

List of Subjects in 7 CFR Part 1710

Electric power, Loan programs, Reporting and recordkeeping requirements, Rural areas.

Accordingly, 7 CFR part 1710 is amended as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS, SUBPART C—LOAN POLICIES AND BASIC POLICIES

1. The authority citation for part 1710 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, and 6941 *et seq.*

2. Amend § 1710.106 by removing paragraph (a)(3), redesignating paragraphs (a)(4) through (a)(6) as (a)(3) through (a)(5), and revising paragraphs (a)(1)(i) and (a)(2)(i) to read as follows:

§ 1710.106 Uses of loan funds.

(a) * * * * *

(1) *Distribution facilities.* (i) The construction of new distribution facilities or systems, the cost of system improvements and removals less salvage value, the cost of ordinary replacements and removals less salvage value, needed to meet load growth requirements, improve the quality of service, or replace existing facilities.

* * * * *

(2) *Transmission and generation facilities.* (i) The construction of new transmission and generation facilities or systems, the cost of system improvements and removals, less salvage value, the cost of ordinary replacements and removals less salvage value, needed to meet load growth, improve the quality of service, or replace existing facilities.

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3. Amend § 1710.250(f) by adding the following sentence to the end of the paragraph to read:

§ 1710.250 General.

* * * * *

(f) * * * Provision for funding of "minor projects" under an RUS loan guarantee is permitted on the same basis as that discussed for insured loan funds in 7 CFR part 1721, Post-Loan Policies and Procedures for Insured Electric Loans.

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Dated: June 14, 1999.

Jill Long Thompson,

Under Secretary, Rural Development.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150-AF80

Miscellaneous Changes to Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to correct several inconsistencies and to clarify certain sections of its regulations pertaining to the storage of spent fuel and high-level radioactive waste. The amendments differentiate the requirements for the storage of spent fuel under wet and dry conditions, clarify requirements for the content and submission of various reports, and specify that quality assurance (QA) records must be maintained as permanent records when identified with activities and items important to safety. These amendments are necessary to facilitate NRC inspections to verify compliance with reporting requirements to ensure the protection of public health and safety and the environment.

EFFECTIVE DATE: August 23, 1999.

FOR FURTHER INFORMATION CONTACT: M. L. Au, telephone (301) 415-6181, e-mail mla@nrc.gov, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

Background

The Commission's licensing requirements for the independent storage of spent nuclear fuel and high-level radioactive waste are contained in 10 CFR part 72. NRC experience in applying Part 72 has indicated that certain additions and clarifications to the regulations are necessary. The NRC published a proposed rule in the **Federal Register** on June 9, 1998 (63 FR 31364).

When subpart L of part 72 was issued in 1990, the purpose and scope of these regulations (i.e., to approve the design of spent fuel storage casks and issue a Certificate of Compliance (CoC)) was not clearly indicated in §§ 72.1 and 72.2. Additionally, § 72.2 referred to a Federal Interim Storage Program; however, the statutory authorization for this program has expired.

The current regulations contain information in multiple locations on

where to send part 72 reports and applications to the NRC. These requirements were inconsistent and did not ensure that received information was properly docketed.

The current regulations in § 72.44 on reporting annual summaries of radioactive effluents released from dry storage casks impose an unnecessary regulatory burden on part 72 licensees by requiring submittal of these reports on a schedule that is different from that required by 10 CFR part 50. Most part 72 licensees are also part 50 licensees. Consequently, this regulation imposed an unnecessary regulatory burden on part 72 licensees.

The current regulations in § 72.75 on reporting requirements for specific events and conditions are inconsistent with the reporting requirements for similar reactor-type events contained in § 50.73.

The current regulations in §§ 72.122 and 72.124 on instrumentation and neutron poison efficacy requirements are unduly burdensome when applied to dry storage cask technology. The Commission has received nine requests for exemption from these regulations over the last three years.

The current regulations in subpart G (quality assurance (QA) requirements) regarding retention of part 72 QA records differ from the retention requirements imposed on part 50 license holders. However, § 72.140(d) currently allows a part 72 license holder to take credit for its part 50 QA program in meeting the requirements of subpart G with the result that differing retention requirements are imposed on part 72 licensees.

Discussion

This final rule makes eight clarifying changes to Part 72. These changes differentiate the requirements for the storage of spent fuel under wet and dry conditions and ensure that necessary information is included in reports and that QA records are maintained permanently when identified with activities and items important to safety. These reports and records are needed to facilitate NRC inspections to verify compliance with reporting requirements to ensure protection of public health and safety and the environment.

The following are a group of eight miscellaneous items of changes to the regulations:

1. Modify §§ 72.1 and 72.2 to include spent fuel storage cask and remove superseded information.

The purpose (§ 72.1) and scope (§ 72.2) were not modified when the Commission amended part 72 on July 18, 1990 (55 FR 29181). Part 72 was

amended to include a process for providing a general license to a reactor licensee to store spent fuel in an independent spent fuel storage installation (ISFSI) at power reactor sites (subpart K) and a process for the approval of spent fuel storage casks (subpart L). Although the language in these sections may be read to include the general license provisions of subpart K, the approval process for spent fuel storage casks in subpart L is not referenced. This rulemaking makes the purpose and scope sections complete by specifically referencing the subpart L cask approval process. Additionally, this rule removes information in the purpose and scope sections, regarding the Federal interim storage program, because the statutory authorization for the interim storage program has expired (61 FR 35935; July 9, 1996).

2. Change the requirement for making initial and written reports in §§ 72.4 and 72.216.

The change to § 72.4 provides that, except where otherwise specified, all communications and reports are to be addressed to NRC's Document Control Desk (DCD) rather than to the Director, Office of Nuclear Material Safety and Safeguards (NMSS). Three current regulations govern the submission of written reports under part 72 (§§ 72.75, 72.216(b), and 50.72(b)(2)(vii)(B)), which is referenced in § 72.216(a). Under § 72.75(d)(2), a report is sent to the DCD. However §§ 50.72(b)(2)(vii)(B) and 72.216(b) indicate that the report be sent, as instructed in § 72.4, to the Director, NMSS. To achieve consistency, § 72.4 is revised to instruct that reports shall be sent to the DCD. Licensing correspondence forwarded to the NRC's DCD ensures proper docketing and distribution. Also, § 72.216(c) is revised to correct an error in the paragraph designation. The current regulation § 72.75(a)(2) and (3) is revised to read § 72.75(b)(2) and (3).

3. Change the requirement for submittal of the dry cask storage effluent report in § 72.44.

Currently, § 72.44(d)(3) requires that a dry cask storage effluent report be submitted to the appropriate NRC regional office within the first 60 days of each year. Section 50.36a(a)(2) requires that a similar report be submitted to the Commission once each year specifying liquid and gaseous effluents from reactor operations.

The revision permits reactor licensees, who also possess licenses for ISFSIs, to submit their dry cask storage effluent report to the NRC once each year, at the same time as the effluent report from their reactor operations. The dry cask storage effluent report would

be submitted within 60 days after the end of the 12-month monitoring period. However, after the effective date of this final rule, the licensee may submit the dry cask report covering a shorter period of time to synchronize the reporting schedule with the annual reactor effluent report.

4. Clarify the reporting requirements for specific events and conditions in § 72.75.

Section 72.75 contains reporting requirements for specific events and conditions, including the requirement in § 72.75(d)(2) for a follow-up written report for certain types of emergency and non-emergency notifications. This rule clarifies the specific information required to meet the intent of the existing reporting requirement. A comparable reporting requirement already exists for similar reactor type events in § 50.73(b). This rule will provide greater consistency between parts 50 and 72, on event notification requirements. Since the reporting requirement already exists, a minimal increase in the licensee's reporting burden will occur by clarifying the format and content.

5. Clarify the requirement for capability for continuous monitoring of confinement storage systems in § 72.122(h)(4).

Currently, § 72.122(h)(4) requires the capability for continuous monitoring of storage confinement systems. The meaning of "continuous" is open to interpretation and does not differentiate between monitoring requirements for wet and dry storage of spent fuel. Wet storage requires active heat removal systems which involve a monitoring process that is "continuous" in the sense of being uninterrupted. Because of the passive nature of dry storage, active heat removal systems are not needed and monitoring can be less frequent. This rule clarifies that the frequency of monitoring can be different for wet and dry storage systems.

6. Clarify the requirement specifying instrument and control systems for monitoring dry spent fuel storage in § 72.122(i).

Section 72.122(i) requires that instrumentation and control systems be provided to monitor systems important to safety, but does not distinguish between wet and dry spent fuel storage systems. For wet storage, systems are required to monitor and control heat removal. For dry storage, passive heat removal is used and a control system is not required. Instrumentation systems for dry spent fuel storage casks must be provided in accordance with cask design requirements to monitor conditions that are important to safety

over anticipated ranges for normal conditions and off-normal conditions. This rule clarifies that control systems are not needed for dry spent fuel storage systems.

7. Clarify the requirement for dry spent fuel storage casks on methods of criticality control in § 72.124(b).

Section 72.124(b) requires specific methods for criticality control, including the requirement that where solid neutron absorbing materials are used, the design must provide for positive means to verify their continued efficacy. This requirement is appropriate for wet spent fuel storage systems, but not for dry spent fuel storage systems. The potentially corrosive environment under wet storage conditions is not present in dry storage systems, because an inert environment is maintained. Under these conditions, there is no mechanism to significantly degrade the neutron absorbing materials. In addition, the dry spent fuel storage casks are sealed and it is not practical nor desirable to penetrate the integrity of the cask to make the measurements verifying the efficacy of neutron absorbing materials. This rule clarifies that positive means for verifying the continued efficacy of solid neutron absorbing materials are not required for dry storage systems, when the continued efficacy may be confirmed by demonstration or analysis before use.

8. Clarify the requirements in § 72.140(d) concerning the previously approved QA program in conformance with appendix B of 10 CFR part 50.

Section 72.174 specifies that QA records must be maintained by or under the control of the licensee until the Commission terminates the license. However, § 72.140(d) allows a holder of a part 50 license to use its approved part 50, appendix B, QA program in place of the part 72 QA requirements, including the requirement for QA records. Appendix B allows the licensee to determine what records will be considered permanent records. Thus, part 50 licensees using an appendix B, QA program could choose not to make permanent all records generated in support of part 72 activities. This rule requires these licensees to follow the part 72 requirement to maintain QA records until termination of the part 72 license.

Summary of Public Comments on the Proposed Rule

The NRC received four letters containing nineteen comments responding to the proposed rule published in the **Federal Register** on June 9, 1998 (63 FR 31364). These

comments were considered in the development of the final rule. The primary objective of this rulemaking is to clarify requirements for certain sections of the regulations. The amendments differentiate the requirements for the storage of spent fuel under wet and dry conditions, clarify requirements for the content and submission of various reports, and specify that QA records must be maintained as permanent records. Copies of the public comments are available for review in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20003-1527.

Four comment letters were received in response to the proposed rule. One was from the Department of Energy (DOE) Idaho Operations Office, one was from a private enterprise, and two were from nuclear power plant licensees. All commenters were supportive of the proposed rule.

Public Comments

1. *Comment:* One commenter believed that to ensure consistency with existing regulations in part 72 and with another NRC proposed rulemaking, "Expand Applicability of Regulations to Holders of, and Applicants for, Certificates of Compliance and Their Contractors and Subcontractors" (63 FR 39526; July 23, 1998), which proposes to define a Certificate of Compliance (CoC) as a certificate approving the "design" of a spent fuel storage cask (as opposed to approving a cask), changes should be made to §§ 72.1 and 72.2(f).

Response: The Commission agrees with this comment. Changes have been made to §§ 72.1 and 72.2(f) to reflect the fact that Certificates of Compliance are issued to approve spent fuel storage cask designs rather than individual casks. In addition, in § 72.2(f), the phrase "in accordance with the requirements of this part as stated in § 72.236", which appears in the proposed rule, has been changed to "in accordance with the requirements of subpart L of this part" to reflect the fact that all the requirements of subpart L pertain to the issuance of certificates of compliance.

2. *Comment:* One commenter noted that the proposed revision to § 72.4 removes existing language which provides the street address for NRC's headquarters office. The commenter noted that this information is necessary for persons who wish to either mail communications to the NRC using a private courier service (e.g., FedEx or UPS) or deliver their communication in person. Additionally, § 72.4 did not provide any guidance for instances in

which the due date for a report or written communication falls on a weekend or holiday. In that regard the language in § 50.4(e) should be used as an example.

Response: The Commission agrees with this comment. The current language in § 72.4 containing the street address to be used for personal delivery is being retained. In addition, the suggested changes have been made for reports due on the weekend or a holiday. The Public Docket Room at 2120 L Street NW, Washington, DC, has been removed from the address listing because it is no longer receiving mail deliveries, as all mail is now delivered to NRC Headquarters.

3. *Comment:* For § 72.44(d)(3), one commenter was concerned that allowing flexibility in the timing for submitting the annual report could create "ratcheting" of the due date and result in the submittal of each report earlier than required to avoid lateness. The change proposed by the commenter to require that each report be submitted within 60 days from the end of each monitoring period and not to exceed the 12-month reporting interval would ensure timely submittal of these reports.

Response: The Commission agrees that the language in the proposed rule needs clarification. The Commission has added language in the final rule to clarify that the report must be submitted within 60 days after the end of the 12-month monitoring period. This change will allow flexibility in timing of submitting the annual report without resulting in the submittal of each report earlier than required to avoid lateness.

4. *Comment:* Two commenters noted that current § 72.75(d)(2) requires a written follow-up report when an event or condition requires an emergency notification under § 72.75(a) or a non-emergency four-hour report under § 72.75(b), but that a written follow-up report is not required when the event or condition requires a non-emergency 24-hour report under § 72.75(c). The second commenter suggested that the NRC clarify its expectation for Part 72 licensees regarding the use of NRC Form 366 and the format and guidance contained in NUREG 1022, Revision 1, "Events Reporting Guidelines 10 CFR 50.72 and 50.73."

Response: The Commission agrees with the comment on the first issue and the suggested change has been made to require a written follow-up report after a 24-hour oral notification. The written report is required for documentation for future use and inspections. With respect to the second issue, the Commission believes that use of NRC Form 366 and the guidance contained in NUREG-

1022, Rev. 1, is an acceptable method for preparing written event reports; however, licensees are not required to follow this method if the written report contains all the information required by § 72.75(d)(2). Therefore, no change has been made to address the second issue.

5. *Comment:* One commenter recommended not specifying the address and addresses in different sections of the regulations where licensees submit reports to NRC. Instead, the commenter recommended the use of one initial location to indicate where reports are submitted to simplify the regulations and ensure a consistent approach. Further, the references in part 72 to the location where persons are to submit information to the NRC should use the phrase "in accordance with § 72.4" instead of providing a specific address in each individual section. This approach would be consistent with the approach taken in other sections in part 72 as well as part 50. This would allow future changes to the NRC receiving address to involve fewer sections of the regulations. The commenter identified §§ 72.44(d)(3), 72.75(d)(2) and 72.140(d) as sections where this change should be made.

Response: The Commission agrees and has made the suggested changes in the final rule.

6. *Comment:* One commenter noted that the proposed amendment to § 72.75 appears to be inconsistent with the advance notice of proposed rulemaking (ANPR) for 10 CFR 50.73 (63 FR 39522; July 23, 1998) concerning the format and content for reporting reactor events and conditions.

Response: An objective of the § 72.75 rulemaking was to make the part 72 independent spent fuel storage installations (ISFSI) report format and content requirements consistent with the current reactor requirements in § 50.73. The final proposed reporting requirements for specific events and conditions in § 72.75 are consistent with the current requirements in § 50.73. If the reporting requirements in § 50.73 should change, the staff will consider whether conforming changes to § 72.75 would be appropriate.

7. *Comment:* One commenter believed that the retention of QA records until termination of the license for part 72 licensees, and the addition of specific information to meet the existing reporting requirement, do not comply with the Backfit Rule. The commenter indicates that both of these amendments will introduce changes to licensee procedures which are not justified by the substantial increase in protection standard and asserts that the NRC appears to be applying a new test; i.e.,

whether the changes are sufficiently trivial to ignore the Backfit Rule.

Response: Under § 72.62, "backfitting" includes the modification, after the license has been issued, of procedures or organizations required to operate an ISFSI or MRS. This backfitting provision is very similar to the Backfit Rule in § 50.109. The Commission has determined that reporting and record keeping requirements are not considered backfits even though they may result in changes to procedures. If the reporting or record keeping requirements had to meet the standards for a backfit analysis, the Commission would have to find that the information would substantially increase public health or safety or common defense and security without knowing the results of the request. In addition, the existence or non-existence of a record or report usually has no independent safety significance as compared to actions taken by the licensee or NRC as a result of the information contained in the record or report. It is this resulting action that affects public health and safety or the common defense or security that should be measured under the backfit standard and not the method for obtaining or maintaining the information.

Nevertheless, the Commission also recognizes that imposing reports or record keeping requirements may have a significant impact on a licensee's resources. The standard for authorizing reporting or record keeping requirements for NRC licensees that is contained in the Code of Federal Regulations should be the same standard as the regulations requiring the providing of information under 10 CFR 50.54(f). Namely, before the staff either changes existing requirements or issues new requirements affecting reporting or record keeping, a written analysis should be prepared that contains (a) a statement that describes the need for the information in terms of the potential safety benefit and, if appropriate, a discussion of possible alternatives and (b) the licensee actions required and the cost to develop a response to the information request. In addition, the imposition of the new or modified reporting or record keeping requirement should be approved by the appropriate level of senior management (namely the Executive Director for Operations or his or her designee) or the Commission itself in the case of rulemaking. For rulemaking, the analysis justifying either modifications to existing or new reporting and record keeping requirements shall be contained in the regulatory analysis. The regulatory analysis section of this rulemaking

package adequately addresses the Commission's standards for this specific record keeping requirement.

8. *Comment:* One commenter recommended that the proposed change to § 72.140(d) should also include QA programs which satisfy the requirements of subpart H of 10 CFR part 71. The commenter believes that QA requirements in part 71 are equivalent to the QA requirements in parts 50 and 72.

Response: While the staff agrees that the QA program requirements in parts 50, 71, and 72 are equivalent, this comment is beyond the scope of this rulemaking. This issue is being considered in a separate rulemaking.

9. *Comment:* One commenter recommended that the wording in §§ 72.75(d)(2)(ii)(5) and (6) be revised to change the word "plant" to "facility" to be consistent with wording in § 72.75(d)(2)(ii).

Response: The Commission agrees with this comment and the change has been made.

10. *Comment:* One commenter recommended adding "spent fuel storage" in the second and third sentences to better describe "cask design requirements" in § 72.122(h)(4).

Response: The Commission agrees with this comment and the change has been made.

11. *Comment:* One commenter recommended replacing the terms "systems" and "facility" in the third sentence of § 72.124(b) with the term "cask".

Response: The Commission is not adopting this comment. The term "facility" includes casks but is not limited to casks. It is possible that different noncask design configurations could be proposed. In reviewing this comment, the staff recognized that a mistake had been made in the proposed rule language in this section. The proposed rule stated "demonstration and analysis", this has been corrected to read "demonstration or analysis."

12. *Comment:* One commenter recommended that the term "notification" be used in place of the term "initial report" in the first sentence of § 72.75(d)(2) to help distinguish between verbal and written communications.

Response: The Commission agrees with the comment and the change has been made.

13. *Comment:* One commenter stated that there is no provision in part 72 for changes to NRC approved quality assurance programs comparable to the part 50 provision at § 50.54(a)(3) unless a licensee has a § 72.140(d) QA program incorporating an approved part 50

program. The commenter requests that a program change provision similar to those found in § 72.44(e) and 72.44(f) be provided to allow for changes to a QA program without NRC approval in defined circumstances.

Response: The proposed recommendation is beyond the scope of this rulemaking action.

14. *Comment:* DOE requested that § 72.80(b) be clarified to exclude DOE from the requirement to submit a copy of its annual financial report.

Response: The Commission agrees with the comment and § 72.22(e) has been revised to exclude DOE from financial assurance requirements.

Specific Changes in Regulatory Text

The following section is provided to assist the reader regarding the specific changes made to each section or paragraph in 10 CFR part 72. For clarity and content, a substantial portion of a particular section or paragraph may be repeated, while only a minor change is being made. This approach will allow the reader to effectively review the specific changes without cross-reference to existing material that has been included for content, but has not been significantly changed.

Sections 72.1 (Purpose) and 72.2 (Scope): These sections are revised to remove superseded information regarding the Federal Interim Storage Program that has expired and to indicate that subpart L provides requirements, procedures, and criteria for approval of spent fuel storage cask designs and issuance of a Certificate of Compliance.

Sections 72.4 and 72.216: These revisions specify that all communications and reports are addressed to the NRC's Document Control Desk.

Section 72.44: This revision permits reactor licensees, who also possess licenses for ISFSIs, to submit dry cask storage effluent report once each year at the same time as the effluent report for reactor operations, instead of submitting dry cask storage effluent report within 60 days of the beginning of each year.

Section 72.75: This change incorporates specific format and content information requirements comparable to reporting requirements that already exist for similar reactor type events in § 50.73(b).

Section 72.122(h)(4): This revision is made to state that periodic monitoring instead of continuous monitoring is appropriate for dry spent fuel storage.

Section 72.122(i): This section specifies the differences between wet pool spent fuel storage instrumentation and control systems and dry spent fuel storage cask instrumentation systems.

Section 72.124(b): This change is made to state that a positive means for verifying the continued efficacy of solid neutron absorbing materials is not required for dry storage systems, when the continued efficacy is confirmed by demonstration or analysis before use.

Section 72.140(d): This change requires all licensees, including a holder of a part 50 license using its approved part 50, appendix B, QA program, to follow the requirement in § 72.174 to maintain part 72 QA records until termination of the part 72 license.

Compatibility of Agreement State Regulations

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** (62 FR 46517, September 3, 1997), this rule is classified as compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of Title 10 of the Code of Federal Regulations, and although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Environmental Impact: Categorical Exclusion

The NRC has determined that Items 1, 5, 6, and 7 of this rule are the types of action described as a categorical exclusion in 10 CFR 51.22(c)(2) and Items 2, 3, 4 and 8 of this rule are the types of action described as a categorical exclusion in 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This final rule increases the burden on licensees by increasing a record retention period from 3 years to life. The public burden for this information collection is estimated to average 38 hours per request. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150-0132.

Public Protection Notification

If a means used to impose information collection 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 the information collection.

Regulatory Analysis

The NRC has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC and concludes that the final rule results in an incremental improvement in public health and safety that outweighs the small incremental cost associated with this proposed change. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Single copies of the analysis may be obtained from M. L. Au, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6181; or e-mail mla@nrc.gov.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This rule affects only the operators of independent spent fuel storage installations (ISFSI). These companies do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Criminal Penalties

For the purpose of section 223 of the Atomic Energy Act of 1954 (AEA), the Commission is issuing the final rule to amend 10 CFR part 72; 72.44, 72.75, 72.140, and 72.216 under one or more of section 161(b), (i), of (o) of AEA. Willful violation of the rule will be subject to criminal enforcement.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR part 72.62, does not apply to this rule, because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR part 72.62(a). Therefore, a backfit analysis is not required for this rule.

Small Business Regulatory Enforcement Fairness Act

In accordance with the 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 72

Criminal penalties, 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 part 72.

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

1. 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. 2951 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. 853 (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. 955 (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, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. Section 72.1 is revised to read as follows:

§ 72.1 Purpose.

The regulations in this part establish requirements, procedures, and criteria for the issuance of licenses to receive, transfer, and possess power reactor

spent fuel and other radioactive materials associated with spent fuel storage in an independent spent fuel storage installation (ISFSI) and the terms and conditions under which the Commission will issue these licenses. The regulations in this part also establish requirements, procedures, and criteria for the issuance of licenses to the Department of Energy (DOE) to receive, transfer, package, and possess power reactor spent fuel, high-level radioactive waste, and other radioactive materials associated with the spent fuel and high-level radioactive waste storage, in a monitored retrievable storage installation (MRS). The regulations in this part also establish requirements, procedures, and criteria for the issuance of Certificates of Compliance approving spent fuel storage cask designs.

3. In § 72.2, paragraph (e) is removed, paragraph (f) is redesignated as paragraph (e) and a new paragraph (f) is added to read as follows:

§ 72.2 Scope.

* * * * *

(f) Certificates of Compliance approving spent fuel storage cask designs shall be issued in accordance with the requirements of subpart L of this part.

4. Section 72.4 is revised to read as follows:

§ 72.4 Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001. Written communications, reports, and applications may be delivered in person to the Nuclear Regulatory Commission at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738 between 7:30 am and 4:15 pm eastern time. If the submittal deadline date falls on a Saturday, or Sunday, or a Federal holiday, the next Federal working day becomes the official due date.

5. In § 72.44, paragraph (d)(3) is revised to read as follows:

§ 72.44 License conditions.

* * * * *

(d) * * *

(3) An annual report be submitted to the Commission in accordance with § 72.4, specifying the quantity of each of the principal radionuclides released to the environment in liquid and in gaseous effluents during the previous 12 months of operation and such other

information as may be required by the Commission to estimate maximum potential radiation dose commitment to the public resulting from effluent releases. On the basis of this report and any additional information that the Commission may obtain from the licensee or others, the Commission may from time to time require the licensee to take such action as the Commission deems appropriate. The report must be submitted within 60 days after the end of the 12-month monitoring period.

* * * * *

6. In § 72.75, paragraph (d)(2) is revised, and paragraphs (d)(3), (d)(4), (d)(5), (d)(6) and (d)(7) are added to read as follows:

§ 72.75 Reporting requirements for specific events and conditions.

* * * * *

(d) * * *

(2) Written report. Each licensee who makes an initial notification required by paragraphs (a), (b), or (c) of this section also shall submit a written follow-up report within 30 days of the initial notification. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all the necessary information and the appropriate distribution is made. These written reports must be sent to the Commission, in accordance with § 72.4. These reports must include the following:

(i) A brief abstract describing the major occurrences during the event, including all component or system failures that contributed to the event and significant corrective action taken or planned to prevent recurrence;

(ii) A clear, specific, narrative description of the event that occurred so that knowledgeable readers conversant with the design of ISFSI or MRS, but not familiar with the details of a particular facility, can understand the complete event. The narrative description must include the following specific information as appropriate for the particular event:

(A) ISFSI or MRS operating conditions before the event;

(B) Status of structures, components, or systems that were inoperable at the start of the event and that contributed to the event;

(C) Dates and approximate times of occurrences;

(D) The cause of each component or system failure or personnel error, if known;

(E) The failure mode, mechanism, and effect of each failed component, if known;

(F) A list of systems or secondary functions that were also affected for

failures of components with multiple functions;

(G) For wet spent fuel storage systems only, after failure that rendered a train of a safety system inoperable, an estimate of the elapsed time from the discovery of the failure until the train was returned to service;

(H) The method of discovery of each component or system failure or procedural error;

(I) Operator actions that affected the course of the event, including operator errors, procedural deficiencies, or both, that contributed to the event;

(2) For each personnel error, the licensee shall discuss:

(i) Whether the error was a cognitive error (e.g., failure to recognize the actual facility condition, failure to realize which systems should be functioning, failure to recognize the true nature of the event) or a procedural error;

(ii) Whether the error was contrary to an approved procedure, was a direct result of an error in an approved procedure, or was associated with an activity or task that was not covered by an approved procedure;

(iii) Any unusual characteristics of the work location (e.g., heat, noise) that directly contributed to the error; and

(iv) The type of personnel involved (e.g., contractor personnel, utility-licensed operator, utility nonlicensed operator, other utility personnel);

(J) Automatically and manually initiated safety system responses (wet spent fuel storage systems only);

(K) The manufacturer and model number (or other identification) of each component that failed during the event;

(L) The quantities and chemical and physical forms of the spent fuel or HLW involved;

(3) An assessment of the safety consequences and implications of the event. This assessment must include the availability of other systems or components that could have performed the same function as the components and systems that failed during the event;

(4) A description of any corrective actions planned as a result of the event, including those to reduce the probability of similar events occurring in the future;

(5) Reference to any previous similar events at the same facility that are known to the licensee;

(6) The name and telephone number of a person within the licensee's organization who is knowledgeable about the event and can provide additional information concerning the event and the facility's characteristics;

(7) The extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name.

7. In § 72.122, paragraphs (h)(4) and (i) are revised to read as follows:

§ 72.122 Overall requirements.

* * * * *

(h) * * *

(4) Storage confinement systems must have the capability for continuous monitoring in a manner such that the licensee will be able to determine when corrective action needs to be taken to maintain safe storage conditions. For dry spent fuel storage, periodic monitoring is sufficient provided that periodic monitoring is consistent with the dry spent fuel storage cask design requirements. The monitoring period must be based upon the spent fuel storage cask design requirements.

* * * * *

(i) Instrumentation and control systems. Instrumentation and control systems for wet spent fuel storage must be provided to monitor systems that are important to safety over anticipated ranges for normal operation and off-normal operation. Those instruments and control systems that must remain operational under accident conditions must be identified in the Safety Analysis Report. Instrumentation systems for dry spent fuel storage casks must be provided in accordance with cask design requirements to monitor conditions that are important to safety over anticipated ranges for normal conditions and off-normal conditions. Systems that are required under accident conditions must be identified in the Safety Analysis Report.

* * * * *

8. In § 72.124, paragraph (b) is revised to read as follows:

§ 72.124 Criteria for nuclear criticality safety.

* * * * *

(b) Methods of criticality control. When practicable, the design of an ISFSI or MRS must be based on favorable geometry, permanently fixed neutron absorbing materials (poisons), or both. Where solid neutron absorbing materials are used, the design must provide for positive means of verifying their continued efficacy. For dry spent fuel storage systems, the continued efficacy may be confirmed by a demonstration or analysis before use, showing that significant degradation of the neutron absorbing materials cannot occur over the life of the facility.

* * * * *

9. In § 72.140, paragraph (d) is revised to read as follows:

§ 72.140 Quality assurance requirements.

* * * * *

(d) Previously approved programs. A Commission-approved quality assurance program which satisfies the applicable criteria of appendix B to part 50 of this chapter and which is established, maintained, and executed with regard to an ISFSI will be accepted as satisfying the requirements of paragraph (b) of this section, except that a licensee using an appendix B quality assurance program also shall meet the requirement of § 72.174 for recordkeeping. Prior to initial use, the licensee shall notify the Commission, in accordance with § 72.4, of its intent to apply its previously approved appendix B quality assurance program to ISFSI activities. The licensee shall identify the program by date of submittal to the Commission, docket number, and date of Commission approval.

10. In § 72.216, paragraph (c) is revised to read as follows:

§ 72.216 Reports.

* * * * *

(c) The general licensee shall make initial and written reports in accordance with §§ 72.74 and 72.75, except for the events specified by § 72.75(b)(2) and (3) for which the initial reports will be made under paragraph (a) of this section.

Dated at Rockville, Maryland, this 15th day of June, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 703 and 712

Investment and Deposit Activities; Credit Union Service Organizations

AGENCY: National Credit Union Administration (NCUA)

ACTION: Final rule.

SUMMARY: The final rule makes four changes to the recently revised rule concerning federal credit unions' (FCUs') investments in and loans to credit union service organizations (CUSOs). The four changes are: First, delete a provision preventing FCUs from investing in or lending to CUSOs in which non-credit union depository institutions are co-investors or lenders; second, revise a provision limiting CUSO investments in non-CUSO service providers; third, delete a provision preventing FCUs from investing in the debentures of a CUSO; and fourth,

clarify how the NCUA measures the limit on an FCU's investment in or loans to CUSOs. In addition, the final rule clarifies the meaning of cyber financial services. The changes decrease the regulatory burden for FCUs investing in or lending to CUSOs.

DATES: This rule is effective July 22, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6540; or Linda Groth, Program Officer, Office of Examination and Insurance, at the above address or telephone (703) 518-6360.

SUPPLEMENTARY INFORMATION:

Background

On November 19, 1998, the NCUA Board requested comment on proposed changes to part 712 of its regulations. 63 FR 65714 (November 30, 1998). Part 712 sets forth the requirements for FCUs investing in or lending to CUSOs. The proposed amendments addressed four issues resulting from the March 1998 revisions to the CUSO rule. 63 FR 10743 (March 5, 1998). The Board also requested comment on the scope of services that should be included within the existing cyber financial services category of the CUSO rule.

Summary of Comments

The NCUA Board received twenty comments on the proposal: nine from credit unions; three from CUSOs; two from credit union trade groups; one from a CUSO trade group; one from a bank trade group; three from state leagues; and one from an attorney. Of the fourteen commenters that addressed the proposed changes, thirteen generally supported the added flexibility of the proposed amendments.

FCUs Investing in or Lending to a CUSO in Which a Bank or Thrift Is Also a Participant

Section 712.2(c) prohibits an FCU from investing in or lending to a CUSO in which one or more banks or thrift institutions participate. The rationale behind the limitation was that it would be too confusing to credit union members if both NCUSIF and FDIC signs were posted together at shared branches. 63 FR at 10746. The Board believes possible confusion can be addressed through appropriate disclosures and so the proposal removed the prohibition.

The commenters generally supported the added flexibility of this amendment. There were two negative commenters. One was a bank trade group that objected because it believes the