of small entities. DOE finds that sections 603 and 604 of that Act do not apply to this rule because it will not have a significant economic impact on a substantial number of small entities. Thus the preparation of a regulatory flexibility analysis is not warranted.

National Environmental Policy Act

There is no impact on the human environment under the regulatory amendments being issued today. Accordingly, DOE has determined that this is not a major Federal action on which significant impact upon the quality of the human environment and, therefore, preparation of an environmental assessment or an environmental impact statement is not required and categorically excluded from preparation under the National Environmental Policy Act pursuant to Appendix A6 of 10 CFR Part 1021.

Paperwork Reduction Act

This rule will not require a collection of information, and, accordingly, clearance is not required by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reductions. Agencies are also instructed to make every effort to ensure that the regulation specifies clearly a preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings; and defines key terms. The DOE certifies that today's final rule meets the requirements of sections 2(a) and (b)(2) of Executive Order 12778.

List of Subjects in 10 CFR Part 1004

Freedom of Information.

Issued in Washington, DC on December 7, 1994.

Robert R. Nordhaus,

General Counsel.

For the reasons set out in the preamble, chapter X of title 10, part 1004 of the Code of Federal Regulations is amended as set forth below.

PART 1004—FREEDOM OF INFORMATION

1. The authority citation for Part 1004 continues to read as follows:

Authority: 5 U.S.C. 552.

2. Section 1004.3 is amended by revising the section heading, reserving paragraph (d), and adding paragraph (e) as follows:

§ 1004.3 Public reading facilities and policy on contractor records.

* * * * *

(d) [Reserved]

(e) *Contractor Records.*

(1) When a contract with DOE provides that any records acquired or generated by the contractor in its performance of the contract shall be the property of the Government, DOE will make available to the public such records that are in the possession of the Government or the contractor, unless the records are exempt from public disclosure under 5 U.S.C. 552(b)(2).

(2) Notwithstanding paragraph (e)(1) of this section, records owned by the Government under contract that contain information or technical data having commercial value as defined in § 1004.3(e)(4) or information for which the contractor claims a privilege recognized under federal or state law shall be made available only when they are in the possession of the Government and not otherwise exempt under 5 U.S.C. 552(b).

(3) The policies stated in this paragraph:

(i) Do not affect or alter contractors' obligations to provide to DOE upon request any records that DOE owns under contract, or DOE's rights under contract to obtain any contractor records and to determine their disposition, including public dissemination; and

(ii) Will be applied by DOE to maximize public disclosure of records that pertain to concerns about the environment, public health or safety, or employee grievances.

(4) For purposes of § 1004.3(e)(2), "technical data and information having commercial value" means technical data and related commercial or financial information which is generated or acquired by a contractor and possessed by that contractor, and whose disclosure the contractor certifies to DOE would cause competitive harm to the commercial value or use of the information or data.

[FR Doc. 94–30497 Filed 12–9–94; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–AGL–32]

Establishment of Class E Airspace; Wilmington, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Wilmington, Airborne Airpark, OH. Presently, this area is designated as Class D airspace when the associated control tower is in operation. However, controlled airspace to the surface is needed when the control tower located at this area is closed. The intended effect of this action is to provide adequate Class E airspace for instrument flight rule (IFR) operations when the control tower is closed.

DATES: Effective date—0901 UTC, March 30, 1995.

Comment date: Comments must be received on or before Jan. 17, 1995.

ADDRESSES: Send comments on the rule in triplicate to:

Manager, Air Traffic Division, System Management Branch, AGL–530, Docket No. 94–AGL–32, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 E. Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Nancy Cibic, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7573.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. If the FAA receives no adverse comments in response to this action, this rule will become effective on the date specified in the "DATES" section. After the review, if the FAA finds that further changes are