

performance and have received approval by the NRC staff. The petitioner believes the proposed amendment would improve the efficiency of the regulatory process by eliminating the need for individual licensees to obtain exemptions to use advanced cladding materials which have already been approved by the NRC. The issues associated with 10 CFR 50.44 which were raised by the petitioner will also be addressed in the proposed rulemaking.

The NRC has now developed draft wording for the changes to its regulations and has made them available on the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>. This draft rule language is preliminary and may be incomplete in one or more respects. This draft rule language was released to inform stakeholders of the current status of the 10 CFR 50.44 update rulemaking and to provide stakeholders with an opportunity to comment on the draft revisions. Comments received prior to publishing the proposed rule will be considered in the development of the proposed rule. Comments may be provided through the rulemaking Web site at <http://ruleforum.llnl.gov> or by mail as indicated under the **ADDRESSES** heading. The NRC may post updates periodically on the rulemaking Web site that may be of interest to stakeholders.

Dated at Rockville, Maryland, this 29th day of October 2001.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Chief, Risk-Informed Initiatives, Environmental, Decommissioning, and Rulemaking Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 01-28398 Filed 11-13-01; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150-AG87

List of Approved Spent Fuel Storage Casks: FuelSolutions™ Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the BNFL Fuel Solutions (FuelSolutions™) cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 2 to the

Certificate of Compliance. Amendment No. 2 would modify the Technical Specifications (TS). The current TS require that if the W74 canister is required to be removed from its storage cask, then the canister must be returned to the spent fuel pool. The modified TS will allow the W74 canister to be placed in the transfer cask until the affected storage cask is repaired or replaced. The TS would also be modified to clarify the description of the other non-fissile material permitted to be stored in the W74 canister and to revise the temperatures to correspond to the liner thermocouples. Specific changes would be made to TS Tables 2.1-3 and 2.1-4; TS 3.3.2 and 3.3.3; and the bases for TS 3.3.2 and 3.3.3. No changes would be made to the conditions of the Certificate of Compliance.

DATES: Comments on the proposed rule must be received on or before December 14, 2001.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attn: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>. You may also provide comments via this web site by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415-5905; e-mail CAG@nrc.gov.

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to pdr@nrc.gov.

Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/NRC/ADAMS/index.html>. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed Certificate of Compliance (CoC) and preliminary safety evaluation report (SER) can be

found under ADAMS Accession No. ML012680428. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT:

Merri Horn, telephone (301) 415-8126, e-mail, mlh1@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment 2 to CoC No. 1026 and does not include other aspects of the FuelSolutions™ cask system design. The NRC is using the direct final rule procedure to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured.

Because NRC considers this action noncontroversial and routine, the proposed rule is being published concurrently with a direct final rule. The direct final rule will become effective on January 28, 2002. However, if the NRC receives significant adverse comments by December 14, 2001, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is

apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR 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, 2244, (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. In § 72.214, Certificate of Compliance 1026 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1026.

Initial Certificate Effective Date: February 15, 2001.

Amendment Number 1 Effective Date: May 14, 2001.

Amendment Number 2 Effective Date: January 28, 2002.

SAR Submitted by: BNFL Fuel Solutions.

SAR Title: Final Safety Analysis Report for the FuelSolutions™ Spent Fuel Management System.

Docket Number: 72–1026.

Certificate Expiration Date: February 15, 2021.

Model Number: WSNF–220, WSNF–221, and WSNF–223 systems; W–150 storage cask; W–100 transfer cask; and the W–21 and W–74 canisters.

* * * * *

Dated at Rockville, Maryland, this 25th day of October, 2001.

For the Nuclear Regulatory Commission.

William F. Kane,

Acting Executive Director for Operations.

[FR Doc. 01–28512 Filed 11–13–01; 8:45 am]

BILLING CODE 7590–01–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1707

Testimony by DNFSB Employees and Production of Official Records in Legal Proceedings

AGENCY: Defense Nuclear Facilities Safety Board (DNFSB).

ACTION: Proposed rule.

SUMMARY: The Defense Nuclear Facilities Safety Board (DNFSB) is issuing a proposed rule that sets forth procedures that requesters would have to follow when making demands or requests to a DNFSB employee to produce official records or information or to provide testimony relating to official information in connection with a legal proceeding in which the DNFSB is not a party. This proposed rule establishes procedures to respond to such demands and requests in an orderly and consistent manner. The rule, among other benefits, promotes uniformity in decisions, protects confidential information, provides guidance to requesters, and reduces the potential for both inappropriate

disclosures of official information and wasteful allocation of agency resources.

DATES: Comments must be received on or before December 14, 2001.

ADDRESSES: Send comments to Richard A. Azzaro, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901.

FOR FURTHER INFORMATION CONTACT:

Richard A. Azzaro, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, telephone: 202–694–7062; FAX: 202–208–6518.

SUPPLEMENTARY INFORMATION:

Background

The Defense Nuclear Facilities Safety Board may receive subpoenas and requests for DNFSB employees to provide evidence in litigation in which the DNFSB is not a party. These subpoenas and requests may also be for DNFSB records that are not available to the public under the Freedom of Information Act. Also, DNFSB could receive subpoenas or requests for DNFSB employees to appear as witnesses in litigation in conjunction with a request for nonpublic records.

Responding to such demands and requests could divert DNFSB resources from their congressionally mandated functions. The proposed regulation will ensure a more efficient use of DNFSB resources, minimize the possibility of involving DNFSB in issues unrelated to its responsibilities, promote uniformity in responding to such requests and subpoenas, and maintain impartiality of DNFSB in matters that are in dispute between other parties. It also serves DNFSB's duty to protect sensitive, confidential, and privileged information and records.

Furthermore, responding to such demands and requests could also result in significant disruption in a DNFSB employee's work schedule. The result is that employees may be diverted from performing their official duties in order to respond to requests from parties in litigation. In order to address this problem, many agencies over the years have issued "Touhy" regulations that are similar to this proposed regulation, governing the circumstances and manner in which an employee may respond to demands for testimony or for the production of documents. Such a regulation was upheld by the United States Supreme Court in *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

In *Touhy*, the Supreme Court held that a Department of Justice (DOJ) official, acting on order of the Attorney