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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

RIN 3150-AG72

#### List of Approved Spent Fuel Storage Casks: FuelSolutions™ Revision

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations revising the BNFL Fuel Solutions FuelSolutions™ cask system listing within the “List of Approved Spent Fuel Storage Casks” to include Amendment No. 1 to the Certificate of Compliance (CoC). Amendment No. 1 will modify the present cask system design to allow the Big Rock Point nuclear facility to store mixed-oxide fuel assemblies, partial fuel assemblies, and damaged fuel assemblies (in a can) under a general license.

**DATES:** The final rule is effective May 14, 2001, unless significant adverse comments are received by March 29, 2001. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

**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 website at <http://ruleforum.llnl.gov>. You may also provide comments via this website 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](mailto: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 email to [pdrr@nrc.gov](mailto:pdrr@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 CoC and preliminary safety evaluation report (SER) can be found under ADAMS Accession No(s). ML003770047.

**FOR FURTHER INFORMATION CONTACT:** Gordon Gundersen, telephone (301) 415-6195, e-mail [GEG1@nrc.gov](mailto:GEG1@nrc.gov), of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that “[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.” Section 133 of the NWPA states, in part, that “[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 218(a) for use at the site of any civilian nuclear power reactor.”

To implement this mandate, the NRC approved dry storage of spent nuclear

fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72 entitled, “General License for Storage of Spent Fuel at Power Reactor Sites” (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR part 72, entitled “Approval of Spent Fuel Storage Casks” containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on January 16, 2001 (66 FR 3444) that approved the FuelSolutions™ cask design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance Number (CoC No.) 1026.

#### Discussion

On September 29, 1999, and as supplemented on July 27, 2000, the certificate holder BNFL Fuel Solutions (BFS) submitted an application to the NRC to amend CoC No. 1026 to allow the Big Rock Point nuclear facility to store mixed-oxide (MOX) fuel assemblies, partial fuel assemblies, and damaged fuel assemblies (in a can). No other changes to the cask system design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that the proposed amendment does not reduce the safety margin. In addition, the NRC staff has determined that the change does not pose any increased risk to public health and safety.

This direct final rule revises the cask design listing in § 72.214 by adding Amendment No. 1 to CoC No. 1026. The amendment consists of changes to the Technical Specifications for the storage of MOX fuel assemblies, partial assemblies, and damaged assemblies (in a can). The particular Technical Specifications which are changed are identified in the NRC Staff’s Safety Evaluation Report for Amendment No. 1.

The amended FuelSolutions™ cask system, when used in accordance with the conditions specified in the CoC, the Technical Specifications, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured.

CoC No. 1026, the revised Technical Specifications, the underlying Safety Evaluation Report for Amendment No. 1, and the Environmental Assessment,

are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the CoC may be obtained from Gordon Gundersen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-6195, email GEG1@nrc.gov.

#### Discussion of Amendments by Section

##### **§ 72.214 List of approved spent fuel storage casks.**

Certificate No. 1026 is revised by adding the effective date of Amendment Number 1.

#### Procedural Background

This rule is limited to the changes contained in Amendment 1 to CoC No. 1026 and does not include other aspects of the FuelSolutions™ cask system design. Because NRC considers this amendment to its rules to be noncontroversial and routine, the NRC is using the direct final rule procedure for this rule. The amendment to the rule will become effective on May 14, 2001. However, if the NRC receives significant adverse comments by March 29, 2001, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendment 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. These comments will be addressed in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

#### Agreement State Compatibility

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** on September 3, 1997 (62 FR 46517), 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 Atomic Energy Act of 1954, as amended (AEA) or the provisions of the Title 10 of the Code of Federal Regulations. 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.

#### Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing" directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

#### Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule would amend the CoC for the FuelSolutions™ cask system within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. The amendment will modify the present cask system design to allow the Big Rock Point nuclear reactor facility to store MOX fuel assemblies, partial assemblies, and damaged fuel assemblies (in a can). The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Gordon Gundersen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-6195, email GEG1@nrc.gov.

#### Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150-0132.

#### Public Protection Notification

If a means used to impose an 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.

#### Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104-113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC would revise the FuelSolutions™ cask system design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

#### Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR Part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On January 16, 2001 (66 FR 3444), the NRC issued an amendment to Part 72 that approved the FuelSolutions™ cask design by adding it to the list of NRC-approved cask designs in § 72.214. On September 29, 1999, and as supplemented on July 27, 2000, the certificate holder BFS, submitted an application to the NRC to amend CoC No. 1026 to permit a Part 72 licensee to store MOX fuel assemblies, partial assemblies, and damaged assemblies (in a can).

This rule will permit the Big Rock Point (BRP) nuclear facility to store MOX fuel assemblies, partial assemblies, and damaged assemblies (in a can) at the BRP ISFSI. The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to the general licensee. This alternative would result in the same expenditure of time and money.

Approval of the direct final rule is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on the above discussion of the benefits and impacts of the alternatives, the NRC

concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

### Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and BFS. The companies that own these plants 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.

### Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

### Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business 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, Office of Management and Budget.

### 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. 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. 10d-48b, sec. 7902, 10b Stat. 31b3 (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 (CoC) 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.

*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-200, WSNF-201, and WSNF-203 systems; W-150 storage cask; W-100 transfer cask; and the W-21 and W-74 canisters.

\* \* \* \* \*

Dated at Rockville, Maryland, this 8th day of February, 2001.

For the Nuclear Regulatory Commission.

**William D. Travers,**

*Executive Director for Operations.*

[FR Doc. 01-4765 Filed 2-26-01; 8:45 am]

BILLING CODE 7590-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 90

[WT Docket No. 99-87, FCC 00-403]

### Revised Competitive Bidding Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** This document is to show rules amended by the Commission in order to changes to its statutory auction authority, shall become effective March 2, 2001. These sections, which contained new information collection requirements, were published in the **Federal Register** on January 2, 2001. This is to let the public know the effective date of the rules that contain new information collection requirements.

**EFFECTIVE DATE:** The amendments to 47 CFR Part 90, 47 CFR 90.621(e)(2) published at 66 FR 33 (January 2, 2001) are effective March 2, 2001.

**FOR FURTHER INFORMATION CONTACT:** Jim Shaffer, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418-0680.

**SUPPLEMENTARY INFORMATION:** On November 9, 2000, the Commission adopted a *Report and Order* (FCC 00-403) to implement sections 309(j) and 337 of the Communications Act of 1934, as amended, as amended by the Balanced Budget Act of 1997 a summary of which was published in the **Federal Register**. See 66 FR 33, January 2, 2001. We stated that the Part 90 of the Commission's Rules, 47 CFR Part 90, is amended effective March 2, 2001, §90.621(e)(2) which contains information collections that are not effective until approved by the Office of Management and Budget. We also stated that the Commission will publish a document in the **Federal Register** announcing the effective date for those sections. This statement requires further action by the Commission to establish the effective date, notwithstanding the preceding statement in the summary that the rule change would become effective upon OMB approval. In order to resolve this matter in a manner that most appropriately provides interested