

Rules and Regulations

Federal Register

Vol. 85, No. 141

Wednesday, July 22, 2020

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC-2020-0050]

RIN 3150-AK47

List of Approved Spent Fuel Storage Casks: Holtec International HI-STORM Flood/Wind Multipurpose Canister Storage System, Certificate of Compliance No. 1032, Amendment No. 5

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of July 27, 2020, for the direct final rule that was published in the **Federal Register** on May 13, 2020. The direct final rule amends the NRC's spent fuel storage regulations by revising the Holtec International HI-STORM Flood/Wind Multipurpose Canister Storage System listing within the "List of approved spent fuel storage casks" to include Amendment No. 5 to Certificate of Compliance No. 1032. Amendment No. 5 revises the certificate of compliance to: Add new heat load patterns and revise the minimum required cooling time for two multipurpose canisters (MPC-89 and MPC-37); add new fuel types to the approved contents; allow an exception to a code to permit use of certain duplex stainless steels; use an analysis model to revise the calculation for evaluating effective fuel conductivities; add the use of the damaged fuel isolator; add two versions of the standard variable weight transfer cask; add the option of using cyclic vacuum drying; and make changes to the final safety analysis report to add new types of fuel assemblies, add a definition to it and to the certificate of compliance, and add the required shielding evaluation to

Section 5.4.8. In addition, Amendment No. 5 makes several clarifications and minor changes.

DATES: The effective date of July 27, 2020, for the direct final rule published May 13, 2020 (85 FR 28479), is confirmed.

ADDRESSES: Please refer to Docket ID NRC-2020-0050 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2020-0050. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The proposed amendment to the certificate of compliance, the proposed changes to the technical specifications, and the preliminary safety evaluation report are available in ADAMS under Accession No. ML20014E616. The final amendment to the certificate of compliance, final changes to the technical specifications, and final safety evaluation report can also be viewed in ADAMS under Accession No. ML20163A701.

- *Attention: The Public Document Room (PDR),* where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at pdr.resource@nrc.gov or call 1-800-397-4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Vanessa Cox, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington,

DC 20555-0001; telephone: 301-415-8342 or email: Vanessa.Cox@nrc.gov.

SUPPLEMENTARY INFORMATION: On May 13, 2020 (85 FR 28479), the NRC published a direct final rule amending its regulations in part 72 of title 10 of the *Code of Federal Regulations* to revise the Holtec International HI-STORM Flood/Wind Multipurpose Canister Storage System listing within the "List of approved spent fuel storage casks" to include Amendment No. 5 to Certificate of Compliance No. 1032. Amendment No. 5 revises the certificate of compliance to: Add new heat load patterns and revise the minimum required cooling time for two multipurpose canisters (MPC-89 and MPC-37); add new fuel types to the approved contents; allow an exception to a code to permit use of certain duplex stainless steels; use an analysis model to revise the calculation for evaluating effective fuel conductivities; add the use of the damaged fuel isolator; add two versions of the standard variable weight transfer cask; add the option of using cyclic vacuum drying; and make changes to the final safety analysis report to add new types of fuel assemblies, add a definition to it and to the certificate of compliance, and add the required shielding evaluation to Section 5.4.8. In addition, Amendment No. 5 makes several clarifications and minor changes.

In the direct final rule published on May 13, 2020, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on July 27, 2020. The NRC received and docketed one comment on the companion proposed rule (85 FR 28521; May 13, 2020). Electronic copies of the comment can be obtained from the Federal Rulemaking website <https://www.regulations.gov> under Docket ID NRC-2020-0050 and is also available in ADAMS under Accession No. ML20168B028.

The NRC evaluated the comment against the criteria described in the direct final rule and determined that the comment was not significant and adverse. Specifically, the comment was outside the scope of this rulemaking, did not oppose the rule, or did not propose a change to the rule, such that the rule would be ineffective or unacceptable without incorporation of the change. Therefore, the direct final rule will become effective as scheduled.

Dated July 8, 2020.

For the Nuclear Regulatory Commission.

Pamela J. Shepherd-Vladimir,

Acting Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2020–15128 Filed 7–21–20; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 331

RIN 3064–AF21

Federal Interest Rate Authority

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is issuing regulations clarifying the law that governs the interest rates State-chartered banks and insured branches of foreign banks (collectively, State banks) may charge. These regulations provide that State banks are authorized to charge interest at the rate permitted by the State in which the State bank is located, or one percent in excess of the 90-day commercial paper rate, whichever is greater. The regulations also provide that whether interest on a loan is permissible under section 27 of the Federal Deposit Insurance Act is determined at the time the loan is made, and interest on a loan permissible under section 27 is not affected by a change in State law, a change in the relevant commercial paper rate, or the sale, assignment, or other transfer of the loan.

DATES: The rule is effective on August 21, 2020.

FOR FURTHER INFORMATION CONTACT: James Watts, Counsel, Legal Division, (202) 898–6678, jwatts@fdic.gov; Catherine Topping, Counsel, Legal Division, (202) 898–3975, ctopping@fdic.gov.

SUPPLEMENTARY INFORMATION:

I. Objectives

Section 27 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831d) authorizes State banks to make loans charging interest at the maximum rate permitted by the State where the bank is located, or at one percent in excess of the 90-day commercial paper rate, whichever is greater. Section 27 does not state at what point in time the validity of the interest rate should be determined to assess whether a State

bank is taking or receiving interest in accordance with section 27. Situations may arise when the usury laws of the State where the bank is located change after a loan is made (but before the loan has been paid in full), and a loan's rate may be non-usurious under the old law but usurious under the new law. To fill this statutory gap and carry out the purpose of section 27, the FDIC proposed regulations¹ in November 2019 that would provide that the permissibility of interest under section 27 must be determined when the loan is made, and shall not be affected by a change in State law, a change in the relevant commercial paper rate, or the sale, assignment, or other transfer of the loan. This interpretation protects the parties' expectations and reliance interests at the time when a loan is made, and provides a logical and fair rule that is easy to apply.

A second statutory gap is also present because section 27 expressly gives banks the right to make loans at the rates permitted by their home States, but does not explicitly list all the components of that right. One such implicit component is the right to assign the loans under the preemptive authority of section 27. Banks' power to make loans has been traditionally viewed as carrying with it the power to assign loans. Thus, a State bank's Federal statutory authority under section 27 to make loans at particular rates includes the power to assign the loans at those rates. To eliminate ambiguity, the proposed regulation makes this implicit understanding explicit. By providing that the permissibility of interest under section 27 must be determined when the loan is made, and shall not be affected by the sale, assignment, or other transfer of the loan, the regulation clarifies that banks can transfer enforceable rights in the loans they made under the preemptive authority of section 27.

The FDIC believes that safety and soundness concerns also support clarification of the application of section 27 to State banks' loans, because the statutory ambiguity exposes State banks to increased risk in the event they need to sell their loans to satisfy their liquidity needs in a crisis. Left unaddressed, the two statutory gaps could create legal uncertainty for State banks and confusion for the courts. One example of the concerns with leaving the statutory ambiguity unaddressed is the recent decision of the U.S. Court of Appeals for the Second Circuit in *Madden v. Midland Funding, LLC*.²

Reading the text of the statute in isolation, the *Madden* court concluded that 12 U.S.C. 85 (section 85)—which authorizes national banks to charge interest at the rate permitted by the law of the State in which the national bank is located—does not allow national banks to transfer enforceable rights in the loans they made under the preemptive authority of section 85. While *Madden* concerned the assignment of a loan by a national bank, the Federal statutory provision governing State banks' authority with respect to interest rates is patterned after and interpreted in the same manner as section 85. *Madden* therefore helped highlight the need to issue clarifying regulations addressing the legal ambiguity in section 27.³

As described in more detail below, the FDIC received 59 comment letters on the proposed rule from interested parties. The FDIC has carefully considered these comments and is now issuing a final rule. The final rule implements the Federal statutory provisions that authorize State banks to charge interest of up to the greater of: one percent more than the 90-day commercial paper rate; or the rate permitted by the State in which the bank is located. The final rule also provides that whether interest on a loan is permissible under section 27 is determined at the time the loan is made, and interest on a loan under section 27 is not affected by a change in State law, a change in the relevant commercial paper rate, or the sale, assignment, or other transfer of the loan. The regulations also implement section 24(j) of the FDI Act (12 U.S.C. 1831a(j)) to provide that the laws of a State in which a State bank is not chartered but in which it maintains a branch (host State), shall apply to any branch in the host State of an out-of-State State bank to the same extent as such State laws apply to a branch in the host State of an out-of-State national bank. The regulations do not address the question of whether a State bank or insured branch of a foreign bank is a real party in interest with respect to a loan or has an economic interest in the loan under state law, e.g. which entity is the “true lender.” Moreover, the FDIC continues to support the position that it will view

³ The Secretary of the Treasury also recommended, in a July 2018 report to the President, that the Federal banking regulators should “use their available authorities to address challenges posed by *Madden*.” See “A Financial System That Creates Economic Opportunities: Nonbank Financials, Fintech, and Innovation,” July 31, 2018, at p. 93 (<https://home.treasury.gov/sites/default/files/2018-07/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financi....pdf>).

¹ 84 FR 66845 (Dec. 6, 2019).

² 786 F.3d 246 (2d Cir. 2015).