ORAL ARGUMENT NOT SCHEDULED

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

D.C. Cir. No. 21-1048
(Consolidated with D.C. Cir. Nos. 21-1055, 21-1056, 21-1179, 21-1227, 21-1230, 21-123112-1151)

DON'T WASTE MICHIGAN, *ET AL.*,

Petitioners

v.

UNITED STATES NUCLEAR REGULATORY COMMISSION
and the UNITED STATES OF AMERICA,
Respondents

INTERIM STORAGE PARTNERS LLC,
Intervenor

Petition for Review of Final Administrative Action of the
United States Nuclear Regulatory Commission

PETITIONER BEYOND NUCLEAR'S STANDING ADDENDUM AND ADDENDUM OF PERTINENT STATUTES, REGULATIONS, AND FEDERAL REGISTER NOTICES FOR FINAL OPENING BRIEF

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August 5, 2022

STANDING ADDENDUM

Table of Contents

This standing addendum includes declarations that Beyond Nuclear offers in support of its standing to pursue this action. The list of exhibits is as follows:

STANDING ADDENDUM EXHIBIT 1

Declaration of Rose Gardner

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

EXHIBIT 1

BEYOND NUCLEAR, INC.,	)	
Petitioner,	)	Case No. 21-1056
	)	Consolidated with Nos. 21-1048, 21-1055, and 21-1179
v.	)	
UNITED STATES NUCLEAR REGULATORY COMMISSION and the UNITED STATES OF AMERICA,	)	
Respondents.	)	

DECLARATION OF ROSE M. GARDNER

Under penalty of perjury, I, Rose M. Gardner, declare as follows:

1. My name is Rose M. Gardner.

2. I am a member of Beyond Nuclear, Inc. (“Beyond Nuclear”).

3. I live at 1402 Avenue A, Eunice, New Mexico, 88231. My home is within seven miles of the Interim Storage Partners’ (“ISP”) Waste Control Specialists Consolidated Interim Storage Facility (the “Facility”). See Attachment A.

4. The majority of my family also lives in Eunice, New Mexico. My first daughter and eight-month-old grandson live next door to my home and my second daughter and her 12-year-old daughter live a block away from my home. My husband’s sister, her grown daughter, and her twelve-year-old granddaughter live at the intersection of Highway 176 and Highway 18, within approximately five miles of the Facility. I regularly spend time with my family at their homes. For example, my niece lives in Eunice as well and I take care of her three young children in both their home and my home.

5. My family and I all frequently and regularly spend time within eight miles of the Facility because we live, recreate, and work in Eunice. During the pandemic, I have worked solely at home. However, I am planning on reopening my flower shop, which will be located at 1407 Avenue A, Eunice, within eight miles of the Facility.

6. I also own about ten acres of land on 16th Street, between Avenue A and Avenue F, on which I raise horses and chickens, also about six miles from the Facility. I raise hay, alfalfa, and other grains on this land to feed cattle for two to three months each year. My family and I consume beef and agricultural products produced on this property. Additionally, there is a fresh water well on this property.

7. I also frequently and regularly spend time on the local roads near the Facility and transportation routes for the Facility. For example, I use Highway 176 and Highway 18 frequently to deliver flowers to my clients in Jal, New Mexico. Highway 18 parallels the Texas and New Mexico Railway that, it is my understanding, ISP plans to use to transport spent nuclear fuel to the Facility. When I drive on Highway 18, I notice rail cars next to me. I believe there have been multiple train derailments in the past few years on this railroad.

8. I regularly enter Highway 18 from Highway 207 south of Eunice, New Mexico. To enter Highway 18 at this location, I have to cross the Texas and New Mexico Railway. There are only two entrances from Highway 18 into Eunice, both of which cross the railroad tracks that will be used for the transportation of nuclear waste, and only one of these railroad crossings is protected by a gate.

9. I am concerned about the radiation risks posed by the construction and operation of the Facility to my property, my health and safety, the health and safety of my family and livestock, and my environment from living and working next to a facility housing such an enormous inventory of radioactive material, and by transportation of spent nuclear fuel to the Facility. I am concerned that an accident at the Facility involving spent nuclear fuel will harm my family, livestock, and home due to radiological exposure.

10. I am concerned about the transportation risk the Facility poses. The oil fields in this area operate many large trucks on the roads near my home and work.

These trucks carry water, oil, and other products. I am deeply concerned about the health and safety risks posed by additional shipments of nuclear waste for myself, my family, and future children growing up here, particularly regarding childhood cancers. Furthermore, I am concerned that the transportation of nuclear waste along the railroad will expose those who are living near the railroad or who frequently cross it to unwanted doses of radiation.

11. I am concerned about the risk posed by the Facility to the agriculture industry around Eunice. I am concerned about the crops that are being grown for both people and animals to eat being affected by the Facility, and contaminants entering our food chain. I am concerned about impacts to my livestock from radiation or contamination of the water well on my property.

12. I am also concerned about the impact the Facility will have on the value of my home because I am concerned that the Facility will deter people from wanting to live in this area. It is my understanding that property values near a nuclear facility can be reduced as early as when it receives its license to operate due to real or perceived risks of exposure to radiation releases from the nearby facility. It is also my understanding that property values may continue to decrease as the facility is constructed and operating. I am also concerned that the Facility's operations may create a precedent for other companies seeking to handle nuclear waste in and around Eunice, New Mexico. Property values in Eunice have already been reduced due to the pandemic and I am concerned about any further reduction.

13. I am also concerned that my family and I will not be able to avoid small doses of unwanted radiation from driving next to rail cars carrying shipments of spent nuclear fuel, which will harm our health and safety. The route that the rail cars take—north through Eunice and then doubling back to go east of Eunice—extends the exposure time of residents near the railroad.

14. I am also concerned with the impacts to my interest and right to travel near my home posed by ISP's future transportation routes for spent nuclear fuel. We will not be able to avoid highways and roads that are involved with transporting spent nuclear fuel to the Facility because these highways and roads are our primary routes to access work, school, and recreational activities.

15. I believe that ISP's license application was inadequate and illegal as written, that the NRC's approval of that application was unlawful, and that my interests will not be adequately represented in this action without the opportunity for Beyond Nuclear to intervene as a party on my behalf.

16. Therefore, I previously authorized Beyond Nuclear to protect my interests by representing me in both (a) a motion to the NRC to dismiss ISP's license application and (b) a petition to intervene in the NRC's licensing proceeding for the Facility. When the NRC denied Beyond Nuclear's motion to dismiss ISP's license application, I authorized Beyond Nuclear to appeal that decision to this court. Now that the NRC has denied Beyond Nuclear's petition to intervene and granted ISP's license, I authorize Beyond Nuclear to appeal that decision to this court.

[Remainder of page intentionally left blank.]

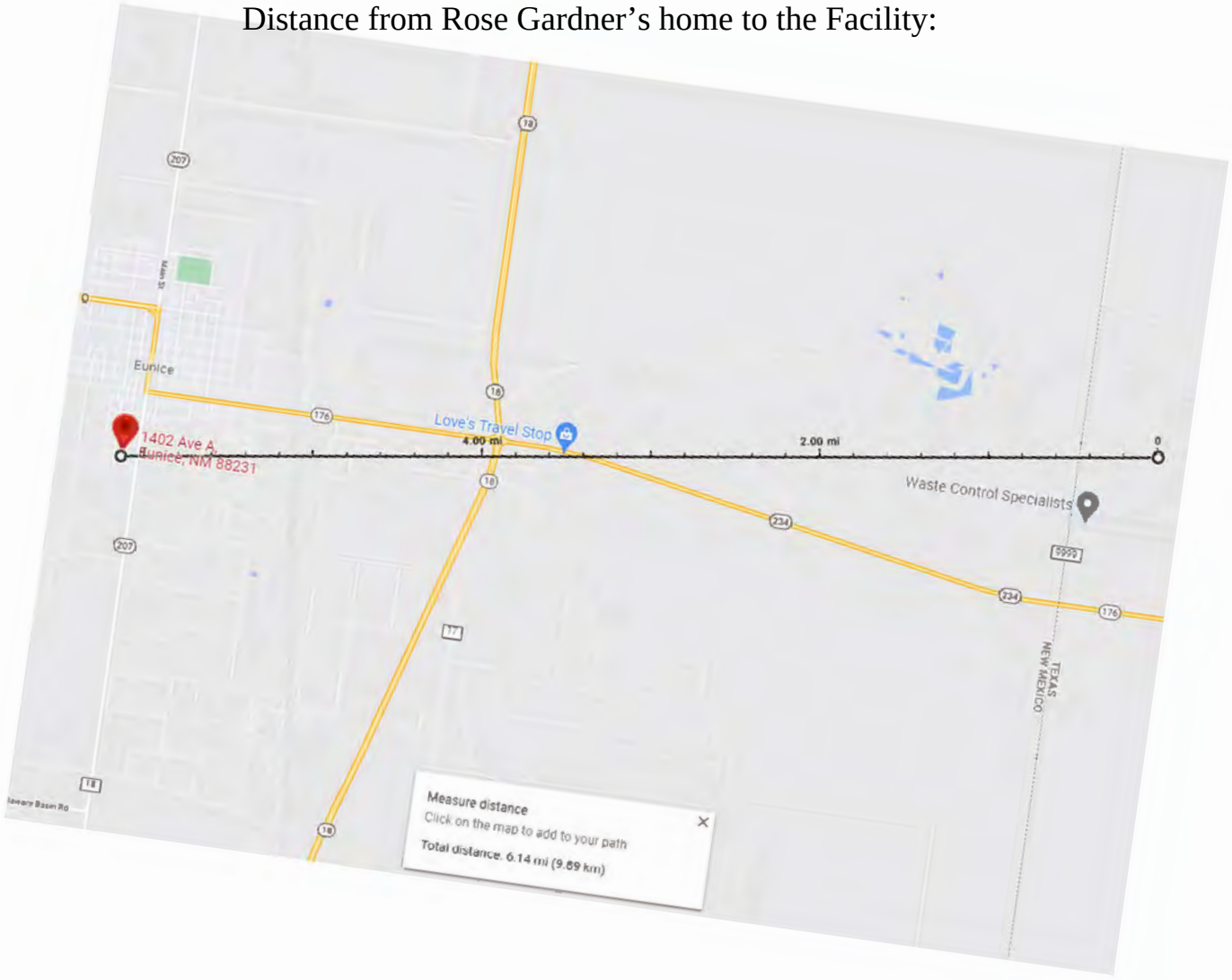
The declarant has caused this Declaration to be executed as of the date below.

Signed,

Rose M Gardner

Dated: 10-27-21

Declaration of Rose Gardner
Attachment A
Distance from Rose Gardner's home to the Facility:



STANDING ADDENDUM EXHIBIT 2

Declaration of D.K. Boyd

EXHIBIT 2

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BEYOND NUCLEAR, INC.,	)	
Petitioner,	)	Case No. 21-1056
	)	Consolidated with Nos. 21-1048, 21-1055, and 21-1179
v.	)	
UNITED STATES NUCLEAR REGULATORY COMMISSION and the UNITED STATES OF AMERICA,	)	
Respondents.	)	

DECLARATION OF D.K. BOYD

Under penalty of perjury, I, D.K. Boyd, declare as follows:

1. My name is D.K. Boyd.

2. I am a member of Beyond Nuclear.

3. My main address is 4200 Tanforan Avenue, Midland, Texas, 79707.

4. I own and ranch the Frying Pan Ranch, most of which I own by deed and some of which I lease from New Mexico. The Frying Pan Ranch is located on 137,599 acres in southeastern New Mexico and western Texas. The closest part of the Frying Pan Ranch to Interim Storage Partners' ("ISP") Waste Control Specialists Consolidated Interim Storage Facility (the "Facility") is only four miles away. I have attached a map identifying the location of this part of the Frying Pan Ranch and the Facility. See Attachment A.

5. I have mineral interests and working interests in oil and gas operations on the Frying Pan Ranch. I also lease some of the Frying Pan Ranch to companies conducting oil and gas operations.

6. My brother and his employees frequently and regularly spend time within 15 miles of the Facility because my brother runs cattle operations on the Frying Pan Ranch. One of my brother's employees lives on Frying Pan Ranch in New Mexico in Township 23S, Range 38E, Section 8.

7. I also frequently and regularly spend time on the local roads near the Facility and transportation routes for the Facility. For instance, I drive on Highway 18 south of Eunice, New Mexico. I have to use Highway 18 to travel for business, between different parts of my ranch, and between my residences. When I am on this Highway, I have noticed rail cars traveling next to me on the Texas and New Mexico Railway because this railroad parallels Highway 18 within a couple hundred feet for almost 40 miles. It is my understanding that ISP plans to transport spent nuclear fuel to the Facility on this railroad.

8. The Texas and New Mexico Railway also runs through approximately 5.5 miles of the Frying Pan Ranch. My family and I frequently and regularly cross this railroad via car or horse to conduct our cattle operations.

9. I am concerned about the radiation risks posed by the construction and operation of the Facility to my property, my health and safety, the health and safety of my family and employees, and my environment, by living and working next to a facility housing such an enormous inventory of radioactive material, and by transportation of spent nuclear fuel to the Facility.

10. I am also concerned that an accident involving spent nuclear fuel at the Facility will harm my family and property due to radiological exposure. I am also concerned that such an accident will harm the value of my mineral and working interests in gas and oil production or make them functionally inaccessible due to radiological exposure.

11. I am also concerned about the impact the Facility will have on the value of the Frying Pan Ranch. It is my understanding that property values near a nuclear facility can be reduced as early as when it receives its license to operate due to real or perceived risks of exposure to radiation releases from the nearby facility. It is also my understanding that property values continue to decrease as the Facility is constructed and operating.

12. I am also concerned that the licensing, construction, and operation of the Facility will impact the economic prosperity of the counties where I live and own land. It is my understanding that the Permian Basin in New Mexico and Texas is the largest oil and gas producer in the United States and the second largest in the world. I am concerned that construction and operation of the Facility on top of the Permian Basin will impact the ability to continue drilling so successfully here and therefore have a negative effect on the economy. This could harm local businesses and the value of my property. I am also concerned that construction and operation of the Facility will limit the domestic production of oil and gas in the United States.

13. I am also concerned that I will not be able to avoid small doses of unwanted radiation from driving next to rail cars carrying shipments of spent nuclear fuel, which will harm my health and safety.

14. I am also concerned with the impacts to my interest and right to travel near my home posed by ISP's proposed transportation of spent nuclear fuel on the Texas and New Mexico Railway. In order to ensure myself and my family travel on the safest roads to avoid unwanted doses of radiation or potential accidents involving transportation of spent nuclear fuel, we would have to avoid highways and roads that are our primary routes to access business and everyday necessities.

15. I am concerned that ISP's license application was inadequate and illegal as written, that NRC's approval of that application was unlawful, and that my interests will not be adequately represented in this action without the opportunity of Beyond Nuclear to intervene as a party in the proceeding on my behalf.

16. Therefore, I previously authorized Beyond Nuclear to protect my interests by representing me in both (a) a motion to the NRC to dismiss ISP's license application and (b) a petition to intervene in the NRC's licensing proceeding for the Facility. When the NRC denied Beyond Nuclear's motion to dismiss ISP's license application, I authorized Beyond Nuclear to appeal that decision to this court. Now that the NRC has denied Beyond Nuclear's petition to intervene and granted ISP's license, I authorize Beyond Nuclear to appeal that decision to this court.

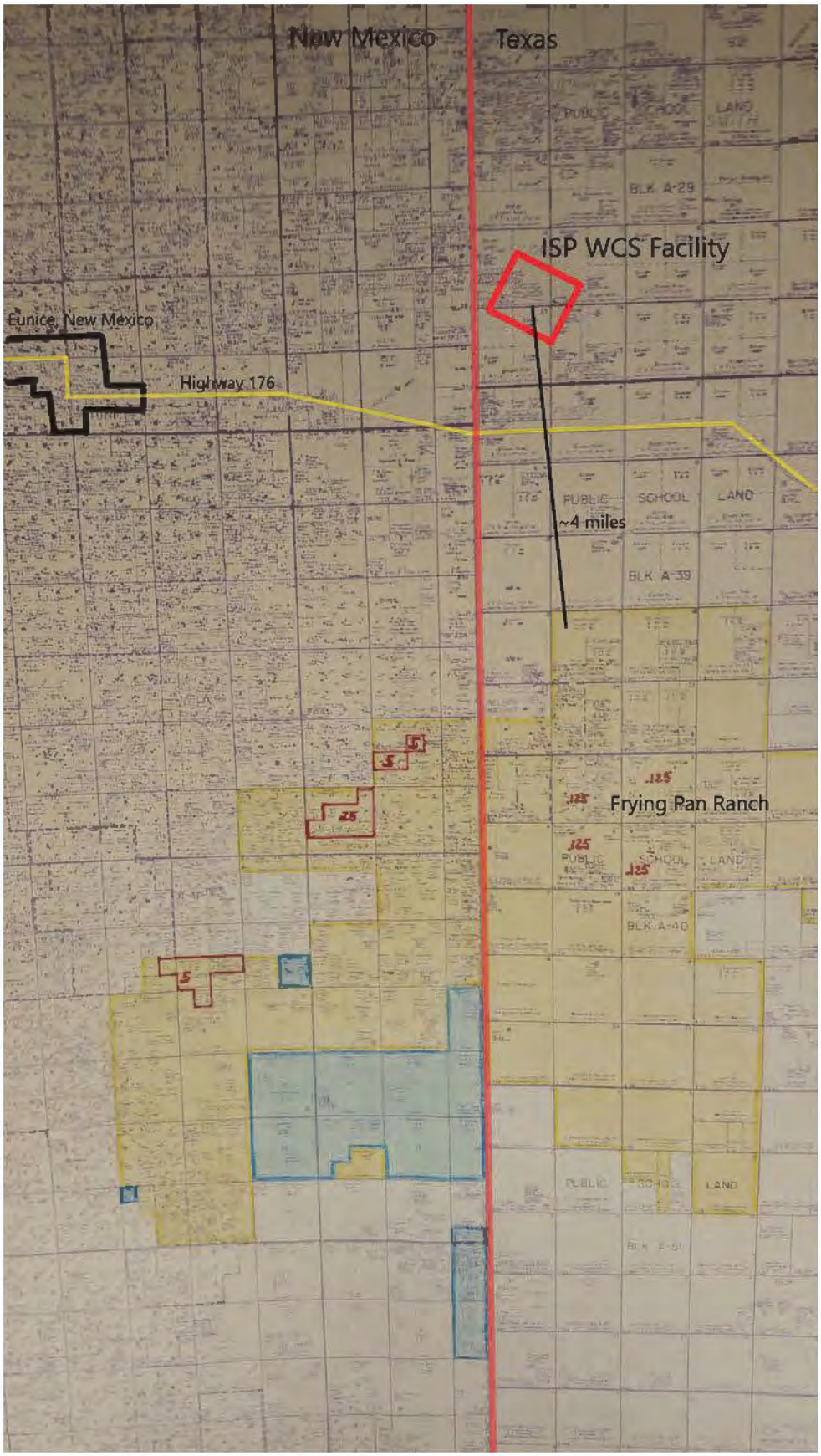
[Remainder of this page intentionally left blank.]

The declarant has caused this Declaration to be executed as of the date below.

Signed:

Dated: 10-23-21

ATTACHMENT A



STANDING ADDENDUM EXHIBIT 3

Declaration of Anita Ireland

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

EXHIBIT 3

BEYOND NUCLEAR, INC.,	)	
Petitioner,	)	Case No. 21-1056
	)	Consolidated with Nos. 21-1048, 21-1055, and 21-1179
v.	)	
UNITED STATES NUCLEAR REGULATORY COMMISSION and the UNITED STATES OF AMERICA,	)	
Respondents.	)	

DECLARATION OF ANITA IRELAND

Under penalty of perjury, I, Anita Ireland, declare as follows:

1. My name is Anita Ireland.

2. I am a member of Beyond Nuclear.

3. I live at 1700 N. Main, Eunice, NM 88231.

4. I frequently spend time within 10 miles of the proposed Interim Storage Partners Consolidated Interim Storage Facility (the "Facility") because my property is located 9.1 miles from the Facility, traveling from Highway 176. **See Attachment A.**

5. My daughter lives on property I own at 1304 Avenue A, Eunice NM 88231 with her husband and three children, one aged 4 and twins aged 6. The property is about 1 acre in size. **See Attachment B.**

6. I am retired, but my daughter frequently and regularly spends time on the local roads near the Facility and transportation routes for the Facility. She must use Highway 176, which passes directly south of the Facility, to get to her job in in Andrews, TX. The highways are very busy and can be dangerous due to truck traffic.

7. I am concerned about the risks to my health and safety and to my environment posed by the construction and operation of the Facility, and by transportation of spent nuclear fuel to the Facility.

8. I am concerned about the radiation risks posed by the construction and operation of the Facility to the health and safety of my family and my environment by living and working near a facility housing such an enormous inventory of radioactive material, and by the transportation of spent nuclear fuel to the Facility. I am concerned my family and I may be exposed to unwanted radiation from the Facility in our daily lives just by conducting our regular work and recreational activities.

9. In addition, I am concerned about the radiation risks posed by the construction and operation of the Facility and transportation of nuclear waste to the Facility to the health and safety of the workers and nearby residents from being near such an enormous inventory of radioactive material.

10. I am concerned that the added traffic associated with the construction and operation of the Facility and transportation of spent nuclear fuel may create dangerous situations. The roads are already dangerous and extremely congested because of the truck traffic, waste management operations, and oil and gas operations. I frequently hear of accidents on these highways. I am worried that an accident involving the transport of spent fuel will impact my health and safety and the health and safety of my family.

11. I am especially concerned for my young grandchildren as they grow and develop around the Facility which could create potential radiation exposure. Currently, I care for my grandchildren when my daughter is at work, but as they grow and attend school, they will frequently spend time on the roads used as transportation routes and those near the Facility.

12. I am also concerned with the impacts posed by ISP's proposed transportation of spent nuclear fuel on the Texas and New Mexico Railway to my interest and right to travel near my home. In order to ensure myself and my family

travel on the safest roads to avoid unwanted doses of radiation or potential accidents involving the transportation of spent nuclear fuel, we would have to avoid highways and roads that are the primary routes to access businesses and everyday necessities. I am concerned that my family and I will not be able to avoid small doses of unwanted radiation from driving next to rail cars carrying shipments of spent nuclear fuel, which will harm my health and safety.

13. I am concerned that an accident involving spent nuclear fuel at the Facility will harm me and my family due to radiological exposure. In addition, I am concerned an accident may harm me and my family by contaminating the water supply of the counties where I live and travel.

14. I am concerned that the licensing, construction, and operation of the Facility will impact the economic prosperity of the counties where I live, as well as decrease the value of my home and other property. I am concerned the Facility will deter people from wanting to live in this area. It is my understanding that property values near a nuclear facility can be reduced as early as when it receives its license to operate due to real or perceived risks of exposure to radiation releases from a nearby facility. It is also my understanding that property values may continue to decrease as the facility is constructed and operating.

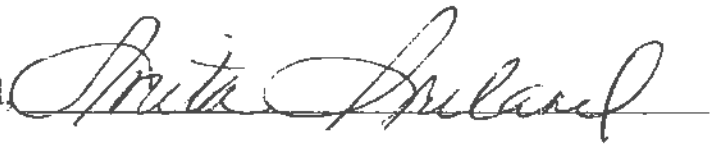
15. I am also concerned that a leak or accident could contaminate the land that is used for ranching and oil and gas leases, impacting the health of the workers, the health of the livestock, and the economic health of the land. Additionally, I am concerned this could impact the economy where I live because people may associate the area with nuclear waste. I am concerned no one will want to buy cattle from this area because of the real or perceived fear that the cattle are contaminated by nuclear waste. I am also concerned that an accident will harm the value of any mineral and/or oil and gas production interests.

16. Finally, I am concerned that ISP's license application was inadequate and illegal as written, that the NRC's approval of that application was unlawful, and that my interests will not be adequately represented in this action without the opportunity for Beyond Nuclear to intervene as a party on my behalf.

17. Therefore, I authorize Beyond Nuclear to protect my interests by representing me in this appeal of the NRC's decisions to deny Beyond Nuclear's Motion to Dismiss and petition to intervene and to grant ISP's license.

[Remainder of page intentionally left blank]

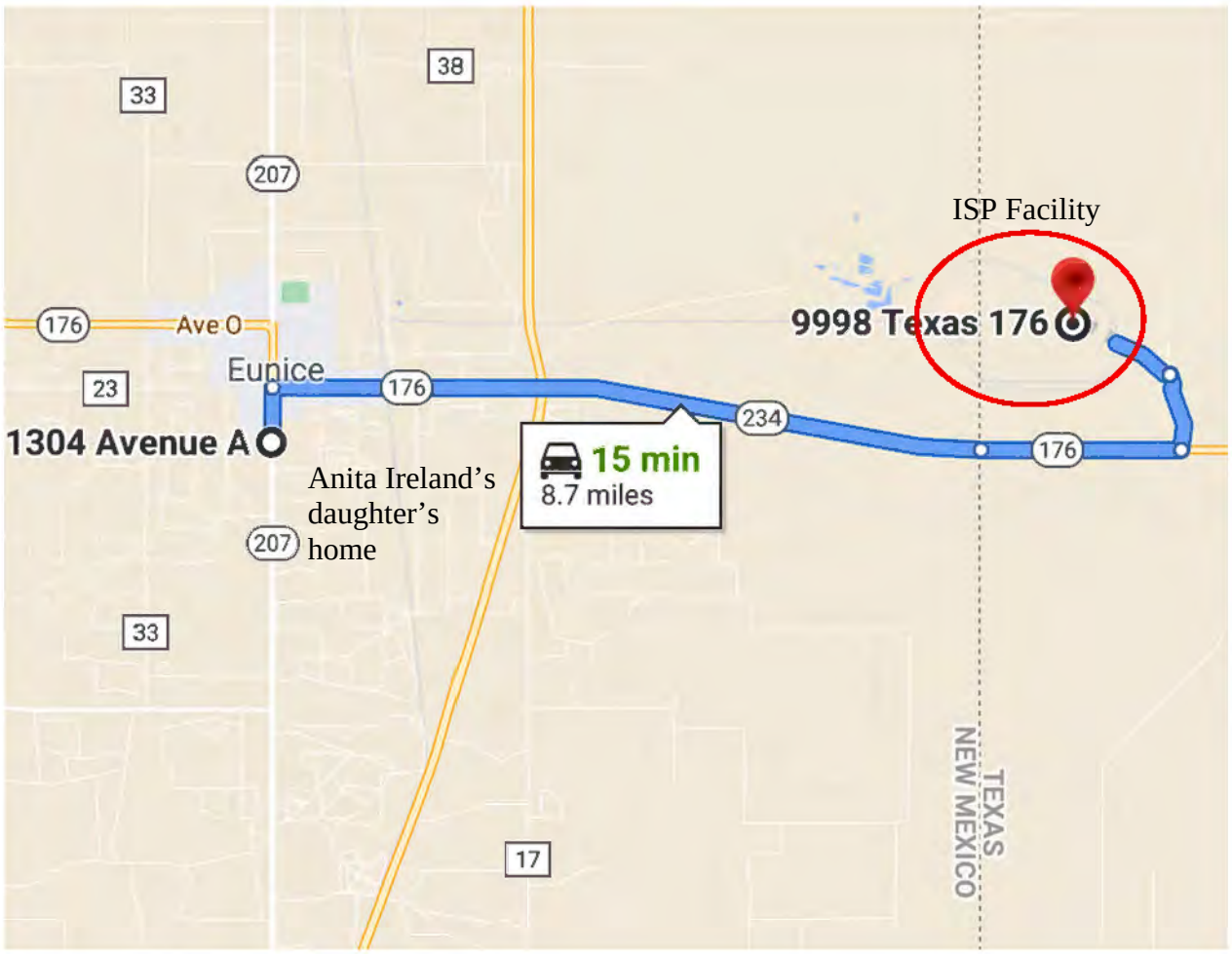
The declarant has caused this Declaration to be executed as of the date below:

Signed: 

Dated: 10/25/2021

Declaration of Anita Ireland
Attachment A

Declaration of Anita Ireland
Attachment B



STANDING ADDENDUM EXHIBIT 4

Declaration of Robert Boyd

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

EXHIBIT 4

BEYOND NUCLEAR, INC.,	)	
Petitioner,	)	Case No. 21-1056
	)	Consolidated with Nos. 21-1048, 21-1055, and 21-1179
v.	)	
UNITED STATES NUCLEAR REGULATORY COMMISSION and the UNITED STATES OF AMERICA,	)	
Respondents.	)	

DECLARATION OF ROBERT CHARLES BOYD, DVM

Under penalty of perjury, I, Robert Charles Boyd, declare as follows:

1. My name is Robert Charles Boyd.

2. I am a member of Beyond Nuclear.

3. I live with my wife, Wendi Denyse Boyd, at 4215 Roadrunner Trail, Midland, Texas, 79707.

4. I ranch cattle on 63 sections of the Frying Pan Ranch, which I lease from my brother, D.K. Boyd. The Frying Pan Ranch is located on 137,599 acres in southeastern New Mexico and western Texas. The closest part of the Frying Pan Ranch to Interim Storage Partners' ("ISP") Waste Control Specialists Consolidated Interim Storage Facility (the "Facility") is only four miles away. I have attached a map identifying the location of this part of the Frying Pan Ranch and the Facility. See Attachment A.

5. I also have mineral interests and oil and gas interests on the Frying Pan Ranch.

6. My employee and I frequently and regularly spend time within 15 miles of the Facility because of my cattle operations on the Frying Pan Ranch. My employee lives on Frying Pan Ranch in New Mexico in Township 23S, Range 38E, Section 8.

7. I also frequently and regularly spend time on the local roads near the Facility and transportation routes for the Facility. For instance, I drive on Highway 18 south of Eunice, New Mexico and Highway 176 which passes directly south the Facility. I have to use Highway 18 and Highway 176 for travel to the ranch, for business, for transport of my cattle, and for travel between different parts of the ranch. These Highways are very busy and can be dangerous due to truck traffic.

8. I am concerned about the risks to my business, my health and safety, and my environment posed by the construction and operation of the Facility, and by transportation of spent nuclear fuel to the Facility.

9. I am concerned about the radiation risks posed by the construction and operation of the Facility to my business, my health and safety, the health and safety of my family and employee, and my environment, by living and working next to a facility housing such an enormous inventory of radioactive material, and by transportation of spent nuclear fuel to the Facility. I am concerned that we may be exposed to unwanted radiation from the Facility in our daily lives just by conducting our regular work and recreation activities.

10. I am concerned that an accident involving spent nuclear fuel at the Facility will harm me, my family, employee, and business due to radiological exposure. An accident may impact my livelihood and way of life by directly impacting my cattle. In addition, I am concerned that New Mexico and Texas will become known for their storage of nuclear waste and no one will want to buy my cattle because of a real or perceived fear that the cattle are poisoned or contaminated.

11. I am also concerned that such an accident will harm the value of my mineral and working interests in gas and oil production or make them functionally inaccessible due to radiological exposure.

12. I am also concerned that such an accident may harm the water supply of the counties where I live and work. It is my understanding that the Ogallala Aquifer in New Mexico and Texas, located directly under and around the Facility, is the largest aquifer in the United States and provides more water for users than any other aquifer in Texas. The availability of this water is critical to my business, the surrounding environment, and the economy of the area in which I live and work.

13. I am concerned that the added traffic associated with construction and operation of the Facility and the transport of spent nuclear fuel may create dangerous situations. The roads are already dangerous and at capacity because of the oil and gas operations. I frequently hear of accidents on these highways. I am worried that an accident involving the transport of spent fuel will impact my health and safety.

14. I am also concerned with the impacts to my interest and right to travel near my home posed by ISP's proposed transportation of spent nuclear fuel on the Texas and New Mexico Railway. In order to ensure myself and my family travel on the safest roads to avoid unwanted doses of radiation or potential accidents involving transportation of spent nuclear fuel, we would have to avoid highways and roads that are our primary routes to access business and everyday necessities. I am concerned that I will not be able to avoid small doses of unwanted radiation from driving next to rail cars carrying shipments of spent nuclear fuel, which will harm my health and safety.

15. I am concerned that the licensing, construction, and operation of the Facility will impact the economic prosperity of the counties where I live and work. It is my understanding that the Permian Basin in New Mexico and Texas is the largest oil and gas producer in the United States and the second largest in the world. I am concerned that construction and operation of the Facility on top of the Permian Basin will impact the ability to continue drilling so successfully here and therefore have a negative effect on the economy. This could harm local businesses. I am also concerned that construction and operation of the Facility will limit the domestic production of oil and gas in the United States.

16. I am concerned that ISP's application was inadequate and illegal as written, that the NRC's approval of that application was unlawful, and that my

interests will not be adequately represented in this action without being represented by Beyond Nuclear.

17. Therefore, I authorize Beyond Nuclear to protect my interests by representing me in this appeal of the NRC's decisions to deny Beyond Nuclear's Motion to Dismiss and petition to intervene and to grant ISP's license.

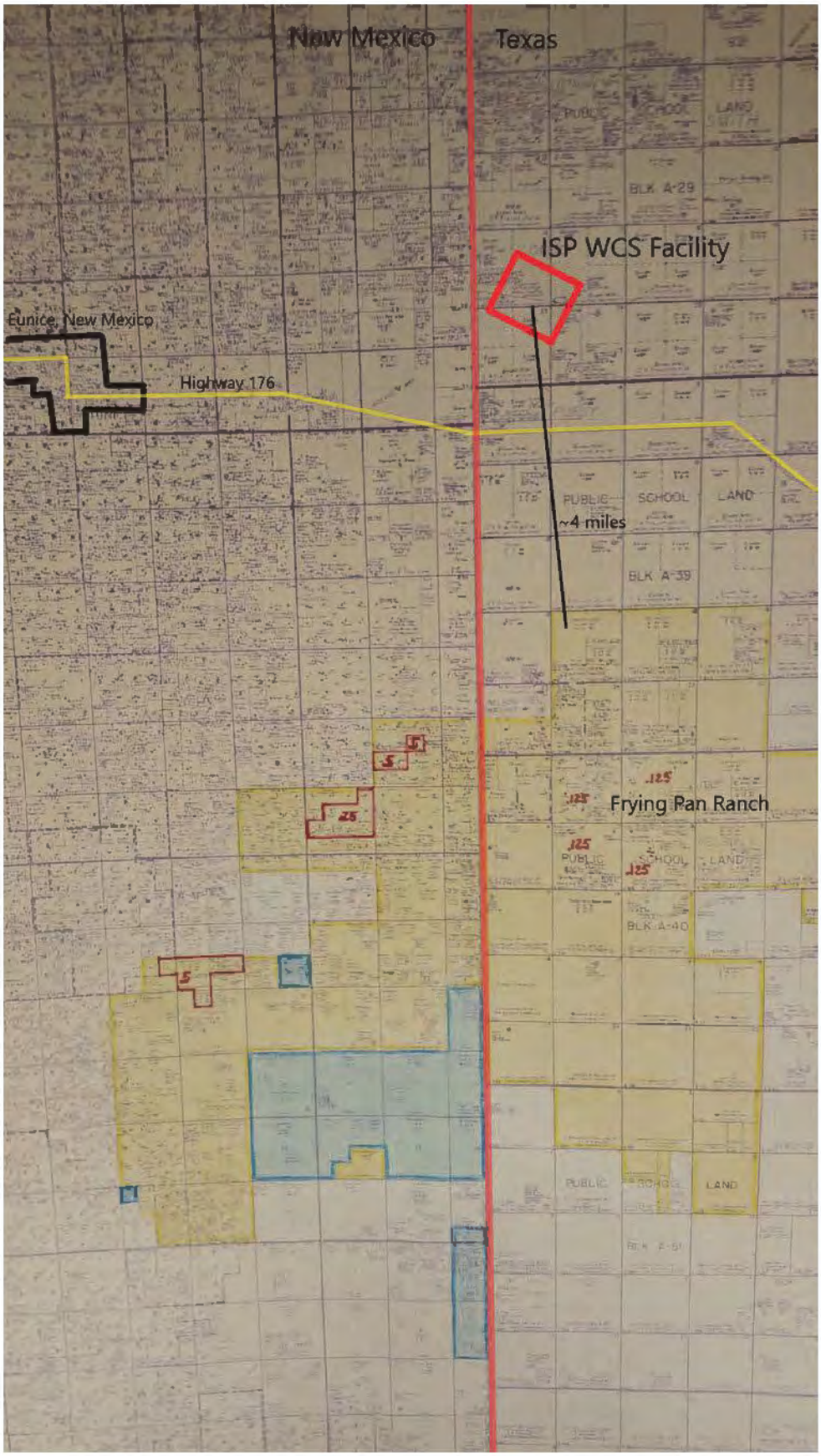
[Remainder of this page intentionally left blank.]

The declarant has caused this Declaration to be executed as of the date below.

Signed:

Dated: 10-26-21

ATTACHMENT A



STATUTORY ADDENDUM

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Federal Register Notices

5 U.S.C. § 702

United States Code Annotated
Title 5. Government Organization and Employees (Refs & Annos)
Part I. The Agencies Generally
Chapter 7. Judicial Review (Refs & Annos)
5 U.S.C.A. § 702

§ 702. Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: Provided, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

United States Code Annotated
Title 5. Government Organization and Employees (Refs & Annos)
Part I. The Agencies Generally
Chapter 7. Judicial Review (Refs & Annos)
5 U.S.C.A. § 706

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

42 U.S.C. § 2201(b)

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 23. Development and Control of Atomic Energy (Refs & Annos)
Division a. Atomic Energy
Subchapter XIII. General Authority of Commission (Refs & Annos)

42 U.S.C.A. § 2201
§ 2201. General duties of Commission

In the performance of its functions the Commission is authorized to--

(b) Standards governing use and possession of material

establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property; in addition, the Commission shall prescribe such regulations or orders as may be necessary or desirable to promote the Nation's common defense and security with regard to control, ownership, or possession of any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235;

42 U.S.C. § 2239(b)

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 23. Development and Control of Atomic Energy (Refs & Annos)
Division a. Atomic Energy
Subchapter XV. Judicial Review and Administrative Procedure (Refs & Annos)

42 U.S.C.A. § 2239
§ 2239. Hearings and judicial review

(a)(1)(A) In any proceeding under this chapter, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees, and in any proceeding for the payment of compensation, an award or royalties under sections 2183, 2187, 2236(c) or 2238 of this title, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. The Commission shall hold a hearing after thirty days' notice and publication once in the Federal Register, on each application under section 2133 or 2134(b) of this title for a construction permit for a facility, and on any application under section 2134(c) of this title for a construction permit for a testing facility. In cases where such a construction permit has been issued following the holding of such a hearing, the Commission may, in the absence of a request therefor by any person whose interest may be affected, issue an operating license or an amendment to a construction permit or an amendment to an operating license without a hearing, but upon thirty days' notice and publication once in the Federal Register of its intent to do so. The Commission may dispense with such thirty days' notice and publication with respect to any application for an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards consideration.

(B)(i) Not less than 180 days before the date scheduled for initial loading of fuel into a plant by a licensee that has been issued a combined construction permit and operating license under section 2235(b) of this title, the Commission shall publish in the Federal Register notice of intended operation. That notice shall provide that any person whose interest may be affected by operation of the plant, may within 60 days request the Commission to hold a hearing on whether the facility as

constructed complies, or on completion will comply, with the acceptance criteria of the license.

(ii) A request for hearing under clause (i) shall show, prima facie, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and the specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety.

(iii) After receiving a request for a hearing under clause (i), the Commission expeditiously shall either deny or grant the request. If the request is granted, the Commission shall determine, after considering petitioners' prima facie showing and any answers thereto, whether during a period of interim operation, there will be reasonable assurance of adequate protection of the public health and safety. If the Commission determines that there is such reasonable assurance, it shall allow operation during an interim period under the combined license.

(iv) The Commission, in its discretion, shall determine appropriate hearing procedures, whether informal or formal adjudicatory, for any hearing under clause (i), and shall state its reasons therefor.

(v) The Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within 180 days of the publication of the notice provided by clause (i) or the anticipated date for initial loading of fuel into the reactor, whichever is later. Commencement of operation under a combined license is not subject to subparagraph (A).

(2)(A) The Commission may issue and make immediately effective any amendment to an operating license or any amendment to a combined construction and operating license, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. In determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility involved is located. In all other respects such amendment shall meet the requirements of this chapter.

(B) The Commission shall periodically (but not less frequently than once every thirty days) publish notice of any amendments issued, or proposed to be issued, as

provided in subparagraph (A). Each such notice shall include all amendments issued, or proposed to be issued, since the date of publication of the last such periodic notice. Such notice shall, with respect to each amendment or proposed amendment (i) identify the facility involved; and (ii) provide a brief description of such amendment. Nothing in this subsection shall be construed to delay the effective date of any amendment.

(C) The Commission shall, during the ninety-day period following the effective date of this paragraph, promulgate regulations establishing (i) standards for determining whether any amendment to an operating license or any amendment to a combined construction and operating license involves no significant hazards consideration; (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which criteria shall take into account the exigency of the need for the amendment involved; and (iii) procedures for consultation on any such determination with the State in which the facility involved is located.

(b) The following Commission actions shall be subject to judicial review in the manner prescribed in chapter 158 of Title 28 and chapter 7 of Title 5:

(1) Any final order entered in any proceeding of the kind specified in subsection (a).

(2) Any final order allowing or prohibiting a facility to begin operating under a combined construction and operating license.

(3) Any final order establishing by regulation standards to govern the Department of Energy's gaseous diffusion uranium enrichment plants, including any such facilities leased to a corporation established under the USEC Privatization Act.

(4) Any final determination under section 2297f(c) of this title relating to whether the gaseous diffusion plants, including any such facilities leased to a corporation established under the USEC Privatization Act, are in compliance with the Commission's standards governing the gaseous diffusion plants and all applicable laws.

28 U.S.C. § 2342

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part VI. Particular Proceedings
Chapter 158. Orders of Federal Agencies; Review (Refs & Annos)

28 U.S.C.A. § 2342
§ 2342. Jurisdiction of court of appeals

The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of—

(1) all final orders of the Federal Communications Commission made reviewable by section 402(a) of title 47;

(2) all final orders of the Secretary of Agriculture made under chapters 9 and 20A of title 7, except orders issued under sections 210(e), 217a, and 499g(a) of title 7;

(3) all rules, regulations, or final orders of—

(A) the Secretary of Transportation issued pursuant to section 50501, 50502, 56101-56104, or 57109 of title 46 or pursuant to part B or C of subtitle IV, subchapter III of chapter 311, chapter 313, or chapter 315 of title 49; and

(B) the Federal Maritime Commission issued pursuant to section 305, 41304, 41308, or 41309 or chapter 421 or 441 of title 46;

(4) all final orders of the Atomic Energy Commission made reviewable by section 2239 of title 42;

(5) all rules, regulations, or final orders of the Surface Transportation Board made reviewable by section 2321 of this title;

(6) all final orders under section 812 of the Fair Housing Act; and

(7) all final agency actions described in section 20114(c) of title 49.

Jurisdiction is invoked by filing a petition as provided by section 2344 of this title.

28 U.S.C. § 2344

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Part VI. Particular Proceedings
Chapter 158. Orders of Federal Agencies; Review (Refs & Annos)

28 U.S.C.A. § 2344
§ 2344. Review of orders; time; notice; contents of petition; service

On the entry of a final order reviewable under this chapter, the agency shall promptly give notice thereof by service or publication in accordance with its rules. Any party aggrieved by the final order may, within 60 days after its entry, file a petition to review the order in the court of appeals wherein venue lies. The action shall be against the United States. The petition shall contain a concise statement of-

(1) the nature of the proceedings as to which review is sought;

(2) the facts on which venue is based;

(3) the grounds on which relief is sought; and

(4) the relief prayed.

The petitioner shall attach to the petition, as exhibits, copies of the order, report, or decision of the agency. The clerk shall serve a true copy of the petition on the agency and on the Attorney General by registered mail, with request for a return receipt.

42 U.S.C. § 10101

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 108. Nuclear Waste Policy (Refs & Annos)

42 U.S.C.A. § 10101
§ 10101. Definitions

For purposes of this chapter:

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) The term "affected Indian tribe" means any Indian tribe—

(A) within whose reservation boundaries a monitored retrievable storage facility, test and evaluation facility, or a repository for high-level radioactive waste or spent fuel is proposed to be located;

(B) whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties may be substantially and adversely affected by the locating of such a facility: Provided, That the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the tribe, that such effects are both substantial and adverse to the tribe;1

(3) The term "atomic energy defense activity" means any activity of the Secretary performed in whole or in part in carrying out any of the following functions:

(A) naval reactors development;

(B) weapons activities including defense inertial confinement fusion;

(C) verification and control technology;

(D) defense nuclear materials production;

(E) defense nuclear waste and materials by-products management;

(F) defense nuclear materials security and safeguards and security investigations; and

(G) defense research and development.

(4) The term "candidate site" means an area, within a geologic and hydrologic system, that is recommended by the Secretary under section 10132 of this title for site characterization, approved by the President under section 10132 of this title for site characterization, or undergoing site characterization under section 10133 of this title.

(5) The term "civilian nuclear activity" means any atomic energy activity other than an atomic energy defense activity.

(6) The term "civilian nuclear power reactor" means a civilian nuclear powerplant required to be licensed under section 2133 or 2134(b) of this title.

(7) The term "Commission" means the Nuclear Regulatory Commission.

(8) The term "Department" means the Department of Energy.

(9) The term "disposal" means the emplacement in a repository of high-level radioactive waste, spent nuclear fuel, or other highly radioactive material with no foreseeable intent of recovery, whether or not such emplacement permits the recovery of such waste.

(10) The terms "disposal package" and "package" mean the primary container that holds, and is in contact with, solidified high-level radioactive waste, spent nuclear fuel, or other radioactive materials, and any overpacks that are emplaced at a repository.

(11) The term "engineered barriers" means manmade components of a disposal system designed to prevent the release of radionuclides into the geologic medium involved. Such term includes the high-level radioactive waste form, high-level radioactive waste canisters, and other materials placed over and around such canisters.

(12) The term "high-level radioactive waste" means—

(A) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and

(B) other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation.

(13) The term "Federal agency" means any Executive agency, as defined in section 105 of Title 5.

(14) The term "Governor" means the chief executive officer of a State.

(15) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)).

(16) The term "low-level radioactive waste" means radioactive material that-

(A) is not high-level radioactive waste, spent nuclear fuel, transuranic waste, or by-product material as defined in section 2014(e)(2) of this title; and

(B) the Commission, consistent with existing law, classifies as low-level radioactive waste.

(17) The term "Office" means the Office of Civilian Radioactive Waste Management established in section 10224 of this title.

(18) The term "repository" means any system licensed by the Commission that is intended to be used for, or may be used for, the permanent deep geologic disposal of high-level radioactive waste and spent nuclear fuel, whether or not such system is designed to permit the recovery, for a limited period during initial operation, of any materials placed in such system. Such term includes both surface and subsurface areas at which high-level radioactive waste and spent nuclear fuel handling activities are conducted.

(19) The term "reservation" means—

(A) any Indian reservation or dependent Indian community referred to in clause (a) or (b) of section 1151 of Title 18; or

(B) any land selected by an Alaska Native village or regional corporation under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(20) The term "Secretary" means the Secretary of Energy.

(21) The term "site characterization" means—

(A) siting research activities with respect to a test and evaluation facility at a candidate site; and

(B) activities, whether in the laboratory or in the field, undertaken to establish the geologic condition and the ranges of the parameters of a candidate site relevant to the location of a repository, including borings, surface excavations, excavations of exploratory shafts, limited subsurface lateral excavations and borings, and in situ testing needed to evaluate the suitability of a candidate site for the location of a repository, but not including preliminary borings and geophysical testing needed to assess whether site characterization should be undertaken.

(22) The term "siting research" means activities, including borings, surface excavations, shaft excavations, subsurface lateral excavations and borings, and in situ testing, to determine the suitability of a site for a test and evaluation facility.

(23) The term "spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

(24) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(25) The term "storage" means retention of high-level radioactive waste, spent nuclear fuel, or transuranic waste with the intent to recover such waste or fuel for subsequent use, processing, or disposal.

(26) The term "Storage Fund" means the Interim Storage Fund established in section 10156(c) of this title.

(27) The term "test and evaluation facility" means an at-depth, prototypic, underground cavity with subsurface lateral excavations extending from a central shaft that is used for research and development purposes, including the development of data and experience for the safe handling and disposal of solidified high-level radioactive waste, transuranic waste, or spent nuclear fuel.

(28) The term "unit of general local government" means any borough, city, county, parish, town, township, village, or other general purpose political subdivision of a State.

(29) The term "Waste Fund" means the Nuclear Waste Fund established in section 10222(c) of this title.

(30) The term "Yucca Mountain site" means the candidate site in the State of Nevada recommended by the Secretary to the President under section 10132(b)(1)(B) of this title on May 27, 1986.

(31) The term "affected unit of local government" means the unit of local government with jurisdiction over the site of a repository or a monitored retrievable storage facility. Such term may, at the discretion of the Secretary, include units of local government that are contiguous with such unit.

(32) The term "Negotiator" means the Nuclear Waste Negotiator.

(33) As used in subchapter IV, the term "Office" means the Office of the Nuclear Waste Negotiator established under subchapter IV of this chapter.

(34) The term "monitored retrievable storage facility" means the storage facility described in section 10161(b)(1) of this title.

Subtitle A, 42 U.S.C. §§ 10121–45

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42 U.S.C.A. § 10121

§ 10121. State and affected Indian tribe participation in development of proposed repositories for defense waste

(a) Notification to States and affected Indian tribes

Notwithstanding the provisions of section 10107 of this title, upon any decision by the Secretary or the President to develop a repository for the disposal of high-level radioactive waste or spent nuclear fuel resulting exclusively from atomic energy defense activities, research and development activities of the Secretary, or both, and before proceeding with any site-specific investigations with respect to such repository, the Secretary shall notify the Governor and legislature of the State in which such repository is proposed to be located, or the governing body of the affected Indian tribe on whose reservation such repository is proposed to be located, as the case may be, of such decision.

(b) Participation of States and affected Indian tribes

Following the receipt of any notification under subsection (a), the State or Indian tribe involved shall be entitled, with respect to the proposed repository involved, to rights of participation and consultation identical to those provided in sections 10135 through 10138 of this title, except that any financial assistance authorized to be provided to such State or affected Indian tribe under section 10136(c) or 10138(b) of this title shall be made from amounts appropriated to the Secretary for purposes of carrying out this section.

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42 U.S.C.A. § 10131

§ 10131. Findings and purposes

(a) The Congress finds that--

(1) radioactive waste creates potential risks and requires safe and environmentally acceptable methods of disposal;

(2) a national problem has been created by the accumulation of (A) spent nuclear fuel from nuclear reactors; and (B) radioactive waste from (i) reprocessing of spent nuclear fuel; (ii) activities related to medical research, diagnosis, and treatment; and (iii) other sources;

(3) Federal efforts during the past 30 years to devise a permanent solution to the problems of civilian radioactive waste disposal have not been adequate;

(4) while the Federal Government has the responsibility to provide for the permanent disposal of high-level radioactive waste and such spent nuclear fuel as may be disposed of in order to protect the public health and safety and the environment, the costs of such disposal should be the responsibility of the generators and owners of such waste and spent fuel;

(5) the generators and owners of high-level radioactive waste and spent nuclear fuel have the primary responsibility to provide for, and the responsibility to pay the costs of, the interim storage of such waste and spent fuel until such waste and spent fuel is accepted by the Secretary of Energy in accordance with the provisions of this chapter;

(6) State and public participation in the planning and development of repositories is essential in order to promote public confidence in the safety of disposal of such waste and spent fuel; and

(7) high-level radioactive waste and spent nuclear fuel have become major subjects of public concern, and appropriate precautions must be taken to ensure that such waste and spent fuel do not adversely affect the public health and safety and the environment for this or future generations.

(b) The purposes of this part are—

(1) to establish a schedule for the siting, construction, and operation of repositories that will provide a reasonable assurance that the public and the environment will be adequately protected from the hazards posed by high-level radioactive waste and such spent nuclear fuel as may be disposed of in a repository;

(2) to establish the Federal responsibility, and a definite Federal policy, for the disposal of such waste and spent fuel;

(3) to define the relationship between the Federal Government and the State governments with respect to the disposal of such waste and spent fuel; and

(4) to establish a Nuclear Waste Fund, composed of payments made by the generators and owners of such waste and spent fuel, that will ensure that the costs of carrying out activities relating to the disposal of such waste and spent fuel will be borne by the persons responsible for generating such waste and spent fuel.

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42 U.S.C.A. § 10132

§ 10132. Recommendation of candidate sites for site characterization

(a) Guidelines

Not later than 180 days after January 7, 1983, the Secretary, following consultation with the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Director of the United States Geological Survey, and interested Governors, and the concurrence of the Commission shall issue general guidelines for the recommendation of sites for repositories. Such guidelines shall specify detailed geologic considerations that shall be primary criteria for the selection of sites in various geologic media. Such guidelines shall specify factors that qualify or disqualify any site from development as a repository, including factors pertaining to the location of valuable natural resources, hydrology, geophysics, seismic activity, and atomic energy defense activities, proximity to water supplies, proximity to populations, the effect upon the rights of users of water, and proximity to components of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, or National Forest Lands. Such guidelines shall take into consideration the proximity to sites where high-level radioactive waste and spent nuclear fuel is generated or temporarily stored and the transportation and safety factors involved in moving such waste to a repository. Such guidelines shall specify population factors that will disqualify any site from development as a repository if any surface facility of such repository would be located (1) in a highly populated area; or (2) adjacent to an area 1 mile by 1 mile having a population of not less than 1,000 individuals. Such guidelines also shall require the Secretary to consider the cost and impact of transporting to the repository site the solidified high-level radioactive waste and spent fuel to be disposed of in the repository and the advantages of regional distribution in the siting of repositories. Such guidelines shall require the Secretary to consider the various geologic media in which sites for repositories may be located and, to the extent practicable, to recommend sites in different geologic media. The Secretary

shall use guidelines established under this subsection in considering candidate sites for recommendation under subsection (b). The Secretary may revise such guidelines from time to time, consistent with the provisions of this subsection.

(b) Recommendation by Secretary to President

(1)(A) Following the issuance of guidelines under subsection (a) and consultation with the Governors of affected States, the Secretary shall nominate at least 5 sites that he determines suitable for site characterization for selection of the first repository site.

(B) Subsequent to such nomination, the Secretary shall recommend to the President 3 of the nominated sites not later than January 1, 1985 for characterization as candidate sites.

(C) Such recommendations under subparagraph (B) shall be consistent with the provisions of section 10225 of this title.

(D) Each nomination of a site under this subsection shall be accompanied by an environmental assessment, which shall include a detailed statement of the basis for such recommendation and of the probable impacts of the site characterization activities planned for such site, and a discussion of alternative activities relating to site characterization that may be undertaken to avoid such impacts. Such environmental assessment shall include—

(i) an evaluation by the Secretary as to whether such site is suitable for site characterization under the guidelines established under subsection (a);

(ii) an evaluation by the Secretary as to whether such site is suitable for development as a repository under each such guideline that does not require site characterization as a prerequisite for application of such guideline;

(iii) an evaluation by the Secretary of the effects of the site characterization activities at such site on the public health and safety and the environment;

(iv) a reasonable comparative evaluation by the Secretary of such site with other sites and locations that have been considered;

(v) a description of the decision process by which such site was recommended; and

(vi) an assessment of the regional and local impacts of locating the proposed repository at such site.

(E)(i) The issuance of any environmental assessment under this paragraph shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of Title 5 and section 10139 of this title. Such judicial review shall be limited to the sufficiency of such environmental assessment with respect to the items described in clauses (i) through (vi) of subparagraph (E).

(F) Each environmental assessment prepared under this paragraph shall be made available to the public.

(G) Before nominating a site, the Secretary shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, of such nomination and the basis for such nomination.

(2) Before nominating any site the Secretary shall hold public hearings in the vicinity of such site to inform the residents of the area in which such site is located of the proposed nomination of such site and to receive their comments. At such hearings, the Secretary shall also solicit and receive any recommendations of such residents with respect to issues that should be addressed in the environmental assessment described in paragraph (1) and the site characterization plan described in section 10133(b)(1) of this title.

(3) In evaluating the sites nominated under this section prior to any decision to recommend a site as a candidate site, the Secretary shall use available geophysical, geologic, geochemical and hydrologic, and other information and shall not conduct any preliminary borings or excavations at a site unless (i) such preliminary boring or excavation activities were in progress on January 7, 1983, or (ii) the Secretary certifies that such available information from other sources, in the absence of preliminary borings or excavations, will not be adequate to satisfy applicable requirements of this chapter or any other law: *Provided*, That preliminary borings or excavations under this section shall not exceed a diameter of 6 inches.

(c) Presidential review of recommended candidate sites

(1) The President shall review each candidate site recommendation made by the Secretary under subsection (b). Not later than 60 days after the submission by the Secretary of a recommendation of a candidate site, the President, in his discretion,

may either approve or disapprove such candidate site, and shall transmit any such decision to the Secretary and to either the Governor and legislature of the State in which such candidate site is located, or the governing body of the affected Indian tribe where such candidate site is located, as the case may be. If, during such 60-day period, the President fails to approve or disapprove such candidate site, or fails to invoke his authority under paragraph (2) to delay his decision, such candidate site shall be considered to be approved, and the Secretary shall notify such Governor and legislature, or governing body of the affected Indian tribe, of the approval of such candidate site by reason of the inaction of the President.

(2) The President may delay for not more than 6 months his decision under paragraph (1) to approve or disapprove a candidate site, upon determining that the information provided with the recommendation of the Secretary is insufficient to permit a decision within the 60-day period referred to in paragraph (1). The President may invoke his authority under this paragraph by submitting written notice to the Congress, within such 60-day period, of his intent to invoke such authority. If the President invokes such authority, but fails to approve or disapprove the candidate site involved by the end of such 6-month period, such candidate site shall be considered to be approved, and the Secretary shall notify such Governor and legislature, or governing body of the affected Indian tribe, of the approval of such candidate site by reason of the inaction of the President.

(d) Preliminary activities

Except as otherwise provided in this section, each activity of the President or the Secretary under this section shall be considered to be a preliminary decisionmaking activity. No such activity shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

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42 U.S.C.A. § 10133
§ 10133. Site characterization

(a) In general

The Secretary shall carry out, in accordance with the provisions of this section, appropriate site characterization activities at the Yucca Mountain site. The Secretary shall consider fully the comments received under subsection (b)(2) and section 10132(b)(2) of this title and shall, to the maximum extent practicable and in consultation with the Governor of the State of Nevada, conduct site characterization activities in a manner that minimizes any significant adverse environmental impacts identified in such comments or in the environmental assessment submitted under subsection (b)(1).

(b) Commission and States

(1) Before proceeding to sink shafts at the Yucca Mountain site, the Secretary shall submit for such candidate site to the Commission and to the Governor or legislature of the State of Nevada, for their review and comment—

(A) a general plan for site characterization activities to be conducted at such candidate site, which plan shall include—

(i) a description of such candidate site;

(ii) a description of such site characterization activities, including the following: the extent of planned excavations, plans for any onsite testing with radioactive or nonradioactive material, plans for any investigation activities that may affect the capability of such candidate site to isolate high-level radioactive waste and spent nuclear fuel, and plans to control any adverse, safety-related impacts from such site characterization activities;

(iii) plans for the decontamination and decommissioning of such candidate site, and for the mitigation of any significant adverse environmental impacts caused by site characterization activities if it is determined unsuitable for application for a construction authorization for a repository;

(iv) criteria to be used to determine the suitability of such candidate site for the location of a repository, developed pursuant to section 10132(a) of this title; and

(v) any other information required by the Commission;

(B) a description of the possible form or packaging for the high-level radioactive waste and spent nuclear fuel to be emplaced in such repository, a description, to the extent practicable, of the relationship between such waste form or packaging and the geologic medium of such site, and a description of the activities being conducted by the Secretary with respect to such possible waste form or packaging or such relationship; and

(C) a conceptual repository design that takes into account likely site-specific requirements.

(2) Before proceeding to sink shafts at the Yucca Mountain site, the Secretary shall (A) make available to the public the site characterization plan described in paragraph (1); and (B) hold public hearings in the vicinity of such candidate site to inform the residents of the area in which such candidate site is located of such plan, and to receive their comments.

(3) During the conduct of site characterization activities at the Yucca Mountain site, the Secretary shall report not less than once every 6 months to the Commission and to the Governor and legislature of the State of Nevada, on the nature and extent of such activities and the information developed from such activities.

(c) Restrictions

(1) The Secretary may conduct at the Yucca Mountain site only such site characterization activities as the Secretary considers necessary to provide the data required for evaluation of the suitability of such site for an application to be submitted to the Commission for a construction authorization for a repository at

such site, and for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) In conducting site characterization activities—

(A) the Secretary may not use any radioactive material at a site unless the Commission concurs that such use is necessary to provide data for the preparation of the required environmental reports and an application for a construction authorization for a repository at such site; and

(B) if any radioactive material is used at a site—

(i) the Secretary shall use the minimum quantity necessary to determine the suitability of such site for a repository, but in no event more than the curie equivalent of 10 metric tons of spent nuclear fuel; and

(ii) such radioactive material shall be fully retrievable.

(3) If the Secretary at any time determines the Yucca Mountain site to be unsuitable for development as a repository, the Secretary shall—

(A) terminate all site characterization activities at such site;

(B) notify the Congress, the1 Governor and legislature of Nevada of such termination and the reasons for such termination;

(C) remove any high-level radioactive waste, spent nuclear fuel, or other radioactive materials at or in such site as promptly as practicable;

(D) take reasonable and necessary steps to reclaim the site and to mitigate any significant adverse environmental impacts caused by site characterization activities at such site;

(E) suspend all future benefits payments under part F with respect to such site; and

(F) report to Congress not later than 6 months after such determination the Secretary's recommendations for further action to assure the safe, permanent disposal of spent nuclear fuel and high-level radioactive waste, including the need for new legislative authority.

(d) Preliminary activities

Each activity of the Secretary under this section that is in compliance with the provisions of subsection (c) shall be considered a preliminary decisionmaking activity. No such activity shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

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42 U.S.C.A. § 10134

§ 10134. Site approval and construction authorization

(a) Hearings and Presidential recommendation

(1) The Secretary shall hold public hearings in the vicinity of the Yucca Mountain site, for the purposes of informing the residents of the area of such consideration and receiving their comments regarding the possible recommendation of such site. If, upon completion of such hearings and completion of site characterization activities at the Yucca Mountain site, under section 10133 of this title, the Secretary decides to recommend approval of such site to the President, the Secretary shall notify the Governor and legislature of the State of Nevada, of such decision. No sooner than the expiration of the 30-day period following such notification, the Secretary shall submit to the President a recommendation that the President approve such site for the development of a repository. Any such recommendation by the Secretary shall be based on the record of information developed by the Secretary under section 10133 of this title and this section, including the information described in subparagraph (A) through subparagraph (G). Together with any recommendation of a site under this paragraph, the Secretary shall make available to the public, and submit to the President, a comprehensive statement of the basis of such recommendation, including the following:

(A) a description of the proposed repository, including preliminary engineering specifications for the facility;

(B) a description of the waste form or packaging proposed for use at such repository, and an explanation of the relationship between such waste form or packaging and the geologic medium of such site;

(C) a discussion of data, obtained in site characterization activities, relating to the safety of such site;

(D) a final environmental impact statement prepared for the Yucca Mountain site pursuant to subsection (f) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), together with comments made concerning such environmental impact statement by the Secretary of the Interior, the Council on Environmental Quality, the Administrator, and the Commission, except that the Secretary shall not be required in any such environmental impact statement to consider the need for a repository, the alternatives to geological disposal, or alternative sites to the Yucca Mountain site;

(E) preliminary comments of the Commission concerning the extent to which the at-depth site characterization analysis and the waste form proposal for such site seem to be sufficient for inclusion in any application to be submitted by the Secretary for licensing of such site as a repository;

(F) the views and comments of the Governor and legislature of any State, or the governing body of any affected Indian tribe, as determined by the Secretary, together with the response of the Secretary to such views;

(G) such other information as the Secretary considers appropriate; and

(H) any impact report submitted under section 10136(c)(2)(B) of this title by the State of Nevada.

(2)(A) If, after recommendation by the Secretary, the President considers the Yucca Mountain site qualified for application for a construction authorization for a repository, the President shall submit a recommendation of such site to Congress.

(B) The President shall submit with such recommendation a copy of the statement for such site prepared by the Secretary under paragraph (1).

(3)(A) The President may not recommend the approval of the Yucca Mountain site unless the Secretary has recommended to the President under paragraph (1) approval of such site and has submitted to the President a statement for such site as required under such paragraph.

(B) No recommendation of a site by the President under this subsection shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C.

4332(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

(b) Submission of application

If the President recommends to the Congress the Yucca Mountain site under subsection (a) and the site designation is permitted to take effect under section 10135 of this title, the Secretary shall submit to the Commission an application for a construction authorization for a repository at such site not later than 90 days after the date on which the recommendation of the site designation is effective under such section and shall provide to the Governor and legislature of the State of Nevada a copy of such application.

(c) Status report on application

Not later than 1 year after the date on which an application for a construction authorization is submitted under subsection (b), and annually thereafter until the date on which such authorization is granted, the Commission shall submit a report to the Congress describing the proceedings undertaken through the date of such report with regard to such application, including a description of—

(1) any major unresolved safety issues, and the explanation of the Secretary with respect to design and operation plans for resolving such issues;

(2) any matters of contention regarding such application; and

(3) any Commission actions regarding the granting or denial of such authorization.

(d) Commission action

The Commission shall consider an application for a construction authorization for all or part of a repository in accordance with the laws applicable to such applications, except that the Commission shall issue a final decision approving or disapproving the issuance of a construction authorization not later than the expiration of 3 years after the date of the submission of such application, except that the Commission may extend such deadline by not more than 12 months if, not less than 30 days before such deadline, the Commission complies with the reporting requirements established in subsection (e)(2). The Commission decision approving the first such application shall prohibit the emplacement in the first

repository of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of such a quantity of spent fuel until such time as a second repository is in operation. In the event that a monitored retrievable storage facility, approved pursuant to part C of this subchapter, shall be located, or is planned to be located, within 50 miles of the first repository, then the Commission decision approving the first such application shall prohibit the emplacement of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of spent fuel in both the repository and monitored retrievable storage facility until such time as a second repository is in operation.

(e) Project decision schedule

(1) The Secretary shall prepare and update, as appropriate, in cooperation with all affected Federal agencies, a project decision schedule that portrays the optimum way to attain the operation of the repository, within the time periods specified in this part. Such schedule shall include a description of objectives and a sequence of deadlines for all Federal agencies required to take action, including an identification of the activities in which a delay in the start, or completion, of such activities will cause a delay in beginning repository operation.

(2) Any Federal agency that determines that it cannot comply with any deadline in the project decision schedule, or fails to so comply, shall submit to the Secretary and to the Congress a written report explaining the reason for its failure or expected failure to meet such deadline, the reason why such agency could not reach an agreement with the Secretary, the estimated time for completion of the activity or activities involved, the associated effect on its other deadlines in the project decision schedule, and any recommendations it may have or actions it intends to take regarding any improvements in its operation or organization, or changes to its statutory directives or authority, so that it will be able to mitigate the delay involved. The Secretary, within 30 days after receiving any such report, shall file with the Congress his response to such report, including the reasons why the Secretary could not amend the project decision schedule to accommodate the Federal agency involved.

(f) Environmental impact statement

(1) Any recommendation made by the Secretary under this section shall be considered a major Federal action significantly affecting the quality of the human

environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). A final environmental impact statement prepared by the Secretary under such Act shall accompany any recommendation to the President to approve a site for a repository.

(2) With respect to the requirements imposed by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), compliance with the procedures and requirements of this chapter shall be deemed adequate consideration of the need for a repository, the time of the initial availability of a repository, and all alternatives to the isolation of high-level radioactive waste and spent nuclear fuel in a repository.

(3) For purposes of complying with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and this section, the Secretary need not consider alternate sites to the Yucca Mountain site for the repository to be developed under this part.

(4) Any environmental impact statement prepared in connection with a repository proposed to be constructed by the Secretary under this part shall, to the extent practicable, be adopted by the Commission in connection with the issuance by the Commission of a construction authorization and license for such repository. To the extent such statement is adopted by the Commission, such adoption shall be deemed to also satisfy the responsibilities of the Commission under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and no further consideration shall be required, except that nothing in this subsection shall affect any independent responsibilities of the Commission to protect the public health and safety under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

(5) Nothing in this chapter shall be construed to amend or otherwise detract from the licensing requirements of the Nuclear Regulatory Commission established in title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5841 et seq.).

(6) In any such statement prepared with respect to the repository to be constructed under this part, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, alternate sites to the Yucca Mountain site, or nongeologic alternatives to such site.

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 108. Nuclear Waste Policy (Refs & Annos)
Subchapter I. Disposal and Storage of High-Level Radioactive Waste, Spent Nuclear Fuel, and Low-Level Radioactive Waste
Part A. Repositories for Disposal of High-Level Radioactive Waste and Spent Nuclear Fuel

42 U.S.C.A. § 10135

§ 10135. Review of repository site selection

(a) "Resolution of repository siting approval" defined

For purposes of this section, the term "resolution of repository siting approval" means a joint resolution of the Congress, the matter after the resolving clause of which is as follows: "That there hereby is approved the site at ..... for a repository, with respect to which a notice of disapproval was submitted by ..... on .....". The first blank space in such resolution shall be filled with the name of the geographic location of the proposed site of the repository to which such resolution pertains; the second blank space in such resolution shall be filled with the designation of the State Governor and legislature or Indian tribe governing body submitting the notice of disapproval to which such resolution pertains; and the last blank space in such resolution shall be filled with the date of such submission.

(b) State or Indian tribe petitions

The designation of a site as suitable for application for a construction authorization for a repository shall be effective at the end of the 60-day period beginning on the date that the President recommends such site to the Congress under section 10134 of this title, unless the Governor and legislature of the State in which such site is located, or the governing body of an Indian tribe on whose reservation such site is located, as the case may be, has submitted to the Congress a notice of disapproval under section 10136 or 10138 of this title. If any such notice of disapproval has been submitted, the designation of such site shall not be effective except as provided under subsection (c).

(c) Congressional review of petitions

If any notice of disapproval of a repository site designation has been submitted to the Congress under section 10136 or 10138 of this title after a recommendation for

approval of such site is made by the President under section 10134 of this title, such site shall be disapproved unless, during the first period of 90 calendar days of continuous session of the Congress after the date of the receipt by the Congress of such notice of disapproval, the Congress passes a resolution of repository siting approval in accordance with this subsection approving such site, and such resolution thereafter becomes law.

(d) Procedures applicable to Senate

(1) The provisions of this subsection are enacted by the Congress—

(A) as an exercise of the rulemaking power of the Senate, and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of resolutions of repository siting approval, and such provisions supersede other rules of the Senate only to the extent that they are inconsistent with such other rules; and

(B) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(2)(A) Not later than the first day of session following the day on which any notice of disapproval of a repository site selection is submitted to the Congress under section 10136 or 10138 of this title, a resolution of repository siting approval shall be introduced (by request) in the Senate by the chairman of the committee to which such notice of disapproval is referred, or by a Member or Members of the Senate designated by such chairman.

(B) Upon introduction, a resolution of repository siting approval shall be referred to the appropriate committee or committees of the Senate by the President of the Senate, and all such resolutions with respect to the same repository site shall be referred to the same committee or committees. Upon the expiration of 60 calendar days of continuous session after the introduction of the first resolution of repository siting approval with respect to any site, each committee to which such resolution was referred shall make its recommendations to the Senate.

(3) If any committee to which is referred a resolution of siting approval introduced under paragraph (2)(A), or, in the absence of such a resolution, any other resolution of siting approval introduced with respect to the site involved, has not reported such resolution at the end of 60 days of continuous session of Congress

after introduction of such resolution, such committee shall be deemed to be discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the Senate.

(4)(A) When each committee to which a resolution of siting approval has been referred has reported, or has been deemed to be discharged from further consideration of, a resolution described in paragraph (3), it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) for any Member of the Senate to move to proceed to the consideration of such resolution. Such motion shall be highly privileged and shall not be debatable. Such motion shall not be subject to amendment, to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which such motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of such resolution is agreed to, such resolution shall remain the unfinished business of the Senate until disposed of.

(B) Debate on a resolution of siting approval, and on all debatable motions and appeals in connection with such resolution, shall be limited to not more than 10 hours, which shall be divided equally between Members favoring and Members opposing such resolution. A motion further to limit debate shall be in order and shall not be debatable. Such motion shall not be subject to amendment, to a motion to postpone, or to a motion to proceed to the consideration of other business, and a motion to recommit such resolution shall not be in order. A motion to reconsider the vote by which such resolution is agreed to or disagreed to shall not be in order.

(C) Immediately following the conclusion of the debate on a resolution of siting approval, and a single quorum call at the conclusion of such debate if requested in accordance with the rules of the Senate, the vote on final approval of such resolution shall occur.

(D) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a resolution of siting approval shall be decided without debate.

(5) If the Senate receives from the House a resolution of repository siting approval with respect to any site, then the following procedure shall apply:

(A) The resolution of the House with respect to such site shall not be referred to a committee.

(B) With respect to the resolution of the Senate with respect to such site—

(i) the procedure with respect to that or other resolutions of the Senate with respect to such site shall be the same as if no resolution from the House with respect to such site had been received; but

(ii) on any vote on final passage of a resolution of the Senate with respect to such site, a resolution from the House with respect to such site where the text is identical shall be automatically substituted for the resolution of the Senate.

(e) Procedures applicable to House of Representatives

(1) The provisions of this section1 are enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives, and as such they are deemed a part of the rules of the House, but applicable only with respect to the procedure to be followed in the House in the case of resolutions of repository siting approval, and such provisions supersede other rules of the House only to the extent that they are inconsistent with such other rules; and

(B) with full recognition of the constitutional right of the House to change the rules (so far as relating to the procedure of the House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(2) Resolutions of repository siting approval shall upon introduction, be immediately referred by the Speaker of the House to the appropriate committee or committees of the House. Any such resolution received from the Senate shall be held at the Speaker's table.

(3) Upon the expiration of 60 days of continuous session after the introduction of the first resolution of repository siting approval with respect to any site, each committee to which such resolution was referred shall be discharged from further consideration of such resolution, and such resolution shall be referred to the appropriate calendar, unless such resolution or an identical resolution was previously reported by each committee to which it was referred.

(4) It shall be in order for the Speaker to recognize a Member favoring a resolution to call up a resolution of repository siting approval after it has been on the appropriate calendar for 5 legislative days. When any such resolution is called up, the House shall proceed to its immediate consideration and the Speaker shall recognize the Member calling up such resolution and a Member opposed to such resolution for 2 hours of debate in the House, to be equally divided and controlled by such Members. When such time has expired, the previous question shall be considered as ordered on the resolution to adoption without intervening motion. No amendment to any such resolution shall be in order, nor shall it be in order to move to reconsider the vote by which such resolution is agreed to or disagreed to.

(5) If the House receives from the Senate a resolution of repository siting approval with respect to any site, then the following procedure shall apply:

(A) The resolution of the Senate with respect to such site shall not be referred to a committee.

(B) With respect to the resolution of the House with respect to such site—

(i) the procedure with respect to that or other resolutions of the House with respect to such site shall be the same as if no resolution from the Senate with respect to such site had been received; but

(ii) on any vote on final passage of a resolution of the House with respect to such site, a resolution from the Senate with respect to such site where the text is identical shall be automatically substituted for the resolution of the House.

(f) Computation of days

For purposes of this section—

(1) continuity of session of Congress is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 90-day period referred to in subsection (c) and the 60-day period referred to in subsections (d) and (e).

(g) Information provided to Congress

In considering any notice of disapproval submitted to the Congress under section 10136 or 10138 of this title, the Congress may obtain any comments of the Commission with respect to such notice of disapproval. The provision of such comments by the Commission shall not be construed as binding the Commission with respect to any licensing or authorization action concerning the repository involved.

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 108. Nuclear Waste Policy (Refs & Annos)
Subchapter I. Disposal and Storage of High-Level Radioactive Waste, Spent Nuclear Fuel, and Low-Level Radioactive Waste
Part A. Repositories for Disposal of High-Level Radioactive Waste and Spent Nuclear Fuel

42 U.S.C.A. § 10136

§ 10136. Participation of States

(a) Notification of States and affected tribes

The Secretary shall identify the States with one or more potentially acceptable sites for a repository within 90 days after January 7, 1983. Within 90 days of such identification, the Secretary shall notify the Governor, the State legislature, and the tribal council of any affected Indian tribe in any State of the potentially acceptable sites within such State. For the purposes of this subchapter, the term "potentially acceptable site" means any site at which, after geologic studies and field mapping but before detailed geologic data gathering, the Department undertakes preliminary drilling and geophysical testing for the definition of site location.

(b) State participation in repository siting decisions

(1) Unless otherwise provided by State law, the Governor or legislature of each State shall have authority to submit a notice of disapproval to the Congress under paragraph (2). In any case in which State law provides for submission of any such notice of disapproval by any other person or entity, any reference in this part to the Governor or legislature of such State shall be considered to refer instead to such other person or entity.

(2) Upon the submission by the President to the Congress of a recommendation of a site for a repository, the Governor or legislature of the State in which such site is located may disapprove the site designation and submit to the Congress a notice of disapproval. Such Governor or legislature may submit such a notice of disapproval to the Congress not later than the 60 days after the date that the President recommends such site to the Congress under section 10134 of this title. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be

accompanied by a statement of reasons explaining why such Governor or legislature disapproved the recommended repository site involved.

(3) The authority of the Governor or legislature of each State under this subsection shall not be applicable with respect to any site located on a reservation.

(c) Financial assistance

(1)(A) The Secretary shall make grants to the State of Nevada and any affected unit of local government for the purpose of participating in activities required by this section and section 10137 of this title or authorized by written agreement entered into pursuant to section 10137(c) of this title. Any salary or travel expense that would ordinarily be incurred by such State or affected unit of local government, may not be considered eligible for funding under this paragraph.

(B) The Secretary shall make grants to the State of Nevada and any affected unit of local government for purposes of enabling such State or affected unit of local government--

(i) to review activities taken under this part with respect to the Yucca Mountain site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of a repository on such State, or affected unit of local government and its residents;

(ii) to develop a request for impact assistance under paragraph (2);

(iii) to engage in any monitoring, testing, or evaluation activities with respect to site characterization programs with regard to such site;

(iv) to provide information to Nevada residents regarding any activities of such State, the Secretary, or the Commission with respect to such site; and

(v) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken under this part with respect to such site.

(C) Any salary or travel expense that would ordinarily be incurred by the State of Nevada or any affected unit of local government may not be considered eligible for funding under this paragraph.

(2)(A)(i) The Secretary shall provide financial and technical assistance to the State of Nevada, and any affected unit of local government requesting such assistance.

(ii) Such assistance shall be designed to mitigate the impact on such State or affected unit of local government of the development of such repository and the characterization of such site.

(iii) Such assistance to such State or affected unit of local government of such State shall commence upon the initiation of site characterization activities.

(B) The State of Nevada and any affected unit of local government may request assistance under this subsection by preparing and submitting to the Secretary a report on the economic, social, public health and safety, and environmental impacts that are likely to result from site characterization activities at the Yucca Mountain site. Such report shall be submitted to the Secretary after the Secretary has submitted to the State a general plan for site characterization activities under section 10133(b) of this title.

(C) As soon as practicable after the Secretary has submitted such site characterization plan, the Secretary shall seek to enter into a binding agreement with the State of Nevada setting forth--

(i) the amount of assistance to be provided under this subsection to such State or affected unit of local government; and

(ii) the procedures to be followed in providing such assistance.

(3)(A) In addition to financial assistance provided under paragraphs (1) and (2), the Secretary shall grant to the State of Nevada and any affected unit of local government an amount each fiscal year equal to the amount such State or affected unit of local government, respectively, would receive if authorized to tax site characterization activities at such site, and the development and operation of such repository, as such State or affected unit of local government taxes the non-Federal real property and industrial activities occurring within such State or affected unit of local government.

(B) Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

(4)(A) The State of Nevada or any affected unit of local government may not receive any grant under paragraph (1) after the expiration of the 1-year period following--

(i) the date on which the Secretary notifies the Governor and legislature of the State of Nevada of the termination of site characterization activities at the site in such State;

(ii) the date on which the Yucca Mountain site is disapproved under section 10135 of this title; or

(iii) the date on which the Commission disapproves an application for a construction authorization for a repository at such site;

whichever occurs first.

(B) The State of Nevada or any affected unit of local government may not receive any further assistance under paragraph (2) with respect to a site if repository construction activities or site characterization activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

(C) At the end of the 2-year period beginning on the effective date of any license to receive and possess for a repository in a State, no Federal funds, shall be made available to such State or affected unit of local government under paragraph (1) or (2), except for--

(i) such funds as may be necessary to support activities related to any other repository located in, or proposed to be located in, such State, and for which a license to receive and possess has not been in effect for more than 1 year;

(ii) such funds as may be necessary to support State activities pursuant to agreements or contracts for impact assistance entered into, under paragraph (2), by such State with the Secretary during such 2-year period; and

(iii) such funds as may be provided under an agreement entered into under subchapter IV.

(5) Financial assistance authorized in this subsection shall be made out of amounts held in the Waste Fund.

(6) No State, other than the State of Nevada, may receive financial assistance under this subsection after December 22, 1987.

(d) Additional notification and consultation

Whenever the Secretary is required under any provision of this chapter to notify or consult with the governing body of an affected Indian tribe where a site is located, the Secretary shall also notify or consult with, as the case may be, the Governor of the State in which such reservation is located.

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 108. Nuclear Waste Policy (Refs & Annos)
Subchapter I. Disposal and Storage of High-Level Radioactive Waste, Spent Nuclear Fuel, and Low-Level Radioactive Waste
Part A. Repositories for Disposal of High-Level Radioactive Waste and Spent Nuclear Fuel

42 U.S.C.A. § 10137

§ 10137. Consultation with States and affected Indian tribes

(a) Provision of information

(1) The Secretary, the Commission, and other agencies involved in the construction, operation, or regulation of any aspect of a repository in a State shall provide to the Governor and legislature of such State, and to the governing body of any affected Indian tribe, timely and complete information regarding determinations or plans made with respect to the site characterization siting, development, design, licensing, construction, operation, regulation, or decommissioning of such repository.

(2) Upon written request for such information by the Governor or legislature of such State, or by the governing body of any affected Indian tribe, as the case may be, the Secretary shall provide a written response to such request within 30 days of the receipt of such request. Such response shall provide the information requested or, in the alternative, the reasons why the information cannot be so provided. If the Secretary fails to so respond within such 30 days, the Governor or legislature of such State, or the governing body of any affected Indian tribe, as the case may be, may transmit a formal written objection to such failure to respond to the President. If the President or Secretary fails to respond to such written request within 30 days of the receipt by the President of such formal written objection, the Secretary shall immediately suspend all activities in such State authorized by this part, and shall not renew such activities until the Governor or legislature of such State, or the governing body of any affected Indian tribe, as the case may be, has received the written response to such written request required by this subsection.

(b) Consultation and cooperation

In performing any study of an area within a State for the purpose of determining the suitability of such area for a repository pursuant to section 10132(c) of this

title, and in subsequently developing and loading any repository within such State, the Secretary shall consult and cooperate with the Governor and legislature of such State and the governing body of any affected Indian tribe in an effort to resolve the concerns of such State and any affected Indian tribe regarding the public health and safety, environmental, and economic impacts of any such repository. In carrying out his duties under this part, the Secretary shall take such concerns into account to the maximum extent feasible and as specified in written agreements entered into under subsection (c).

(c) Written agreement

Not later than 60 days after (1) the approval of a site for site characterization for such a repository under section 10132(c) of this title, or (2) the written request of the State or Indian tribe in any affected State notified under section 10136(a) of this title to the Secretary, whichever, first occurs, the Secretary shall seek to enter into a binding written agreement, and shall begin negotiations, with such State and, where appropriate, to enter into a separate binding agreement with the governing body of any affected Indian tribe, setting forth (but not limited to) the procedures under which the requirements of subsections (a) and (b), and the provisions of such written agreement, shall be carried out. Any such written agreement shall not affect the authority of the Commission under existing law. Each such written agreement shall, to the maximum extent feasible, be completed not later than 6 months after such notification. Such written agreement shall specify procedures--

(1) by which such State or governing body of an affected Indian tribe, as the case may be, may study, determine, comment on, and make recommendations with regard to the possible public health and safety, environmental, social, and economic impacts of any such repository;

(2) by which the Secretary shall consider and respond to comments and recommendations made by such State or governing body of an affected Indian tribe, including the period in which the Secretary shall so respond;

(3) by which the Secretary and such State or governing body of an affected Indian tribe may review or modify the agreement periodically;

(4) by which such State or governing body of an affected Indian tribe is to submit an impact report and request for impact assistance under section 10136(c) of this title or section 10138(b) of this title, as the case may be;

(5) by which the Secretary shall assist such State, and the units of general local government in the vicinity of the repository site, in resolving the offsite concerns of such State and units of general local government, including, but not limited to, questions of State liability arising from accidents, necessary road upgrading and access to the site, ongoing emergency preparedness and emergency response, monitoring of transportation of high-level radioactive waste and spent nuclear fuel through such State, conduct of baseline health studies of inhabitants in neighboring communities near the repository site and reasonable periodic monitoring thereafter, and monitoring of the repository site upon any decommissioning and decontamination;

(6) by which the Secretary shall consult and cooperate with such State on a regular, ongoing basis and provide for an orderly process and timely schedule for State review and evaluation, including identification in the agreement of key events, milestones, and decision points in the activities of the Secretary at the potential repository site;

(7) by which the Secretary shall notify such State prior to the transportation of any high-level radioactive waste and spent nuclear fuel into such State for disposal at the repository site;

(8) by which such State may conduct reasonable independent monitoring and testing of activities on the repository site, except that such monitoring and testing shall not unreasonably interfere with or delay onsite activities;

(9) for sharing, in accordance with applicable law, of all technical and licensing information, the utilization of available expertise, the facilitating of permit procedures, joint project review, and the formulation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws;

(10) for public notification of the procedures specified under the preceding paragraphs; and

(11) for resolving objections of a State and affected Indian tribes at any stage of the planning, siting, development, construction, operation, or closure of such a facility within such State through negotiation, arbitration, or other appropriate mechanisms.

(d) On-site representative

The Secretary shall offer to any State, Indian tribe or unit of local government within whose jurisdiction a site for a repository or monitored retrievable storage facility is located under this subchapter an opportunity to designate a representative to conduct on-site oversight activities at such site. Reasonable expenses of such representatives shall be paid out of the Waste Fund.

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 108. Nuclear Waste Policy (Refs & Annos)
Subchapter I. Disposal and Storage of High-Level Radioactive Waste, Spent Nuclear Fuel, and Low-Level Radioactive Waste
Part A. Repositories for Disposal of High-Level Radioactive Waste and Spent Nuclear Fuel

42 U.S.C.A. § 10138

§ 10138. Participation of Indian tribes

(a) Participation of Indian tribes in repository siting decisions

Upon the submission by the President to the Congress of a recommendation of a site for a repository located on the reservation of an affected Indian tribe, the governing body of such Indian tribe may disapprove the site designation and submit to the Congress a notice of disapproval. The governing body of such Indian tribe may submit such a notice of disapproval to the Congress not later than the 60 days after the date that the President recommends such site to the Congress under section 10134 of this title. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why the governing body of such Indian tribe disapproved the recommended repository site involved.

(b) Financial assistance

(1) The Secretary shall make grants to each affected tribe notified under section 10136(a) of this title for the purpose of participating in activities required by section 10137 of this title or authorized by written agreement entered into pursuant to section 10137(c) of this title. Any salary or travel expense that would ordinarily be incurred by such tribe, may not be considered eligible for funding under this paragraph.

(2)(A) The Secretary shall make grants to each affected Indian tribe where a candidate site for a repository is approved under section 10132(c) of this title. Such grants may be made to each such Indian tribe only for purposes of enabling such Indian tribe--

(i) to review activities taken under this part with respect to such site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of such repository on the reservation and its residents;

(ii) to develop a request for impact assistance under paragraph (2);

(iii) to engage in any monitoring, testing, or evaluation activities with respect to site characterization programs with regard to such site;

(iv) to provide information to the residents of its reservation regarding any activities of such Indian tribe, the Secretary, or the Commission with respect to such site; and

(v) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken under this part with respect to such site.

(B) The amount of funds provided to any affected Indian tribe under this paragraph in any fiscal year may not exceed 100 percent of the costs incurred by such Indian tribe with respect to the activities described in clauses (i) through (v) of subparagraph (A). Any salary or travel expense that would ordinarily be incurred by such Indian tribe may not be considered eligible for funding under this paragraph.

(3)(A) The Secretary shall provide financial and technical assistance to any affected Indian tribe requesting such assistance and where there is a site with respect to which the Commission has authorized construction of a repository. Such assistance shall be designed to mitigate the impact on such Indian tribe of the development of such repository. Such assistance to such Indian tribe shall commence within 6 months following the granting by the Commission of a construction authorization for such repository and following the initiation of construction activities at such site.

(B) Any affected Indian tribe desiring assistance under this paragraph shall prepare and submit to the Secretary a report on any economic, social, public health and safety, and environmental impacts that are likely as a result of the development of a repository at a site on the reservation of such Indian tribe. Such report shall be submitted to the Secretary following the completion of site characterization activities at such site and before the recommendation of such site to the President

by the Secretary for application for a construction authorization for a repository. As soon as practicable following the granting of a construction authorization for such repository, the Secretary shall seek to enter into a binding agreement with the Indian tribe involved setting forth the amount of assistance to be provided to such Indian tribe under this paragraph and the procedures to be followed in providing such assistance.

(4) The Secretary shall grant to each affected Indian tribe where a site for a repository is approved under section 10132(c) of this title an amount each fiscal year equal to the amount such Indian tribe would receive were it authorized to tax site characterization activities at such site, and the development and operation of such repository, as such Indian tribe taxes the other commercial activities occurring on such reservation. Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

(5) An affected Indian tribe may not receive any grant under paragraph (1) after the expiration of the 1-year period following--

(i) the date on which the Secretary notifies such Indian tribe of the termination of site characterization activities at the candidate site involved on the reservation of such Indian tribe;

(ii) the date on which such site is disapproved under section 10135 of this title;

(iii) the date on which the Commission disapproves an application for a construction authorization for a repository at such site;

(iv) December 22, 1987;

whichever occurs first, unless there is another candidate site on the reservation of such Indian tribe that is approved under section 10132(c) of this title and with respect to which the actions described in clauses (i), (ii), and (iii) have not been taken.

(B) An affected Indian tribe may not receive any further assistance under paragraph (2) with respect to a site if repository construction activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

(C) At the end of the 2-year period beginning on the effective date of any license to receive and possess for a repository at a site on the reservation of an affected Indian tribe, no Federal funds shall be made available under paragraph (1) or (2) to such Indian tribe, except for--

(i) such funds as may be necessary to support activities of such Indian tribe related to any other repository where a license to receive and possess has not been in effect for more than 1 year; and

(ii) such funds as may be necessary to support activities of such Indian tribe pursuant to agreements or contracts for impact assistance entered into, under paragraph (2), by such Indian tribe with the Secretary during such 2-year period.

(6) Financial assistance authorized in this subsection shall be made out of amounts held in the Nuclear Waste Fund established in section 10222 of this title.

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Chapter 108. Nuclear Waste Policy (Refs & Annos)
Subchapter I. Disposal and Storage of High-Level Radioactive Waste, Spent Nuclear Fuel, and Low-Level Radioactive Waste
Part A. Repositories for Disposal of High-Level Radioactive Waste and Spent Nuclear Fuel

42 U.S.C.A. § 10139
§ 10139. Judicial review of agency actions

(a) Jurisdiction of United States courts of appeals

(1) Except for review in the Supreme Court of the United States, the United States courts of appeals shall have original and exclusive jurisdiction over any civil action--

(A) for review of any final decision or action of the Secretary, the President, or the Commission under this part;

(B) alleging the failure of the Secretary, the President, or the Commission to make any decision, or take any action, required under this part;

(C) challenging the constitutionality of any decision made, or action taken, under any provision of this part;

(D) for review of any environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to any action under this part, or as required under section 10155(c)(1) of this title, or alleging a failure to prepare such statement with respect to any such action;

(E) for review of any environmental assessment prepared under section 10132(b)(1) or 10155(c)(2) of this title; or

(F) for review of any research and development activity under subchapter II.

(2) The venue of any proceeding under this section shall be in the judicial circuit in which the petitioner involved resides or has its principal office, or in the United States Court of Appeals for the District of Columbia.

(c) Deadline for commencing action

A civil action for judicial review described under subsection (a)(1) may be brought not later than the 180th day after the date of the decision or action or failure to act involved, as the case may be, except that if a party shows that he did not know of the decision or action complained of (or of the failure to act), and that a reasonable person acting under the circumstances would not have known, such party may bring a civil action not later than the 180th day after the date such party acquired actual or constructive knowledge of such decision, action, or failure to act.

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42 U.S.C.A. § 10140
§ 10140. Expedited authorizations

(a) Issuance of authorizations

(1) To the extent that the taking of any action related to the site characterization of a site or the construction or initial operation of a repository under this part requires a certificate, right-of-way, permit, lease, or other authorization from a Federal agency or officer, such agency or officer shall issue or grant any such authorization at the earliest practicable date, to the extent permitted by the applicable provisions of law administered by such agency or officer. All actions of a Federal agency or officer with respect to consideration of applications or requests for the issuance or grant of any such authorization shall be expedited, and any such application or request shall take precedence over any similar applications or requests not related to such repositories.

(2) The provisions of paragraph (1) shall not apply to any certificate, right-of-way, permit, lease, or other authorization issued or granted by, or requested from, the Commission.

(b) Terms of authorizations

Any authorization issued or granted pursuant to subsection (a) shall include such terms and conditions as may be required by law, and may include terms and conditions permitted by law.

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42 U.S.C.A. § 10141
§ 10141. Certain standards and criteria

(a) Environmental Protection Agency standards
Not later than 1 year after January 7, 1983, the Administrator, pursuant to authority under other provisions of law, shall, by rule, promulgate generally applicable standards for protection of the general environment from offsite releases from radioactive material in repositories.

(b) Commission requirements and criteria

(1)(A) Not later than January 1, 1984, the Commission, pursuant to authority under other provisions of law, shall, by rule, promulgate technical requirements and criteria that it will apply, under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) and the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.), in approving or disapproving--

(i) applications for authorization to construct repositories;

(ii) applications for licenses to receive and possess spent nuclear fuel and high-level radioactive waste in such repositories; and

(iii) applications for authorization for closure and decommissioning of such repositories.

(B) Such criteria shall provide for the use of a system of multiple barriers in the design of the repository and shall include such restrictions on the retrievability of the solidified high-level radioactive waste and spent fuel emplaced in the repository as the Commission deems appropriate.

(C) Such requirements and criteria shall not be inconsistent with any comparable standards promulgated by the Administrator under subsection (a).

(2) For purposes of this chapter, nothing in this section shall be construed to prohibit the Commission from promulgating requirements and criteria under paragraph (1) before the Administrator promulgates standards under subsection (a). If the Administrator promulgates standards under subsection (a) after requirements and criteria are promulgated by the Commission under paragraph (1), such requirements and criteria shall be revised by the Commission if necessary to comply with paragraph (1)(C).

(c) Environmental impact statement

The promulgation of standards or criteria in accordance with the provisions of this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

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42 U.S.C.A. § 10142
§ 10142. Disposal of spent nuclear fuel

Notwithstanding any other provision of this part, any repository constructed on a site approved under this part shall be designed and constructed to permit the retrieval of any spent nuclear fuel placed in such repository, during an appropriate period of operation of the facility, for any reason pertaining to the public health and safety, or the environment, or for the purpose of permitting the recovery of the economically valuable contents of such spent fuel. The Secretary shall specify the appropriate period of retrievability with respect to any repository at the time of design of such repository, and such aspect of such repository shall be subject to approval or disapproval by the Commission as part of the construction authorization process under subsections (b) through (d) of section 10134 of this title.

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42 U.S.C.A. § 10143
§ 10143. Title to material

Delivery, and acceptance by the Secretary, of any high-level radioactive waste or spent nuclear fuel for a repository constructed under this part shall constitute a transfer to the Secretary of title to such waste or spent fuel.

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42 U.S.C.A. § 10144

§ 10144. Consideration of effect of acquisition of water rights

The Secretary shall give full consideration to whether the development, construction, and operation of a repository may require any purchase or other acquisition of water rights that will have a significant adverse effect on the present or future development of the area in which such repository is located. The Secretary shall mitigate any such adverse effects to the maximum extent practicable.

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42 U.S.C.A. § 10145

§ 10145. Termination of certain provisions

Sections 10139 and 10140 of this title shall cease to have effect at such time as a repository developed under this part is licensed to receive and possess high-level radioactive waste and spent nuclear fuel.

Subtitle B, 42 U.S.C. §§ 10151–57

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Part B. Interim Storage Program

42 U.S.C.A. § 10151

§ 10151. Findings and purposes

(a) The Congress finds that--

(1) the persons owning and operating civilian nuclear power reactors have the primary responsibility for providing interim storage of spent nuclear fuel from such reactors, by maximizing, to the extent practical, the effective use of existing storage facilities at the site of each civilian nuclear power reactor, and by adding new onsite storage capacity in a timely manner where practical;

(2) the Federal Government has the responsibility to encourage and expedite the effective use of existing storage facilities and the addition of needed new storage capacity at the site of each civilian nuclear power reactor; and

(3) the Federal Government has the responsibility to provide, in accordance with the provisions of this part, not more than 1,900 metric tons of capacity for interim storage of spent nuclear fuel for civilian nuclear power reactors that cannot reasonably provide adequate storage capacity at the sites of such reactors when needed to assure the continued, orderly operation of such reactors.

(b) The purposes of this part are--

(1) to provide for the utilization of available spent nuclear fuel pools at the site of each civilian nuclear power reactor to the extent practical and the addition of new spent nuclear fuel storage capacity where practical at the site of such reactor; and

(2) to provide, in accordance with the provisions of this part, for the establishment of a federally owned and operated system for the interim storage of spent nuclear fuel at one or more facilities owned by the Federal Government with not more than 1,900 metric tons of capacity to prevent disruptions in the orderly operation of any civilian nuclear power reactor that cannot reasonably

provide adequate spent nuclear fuel storage capacity at the site of such reactor when needed.

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42 U.S.C.A. § 10152

§ 10152. Available capacity for interim storage of spent nuclear fuel

The Secretary, the Commission, and other authorized Federal officials shall each take such actions as such official considers necessary to encourage and expedite the effective use of available storage, and necessary additional storage, at the site of each civilian nuclear power reactor consistent with--

(1) the protection of the public health and safety, and the environment;

(2) economic considerations;

(3) continued operation of such reactor;

(4) any applicable provisions of law; and

(5) the views of the population surrounding such reactor.

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Part B. Interim Storage Program

42 U.S.C.A. § 10153
§ 10153. Interim at-reactor storage

The Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 10198(a) of this title for use at the site of any civilian nuclear power reactor. The establishment of such procedures shall not preclude the licensing, under any applicable procedures or rules of the Commission in effect prior to such establishment, of any technology for the storage of civilian spent nuclear fuel at the site of any civilian nuclear power reactor.

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Part B. Interim Storage Program

42 U.S.C.A. § 10154

§ 10154. Licensing of facility expansions and transshipments

(a) Oral argument

In any Commission hearing under section 189 of the Atomic Energy Act of 1954 (42 U.S.C. 2239) on an application for a license, or for an amendment to an existing license, filed after January 7, 1983, to expand the spent nuclear fuel storage capacity at the site of a civilian nuclear power reactor, through the use of high-density fuel storage racks, fuel rod compaction, the transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, the construction of additional spent nuclear fuel pool capacity or dry storage capacity, or by other means, the Commission shall, at the request of any party, provide an opportunity for oral argument with respect to any matter which the Commission determines to be in controversy among the parties. The oral argument shall be preceded by such discovery procedures as the rules of the Commission shall provide. The Commission shall require each party, including the Commission staff, to submit in written form, at the time of the oral argument, a summary of the facts, data, and arguments upon which such party proposes to rely that are known at such time to such party. Only facts and data in the form of sworn testimony or written submission may be relied upon by the parties during oral argument. Of the materials that may be submitted by the parties during oral argument, the Commission shall only consider those facts and data that are submitted in the form of sworn testimony or written submission.

(b) Adjudicatory hearing

(1) At the conclusion of any oral argument under subsection (a), the Commission shall designate any disputed question of fact, together with any remaining questions of law, for resolution in an adjudicatory hearing only if it determines that--

(A) there is a genuine and substantial dispute of fact which can only be resolved with sufficient accuracy by the introduction of evidence in an adjudicatory hearing; and

(B) the decision of the Commission is likely to depend in whole or in part on the resolution of such dispute.

(2) In making a determination under this subsection, the Commission--

(A) shall designate in writing the specific facts that are in genuine and substantial dispute, the reason why the decision of the agency is likely to depend on the resolution of such facts, and the reason why an adjudicatory hearing is likely to resolve the dispute; and

(B) shall not consider--

(i) any issue relating to the design, construction, or operation of any civilian nuclear power reactor already licensed to operate at such site, or any civilian nuclear power reactor for which a construction permit has been granted at such site, unless the Commission determines that any such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered; or

(ii) any siting or design issue fully considered and decided by the Commission in connection with the issuance of a construction permit or operating license for a civilian nuclear power reactor at such site, unless (I) such issue results from any revision of siting or design criteria by the Commission following such decision; and (II) the Commission determines that such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered.

(3) The provisions of paragraph (2)(B) shall apply only with respect to licenses, authorizations, or amendments to licenses or authorizations, applied for under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) before December 31, 2005.

(4) The provisions of this section shall not apply to the first application for a license or license amendment received by the Commission to expand onsite spent

fuel storage capacity by the use of a new technology not previously approved for use at any nuclear powerplant by the Commission.

(c) Judicial review
No court shall hold unlawful or set aside a decision of the Commission in any proceeding described in subsection (a) because of a failure by the Commission to use a particular procedure pursuant to this section unless--

(1) an objection to the procedure used was presented to the Commission in a timely fashion or there are extraordinary circumstances that excuse the failure to present a timely objection; and

(2) the court finds that such failure has precluded a fair consideration and informed resolution of a significant issue of the proceeding taken as a whole.

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Part B. Interim Storage Program

42 U.S.C.A. § 10155

§ 10155. Storage of spent nuclear fuel

(a) Storage capacity

(1) Subject to section 10107 of this title, the Secretary shall provide, in accordance with paragraph (5), not more than 1,900 metric tons of capacity for the storage of spent nuclear fuel from civilian nuclear power reactors. Such storage capacity shall be provided through any one or more of the following methods, used in any combination determined by the Secretary to be appropriate:

(A) use of available capacity at one or more facilities owned by the Federal Government on January 7, 1983, including the modification and expansion of any such facilities, if the Commission determines that such use will adequately protect the public health and safety, except that such use shall not--

(i) render such facilities subject to licensing under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) or the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.); or

(ii) except as provided in subsection (c) require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), such facility is already being used, or has previously been used, for such storage or for any similar purpose.

(B) acquisition of any modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, and provision of such equipment, to any person generating or holding title to spent nuclear fuel, at the site of any civilian nuclear power reactor operated by such person or at any site owned by the Federal Government on January 7, 1983;

(C) construction of storage capacity at any site of a civilian nuclear power reactor.

(2) Storage capacity authorized by paragraph (1) shall not be provided at any Federal or non-Federal site within which there is a candidate site for a repository. The restriction in the preceding sentence shall only apply until such time as the Secretary decides that such candidate site is no longer a candidate site under consideration for development as a repository.

(3) In selecting methods of providing storage capacity under paragraph (1), the Secretary shall consider the timeliness of the availability of each such method and shall seek to minimize the transportation of spent nuclear fuel, the public health and safety impacts, and the costs of providing such storage capacity.

(4) In providing storage capacity through any method described in paragraph (1), the Secretary shall comply with any applicable requirements for licensing or authorization of such method, except as provided in paragraph (1)(A)(i).

(5) The Secretary shall ensure that storage capacity is made available under paragraph (1) when needed, as determined on the basis of the storage needs specified in contracts entered into under section 10156(a) of this title, and shall accept upon request any spent nuclear fuel as covered under such contracts.

(6) For purposes of paragraph (1)(A), the term “facility” means any building or structure.

(b) Contracts

(1) Subject to the capacity limitation established in subsections (a)(1) and (d), the Secretary shall offer to enter into, and may enter into, contracts under section 10156(a) of this title with any person generating or owning spent nuclear fuel for purposes of providing storage capacity for such spent fuel under this section only if the Commission determines that--

(A) adequate storage capacity to ensure the continued orderly operation of the civilian nuclear power reactor at which such spent nuclear fuel is generated cannot reasonably be provided by the person owning and operating such reactor at such site, or at the site of any other civilian nuclear power reactor operated by such person, and such capacity cannot be made available in a timely manner through any method described in subparagraph (B); and

(B) such person is diligently pursuing licensed alternatives to the use of Federal storage capacity for the storage of spent nuclear fuel expected to be generated by such person in the future, including--

(i) expansion of storage facilities at the site of any civilian nuclear power reactor operated by such person;

(ii) construction of new or additional storage facilities at the site of any civilian nuclear power reactor operated by such person;

(iii) acquisition of modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, for use at the site of any civilian nuclear power reactor operated by such person; and

(iv) transshipment to another civilian nuclear power reactor owned by such person.

(2) In making the determination described in paragraph (1)(A), the Commission shall ensure maintenance of a full core reserve storage capability at the site of the civilian nuclear power reactor involved unless the Commission determines that maintenance of such capability is not necessary for the continued orderly operation of such reactor.

(3) The Commission shall complete the determinations required in paragraph (1) with respect to any request for storage capacity not later than 6 months after receipt of such request by the Commission.

(c) Environmental review

(1) The provision of 300 or more metric tons of storage capacity at any one Federal site under subsection (a)(1)(A) shall be considered to be a major Federal action requiring preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(2)(A) The Secretary shall prepare, and make available to the public, an environmental assessment of the probable impacts of any provision of less than 300 metric tons of storage capacity at any one Federal site under subsection (a)(1)(A) that requires the modification or expansion of any facility at the site, and

a discussion of alternative activities that may be undertaken to avoid such impacts. Such environmental assessment shall include--

(i) an estimate of the amount of storage capacity to be made available at such site;

(ii) an evaluation as to whether the facilities to be used at such site are suitable for the provision of such storage capacity;

(iii) a description of activities planned by the Secretary with respect to the modification or expansion of the facilities to be used at such site;

(iv) an evaluation of the effects of the provision of such storage capacity at such site on the public health and safety, and the environment;

(v) a reasonable comparative evaluation of current information with respect to such site and facilities and other sites and facilities available for the provision of such storage capacity;

(vi) a description of any other sites and facilities that have been considered by the Secretary for the provision of such storage capacity; and

(vii) an assessment of the regional and local impacts of providing such storage capacity at such site, including the impacts on transportation.

(B) The issuance of any environmental assessment under this paragraph shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of Title 5. Such judicial review shall be limited to the sufficiency of such assessment with respect to the items described in clauses (i) through (vii) of subparagraph (A).

(3) Judicial review of any environmental impact statement or environmental assessment prepared pursuant to this subsection shall be conducted in accordance with the provisions of section 10139 of this title.

(d) Review of sites and State participation

(1) In carrying out the provisions of this part with regard to any interim storage of spent fuel from civilian nuclear power reactors which the Secretary is authorized by this section to provide, the Secretary shall, as soon as practicable, notify, in

writing, the Governor and the State legislature of any State and the Tribal Council of any affected Indian tribe in such State in which is located a potentially acceptable site or facility for such interim storage of spent fuel of his intention to investigate that site or facility.

(2) During the course of investigation of such site or facility, the Secretary shall keep the Governor, State legislature, and affected Tribal Council currently informed of the progress of the work, and results of the investigation. At the time of selection by the Secretary of any site or existing facility, but prior to undertaking any site-specific work or alterations, the Secretary shall promptly notify the Governor, the legislature, and any affected Tribal Council in writing of such selection, and subject to the provisions of paragraph (6) of this subsection, shall promptly enter into negotiations with such State and affected Tribal Council to establish a cooperative agreement under which such State and Council shall have the right to participate in a process of consultation and cooperation, based on public health and safety and environmental concerns, in all stages of the planning, development, modification, expansion, operation, and closure of storage capacity at a site or facility within such State for the interim storage of spent fuel from civilian nuclear power reactors. Public participation in the negotiation of such an agreement shall be provided for and encouraged by the Secretary, the State, and the affected Tribal Council. The Secretary, in cooperation with the States and Indian tribes, shall develop and publish minimum guidelines for public participation in such negotiations, but the adequacy of such guidelines or any failure to comply with such guidelines shall not be a basis for judicial review.

(3) The cooperative agreement shall include, but need not be limited to, the sharing in accordance with applicable law of all technical and licensing information, the utilization of available expertise, the facilitating of permitting procedures, joint project review, and the formulation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws. The cooperative agreement also shall include a detailed plan or schedule of milestones, decision points and opportunities for State or eligible Tribal Council review and objection. Such cooperative agreement shall provide procedures for negotiating and resolving objections of the State and affected Tribal Council in any stage of planning, development, modification, expansion, operation, or closure of storage capacity at a site or facility within such State. The terms of any cooperative agreement shall not affect the authority of the Nuclear Regulatory Commission under existing law.

(4) For the purpose of this subsection, “process of consultation and cooperation” means a methodology by which the Secretary (A) keeps the State and eligible

Tribal Council fully and currently informed about the aspects of the project related to any potential impact on the public health and safety and environment; (B) solicits, receives, and evaluates concerns and objections of such State and Council with regard to such aspects of the project on an ongoing basis; and (C) works diligently and cooperatively to resolve, through arbitration or other appropriate mechanisms, such concerns and objections. The process of consultation and cooperation shall not include the grant of a right to any State or Tribal Council to exercise an absolute veto of any aspect of the planning, development, modification, expansion, or operation of the project.

(5) The Secretary and the State and affected Tribal Council shall seek to conclude the agreement required by paragraph (2) as soon as practicable, but not later than 180 days following the date of notification of the selection under paragraph (2). The Secretary shall periodically report to the Congress thereafter on the status of the agreements approved under paragraph (3). Any report to the Congress on the status of negotiations of such agreement by the Secretary shall be accompanied by comments solicited by the Secretary from the State and eligible Tribal Council.

(6)(A) Upon deciding to provide an aggregate of 300 or more metric tons of storage capacity under subsection (a)(1) at any one site, the Secretary shall notify the Governor and legislature of the State where such site is located, or the governing body of the Indian tribe in whose reservation such site is located, as the case may be, of such decision. During the 60-day period following receipt of notification by the Secretary of his decision to provide an aggregate of 300 or more metric tons of storage capacity at any one site, the Governor or legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, may disapprove the provision of 300 or more metric tons of storage capacity at the site involved and submit to the Congress a notice of such disapproval. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why the provision of such storage capacity at such site was disapproved by such Governor or legislature or the governing body of such Indian tribe.

(B) Unless otherwise provided by State law, the Governor or legislature of each State shall have authority to submit a notice of disapproval to the Congress under subparagraph (A). In any case in which State law provides for submission of any such notice of disapproval by any other person or entity, any reference in this part

to the Governor or legislature of such State shall be considered to refer instead to such other person or entity.

(C) The authority of the Governor and legislature of each State under this paragraph shall not be applicable with respect to any site located on a reservation.
(D) If any notice of disapproval is submitted to the Congress under subparagraph (A), the proposed provision of 300 or more metric tons of storage capacity at the site involved shall be disapproved unless, during the first period of 90 calendar days of continuous session of the Congress following the date of the receipt by the Congress of such notice of disapproval, the Congress passes a resolution approving such proposed provision of storage capacity in accordance with the procedures established in this paragraph and subsections (d) through (f) of section 10135 of this title and such resolution thereafter becomes law. For purposes of this paragraph, the term "resolution" means a joint resolution of either House of the Congress, the matter after the resolving clause of which is as follows: "That there hereby is approved the provision of 300 or more metric tons of spent nuclear fuel storage capacity at the site located at _____, with respect to which a notice of disapproval was submitted by _____ on _____.". The first blank space in such resolution shall be filled with the geographic location of the site involved; the second blank space in such resolution shall be filled with the designation of the State Governor and legislature or affected Indian tribe governing body submitting the notice of disapproval involved; and the last blank space in such resolution shall be filled with the date of submission of such notice of disapproval.

(E) For purposes of the consideration of any resolution described in subparagraph (D), each reference in subsections (d) and (e) of section 10135 of this title to a resolution of repository siting approval shall be considered to refer to the resolution described in such subparagraph.

(7) As used in this section, the term "affected Tribal Council" means the governing body of any Indian tribe within whose reservation boundaries there is located a potentially acceptable site for interim storage capacity of spent nuclear fuel from civilian nuclear power reactors, or within whose boundaries a site for such capacity is selected by the Secretary, or whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties, as determined by the Secretary of the Interior pursuant to a petition filed with him by the appropriate governmental officials of such tribe, may be substantially and adversely affected by the establishment of any such storage capacity.

(e) Limitations

Any spent nuclear fuel stored under this section shall be removed from the storage site or facility involved as soon as practicable, but in any event not later than 3 years following the date on which a repository or monitored retrievable storage facility developed under this chapter is available for disposal of such spent nuclear fuel.

(f) Report

The Secretary shall annually prepare and submit to the Congress a report on any plans of the Secretary for providing storage capacity under this section. Such report shall include a description of the specific manner of providing such storage selected by the Secretary, if any. The Secretary shall prepare and submit the first such report not later than 1 year after January 7, 1983.

(g) Criteria for determining adequacy of available storage capacity

Not later than 90 days after January 7, 1983, the Commission pursuant to section 553 of the Administrative Procedures Act, shall propose, by rule, procedures and criteria for making the determination required by subsection (b) that a person owning and operating a civilian nuclear power reactor cannot reasonably provide adequate spent nuclear fuel storage capacity at the civilian nuclear power reactor site when needed to ensure the continued orderly operation of such reactor. Such criteria shall ensure the maintenance of a full core reserve storage capability at the site of such reactor unless the Commission determines that maintenance of such capability is not necessary for the continued orderly operation of such reactor. Such criteria shall identify the feasibility of reasonably providing such adequate spent nuclear fuel storage capacity, taking into account economic, technical, regulatory, and public health and safety factors, through the use of high-density fuel storage racks, fuel rod compaction, transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, construction of additional spent nuclear fuel pool capacity, or such other technologies as may be approved by the Commission.

(h) Application

Notwithstanding any other provision of law, nothing in this chapter shall be construed to encourage, authorize, or require the private or Federal use, purchase, lease, or other acquisition of any storage facility located away from the site of any

civilian nuclear power reactor and not owned by the Federal Government on January 7, 1983.

(i) Coordination with research and development program

To the extent available, and consistent with the provisions of this section, the Secretary shall provide spent nuclear fuel for the research and development program authorized in section 10198 of this title from spent nuclear fuel received by the Secretary for storage under this section. Such spent nuclear fuel shall not be subject to the provisions of subsection (e).

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Part B. Interim Storage Program

42 U.S.C.A. § 10156

§ 10156. Interim Storage Fund

(a) Contracts

(1) During the period following January 7, 1983, but not later than January 1, 1990, the Secretary is authorized to enter into contracts with persons who generate or own spent nuclear fuel resulting from civilian nuclear activities for the storage of such spent nuclear fuel in any storage capacity provided under this part: *Provided, however*, That the Secretary shall not enter into contracts for spent nuclear fuel in amounts in excess of the available storage capacity specified in section 10155(a) of this title. Those contracts shall provide that the Federal Government will (1) take title at the civilian nuclear power reactor site, to such amounts of spent nuclear fuel from the civilian nuclear power reactor as the Commission determines cannot be stored onsite, (2) transport the spent nuclear fuel to a federally owned and operated interim away-from-reactor storage facility, and (3) store such fuel in the facility pending further processing, storage, or disposal. Each such contract shall (A) provide for payment to the Secretary of fees determined in accordance with the provisions of this section; and (B) specify the amount of storage capacity to be provided for the person involved.

(2) The Secretary shall undertake a study and, not later than 180 days after January 7, 1983, submit to the Congress a report, establishing payment charges that shall be calculated on an annual basis, commencing on or before January 1, 1984. Such payment charges and the calculation thereof shall be published in the Federal Register, and shall become effective not less than 30 days after publication. Each payment charge published in the Federal Register under this paragraph shall remain effective for a period of 12 months from the effective date as the charge for the cost of the interim storage of any spent nuclear fuel. The report of the Secretary shall specify the method and manner of collection (including the rates and manner of payment) and any legislative recommendations determined by the Secretary to be appropriate.

(3) Fees for storage under this part shall be established on a nondiscriminatory basis. The fees to be paid by each person entering into a contract with the Secretary under this subsection shall be based upon an estimate of the pro rata costs of storage and related activities under this part with respect to such person, including the acquisition, construction, operation, and maintenance of any facilities under this part.

(4) The Secretary shall establish in writing criteria setting forth the terms and conditions under which such storage services shall be made available.

(5) Except as provided in section 10157 of this title, nothing in this chapter or any other Act requires the Secretary, in carrying out the responsibilities of this section, to obtain a license or permit to possess or own spent nuclear fuel.

(b) Limitation

No spent nuclear fuel generated or owned by any department of the United States referred to in section 101 or 102 of Title 5 may be stored by the Secretary in any storage capacity provided under this part unless such department transfers to the Secretary, for deposit in the Interim Storage Fund, amounts equivalent to the fees that would be paid to the Secretary under the contracts referred to in this section if such spent nuclear fuel were generated by any other person.

(c) Establishment of Interim Storage Fund

There hereby is established in the Treasury of the United States a separate fund, to be known as the Interim Storage Fund. The Storage Fund shall consist of--

(1) all receipts, proceeds, and recoveries realized by the Secretary under subsections (a), (b), and (e), which shall be deposited in the Storage Fund immediately upon their realization;

(2) any appropriations made by the Congress to the Storage Fund; and

(3) any unexpended balances available on January 7, 1983, for functions or activities necessary or incident to the interim storage of civilian spent nuclear fuel, which shall automatically be transferred to the Storage Fund on such date.

(d) Use of Storage Fund

The Secretary may make expenditures from the Storage Fund, subject to subsection (e), for any purpose necessary or appropriate to the conduct of the functions and activities of the Secretary, or the provision or anticipated provision of services, under this part, including--

(1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any interim storage facility provided under this part;

(2) the administrative cost of the interim storage program;

(3) the costs associated with acquisition, design, modification, replacement, operation, and construction of facilities at an interim storage site, consistent with the restrictions in section 10155 of this title;

(4) the cost of transportation of spent nuclear fuel; and

(5) impact assistance as described in subsection (e).

(e) Impact assistance

(1) Beginning the first fiscal year which commences after January 7, 1983, the Secretary shall make annual impact assistance payments to a State or appropriate unit of local government, or both, in order to mitigate social or economic impacts occasioned by the establishment and subsequent operation of any interim storage capacity within the jurisdictional boundaries of such government or governments and authorized under this part: *Provided*, *however*, That such impact assistance payments shall not exceed (A) ten per centum of the costs incurred in paragraphs (1) and (2), or (B) $15 per kilogram of spent fuel, whichever is less;

(2) Payments made available to States and units of local government pursuant to this section shall be--

(A) allocated in a fair and equitable manner with a priority to those States or units of local government suffering the most severe impacts; and

(B) utilized by States or units of local governments only for (i) planning, (ii) construction and maintenance of public services, (iii) provision of public services related to the providing of such interim storage authorized under this

subchapter, and (iv) compensation for loss of taxable property equivalent to that if the storage had been provided under private ownership.

(3) Such payments shall be subject to such terms and conditions as the Secretary determines necessary to ensure that the purposes of this subsection shall be achieved. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this subsection.

(4) Payments under this subsection shall be made available solely from the fees determined under subsection (a).

(5) The Secretary is authorized to consult with States and appropriate units of local government in advance of commencement of establishment of storage capacity authorized under this part in an effort to determine the level of the payment such government would be eligible to receive pursuant to this subsection.

(6) As used in this subsection, the term "unit of local government" means a county, parish, township, municipality, and shall include a borough existing in the State of Alaska on January 7, 1983, and any other unit of government below the State level which is a unit of general government as determined by the Secretary.

(f) Administration of Storage Fund

(1) The Secretary of the Treasury shall hold the Storage Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Storage Fund during the preceding fiscal year.

(2) The Secretary shall submit the budget of the Storage Fund to the Office of Management and Budget triennially along with the budget of the Department of Energy submitted at such time in accordance with chapter 11 of Title 31. The budget of the Storage Fund shall consist of estimates made by the Secretary of expenditures from the Storage Fund and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the Budget of the United States Government. The Secretary may make expenditures from the Storage Fund, subject to appropriations which shall remain available until expended. Appropriations shall be subject to triennial authorization.

(3) If the Secretary determines that the Storage Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury

to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States--

(A) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Storage Fund; and

(B) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such investments, except that the interest rate on such investments shall not exceed the average interest rate applicable to existing borrowings.

(4) Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Storage Fund, shall be exempt from annual apportionment under the provisions of subchapter II of chapter 15 of Title 31.

(5) If at any time the moneys available in the Storage Fund are insufficient to enable the Secretary to discharge his responsibilities under this part, the Secretary shall issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Secretary and the Secretary of the Treasury. The total of such obligations shall not exceed amounts provided in appropriation Acts. Redemption of such obligations shall be made by the Secretary from moneys available in the Storage Fund. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of Title 31, and the purposes for which securities may be issued under such Act are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

(6) Any appropriations made available to the Storage Fund for any purpose described in subsection (d) shall be repaid into the general fund of the Treasury, together with interest from the date of availability of the appropriations until the date of repayment. Such interest shall be paid on the cumulative amount of appropriations available to the Storage Fund, less the average undisbursed cash balance in the Storage Fund account during the fiscal year involved. The rate of such interest shall be determined by the Secretary of the Treasury taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States of comparable maturity. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest.

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42 U.S.C.A. § 10157

§ 10157. Transportation

(a)(1) Transportation of spent nuclear fuel under section 10156(a) of this title shall be subject to licensing and regulation by the Commission and by the Secretary of Transportation as provided for transportation of commercial spent nuclear fuel under existing law.

(2) The Secretary, in providing for the transportation of spent nuclear fuel under this chapter, shall utilize by contract private industry to the fullest extent possible in each aspect of such transportation. The Secretary shall use direct Federal services for such transportation only upon a determination of the Secretary of Transportation, in consultation with the Secretary, that private industry is unable or unwilling to provide such transportation services at reasonable cost.

Subtitle C, 42 U.S.C. §§ 10161–69

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Part C. Monitored Retrievable Storage

42 U.S.C.A. § 10161

§ 10161. Monitored retrievable storage

(a) Findings

The Congress finds that--

(1) long-term storage of high-level radioactive waste or spent nuclear fuel in monitored retrievable storage facilities is an option for providing safe and reliable management of such waste or spent fuel;

(2) the executive branch and the Congress should proceed as expeditiously as possible to consider fully a proposal for construction of one or more monitored retrievable storage facilities to provide such long-term storage;

(3) the Federal Government has the responsibility to ensure that site-specific designs for such facilities are available as provided in this section;

(4) the generators and owners of the high-level radioactive waste and spent nuclear fuel to be stored in such facilities have the responsibility to pay the costs of the long-term storage of such waste and spent fuel; and

(5) disposal of high-level radioactive waste and spent nuclear fuel in a repository developed under this chapter should proceed regardless of any construction of a monitored retrievable storage facility pursuant to this section.

(b) Submission of proposal by Secretary

(1) On or before June 1, 1985, the Secretary shall complete a detailed study of the need for and feasibility of, and shall submit to the Congress a proposal for, the construction of one or more monitored retrievable storage facilities for high-level radioactive waste and spent nuclear fuel. Each such facility shall be designed--

(A) to accommodate spent nuclear fuel and high-level radioactive waste resulting from civilian nuclear activities;

(B) to permit continuous monitoring, management, and maintenance of such spent fuel and waste for the foreseeable future;

(C) to provide for the ready retrieval of such spent fuel and waste for further processing or disposal; and

(D) to safely store such spent fuel and waste as long as may be necessary by maintaining such facility through appropriate means, including any required replacement of such facility.

(2) Such proposal shall include--

(A) the establishment of a Federal program for the siting, development, construction, and operation of facilities capable of safely storing high-level radioactive waste and spent nuclear fuel, which facilities are to be licensed by the Commission;

(B) a plan for the funding of the construction and operation of such facilities, which plan shall provide that the costs of such activities shall be borne by the generators and owners of the high-level radioactive waste and spent nuclear fuel to be stored in such facilities;

(C) site-specific designs, specifications, and cost estimates sufficient to (i) solicit bids for the construction of the first such facility; (ii) support congressional authorization of the construction of such facility; and (iii) enable completion and operation of such facility as soon as practicable following congressional authorization of such facility; and

(D) a plan for integrating facilities constructed pursuant to this section with other storage and disposal facilities authorized in this chapter.

(3) In formulating such proposal, the Secretary shall consult with the Commission and the Administrator, and shall submit their comments on such proposal to the Congress at the time such proposal is submitted.

(4) The proposal shall include, for the first such facility, at least 3 alternative sites and at least 5 alternative combinations of such proposed sites and facility designs

consistent with the criteria of paragraph (1). The Secretary shall recommend the combination among the alternatives that the Secretary deems preferable. The environmental assessment under subsection (c) shall include a full analysis of the relative advantages and disadvantages of all 5 such alternative combinations of proposed sites and proposed facility designs.

(c) Environmental impact statements

(1) Preparation and submission to the Congress of the proposal required in this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Secretary shall prepare, in accordance with regulations issued by the Secretary implementing such Act, an environmental assessment with respect to such proposal. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such proposal is submitted.

(2) If the Congress by law, after review of the proposal submitted by the Secretary under subsection (b), specifically authorizes construction of a monitored retrievable storage facility, the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall apply with respect to construction of such facility, except that any environmental impact statement prepared with respect to such facility shall not be required to consider the need for such facility or any alternative to the design criteria for such facility set forth in subsection (b)(1).

(d) Licensing

Any facility authorized pursuant to this section shall be subject to licensing under section 5842(3) of this title. In reviewing the application filed by the Secretary for licensing of the first such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in subsection (b)(1).

(e) Clarification

Nothing in this section limits the consideration of alternative facility designs consistent with the criteria of paragraph (b)(1) in any environmental impact statement, or in any licensing procedure of the Commission, with respect to any monitored, retrievable facility authorized pursuant to this section.

(f) Impact assistance

(1) Upon receipt by the Secretary of congressional authorization to construct a facility described in subsection (b), the Secretary shall commence making annual impact aid payments to appropriate units of general local government in order to mitigate any social or economic impacts resulting from the construction and subsequent operation of any such facility within the jurisdictional boundaries of any such unit.

(2) Payments made available to units of general local government under this subsection shall be--

> **(A)** allocated in a fair and equitable manner, with priority given to units of general local government determined by the Secretary to be most severely affected; and
>
> **(B)** utilized by units of general local government only for planning, construction, maintenance, and provision of public services related to the siting of such facility.

(3) Such payments shall be subject to such terms and conditions as the Secretary determines are necessary to ensure achievement of the purposes of this subsection. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this subsection.

(4) Such payments shall be made available entirely from funds held in the Nuclear Waste Fund established in section 10222(c) of this title and shall be available only to the extent provided in advance in appropriation Acts.

(5) The Secretary may consult with appropriate units of general local government in advance of commencement of construction of any such facility in an effort to determine the level of payments each such unit is eligible to receive under this subsection.

(g) Limitation

No monitored retrievable storage facility developed pursuant to this section may be constructed in any State in which there is located any site approved for site characterization under section 10132 of this title. The restriction in the preceding

sentence shall only apply until such time as the Secretary decides that such candidate site is no longer a candidate site under consideration for development as a repository. Such restriction shall continue to apply to any site selected for construction as a repository.

(h) Participation of States and Indian tribes

Any facility authorized pursuant to this section shall be subject to the provisions of sections 10135, 10136(a), 10136(b), 10136(d), 10137, and 10138 of this title. For purposes of carrying out the provisions of this subsection, any reference in sections 10135 through 10138 of this title to a repository shall be considered to refer to a monitored retrievable storage facility.

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42 U.S.C.A. § 10162

§ 10162. Authorization of monitored retrievable storage

(a) Nullification of Oak Ridge siting proposal

The proposal of the Secretary (EC-1022, 100th Congress) to locate a monitored retrievable storage facility at a site on the Clinch River in the Roane County portion of Oak Ridge, Tennessee, with alternative sites on the Oak Ridge Reservation of the Department of Energy and on the former site of a proposed nuclear powerplant in Hartsville, Tennessee, is annulled and revoked. In carrying out the provisions of sections 10164 and 10165 of this title, the Secretary shall make no presumption or preference to such sites by reason of their previous selection.

(b) Authorization

The Secretary is authorized to site, construct, and operate one monitored retrievable storage facility subject to the conditions described in sections 10163 through 10169 of this title.

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42 U.S.C.A. § 10163

§ 10163. Monitored Retrievable Storage Commission

(a) Establishment

(1)(A) There is established a Monitored Retrievable Storage Review Commission (hereinafter in this section referred to as the "MRS Commission"), that shall consist of 3 members who shall be appointed by and serve at the pleasure of the President pro tempore of the Senate and the Speaker of the House of Representatives.

(B) Members of the MRS Commission shall be appointed not later than 30 days after December 22, 1987, from among persons who as a result of training, experience and attainments are exceptionally well qualified to evaluate the need for a monitored retrievable storage facility as a part of the Nation's nuclear waste management system.

(C) The MRS Commission shall prepare a report on the need for a monitored retrievable storage facility as a part of a national nuclear waste management system that achieves the purposes of this chapter. In preparing the report under this subparagraph, the MRS Commission shall--

(i) review the status and adequacy of the Secretary's evaluation of the systems advantages and disadvantages of bringing such a facility into the national nuclear waste disposal system;

(ii) obtain comment and available data on monitored retrievable storage from affected parties, including States containing potentially acceptable sites;

(iii) evaluate the utility of a monitored retrievable storage facility from a technical perspective; and

(iv) make a recommendation to Congress as to whether such a facility should be included in the national nuclear waste management system in order to achieve the purposes of this chapter, including meeting needs for packaging and handling of spent nuclear fuel, improving the flexibility of the repository development schedule, and providing temporary storage of spent nuclear fuel accepted for disposal.

(2) In preparing the report and making its recommendation under paragraph (1) the MRS Commission shall compare such a facility to the alternative of at-reactor storage of spent nuclear fuel prior to disposal of such fuel in a repository under this chapter. Such comparison shall take into consideration the impact on--

(A) repository design and construction;

(B) waste package design, fabrication and standardization;

(C) waste preparation;

(D) waste transportation systems;

(E) the reliability of the national system for the disposal of radioactive waste;

(F) the ability of the Secretary to fulfill contractual commitments of the Department under this chapter to accept spent nuclear fuel for disposal; and

(G) economic factors, including the impact on the costs likely to be imposed on ratepayers of the Nation's electric utilities for temporary at-reactor storage of spent nuclear fuel prior to final disposal in a repository, as well as the costs likely to be imposed on ratepayers of the Nation's electric utilities in building and operating such a facility.

(3) The report under this subsection, together with the recommendation of the MRS Commission, shall be transmitted to Congress on November 1, 1989.

(4)(A)(i) Each member of the MRS Commission shall be paid at the rate provided for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the MRS Commission, and shall receive travel expenses, including per diem in lieu of subsistence in the same manner as is permitted under sections 5702 and 5703 of Title 5.

(ii) The MRS Commission may appoint and fix compensation, not to exceed the rate of basic pay payable for GS-18 of the General Schedule, for such staff as may be necessary to carry out its functions.

(B)(i) The MRS Commission may hold hearings, sit and act at such times and places, take such testimony and receive such evidence as the MRS Commission considers appropriate. Any member of the MRS Commission may administer oaths or affirmations to witnesses appearing before the MRS Commission.

(ii) The MRS Commission may request any Executive agency, including the Department, to furnish such assistance or information, including records, data, files, or documents, as the Commission considers necessary to carry out its functions. Unless prohibited by law, such agency shall promptly furnish such assistance or information.

(iii) To the extent permitted by law, the Administrator of the General Services Administration shall, upon request of the MRS Commission, provide the MRS Commission with necessary administrative services, facilities, and support on a reimbursable basis.

(iv) The MRS Commission may procure temporary and intermittent services from experts and consultants to the same extent as is authorized by section 3109(b) of Title 5 at rates and under such rules as the MRS Commission considers reasonable.

(C) The MRS Commission shall cease to exist 60 days after the submission to Congress of the report required under this subsection.

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42 U.S.C.A. § 10164
§ 10164. Survey

After the MRS Commission submits its report to the Congress under section 10163 of this title, the Secretary may conduct a survey and evaluation of potentially suitable sites for a monitored retrievable storage facility. In conducting such survey and evaluation, the Secretary shall consider the extent to which siting a monitored retrievable storage facility at each site surveyed would--

(1) enhance the reliability and flexibility of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this chapter;

(2) minimize the impacts of transportation and handling of such fuel and waste;

(3) provide for public confidence in the ability of such system to safely dispose of the fuel and waste;

(4) impose minimal adverse effects on the local community and the local environment;

(5) provide a high probability that the facility will meet applicable environmental, health, and safety requirements in a timely fashion;

(6) provide such other benefits to the system for the disposal of spent nuclear fuel and high-level radioactive waste as the Secretary deems appropriate; and

(7) unduly burden a State in which significant volumes of high-level radioactive waste resulting from atomic energy defense activities are stored.

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42 U.S.C.A. § 10165
§ 10165. Site selection

(a) In general

The Secretary may select the site evaluated under section 10164 of this title that the Secretary determines on the basis of available information to be the most suitable for a monitored retrievable storage facility that is an integral part of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this chapter.

(b) Limitation

The Secretary may not select a site under subsection (a) until the Secretary recommends to the President the approval of a site for development as a repository under section 10134(a) of this title.

(c) Site specific activities

The Secretary may conduct such site specific activities at each site surveyed under section 10164 of this title as he determines may be necessary to support an application to the Commission for a license to construct a monitored retrievable storage facility at such site.

(d) Environmental assessment

Site specific activities and selection of a site under this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Secretary shall prepare an environmental assessment with respect to such selection in accordance with regulations issued by the Secretary implementing such Act. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level

radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such site is selected.

(e) Notification before selection

(1) At least 6 months before selecting a site under subsection (a), the Secretary shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, of such potential selection and the basis for such selection.

(2) Before selecting any site under subsection (a), the Secretary shall hold at least one public hearing in the vicinity of such site to solicit any recommendations of interested parties with respect to issues raised by the selection of such site.

(f) Notification of selection

The Secretary shall promptly notify Congress and the appropriate State or Indian tribe of the selection under subsection (a).

(g) Limitation

No monitored retrievable storage facility authorized pursuant to section 10162(b) of this title may be constructed in the State of Nevada.

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42 U.S.C.A. § 10166
§ 10166. Notice of disapproval

(a) In general

The selection of a site under section 10165 of this title shall be effective at the end of the period of 60 calendar days beginning on the date of notification under such subsection, unless the governing body of the Indian tribe on whose reservation such site is located, or, if the site is not on a reservation, the Governor and the legislature of the State in which the site is located, has submitted to Congress a notice of disapproval with respect to such site. If any such notice of disapproval has been submitted under this subsection, the selection of the site under section 10165 of this title shall not be effective except as provided under section 10135(c) of this title.

(b) References

For purposes of carrying out the provisions of this subsection, references in section 10135(c) of this title to a repository shall be considered to refer to a monitored retrievable storage facility and references to a notice of disapproval of a repository site designation under section 10136(b) or 10138(a) of this title shall be considered to refer to a notice of disapproval under this section.

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42 U.S.C.A. § 10167
§ 10167. Benefits agreement

Once selection of a site for a monitored retrievable storage facility is made by the Secretary under section 10165 of this title, the Indian tribe on whose reservation the site is located, or, in the case that the site is not located on a reservation, the State in which the site is located, shall be eligible to enter into a benefits agreement with the Secretary under section 10173 of this title.

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 108. Nuclear Waste Policy (Refs & Annos)
Subchapter I. Disposal and Storage of High-Level Radioactive Waste, Spent Nuclear Fuel, and Low-Level Radioactive Waste
Part C. Monitored Retrievable Storage

42 U.S.C.A. § 10168

§ 10168. Construction authorization

(a) Environmental impact statement

(1) Once the selection of a site is effective under section 10166 of this title, the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall apply with respect to construction of a monitored retrievable storage facility, except that any environmental impact statement prepared with respect to such facility shall not be required to consider the need for such facility or any alternative to the design criteria for such facility set forth in section 10161(b)(1) of this title.

(2) Nothing in this section shall be construed to limit the consideration of alternative facility designs consistent with the criteria described in section 10161(b)(1) of this title in any environmental impact statement, or in any licensing procedure of the Commission, with respect to any monitored retrievable storage facility authorized under section 10162(b) of this title.

(b) Application for construction license

Once the selection of a site for a monitored retrievable storage facility is effective under section 10166 of this title, the Secretary may submit an application to the Commission for a license to construct such a facility as part of an integrated nuclear waste management system and in accordance with the provisions of this section and applicable agreements under this chapter affecting such facility.

(c) Licensing

Any monitored retrievable storage facility authorized pursuant to section 10162(b) of this title shall be subject to licensing under section 5842(3) of this title. In reviewing the application filed by the Secretary for licensing of such facility, the

Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in section 10161(b)(1) of this title.

(d) Licensing conditions

Any license issued by the Commission for a monitored retrievable storage facility under this section shall provide that--

(1) construction of such facility may not begin until the Commission has issued a license for the construction of a repository under section 10135(d)1 of this title;

(2) construction of such facility or acceptance of spent nuclear fuel or high-level radioactive waste shall be prohibited during such time as the repository license is revoked by the Commission or construction of the repository ceases;

(3) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 10,000 metric tons of heavy metal until a repository under this chapter first accepts spent nuclear fuel or solidified high-level radioactive waste; and

(4) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 15,000 metric tons of heavy metal.

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42 U.S.C.A. § 10169
§ 10169. Financial assistance

The provisions of section 10136(c) or 10138(b) of this title with respect to grants, technical assistance, and other financial assistance shall apply to the State, to affected Indian tribes and to affected units of local government in the case of a monitored retrievable storage facility in the same manner as for a repository.

42 U.S.C. § 10222

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 108. Nuclear Waste Policy (Refs & Annos)
Subchapter III. Other Provisions Relating to Radioactive Waste

42 U.S.C.A. § 10222
§ 10222. Nuclear Waste Fund

(a) Contracts

(1) In the performance of his functions under this chapter, the Secretary is authorized to enter into contracts with any person who generates or holds title to high-level radioactive waste, or spent nuclear fuel, of domestic origin for the acceptance of title, subsequent transportation, and disposal of such waste or spent fuel. Such contracts shall provide for payment to the Secretary of fees pursuant to paragraphs (2) and (3) sufficient to offset expenditures described in subsection (d).

(2) For electricity generated by a civilian nuclear power reactor and sold on or after the date 90 days after January 7, 1983, the fee under paragraph (1) shall be equal to 1.0 mil per kilowatt-hour.

(3) For spent nuclear fuel, or solidified high-level radioactive waste derived from spent nuclear fuel, which fuel was used to generate electricity in a civilian nuclear power reactor prior to the application of the fee under paragraph (2) to such reactor, the Secretary shall, not later than 90 days after January 7, 1983, establish a 1 time fee per kilogram of heavy metal in spent nuclear fuel, or in solidified high-level radioactive waste. Such fee shall be in an amount equivalent to an average charge of 1.0 mil per kilowatt-hour for electricity generated by such spent nuclear fuel, or such solidified high-level waste derived therefrom, to be collected from any person delivering such spent nuclear fuel or high-level waste, pursuant to section 10143 of this title, to the Federal Government. Such fee shall be paid to the Treasury of the United States and shall be deposited in the separate fund established by subsection (c). In paying such a fee, the person delivering spent fuel, or solidified high-level radioactive wastes derived therefrom, to the Federal Government shall have no further financial obligation to the Federal Government for the long-term storage and permanent disposal of such spent fuel, or the solidified high-level radioactive waste derived therefrom.

(4) Not later than 180 days after January 7, 1983, the Secretary shall establish procedures for the collection and payment of the fees established by paragraph (2)

and paragraph (3). The Secretary shall annually review the amount of the fees established by paragraphs (2) and (3) above to evaluate whether collection of the fee will provide sufficient revenues to offset the costs as defined in subsection (d) herein. In the event the Secretary determines that either insufficient or excess revenues are being collected, in order to recover the costs incurred by the Federal Government that are specified in subsection (d), the Secretary shall propose an adjustment to the fee to insure full cost recovery. The Secretary shall immediately transmit this proposal for such an adjustment to Congress. The adjusted fee proposed by the Secretary shall be effective after a period of 90 days of continuous session have elapsed following the receipt of such transmittal unless during such 90-day period either House of Congress adopts a resolution disapproving the Secretary's proposed adjustment in accordance with the procedures set forth for congressional review of an energy action under section 6421 of this title.

(5) Contracts entered into under this section shall provide that--

(A) following commencement of operation of a repository, the Secretary shall take title to the high-level radioactive waste or spent nuclear fuel involved as expeditiously as practicable upon the request of the generator or owner of such waste or spent fuel; and

(B) in return for the payment of fees established by this section, the Secretary, beginning not later than January 31, 1998, will dispose of the high-level radioactive waste or spent nuclear fuel involved as provided in this subchapter.

(6) The Secretary shall establish in writing criteria setting forth the terms and conditions under which such disposal services shall be made available.

(b) Advance contracting requirement

(1)(A) The Commission shall not issue or renew a license to any person to use a utilization or production facility under the authority of section 2133 or 2134 of this title unless--

(i) such person has entered into a contract with the Secretary under this section; or

(ii) the Secretary affirms in writing that such person is actively and in good faith negotiating with the Secretary for a contract under this section.

(B) The Commission, as it deems necessary or appropriate, may require as a precondition to the issuance or renewal of a license under section 2133 or 2134 of this title that the applicant for such license shall have entered into an agreement with the Secretary for the disposal of high-level radioactive waste and spent nuclear fuel that may result from the use of such license.

(2) Except as provided in paragraph (1), no spent nuclear fuel or high-level radioactive waste generated or owned by any person (other than a department of the United States referred to in section 101 or 102 of Title 5) may be disposed of by the Secretary in any repository constructed under this chapter unless the generator or owner of such spent fuel or waste has entered into a contract with the Secretary under this section by not later than--

(A) June 30, 1983; or

(B) the date on which such generator or owner commences generation of, or takes title to, such spent fuel or waste; whichever occurs later.

(3) The rights and duties of a party to a contract entered into under this section may be assignable with transfer of title to the spent nuclear fuel or high-level radioactive waste involved.

(4) No high-level radioactive waste or spent nuclear fuel generated or owned by any department of the United States referred to in section 101 or 102 of Title 5 may be disposed of by the Secretary in any repository constructed under this chapter unless such department transfers to the Secretary, for deposit in the Nuclear Waste Fund, amounts equivalent to the fees that would be paid to the Secretary under the contracts referred to in this section if such waste or spent fuel were generated by any other person.

(c) Establishment of Nuclear Waste Fund

There hereby is established in the Treasury of the United States a separate fund, to be known as the Nuclear Waste Fund. The Waste Fund shall consist of--

(1) all receipts, proceeds, and recoveries realized by the Secretary under subsections (a), (b), and (e), which shall be deposited in the Waste Fund immediately upon their realization;

(2) any appropriations made by the Congress to the Waste Fund; and

(3) any unexpended balances available on January 7, 1983, for functions or activities necessary or incident to the disposal of civilian high-level radioactive waste or civilian spent nuclear fuel, which shall automatically be transferred to the Waste Fund on such date.

(d) Use of Waste Fund

The Secretary may make expenditures from the Waste Fund, subject to subsection (e), only for purposes of radioactive waste disposal activities under subchapters I and II, including--

(1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any repository, monitored,1 retrievable storage facility2 or test and evaluation facility constructed under this chapter;

(2) the conducting of nongeneric research, development, and demonstration activities under this chapter;

(3) the administrative cost of the radioactive waste disposal program;

(4) any costs that may be incurred by the Secretary in connection with the transportation, treating, or packaging of spent nuclear fuel or high-level radioactive waste to be disposed of in a repository, to be stored in a monitored,1 retrievable storage site2 or to be used in a test and evaluation facility;

(5) the costs associated with acquisition, design, modification, replacement, operation, and construction of facilities at a repository site, a monitored,1 retrievable storage site2 or a test and evaluation facility site and necessary or incident to such repository, monitored,1 retrievable storage facility2 or test and evaluation facility; and

(6) the provision of assistance to States, units of general local government, and Indian tribes under sections 10136, 10138, and 10199 of this title.

No amount may be expended by the Secretary under this subchapter for the construction or expansion of any facility unless such construction or expansion is expressly authorized by this or subsequent legislation. The Secretary hereby is authorized to construct one repository and one test and evaluation facility.

(e) Administration of Waste Fund

(1) The Secretary of the Treasury shall hold the Waste Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Waste Fund during the preceding fiscal year.

(2) The Secretary shall submit the budget of the Waste Fund to the Office of Management and Budget triennially along with the budget of the Department of Energy submitted at such time in accordance with chapter 11 of Title 31. The budget of the Waste Fund shall consist of the estimates made by the Secretary of expenditures from the Waste Fund and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the Budget of the United States Government. The Secretary may make expenditures from the Waste Fund, subject to appropriations which shall remain available until expended. Appropriations shall be subject to triennial authorization.

(3) If the Secretary determines that the Waste Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States--

> **(A)** having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Waste Fund; and
>
> **(B)** bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such investments, except that the interest rate on such investments shall not exceed the average interest rate applicable to existing borrowings.

(4) Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Waste Fund, shall be exempt from annual apportionment under the provisions of subchapter II of chapter 15 of Title 31.

(5) If at any time the moneys available in the Waste Fund are insufficient to enable the Secretary to discharge his responsibilities under this subchapter, the Secretary shall issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions

as may be agreed to by the Secretary and the Secretary of the Treasury. The total of such obligations shall not exceed amounts provided in appropriation Acts. Redemption of such obligations shall be made by the Secretary from moneys available in the Waste Fund. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of Title 31, and the purposes for which securities may be issued under such Act are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

(6) Any appropriations made available to the Waste Fund for any purpose described in subsection (d) shall be repaid into the general fund of the Treasury, together with interest from the date of availability of the appropriations until the date of repayment. Such interest shall be paid on the cumulative amount of appropriations available to the Waste Fund, less the average undisbursed cash balance in the Waste Fund account during the fiscal year involved. The rate of such interest shall be determined by the Secretary of the Treasury taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States of comparable maturity. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest.

Nuclear Regulatory Commission, Final Rule on Licensing Requirements for the Storage of Spent Fuel in an Independent Fuel Spent Storage Installation, 45 Fed. Reg. 74,693 (Nov. 12, 1980)

Rules and Regulations

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

Licensing Requirements for the Storage of Spent Fuel in an Independent Fuel Spent Storage Installation

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is adding a new Part to its regulations to cover the specific licensing requirements for the storage of spent fuel in an independent spent fuel storage installation (ISFSI). Such activities are currently licensed under the Commission's general regulation for the Domestic Licensing of Special Nuclear Material, 10 CFR Part 70. Experience with licensing actions under this regulation demonstrated the need for a more definitive regulation to cover spent fuel storage in an ISFSI. This new Part was developed to meet this need.

DATES: Effective date: November 28, 1980.

Note.—The NRC did not submit this rule to the Comptroller General for a review of its reporting and recordkeeping requirements because the projected number of licensees involved, fewer than 10, makes it exempt from the Federal Reports Act, as amended, 44 USC 3512.

FOR FURTHER INFORMATION CONTACT: Dennis W. Reisenweaver, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, (301) 443–5910.

SUPPLEMENTARY INFORMATION: On October 6, 1978, the NRC published in the Federal Register (43 FR 46309) a notice of proposed rulemaking covering the storage of spent fuel in an independent spent fuel storage installation (ISFSI). In addition, copies of the proposed rule with a request for comments were sent to individuals, organizations, and government agencies thought to be potentially interested in this subject.

Seventy letters, containing more than 600 individual comments, were received in response to this request. Individual letters were submitted on behalf of several contributors. In addition, comments were received from interested NRC staff members. The comments covered generic subjects in addition to ones addressed to specific sections of the draft rule. After a careful consideration of all of the comments received, the Commission has adopted 10 CFR Part 72 in effective form. Major issues contained in these comments and resulting changes in the rule are discussed below. The detailed responses to individual comments are documented in NUREG–0567, "Analyses of Comments on 10 CFR Part 72." Copies of this report are available from the Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issues Addressed in Public Comments

1. *Need for a Rule at This Time.* Fifty commenters showed a broad recognition of the need for the proposed rule at this time and endorsed this action by the NRC, although exceptions were taken to some of the specific requirements. Twelve commenters were opposed to this rule and its promulgation at this time. For example, some of these commenters expressed a concern that the promulgation of a rule covering spent fuel storage would decrease pressures on both industry and government to solve the radioactive waste problem. Others advocated a halt to the generation of spent fuel, i.e., shut down nuclear power plants until the waste problem is solved.

Following the President's deferral of reprocessing of spent fuel in April 1977 came the general recognition that, regardless of future developments, spent fuel would have to be stored for a number of years prior to its ultimate disposition, and that the storage of spent fuel in an ISFSI would be a likely additional new step in the nuclear fuel cycle. The NRC expects a number of license applications covering this activity in the near future. Part 72 establishes specific regulatory requirements for this activity.

It is the judgment of the Commission that the promulgation of Part 72, which is designed to codify certain existing regulatory practices and better define licensing requirements covering the storage of spent fuel in an ISFSI, is consistent with the NRC objective of having applicable regulations in place to meet anticipated needs.

2. *Purpose and Scope of Part 72.* In the opinion of those commenters who consider spent fuel to be a high-level waste, the licensing of sent fuel storage is the de facto licensing of the temporary storage of high-level wastes. Others commented that Part 72 could be expanded to cover the temporary storage of high-level wastes in a facility like an ISFSI to allow further radioactive decay prior to placement in a repository.

Part 72 is limited in scope to the temporary storage (up to 20 years with renewal at the option of the Commission) of spent fuel (and radioactive materials associated with spent fuel storage) in facilities designed specifically for this purpose. The purpose of Part 72 is to prescribe the regulatory requirements for this activity.

The Commission has stated that spent fuel from power reactors is high-level waste for the purposes of Section 202(3) of the Energy Reorganization Act.[1] Thus an ISFSI that is operated by the Department of Energy must be licensed by NRC.

3. *De Facto Support of Nuclear Power.* Some commenters interpreted the promulgation of Part 72 as de facto support by the Commission of the continuing production of electricity by nuclear power (and its resultant waste generation) without a national waste management policy. The Commission's intent in promulgating Part 72 is simply to have applicable regulations in place for the protection of the health and safety of the public and of the environment if applications are received for the storage of spent fuel in an ISFSI. The Commission's position on the subject of waste management was addressed in the Federal Register notice on 10 CFR Part 51, published on August 2, 1979 (44 FR 45362) promulgating a final rule which sets out in Table S–3, Table of Uranium Fuel Cycle Environmental Data, revised environmental impact values for the

[1] Statement of Dr. Joseph R. Hendrie, then Chairman of the U.S Nuclear Regulatory Commission before the Committee on Energy and Natural Resources, U.S. Senate, May 10, 1979.

uranium fuel cycle including waste disposal and the notice of proposed rulemaking on 10 CFR Parts 50 and 51, "Storage and Disposal of Nuclear Wastes," published on October 25, 1979 (44 FR 61372).

4. *Adequacy of Technology Base.* A number of commenters questioned the adequacy and availability of the technology base for the development of a rule covering extended spent fuel storage. In fact, there is a very broad technology base for both wet and dry modes of spent fuel storage for the contemplated lifetime of an ISFSI.

Water basins are simple structures that have been used since the mid-1940s for the handling, transfer and storage of spent fuel and other highly radioactive sources such as ^{60}Co and for the shielding of research reactors, initially at government plants and later at commercial reactors. The engineering practices and procedures involved in their design and construction are well established. The operation of a water basin is also straightforward, the water chemistry is well established, and the maintenance of high quality basin water is readily achievable. These water conditions are essentially non-corrosive to both the materials involved in the basin itself and the components of spent fuel assemblies from commercial light water reactors. Both experience and theoretical analyses of basin storage conditions indicate that spent fuel can be stored underwater for several decades without serious degradation.

Although dry storage has not been used for commercial light water reactor (LWR) fuels, dry storage has been used for a number of years for other types of spent fuels and other highly radioactive materials, particularly at the Idaho Nuclear Engineering Laboratory. Dry storage is used for spent MAGNOX fuels at the Wylfa Power Station in Wales. Canada is developing dry storage for CANDU reactor fuels, and the U.S. Department of Energy (DOE) is evaluating the storage of high burnup LWR fuels both in concrete and steel canisters similar to the Canadian design and in near-surface dry well storage at the Nevada Test Site.

5. *Is Spent Fuel Storage a Low Risk Operation?* Some commenters questioned whether the extended storage of spent fuel is a low risk operation as stated in the preamble to the proposed rule.

Radiological risks to the public result from a release of radioactive materials and their dispersal to the environment. Once in place, spent fuel storage is a static operation and during normal operations the conditions required for the release and dispersal of significant quantities of radioactive materials are not present. There are no high temperatures or pressures present during normal operations or under design basis accident conditions to cause the release and dispersal of radioactive materials. This is primarily due to the low heat generation rate of spent fuel with more than the one year of decay before storage in an ISFSI required by the rule and with the low inventory of volatile radioactive materials readily available for release to the environs.

However, it is essential to maintain safe storage conditions. For water basins, this means that the pool structure, storage racks and possibly other items such as crane tiedowns, must be designed to withstand the maximum potential natural phenomena, including earthquakes, to which the ISFSI may be exposed. For this reason, the rule stresses the selection of sound sites and designing for the most severe natural phenomena reported for the site and surrounding area. The same considerations are applicable to ISFSI designs other than water basins.

6. *Coverage of Dry Storage and Existing Facilities.* A number of commenters suggested that the purpose and scope be written in more definitive language and specifically to cover dry storage and other radioactive materials associated with spent fuel, recognizing that this was intended in the proposed rule. The wording was changed for improved clarity in response to these suggestions. In addition, paragraph 72.2(c) was added to the scope to clarify the fact that this rule covers both wet and dry storage. Other appropriate changes were made in the body of the rule to further clarify this point.

7. *Types of Fuel Covered and Decay versus Fuel Characteristics.* Comments were received suggesting that the rule be broadened to cover other than LWR spent fuel, e.g., CANDU reactor fuel that might be received from abroad. In response, the definition of spent fuel was broadened to cover all types of power reactor fuels. An ISFSI would have to be designed to accommodate the types of spent fuel to be stored, and any restrictions on fuel types would be a subject of license conditions.

Some commenters questioned the one-year decay stipulation, preferring that this requirement be expressed in terms of specific power, burnup, or other pertinent fuel characteristics. In practice, specific power is important only for freshly discharged fuel as the power level prior to shutdown is the controlling factor for the concentration of short-lived radionuclides present in spent fuel. The long-lived radionuclides present in spent fuel are proportional to burnup; but within the limits of expected burnups, this is not a significant factor for spent fuel aged more than one year.

The one-year decay stipulation has been retained as this is a basis for the requirements of Part 72, i.e., the presumption is made that no short-lived radionuclides are present and the levels of volatile radioactive materials are very substantially reduced.

Inasmuch as the definition of spent fuel eligible for storage in an ISFSI [Section 72.3(v)] specifies that the fuel must have undergone at least a year's decay since its irradiation in a power reactor, any facility for temporary storage of fuel irradiated in a power reactor which has not undergone a year's decay would be licensed under Part 50 rather than Part 72.

8. *Definition of Temporary Storage.* In response to comments, a definition of temporary storage has been added as paragraph 72.3(x). Temporary storage, in the context of Part 72, means "interim storage of spent fuel for a limited time only, pending its ultimate disposal."

9. *Material Versus Facility License.* Some confusion and misunderstanding over the differences between a Part 70 "material" license and a Part 50 "facility" license was reflected by a number of commentors. Under Part 70, a licensee is authorized to receive title to, own, acquire, deliver, receive, possess, use, and transfer special nuclear material for a stated purpose, such as fuel manufacturing, to be carried out in an approved plant complex; however, the plant itself is not licensed but its operation is regulated. Under Part 50, a licensee is authorized to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess or use a production or utilization facility, as defined by the Atomic Energy Act; the license covers the facility, not the material. The possession of fuel by a reactor licensee is covered under a Part 70 license, which is incorporated into the Part 50 license. The licensing of spent fuel storage in an ISFSI under Part 72 is a material type of license; however, Part 72 includes requirements for an ISFSI that are conditions under which a license to possess spent fuel will be issued.

10. *One License Application and One Safety Analysis Report.* For some time the NRC has endeavored to simplify its regulations and licensing activities. As spent fuel storage in an ISFSI is a simple operation, does not require a complex plant and is subject to few controversial technical issues, a one step licensing procedure requiring only one application and one SAR was adopted in Part 72. This one step licensing procedure was

the subject of a number of comments. It is believed that the rewording of the text of the rule plus the discussions of individual comments in NUREG–0587 have clarified requirements and the one application and one SAR requirement has been retained in Part 72. However, it should be recognized that locating an ISFSI on a nuclear power plant site may require an amendment to the Part 50 license to take into account possible interactions with the ISFSI.

Section 2.764 of 10 CFR Part 2 has been amended by adding a new paragraph (c) which provides that an initial decision directing the issuance under 10 CFR Part 72 of an initial license for the construction and operation of an independent spent fuel storage installation (ISFSI) shall not become effective until review by the Commission has been completed and that the Director of Nuclear Material Safety and Safeguards shall not issue such an initial license until expressly authorized to do so by the Commission. This amendment does not affect and is not intended to alter in any way the previous action of the Commission temporarily suspending the immediate effectiveness rule (10 CFR 2.764 (a) and (b)) in certain proceedings as provided in Appendix B to Part 2 (44 FR 65049 November 9, 1979.)

11. *Accident Analyses.* A number of comments addressed the subject of accident analyses, particularly an apparent inconsistency between the 24-hour inhalation/ingestion dose addressed in paragraph 72.15(a)(13) and the 2-hour direct radiation dose used as a site evaluation factor in § 72.87.

In response to those comments and upon further consideration, paragraph 72.15(a)(13) was revised to require accident analyses to cover both immediate dose and long-term dose commitment based on the duration of the postulated event rather than on an arbitrary time limit. Accident criteria to be used in site evaluation were removed from §§ 72.65 and 72.67 and placed in a new § 72.68 which addresses the criteria for establishing the controlled area for an ISFSI.

12. *Decommissioning Plan.* The requirement in Part 72 that the license application include a plan for decommissioning of the proposed ISFSI and the financial arrangements therefore were the subject of many comments. The reason for this requirement is that the decommissioning plan provides design input (see § 72.76) and the basis for the costs of decommissioning. Part 72 makes it a requirement that adequate financial arrangements to cover the cost of decommissioning should be made before a license is issued.

Although decommissioning of an ISFSI should require only the removal of surface contamination, planning for decontamination and decommissioning is an essential element of design input. The value of a decommissioning plan being developed at the license application stage is that this plan demonstrates the extent to which the proposed ISFSI has been designed for decommissioning.

The provisions for financing the ultimate decommissioning of an ISFSI were also the subject of many comments reflecting that this is a problem yet to be resolved. This should not be a serious problem as the cost of decommissioning an ISFSI that is designed for decommissioning should be small compared to these costs for some other nuclear facilities.

13. *Prequalification of Part 50 Licensees.* Some commenters, particularly utilities, suggested that Part 50 licensees should be considered to be prequalified. This suggestion was not adopted, although no serious difficulty is anticipated in the qualification of a Part 50 licensee. A Part 50 licensee must satisfy the requirement in Part 72 that an applicant have an adequately trained staff committed to the design, construction and operation of the proposed ISFSI. The storage of spent fuel in an ISFSI is a low risk operation provided the ISFSI is designed, constructed and operated in accordance with required standards. A commitment to this effect on the part of an applicant is considered important.

14. *Required Detail and Updating of the SAR.* Questions were raised on the required detail in the SAR and its updating. The single license granted under Part 72 prior to the start of construction requires considerable detail in the license application, particularly in the SAR. There must be sufficient detail to: (1) Support the findings enumerated in § 72.31 for the issuance of a license, and

(2) Serve as the bases for both the license conditions applicable to design and construction and the license conditions, including technical specifications, applicable to operations.

The wording has been changed throughout the rule to clarify this point.

Updating the SAR during the design and construction phase of the project is required. However, such updating is limited to an elaboration or modification of the information in an approved SAR. Any changes involving an unreviewed safety question require an amendment to the license. An annual updating of the SAR after the ISFSI is built is required even if no changes have been made. The annual updating will also address the significance of any changes to codes, standards, regulations, or regulatory guides which the licensee has committed to meeting that are applicable to the design, construction, or operations of the ISFSI. Changes at an ISFSI after it is built are expected to be limited to support systems with only marginal safety significance. This requirement is comparable to that of the proposed amendment to § 50.71 of 10 CFR Part 50, commonly referred to as the "FSAR Update Rule."

15. *Content of Environmental Reports.* The content of the environmental report required by § 72.20 was the subject of a number of comments. The environmental report required for an ISFSI is an evaluation of the environmental impact of the ISFSI on the region in which it is located, including the transportation that is involved. Discussions of generic issues covered by DOE and NRC generic environmental impact statements may be incorporated by reference.

16. *Provision for Public Hearings and State and Local Participation in the Licensing Process.* A number of commenters expressed concern over the omission in proposed Part 72 of any reference to public hearings or other provisions covering state and local participation in the licensing process. In accordance with the requirements of Sec. 189a of the Atomic Energy Act, as amended, which provides in part ". . . the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding . . . ," the Office of Nuclear Materials Safety and Safeguards has established the practice of publicizing proposed spent fuel storage licensing actions and holding public hearings on a request by any person whose interest my be affected. A section based on the provisions of §§ 2.104 and 2.105 of 10 CFR Part 2, has been added to the rule (See § 72.34).

17. *Applicability of License Conditions.* Some commenters raised questions on the content and applicability of license conditions recognizing that license conditions are an important aspect of the single preconstruction license issued under Part 72. In response to these comments, the wording of § 72.33 was changed to clarify the point that license conditions are applicable to design, construction, and operational activities. Since license conditions applicable to ISFSI operations are technical in nature, these have been identified by the more

familiar term "Technical Specifications."

18. *At-Reactor versus Away-From-Reactor Siting.* Some commenters favored restricting the siting of ISFSIs to reactor sites, with the thought that this might reduce perceived transportation risks and keep pressure on the nuclear industry to help solve the waste management problem. Others favored away-from-reactor siting, perceiving this to be safest solution even though transportation might be increased.

Also, some commenters interpreted the promulgation of Part 72 as reflecting an NRC bias favoring away-from-reactor siting. This conclusion is not correct. The NRC is not aware of any compelling reasons generally favoring either at-reactor or away-from-reactor siting of an ISFSI. There are many factors to be considered in each situation and in the licensing actions involved; accordingly, the rule permits either.

19. *The Use of New Site-Related Terms.* One subject of particular interest to many commenters was the use in Part 72 of new site-related terms ("controlled area," "neighboring area" and "region,") rather than the more familiar site-related terms used in 10 CFR Parts 20 and 100.

Several considerations went into the development of new terms for site-related areas around an ISFSI. While the terminology used in 10 CFR Part 20, specifically 'restricted' and 'unrestricted' areas, applies to all nuclear facilities, it is limited to radiation protection concerns associated with normal operations and the means used by the licensee to control the access to areas of potential radiation exposure. With the advent of as low as is reasonably achievable objectives and environmental radiation protection standards promulgated by the Environmental Protection Agency in 40 CFR Part 190, the term "unrestricted" used in 10 CFR Part 20 is too narrow in meaning for applications to areas beyond the boundaries of the licensee's property.

The current terminology used in 10 CFR Part 100, specifically 'exclusion area' and 'low population zone', is applicable to postulated radiological consequences to individuals beyond the site boundary from potential accidents in test and power reactors. Its applicability is limited to specific types of nuclear reactors, not other nuclear installations, and to well-defined reference dose guidelines and risks associated with such nuclear reactors. The terminology used in 10 CFR Part 100 is too restrictive in meaning for use at multi-purpose sites and was never intended to be used for other than reactor sites. The use of these terms[1] from 10 CFR Part 100 for an ISFSI is inappropriate.

Furthermore, the "Report of the Siting Policy Task Force," NUREG–0625, has recommended several changes in the basic criteria of 10 CFR Part 100. Therefore using the current terminology of 10 CFR Part 100 in 10 CFR Part 72 is not appropriate due to the potential changes that may be made in Part 100. For example, it is proposed to change the term (and definition) of "low population zone" to "emergency planning zone" (EPZ). This terminology was used in the proposed revision of Appendix E (now titled "Emergency Planning and Preparedness for Production and Utilization Facilities") to 10 CFR Part 50, that was published for comment on December 19, 1979. Consistent with this proposed revision, the term "neighboring area" in 10 CFR Part 72 has been changed to "ISFSI Emergency Planning Zone" (ISFSI–EPZ) because these are comparable in concept. The size of an ISFSI–EPZ is expected to be much smaller than that of a reactor EPZ.

20. *Criteria for Establishing the Controlled Area, Neighboring Area,[1] and Region as Applied to the Site of an ISFSI.* A number of commenters expressed the need for criteria for establishing the controlled area, the neighboring area and the region for an ISFSI as these terms are used in Part 72 and noted that there was a potential conflict of terms in the proposed rule. In response to these comments, more definitive criteria have been incorporated in the pertinent sections of the rule and clarifying changes in the text and definitions have been made.

Another concern with the implementation of these defined areas for an ISFSI is the possible conflict in terminology for an ISFSI located on the same site with a nuclear power reactor licensed under 10 CFR Parts 50 and 100 requirements.

Part of this concern appears due to a misunderstanding and the impression that the controlled area for an ISFSI is the same as the exclusion area for a reactor and that the neighboring area (since changed to ISFSI–EPZ) for an ISFSI is the same as the low population zone for a reactor. In concept, these areas are similar but the bases for their establishment are different. The controlled area for an ISFSI is not the same as the exclusion area for a reactor because the design basis accidents are different. Reactor accidents involve a potential release of radioactive materials, including short-lived species such as ^{131}I. Design basis accidents of concern at an ISFSI primarily involve direct radiation from exposure to the spent fuel rather than releases of radioactive materials. The areas requiring control or protective action measures for the protection of the public are quite different and hence using different terminology for each avoids confusion.

The four site-related terms and their definitions, i.e., site, controlled area, neighboring area (now ISFSI–EPZ), and region, establish each of the geographical areas and the interrelationship that would exist between these areas and the need to protect public health and safety and the environment. The site means the real property on which the ISFSI is located. The controlled area, which may or may not be the same as the site, has the purpose of defining licensee control for meeting regulatory licensing requirements. The controlled area, in most cases, will be enclosed by some physical barrier such as a fence, to provide the needed control of activities within the area. Beyond the controlled area, the licensee does not necessarily exercise authority over activities.

The ISFSI-Emergency Planning Zone (ISFSI–EPZ) is that area in the immediate vicinity of an ISFSI upon which local and State governments should base their radiological response plans. The requirement to define a neighboring area in the proposed 10 CFR Part 72, in which State and local governments could take protective action in the event of an emergency, is comparable in concept to the emergency planning zones for reactors. The term ISFSI–EPZ has been adopted to differentiate this zone and its requirements from those of an EPZ for a reactor.

The regions around an ISFSI site will vary in geographical area and location depending upon the event being evaluated to determine its impact on the ISFSI. A region has the purpose of defining the area within which such an event can have an impact on the public health and safety or environment. This impact must be assessed from the consequences postulated for the events evaluated.

21. *Dose Limits for Normal Operations and Accidents.* A number of commenters addressed the subject of dose limits for normal operations and accidents. Although spent fuel storage is not specifically identified as a fuel cycle operation in 40 CFR Part 190, "Environmental Radiation Protection Standards for Nuclear Power

[1] The term "neighboring area" has been changed to "ISFSI-EPZ."

Operations," the dose limits specified in this regulation are used in Part 72. Section 72.67 was rewritten to better clarify the requirements on effluents and direct radiation during normal operations and anticipated occurrences.

The accident dose limit of 5 rem was placed in a new § 72.68, that defines the criteria for establishing a controlled area for an ISFSI. The 2-hour criterion was deleted; the controlling design basis accident for the specific ISFSI covered in the application is to be evaluated. The 5 rem cumulative exposure limit is derived from protective actions recommended by EPA for projected doses to populations for planning purposes.[2]

The reference to 24 hours in paragraph 72.15(a)(13) was deleted; the requirements for the accident analysis section of the SAR were changed to call for the evaluation of a dose commitment due to the event that would take into account the total dose from a single exposure as well as dose reduction due to protective action.

In response to comments on the applicability of Appendix I to 10 CFR Part 50 and Part 100 to an ISFSI, Appendix I is applicable only to light water cooled power reactors and Part 100 is applicable only to power and test reactors. Neither of these regulations is applicable to an ISFSI.

22. *Geological and Seismological Investigations.* In the proposed rule, the geological and seismological investigation requirements for an ISFSI site were based on the reasoning that it should be possible to select sound sites for the few ISFSIs expected to be built. Seismologically, a sound site was considered one having potential ground motion of less than 0.25 g from earthquake with a return period of 500 years. This earthquake potential could be determined on a probabilistic basis; i.e., read from seismic zonation maps such as those published by the U.S. Geological Survey.[3] Uncertainties in such determinations could be offset by overdesign.

This use of probabilistic techniques was considered appropriate as a site selection criterion; it was not intended to be used for determining the design earthquake for structures. Assuming a sound site as defined above, the use of a standard design earthquake of 0.25 g (which has a return period that is much greater than 500 years) was considered conservative and adequate to offset uncertainties in an evaluation of a specific site on a probabilistic basis.

However, it was not possible to obtain a consensus among experts in the field on this approach. It was generally agreed that probabilistics techniques are adequate to determine potential seismicity on a regional basis, but these techniques are not yet adequately developed for application to a specific site.

As an alternative, the proposed rule allowed a site specific "g" value to be determined by the procedures of Appendix A to Part 100, "Seismic and Geologic Siting Criteria for Nuclear Power Plants." This provision was in Subpart E, "Siting Criteria," and was intended for use in the evaluation of site characteristics, such as potential soil liquefaction, under earthquake conditions in areas of low potential seismic activity where the use of the standard design earthquake of 0.25 g was considered to be unduly restrictive.

The final rule makes a differentiation between the regions east and west of the Rocky Mountain Front, approximately 104° west longitude, and in the east makes a further differentiation between areas of low seismic potential and areas of known seismic potential, including, but not limited to, New Madrid, Mo.; Charleston, S.C.; and Attica, N.Y.

In areas of low seismic potential in the eastern United States, a proposed site will be considered acceptable if the results from onsite foundation and geological investigation, literature review, and regional geological reconnaissance show no unstable geological characteristics, soil stability problems, or potential for vibratory ground motion at the site in excess of an appropriate response spectrum anchored at 0.2 g. Unstable geological characteristics are defined as capable faults, surface offset potential, subsidence or collapse features, uplight or downwarp, active tectonism, or landslide or mudflow potential. In the western United States and in regions of known seismic potential in the eastern United States, the seismicity at a proposed site must be evaluated by the criteria and level of investigations of Appendix A of 10 CFR Part 100, "Seismic and Geologic Siting Criteria for Nuclear Power Plants."

The conservatism reflected both in the use of a standard design earthquake of 0.25 g for the design of structures at sites in areas of low seismic potential or the alternative of developing a site specific design earthquake by the very thorough investigation required by Appendix A of Part 100 is considered necessary and appropriate for the protection of an ISFSI which could contain a large inventory of spent fuel. The Commission is considering a revision of Appendix A to Part 100. However, it is anticipated that such revision would be in the nature of a clarification of its requirements and that the rule would still be applicable to ISFSI siting.

The principle of selecting sound sites has been retained in the final rule. For example, floodplains and sites that lie within the range of strong nearfield ground motion from earthquakes on larger capable faults should be avoided. This principle is consistent with the recommendations in the "Report of the Siting Policy Task Force," NUREG–0625.

23. *The ISFSI Design Earthquake (ISFSI–DE).* The standardized ISFSI–DE of 0.25 g for massive structures, such as water basins, has been retained in the final rule for use at sites east of the Rocky Mountain Front that are in areas of low potential seismic activity and hence do not need to be evaluated by the criteria and level of investigations of Appendix A of 10 CFR Part 100.

For sites west of the Rocky Mountain Front and in regions in the eastern United States of known seismic activity, the ISFSI–DE must be determined using the level of investigations and the criteria of Appendix A of 10 CFR Part 100, including the requirement that it be no less than 0.10 g.

For an ISFSI that is located on a power plant site which has been evaluated by the criteria and level of investigations of Appendix A of 10 CFR Part 100, the ISFSI–DE for structures shall be equivalent to the safe shutdown earthquake (SSE) for a nuclear power plant.

For ISFSI's which do not involve massive structures, such as dry storage casks and cannisters, the required design earthquake will be determined on a case-by-case basis until more experience is gained with the licensing of these types of units.

24. *Probability Basis Used for Other Natural Phenomena.* Some commenters wanted to go one step further and use a probabilistic basis for other natural phenomena such as tornadoes and floods. It has been common practice in the United States to use probable maximum events as design bases for radiological safety-related structures, systems, and components. When a frequency or probabilistic analysis of historical data is used to estimate such a low probability event, there is generally too much uncertainty to make the estimate useful for design purposes. Therefore, the probable maximum flood, for example, is estimated using deterministic hydrologic models which

[2] EPA 520/1–75–001, "Manual of Protective Act on Guides and Protective Actions for Nuclear Incidents," September, 1975.

[3] Such as Algermissen and Perkins, USGS, Open File Report 76–416, 1976, "A Probabilistic Estimate of Maximum Acceleration in Rock in the Contiguous United States."

utilize meteorological input that approaches the upper limit possible for that location, taking into account existing climate and time of year.

25. *Prequalification of Reactor Sites and Their Population Distributions.* Some commenters recommended that reactor sites be prequalified with no site specific investigations required for an at-reactor siting of an ISFSI. While a site that has undergone a full safety and environmental review and has been approved for a Part 50 facility is likely to be found acceptable for a properly designed ISFSI, the pre-qualification of sites licensed under Part 50 without review in relation to the proposed design of the ISFSI does not seem prudent. Information on a specific site that has been submitted to the NRC in connection with other licensing actions need not be repeated in a Part 72 license application. It can be incorporated by specific references to previous submissions.

26. *Transportation Considerations.* A number of commenters considered that the transportation involved in spent fuel shipments to an ISFSI could be an important consideration in an evaluation of site suitability. This might be particularly true of a large installation. The Commission agrees and a new § 72.70 has been added to the rule to specifically address this point.

27. *Missile Protection.* Part 72 requires protection from natural phenomena with the exception of tornado missiles. Tornado missile protection at reactors is of concern because rupture of recently discharged fuel at a reactor could cause the potential release of volatile short-lived radionuclides, particularly ^{131}I. Since the quantity of ^{131}I present in aged fuel at an ISFSI is reduced a factor of 10^9 due to radioactive decay in the first year after discharge, the potential risk from the rupture of aged fuel is orders of magnitude lower for an ^{131}I release. The radionuclides which could potentially be released as a result of a tornado missile event are long-lived ^{85}Kr and ^{129}I. However, an accident evaluation in NUREG-0575,[5] Section 4.2.3.2, using conservative assumptions demonstrates that the consequences from the release of the nuclides attributable to a tornado missile would not be significant. Hence, a requirement for protection from tornado missiles does not appear to be justified.

28. *Criticality.* A number of commenters expressed concern over the prospect of a criticality in an ISFSI.

[5] Final Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Reactor Fuel, August 1979.

Criticality has been a subject of study and experiment in the nuclear industry and has received much attention among nuclear engineers. The technology used in evaluating a given design for criticality potential is now highly developed with sophisticated computer codes. These codes have been benchmarked by actual measurements in various kinds of lattices and configurations of critical arrays of fuel elements. Because spent fuel storage racks are designed with a large safety factor to prevent criticality, the possibility of a significant criticality in ISFSI is very remote.

29. *Application of ALARA to Occupational Exposures.* Some commenters objected to the application of the ALARA principle to the design of a facility as this might affect occupational exposures. These objections were based on two points:

(1) The thought that ALARA applied only to public health and safety, and

(2) Occupational exposures are controlled by administrative procedures.

In response, the ALARA concept does apply to occupational health protection as specified in 10 CFR Section 20.1(c). Furthermore, although it is recognized that occupational exposures can be controlled to some extent by administrative procedures, design provisions such as adequate shielding of sources and proper equipment layout to minimize exposures are also important factors in keeping occupational exposures to a minimum. It is often impossible to fully compensate for a poor design using administrative procedures. ALARA (and its predecessor ALAP) has been a cornerstone of radiation protection for many years and it has always been considered to apply to all types of exposure, occupational and public.

30. *Broadened Applicability of Quality Assurance Program.* Some commenters took objection to what they interpreted as a broadening of the QA program, e.g., coverage of operations and the physical security system. It is the Commission's view that a licensee's QA program must cover not only design and construction, but all activities that are important to safety throughout the life of a facility.

31. *Certification versus Licensing of Operating Personnel.* The safety of an ISFSI is achieved by static means, primarily its configuration. Its safety is not dependent on dynamic reactions to the manipulation of controls like a reactor. It is necessary that operating personnel be adequately trained but not necessarily licensed by the NRC. A certification by the licensee of an individual's proficiency to operate equipment is considered adequate.

32. *Definition of the term "Independent".* The meaning of the term "Independent" as used in Part 72 when applied to an ISFSI that is located on the site of another licensed facility, was the subject of a number of comments and considerable staff discussion.

An ISFSI may be a free-standing, away-from-reactor, fully independent type of facility or it may be located on the site of an existing facility such as a nuclear power plant. Such a location could have the economic benefit of sharing some utilities, services and personnel between the ISFSI and an existing facility on the site.

The rule is applicable to either type of location and an ISFSI may be provided with services from an existing facility and still be considered "independent." The use of services from an existing facility (i.e., electricity, makeup water, waste treatment, etc.) is allowable provided the Commission finds there is reasonable assurance that the construction and operation of the ISFSI will provide adequate protection to the health and safety of the public from the standpoint of both facilities involved.

Any physical connection between facilities must be evaluated, but any penetration of the reactor storage pool walls will be considered a conclusive showing that the ISFSI is not "independent" and hence is not within the scope of Part 72 and should be covered by licensing action under Part 50.

33. *Licensing Actions Involving Previously Licensed Facilities.* There are now in existence three facilities for spent fuel storage that have been subject to previous licensing actions. These are:

G.E.—Morris, Ill.—built under a Part 50 Construction Permit authorization as a reprocessing plant; spent fuel storage now licensed under Part 70;

NFS—West Valley—now licensed under Part 50;

AGNS—Barnwell, S C.—built under a Part 50 Construction Permit authorization as a reprocessing plant; but no operating license issued.

In the event of an application for use of one of the above facilities as an ISFSI, a license would be issued if the facility meets the requirements of Part 72. Such licensing actions will require the preparation of an environmental impact statement or appraisal under conforming amendments of Part 51. In this regard see § 51.5(a)(10) for issuance of an initial license for storage of spent fuel in an ISFSI at a site not occupied by a nuclear power reactor; § 51.5(b)(4) for issuance of certain amendments to a

license for storage of spent fuel in an ISFSI; § 51.5(b)(5) for issuance of a renewal license for storage of spent fue in an ISFSI; and § 51.5(b)(9) for issuanc: of an initial license for storage of spent fuel in an ISFSI on the site of a nuclear power reactor. These environmental impact assessments will include an evaluation of feasible alternatives. However, since the site selection process for an existing facility has already been completed, no comparative review of alternative sites will be required unless there is new information which could alter the original site evaluation findings. In practice, this means that alternative sites need not b: reviewed and that the existing facility would be rejected for siting considerations only if the site involved found to be unsuitable with respect to either safety or environmental impact considerations.

An application for renewal of the license for the G.E.—Morris facility under 10 CFR Part 70 was received on February 27, 1979 and has been under review since that time. As 10 CFR Part 72 has become effective prior to completion of this licensing action, such licensing action will proceed pursuant o 10 CFR Part 72 which is specifically designed to cover spent fuel storage in an ISFSI. This is expected to result in some procedural delays in the G.E.—Morris proceedings.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of title 5 of the United States Code, the following new Part 72 and related conforming amendments of Parts 51, 70, 73 and 150 to Chapter I of Title 10, of the Code of Federal Regulations are published as a document subject to codification.

1. A new 10 CFR Part 72 is added to read as follows:

PART 72—LICENSING REQUIREMENTS FOR THE STORAGE OF SPENT FUEL IN AN INDEPENDENT SPENT FUEL STORAGE INSTALLATION (ISFSI)

Subpart A—General Provisions

Subpart B—License Application, Form, and Contents

Subpart C—Issuance and Conditions of Licenses

Subpart D—Records, Reports, Inspections and Enforcement

Subpart E—Siting Evaluation Factors

Subpart F—General Design Criteria

Subpart G—Quality Assurance

Subpart H—Physical Protection

Subpart I—Training And Certification of ISFSI Personnel

Authority. The provisions of this Part 72 are issued under the Atomic Energy Act of 1954, as amended, secs. 51, 53 as amended, 57 as amended, 62, 63, 65, 69, 81 as amended, 161b, h, i, o, 182a as amended, 183 as amended, 184 as amended, 186, 187, Pub. L. 83–703, 68 Stat. 929, 930 as amended by 71 Stat. 576, 72 Stat. 632 and 79 Stat. 602, 932 as amended by 78 Stat. 605 and 88 Stat. 475, 933, 934, 935 as ameded by 88 Stat. 475 and 92 Stat. 3039, 946, 953 as amended by 70 Stat. 1069, 954 as amended by 78 Stat. 602, 955 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201(b), (b), (i), (o), 2232, 2233, 2234, 2238, 2237); sec. 234, Pub. L. 91–161, 83 Stat. 444 (42 U.S.C. 2282); sec. 274c, as amended, Pub. L. 86–273, 73 Stat. 688 as amended by Pub. L. 95–604, 92 Stat. 3036 (42 U.S.C. 2021(c)); under sec. 102(2)(C) of the National Environmental Policy Act of 1969, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332) and under the Energy Reorganization Act of 1974, as amended, sec. 201, as amended, 202, and 206, Pub. L. 93–438, 88 Stat. 1242, as amended by 89 Stat. 413, 1243, 1246 (42 U.S.C. 5841, 5842, 5846).

Subpart A—General Provisions

§ 72.1 Purpose.

The regulations in this part establish requirements, procedures, and criteria for the issuance of licenses to 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 such licenses.

§ 72.2 Scope.

(a) Licenses issued under this Part are limited to the possession of power reactor spent fuel to be stored in a complex that is designed and constructed specifically for the temporary storage of power reactor spent fuel aged for at least one year, and to the possession of other radioactive materials associated with spent fuel storage.

(b) The regulations in this part apply to all persons in the United States, including persons in Agreement States.

(c) The requirements of this regulation are applicable, as appropriate, to both wet and dry modes of storage of spent fuel.

(d) Licenses covering the storage of spent fuel in an existing spent fuel storage facility shall be issued in accordance with the requirements of this part as stated in § 72.31.

§ 72.3 Definitions.

As used in this part: (a) "Act" means the Atomic Energy Act of 1954 (68 Stat. 919) including any amendments thereto.

(b) "As low as is reasonably achievable" [ALARA] means as low as is reasonably achievable taking into account the state of technology, and the economics of improvements in relation to (1) benefits to the public health and safety, (2) other societal and socioeconomic considerations, and (3) the utilization of atomic energy in the public interest.

(c) "Atomic energy" means all forms of energy released in the course of nuclear fission or nuclear transformation.

(d) "Byproduct material" means any radioactive material (except special nuclear material) yielded in, or made radioactive by exposure to, the radiation incident to the process of producing or utilizing special nuclear material.

(e) "Commission" means the Nuclear Regulatory Commission or its duly authorized representatives.

(f) "Commencement of construction" means any clearing of land, excavation, or other substantial action that would adversely affect the natural environment of a site, but does not mean:

(1) Changes desirable for the temporary use of the land for public recreational uses, necessary borings or excavations to determine subsurface materials and foundation conditions, or other preconstruction monitoring to establish background information related to the suitability of the site or to the protection of environmental values;

(2) Construction of environmental monitoring facilities;

(3) Procurement of manufacture of components of the installation; or

(4) Construction of means of access to the site as may be necessary to accomplish the objectives of sections (1) and (2) above.

(g) "Confinement systems" means those systems, including ventilation, that act as barriers between areas containing radioactive substances and the environment.

(h) "Controlled area" means that area immediately surrounding an ISFSI for which the licensee exercises authority over its use and within which ISFSI operations are performed.

(i) "Design bases" means that information that identifies the specific functions to be performed by a structure, system, or component of a facility and the specific values or ranges of values chosen for controlling parameters as reference bounds for design. These values may be restraints derived from generally accepted "state-of-the-art" practices for achieving functional goals or requirements derived from analysis (based on calculation or experiments) of the effects of a postulated event under which a structure, system, or component must meet its functional goals. The values for controlling parameters for external events include: (1) estimates of severe natural events to be used for deriving design bases that will be based on consideration of historical data on the associated parameters, physical data, or analysis of upper limits of the physical processes involved and (2) estimates of severe external man-induced events to be used for deriving design bases that will be based on analysis of human activity in the region taking into account the site characteristics and the risks associated with the event.

(j) "Design capacity" means the quantity in metric tons of spent fuel, its maximum burnup in MWD/MTU, and the total heat generation in Btu per hour that an ISFSI is designed to accommodate.

(k) "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters including flood-prone areas of offshore islands. Areas subject to a one percent or greater chance of flooding in any given year are included.

(l) "Historical data" means a compilation of the available published and unpublished information concerning a particular type of event.

(m) "Independent spent fuel storage installation" (ISFSI) means a complex designed and constructed for the storage of spent fuel and other radioactive materials associated with spent fuel storage. An ISFSI which is located on the site of another facility may share common utilities and services with such a facility and be physically connected with such other facility and still be considered to be independent, *provided* that such sharing of utilities and services or physical connections does not (i) increase the probability or consequences of an accident or malfunction of components, structures or systems that are important to safety; or (ii) reduce the margin of safety as defined in the basis for any technical specifications of either facility."

(n) "ISFSI-emergency planning zone" (ISFSI-EPZ) means that area in the vicinity of an ISFSI within which protective action measures may be needed in the event of an accident at an ISFSI.

(o) "NEPA" means the National Environmental Policy Act of 1969 including any amendments thereto.

(p) "Person" means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Nuclear Regulatory Commission or the Department of Energy (DOE), except that the DOE shall be considered a person within the meaning of the regulations in this part to the extent that its facilities and activities are subject to the licensing and related regulatory authority of the Commission pursuant to Section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244); (2) any State; any political subdivision of a state, or any political entity within a State, (3) any foreign government or nation, or any political subdivision of any such government or nation, or other entity; and (4) any legal successor, representative, agent, or agency of the foregoing.

(q) "Population" means the people that may be affected by the change in environmental conditions due to the construction, operation, or decommissioning of an ISFSI.

(r) "Region" means the geographical area surrounding and including the site, which is large enough to contain (1) all the features related to a phenomenon or to a particular event that could potentially impact the safety of the ISFSI and (2) all measurable effects of environmental impact, both radiological and nonradiological, that are due to the construction, operation or decommissioning of an ISFSI.

(s) "Site" means the real property on which the ISFSI is located.

(t) "Source material" means (1) uranium or thorium, or any combination thereof, in any physical or chemical form or (2) ores that contain by weight one-twentieth of one percent (0.05%) or more of (i) uranium, (ii) thorium, or (iii) any combination thereof. Source material does not include special nuclear material.

(u) "Special nuclear material" means (1) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51 of the Act, determines to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing but does not include source material.

(v) "Spent fuel" as used in this Part means irradiated nuclear fuel that has undergone at least one year's decay since being used as a source of energy in a power reactor. Spent fuel includes the

special nuclear material, byproduct material, source material, and other radioactive materials associated with fuel assemblies.

(w) "Structures, systems, and components important to safety" means those features of the ISFSI whose function is (1) to maintain the conditions required to store spent fuel safely, (2) to prevent damage to the spent fuel during handling and storage, or (3) to provide reasonable assurance that spent fuel can be received, handled, stored and retrieved without undue risk to the health and safety of the public.

(x) "Temporary storage" means the interim storage, protection, and safeguarding of spent fuel and radioactive materials associated with spent fuel storage, for a limited time only, pending its ultimate disposal.

§ 72.4 Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this Part and applications filed under them should be addresed to The Nuclear Regulatory Commission, Office of Nuclear Materials Safety and Safeguards, Division of Fuel Cycle and Material Safety, Washington, D.C. 20555. Communications, reports, and applications may be delivered in person at the Commission's Offices at 7915 Eastern Avenue, Silver Spring, Maryland, or at 1717 H Street, N.W., Washington, D.C.

§ 72.5 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by an officer or employee of the Commission, other than a written interpretation by the General Counsel, will be recognized to be binding upon the Commission.

§ 72.6 License required; types of licenses.

(a) Licenses for spent fuel are of two types: general and specific. Any general license provided in this part is effective without the filing of applications with the Commission or the issuance of licensing documents to particular persons. Specific licenses are issued to named persons upon applications filed pursuant to the regulations in this part.

(b) A general license is hereby issued to receive title to and own spent fuel without regard to quantity.

(c) No person may acquire, receive, or possess spent fuel or radioactive material associated with spent fuel for the purpose of storage in an independent spent fuel storage installation except as authorized in a specific license issued by the Commission in accordance with the regulations in this part.

§ 72.7 Specific exemptions.

The Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this Part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

§ 72.8 Denial of licensing by agreement states.

Agreement States may not issue licenses covering the storage of spent fuel in an ISFSI.

Subpart B—License Application, Form, Contents

§ 72.11 Filing of applications for specific licenses; oath or affirmation.

(a) *Place of filing.* Each application for a license, or amendment thereof, under this Part should be filed with the Director, Division of Fuel Cycle and Material Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Applications, communications, reports and correspondence may also be delivered in person at the Commision's offices at 7915 Eastern Avenue, Silver Spring, Maryland, or at 1717 H Street, NW., Washington, D.C.

(b) *Oath or affirmation.* Each application for a license or license amendment (including amendments to such applications) shall be executed in an original signed by the applicant or duly authorized officer thereof under oath or affirmation.

(c) *Number of copies of applications.* Each filing of an application for a license or license amendment under this Part (including amendments to such applications) shall include, in addition to the signed originals, the documents listed in § 72.21.

(d) *Fees.* The application, amendment, and renewal fees applicable to a license covering the storage of spent fuel in an ISFSI are those shown in § 170.31 of this chapter.

§ 72.12 Elimination of repetition.

In any application under this part, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the Commission: *Provided*, that such references are clear and specific.

§ 72.13 Public inspection of applications.

Applications and documents submitted to the Commission in connection with applications may be made available for public inspection in accordance with provisions of the regulations contained in Part 2 and Part 9 of this chapter.

§ 72.14 Contents of application: General and financial information.

Each application shall state:

(a) Full name of applicant;

(b) Address of applicant;

(c) Description of business or occupation of applicant;

(d) If applicant is: (1) an individual: citizenship and age;

(2) a partnership: name, citizenship, and address of each partner and the principal location at which the partnership does business;

(3) a corporation or an unincorporated association:

(i) the State in which it is incorporated or organized and the principal location at which it does business; and

(ii) the names, addresses, and citizenship of its directors and principal officers; or

(4) acting as an agent or representative of another person in filing the application: the identification of the principal and the information required under this paragraph with respect to such principal.

(e) Information sufficient to demonstrate to the Commission the financial qualifications of the applicant to carry out, in accordance with the regulations in this chapter, the activities for which the license is sought. This information shall state the place at which the activity is to be performed, the general plan for carrying out the activity, and the period of time for which the license is requested. The information shall show that the applicant either possesses the necessary funds, or that the applicant has reasonable assurance of obtaining the necessary funds; or that by a combination of the two, the applicant will have the necessary funds available to cover the following:

(1) Estimated construction costs;

(2) Estimated operating costs over the planned life of the ISFSI complex; and

(3) Estimated shutdown and decommissioning costs, and the necessary financial arrangements to provide reasonable assurance prior to licensing that shutdown, decontamination, and decommissioning will be carried out after the removal of spent fuel from storage.

§ 72.15 Contents of application: Technical information.

(a) Each application for a license under this part shall include a Safety Analysis Report describing the proposed ISFSI for the storage of spent fuel, including how the ISFSI will be operated. The minimum information to

be included in this report shall consist of the following:

(1) A description and safety assessment of the site on which the ISFSI is to be located, with appropriate attention to the design bases for external events. Such assessment shall contain an analysis and evaluation of the major structures, systems, and components of the ISFSI that bear on the suitability of the site when the ISFSI is operated at its design capacity. If the proposed ISFSI is to be located on the site of a nuclear power plant or other licensed facility, the potential interactions between the ISFSI and such other facility shall be evaluated.

(2) A description and discussion of the ISFSI structures with special attention to design and operating characteristics, unusual or novel design features, and principal safety considerations.

(3) The design of the ISFSI in sufficient detail to support the findings in § 72.31, including:

(i) The design criteria for the ISFSI pursuant to Subpart F of this Part, with identification and justification for any additions to or departures from the general design criteria;

(ii) The design bases and the relation of the design bases to the design criteria;

(iii) Information relative to materials of construction, general arrangement, dimensions or principal structures, and descriptions of all structures, systems, and components important to safety, in sufficient detail to support a finding that the ISFSI will satisfy the design bases with an adequate margin for safety; and

(iv) Applicable codes and standards.

(4) An analysis and evaluation of the design and performance of structures, systems, and components important to safety, with the objective of assessing the impact on public health and safety resulting from operation of the ISFSI and including determination of:

(i) the margins of safety during normal operations and expected operational occurrences during the life of the ISFSI; and

(ii) the adequacy of structures, systems, and components provided for the prevention of accidents and the mitigation of the consequences of accidents, including natural and man-made phenomena and events.

(5) The means for controlling and limiting occupational radiation exposures within the limits given in Part 20 of this chapter, and for meeting the objective of exposures as low as is reasonably achievable.

(6) The features of ISFSI design and operating modes to maintain low waste volumes.

(7) An identification and justification for the selection of those subjects that will be probable license conditions and technical specifications. Such subjects shall cover the design, construction, operation, and decommissioning of the ISFSI.

(8) A plan for the conduct of operations, including the planned managerial and administrative controls system, and the applicant's organization, and program for training of personnel pursuant to Subpart I of this Part.

(9) If the proposed ISFSI incorporates structures, systems, or components important to safety whose functional adequacy or reliability have not been demonstrated by prior use for that purpose or cannot be demonstrated by reference to performance data in related applications or to widely accepted engineering principles—an identification of such structures, systems, or components along with a schedule showing how such safety questions will be resolved prior to the initial receipt of spent fuel for storage at the ISFSI.

(10) The technical qualifications of the applicant to engage in the proposed activities, as required by § 72.17 of this Part.

(11) A description of the applicant's plans for coping with emergencies, as required by § 72.19 of this part.

(12) A description of the equipment to be installed to maintain control over radioactive materials in gaseous and liquid effluents produced during normal operations and expected operational occurrences. The description shall identify the design objectives and the means to be used for keeping levels of radioactive material in effluents to the environment as low as is reasonably achievable and within the exposure limits stated in § 72.67 of this part. The description shall include:

(i) An estimate of the quantity of each of the principal radionuclides expected to be released annually to the environment in liquid and gaseous effluents produced during normal ISFSI operations; and prior to the first receipt of spent fuel, a second estimate confirming the original estimate or, if the expected releases and exposures are significantly different from the original estimate;

(ii) A description of the equipment and processes used in radioactive waste systems; and

(iii) A general description of the provisions for packaging, storage, and disposal of solid wastes containing radioactive materials resulting from treatment of gaseous and liquid effluents and from other sources.

(13) An analysis of the potential dose or dose commitment to an individual outside the controlled area from accidents or natural phenomena events that result in the release of radioactive material to the environment or direct radiation from the ISFSI. The calculations of individual dose or dose commitment shall be performed for direct exposure, inhalation, and ingestion occurring as a result of the postulated design basis event.

(14) A description of the quality assurance program to be applied to the design, fabrication, construction, testing, and operation of the structures, systems, and components of the ISFSI important to safety, as required by § 72.80. The description of the quality assurance program shall identify structures, systems and components important to safety and shall show how the criteria in Appendix B to Part 50 of this chapter will be applied to those safety-related components, systems, and structures in a manner consistent with their importance to safety.

(15) A description for the detailed security measures for physical protection, including design features and the plans required by Subpart H of this Part.

(16) A description of the program covering preoperational testing and initial operations.

(17) A description of the decommissioning plan required under § 72.18 of this Part.

§ 72.16 Contents of application: Technical specifications.

Each application under this Part shall include proposed technical specifications in accordance with the requirements of § 72.33 and a summary statement of the bases and justifications for these technical specifications.

§ 72.17 Contents of application: Applicant's technical qualifications.

Each application under this Part shall include: (a) The technical qualifications, including training and experience, of the applicant to engage in the proposed activities.

(b) A description of the personnel training program required under Subpart I of this Part.

(c) A description of the applicants' operating organization, delegations of responsibility and authority, and the minimum skills and experience qualifications relevant to the various levels of responsibility and authority.

(d) A commitment by the applicant to have and maintain an adequate complement of trained and certified plant personnel prior to the receipt of spent fuel for storage.

§ 72.18 Decommissioning plan, including financing.

(a) Each application under this part shall include a proposed decommissioning plan that contains sufficient information on proposed practices and procedures for the decontamination of the site and facilities and for disposal of residual radioactive materials after all spent fuel has been removed, in order to provide reasonable assurance that the decontamination and decommissioning of the ISFSI at the end of its useful life will provide adequate protection to the health and safety of the public. This plan shall identify and discuss those design features of the ISFSI that facilitate its decontamination and decommissioning at the end of its useful life.

(b) The decommissioning plan shall include the financial arrangements made by the applicant to provide reasonable assurance that the planned decontamination and decommissioning of the ISFSI will be carried out.

§ 72.19 Emergency plan.

An application to store spent fuel in an ISFSI shall include plans for coping with emergencies. These plans shall contain the elements that are listed in Section IV, "Content of Emergency Plans," of Appendix E to Part 50 of this chapter.

§ 72.20 Environmental report.

Each application for a license under this part shall be accompanied by an Environmental Report which meets the requirements of Part 51 of this chapter.

§ 72.21 Required licensing documents.

Section	Document	No. of copies	Signed originals
72.14	License Application	25	3
72.15	Safety Analysis Report [a].	70	
72.18	Decommissioning Plan [a].	25	
72.19	Emergency Plan [a]	25	
72.20	Environmental Report [a]	150	
72.38(b)	Report of ISFSI Design and Procedures Changes.	25	3
72.38(b)	Application for Transfer of License.	25	3
72.38	Application for Termination of License.	25	3
72.39	Amendment to License.	25	3
72.80	Quality Assurance Program [a].	25	
72.81	Physical Security Plan [a] [b].	10	
72.82	Design for Physical Protection [a] [b].	10	
72.83	Safeguards Contingency Plan [a] [b].	10	
72.84	Changes to Physical Security and Contingency Plans.	10	
72.92	Personnel Training Program [a].	25	

[a] Submitted with license application.
[b] Physical protection plans will be withheld from public disclosure by the NRC.

Subpart C—Issuance and Conditions of Licenses

§ 72.31 Issuance of licenses.

(a) Except as provided in paragraph (c) of this section, the Commission will issue a license under this Part upon a determination that the application for a license meets the standards and requirements of the Act and the regulations of the Commission, and upon finding that:

(1) The applicant's proposed ISFSI design complies with Subpart F of this part;

(2) The proposed site complies with the criteria in Subpart E of this Part;

(3) If on the site of a nuclear power plant or other licensed activity or facility, the proposed ISFSI would not pose an undue risk to the safe operation of such nuclear power plant or other licensed activity or facility;

(4) The applicant is qualified by reason of training and experience to conduct the operation covered by the regulations in this Part;

(5) The applicant's proposed operating procedures to protect health and to minimize danger to life or property are adequate;

(6) The applicant is financially qualified to engage in the proposed activities in accordance with the regulations in this Part;

(7) The applicant's quality assurance plan complies with Subpart G of this Part;

(8) The applicant's physical protection provisions comply with Subpart H of this Part;

(9) The applicant's personnel training program complies with Subpart I of this Part;

(10) The applicant's decommissioning plan and its financing pursuant to § 72.18 of this Part provide reasonable assurance that the decontamination and decommissioning of the ISFSI at the end of its useful life will provide adequate protection to the health and safety of the public;

(11) The applicant's emergency plan complies with § 72.19 of this Part;

(12) The applicable provisions of Part 170 of this chapter have been satisfied;

(13) There is reasonable assurance that (i) the activities authorized by the license can be conducted without endangering the health and safety of the public and (ii) such activities will be conducted in compliance with the applicable regulations of this Chapter; and

(14) The issuance of the license will not be inimical to the common defense and security.

(b) Grounds for denial for a license to store spent fuel in the proposed ISFSI may be commencement of construction prior to a conclusion or finding by the Director of the Office of Nuclear Materials Safety and Safeguards or his designee or after a public hearing, the Presiding Office, Atomic Safety and Licensing Board, or the Commission acting as a collegial body, as appropriate, on the basis of information filed and evaluations made pursuant to Part 51 of this chapter, and after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license with any appropriate conditions to protect environmental values.

(c) For facilities that have been covered under previous licensing actions including the issuance of a Construction Permit under Part 50 of this chapter, a reevaluation of the site is not required except where new information is discovered which could alter the original site evaluation findings. In this case, the site evaluation factors involved will be reevaluated.

§ 72.32 Duration of license; renewal.

(a) Each license issued under this Part shall be for a fixed period of time to be specified in the license but not to exceed 20 years from the date of issuance. Licenses may be renewed by the Commission at the expiration of that period upon application of the licensee.

(b) Applications for renewal of a license should be filed in accordance with the applicable provisions of Subpart B of this Part at least two years prior to the expiration of the existing license. Information contained in previous applications, statements, or reports filed with the Commission under the license may be incorporated by reference: *Provided*, that such references are clear and specific.

(c) In any case in which a licensee, not less than 2 years prior to expiration of his existing license, has filed an application in proper form for renewal of a license, such existing license shall not expire until a final decision concerning the application for renewal has been made by the Commission.

§ 72.33 License conditions.

(a) Each license issued under this part shall include license conditions. The license conditions may be derived from the analyses and evaluations included in the safety analysis report and amendments thereto submitted pursuant to § 72.15 of this part. License conditions pertain to design, construction and operation. The Commission may also include such additional license conditions as it finds appropriate.

(b) Every license issued under this Part shall be subject to the following conditions, even if they are not explicitly stated therein:

(1) Neither the license nor any right thereunder shall be transferred, assigned, or disposed of in any manner, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Atomic Energy Act and give its consent in writing.

(2) The license shall be subject to revocation, suspension, modification, or amendment in accordance with the procedures provided by the Atomic Energy Act and Commission regulations.

(3) Upon request of the Commission, the licensee shall, at any time before expiration of the license, submit written statements, signed under oath or affirmation, to enable the Commission to determine whether or not the license should be modified, suspended, or revoked.

(4) Prior to the receipt of spent fuel for storage at an ISFSI, the licensee shall have in effect an NRC-approved program covering the training and certification of ISFSI personnel that meets the requirements of Subpart I of this Part.

(5) The licensee shall permit the operation of the safety-related equipment and controls of the ISFSI only by personnel whom the licensee has certified as being adequately trained to perform such operations, or by uncertified personnel who are under the direct visual supervision of a certified individual.

(c) Technical specifications submitted pursuant to § 72.16 of this Part shall include requirements in the following categories:

(1) Functional and operating limits and monitoring instruments and limiting control settings. (i) Functional and operating limits for an ISFSI are limits on fuel handling and storage conditions that are found to be necessary to protect the integrity of the stored fuel, to protect employees against occupational exposures and to guard against the uncontrolled release of radioactive materials. (ii) Monitoring instruments and limiting control settings for an ISFSI are those related to fuel handling and storage conditions having significant safety functions.

(2) Limiting conditions. Limiting conditions are the lowest functional capability or performance levels of equipment required for safe operation.

(3) Surveillance requirements. Surveillance requirements include: (i) inspections of spent fuel in storage and monitoring; (ii) inspection, test and calibration activities to ensure that the necessary integrity of required systems, components and the spent fuel in storage is maintained; (iii) confirmation that operation of the ISFSI is within the required functional and operating limits; and (iv) a confirmation that the limiting conditions required for safe storage are met.

(4) Design features. Design features include items that would have a significant effect on safety if altered or modified, such as materials of construction and geometric arrangements.

(5) Administrative controls. Administrative controls include the organization and management procedures, recordkeeping, review and audit, and reporting necessary to assure that the operations involved in the storage of spent fuel in an ISFSI are performed in a safe manner.

(d) Each license authorizing the storage of spent fuels under this Part shall include technical specifications that, in addition to stating the limits on the release of radioactive materials for compliance with limits of Part 20 of this chapter and the "as low as is reasonably achievable objectives" for effluents, require that:

(1) Operating procedures for control of effluents be established and followed, and equipment in the radioactive waste treatment systems be maintained and used, to meet the requirements of § 72.67 of this Part;

(2) An environmental monitoring program be established to ensure compliance with the technical specifications for effluents; and

(3) An annual report be submitted to the appropriate regional office specified in Appendix D of Part 20 of this Chapter, with a copy to the Director, Office of Nuclear Material Safety and Safeguards, within 60 days after January 1 of each year, 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 such reports and any additional information 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.

(e) The licensee shall make no change that would decrease the effectiveness of the physical security plan prepared pursuant to § 72.81 of this Part without the prior approval of the Commission. A licensee desiring to make such a change shall submit an application for an amendment to the license pursuant to § 72.39 of this Part. A licensee may make changes to the physical security plan without prior Commission approval, provided that such changes do not decrease the effectiveness of the plan. The licensee shall furnish to the Commission a report containing a description of each change within two months after the change is made, and shall maintain records of changes to the plan made without prior Commission approval for a period of two years from the date of the change.

(f) A licensee shall follow and maintain in effect an emergency plan that is approved by the Commission. The licensee may make changes to the approved plan without Commission approval only if such changes do not decrease the effectiveness of the plan, and if the plan, as changed, continues to contain the elements of Section IV of Appendix E of 10 CFR Part 50. Within six months after any such change is made, the licensee shall submit a report containing a description of any changes made in the plan to the appropriate NRC regional office specified in Appendix D to Part 20 of this chapter with a copy to the Director, Office of Nuclear Material Safety and Safeguards. Proposed changes that decrease the effectiveness of the approved emergency plan shall not be implemented unless the licensee has received prior approval of such changes from the Commission.

§ 72.34 Public hearings.

(a) In connection with each application for a license or an amendment to a license under this Part, the Commission shall issue or cause to be issued a notice of hearing in accordance with § 2.104, or a notice of proposed action in accordance with § 2.105, of this chapter, as appropriate. Except as provided in paragraph (b) of this section, a hearing may not be held until after 30 days' notice and publication once in the Federal Register.

(b) In the absence of a request for hearing by any person whose interest may be affected, the Commission may

issue a license or an amendment to a license without a hearing upon 30 days' notice and publication once in the Federal Register of its intent to do so. The Commission may dispense with such 30 days' notice and publication with respect to an application for an amendment to a license issued under this Part upon a determination by the Commission that the amendment does not involve a significant hazards consideration or an unreviewed safety question.

§ 72.35 Changes, tests and experiments.

(a)(1) The holder of a license issued under this Part may, without prior Commission approval unless the proposed change, test or experiment involves a change in the license conditions incorporated in the license an unreviewed safety question, significant increase in occupational exposure or a significant unreviewed environmental impact: (i) make changes in the ISFSI described in the Safety Analysis Report, (ii) make changes in the procedures described in the Safety Analysis Report, or (iii) conduct tests or experiments not described in the Safety Analysis Report.

(2) A proposed change, test or experiment shall be deemed to involve an unreviewed safety question (i) if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the Safety Analysis Report may be increased; (ii) if a possibility for an accident or malfunction of a different type than any evaluated previously in the Safety Analysis Report may be created; or (iii) if the margin of safety as defined in the basis for any technical specification is reduced.

(b)(1) The licensee shall maintain records of changes in the ISFSI and of changes in procedures made pursuant to this section if such changes constitute changes in the ISFSI or procedures described in the Safety Analysis Report. The licensee shall also maintain records of tests and experiments carried out pursuant to paragraph (a) of this section. These records shall include a written safety evaluation that provides the bases for the determination that the change, test, or experiment does not involve an unreviewed safety question. The records of changes in the ISFSI and of changes in procedures and records of tests shall be maintained for the lifetime of the ISFSI.

(2) Annually, or at such shorter interval as may be specified in the license, the licensee shall furnish to the appropriate regional office, specified in Appendix D of Part 20 of this chapter, with a copy to the Director, Office of Nuclear Material and Safeguards, a report containing a brief description of such changes, tests, and experiments, including a summary of the safety evaluation of each. Any report submitted by a licensee pursuant to this paragraph will be made a part of the public record pertaining to this license.

(c) The holder of a license issued under this Part who desires (1) to change the license conditions, (2) to change the ISFSI or the procedures described in the Safety Analysis Report, or (3) to conduct tests or experiments not described in the Safety Analysis Report that involve an unreviewed safety question, a significant increase in occupational exposure, or significant unreviewed environmental impact, shall submit an application for amendment of the license, pursuant to § 72.39 of this Part

§ 72.36 Transfer of licenses.

(a) No license or any right included in a license issued under this Part shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing.

(b)(1) An application for transfer of a license shall include as much of the information described in §§ 72.14 and 72.17 of this Part with respect to the identity and the technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license. The application shall also include a statement of the purposes for which the transfer of the license is requested and the nature of the transaction necessitating or making desirable the transfer of the license.

(2) The Commission may require any person who submits an application for the transfer of a license pursuant to the provisions of this section to file a written consent from the existing licensee, or a certified copy of an order or judgment of a court of competent jurisdiction, attesting to the person's right—subject to the licensing requirements of the Act and these regulations—to possession of the spent fuel and the ISFSI involved.

(c) After appropriate notice to interested persons, including the existing licensee, and observance of such procedures as may be required by the Act or regulations or orders of the Commission, the Commission will approve an application for the transfer of a license, if the Commission determines

(1) That the proposed transferee is qualified to be the holder of the license; and

(2) That transfer of the license is consistent with applicable provisions of the law, and the regulations and orders issued by the Commission pursuant thereto.

§ 72.37 Creditor regulations.

(a) Pursuant to section 184 of the Act, the Commission consents, without individual application, to the creation of any mortgage, pledge, or other lien on special nuclear material contained in spent fuel not owned by the United States that is the subject of a license or on any interest in such special nuclear material in spent fuel: *Provided:*

(1) That the rights of any creditor so secured may be exercised only in compliance with and subject to the same requirements and restrictions as would apply to the licensee pursuant to the provisions of the license, the Atomic Energy Act of 1954, as amended, and regulations issued by the Commission pursuant to said Act; and

(2) That no creditor so secured may take possession of the spent fuel pursuant to the provisions of this section prior to either the issuance of a license from the Commission authorizing such possession or the transfer of the license.

(b) Any creditor so secured may apply for transfer of the license covering such spent fuel by filing an application for transfer of the license pursuant to § 72.36(b). The Commission will act upon such application pursuant to § 72.36(c).

(c) Nothing contained in this regulation shall be deemed to affect the means of acquiring, or the priority of, any tax lien or other lien provided by law.

(d) As used in this section, "creditor" includes, without implied limitation, the trustee under any mortgage, pledge, or lien on spent fuel in storage made to secure any creditor; any trustee or receiver of such spent fuel appointed by a court of competent jurisdiction in any action brought for the benefit of any creditor secured by such mortgage, pledge, or lien; any purchaser of such spent fuel at the sale thereof upon foreclosure of such mortgage, pledge, or lien or upon exercise of any power of sale contained therein; or any assignee of any such purchaser.

§ 72.38 Applications for termination of licenses.

(a) The licensee shall apply to the Commission for authority to surrender a license voluntarily and to decommission the ISFSI and dispose of the materials stored therein. The Commission may

require information, including information as to proposed procedures for the disposal of radioactive material and decontamination of the site, to determine whether there is reasonable assurance that the decommissioning and disposal will be performed in accordance with the regulations in this chapter and will not be inimical to the common defense and security or to the health and safety of the public.

(b) Upon a finding of reasonable assurance that the decommissioning of ISFSI and disposal of the materials stored therein will be performed in accordance with the regulations in this chapter and will provide adequate protection to the health and safety of the public, and after notice to interested persons, the Commission will authorize such decommissioning and disposal and terminate the license upon completion of such procedures in accordance with any conditions specified in the authorization.

§ 72.39 Application for amendment of license.

Whenever a holder of a license desires to amend the license, an application for an amendment shall be filed with the Commission fully describing the changes desired and the reasons for such changes, and following as far as applicable the form prescribed for original applications.

§ 72.40 Issuance of amendment.

In determining whether an amendment to a license will be issued to the applicant, the Commission will be guided by the considerations that govern the issuance of initial licenses.

§ 72.41 Modification, revocation, and supension of licenses.

(a) The terms and conditions of all licenses are subject to amendment, revision, or modification by reason of amendments to the Atomic Energy Act of 1954, or by reason of rules, regulations, or orders issued in accordance with the Act or any amendments thereto.

(b) Any license may be modified, revoked, or suspended in whole or in part for any of the following: (i) for any material false statement in the application or in any statement of fact required under Section 182 of the Act; (ii) conditions revealed by such application or statement of fact or any report, record, inspection or other means which would warrant the Commission to refuse to grant a license on an original application; (iii) failure to operate an ISFSI in accordance with the terms of the license; (iv) violation of, or failure to observe any of, the terms and conditions of the Act, or of any applicable regulation, license, or order of the Commission.

(c) Upon revocation of a license, the Commission may immediately cause the retaking of possession of all special nuclear material contained in spent fuel held by the licensee. In cases found by the Commission to be of extreme importance to the national defense and security or to the health and safety of the public, the Commission prior to following any of the procedures provided under sections 551–558 of title 5 of the United States Code, may cause the taking of possession of any special nuclear material contained in spent fuel held by the licensee.

§ 72.42 Backfitting.

(a) The Commission may require the backfitting of an ISFSI if it finds that such action will provide substantial additional protection to the environment, or occupational or public health and safety. As used in this section, "backfitting" means the addition, elimination, or modification of structures, systems, or components of an ISFSI after the license has been issued.

(b) The Commission may at any time require a holder of a license to submit such information concerning the backfitting or the proposed backfitting of the ISFSI as it deems appropriate.

Subpart D—Records, Reports, Inspections, and Enforcement

§ 72.50 Safety analysis report updating.

(a) The design, description of planned operations, and other information submitted in the Safety Analysis Report shall be updated by the licensee and submitted to the Commission at least once every six months after issuance of the license during final design and construction, until preoccupational testing is completed, with final completion and submittal to the Commission at least 90 days prior to the planned receipt of spent fuel. This final submittal shall include a final analysis and evaluation of the design and performance of structures, systems, and components that are important to safety taking into account any pertinent information developed since the submittal of the license application. Changes affecting safety margins will require Commission approval prior to the receipt of spent fuel.

(b) After the first receipt of spent fuel for storage, the Safety Analysis Report shall be updated annually and submitted to the Commission by the licensee. This submittal shall include the following:

(1) New or revised information relating to applicable site evaluation factors, including the results of environmental monitoring programs.

(2) A description and analysis of changes in the structures, systems, and components of the ISFSI, with emphasis upon (i) performance requirements, (ii) the bases, with technical justification therefor, upon which such requirements have been established, and (iii) evaluations showing that safety functions will be accomplished.

(3) An analysis of the significance of any changes to codes, standards, regulations, or regulatory guides which the licensee has committed to meeting the requirements that are applicable to the design, construction, or operation of the ISFSI.

§ 72.51 Material balance, inventory, and records requirements for stored materials.

(a) Each licensee shall keep records showing the receipt, inventory (including location), disposal, acquisition, and transfer of all spent fuel in storage.

(b) Each licensee shall conduct a physical inventory of all spent fuel in storage at intervals not to exceed twelve months unless otherwise directed by the Commission.

(c) Each licensee shall establish, maintain, and follow written material control and accounting procedures that are sufficient to enable the licensee to account for the spent fuel in storage.

(d) Records of spent fuel in storage shall be kept in duplicate. The duplicate set of records shall be kept at a separate location sufficiently remote from the original records that a single event would not destroy both sets of records. Records of spent fuel transferred out of an ISFSI shall be preserved for a period of five years after the date of transfer.

§ 72.52 Reports of accidental criticality or loss of special nuclear material.

Each licensee shall report immediately to the appropriate NRC regional Office specified in Appendix D of Part 20 of this chapter by telephone and telegram or teletype, any case of accidental criticality and any loss of special nuclear material.

§ 72.53 Material status reports.

Each licensee shall complete and submit Material Status Reports to the Commission on Form NRC–742, in accordance with printed instructions for completing the form. The reports shall provide information concerning the special nuclear material contained in spent fuel possessed, received, transferred, disposed of, or lost by the licensee. All such reports shall be made as of march 31 and September 30 of each year and shall be filed with the U.S.

Department of Energy, P.O. Box E, Oak Ridge, Tennessee 37830, within 30 days after the end of the period covered by the report. The Commission may, when good cause is shown, permit a licensee to submit Material Status Reports at other times.

§ 72.54 Nuclear material transfer reports.

Whenever the licensee transfers or receives spent fuel, the licensee shall complete and distribute a Nuclear Material Transaction Report on Form NRC-741. Each licensee who transfers spent fuel shall submit a copy of form NRC-741 to the U.S. Department of Energy, P.O. Box E, Oak Ridge, Tennessee 37830, and three copies to the receiver of the material promptly after the transfer takes place. Each licensee who receives spent fuel shall submit a copy of form NRC-741 to the Department of Energy and to the shipper of the material within 10 days after the spent fuel is received and unloaded and its identity is verified.

§ 72.55 Other records and reports.

(a) Each licensee shall maintain any records and make any reports that may be required by the conditions of the license or by the rules, regulations, and orders of the Commission in effectuating the purposes of the Act.

(b) Each licensee shall furnish a copy of its annual financial report, including the certified financial statements, to the Commission.

(c) Records that are required by the regulations in this part or by the license conditions shall be maintained for the period specified by the appropriate regulation or license condition. If a retention period is not otherwise specified, such records shall be maintained until the Commission authorizes their disposition.

(d) Any record that must be maintained pursuant to this Part may be either the original or a reproduced copy or microform provided that any reproduced copy or microform is duly authenticated by authorized personnel and that the microform is capable of producing a clear an legible copy after storage for the period specified by commission regulations.

§ 72.56 Inspections and tests.

(a) Each licensee under this part shall permit inspection by duly authorized representatives of the Commission of his records, premises, activities and of spent fuel in possession related to the specific license as may be necessary to effectuated the purposes of the Act, including Section 105 of the Act.

(b) Each licensee under this Part shall make available to the Commission for inspection, upon reasonable notice, records kept by the licensee pertaining to his receipt, possession, or transfer of spent fuel.

(c)(1) Each licensee under this Part shall upon request by the Director, Office of Inspection and Enforcement provide rent-free office space for the exclusive use of the Commission inspection personnel. Heat, air conditioning, light, electrical outlets and janitorial services shall be furnished by each licensee. The office shall be convenient to and have full access to the installation and shall provide the inspector both visual and acoustic privacy.

(2) For a site with a single storage installation the space provided shall be adequate to accommodate a full-time inspector, a part-time secretary and transient NRC personnel and will be generally commensurate with other office facilities at the site. A space of 250 sq. ft., either within the site's office complex or in an office trailer, or other on site space, is suggested as a guide. For sites containing multiple facilities additional space may be requested to accommodate additional full-time inspectors. The office space that is provided shall be subject to the approval of the Director, Office of Inspection and Enforcement. All furniture, supplies and Commission equipment shall be furnished by the Commission.

(3) Each licensee under this Part shall afford any NRC resident inspector assigned to that site, or other NRC inspectors identified by the Regional Director as likely to inspect the installation, immediate unfettered access, equivalent to access provided regular plant employees, following proper identification and compliance with applicable access control measures for security, radiological protection and personal safety.

(d) Each licensee shall perform, or permit the Commission to perform, such tests as the Commission deems appropriate or necessary for the administration of the regulations in this part.

(e) A report of the preoperational test acceptance criteria and test results shall be submitted to the appropriate regional office specified in Appendix D of Part 20 of this chapter with a copy to the Director, Office of Nuclear Material Safety and Safeguards at least 30 days prior to the receipt of spent fuel.

§ 72.57 Violation.

An injunction or other court order may be obtained prohibiting any violation of any provision of the Atomic Energy Act of 1954, as amended, or title II of the Energy Reorganization Act of 1974, as amended, or any regulation or order issued thereunder. A court order may be obtained for the payment of a civil penalty imposed pursuant to section 234 of the Atomic Energy Act for violation of §§ 53, 57, 62, 63, 81, or 82 of the Atomic Energy Act, or section 206 of the Energy Reorganization Act of 1974, or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license issued thereunder, or for any violation for which a license may be revoked under section 186 of the Atomic Energy Act. Any person who willfully violates any provision of the Atomic Energy Act, or any regulation or order issued thereunder, may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both, as provided by law.

Subpart E—Siting Evaluation Factors

§ 72.61 General considerations.

(a) Site characteristics that may directly affect the safety or environmental impact of the ISFSI shall be investigated and assessed.

(b) Proposed sites for the ISFSI shall be examined with respect to the frequency and the severity of external natural and man-induced events that could affect the safe operation of the ISFSI.

(c) Design basis external events shall be determined for each combination of proposed site and proposed ISFSI design.

(d) Proposed sites with design basis external events for which adequate protection cannot be provided through ISFSI design shall be deemed unsuitable for the location of the ISFSI.

(e) For each proposed site, pursuant to Part 51 of this chapter, the potential for radiological and other environmental impacts on the region shall be evaluated with due consideration of the characteristics of the population, including its distribution, and of the regional environs, including its historical and esthetic values.

(f) The facility shall be sited so as to avoid to the extent possible the long-term and short-term adverse impacts associated with the occupancy and modification of floodplains.

§ 72.62 Design basis external natural events.

(a) Natural phenomena that may exist or that can occur in the region of a proposed site shall be identified and assessed according to their potential effects on the safe operation of the ISFSI. The important natural phenomena

that affect the ISFSI design shall be identified.

(b) Records of the occurrence and severity of those important natural phenomena shall be collected for the region and evaluated for reliability, accuracy, and completeness.

(c) Appropriate methods shall be adopted for evaluating the design basis natural events based on the characteristics of the region and the current state of knowledge about such events.

§ 72.63 Design basis external man-induced events.

(a) The region shall be examined for both past and present man-made facilities and activities that might endanger the proposed ISFSI. The important potential man-induced events that affect the ISFSI design shall be identified.

(b) Information concerning the potential occurrence and severity of such events shall be collected and evaluated for reliability, accuracy, and completeness.

(c) Appropriate methods shall be adopted for evaluating the design basis external man-induced events, based on the current state of knowledge about such events.

§ 72.64 Identifying regions around an ISFSI site.

(a) The regional extent of external phenomena, man-made or natural, that are used as a basis for the design of the ISFSI shall be defined.

(b) The potential regional impact due to the construction, operation or decommissioning of the ISFSI shall be identified. The extent of such regional impacts shall be determined on the basis of potential measurable effects on the population or the environment, from ISFSI activities.

(c) Those regions identified pursuant to paragraphs (a) and (b) of this section shall be investigated as appropriate with respect to (i) the present and future character and the distribution of population, (ii) consideration of present and projected future uses of land and water within the region, and (iii) any special characteristics that may influence the potential consequences of a release of radioactive material during the operational lifetime of the ISFSI.

(d) If the distribution of population in any defined region is such that adquate protective action cannot be provided through emergency planning the proposed site shall be unsuitable for the location of an ISFSI.

§ 72.65 Defining potential effects of the ISFSI on the region.

(a) The proposed site shall be evaluated with respect to the effects on populations in the region resulting from the release of radioactive materials under normal and accident conditions during operation and decommissioning of the ISFSI; in this evaluation both usual and unusal regional and site characteristics shall be taken into account.

(b) Each site shall be evaluated with respect to the effects on the regional environment resulting from construction, operation and decommissioning of the ISFSI; in this evaluation both usual and unusual regional and site characteristics shall be taken into account.

§ 72.66 Geological and seismological characteristics.

(a) *Massive Water Basin and Air-Cooled Canyon Types of ISFSI Structures:*

(1) East of the Rocky Mountain Front (east of approximately 104° west longitude), except in areas of known seismic activity including but not limited to the regions around New Madrid, Mo., Charleston, S.C., and Attica, N.Y., sites will be acceptable if the results from onsite foundation and geological investigation, literature review, and regional geological reconnassiance show no unstable geological characteristics, soil stability problems, or potential for vibratory ground motion at the site in excess of an appropriate response spectrum achorad at 0.2 g.

(2) West of the Rocky Mountain Front (west of approximately 104° west longitude), and in other areas of known potential seismic activity, seismicity will be evaluated by the techniques of Appendix A of Part 100 of this chapter. Sites that lie within the range of strong near-field ground motion from historical earthquakes on large capable faults should be avoided.

(3) Sites other than bedrock sites shall be evaluated for their liquefaction potential or other soil instaility due to vibratory ground motion.

(4) Site-specific investigations and laboratory analyses must show that soil conditions are adequate for the proposed foundation loading.

(5) In an evaluation of alternative sites, those which require a minimum of engineered provisions to correct site deficiencies are preferred. Sites with unstable geologic characteristics should be avoided.

(6) The ISFSI design earthquake (ISFSI-DE) for use in the design of structures shall be determined as follows:

(a) For sites that have been evaluated under the criteria of Appendix A of 10 CFR Part 100, the ISFSI-DE shall be equivalent to the safe shutdown earthquake (SSE) for a nuclear power plant.

(b) For those sites that have not been evaluated under the criteria of Appendix A of 10 CFR Part 100, that are east of the Rocky Mountain Front, and that are not in areas of known seismic activity, a standardized ISFSI-DE described by an appropriate response spectrum anchored at 0.25 g may be used. Alternatively, a site-specific ISFSI-DE may be determined by using the criteria and level of investigations required by Appendix A of Part 100 of this chapter.

(c) Regardless of the results of the investigations anywhere in the continental U.S., the ISFSI-DE shall have a value for the horizontal ground motion of no less than 0.10 g with the appropriate response spectrum.

(b) *Other types of ISFSI Designs.* For ISFSI designs that do not use massive water basins or air-cooled canyons, such as canisters, casks, or silos, a site specific investigation is required to establish site suitability commensurate with the specific requirements of the proposed ISFSI.

§ 72.67 Criteria for radioactive materials in effluents and direct radiation from an ISFSI.

(a) During normal operations and anticipated occurrences, the annual dose equivalent to any real individual who is located beyond the controlled area shall not exceed 25 mrem to the whole body, 75 mrem to the thyroid and 25 mrem to any other organ as a result of exposure to (1) planned discharges of radioactive materials, radon and its daughters excepted, to the general environment, (2) direct radiation from ISFSI operations and (3) any other radiation from uranium fuel cycle operations within the region.

(b) Operational restrictions shall be established to meet as low as is reasonably achievable objectives for radioactive materials in effluents and direct radiation levels associated with ISFSI operations.

(c) Operational limits shall be established for radioactive materials in effluents and direct radiation levels associated with ISFSI operations to meet the limits given in paragraph (a) of this section.

§ 72.68 Controlled area of an ISFSI.

(a) For each ISFSI site, a controlled area shall be established.

(b) Any individual located on or beyond the nearest boundary of the controlled area shall not receive a dose greater than 5 rem to the whole body or

any organ from any design basis accident. The minimum distance from the spent fuel handling and storage facilities to the nearest boundary of the controlled area shall be at least 100 meters.

(c) The controlled area may be traversed by a highway, railroad or waterway, so long as appropriate and effective arrangements are made to control traffic and to protect the public health and safety.

72.69 ISFSI emergency planning zone.

(a) For each ISFSI site, an ISFSI Emergency Planning Zone (ISFSI–EPZ) shall be established. The ISFSI–EPZ shall provide reasonable assurance that protective actions beyond its outer boundary would not be necessary.

(b) The boundaries of an ISFSI–EPZ for a particular ISFSI will be determined on a case-by-case basis taking into account both the characteristics of the specific facility and local conditions such as demography, topography, land characteristics, access routes and local jurisdictional boundaries.

§ 72.70 Spent fuel transportation.

The proposed ISFSI shall be evaluated with respect to the potential impact on the environment of spent fuel being transported into the area.

Subpart F—General Design Criteria

§ 72.71 General Considerations.

Pursuant to the provisions of § 72.15 of this Part, an application to store spent fuel in an ISFSI must include the design criteria for the proposed storage complex. These design criteria establish the design, fabrication, construction, testing, and performance requirements for structures, systems, and components important to safety as defined in § 72.3. The general design criteria identified in this section establish minimum requirements for the design criteria for an ISFSI. Any omissions in these general design criteria do not relieve the applicant from the requirement of providing the necessary safety features in the design of the ISFSI.

§ 72.72 Overall requirements.

(a) *Quality Standards.*—Structures, systems, and components important to safety shall be designed, fabricated, erected, and tested to quality standards commensurate with the importance to safety of the function to be performed.

(b) *Protection against environmental conditions and natural phenomena.*—(1) Structures, systems, and components important to safety shall be designed to accommodate the effects of, and to be compatible with, site characteristics and environmental conditions associated with normal operation, maintenance, and testing of the ISFSI; and to withstand postulated accidents.

(2) Structures, systems, and components important to safety shall be designed to withstand the effects of natural phenomena such as earthquakes, tornadoes, lightning, hurricanes, floods, tsunami, and seiches, without impairing their capability to perform safety functions. The design bases for these structures, systems, and components shall reflect (i) appropriate consideration of the most severe of the natural phenomena reported for the site and surrounding area, with appropriate margins to take into account the limitations of the data and the period of time in which the data have accumulated, and (ii) appropriate combinations of the effects of normal and accident conditions and the effects of natural phenomena. An ISFSI need not be protected from tornado missiles but should be designed to prevent massive collapse of building structures or the dropping of heavy objects on to the stored spent fuel as a result of building structural failures.

(3) Capability shall be provided for determining the intensity of natural phenomena that may occur for comparison with design bases of structures, systems, and components important to safety.

(4) If the ISFSI is located over an aquifer which is a major water resource, measures shall be taken to preclude the transport of radioactive materials to the environment through this potential pathway.

(c) *Protection Against Fires and Explosions.*

Structures, systems, and components important to safety shall be designed and located so that they can continue to perform their safety functions effectively under credible fire and explosion exposure conditions. Noncombustible and heat-resistant materials shall be used wherever practical throughout the ISFSI, particularly in locations vital to the control of radioactive materials and to the maintenance of safety control functions. Explosion and fire detection, alarm, and suppression systems shall be designed and provided with sufficient capacity and capability to minimize the adverse effects of fires and explosions on structures, systems, and components important to safety. The design of the ISFSI shall include provisions to protect against adverse effects that might result from either the operation or the failure of the fire suppression system.

(d) *Sharing of structures, systems, and components.*—Structures, systems, and components important to safety shall not be shared between an ISFSI and other facilities unless it is shown that such sharing will not impair the capability of either facility to perform its safety functions, including the ability to return to a safe condition in the event of an accident.

(e) *Proximity of sites.*—An ISFSI located near other nuclear facilities shall be designed and operated to ensure that the cumulative effects of their combined operations will not constitute an unreasonable risk to the health and safety of the public.

(f) *Testing and maintenance of systems and components.*—Systems and components that are important to safety shall be designed to permit inspection, maintenance, and testing.

(g) *Emergency capability.*—Structures, systems, and components important to safety shall be designed for emergencies. The design shall provide for accessibility to the equipment of onsite and available offsite emergency facilities and services such as hospitals, fire and police departments, ambulance service, and other emergency agencies.

(h) *Confinement barriers and systems.*—(1) The fuel cladding shall be protected against degradation and gross ruptures.

(2) For underwater storage of spent fuel in which the pool water serves as a shield and a confinement medium for radioactive materials, systems designed for maintaining water purity and the pool water level shall be designed so that any abnormal operations or failure in those systems from any cause will not cause the water level to fall below safe limits. The design shall preclude installations of drains, permanently connected systems, and other features that could by abnormal operations or failure cause a significant loss of water. Pool water level equipment shall be provided to alarm in a continuously manned location if the water level in the fuel storage pools falls below a predetermined level.

(3) Ventilation and off-gas systems shall be provided where necessary to ensure the confinement of airborne radioactive particulate materials during normal or off-normal conditions.

(i) *Instrumentation and control systems.*—Instrumentation and control systems shall 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 shall be identified in the Safety Analysis Report.

(j) *Control room or control areas.*—A control room or control areas shall be designed to permit occupancy and actions to be taken to monitor the ISFSI

safely under normal conditions, and to provide safe control of the ISFSI under off-normal or accident conditions.

(k) *Utility services.*—(1) Each utility service system shall be designed to meet emergency conditions. The design of utility services and distribution systems that are important to safety shall include redundant systems to the extent necessary to maintain, with adequate capacity, the ability to perform safety functions assuming a single failure.

(2) Emergency utility services shall be designed to permit testing of the functional operability and capacity, including the full operational sequence, of each system for transfer between normal and emergency supply sources; and to permit the operation of associated safety systems.

(3) Provisions shall be made so that, in the event of a loss of the primary electric power source or circuit, reliable and timely emergency power will be provided to instruments, utility service systems, the central security alarm station, and operating systems, in amounts sufficient to allow safe storage conditions to be maintained and to permit continued functioning of all systems essential to safe storage.

§ 72.73 Criteria for nuclear criticality safety.

(a) *Design for criticality safety.*—Spent fuel handling, transfer, and storage systems shall be designed to be maintained subcritical and to prevent a nuclear criticality accident. The design of handling, transfer, and storage systems shall include margins of safety for the nuclear criticality parameters that are commensurate with the uncertainties in the handling, transfer and storage conditions, in the data and methods used in calculations, and in the nature of the immediate environment under accident conditions.

(b) *Methods of criticality control.*—The design of an ISFSI shall be based on either favorable geometry (spacing) or permanently fixed neutron absorbing materials (poisons). Where solid neutron absorbing materials are used, the design shall provide for positive means to verify their continued efficacy. In criticality design analyses for underwater storage systems, credit can be taken for the neutron absorption of rack structures and the water within the storage unit.

§ 72.74 Criteria for radiological protection.

(a) *Exposure control.*—Radiation protection systems shall be provided for all areas and operations where onsite personnel may be exposed to radiation or airborne radioactive materials. Structures, systems, and components for which operation, maintenance, and required inspections may involve such exposure shall be designed, fabricated, located, shielded, controlled, and tested so as to control external and internal radiation exposures to personnel. The design shall include means to:

(1) prevent the accumulation of radioactive material in those systems requiring access;

(2) decontaminate those systems to which access is required;

(3) control access to areas of potential contamination or high radiation within the ISFSI;

(4) measure and control contamination of areas requiring access;

(5) minimize the time required to perform work in the vicinity of radioactive components; for example, by providing sufficient space for ease of operation and designing equipment for ease of repair and replacement; and

(6) shield personnel from radiation exposure.

(b) *Radiological alarm systems.*—Radiological alarm systems shall be provided in accessible work areas to warn operating personnel of radiation and airborne radioactivity levels above a given setpoint and of concentrations of radioactive material in effluents above control limits. Such systems shall be designed with provisions for calibration and testing their operability.

(c) *Effluent and direct radiation monitoring.*—

(1) Effluent systems shall be provided with means for measuring the amount of radionuclides in effluents during normal operations and under accident conditions. A means of measuring the flow of the diluting medium, either air or water, shall also be provided.

(2) Areas containing radioactive materials shall be provided with systems for measuring the direct radiation levels in and around these areas.

(d) *Effluent Control.*

The ISFSI shall be designed to provide means to limit to levels as low as is reasonably achievable the release of radioactive materials in effluents during normal operations; and control the release of radioactive materials under accident conditions. Analyses shall be made to show that releases to the general environment during normal operations and anticipated occurrences will be within the exposure limits given in § 72.67. Analyses of design basis accidents shall be made, to show that releases to the general environment will be within the exposure limits given in § 72.68. Systems designed to monitor the release of radioactive materials shall have means for calibration and testing their operability.

§ 72.75 Criteria for spent fuel and radioactive waste storage and handling.

(a) *Spent Fuel and Radioactive Waste Storage and Handling Systems.*

Spent fuel storage, radioactive waste storage, and other systems that might contain or handle radioactive materials associated with spent fuel, shall be designed to ensure adequate safety under normal and accident conditions. These systems shall be designed with (1) a capability to test and monitor components important to safety, (2) suitable shielding for radiation protection under normal and accident conditions, (3) confinement structures and systems, (4) a heat-removal capability having testability and reliability consistent with its importance to safety, and (5) means to minimize the quantity of radioactive wastes generated.

(b) *Waste Treatment.*

Radioactive waste treatment facilities shall be provided. Provisions shall be made for the packaging of site-generated low level wastes in a form suitable for transfer to disposal sites.

§ 72.76 Criteria for decommissioning.

The ISFSI shall be designed for decommissioning. Provisions shall be made to facilitate decontamination of structures and equipment, minimize the quantity of radioactive wastes and contaminated equipment, and facilitate the removal of radioactive wastes and contaminated materials at the time the ISFSI is permanently decommissioned.

Subpart G—Quality Assurance

§ 72.80 Quality assurance program; Records.

(a) A quality assurance program based on the criteria in Appendix B to Part 50 of this chapter shall be established and implemented for the structures, systems, and components of an ISFSI that are important to safety. The application of the quality assurance program should be commensurate with the importance to safety of identified activities and individual structures, systems, and components.

(b) The quality assurance program shall cover all activities identified as being important to safety throughout the life of the licensed activity—from site selection through decommissioning—prior to termination of the license.

(c) Appropriate records of the design, fabrication, erection, testing, maintenance and occupation of structures, systems, and components important to safety shall be maintained by or under the control of the licensee throughout the life of the ISFSI.

Subpart H—Physical Protection

§ 72.81 Physical security plan.

A plan for detailed security measures for physical protection shall be established. This plan shall consist of two parts. Part I shall demonstrate how the applicant plans to comply with the applicable requirements of Part 73 of this chapter and during transportation to and from the proposed ISFSI and shall include the design for physical protection and the licensee's safeguards contingency plan and guard training plan. Part II shall list tests, inspections, audits, and other means to be used to demonstrate compliance with such requirements.

§ 72.82 Design for physical protection.

The design for physical protection shall show the site layout and ISFSI design features provided to protect the ISFSI from sabotage. It shall include:

(a) The design criteria for the physical protection of the proposed ISFSI;

(b) The design bases and the relation of the design bases to the design criteria submitted pursuant to paragraph (a) of this section; and

(c) Information relative to materials of construction, equipment, general arrangement, and proposed quality assurance program sufficient to provide reasonable assurance that the final security system will conform to the design bases for the principal design criteria submitted pursuant to paragraph (a) of this section.

§ 72.83 Safeguards contingency plan.

(a) The requirements of the licensee's safeguards contingency plan for dealing with threats and industrial sabotage shall be as defined in § 73.40(b) of this Chapter. This plan shall include Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix, the first four categories of information relating to nuclear facilities licensed under Part 50 of this chapter. (The fifth category of information, Procedures, does not have to be submitted for approval.)

(b) The licensee shall prepare and maintain safeguards contingency plan procedures in accordance with Appendix C to 10 CFR Part 73 for effecting the actions and decisions contained in the Responsibility Matrix of the licensee's safeguards contingency plan.

§ 72.84 Change to physical security and safeguards contingency plans.

(a) The licensee shall make no change that would decrease the safeguards effectiveness of the physical security plan or the first four categories of information (Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix) contained in the licensee safeguards contingency plan without the prior approval of the Commission. A licensee desiring to make such a change shall submit an application for an amendment to his license pursuant to § 72.39.

(b) The licensee may, without prior Commission approval, make changes to the physical security plan or the safeguards contingency plan, if the changes do not decrease the safeguards effectiveness of these plans. The licensee shall maintain records of changes to any such plan made without prior approval for a period of 2 years from the date of the change and shall furnish to the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the appropriate NRC Regional Office specified in Appendix A to Part 73 of this chapter, a report containing a description of each change within 2 months after the change is made.

Subpart I—Training and Certification of ISFSI Personnel

§ 72.91 Operator requirements.

Operation of equipment and controls that have been identified as important to safety in the Safety Analysis Report and in the license shall be limited to trained and certified personnel or be under the direct visual supervision of an individual with training and certification in such operation. Supervisory personnel who personally direct the operation of equipment and controls that are important to safety must also be certified in such operations.

§ 72.92 Operator training and certification program.

The applicant for a license under this part shall establish a program for training, proficiency testing, and certification of ISFSI personnel. This program shall be submitted to the Commission for approval with the license application.

§ 72.93 Physical requirements.

The physical condition and the general health of personnel certified for the operation of equipment and controls that are important to safety shall not be such as might cause operational errors that could endanger other in-plant personnel or the public health and safety. Any condition which might cause impaired judgment or motor coordination must be considered in the selection of personnel for activities that are important to safety. Such conditions need not categorically disqualify a person, so long as appropriate provisions are made to accommodate such defect.

Conforming Amendments

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. Section 2.764 is amended by adding the phrase "Except as provided in paragraph (c) of this section," at the beginning of paragraphs (a) and (b), by adding a new paragraph (c) and by revising footnote 1 to read as follows:

§ 2.764 Immediate effectiveness of initial decision directing issuance or amendment of construction permit or operating license.[1]

(a) Except as provided in paragraph (c) of this section, an initial decision * * *

(b) Except as provided in paragraph (c) of this section, the Director of Nuclear Reactor Regulation or * * *

(c) An initial decision directing the issuance of an initial license for the construction and operation of an independent spent fuel storage installation (ISFSI) under 10 CFR Part 72 of this chapter shall not become effective until review by the Commission has been completed. The Director of Nuclear Material Safety and Safeguards shall not issue an initial license for the construction and operation of an independent spent fuel storage installation (ISFSI) under 10 CFR Part 72 of this chapter until expressly authorized to do by the Commission.

PART 54—LICENSING AND REGULATORY POLICY AND PROCEDURES FOR ENVIRONMENTAL PROTECTION.

2. In § 51.5(a) paragraph (10) is redesignated as paragraph (11) and a new paragraph (10) is added. In § 51.5(b) a new subparagraph (4)(iv) and paragraph (9) is added. Paragraph 51.5(b)(5) is changed to include the above additional subparagraph (4)(iv). As amended § 51.5 reads as follow:

§ 51.5 Actions requiring preparation of environmental impact statements, negative declarations, environmental impact appraisals; actions excluded.

(a) An environmental impact statement will be prepared and circulated prior to taking any of the following types of actions:

* * * * *

(10) Issuance of a license pursuant to Part 72 of this chapter for the storage of

[1] The temporary suspension of § 2.764 (a) and (b) in certain proceedings and related matters is addressed in Appendix B to this part.

spent fuel in an independent spent fuel storage installation (ISFSI) at a site not occupied by a nuclear power reactor.

(11) Any other action which the Commission determines is a major Commission action significantly affecting the quality of the human environment.

(b) Many licensing and regulatory actions of the Commission other than those listed in paragraph (a) may or may not require preparation of an environmental impact statement, depending upon the circumstances. In determining whether an environmental impact statement should or should not be prepared for such action, the Commission shall be guided by the Council on Environmental Quality Guidelines, 40 CFR 1500.6. Such other actions include:

* * * * *

(iv) The storage of spent fuel in an independent spent fuel storage installation (ISFSI) pursuant to Part 72 of the chapter.

(5) Renewal of licenses to conduct activities listed in paragraph (b)(4) (i)-(iv) of this section;"

* * * * *

(9) Issuance of a license pursuant to Part 72 of this chapter for the storage of spent fuel in an independent spent fuel storage installation (ISFSI) on the site of a nuclear power reactor.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

3. Section 70.1 is amended by inserting the following phrase in the beginning of paragraph (a) and by adding a new paragraph to read as follows:

§ 70.1 Purpose.

(a) Except as provided in paragraph (c) of this section, the regulations of this part * * *

* * * * *

(c) The regulations in Part 72 of this chapter establish requirements, procedures, and criteria for the issuance of licenses to possess 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 such licenses.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

§ 73.1 Purpose and scope.

4. In § 73.1(b) Scope, add a new paragraph as follows:

* * * * *

(b) *Scope.* This part prescribes requirements for the physical protection of spent fuel stored in an independent spent fuel storage installation (ISFSI) licensed under Part 72 of this Chapter.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES UNDER SECTION 274

5. Section 150.15(a) is amended by adding a new paragraph (8) to read as follows:

§ 150.15 Persons not exempt.

(a) Persons in agreement States are not exempt from the Commission's licensing and regulatory requirements with respect to the following activities:

* * * * *

150.15(a)(7) The storage of spent fuel in an independent spent fuel storage installation (ISFSI) licensed pursuant to Part 72 of this Chapter.

* * * * *

Dated at Washington, D.C., this 3rd day of November 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 80-34693 Filed 11-10-80; 8:45 am]

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DEPARTMENT OF ENERGY

Office of Conservation and Solar Energy

10 CFR Part 456

[Docket No. CAS-RM-79-101]

Residential Conservation Service Program; Briefing

AGENCY: Department of Energy.

ACTION: Notice of briefing.

SUMMARY: The Department of Energy is implementing the Residential Conservation Service (RCS) Program pursuant to Title II, Part I of the National Energy Conservation Policy Act (NECPA) (Pub. L. 95-619, Stat. 3206 *et seq.*). The purpose of the program is to encourage the installation of energy conservation measures and renewable resource measures in existing houses by residential customers of larger gas and electric utilities and home heating suppliers. On November 7, 1979, DOE issued a final rule for the RCS Program (44 FR 64602).

Under the RCS Program, DOE has established rules and guidelines that affect the energy conserving and renewable resource products manufactured, distributed or installed under the program. The rules address material and installation standards, product labeling, program listing, and warranty requirements.

In order to make manufacturers, suppliers, and contractors aware of the requirements for labeling, warranty, listing, and the material standards, we have scheduled a briefing for trade associations which represent manufacturers, contractors and distributors of energy conserving and renewable resource measures to address these guidelines.

DATES: The briefing will be held November 20, 1980, from 2:00 p.m., to 4:30 p.m. Request for attendence should be received before November 14, 1979. Direct all requests to Gloria Purnell at the address listed under the section entitled "For Further Information Contact:". The briefing will be held at the address listed below:

ADDRESSES: Quality Inn, 415 New Jersey Avenue, N.W., Federal Ballroom, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Gloria Purnell, Office of Conservation and Solar Energy, Room GH-068, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202) 252-9101.

SUPPLEMENTARY INFORMATION: Not available.

Issued in Washington, D.C. on November 7, 1980.

T. E. Stelson,

Conservation and Solar Energy.

[FR Doc. 80-35381 Filed 11-10-80; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9089]

Atlantic Richfield Company; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order, among other things, reopens the proceeding and modifies definition (h)(1) and (2) of the divestiture order issued on October 20, 1978, 44 FR 67843, 94 F.T.C. 1054, so that, upon prior Commission approval, Noranda Mines Ltd., INCO Ltd., the Anglo American Group, or any of their respective subsidiaries (previously designated as "ineligible"), may be considered as "eligible" to purchase properties to be divested or to engage in certain joint ventures with Atlantic Richfield.

DATES: Order issued October 20, 1978. Modifying order issued October 7, 1980.

FOR FURTHER INFORMATION CONTACT: FTC/C, E. Perry Johnson, Washington, D.C. 20580, (202) 523-3001.

Nuclear Regulatory Commission, Final Rule on Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste, 53 Fed. Reg. 31,651 (Aug. 19, 1988)

varieties of potatoes. For this reason, the committee recommended retaining the special purpose shipment requirements for non-red-skinned potatoes. These requirements could be eliminated at some point in the future if experience indicates that there is a viable market for these small potatoes.

An editorial change is being made regarding the special purpose requirements for other than red-skinned potatoes. While the current regulation specifies that handlers apply for a "special purpose certificate," the proper term is "Certificate of Privilege." This is the term used elsewhere in the regulation, and this revision is made in the interest of consistency.

Section 8e of the Agricultural Marketing Agreement Act of 1937 requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for that particular area. Because the import requirements for red-skinned potatoes are based on the marketing orders covering Washington potatoes (M.O. 946) and Colorado Area No. 2 potatoes (M.O. 948), these changes in the handling requirements for Oregon-California potatoes will have no effect on the potato import regulation.

The information collection requirements contained in the provisions of the regulations to be revised by this interim final rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB No. 0581-0112. This action reduces the current information collection burden by eliminating the reporting requirements applicable to shipments of small, high quality red-skinned potatoes.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register for the following reasons: (1) The harvest and shipment of red-skinned potatoes has begun, and this relaxation of requirements should apply to as many shipments as possible; (2) potato handlers are aware of this action which was recommended by the committee at a public meeting, and they will not need additional time to comply with the changed requirements; (3) this rule facilitates the handling of red-skinned potatoes to meet current consumer demand, and expediting its effective date will be advantageous to producers and consumers alike; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to the finalization of the rule.

List of Subjects in 7 CFR Part 947

Marketing agreements and orders, Potatoes, Oregon, California.

For the reasons set forth in the preamble, 7 CFR Part 947 is amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR Part 947 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 947.340 is amended by revising paragraph (b) to read as follows:

Note.—This section will appear in the Code of Federal Regulations.

§ 947.340 Handling regulation.

* * * * *

(b) *Size requirements.* (1) Such potatoes shipped to points within the continental United States shall be at least 2 inches in diameter or weigh at least 4 ounces, and such potatoes shipped to export destinations shall be at least 1⅝ inches in diameter.

(2) Red-skinned varieties of potatoes may be shipped without regard to any minimum size requirement, if they otherwise grade at least U.S. No. 1.

(3) All non-red-skinned varieties of potatoes that measure less than 1⅝ inches in diameter may be shipped if such potatoes otherwise grade at least U.S. No. 1 and are packed in quantities of 50 pounds or more per container: *Provided,* That any person who desires to handle such potatoes shall each season prior to shipment apply for and obtain a Certificate of Privilege from the committee authorizing shipment of the potatoes for market expansion purposes: *Provided further,* That any person who so handles potatoes for market expansion purposes shall promptly report the shipment, grading, and usage of the potatoes to the committee.

* * * * *

Dated: August 16, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-18875 Filed 8-18-88; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 19, 20, 21, 51, 70, 72, 73, 75 and 150

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 Waste Policy Act of 1982, as amended (NWPA) requires that monitored retrievable storage facilities (MRS) for spent nuclear fuel and high-level radioactive waste (HLW) be subject to licensing by the Nuclear Regulatory Commission (NRC). The NRC is adding language to its regulations in 10 CFR Part 72 to provide for licensing the storage of spent nuclear fuel and HLW in an MRS. The Commission intends to have the appropriate regulation to fulfill the requirements of the NWPA in place in a timely manner. The rule would also clarify certain issues that have arisen since Part 72 was made effective on November 28, 1980 and incorporate other changes resulting from public comments received.

EFFECTIVE DATE: September 19, 1988.

ADDRESSES: Copies of NUREG-0575, NUREG-1092, and NUREG-1140 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5282 Port Royal Road, Springfield, VA 22161. A copy of each NUREG is also available for public

inspection and/or copying at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Keith G. Steyer or C.W. Nilsen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301)492–3824 or 492–3834, respectively.

SUPPLEMENTARY INFORMATION: On May 27, 1986, following Commission approval, the proposed revision to 10 CFR Part 72 relating to MRS licensing was published in the Federal Register (51 FR 19106) for comment. The comment period expired on August 25, 1988.

The NRC received 195 comment letters from utilities, engineering companies, State offices, environmental groups, private citizens, and a member of the U.S. House of Representatives. The comment letters from private citizens numbered about 145. (Some of these were signed by several individuals or were submitted on behalf of private business firms.) From the comment letters received, the staff identified 27 separate topics to which specific responses were directed. Comments were also received which addressed the original rule, not the proposed amendment. In response to the comments, several changes have been made to the proposed rule. The majority of these changes are mainly clarifying in nature.

In order to provide sufficient space to accommodate possible future amendments to Part 72, the sections of the final rule have been renumbered. To aid the reader in following the discussion of comments in the preamble of the final rule, each reference to a specific section of the final rule is followed by a bracketed reference to the parallel section of the proposed rule.

A compilation of the issues raised as a result of public comment and the accompanying Commission response follow:

1. Backfitting

Comment: Several commenters indicated that the proposed rule should incorporate the sense of the reactor backfitting rule set out in 10 CFR 50.109.

Response: Although these storage facilities are not like reactors but are, for the most part, static by nature with very little need for design changes, the staff has revised the backfitting requirements of 10 CFR 72.62 (§ 72.42). The change is being made to conform § 72.62 (§ 72.42) more closely to § 50.109 as modified by the court decision in *Union of Concerned Scientists, et al., v. U.S. Nuclear Regulatory Commission, et al.*, Nos. 85–1757 and 86–1219, 824 F.2d 108 (U.S.C.A.D.C. August 4, 1987).

2. Opportunity for Hearing Prior to the First Receipt of Spent Fuel or High-Level Radioactive Waste (HLW)

Comment: A new proposed § 72.46(c) (§ 72.34(c)) was added to 10 CFR Part 72 specifically providing that the Commission may, upon its own initiative, issue a notice of opportunity for hearing prior to the first receipt of spent fuel or high-level radio-active waste at an MRS if it finds this to be in the public interest. In the supplementary information in the May 27, 1986 Proposed Rule, the Commission indicated its own considerations on this topic and expressed particular interest in receiving public comment on (1) the need to make a finding before MRS operation that construction conforms to the license application, (2) provisions for second stage hearing rights to address specific new issues which could not have been litigated at the first stage and/or new information which has been revealed since issuance of the license, and (3) the format of the hearing, if held. Of the comment letters that addressed these points, some expressed no preference, some favored the provisions, some thought the provisions were unnecessary.

The principal reasons given by proponents of these provisions are that the public will have more confidence that the MRS will be operated safely and that there should be a clear opportunity to examine new issues which could be raised. Other comments of proponents were that the Department of Energy has had poor public performance in the past, that the degree of hazard is similar to nuclear power reactors which require a two-stage process, and that the opportunity for a second hearing could be an appropriate time to examine technical/financial information. Additional comments suggested that the rule require a second mandatory hearing and that funding be provided for nonprofit groups to participate in a second hearing.

On the topic of a finding it was suggested that (1) criteria be set forth for any finding the Commission may make, and (2) the NRC inspections should certify quality assurance and completeness of construction in an inspection report prior to initiation of operation. One comment suggested that start-up of the MRS should be linked to the repository authorization as an issue at a second hearing.

The principal reasons given by those opposed to the new provisions for a second hearing were that (1) it would cause unnecessary delay, (2) the Commission's regulations in 10 CFR Part 2 were sufficient to examine any new issues, (3) the NRC's normal systematic inspections are adequate to assure that construction was proper, (4) the nature of the MRS is such that all issues could be covered by the opportunity for public review prior to issuing a license and starting construction, and (5) the backfitting provision (§ 72.82 (§ 72.42)) provides additional assurance that significant issues may be raised by staff after the license is issued. Other reasons offered in objection to the new provisions were that (6) there was no basic difference between an MRS and an Independent Spent Fuel Storage Installation (ISFSI), (7) the small amount of solidified high-level waste which could be received could not justify any change in procedure from an ISFSI, and (8) the Safety Analysis Report (SAR) update procedure will assure that any new issue will be known and understood by NRC staff.

Response: The Commission specifically added the new provision and requested comments in order to obtain as complete an understanding as possible of whether or not any benefits would accrue to the public from such a procedure. This was done with full knowledge that the Atomic Energy Act of 1954, as amended, only requires one hearing and that under the procedures in 10 CFR Part 2 the opportunity always exists for any member of the public to bring any new issues to the Commission's attention.

In the comments received from the public there was no indication that there were likely to be any new safety issues brought forward which could not have been fully addressed on the occasion of the hearing held prior to issuance of the license. The licensing process of Part 72 supports one-stage licensing as it requires that all information needed for the licensing action be available and complete before a license is issued, i.e., final design, quality assurance/control procedures, operator training procedures, operating technical specifications, etc. Unlike a reactor license where a construction permit is issued prior to final design, an MRS application for license contains a final and complete design and therefore one-stage licensing is achievable. As to conformance of construction with the application and license, the Commission believes that, unlike reactors, construction of Part 72 type facilities will be simple and straightforward. Accordingly, in the Commission's judgment, there will be no need, as part of the safety review prior to license issuance, to require an applicant to

"prove" conformance of the as-built facility with the application. NRC would audit construction progress and, in the event some problems were found, enforcement action could be taken to correct them and, if necessary, halt the receipt of spent fuel until they were corrected. In this regard, § 72.82(c)(3) (§ 72.56(c)(3)) provides for establishing an NRC resident inspection program if warranted.

3. Interaction with States

Comment: Comments were received concerning providing of information to State and local governments and their interaction in the licensing process with DOE and the Commission.

Response: Under § 72.200 (§ 72.310) of the proposed rule, the Governor and legislature of any State in which a monitored retrievable storage installation may be located and the governing body of any affected Indian tribe will be provided timely and complete information regarding determinations or plans made by the Commission with respect to siting, development, design, licensing, construction, operation, regulation or decommissioning of such monitored retrievable storage facility. In response to the comment, the Commission will change § 72.200 (§ 72.310) "Provision of MRS Information" to require that the above information will also be provided to each affected unit of local government and to the Governors of any contiguous States. The definition of "affected unit of local government" which has been added to § 72.3 tracks the definition used in the Nuclear Waste Policy Amendments Act of 1987. (Sec. 5002, Pub. L. 100-203, 101 Stat. 1330-227 (42 U.S.C. 10101 (31)).) Participation by persons, including States, in license reviews is as provided for in 10 CFR Part 2, Subpart G.

4. High Burn-Up Fuel

Comment: In response to a 1980 petition for rulemaking, the Commission agreed (51 FR 23233, June 26, 1986) to prepare an environmental assessment on high burn-up fuel. The Commission's response concerning impacts of high burn-up fuel should be provided.

Response: The Commission issued an environmental assessment addressing the subject of high burn-up fuel in February 1988 "Assessment of the Use of Extended Burnup Fuel in Light Water Power Reactors" (NUREG/CR-5009). The assessment concluded "Environmentally, this burnup increase would have no significant impact over normal burnup."

5. Emergency Planning

Comment: As discussed in supplementary information to the proposed revisions to 10 CFR Part 72 the rule was rewritten to set forth explicit requirements appropriate to an ISFSI or an MRS, rather than refer to Appendix E to CFR Part 50, which is specific to nuclear power reactors. Responders commented on this change. Several thought that there should be a wider dissemination of the emergency plan which an applicant would have to prepare pursuant to the rewritten § 72.32 (§ 72.19), as well as a comment period longer than the specified 60 days. Another responder thought that 60 days was adequate. Other comments were that (1) sabotage of casks and terrorism, sabotage and military attack scenarios should be considered in an emergency plan, (2) a fully developed and tested offsite emergency plan should be developed, (3) the new version of § 72.32 (§ 72.19) implies a need for offsite protective actions which is incorrect, (4) the supplementary information which will accompany the issuance of the final rule should discuss worldwide experience and previous reviews and studies as support for the new emergency planning provisions, and (5) the emergency plan should continue to be the same as that for nuclear power reactors.

Response: The basic concept of emergency planning in § 72.32 (§ 72.19) has not been changed. None of the respondents provided any additional information to the staff or questioned the staff analyses such as to change the basis for the staff's approach to emergency planning for an ISFSI or an MRS. Moreover, in view of the relatively passive nature of facilities for the receipt, handling and storage of spent fuel and high-level radioactive waste, as compared to operating power reactors, emergency plans for ISFSI and MRS need not be equivalent to emergency plans for reactors.

Since the proposed revision of Part 72 was published for comment on May 27, 1986, the NRC has published proposed amendments to 10 CFR Parts 30, 40, and 70 [1] which would require certain NRC fuel cycle and other radioactive materials licensees that engage in activities that may have the potential for a significant accidental release of NRC-licensed materials to establish and maintain approved emergency plans for responding to such accidents. Although applicable to persons licensed under different parts of the Commission's regulations, the proposed requirements for emergency plans in Parts 30, 40, and 70 contain substantially identical provisions because they are designed to protect the public against similar radiological hazards. The proposed revision of Part 72 as published for comment also requires applicants for an ISFSI or MRS license to submit an emergency plan (see § 72.32 (§ 72.19).) Although the texts of proposed § 72.19 (redesignated § 72.32) and the parallel provisions of the proposed Emergency Preparedness rule are not identical, these provisions have the same purpose and use the same approach. In both cases, the proposed regulations require onsite emergency planning with provisions for offsite emergency response in terms of coordination and communication with offsite authorities and the public. It is therefore appropriate that in both cases these requirements should be expressed in the same way.

Until the Commission promulgates the Emergency Preparedness rule in final form, it is not possible to ascertain exactly the language that should be used. In view of these circumstances and since there is every expectation that this period of uncertainty will be of relatively short duration, we believe the prudent course of action is to reserve § 72.32 (§ 72.19), Emergency plan, in the final rule with the understanding that the text of this section will be promulgated in final form as a conforming amendment when the Commission adopts and promulgates the final Emergency Preparedness rule or shortly thereafter. We should point out that the temporary absence from Part 72 of requirements respecting emergency plans does not present any difficulties from a regulatory standpoint. To date, only three licenses have been issued under Part 72. Two licensees also hold Part 50 licenses and are required to comply with the provisions respecting emergency plans set out in the Part. The Part 72 license held by the third licensee contains conditions relating to emergency planning with which that licensee must comply.

Sabotage, terrorism, and military attacks are not treated as emergency preparedness issues. The Commission's established practice with respect to dangers of enemy action is that the protection of the United States against hostile enemy acts is a responsibility of the nation's defense establishment and the various agencies having internal security functions. Acts other than military are covered under a planning system included in Subpart H of Part 72.

[1] Proposed rule on Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees, 52 FR 12921, April 20, 1987.

which contains requirements respecting physical security and safeguards contingency plans that are specifically designed to preclude the occurrence of such acts. The primary purpose of an emergency response plan is to prescribe measures to be taken to mitigate the effects of accidental releases of radioactivity, irrespective of their cause. Thus, in the unlikely event that there should be an accidental release of radioactivity by reason of an act of terrorism or an act of sabotage, protective actions would be taken as prescribed in the emergency response plan, just as they would be taken in the case of accidental release arriving from other causes.

6. Department of Energy as Licensee for the MRS

Comment: Respondents commented on several aspects of the licensing of the Department of Energy for the MRS. One commenter requested that in every instance in which there would be a difference in requirement between the Department and other licensees, that that difference should be specifically defined in Part 72. Other commenters pointed out that the funding for the MRS was from the Nuclear Waste Fund as stipulated in the NWPA and, therefore, the Department should be required, through Part 72, to show how these funds will be adequate for operation and decommissioning. A further commenter questioned the Department's authority pursuant both to Part 72 and its own orders to delegate quality assurance responsibilities to its contractor(s). One commenter suggested that Part 72 should permit revocation or suspension of the Department's license for the MRS since the NRC could not impose civil penalties for license violations.

Response: As discussed in the supplementary information to the proposed revisions to Part 72, the Department of Energy is exempted from certain financial reports, creditor information and financial plans for decommissioning. As pointed out in the comment above, funding for the MRS will be from the Nuclear Waste Fund, separately accountable from public funds. Consistent with the principle of full cost recovery in section 302 of the NWPA (96 Stat. 2257, 42 U.S.C. 10222) this fund will provide all financial resources for the MRS, i.e., licensing, construction, operation and decommissioning. Since DOE is a federal agency and the status of the NWPA waste fund is reported to and reviewed by the Congress yearly, the Commission believes that Congress will assure that adequate funds are available and appropriated for DOE to carry out its statutory responsibility. Under these circumstances additional NRC oversight is unnecessary and inappropriate.

As to possible conflicts in the licensing and regulatory process between orders and procedures of the Department of Energy and NRC requirements, two government agencies, the commenter provided no specifics and the Commission is not aware of any such conflict. The Department will be provided the same latitude as any other licensee pursuant to § 72.142 (§ 72.101) wherein it is stated that "the licensee may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, but shall retain responsibility for the program."

The Energy Reorganization Act of 1974, as amended, and the Nuclear Waste Policy Act of 1982, as amended, provide that upon authorization by Congress an MRS shall be subject to licensing by the Commission. Accordingly, no exemptions from the provisions of § 72.60 (§ 72.41), "Modification, revocation, and suspension of licenses" and § 72.84 (§ 72.57), "Violation" are shown for the Department. In the exercise of this broad statutory authority and consistent with its customary practice in regulating other Federal licensees, the Commission may impose penalties on the Department if there is sufficient justification. The Commission knows of no other differences between the Department and other licensees for which a change in Part 72 is warranted. (The commenters recommended no specific changes in this area.)

7. Minimum Decay Period (Age) for Receipt of Spent Fuel

Comment: It was noted that there is a seeming discrepancy between the minimum decay period (age) of spent fuel as specified in § 72.2 (one year) and a reference to the environmental analysis in NUREG–1140, "A Regulatory Analysis on Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees" (five-year decay assumed).

Response: The minimum one-year decay period in § 72.2 is based on assuring the decay of radioisotopes having half-lives on the order of a few days or less. In actuality, the decay periods are likely to be much longer than one year. Accordingly, the NUREG-1140 analyses were based on the more realistic, but still conservative, assumption that five or more years of decay would have taken place for the spent fuel for which an accident in a dry cask was assumed. This is not a discrepancy since different purposes are being served in each instance. In choosing a nominal decay period of 10 years and a five-year minimum decay period in the design parameters for the MRS the Department of Energy (DOE) is merely exercising its own prerogative to use a longer decay criterion for purposes of fuel receipt. Selection of a five-year minimum decay period also reflects DOE's understanding that the spent fuel to be received at the MRS will already have decayed for periods of time likely to be even much greater than five years at individual power reactor sites. The original analysis for Part 72 was based on one-year decay.

8. Physical Security Plan

Comment: A few commenters were concerned about the proposed change in the requirements of the physical security plan for the Department of Energy in that the Department must provide a certification that it will provide at the MRS "such safeguards as it requires at comparable surface DOE facilities to promote the common defense and security." The concerns were that this was an added requirement imposed only on the Department and that there was no definition of what a "comparable" DOE facility would consist of.

Response: For all licensees physical security plans are designed for two purposes: (1) To protect against sabotage and (2) to promote the common defense and security. The change in the requirements of the physical security plan is intended to be consistent with 10 CFR Part 60, "Disposal of High-Level Radioactive Wastes in Geologic Repositories," wherein it is recognized that the Department already carries these responsibilities for all of its facilities.

The Department in carrying out its responsibility to promote the common defense and security of all its facilities can best identify the surface DOE facilities to which the MRS is most comparable for purposes of physical security without the unnecessary burden of an NRC definition of "Comparable." Comparability in this context is a function of the kinds and quantities of nuclear materials held at the facilities and the potential consequences of theft or sabotage. However, the NRC staff believes that the Receiving Basin for Off-Site Fuel at the Savannah River Plant may be an appropriately comparable facility.

9. Continous Cask Monitoring Provision

Comment: Several commenters pointed out that the wording of the provision in § 72.122(h)(4) (§ 72.92(h)(4)) for monitoring of storage confinement

systems was inconsistent with section 141(b)(1)(B) of the NWPA (96 Stat. 2242, 42 U.S.C. 10161(b)(1)(B)) wherein it is required that an MRS facility shall be designed to permit continous monitoring. Another commenter suggested that the State should participate in the monitoring.

Response: The difference in wording between section 141(b)(1)(B) of the NWPA (96 Stat. 2242, 42 U.S.C. 10161(b)(1)(B)) and § 72.122(h)(4) (§ 72.92(h)(4)) was inadvertent. The staff has corrected the wording of § 72.122(h)(4) (§ 72.92(h)(4)) in the final rule to agree with the NWPA. As to State participation in monitoring, this is a matter to be resolved with the Department or as indicated in Response Number 3.

10. Inspection and/or Monitoring

Comment: In § 72.44(c)(3) (§ 72.33(c)(3)) the words "inspection and monitoring" have been changed to "inspection or monitoring."

Response: The proposed change serves no useful purpose. The degree and method of inspection and monitoring will be dependent upon design and operational limits for specific cases. The words "inspection and monitoring" will be reinstated.

11. Foreign Fuel

Comment: One commenter expressed objection to the processing and storage of foreign spent fuel or HLW at the MRS and stated that it should be specifically prohibited.

Response: The reference to foreign fuel in § 72.78 (§ 72.54) of the proposed rule was limited to material transfer report requirements and was not intended either to restrict or to permit such processing or storage. Section 302(a) of the NWPA (96 Stat. 2257, 42 U.S.C. 10222(a)) does specify only "high-level radioactive waste, or spent nuclear fuel of domestic origin" and therefore the reference to foreign fuel at an MRS will be removed.

12. Tornado Missile

Comment: Commenters have disagreed with the deletion of the exemption regarding protection against tornado missile impact, that is, as expressed in the existing rule, "* * * An ISFSI need not be protected from tornado missiles * * *". Another commenter who favors the deletion concerning protection from tornado missiles would also have the restriction limiting its scope to "* * * structures, systems, and components important to safety" deleted.

Response: The explanation of the exemption for tornado missiles, set out in the preamble of the existing rule (45 FR 74693, November 12, 1980) states that radionuclide releases from spent fuel which has undergone at least a year of radioactive decay would not be significant in the event of tornado missile impact, citing an accident evaluation from NUREG–0575 "Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuels" with gaseous radionuclide releases from water pool storage. With the continuing development of dry storage technologies, which include metal casks, concrete silos, dry wells, and air-cooled vaults, the Commission decided the designs should take into account tornado missile protection, unless it is shown that tornado missiles will not have any effect on structures, systems and components important to safety. While offsite gaseous release impacts from fuel rod rupture due to a tornado missile incident would remain insignificant, it is important to assure that design criteria for dry storage designs continue to address maintaining confinement of particulate material. All safety reviews for storage licensed under Part 72, both water pool and dry storage, have evaluated designs with respect to tornado missile impact. Since safety considerations drive the concern with respect to the tornado missile phenomenon, it is not necessary to expand that concern beyond "structures, systems, and components important to safety."

13. Use of Part 50 Criteria

Comment: To expedite the licensing process for facilities proposed on sites which currently possess a 10 CFR Part 50 license, it was proposed that the applicable siting evaluation factors and general design criteria which have been reviewed and approved by the NRC for the Part 50 license be directly adopted for the Part 72 facility without additional review, hearings or approvals. Adequate reviews and approvals have been completed, and any change to those previously approved should be treated as a backfit.

Response: The storage of an increased amount of spent fuel on a reactor site, over that covered under an existing Part 50 license, requires staff action through safety and environmental reviews. In taking this action to authorize additional storage capacity for spent fuel, the staff will apply criteria from Part 50 or Part 72, depending on the type of licensing action being sought. Licensing action for an ISFSI would use criteria contained in Part 72 and Part 50 would be used for amending an existing reactor license. Storage of spent fuel on a reactor site outside of an existing reactor basin is already regulated under the criteria of Part 72 and these criteria have been used in reviewing applications for additional fuel storage at reactor sites.

14. Cladding

Comment: Opposition is expressed to any lowering of fuel cladding protection, as provided for in the existing § 72.122(h)(1) (§ 72.92(h)(1)).

Response: The revision of this provision (i.e., § 72.122(h)(1) (§ 72.92(h)(1))) addressed confinement of fuel material, which is the purpose of protecting the fuel cladding. The revised provision specifically provides for additional alternative means of accomplishing this objective. This serves to enhance confinement protection capability rather than diminish it.

15. Rod Consolidation

Comment: Comments were received concerning the Department of Energy's plan to consolidate rods from spent fuel assemblies into sealed packages. One commenter suggested inserting the word "chemically" after the word "separated" in the definition of spent nuclear fuel. Another comment suggested that a separate environmental impact statement be prepared on rod consolidation. It was suggested that the NRC give rod consolidation special consideration and that it is not clear at present what requirements the NRC will use for rod consolidation.

Response: Rod consolidation is the most elaborate operation contemplated for the MRS. The Department of Energy in its proposal and elsewhere has indicated its intention to fully develop the rod consolidation process for installation and operation. The rod consolidation system must meet all applicable portions of the general design criteria. There is no precedent for the preparation of an environmental impact statement in connection with a single system of a facility for which a complete environmental impact statement will be prepared. The aspect of rod consolidation will be covered in that statement, as well as in the safety review and evaluation by the staff in connection with the application for an MRS. The NRC does expect to be kept informed by the Department of its developmental activities prior to receipt of an application.

The insertion of the word "chemically" as suggested has been accepted by the staff for the final rule.

16. Accident Analysis For Two Barriers

Comment: A comment was received regarding engineered barriers such as canisters, "* * * the design basis accident scenario (i.e., release of gap activity from all fuel contained in a dry cask) should be revised to account for cases in which canister or other engineered barriers are incorporated."

Response: Most cask designs do not incorporate canistering of spent fuel assemblies. Therefore, for purposes of this rulemaking, choice of a lesser accident scenario assuming canistering is not appropriate for a bounding analysis. In a safety review involving a specific design, which incorporates an additional engineered barrier, the design basis accident scenario should, of course, consider this addition in the review analysis.

17. Records

Comment: Comments were received concerning archiving of records; by whom and how long?

Response: The proposed rule is consistent with current NRC policy concerning retention periods for records. The specific details of their physical storage is action taken at time of licensing.

18. Operator Safety

Comment: Comments were received concerning design for ALARA.

Response: The licensee is responsible for meeting the requirements of 10 CFR Part 20 "Standards for Protection Against Radiation," and all its provisions for maintaining ALARA. In addition § 72.24 (§ 72.15) Contents of Application: Technical Information requires applicants for a license to supply information for maintaining ALARA for occupational exposure.

19. MRS Collocation with Waste Repository

Comment: A commenter suggested expanding limitation for collocation with repository to include other facilities.

Response: The collocation restrictions in § 72.96 (§ 72.75) are specifically included in order to comply with sections 141(g) and 145(g) of the NWPA (96 Stat. 2243, 42 U.S.C. 10161(g); 101 Stat. 1330–235, 42 U.S.C. 10165(g)). (See also section 135(a)(2), 96 Stat. 2232, 42 U.S.C. 10155(a)(2).)

20. MRS Collocation with Other Nuclear Facilities

Comment: Commenter was concerned about other nuclear facilities that are not licensed.

Response: The licensing process considers all activities and facilities, licensed or unlicensed, that could increase the probability or consequences of safety significant events at licensed facilities.

21. Definition of High-Level Radioactive Waste

Comment: Some commenters noted that the definition of "high-level radioactive waste" used in Part 72 was not the same as the definition used in 10 CFR Part 60 and expressed the view that the two definitions should be consistent.

Response: Since it was first promulgated in November 1980 for the purpose of establishing licensing requirements for the storage of spent fuel in an independent spent fuel storage installation, Part 72, unlike Part 60, has always contained a separate definition of spent fuel. In revising Part 72 to provide for licensing the storage of spent fuel and high-level radioactive waste in an MRS, the Commission has revised the definition of spent fuel to conform more closely to the definition set out in section 2(23) of the Nuclear Waste Policy Act of 1982, as amended (96 Stat. 2204, 42 U.S.C. 10101(23)). The Commission has also amended § 72.3 by adding a definition of "high-level radioactive waste" which conforms to the language used in section 2(12) of that Act (42 U.S.C. 10101(12)). The definitions of spent fuel and high-level radioactive waste used in Part 72, though not identical to the definition of high-level radioactive waste used in 10 CFR Part 60 which encompasses "irradiated reactor fuel," are not inconsistent with that definition. It should be noted, however, that as explained in the Commission's advance notice of proposed rulemaking relating to the definition of high-level radioactive waste (52 FR 5992, February 27, 1987), the definition of high-level radioactive waste used in Part 60 serves a jurisdictional function, specifically identification of the class of Department of Energy facilities that, under section 202 of the Energy Reorganization Act of 1974 (42 U.S.C. 5842) are subject to the licensing and related regulatory authority of the Commission.

22. High Level Liquid Waste

Comment: Several commenters were concerned about the storage of liquid High-Level Waste (HLW).

Response: The MRS will be designed and licensed for the storage of irradiated fuel and solidified waste from the processing of fuel. The MRS will not receive liquid HLW and the form of the solid waste stored will be that which is compatible with the requirements for permanent disposal in a repository.

Any liquid wastes generated at the MRS will be handled in accordance with existing regulations.

23. Quality Assurance—Quality Control

Comment: Comments were associated with the apparent difference between the quality assurance criteria proposed and the previous quality assurance criteria.

Response: The proposed rule quality assurance subpart was written to incorporate the previously referenced 10 CFR Part 50, Appendix B quality assurance criteria specifically into Part 72. There was no intent to change the criteria. Minor conforming changes have been made in the final rule.

24. Criticality

Comment: A comment was received concerning the removal of the requirement for verifying continued efficacy of solid neutron poisons.

Response: Several changes have been made to the criticality section of the final rule to make it correspond to other Parts of the Commission's regulations and standard criticality review practices. Verification of solid neutron poisons has been retained. Double contingency criteria and requirements for criticality monitors have been added. It is not the intent of the revision concerning criticality monitors to require monitors in the open areas where loaded casks are positioned for storage as that system is static. Monitors are required where the systems are dynamic.

25. MRS Storage Capacity

Comment: Commenters questioned the MRS storage capacity as stated in the proposed rule in §§ 72.1 and 72.96 (§§ 72.1 and 72.75).

Response: In the proposed rule, MRS storage capacity values are based on the NWPA, as approved by Congress. (See section 135(a)(1)(A), 96 Stat. 2232, 42 U.S.C. 10155(a)(1)(A) and section 114(d), 96 Stat. 2215 as amended by 101 Stat. 1330–230, 42 U.S.C. 10134(d) and section 141(g), 96 Stat. 2243, 42 U.S.C. 10161(g)). In addition, the Nuclear Waste Policy Amendments Act of 1987 provides that the MRS authorized by section 142(b) of NWPA (101 Stat. 1330–232, 42 U.S.C. 10162(b)) shall be subject to the storage capacity limits specified in sections 148(d) (3) and (4) (101 Stat. 1330–236, 42 U.S.C. 10168(d) (3) and (4)). These requirements have been incorporated in new § 72.44(g) which has been added to the final rule.

28. The Term—"Temporory Storage"

Comment: Comments objected to the removal of the term "Temporary Storage" from § 72.3 Definitions and the removal of the word "temporary" from § 72.2 Scope.

Response: In making these changes, the Commission does not intend to change the scope of Part 72 which relates to the licensing of ISFSI and MRS for the purpose of storage only. Part 72 does not nor is it intended to cover permanent disposal. Accordingly, use of the word "temporary" in the rule is non-definitive and unnecessary.

27. MRS Rule Making

Comment: Many commenters (approximately 150), through the use of form letters or paraphrasing, did not want the MRS in Tennessee, did not support any form of rulemaking until Congress had authorized the MRS through funding appropriation, and made reference to "license it twice."

Response: The Nuclear Waste Policy Amendments Act of 1987 authorizes the Department of Energy to site, construct and operate one MRS and prescribes procedures for the selection of an appropriate site. The Act expressly annuls and revokes the Department's proposal "to locate a monitored retrievable storage facility at a site on the Clinch River in the Roane County portion of Oak Ridge, Tennessee, with alternative sites on the Oak Ridge Reservation of the Department of Energy and on the former site of a proposed nuclear powerplant in Hartsville, Tennessee * * *" (Section 142(a), 101 Stat. 1330–232, 42 U.S.C. 10162(a)). The Commission's regulations are promulgated to permit the Commission to carry out its mandate of providing for the health and safety of the public. Except for the siting limitations in § 72.98 (§ 72.75) of the final rule, which, among other things, prohibits an MRS authorized by section 142(b) of NWPA (101 Stat. 1330–232, 42 U.S.C. 10162(b)) from being constructed in Nevada, the Commission's regulations are silent on the location of an MRS. The "license it twice" concept is addressed in Response Number 2.

28. Increase of Licensing Period for the MRS

Comment: Comments questioned the Commission's basis, as described in the statement of considerations for the proposed changes to Part 72, for providing a longer license term for an MRS (40 years) than for an ISFSI (20 years). Comments also included (1) the term should start with the receipt of spent fuel, and (2) ISFSI should also have a 40-year license term. Further explanation of the basis for the license term was also requested. All of the commenters seemed to concentrate on a license for the spent fuel rather than a license covering a facility for storage.

Response: An MRS as described in the NWPA is intended for storage, but nor necessarily for the same fuel since fuel will continually be moved in and out over the life of the facility in concert with operation of a repository. A longer license term is therefore appropriate for an MRS considering the purpose and mode of operation of the facility.

In contrast to the MRS, the spent fuel stored in an ISFSI at reactor sites or elsewhere will be collected until the Department of Energy waste disposal system is ready for its receipt. The current schedule indicates that this transfer from reactor sites to an MRS could begin to occur within about 10 years. The Commission has in place a license renewal process for ISFSI storage which provides an opportunity for extension of the 20-year license term, with staff reevaluation of safety and environmental aspects of the operation. In any event the systematic inspection program of the Commission wherein the licensee's adherence to all license conditions and technical specifications is continually being examined applies to both MRS and ISFSI storage over the entire period of a license. The Commission will provide a 40-year license term for an MRS in the final rule.

On December 22, 1987, the Nuclear Waste Policy Amendments Act of 1987 (Subtitle A of Title V of the Omnibus Budget Reconciliation Act for Fiscal Year 1988; Pub. L. 100–203, 101 Stat. 1330–227) was approved by the President and became public law. The 1987 amendments authorized the Secretary of the Department of Energy to site, construct and operate one monitored retrievable storage facility subject to certain statutory conditions (sec. 142(b), 101 Stat. 1330–232, 42 U.S.C. 10162(b)). As a result of these changes in the statute, it has been necessary to make certain conforming changes in the text of the final rule. Most of the changes are minor in nature. For example, references have been added to the authority section and conforming changes have been made in the following sections of the rule: §§ 72.22(d)(5), 72.40(b), 72.90(e) and 72.98(d) (§§ 72.14(d)(5), 72.31(b), 72.70(e) and 72.75(d)). A new paragraph (g) has been added to § 72.44 (§ 72.33), License conditions, to incorporate into the Commission's regulations the specific statutory conditions (*see* sec. 148(d) of the NWPA, 101 Stat. 1330–238, 42 U.S.C. 10168(d)) which must be included in a Commission license for the monitored retrievable storage installation authorized pursuant to section 142(b) of the NWPA (101 Stat. 1330–232, 42 U.S.C. 10162(b)). For an explanation of these conditions, *see* 133 Cong. Rec. H11973–75 and S18683–84 (daily ed. December 21, 1987).

Having considered all of the above, the Commission has determined that a final rule be promulgated. The text of the final rule has some changes as noted from the proposed rule.

Finding of No Significant Environmental Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments to 10 CFR Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste."

NUREG–0575, "Final Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel," August 1979, was issued in support of the final rule promulgating 10 CFR Part 72, "Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation ISFSI)," which became effective November 28, 1980. On January 7, 1983, the Nuclear Waste Policy Act of 1982 was signed into law. On December 22, 1987, the Act was amended by the Nuclear Waste Policy Amendments Act of 1987 (Pub. L. 100–203, Title V, Subtitle A, 101 Stat. 1330–227). Section 142(b) of the amended Act (101 Stat. 1330–232, 42 U.S.C. 10162(b)) authorized the Secretary of the Department of Energy to site, construct and operate one MRS. NWPA also established procedures which a State or an Indian tribe may use to negotiate an agreement with the Federal Government under which the State or Indian tribe would agree to host an MRS within the State or reservation. Following enactment of legislation to implement the negotiated agreement, the Secretary of the Department of Energy could proceed to evaluate appropriate sites. As in the case of the MRS authorized by section 142(b) of NWPA (101 Stat. 1330–232, 42 U.S.C. 10162(b)), DOE must also obtain an NRC license for an MRS authorized by Congress pursuant to a negotiated agreement. The NRC staff has concluded that although existing 10 CFR Part 72 is generally applicable to the design, construction, operation, and decommissioning of MRS, additions are necessary to explicitly cover the licensing of spent nuclear fuel and high-level radioactive waste storage in an MRS. In August 1984, the NRC published

an environmental assessment for this proposed revision of Part 72, NUREG–1092, "Environmental Assessment for 10 CFR Part 72, Licensing Requirements for the Independent Storage of Spent Fuel and High-Level Radioactive Waste." NUREG–1092 discusses the major issues of the rule and the potential impact on the environment. The findings of the environmental assessment are "(1) past experience with water pool storage of spent fuel establishes the technology for long-term storage of spent fuel without affecting the health and safety of the public, (2) the proposed rulemaking to include the criteria of 10 CFR Part 72 for storing spent nuclear fuel and high-level radioactive waste does not significantly affect the environment, (3) solid high-level waste is comparable to spent fuel in its heat generation and in its radioactive material content on a per metric ton basis, and (4) knowledge of material degradation mechanisms under dry storage conditions and the ability to institute repairs in a reasonable manner without endangering the health [and safety] of the public shows dry storage technology options do not significantly impact the environment." The assessment concludes that, among other things, there are no significant environmental impacts as a result of promulgation of these revisions of 10 CFR Part 72.

Based on the above assessment the Commission concludes that the rulemaking action will not have a significant incremental environmental impact on the quality of the human environment.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 [44 U.S.C. 3501 *et seq.*]. These requirements were approved by the Office of Management and Budget approval number 3150–0132.

Regulatory Analysis

The NRC has prepared a regulatory analysis on this final rule. The analysis examines the benefits and alternatives considered by the NRC. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from C.W. Nilsen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301–492–3834).

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing and operation of independent spent fuel storage installations and of monitored retrievable storage installations. The owners of these installations, nuclear power plant utilities or DOE, do not fall within the scope of the definition of "small entities" set forth in section 601(3) of the Regulatory Flexibility Act or within the definition of "small business" in section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 19

Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Penalty, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 20

Byproduct material, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

10 CFR Part 21

Nuclear power plants and reactors, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 70

Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

10 CFR Part 73

Hazardous materials—transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 75

Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 150

Hazardous materials—transportation, Intergovernmental relations, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

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, 5 U.S.C. 552 and 553, and the Nuclear Waste Policy Act of 1982, as amended, the NRC is adopting the following revision to 10 CFR Part 72 and related conforming amendments to 10 CFR Parts 2, 19, 20, 21, 51, 70, 73, 75, and 150

1. 10 CFR Part 72 is revised to read as follows:

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

Subpart A—General Provisions

Sec.

Sec.

Subpart B—License Application, Form, and Contents

Subpart C—Issuance and Conditions of License

Subpart D—Records, Reports, Inspections, and Enforcement

Subpart E—Siting Evaluation Factors

Subpart F—General Design Criteria

Subpart G—Quality Assurance

Subpart H—Physical Protection

Subpart I—Training and Certification of Personnel

Subpart J—Provision of MRS Information to State Governments and Indian Tribes

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 (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 I 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)).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 72.8, 72.22, 72.24, 72.26, 72.28(d), 72.30, 72.32, 72.44 (a) (b) (1), (4), (5), (c), (d) (1), (2), (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.72 (b), (c), 72.74 (a) (b), 72.76, 72.78, 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140 (b), (c), 72.148, 72.154, 72.156, 72.160, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.184, 72.188 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 72.10 (a), (c), 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44 (a), (b) (1), (4), (5), (c), (d) (1), (2) (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.90 (a)–(d), (f), 72.92, 72.94, 72.98, 72.100, 72.102 (c), (d), (f), 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140 (b), (c), 72.142, 72.144, 72.146, 72.148, 72.150, 72.152, 72.154, 72.156, 72.158, 72.160, 72.162, 72.164, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.182, 72.184, 72.188, 72.190, 72.192, 72.194 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 72.10(e), 72.11, 72.16, 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44 (b)(3), (c)(5), (d)(3), (e), (f), 72.48 (b), (c), 72.50(b), 72.54 (a), (b), (c), 72.56, 72.70, 72.72, 72.74 (a), (b), 72.76(a), 72.78(a), 72.80, 72.82, 72.92(b), 72.94(b), 72.140 (b), (c), (d), 72.144(a), 72.146, 72.148, 72.150, 72.152, 72.154 (a), (b), 72.156, 72.160, 72.162, 72.168, 72.170, 72.172, 72.174, 72.176, 72.180, 72.184, 72.186, 72.192 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

Subpart A—General Provisions

§ 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 such licenses, including licenses to the U.S. Department of Energy (DOE) for the provision of not more than 1900 metric tons of spent fuel storage capacity at facilities not owned by the Federal Government on January 7, 1983 for the Federal interim storage program under Subtitle B—Interim Storage Program of the Nuclear Waste Policy Act of 1982 (NWPA). The regulations in this part also establish requirements, procedures, and criteria for the issuance of licenses to 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).

§ 72.2 Scope.

(a) Except as provided in § 72.6(b), licenses issued under this part are limited to the receipt, transfer, packaging, and possession of:

(1) Power reactor spent fuel to be stored in a complex that is designed and constructed specifically for storage of power reactor spent fuel aged for at least one year, and other radioactive materials associated with spent fuel storage in an independent spent fuel storage installation (ISFSI); or

(2) Power reactor spent fuel to be stored in a monitored retrievable storage installation (MRS) owned by DOE that is designed and constructed specifically for the storage of spent fuel aged for at leaat one year, high-level radioactive waste that is in a solid form, and other radioactive materials associated with spent fuel or high/level radioactive waste storage.

The term "Monitored Retrievable Storage Installation" or "MRS," as defined § 72.3, is derived from the NWPA and includes any installation that meets this definition.

(b) The regulations in this part pertaining to an independent spent fuel storage installation (ISFSI) apply to all persons in the United States, including persons in Agreement States. The regulations in this part pertaining to a monitored retrievable storage installation (MRS) apply only to DOE.

(c) The requirements of this regulation are applicable, as appropriate, to both wet and dry modes of storage of (1) spent fuel in an independent spent fuel storage installation (ISFSI) and (2) spent fuel and solid high-level radioactive waste in a monitored retrievable storage installation (MRS).

(d) Licenses covering the storage of spent fuel in an existing spent fuel storage installation shall be issued in accordance with the requirements of this part as stated in § 72.40, as applicable.

(e) As provided in section 135 of the Nuclear Waste Policy Act of 1982, Pub. L. 97-425, 96 Stat. 2201 at 2232 (42 U.S.C. 10155) the U.S. Department of Energy is not required to obtain a license under the regulations in this part to use available capacity at one or more facilities owned by the Federal Government on January 7, 1983, including the modification and expansion of any such facilities, for the storage of spent nuclear fuel from civilian nuclear power reactors.

§ 72.3 Definitions.

As used in this part:

"Act" means the Atomic Energy Act of 1954 (68 Stat. 919) including any amendments thereto.

"Affected Indian tribe" means any Indian tribe—

(1) Within whose reservation boundaries a monitored retrievable storage facility is proposed to be located;

(2) Whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties may be substantially and adversely affected by the locating of such a facility: *Provided*, That the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the tribe, that such effects are both substantial and adverse to the tribe.

"Affected unit of local government" means any unit of local government with jurisdiction over the site where an MRS is proposed to be located.

"As low as is reasonably achievable" (ALARA) means as low as is reasonably achievable taking into account the state of technology, and the economics of improvement in relation to—

(1) Benefits to the public health and safety,

(2) Other societal and socioeconomic considerations, and

(3) The utilization of atomic energy in the public interest.

"Atomic energy" means all forms of energy released in the course of nuclear fission or nuclear transformation.

"Byproduct material" means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

"Commencement of construction" means any clearing of land, excavation, or other substantial action that would adversely affect the natural environment of a site, but does not mean:

(1) Changes desirable for the temporary use of the land for public recreational uses, necessary borings or excavations to determine subsurface materials and foundation conditions, or other preconstruction monitoring to establish background information related to the suitability of the site or to the protection of environmental values;

(2) Construction of environmental monitoring facilities;

(3) Procurement or manufacture of components of the installation; or

(4) Construction of means of access to the site as may be necessary to accomplish the objectives of paragraphs (1) and (2) of this definition.

"Commission" means the Nuclear Regulatory Commission or its duly authorized representatives.

"Confinement systems" means those systems, including ventilation, that act as barriers between areas containing radioactive substances and the environment.

"Controlled area" means that area immediately surrounding an ISFSI or MRS for which the licensee exercises authority over its use and within which ISFSI or MRS operations are performed.

"Decommission" means to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of license.

"Design bases" means that information that identifies the specific functions to be performed by a structure, system, or component of a facility and the specific values or ranges of values chosen for controlling parameters as reference bounds for design. These values may be restraints derived from generally accepted "state-of-the-art" practices for achieving functional goals or requirements derived from analysis (based on calculation or experiments) of the effects of a postulated event under which a structure, system, or component must meet its functional goals. The values for controlling parameters for external events include: (1) Estimates of severe natural events to be used for deriving design bases that will be based on consideration of historical data on the associated parameters, physical data, or analysis of upper limits of the physical processes involved and (2) estimates of severe external man-induced events to be used for deriving design bases that will be based on analysis of human activity in the region taking into account the site characteristics and the risks associated with the event.

"Design capacity" means the quantity of spent fuel or high-level radioactive waste, the maximum burnup of the spent fuel in MWD/MTU, the curie content of the waste, and the total heat generation in BTU per hour that the storage installation is designed to accommodate.

"DOE" means the U.S. Department of Energy or its duly authorized representatives.

"Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands. Areas subject to a one percent or greater chance of flooding in any given year are included.

"High-level radioactive waste" or "HLW" means (1) the highly radioacive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations;

and (2) other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation.

"Historical data" means a compilation of the available published and unpublished information concerning a particular type of event.

"Independent spent fuel storage installation" or "ISFSI" means a complex designed and constructed for the interim storage of spent nuclear fuel and other radioactive materials associated with spent fuel storage. An ISFSI which is located on the site of another facility may share common utilities and services with such a facility and be physically connected with such other facility and still be considered independent: Provided, that such sharing of utilities and services or physical connections does not: (1) Increase the probability or consequences of an accident or malfunction of components, structures, or systems that are important to safety; or (2) reduce the margin of safety as defined in the basis for any technical specification of either facility.

"Indian Tribe" means an Indian tribe as defined in the Indian Self Determination and Education Assistance Act (Pub. L. 93–638).

"Monitored Retrievable Storage Installation" or "MRS" means a complex designed, constructed, and operated by DOE for the receipt, transfer, handling, packaging, possession, safeguarding, and storage of spent nuclear fuel aged for at least one year and solidified high-level radioactive waste resulting from civilian nuclear activities, pending shipment to a HLW repository or other disposal.

"NEPA" means the National Environmental Policy Act of 1969 including any amendments thereto.

"NWPA" means the Nuclear Waste Policy Act of 1982 including any amendments thereto.

"Person" means—

(1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission or the Department of Energy (DOE), except that the DOE shall be considered a person within the meaning of the regulations in this part to the extent that its facilities and activities are subject to the licensing and related regulatory authority of the Commission pursuant to section 202 of the Energy Reorganization Act of 1974, as amended (88 Stat. 1244), and Sections 131, 132, 133, 135, 137, and 141 of the Nuclear Waste Policy Act of 1982 (96 Stat. 2229, 2230, 2232, 2241);

(2) Any State, any political subdivision of a State, or any political entity within a State;

(3) Any foreign government or nation, or any political subdivision of any such government or nation, or other entity; and

(4) Any legal successor, representative, agent, or agency of the foregoing.

"Population" means the people that may be affected by the change in environmental conditions due to the construction, operation, or decommissioning of an ISFSI or MRS.

"Region" means the geographical area surrounding and including the site, which is large enough to contain all the features related to a phenomenon or to a particular event that could potentially impact the safe or environmentally sound construction, operation, or decommissioning of an independent spent fuel storage or monitored retrievable storage installation.

"Reservation" means—

(1) Any Indian reservation or dependent Indian community referred to in clause (a) or (b) of section 1151 of title 18, United States Code; or

(2) Any land selected by an Alaska Native village or regional corporation under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

"Site" means the real property on which the ISFSI or MRS is located.

"Source material" means—

(1) Uranium or thorium, or any combination thereof, in any physical or chemical form or

(2) Ores that contain by weight one-twentieth of one percent (0.05%) or more of:

(i) Uranium,

(ii) Thorium, or

(iii) Any combination thereof.

Source material does not include special nuclear material.

"Special nuclear material" means—

(1) Plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51 of the Act, determines to be special nuclear material, but does not include source material; or

(2) Any material artificially enriched by any of the foregoing but does not include source material.

"Spent Nuclear Fuel" or "Spent Fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, has undergone at least one year's decay since being used as a source of energy in a power reactor, and has not been chemically separated into its constituent elements by reprocessing. Spent fuel includes the special nuclear material, byproduct material, source material, and other radioactive materials associated with fuel assemblies.

"Structures, systems, and components important to safety" mean those features of the ISFSI or MRS whose function is:

(1) To maintain the conditions required to store spent fuel or high-level radioactive waste safely,

(2) To prevent damage to the spent fuel or the high-level radioactive waste container during handling and storage, or

(3) To provide reasonable assurance that spent fuel or high-level radioactive waste can be received, handled, packaged, stored, and retrieved without undue risk to the health and safety of the public.

§ 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 Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Communications, reports, and applications may be delivered in person at the Commission's Offices at 11555 Rockville Pike, Rockville, Maryland, or at 1717 H Street NW., Washington, DC.

§ 72.5 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by an officer or employee of the Commission, other than a written interpretation by the General Counsel, will be recognized to be binding upon the Commission.

§ 72.6 License required; types of licenses.

(a) Licenses for the receipt, handling, storage, and transfer of spent fuel or high-level radioactive waste are of two types: general and specific. Any general license provided in this part is effective without the filing of an application with the Commission or the issuance of a licensing document to a particular person. A specific license is issued to a named person upon application filed pursuant to regulations in this part.

(b) A general license is hereby issued to receive title to and own spent fuel or high-level radioactive waste without regard to quantity. Notwithstanding any other provision of this chapter, a general licensee under this paragraph is not authorized to acquire, deliver, receive,

possess, use, or transfer spent fuel or high-level radioactive waste except as authorized in a specific license.

(c) Except as authorized in a specific license issued by the Commission in accordance with the regulations in this part, no person may acquire, receive, or possess—

(1) Spent fuel for the purpose of storage in an ISFSI; or

(2) Spent fuel, high-level radioactive waste, or radioactive material associated with high-level radioactive waste for the purpose of storage in an MRS.

§ 72.7 Specific exemptions.

The Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

§ 72.8 Denial of licensing by Agreement States.

Agreement States may not issue licenses covering the storage of spent fuel in an ISFSI or the storage of spent fuel and high-level radioactive waste in an MRS.

§ 72.9 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). OMB has approved the information collection requirements contained in this part under control number 3150–0132.

(b) The approved information collection requirements contained in this part appear in §§ 72.16, 72.22 through 72.34, 72.42, 72.44, 72.48 through 72.56, 72.62, 72.70 through 72.82, 72.90, 72.92, 72.94, 72.98, 72.100, 72.102, 72.104, 72.108, 72.120, 72.126, 72.140 through 72.176 72.180 through 72.186, and 72.192.

§ 72.10 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, and privileges of employment. The protected activities are established in section 210 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act.

(1) The protected activities include but are not limited to—

(i) Providing the Commission information about possible violations of requirements imposed under either of the above statutes;

(ii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements; or

(iii) Testifying in any Commission proceeding.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in the protected activities specified in paragrph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 30 days after an alleged violation occurs by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraph (a) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e)(1) Each licensee and each applicant shall post Form NRC–3, "Notice to Employees," on its premises. Posting must be at location sufficient to permit employees protected by this section to observe all copy on the way to or from their place of work. Premises must be posted no later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

(2) Copies of Form NRC–3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix A, Part 73 of this chapter or the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

§ 72.11 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

Subpart B—License Application, Form, and Contents

§ 72.16 Filing of application for specific license.

(a) *Place of filing.* Each application for a license, or amendment thereof, under

this part should be filed with the Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Applications, communications, reports, and correspondence may also be delivered in person at the Commission's offices at 11555 Rockville Pike, Rockville, Maryland, or at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

(b) *Oath or affirmation.* Each application for a license or license amendment (including amendments to such applications), except for those filed by DOE, must be executed in an original signed by the applicant or duly authorized officer thereof under oath or affirmation. Each application for a license or license amendment (including amendments to such applications) filed by DOE must be signed by the Secretary of Energy or the Secretary's authorized representative.

(c) *Number of copies of application.* Each filing of an application for a license or license amendment under this part (including amendments to such applications) must include, in addition to a signed original, 15 copies of each portion of such application, safety analysis report, environmental report, and any amendments. Another 125 copies shall be retained by the applicant for distribution in accordance with instruction from the Director or the Director's designee.

(d) *Fees.* The application, amendment, and renewal fees applicable to a license covering the storage of spent fuel in an ISFSI are those shown in § 170.31 of this chapter.

(e) *Notice of docketing.* Upon receipt of an application for a license or license amendment under this part, the Director, Office of Nuclear Material Safety and Safeguards or the Director's designee will assign a docket number to the application, notify the applicant of the docket number, instruct the applicant to distribute copies retained by the applicant in accordance with paragraph (c) of this section, and cause a notice of docketing to be published in the **Federal Register.** The notice of docketing shall identify the site of the ISFSI or the MRS by locality and State and may include a notice of hearing or a notice of proposed action and opportunity for hearing as provided by § 72.46 of this part. In the case of an application for a license or an amendment to a license for an MRS, the Director, Office of Nuclear Material Safety and Safeguards, or the Director's designee, in accordance with § 72.200 of this part, shall send a copy of the notice of docketing to the Governor and legislature of any State in which an MRS is or may be located, to the Chief Executive of the local municipality, to the Governors of any contiguous States and to the governing body of any affected Indian tribe.

§ 72.10 Elimination of repetition.

In any application under this part, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the Commission: Provided, That such references are clear and specific.

§ 72.20 Public inspection of application.

Applications and documents submitted to the Commission in connection with applications may be made available for public inspection in accordance with provisions of the regulations contained in Parts 2 and 9 of this chapter.

§ 72.22 Contents of application: General and financial information.

Each application must state:

(a) Full name of applicant;

(b) Address of applicant;

(c) Description of business or occupation of applicant;

(d) If applicant is:

(1) An individual: Citizenship and age;

(2) A partnership: Name, citizenship, and address of each partner and the principal location at which the partnership does business;

(3) A corporation or an unincorporated association:

(i) The State in which it is incorporated or organized and the principal location at which it does business; and

(ii) The names, addresses, and citizenship of its directors and principal officers;

(4) Acting as an agent or representative of another person in filing the application: The identification of the principal and the information required under this paragraph with respect to such principal.

(5) The Department of Energy:

(i) The identification of the DOE organization responsible for the construction and operation of the ISFSI or MRS, including a description of any delegations of authority and assignments of responsibilities.

(ii) For each application for a license for an MRS, the provisions of the public law authorizing the construction and operation of the MRS.

(e) Except for DOE, information sufficient to demonstrate to the Commission the financial qualifications of the applicant to carry out, in accordance with the regulations in this chapter, the activities for which the license is sought. The information must state the place at which the activity is to be performed, the general plan for carrying out the activity, and the period of time for which the license is requested. The information must show that the applicant either possesses the necessary funds, or that the applicant has reasonable assurance of obtaining the necessary funds or that by a combination of the two, the applicant will have the necessary funds available to cover the following:

(1) Estimated construction costs;

(2) Estimated operating costs over the planned life of the ISFSI; and

(3) Estimated decommissioning costs, and the necessary financial arrangements to provide reasonable assurance prior to licensing that decommissioning will be carried out after the removal of spent fuel and/or high-level radioactive waste from storage.

§ 72.24 Contents of application: Technical information.

Each application for a license under this part must include a Safety Analysis Report describing the proposed ISFSI or MRS for the receipt, handling, packaging, and storage of spent fuel or high-level radioactive waste, including how the ISFSI or MRS will be operated. The minimum information to be included in this report must consist of the following:

(a) A description and safety assessment of the site on which the ISFSI or MRS is to be located, with appropriate attention to the design bases for external events. Such assessment must contain an analysis and evaluation of the major structures, systems, and components of the ISFSI or MRS that bear on the suitability of the site when the ISFSI or MRS is operated at its design capacity. If the proposed ISFSI or MRS is to be located on the site of a nuclear power plant or other licensed facility, the potential interactions between the ISFSI or MRS and such other facility must be evaluated.

(b) A description and discussion of the ISFSI or MRS structures with special attention to design and operating characteristics, unusual or novel design features, and principal safety considerations.

(c) The design of the ISFSI or MRS in sufficient detail to support the findings in § 72.40, including:

(1) The design criteria for the ISFSI or MRS pursuant to Subpart F of this part, with identification and justification for any additions to or departures from the general design criteria;

(2) the design bases and the relation of the design bases to the design criteria;

(3) Information relative to materials of construction, general arrangement, dimensions of principal structures, and descriptions of all structures, systems, and components important to safety, in sufficient detail to support a finding that the ISFSI or MRS will satisfy the design bases with an adequate margin for safety; and

(4) Applicable codes and standards.

(d) An analysis and evaluation of the design and performance of structures, systems, and components important to safety, with the objective of assessing the impact on public health and safety resulting from operation of the ISFSI or MRS and including determination of:

(1) The margins of safety during normal operations and expected operational occurrences during the life of the ISFSI or MRS; and

(2) The adequacy of structures, systems, and components provided for the prevention of accidents and the mitigation of the consequences of accidents, including natural and manmade phenomena and events.

(e) The means for controlling and limiting occupational radiation exposures within the limits given in Part 20 of this chapter, and for meeting the objective of maintaining exposures as low as is reasonably achievable.

(f) The features of ISFSI or MRS design and operating modes to reduce to the extent practicable radioactive waste volumes generated at the installation.

(g) An identification and justification for the selection of those subjects that will be probable license conditions and technical specifications. These subjects must cover the design, construction, preoperational testing, operation, and decommissioning of the ISFSI or MRS.

(h) A plan for the conduct of operations, including the planned managerial and administrative controls system, and the applicant's organization, and program for training of personnel pursuant to Subpart I.

(i) If the proposed ISFSI or MRS incorporates structures, systems, or components important to safety whose functional adequacy or reliability have not been demonstrated by prior use for that purpose or cannot be demonstrated by reference to performance data in related applications or to widely accepted engineering principles, an identification of these structures, systems, or components along with a schedule showing how safety questions will be resolved prior to the initial receipt of spent fuel or high-level radioactive waste for storage at the ISFSI or MRS.

(j) The technical qualifications of the applicant to engage in the proposed activities, as required by § 72.28.

(k) A description of the applicant's plans for coping with emergencies, as required by § 72.32.

(l) A description of the equipment to be installed to maintain control over radioactive materials in gaseous and liquid effluents produced during normal operations and expected operational occurrences. The description must identify the design objectives and the means to be used for keeping levels of radioactive material in effluents to the environment as low as is reasonably achievable and within the exposure limits stated in § 72.104. The description must include:

(1) An estimate of the quantity of each of the principal radionuclides expected to be released annually to the environment in liquid and gaseous effluents produced during normal ISFSI or MRS operations;

(2) A description of the equipment and processes used in radioactive waste systems; and

(3) A general description of the provisions for packaging, storage, and disposal of solid wastes containing radioactive materials resulting from treatment of gaseous and liquid effluents and from other sources.

(m) An analysis of the potential dose equivalent or committed dose equivalent to an individual outside the controlled area from accidents or natural phenomena events that result in the release of radioactive material to the environment or direct radiation from the ISFSI or MRS. The calculations of individual dose equivalent or committed dose equivalent must be performed for direct exposure, inhalation, and ingestion occurring as a result of the postulated design basis event.

(n) A description of the quality assurance program that satisfies the requirements of Subpart G to be applied to the design, fabrication, construction, testing, operation, modification, and decommissioning of the structures, systems, and components of the ISFSI or MRS important to safety. The description must identify the structures, systems, and components important to safety. The program must also apply to managerial and administrative controls used to ensure safe operation of the ISFSI or MRS.

(o) A description of the detailed security measures for physical protection, including design features and the plans required by Subpart H. For an application from DOE for an ISFSI or MRS, DOE will provide a description of the physical security plan for protection against radiological sabotage as required by Subpart H. An application submitted by DOE for an ISFSI or MRS must include a certification that it will provide at the ISFSI or MRS such safeguards as it requires at comparable surface DOE facilities to promote the common defense and security.

(p) A description of the program covering preoperational testing and initial operations.

(q) A description of the decommissioning plan required under § 72.30.

§ 72.26 Contents of application: Technical specifications.

Each application under this part shall include proposed technical specifications in accordance with the requirements of § 72.44 and a summary statement of the bases and justifications for these technical specifications.

§ 72.28 Contents of application: Applicant's technical qualifications.

Each application under this part must include:

(a) The technical qualifications, including training and experience, of the applicant to engage in the proposed activities;

(b) A description of the personnel training program required under Subpart I;

(c) A description of the applicant's operating organization, delegations of responsibility and authority and the minimum skills and experience qualifications relevant to the various levels of responsibility and authority; and

(d) A commitment by the applicant to have and maintain an adequate complement of trained and certified installation personnel prior to the receipt of spent fuel or high-level radioactive waste for storage.

§ 72.30 Decommissioning planning, including financing and recordkeeping.

(a) Each application under this part must include a proposed decommissioning plan that contains sufficient information on proposed practices and procedures for the decontamination of the site and facilities and for disposal of residual radioactive materials after all spent fuel or high-level radioactive waste has been removed, in order to provide reasonable assurance that the decontamination and decommissioning of the ISFSI or MRS at the end of its useful life will provide adequate protection to the health and safety of the public. This plan must identify and discuss those design features of the ISFSI or MRS that facilitate its decontamination and

decommissioning at the end of its useful life.

(b) The decommissioning funding plan must contain information on how reasonable assurance will be provided that funds will be available to decommission the ISFSI or MRS. This information must include a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (c) of this section, including means of adjusting cost estimates and associated funding levels periodically over the life of the ISFSI or MRS.

(c) Financial assurance for decommissioning must be provided by one or more of the following methods:

(1) *Prepayment.* Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(2) *A surety method, insurance, or other guarantee method.* These methods guarantee that decommissioning costs will be paid should the licensee default. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix A of 10 CFR Part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

(i) The surety method or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the Commission, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Commission withing 30 days after receipt of notification or cancellation.

(ii) The surety method or insurance must be payable to a trust established for decomissioning costs. The trustee and trust must be acceptable to the Commission. An acceptable trustee includes an appropriate State or Federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(iii) The surety or insurance must remain in effect until the Commission has terminated the license.

(3) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund establishing and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provision must be as stated in paragraph (c)(2) of this section.

(4) In the case of Federal, State, or local government licensees, a statement of intent containing a cost estimate for decommissioning, and indicating that funds for decommissioning will be obtained when necessary.

(5) In the case of electric utility licensees, the methods of § 50.75(e) (1) and (3) of this chapter.

(d) Each licensee shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the Commission. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the Commission considers important to decommissioning consists of—

(1) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms, and concentrations.

(2) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

(3) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

§ 72.32 Emergency plan.

(a) [Reserved]

(b) [Reserved]

(c) For an ISFSI that is located on the site of a nuclear power reactor licensed for operation by the Commission, the emergency plan required by 10 CFR 50.47 shall be deemed to satisfy the requirements of this section.

§ 72.34 Environmental report.

Each application for an ISFSI or MRS license under this part must be accompanied by an Environmental Report which meets the requirements of Subpart A of Part 51 of this chapter.

Subpart C—Issuance and Conditions of License

§ 72.40 Issuance of license.

(a) Except as provided in paragraph (c) of this section, the Commission will issue a license under this part upon a determination that the application for a license meets the standards and requirements of the Act and the regulations of the Commission, and upon finding that:

(1) The applicant's proposed ISFSI or MRS design complies with Subpart F;

(2) The proposed site complies with the criteria in Subpart E;

(3) If on the site of a nuclear power plant or other licensed activity or facility, the proposed ISFSI would not pose an undue risk to the safe operation of such nuclear power plant or other licensed activity or facility;

(4) The applicant is qualified by reason of training and experience to conduct the operation covered by the regulations in this part;

(5) The applicant's proposed operating procedures to protect health and to minimize danger to life or property are adequate;

(6) Except for DOE, the applicant for an ISFSI or MRS is financially qualified to engage in the proposed activities in

accordance with the regulations in this part;

(7) The applicant's quality assurance plan complies with Subpart G;

(8) The applicant's physical protection provisions comply with Subpart H. DOE has complied with the safeguards and physical security provisions identified in § 72.24(o);

(9) The applicant's personnel training program complies with Subpart I;

(10) Except for DOE, the applicant's decommissioning plan and its financing pursuant to § 72.30 provide reasonable assurance that the decontamination and decommissioning of the ISFSI or MRS at the end of its useful life will provide adequate protection to the health and safety of the public;

(11) The applicant's emergency plan complies with § 72.32;

(12) The applicable provisions of Part 170 of this chapter have been satisfied;

(13) There is reasonable assurance that: (i) The activities authorized by the license can be conducted without endangering the health and safety of the public and (ii) these activities will be conducted in compliance with the applicable regulations of this chapter; and

(14) The issuance of the license will not be inimical to the common defense and security.

(b) Grounds for denial of a license to store spent fuel in the proposed ISFSI or to store spent fuel and high-level radioactive waste in the proposed MRS may be the commencement of construction prior to (1) a finding by the Director, Office of Nuclear Materials Safety and Safeguards or designee or (2) a finding after a public hearing by the presiding officer, Atomic Safety and Licensing Board, Atomic Safety and Licensing Appeal Board, or the Commission acting as a collegial body, as appropriate, that the action called for is the issuance of the proposed license with any appropriate conditions to protect environmental values. This finding is to be made on the basis of information filed and evaluations made pursuant to Subpart A of Part 51 of this chapter or in the case of an MRS on the basis of evaluations made pursuant to sections 141(c) and (d) or 148(a) and (c) of NWPA (96 Stat. 2242, 2243, 42 U.S.C. 10161(c), (d); 101 Stat. 1330–235, 1330–236, 42 U.S.C. 10168(a), (c)), as appropriate, and after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives.

(c) For facilities that have been covered under previous licensing actions including the issuance of a construction permit under Part 50 of this chapter, a reevaluation of the site is not required except where new information is discovered which could alter the original site evaluation findings. In this case, the site evaluation factors involved will be reevaluated.

§ 72.42 Duration of license; renewal.

(a) Each license issued under this part must be for a fixed period of time to be specified in the license. The license term for an ISFSI must not exceed 20 years from the date of issuance. The license term for an MRS must not exceed 40 years from the date of issuance. Licenses for either type of installation may be renewed by the Commission at the expiration of the license term upon application by the licensee and pursuant to the requirements of this rule.

(b) Applications for renewal of a license should be filed in accordance with the applicable provisions of Subpart B at least two years prior to the expiration of the existing license. Information contained in previous applications, statements, or reports filed with the Commission under the license may be incorporated by reference: Provided, that such references are clear and specific.

(c) In any case in which a licensee, not less than two years prior to expiration of its existing license, has filed an application in proper form for renewal of a license, the existing license shall not expire until a final decision concerning the application for renewal has been made by the Commission.

§ 72.44 License conditions.

(a) Each license issued under this part shall include license conditions. The license conditions may be derived from the analyses and evaluations included in the Safety Analysis Report and amendments thereto submitted pursuant to § 72.24. License conditions pertain to design, construction and operation. The Commission may also include additional license conditinns as it finds appropriate.

(b) Each license issued under this part shall be subject to the following conditions, even if they are not explicitly stated therein:

(1) Neither the license nor any right thereunder shall be transferred, assigned, or disposed of in any manner, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Atomic Energy Act of 1954, as amended, and give its consent in writing.

(2) The license shall be subject to revocation, suspension, modification, or amendment in accordance with the procedures provided by the Atomic Energy Act of 1954, as amended, and Commission regulations.

(3) Upon request of the Commission, the licensee shall, at any time before expiration of the license, submit written statements, signed under oath or affirmation if appropriate, to enable the Commission to determine whether or not the license should be modified, suspended, or revoked.

(4) Prior to the receipt of spent fuel for storage at an ISFSI or the receipt of spent fuel and high-level radioactive waste for storage at an MRS, the licensee shall have in effect an NRC-approved program covering the training and certification of personnel that meets the requirements of Subpart I.

(5) The license shall permit the operation of the equipment and controls that are important to safety of the ISFSI or the MRS only by personnel whom the licensee has certified as being adequately trained to perform such operations, or by uncertified personnel who are under the direct visual supervision of a certified individual.

(6)(i) Each licensee shall notify the appropriate NRC Regional Administrator, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title II (Bankruptcy) of the United States Code by or against:

(A) The licensee;

(B) An entity (as that term is defined in 11 U.S.C. 101(14)) controlling the licensee or listing the license or licensee as property of the estate; or

(C) An affiliate (as that term is defined in 11 U.S.C. 101(2)) of the licensee.

(ii) This notification must indicate:

(A) The bankruptcy court in which the petition for bankruptcy was filed; and

(B) Tha date of the filing of the petition.

(c) Each license issued under this part must include technical specifications. Technical specifications must include requirements in the following categories:

(1) *Functional and operating limits and monitoring instruments and limiting control settings.*

(i) Functional and operating limits for an ISFSI or MRS are limits on fuel or waste handling and storage conditions that are found to be necessary to protect the integrity of the stored fuel or waste container, to protect employees against occupational exposures and to guard against the uncontrolled release of radioactive materials; and

(ii) Monitoring instruments and limiting control settings for an ISFSI or MRS are those related to fuel or waste handling and storage conditions having significant safety functions.

(2) *Limiting conditions.* Limiting conditions are the lowest functional capability or performance levels of equipment required for safe operation.

(3) *Surveillance requirements.* Surveillance requirements include:

(i) Inspection and monitoring of spent fuel or high-level radioactive waste in storage;

(ii) inspection, test and calibration activities to ensure that the necessary integrity of required systems and components is maintained;

(iii) confirmation that operation of the ISFSI or MRS is within the required functional and operating limits; and

(iv) confirmation that the limiting conditions required for safe storage are met.

(4) *Design features.* Design features include items that would have a significant effect on safety if altered or modified, such as materials of construction and geometric arrangements.

(5) *Administrative controls.* Administrative controls include the organization and management procedures, recordkeeping, review and audit, and reporting necessary to assure that the operations involved in the storage of spent fuel in an ISFSI and the storage of spent fuel and high-level radioactive waste in an MRS are performed in a safe manner.

(d) Each license authorizing the receipt, handling, and storage of spent fuel or high-level radioactive waste under this part must include technical specifications that, in addition to stating the limits on the release of radioactive materials for compliance with limits of Part 20 of this chapter and the "as low as is reasonably achievable" objectives for effluents, require that:

(1) Operating procedures for control of effluents be established and followed, and equipment in the radioactive waste treatment systems be maintained and used, to meet the requirements of § 72.104;

(2) An environmental monitoring program be established to ensure compliance with the technical specifications for effluents; and

(3) An annual report be submitted to the appropriate regional office specified in Appendix A of Part 73 of this chapter, with a copy to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 60 days after January 1 of each year, 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 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.

(e) The licensee shall make no change that would decrease the effectiveness of the physical security plan prepared pursuant to § 72.180 without the prior approval of the Commission. A licensee desiring to make such a change shall submit an application for an amendment to the license pursuant to § 72.56. A licensee may make changes to the physical security plan without prior Commission approval, provided that such changes do not decrease the effectiveness of the plan. The licensee shall furnish to the Commission a report containing a description of each change within two months after the change is made, and shall maintain records of changes to the plan made without prior Commission approval for a period of 3 years from the date of the change.

(f) A licensee shall follow and maintain in effect an emergency plan that is approved by the Commission. The licensee may make changes to the approved plan without Commission approval only if such changes do not decrease the effectiveness of the plan. Within six months after any change is made, the licensee shall submit a report containing a description of any changes made in the plan to the appropriate NRC Regional Office specified in Appendix A to Part 73 of this chapter with a copy to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Proposed changes that decrease the effectiveness of the approved emergency plan must not be implemented unless the licensee has received prior approval of such changes from the Commission.

(g) A license issued to DOE under this part for an MRS authorized by section 142(b) of NWPA (101 Stat. 1330-232, 42 U.S.C. 10162(b)) must include the following conditions:

(1) Construction of the MRS may not begin until the Commission has authorized the construction of a repository under section 114(d) of NWPA (96 Stat. 2215, as amended by 101 Stat. 1330-230, 42 U.S.C. 10134(d)) and Part 60 of this chapter;

(2) Construction of the MRS or acceptance of spent nuclear fuel or high-level radioactive waste at the MRS is prohibited during such time as the repository license is revoked by the Commission or construction of the repository ceases;

(3) The quantity of spent nuclear fuel or high-level radioactive waste at the site of the MRS at any one time may not exceed 10,000 metric tons of heavy metal until a repository authorized under NWPA and Part 60 of this chapter first accepts spent nuclear fuel or solidified high-level radioactive waste; and

(4) The quantity of spent nuclear fuel or high-level radioactive waste at the site of the MRS at any one time may not exceed 15,000 metric tons of heavy metal.

§ 72.46 Public hearings.

(a) In connection with each application for a license under this part, the Commission shall issue or cause to be issued a notice of proposed action and opportunity for hearing in accordance with § 2.105 or § 2.1107 of this chapter, as appropriate, or, if the Commission finds that a hearing is required in the public interest, a notice of hearing in accordance with § 2.104 of this chapter.

(b)(1) In connection with each application for an amendment to a license under this part, the Commission shall, except as provided in paragraph (b)(2) of this section, issue or cause to be issued a notice of proposed action and opportunity for hearing in accordance with § 2.105 or § 2.1107 of this chapter, as appropriate, or, if the Commission finds that a hearing is required in the public interest, a notice of hearing in accordance with § 2.104 of this chapter.

(2) The Director, Office of Nuclear Material Safety and Safeguards, or the Director's designee may dispense with a notice of proposed action and opportunity for hearing or a notice of hearing and take immediate action on an amendment to a license issued under this part upon a determination that the amendment does not present a genuine issue as to whether the health and safety of the public will be significantly affected. After taking the action, the Director or the Director's designee shall promptly publish a notice in the **Federal Register** of the action taken and of the right of interested persons to request a hearing on whether the action should be rescinded or modified. If the action taken amends an MRS license, the Director or the Director's designee shall also inform the appropriate State and local officials.

(c) The notice of proposed action and opportunity for hearing or the notice of hearing may be included in the notice of docketing required to be published by § 72.16 of this part.

(d) If no request for a hearing or petition for leave to intervene is filed within the time prescribed in the notice of proposed action and opportunity for hearing, the Director, Office of Nuclear Material Safety and Safeguards or the Director's designee may take the proposed action, and thereafter shall promptly inform the appropriate State and local officials and publish a notice in the Federal Register of the action taken. In accordance with § 2.764(c) of this chapter, the Director, Office of Nuclear Material Safety and Safeguards shall not issue an initial licenae for the construction and operation of an ISFSI or an MRS until expresaly authorized to do so by the Commission.

§ 72.48 Changes, tests, and experiments.

(a)(1) The holder of a license issued under this part may:

(i) Make changs in the ISFSI or MRS described in the Safety Analysis Report,

(ii) Make changes in the procedures described in the Safety Analysis Report, or

(iii) Conduct tests or experimenta not described in the Safety Analysis Report, without prior Commission approval, unless the proposed change, test or experiment involves a change in the license conditions incorporated in the license, an unreviewed safety question, a significant increase in occupational exposure or a significant unreviewed enviromental impact.

(2) A proposed change, test, or experiment shall be deemed to involve an unreviewed safety question—

(i) If the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the Safety Analysis Report may be increased;

(ii) If a possibility for an accident or malfunction of a different type than any evaluated previously in the Safety Analysis Report may be created; or

(iii) If the margin of safety as defined in the basis for any technical specification is reduced.

(b)(1) The licensee shall maintain records of changes in the ISFSI or MRS and of changes in procedures made pursuant to this section if these changes constitute changes in the ISFSI or MRS or procedures described in the Safety Analysis Report. The licensee shall also maintain records of tests and experiments carried out pursuant to paragraph (a) of this section. These records must include a written safety evaluation that provides the bases for the determination that the change, test, or experiment does not involve an unreviewed safety question. The records of changes in the ISFSI or MRS and of changes in procedures and records of tests must be maintained until the Commission terminates the license.

(2) Annually, or at such shorter interval as may be specified in the license, the licensee shall furnish to the appropriate regional office, specified in Appendix A of Part 73 of this chapter, with a copy to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, a report containing a brief description of changes, testa, and experiments made under paragraph (a) of the section, including a summary of the safety evaluation of each. Any report submitted by a licensee pursuant to this paragraph will be made a part of the public record pertaining to this license.

(c) The holder of a license issued under this part who desires—

(1) To make changes in the ISFSI or MRS or the procedures as described in the Safety Analysis Report, or to conduct tests or experiments not described in the Safety Analysis Report, that involve an unreviewed safety question, a significant increase in occupational exposure, or significant unreviewed environmental impact, or

(2) To change the license conditions shall submit an application for amendment of the license, pursuant to § 72.56.

§ 72.50 Transfer of license.

(a) No license or any part included in a license issued under this part for an ISFSI or MRS shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing.

(b)(1) An application for transfer of a license must include as much of the information described in §§ 72.22 and 72.28 with respect to the identity and the technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license. The application must also inciude a statement of the purposes for which the transfer of the license is requested and the nature of the transaction necessitating or making desirable the transfer of the license.

(2) Thc Commission may require any person who submits an application for the transfer of a license pursuant to the provisions of this section to file a written consent from the existing licensee, or a certified copy of an order or judgment of a court of competent jurisdiction, attesting to the person's right—subject to the licensing requirements of the Act and these regulations—to possession of the radioactive materials and the storage installation involved.

(c) After appropriate notice to interested persons, including the existing licensee, and observance of such procedures as may be required by the Act or regulations or orders of the Commission, the Commission will approve an application for the transfer of a license, if the Commission determines that:

(1) The proposed transferee is qualified to be the holder of the license; and

(2) Transfer of the license is consistent with applicable provisions of the law, and the regulations and orders iasued by the Commission.

§ 72.52 Creditor regulations.

(a) This section does not apply to an ISFSI or MRS constructed and operated by DOE.

(b) Pursuant to section 184 of the Act, the Commission consents, without individual application, to the creation of any mortgage, pledge, or other lien on special nuclear material contained in spent fuel not owned by the United States that is the subject of a license or on any interest in special nuclear material in apent fuel; Provided:

(1) That the rights of any creditor so secured may be exercised only in compliance with and subject to the same requirements and restrictions aa would apply to the licensee pursuant to the provisions of the license, the Atomic Energy Act of 1954, as amended, and regulations issued by the Commission pursuant to said Act; and

(2) That no creditor so secured may take possession of the spent fuel pursuant to the provisions of this section prior to either the issuance of a license from the Commission authorizing possession or the transfer of the license.

(c) Any creditor so secured may apply for transfer of the license covering spent fuel by filing an application for transfer of the license pursuant to § 72.50(b). The Commission will act upon the application pursuant to § 72.50(c).

(d) Nothing contained in this regulation shall be deemed to affect the means of acquiring, or the priority of, any tax lien or other lien provided by law.

(e) As used in this section, "creditor" includes, without implied limitation, the trustee under any mortgage, pledge, or

lien on spent fuel in storage made to secure any creditor; any trustee or receiver of spent fuel appointed by a court of competent jurisdiction in any action brought for the benefit of any creditor secured by such mortgage, pledge, or lien; any purchaser of the spent fuel at the sale thereof upon foreclosure of the mortgage, pledge, or lien or upon exercise of any power of sale contained therein; or any assignee of any such purchaser.

§ 72.54 Application for termination of license.

(a) Any licensee may apply to the Commission for authority to surrender a license voluntarily and to decommission the ISFSI or MRS. This application must be made within two years following permanent cessation of operations, and in no case later than one year prior to expiration of the license. Each application for termination of license must be accompanied, or preceded, by a proposed final decommissioning plan.

(b) The proposed final decommissioning plan must include—

(1) The choice of the alternative for decommissioning with a description of activities involved. An alternative is acceptable if it provides for completion of decommissioning without significant delay. Consideration will be given to an alternative which provides for delayed completion of decommissioning only when necessary to protect the public health and safety. Factors to be considered in evaluating an alternative which provides for delayed completion of decommissioning include unavailability of waste disposal capacity and other site specific factors affecting the licensee's capability to carry out decommissioning safely, including presence of other nuclear facilities at the site.

(2) A description of controls and limits on procedures and equipment to protect occupational and public health and safety;

(3) A description of the planned final radiation survey; and

(4) An updated detailed cost estimate for the chosen alternative for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and plan for assuring the availability of adequate funds for completion of decommissioning including means for adjusting cost estimates and associated funding levels over any storage or surveillance period.

(5) A description of technical specifications and quality assurance provisions in place during decommissioning.

(c) For final decommissioning plans in which the major dismantlement activities are delayed by first placing the ISFSI or MRS in storage, planning for these delayed activities may be less detailed. Updated detailed plans must be submitted and approved prior to the start of such activities.

(d) If the final decommissioning plan demonstrates that the decommissioning will be performed in accordance with the regulations in this chapter and will not be inimical to the common defense and security or to the health and safety of the public, and after notice to interested persons, the Commission will approve the plan subject to such conditions and limitations as it deems appropriate and necessary and issue an order authorizing the decommissioning.

(e) The Commission will terminate the license if it determines that—

(1) The decommissioning has been performed in accordance with the approved final decommissioning plan and the order authorizing decommissioning; and

(2) The terminal radiation survey and associated documentation demonstrates that the ISFSI or MRS and site are suitable for release for unrestricted use.

§ 72.56 Application for amendment of license.

Whenever a holder of a license desires to amend the license, an application for an amendment shall be filed with the Commission fully describing the changes desired and the reasons for such changes, and following as far as applicable the form prescribed for original applications.

§ 72.58 Issuance of amendment.

In determining whether an amendment to a license will be issued to the applicant, the Commission will be guided by the considerations that govern the issuance of initial licenses.

§ 72.60 Modification, revocation, and suspension of license.

(a) The terms and conditions of all licenses are subject to amendment, revision, or modification by reason of amendments to the Atomic Energy Act of 1954, as amended, or by reason or rules, regulations, or orders issued in accordance with the Act or any amendments thereto.

(b) Any license may be modified, revoked, or suspended in whole or in part for any of the following:

(1) Any material false statement in the application or in any statement of fact required under section 182 of the Act;

(2) Conditions revealed by the application or statement of fact or any report, record, inspection or other means which would warrant the Commission to refuse to grant a license on an original application;

(3) Failure to operate an ISFSI or MRS in accordance with the terms of the license;

(4) Violation of, or failure to observe, any of the terms and conditions of the Act, or of any applicable regulation, license, or order of the Commission.

(c) Upon revocation of a license, the Commission may immediately cause the retaking of possession of all special nuclear material contained in spent fuel held by the licensee. In cases found by the Commission to be of extreme importance to the national defense and security or to the health and safety of the public, the Commission prior to following any of the procedures provided under sections 551–558 of Title 5 of the United States Code, may cause the taking of possession of any special nuclear material contained in spent fuel held by the licensee.

§ 72.62 Backfitting.

(a) As used in this section, "backfitting" means the addition, elimination, or modification, after the license has been issued, of:

(1) Structures, systems, or components of an ISFSI or MRS, or

(2) Procedures or organization required to operate an ISFSI or MRS.

(b) The Commission will require backfitting of an ISFSI or MRS if it finds that such action is necessary to assure adequate protection to occupational or public health and safety, or to bring the ISFSI or MRS into compliance with a license or the rules or orders of the Commission, or into conformance with written commitments by a licensee.

(c) The Commission may require the backfitting of an ISFSI or MRS if it finds:

(1) That there is a substantial increase in the overall protection of the occupational or public health and safety to be derived from the backfit, and

(2) That the direct and indirect costs of implementation for that ISFSI or MRS are justified in view of this increased protection.

(d) The Commission may at any time require a holder of a license to submit such information concerning the backfitting or the proposed backfitting of an ISFSI or MRS as it deems appropriate.

Subpart D—Records, Reports, Inspections, and Enforcement

§ 72.70 Safety analysis report updating.

(a) The design, description of planned operations, and other information submitted in the Safety Analysis Report shall be updated by the licensee and

submitted to the Commission at least once every six months after issuance of the license during final design and construction, until preoperational testing is completed, with final Safety Analysis Report completion and submittal to the Commission at least 90 days prior to the planned receipt of spent fuel or high-level radioactive waste. The final submittal must include a final analysis and evaluation of the design and performance of structures, systems, and components that are important to safety taking into account any pertinent information developed since the submittal of the license application.

(b) After the first receipt of spent fuel or high-level radioactive waste for storage, the Safety Analysis Report must be updated annually and submitted to the Commission by the licensee. This submittal must include the following:

(1) New or revised information relating to applicable site evaluation factors, including the results of environmental monitoring programs.

(2) A description and analysis of changes in the structures, systems, and components of the ISFSI or MRS, with emphasis upon:

(i) Performance requirements,

(ii) The bases, with technical justification therefor upon which such requirements have been established, and

(iii) Evaluations showing that safety functions will be accomplished.

(3) An analysis of the significance of any changes to codes, standards, regulations, or regulatory guides which the licensee has committed to meeting the requirements of which are applicable to the design, construction, or operation of the ISFSI or MRS.

§ 72.72 Material balance, inventory, and records requirements for stored materials.

(a) Each licensee shall keep records showing the receipt, inventory (including location), disposal, acquisition, and transfer of all spent fuel and high-level radioactive waste in storage. The records must include as a minimum the name of shipper of the material to the ISFSI or MRS, the estimated quantity of radioactive material per item (including special nuclear material in spent fuel), item identification and seal number, storage location, onsite movements of each fuel assembly or storage canister, and ultimate disposal. These records for spent fuel at an ISFSI or for spent fuel and high-level radioactive waste at an MRS must be retained for as long as the material is stored and for a period of five years after the material is disposed of or transferred out of the ISFSI or MRS.

(b) Each licensee shall conduct a physical inventory of all spent fuel and high-level radioactive waste in storage at intervals not to exceed 12 months unless otherwise directed by the Commission. The licensee shall retain a copy of the current inventory as a record until the Commission terminates the license.

(c) Each licensee shall establish, maintain, and follow written material control and accounting procedures that are sufficient to enable the licensee to account for material in storage. The licensee shall retain a copy of the current material control and accounting procedures until the Commission terminates the license.

(d) Records of spent fuel and high-level radioactive waste in storage must be kept in duplicate. The duplicate set of records must be kept at a separate location sufficiently remote from the original records that a single event would not destroy both sets of records. Records of spent fuel transferred out of an ISFSI or of spent fuel or high-level radioactive waste transferred out of an MRS must be preserved for a period of five years after the date of transfer.

§ 72.74 Reports of accidental criticality or loss of special nuclear material.

(a) Each licensee shall notify the NRC Operations Center [1] within one hour of discovery of accidental criticality or any loss of special nuclear material.

(b) This notification must be made to the NRC Operations Center via the Emergency Notification System if the licensee is party to that system. If the Emergency Notification System is inoperative or unavailable, the licensee shall make the required notification via commercial telephonic service or any other dedicated telephonic system or any other method that will ensure that a report is received by the NRC Operations Center within one hour. The exemption of § 73.21(g)(3) of this chapter applies to all telephonic reports required by this section.

(c) Reports required under § 73.71 of this chapter need not be duplicated under the requirements of this section.

§ 72.76 Material status reports.

(a) Except as provided in paragraph (b) of this section, each licensee shall complete and submit to the Commission (on DOE/NRC Form-742, Material Balance Report) material status reports in accordance with the printed instructions for completing the form. These reports must provide information concerning the special nuclear material contained in the spent fuel possessed, received, transferred, disposed of, or lost by the licensee. Material status reports must be made as of March 31 and September 30 of each year and filed within 30 days after the end of the period covered by the report. The Commission may, when good cause is shown, permit a licensee to submit material status reports at other times.

(b) Any licensee who is required to submit routine material status reports pursuant to § 75.35 of this chapter (pertaining to implementation of the US/IAEA Safeguards Agreement) shall prepare and submit such reports only as provided in that section instead of as provided in paragraph (a) of this section.

§ 72.78 Nuclear material transfer reports.

(a) Except as provided in paragraph (b) of this section, whenever the licensee transfers or receives spent fuel, the licensee shall complete and distribute a Nuclear Material Transaction Report on DOE/NRC Form-741 in accordance with printed instructions for completing the form. Each ISFSI licensee who receives spent fuel from a foreign source shall complete both the supplier's and receiver's portion of DOE/NRC Form-741, verify the identity of the spent fuel, and indicate the results on the receiver's portion of the form.

(b) Any licensee who is required to submit inventory change reports on DOE/NRC Form-741 pursuant to § 75.34 of this chapter (pertaining to implementation of the US/IAEA Safeguards Agreement) shall prepare and submit such reports only as provided in that section instead of as provided in paragraph (a) of this section.

§ 72.80 Other records and reports.

(a) Each licensee shall maintain any records and make any reports that may be required by the conditions of the license or by the rules, regulations, and orders of the Commission in effectuating the purposes of the Act.

(b) Each licensee shall furnish a copy of its annual financial report, including the certified financial statements, to the Commission.

(c) Records that are required by the regulations in this part or by the license conditions must be maintained for the period specified by the appropriate regulation or license condition. If a retention period is not otherwise specified, the above records must be maintained until the Commission terminates the license.

(d) Any record that must be maintained pursuant to this part may be either the original or a reproduced copy by any state of the art method provided

[1] Commercial telephone number of the NRC Operations Center is (301)951-0550.

that any reproduced copy is duly authenticated by authorized personnel and is capable of producing a clear and legible copy after storage for the period specified by Commission regulations.

§ 72.82 Inspections and tests.

(a) Each licensee under this part shall permit inspection by duly authorized representatives of the Commission of its records, premises, and activities and of spent fuel or high-level radioactive waste in its possession related to the specific license as may be necessary to effectuate the purposes of the Act, including section 105 of the Act.

(b) Each licensee under this part shall make available to the Commission for inspection, upon reasonable notice, records kept by the licensee pertaining to its receipt, possession, packaging, or transfer of spent fuel or high-level radioactive waste.

(c)(1) Each licensee under this part shall upon request by the Director, Office of Nuclear Material Safety and Safeguards or the appropriate NRC Regional Administrator provide rent-free office space for the exclusive use of the Commission inspection personnel. Heat, air conditioning, light, electrical outlets and janitorial services shall be furnished by each licensee. The office shall be convenient to and have full access to the installation and shall provide the inspector both visual and acoustic privacy.

(2) For a site with a single storage installation the space provided shall be adequate to accommodate a full-time inspector, a part-time secretary, and transient NRC personnel and will be generally commensurate with other office facilities at the site. A space of 250 sq. ft., either within the site's office complex or in an office trailer, or other onsite space, is suggested as a guide. For sites containing multiple facilities, additional space may be requested to accommodate additional full-time inspectors. The office space that is provided shall be subject to the approval of the Director, Office of Nuclear Material Safety and Safeguards or the appropriate NRC Regional Administrator. All furniture, supplies and Commission equipment will be furnished by the Commission.

(3) Each licensee under this part shall afford any NRC resident inspector assigned to that site, or other NRC inspectors identified by the Regional Administrator as likely to inspect the installation, immediate unfettered access, equivalent to access provided regular plant employees, following proper identification and compliance with applicable access control measures for security, radiological protection, and personal safety.

(d) Each licensee shall perform, or permit the Commission to perform, such tests as the Commission deems appropriate or necessary for the administrator of the regulations in this part.

(e) A report of the preoperational test acceptance criteria and test results must be submitted to the appropriate Regional Office specified in Appendix A of Part 73 of this chapter with a copy to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, at least 30 days prior to the receipt of spent fuel or high-level radioactive waste.

§ 72.84 Violations.

An injunction or other court order may be obtained prohibiting any violation of any provision of the Atomic Energy Act of 1954, as amended, or title II of the Energy Reorganization Act of 1974, as amended, or any regulation or order issued thereunder. A court order may be obtained for the payment of a civil penalty imposed pursuant to section 234 of the Atomic Energy Act for violation of sections 53, 57, 62, 63, 81, or 82 of the Atomic Energy Act, or section 206 of the Energy Reorganization Act of 1974, or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license issued thereunder, or for any violation for which a license may be revoked under section 186 of the Atomic Energy Act. Any person who willfully violates any provision of the Atomic Energy Act, or any regulation or order issued thereunder, may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both, as provided by law.

Subpart E—Siting Evaluation Factors

§ 72.90 General considerations.

(a) Site characteristics that may directly affect the safety or environmental impact of the ISFSI or MRS must be investigated and assessed.

(b) Proposed sites for the ISFSI or MRS must be examined with respect to the frequency and the severity of external natural and maninduced events that could affect the safe operation of the ISFSI or MRS.

(c) Design basis external events must be determined for each combination of proposed site and proposed ISFSI or MRS design.

(d) Proposed sites with design basis external events for which adequate protection cannot be provided through ISFSI or MRS design shall be deemed unsuitable for the location of the ISFSI or MRS.

(e) Pursuant to Subpart A of Part 51 of this chapter for each proposed site for an ISFSI and pursuant to sections 141 or 148 of NWPA, as appropriate (98 Stat. 2241, 101 Stat. 1330–235, 42 U.S.C. 10161, 10168) for each proposed site for an MRS, the potential for radiological and other environmental impacts on the region must be evaluated with due consideration of the characteristics of the population, including its distribution, and of the regional environs, including its historical and esthetic values.

(f) The facility must be sited so as to avoid to the extent possible the long-term and short-term adverse impacts associated with the occupancy and modification of floodplains.

§ 72.92 Design basis external natural events.

(a) Natural phenomena that may exist or that can occur in the region of a proposed site must be identified and assessed according to their potential effects on the safe operation of the ISFSI or MRS. The important natural phenomena that affect the ISFSI or MRS design must be identified.

(b) Records of the occurrence and severity of those important natural phenomena must be collected for the region and evaluated for reliability, accuracy, and completeness. The applicant shall retain these records until the license is issued.

(c) Appropriate methods must be adopted for evaluating the design basis external natural events based on the characteristics of the region and the current state of knowledge about such events.

§ 72.94 Design basis external man-induced events.

(a) The region must be examined for both past and present man-made facilities and activities that might endanger the proposed ISFSI or MRS. The important potential man-induced events that affect the ISFSI or MRS design must be identified.

(b) Information concerning the potential occurrence and severity of such events must be collected and evaluated for reliability, accuracy, and completeness.

(c) Appropriate methods must be adopted for evaluating the design basis external man-induced events, based on the current state of knowledge about such events.

§ 72.96 Siting limitations.

(a) An ISFSI which is owned and operated by DOE must not be located at any site within which there is a

candidate site for a HLW repository. This limitation shall apply until such time as DOE decides that such candidate site is no longer a candidate site under consideration for development as a HLW repository.

(b) An MRS must not be sited in any State in which there is located any site approved for site characterization for a HLW repository. This limitation shall apply until such time as DOE decides that the candidate site is no longer a candidate site under consideration for development as a repository. This limitation shall continue to apply to any site selected for construction as a repository.

(c) If an MRS is located, or is planned to be located, within 50 miles of the first HLW repository, any Commission decision approving the first HLW repository application must limit the quantity of spent fuel or high-level radioactive waste that may be stored. This limitation shall prohibit the storage of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal, or a quantity of solidified high-level radioactive waste resulting from the reprocessing of such a quantity of spent fuel, in both the repository and the MRS until such time as a second repository is in operation.

(d) An MRS authorized by section 142(b) of NWPA (101 Stat. 1330–232, 42 U.S.C. 10162(b)) may not be constructed in the State of Nevada. The quantity of spent nuclear fuel or high-level radioactive waste that may be stored at an MRS authorized by section 142(b) of NWPA shall be subject to the limitations in § 72.44(g) of this part instead of the limitations in paragraph (c) of this section.

§ 72.98 Identifying regions around an ISFSI or MRS site.

(a) The regional extent of external phenomena, man-made or natural, that are used as a basis for the design of the ISFSI or MRS must be identified.

(b) The potential regional impact due to the construction, operation or decommissioning of the ISFSI or MRS must be identified. The extent of regional impacts must be determined on the basis of potential measurable effects on the population or the environment from ISFSI or MRS activities.

(c) Those regions identified pursuant to paragraphs (a) and (b) of this section must be investigated as appropriate with respect to:

(1) The present and future character and the distribution of population,

(2) Consideration of present and projected future uses of land and water within the region, and

(3) Any special characteristics that may influence the potential consequences of a release of radioactive material during the operational lifetime of the ISFSI or MRS.

§ 72.100 Defining potential effects of the ISFSI or MRS on the region.

(a) The proposed site must be evaluated with respect to the effects on populations in the region resulting from the release of radioactive materials under normal and accident conditions during operation and decommissioning of the ISFSI or MRS; in this evaluation both usual and unusual regional and site characteristics shall be taken into account.

(b) Each site must be evaluated with respect to the effects on the regional environment resulting from construction, operation, and decommissioning for the ISFSI or MRS; in this evaluation both usual and unusual regional and site characteristics must be taken into account.

§ 72.102 Geological and seismological characteristics.

(a)(1) East of the Rocky Mountain Front (east of approximately 104° west longitude), except in areas of known seismic activity including but not limited to the regions around New Madrid, MO, Charleston, SC, and Attica, NY, sites will be acceptable if the results from onsite foundation and geological investigation, literature review, and regional geological reconnaissance show no unstable geological characteristics, soil stability problems, or potential for vibratory ground motion at the site in excess of an appropriate response spectrum anchored at 0.2 g.

(2) For those sites that have been evaluated under paragraph (a)(1) of this section that are east of the Rocky Mountain Front, and that are not in areas of known seismic activity, a standardized design earthquake (DE) described by an appropriate response spectrum anchored at 0.25 g may be used. Alternatively, a site-specific DE may be determined by using the criteria and level of investigations required by Appendix A of Part 100 of this chapter.

(b) West of the Rocky Mountain Front (west of approximately 104° west longitude), and in other areas of known potential seismic activity, seismicity will be evaluated by the techniques of Appendix A of Part 100 of this chapter. Sites that lie within the range of strong near-field ground motion from historical earthquakes on large capable faults should be avoided.

(c) Sites other than bedrock sites must be evaluated for their liquefaction potential or other soil instability due to vibratory ground motion.

(d) Site-specific investigations and laboratory analyses must show that soil conditions are adequate for the proposed foundation loading.

(e) In an evaluation of alternative sites, those which require a minimum of engineered provisions to correct site deficiencies are preferred. Sites with unstable geologic characteristics should be avoided.

(f) The design earthquake (DE) for use in the design of structures must be determined as follows:

(1) For sites that have been evaluated under the criteria of Appendix A of 10 CFR Part 100, the DE must be equivalent to the safe shutdown earthquake (SSE) for a nuclear power plant.

(2) Regardless of the results of the investigations anywhere in the continental U.S., the DE must have a value for the horizontal ground motion of no less than 0.10 g with the appropriate response spectrum.

§ 72.104 Criteria for radioactive materials in effluents and direct radiation from an ISFSI or MRS.

(a) During normal operations and anticipated occurrences, the annual dose equivalent to any real individual who is located beyond the controlled area must not exceed 25 mrem to the whole body, 75 mrem to the thyroid and 25 mrem to any other organ as a result of exposure to:

(1) Planned discharges of radioactive materials, radon and its decay products excepted, to the general environment,

(2) Direct radiation from ISFSI or MRS operations, and

(3) Any other radiation from uranium fuel cycle operations within the region.

(b) Operational restrictions must be established to meet as low as is reasonably achievable objectives for radioactive materials in effluents and direct radiation levels associated with ISFSI or MRS operations.

(c) Operational limits must be established for radioactive materials in effluents and direct radiation levels associated with ISFSI or MRS operations to meet the limits given in paragraph (a) of this section.

§ 72.106 Controlled area of an ISFSI or MRS.

(a) For each ISFSI or MRS site, a controlled area must be established.

(b) Any individual located on or beyond the nearest boundary of the controlled area shall not receive a dose greater than 5 rem to the whole body or any organ from any design basis accident. The minimum distance from

the spent fuel or high-level radioactive waste handling and storage facilities to the nearest boundary of the controlled area shall be at least 100 meters.

(c) The controlled area may be traversed by a highway, railroad or waterway, so long as appropriate and effective arrangements are made to control traffic and to protect public health and safety.

§ 72.108 Spent fuel or high-level radioactive waste transportation.

The proposed ISFSI or MRS must be evaluated with respect to the potential impact on the environment of the transportation of spent fuel or high-level radioactive waste within the region.

Subpart F—General Design Criteria

§ 72.120 General considerations.

(a) Pursuant to the provisions of § 72.24, an application to store spent fuel in an ISFSI or to store spent fuel or high-level radioactive waste in an MRS must include the design criteria for the proposed storage installation. These design criteria establish the design, fabrication, construction, testing, maintenance and performance requirements for structures, systems, and components important to safety as defined in § 72.3. The general design criteria identified in this subpart establish minimum requirements for the design criteria for an ISFSI or MRS. Any omissions in these general design criteria do not relieve the applicant from the requirement of providing the necessary safety features in the design of the ISFSI or MRS.

(b) The MRS must be designed to store either spent fuel or solid high-level radioactive wastes. Liquid high-level radioactive wastes may not be received or stored in an MRS. If the MRS is a water-pool type facility, the solidified waste form shall be a durable solid with demonstrable leach resistance.

§ 72.122 Overall requirements.

(a) *Quality Standards.* Structures, systems, and components important to safety must be designed, fabricated, erected, and tested to quality standards commensurate with the importance to safety of the function to be performed.

(b) *Protection against environmental conditions and natural phenomena.* (1) Structures, systems, and components important to safety must be designed to accommodate the effects of, and to be compatible with, site characteristics and environmental conditions associated with normal operation, maintenance, and testing of the ISFSI or MRS and to withstand postulated accidents.

(2) Structures, systems, and components important to safety must be designed to withstand the effects of natural phenomena such as earthquakes, tornadoes, lighting, hurricanes, floods, tsunami, and seiches, without impairing their capability to perform safety functions. The design bases for these structures, systems, and components must reflect:

(i) Appropriate consideration of the most severe of the natural phenomena reported for the site and surrounding area, with appropriate margins to take into account the limitations of the data and the period of time in which the data have accumulated, and

(ii) Appropriate combinations of the effects of normal and accident conditions and the effects of natural phenomena.

The ISFSI or MRS should also be designed to prevent massive collapse of building structures or the dropping of heavy objects as a result of building structural failure on the spent fuel or high-level radioactive waste or on to structures, systems, and components important to safety.

(3) Capability must be provided for determining the intensity of natural phenomena that may occur for comparison with design bases of structures, systems, and components important to safety.

(4) If the ISFSI or MRS is located over an aquifer which is a major water resource, measures must be taken to preclude the transport of radioactive materials to the environment through this potential pathway.

(c) *Protection against fires and explosions.* Structures, systems, and components important to safety must be designed and located so that they can continue to perform their safety functions effectively under credible fire and explosion exposure conditions. Noncombustible and heat-resistant materials must be used wherever practical throughout the ISFSI or MRS, particularly in locations vital to the control of radioactive materials and to the maintenance of safety control functions. Explosion and fire detection, alarm, and suppression systems shall be designed and provided with sufficient capacity and capability to minimize the adverse effects of fires and explosions on structures, systems, and components important to safety. The design of the ISFSI or MRS must include provisions to protect against adverse effects that might result from either the operation or the failure of the fire suppression system.

(d) *Sharing of structures, systems, and components.* Structures, systems, and components important to safety must not be shared between an ISFSI or MRS and other facilities unless it is shown that such sharing will not impair the capability of either facility to perform its safety functions, including the ability to return to a safe condition in the event of an accident.

(e) *Proximity of sites.* An ISFSI or MRS located near other nuclear facilities must be designed and operated to ensure that the cumulative effects of their combined operations will not constitute an unreasonable risk to the health and safety of the public.

(f) *Testing and maintenance of systems and components.* Systems and components that are important to safety must be designed to permit inspection, maintenance, and testing.

(g) *Emergency capability.* Structures, systems, and components important to safety must be designed for emergencies. The design must provide for accessibility to the equipment of onsite and available offsite emergency facilities and services such as hospitals, fire and police departments, ambulance service, and other emergency agencies.

(h) *Confinement barriers and systems.* (1) The spent fuel cladding must be protected during storage against degradation that leads to gross ruptures or the fuel must be otherwise confined such that degradation of the fuel during storage will not pose operational safety problems with respect to its removal from storage. This may be accomplished by canning of consolidated fuel rods or unconsolidated assemblies or other means as appropriate.

(2) For underwater storage of spent fuel or high-level radioactive waste in which the pool water serves as a shield and a confinement medium for radioactive materials, systems for maintaining water purity and the pool water level must be designed so that any abnormal operations or failure in those systems from any cause will not cause the water level to fall below safe limits. The design must preclude installations of drains, permanently connected systems, and other features that could, by abnormal operations or failure, cause a significant loss of water. Pool water level equipment must be provided to alarm in a continuously manned location if the water level in the storage pools falls below a predetermined level.

(3) Ventilation systems and off-gas systems must be provided where necessary to ensure the confinement of airborne radioactive particulate materials during normal or off-normal conditions.

(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.

(5) The high-level radioactive waste must be packaged in a manner that allows handling and retrievability without the release of radioactive materials to the environment or radiation exposures in excess of Part 20 limits. The package must be designed to confine the high-level radioactive waste for the duration of the license.

(i) *Instrumentation and control systems.* Instrumentation and control systems 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.

(j) *Control room or control area.* A control room or control area, if appropriate for the ISFSI or MRS design, must be designed to permit occupancy and actions to be taken to monitor the ISFSI or MRS safely under normal conditions, and to provide safe control of the ISFSI or MRS under off-normal or accident conditions.

(k) *Utility or other services.* (1) Each utility service system must be designed to meet emergency conditions. The design of utility services and distribution systems that are important to safety must include redundant systems to the extent necessary to maintain, with adequate capacity, the ability to perform safety functions assuming a single failure.

(2) Emergency utility services must be designed to permit testing of the functional operability and capacity, including the full operational sequence, of each system for transfer between normal and emergency supply sources; and to permit the operation of associated safety systems.

(3) Provisions must be made so that, in the event of a loss of the primary electric power source or circuit, reliable and timely emergency power will be provided to instruments, utility service systems, the central security alarm station, and operating systems, in amounts sufficient to allow safe storage conditions to be maintained and to permit continued functioning of all systems essential to safe storage.

(4) An ISFSI or MRS which is located on the site of another facility may share common utilities and services with such a facility and be physically connected with the other facility; however, the sharing of utilities and services or the physical connection must not significantly:

(i) Increase the probability or consequences of an accident or malfunction of components, structures, or systems that are important to safety; or

(ii) Reduce the margin of safety as defined in the basis for any technical specifications of either facility.

(l) *Retrievability.* Storage systems must be designed to allow ready retrieval of spent fuel or high-level radioactive waste for further processing or disposal.

§ 72.124 Criteria for nuclear criticality safety.

(a) *Design for criticality safety.* Spent fuel handling, packaging, transfer, and storage systems must be designed to be maintained subcritical and to ensure that, before a nuclear criticality accident is possible, at least two unlikely, independent, and concurrent or sequential changes have occurred in the conditions essential to nuclear criticality safety. The design of handling, packaging, transfer, and storage systems must include margins of safety for the nuclear criticality parameters that are commensurate with the uncertainties in the data and methods used in calculations and demonstrate safety for the handling, packaging, transfer and storage conditions and in the nature of the immediate environment under accident conditions.

(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 shall provide for positive means to verify their continued efficacy.

(c) *Criticality Monitoring.* A criticality monitoring system shall be maintained in each area where special nuclear material is handled, used, or stored which will energize clearly audible alarm signals if accidental criticality occurs. Underwater monitoring is not required when special nuclear material is handled or stored beneath water shielding. Monitoring of dry storage areas where special nuclear material is packaged in its stored configuration under a license issued under this subpart is not required.

§ 72.126 Criteria for radiological protection.

(a) *Exposure control.* Radiation protection systems must be provided for all areas and operations where onsite personnel may be exposed to radiation or airborne radioactive materials. Structures, systems, and components for which operation, maintenance, and required inspections may involve occupational exposure must be designed, fabricated, located, shielded, controlled, and tested so as to control external and internal radiation exposures to personnel. The design must include means to:

(1) Prevent the accumulation of radioactive material in those systems requiring access;

(2) Decontaminate those systems to which access is required;

(3) Control access to areas of potential contamination or high radiation within the ISFSI or MRS;

(4) Measure and control contamination of areas requiring access;

(5) Minimize the time required to perform work in the vicinity of radioactive components; for example, by providing sufficient space for ease of operation and designing equipment for ease of repair and replacement; and

(6) Shield personnel from radiation exposure.

(b) *Radiological alarm systems.* Radiological alarm systems must be provided in accessible work areas as appropriate to warn operating personnel of radiation and airborne radioactive material concentrations above a given setpoint and of concentrations of radioactive material in effluents above control limits. Radiation alarm systems must be designed with provisions for calibration and testing their operability.

(c) *Effluent and direct radiation monitoring.* (1) As appropriate for the handling and storage system, effluent systems must be provided. Means for measuring the amount of radionuclides in effluents during normal operations and under accident conditions must be provided for these systems. A means of measuring the flow of the diluting medium, either air or water, must also be provided.

(2) Areas containing radioactive materials must be provided with systems for measuring the direct radiation levels in and around these areas.

(d) *Effluent control.* The ISFSI or MRS must be designed to provide means to limit to levels as low as is reasonably achievable the release of radioactive materials in effluents during normal operations; and control the release of radioactive materials under accident conditions. Analyses must be made to show that releases to the general environment during normal operations and anticipated occurrences will be within the exposure limit given in § 72.104. Analyses of design basis accidents must be made to show that releases to the general environment will be within the exposure limits given in

§ 72.106. Systems designed to monitor the release of radioactive materials must have means for calibration and testing their operability.

§ 72.128 Criteria for spent fuel, high-level radioactive waste, and other radioactive waste storage and handling.

(a) *Spent fuel and high-level radioactive waste storage and handling systems.* Spent fuel storage, high-level radioactive waste storage, and other systems that might contain or handle radioactive materials associated with spent fuel or high-level radioactive waste, must be designed to ensure adequate safety under normal and accident conditions. These systems must be designed with—

(1) A capability to test and monitor components important to safety,

(2) Suitable shielding for radioactive protection under normal and accident conditions,

(3) Confinement structures and systems,

(4) A heat-removal capability having testability and reliability consistent with its importance to safety, and

(5) means to minimize the quantity of radioactive wastes generated.

(b) *Waste treatment.* Radioactive waste treatment facilities must be provided. Provisions must be made for the packing of site-generated low-level wastes in a form suitable for storage onsite awaiting transfer to disposal sites.

§ 72.130 Criteria for decommissioning.

The ISFSI or MRS must be designed for decommissioning. Provisions must be made to facilitate decontamination of structures and equipment, minimize the quantity of radioactive wastes and contaminated equipment, and facilitate the removal of radioactive wastes and contaminated materials at the time the ISFSI or MRS is permanently decommissioned.

Subpart G—Quality Assurance

§ 72.140 Quality assurance requirements.

(a) *Purpose.* This subpart describes quality assurance requirements applying to design, purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing, operation, maintenance, repair, modification of structures, systems, and components, and decommissioning that are important to safety. As used in this subpart, "quality assurance" comprises all those planned and systematic actions necessary to provide adequate confidence that a structure, system, or component will perform satisfactorily in service. Quality assurance includes quality control, which comprises those quality assurance actions related to control of the physical characteristics and quality of the material or component to predetermined requirements.

(b) *Establishment of program.* Each licensee [2] shall establish, maintain, and execute a quality assurance program satisfying each of the applicable criteria of this subpart, and satisfying any specific provisions which are applicable to the licensee's activities. The licensee shall execute the applicable criteria in a graded approach to an extent that is commensurate with the importance to safety. The quality assurance program must cover the activities identified in § 72.24(n) throughout the life of the licensed activity, from the site selection through decommissioning, prior to termination of the license.

(c) *Approval of program.* Prior to receipt of spent fuel at the ISFSI or spent fuel and high-level radioactive waste at the MRS, each licensee shall obtain Commission approval of its quality assurance program. Each licensee shall file a description of its quality assurance program, including a discussion of which requirements of this subpart are applicable and how they will be satisfied, with the Director, Office of Nuclear Material and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(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. Prior to first use, the licensee shall notify the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of its intent to apply its previously approved Appendix B program to ISFSI activities. The licensee shall identify the program by date of submittal to the Commission, docket number, and date of Commission approval.

§ 72.142 Quality assurance organization.

The licensee shall be responsible for the establishment and execution of the quality assurance program. The licensee may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, but shall retain responsibility for the program. The licensee shall clearly establish and delineate in writing the authority and duties of persons and organizations performing activities affecting the functions of structures, systems and components which are important to safety. These activities include performing the functions associated with attaining quality objectives and the quality assurance functions. The quality assurance functions are:

(a) Assuring that an appropriate quality assurance program is established and effectively executed and

(b) Verifying, by procedures such as checking, auditing, and inspection, that activities affecting the functions that are important to safety have been correctly performed. The persons and organizations performing quality assurance functions must have sufficient authority and organizational freedom to identify quality problems; to initiate, recommend, or provide solutions; and to verify implementation of solutions.

The persons and organizations performing quality assurance functions shall report to a management level that ensures that the required authority and organizational freedom, including sufficient independence from cost and schedule considerations when these considerations are opposed to safety considerations, are provided. Because of the many variables involved, such as the number of personnel, the type of activity being performed, and the location or locations where activities are performed, the organizational structure for executing the quality assurance program may take various forms provided that the persons and organizations assigned the quality assurance functions have the required authority and organizational freedom. Irrespective of the organizational structure, the individual(s) assigned the responsibility for assuring effective execution of any portion of the quality assurance program at any location where activities subject to this section are being performed must have direct access to the levels of management necessary to perform this function.

§ 72.144 Quality assurance program.

(a) The licensee shall establish, at the earliest practicable time consistent with the schedule for accomplishing the activities, a quality assurance program which complies with the requirements of this subpart. The licensee shall document the quality assurance program by written procedures or instructions and shall carry out the program in accordance with these procedures

[2] While the term "licensee" is used in these criteria, the requirements are applicable to whatever design, construction, fabrication, assembly, and testing is accomplished with respect to structures, systems, and components prior to the time a license is issued.

throughout the period during which the ISFSI or MRS is licensed. The licensee shall identify the structures, systems, and components to be covered by the quality assurance program, the major organizations participating in the program, and the designated functions of these organizations.

(b) The licensee, through its quality assurance program, shall provide control over activities affecting the quality of the identified structures, systems, and components to an extent commensurate with the importance to safety, and as necessary to ensure conformance to the approved design of each ISFSI or MRS. The licensee shall ensure that activities affecting quality are accomplished under suitably controlled conditions. Controlled conditions include the use of appropriate equipment; suitable environmental conditions for accomplishing the activity, such as adequate cleanliness; and assurance that all prerequisites for the given activity have been satisfied. The licensee shall take into account the need for special controls, processes, test equipment, tools and skills to attain the required quality and the need for verification of quality by inspection and test.

(c) The licensee shall base the requirements and procedures of its quality assurance program on the following considerations concerning the complexity and proposed use of the structures, systems, or components:

(1) The impact of malfunction or failure of the item on safety;

(2) The design and fabrication complexity or uniqueness of the item;

(3) The need for special controls and surveillance over processes and equipment;

(4) The degree to which functional compliance can be demonstrated by inspection or test; and

(5) The quality history and degree of standardization of the item.

(d) The licensee shall provide for indoctrination and training of personnel performing activities affecting quality as necessary to ensure that suitable proficiency is achieved and maintained. The licensee shall review the status and adequacy of the quality assurance program at established intervals. Management of other organizations participating in the quality assurance program shall regularly review the status and adequacy of that part of the quality assurance program which they are executing.

§ 72.146 Design control.

(a) The licensee shall establish measures to ensure that applicable regulatory requirements and the design basis, as specified in the license application for those structures, systems, and components to which this section applies, are correctly translated into specifications, drawings, procedures, and instructions. These measures must include provisions to ensure that appropriate quality standards are specified and included in design documents and that deviations from standards are controlled. Measures must be established for the selection and review for suitability of application of materials, parts, equipment, and processes that are essential to the functions of the structures, systems, and components which are important to safety.

(b) The licensee shall establish measures for the identification and control of design interfaces and for coordination among participating design organizations. These measures must include the establishment of written procedures among participating design organizations for the review, approval, release, distribution, and revision of documents involving design interfaces. The design control measures must provide for verifying or checking the adequacy of design, by methods such as design reviews, alternate or simplified calculational methods, or by a suitable testing program. For the verifying or checking process, the licensee shall designate individuals or groups other than those who were responsible for the original design, but who may be from the same organization. Where a test program is used to verify the adequacy of a specific design feature in lieu of other verifying or checking processes, the licensee shall include suitable qualification testing of a prototype or sample unit under the most adverse design conditions. The licensee shall apply design control measures to items such as the following: criticality physics, radiation, shielding, stress, thermal, hydraulic, and accident analyses; compatibility of materials; accessibility for inservice inspection, maintenance, and repair; features to facilitate decontamination; and delineation of acceptance criteria for inspections and tests.

(c) The licensee shall subject design changes, including field changes, to design control measures commensurate with those applied to the original design. Changes in the conditions specified in the license require NRC approval.

§ 72.148 Procurement document control.

The licensee shall establish measures to assure that applicable regulatory requirements, design bases, and other requirements which are necessary to assure adequate quality are included or referenced in the documents for procurement of material, equipment, and services, whether purchased by the licensee or by its contractors or subcontractors. To the extent necessary, the licensee shall require contractors or subcontractors to provide a quality assurance program consistent with the applicable provisions of this subpart.

§ 72.150 Instructions, procedures, and drawings.

The licensee shall prescribe activities affecting quality by documented instructions, procedures, or drawings of a type appropriate to the circumstances and shall require that these instructions, procedures, and drawings be followed. The instructions, procedures, and drawings must include appropriate quantitative or qualitative acceptance criteria for determining that important activities have been satisfactorily accomplished.

§ 72.152 Document control.

The licensee shall establish measures to control the issuance of documents such as instructions, procedures, and drawings, including changes, which prescribe all activities affecting quality. These measures must assure that documents, including changes, are reviewed for adequacy, approved for release by authorized personnel, and distributed and used at the location where the prescribed activity is performed. These measures must ensure that changes to documents are reviewed and approved.

§ 72.154 Control of purchased material, equipment, and services.

(a) The licensee shall establish measures to ensure that purchased material, equipment and services, whether purchased directly or through contractors and subcontractors, conform to the procurement documents. These measures must include provisions, as appropriate, for source evaluation and selection, objective evidence of quality furnished by the contractor or subcontractor, inspection at the contractor or subcontractor source, and examination of products upon delivery.

(b) The licensee shall have available documentary evidence that material and equipment conform to the procurement specifications prior to installation or use of the material and equipment. The licensee shall retain or have available this documentary evidence for the life of ISFSI or MRS. The licensee shall ensure that the evidence is sufficient to identify the specific requirements met by the purchased material and equipment.

(c) The licensee or designee shall assess the effectiveness of the control of quality by contractors and subcontractors at intervals consistent with the importance, complexity, and quantity of the product or services.

§ 72.156 Identification and control of materials, parts, and components.

The licensee shall establish measures for the identification and control of materials, parts, and components. These measures must ensure that identification of the item is maintained by heat number, part number, serial number, or other appropriate means, either on the item or on records traceable to the item as required, throughout fabrication, installation, and use of the item. These identification and control measures must be designed to prevent the use of incorrect or defective materials, parts, and components.

§ 72.158 Control of special processes.

The licensee shall establish measures to ensure that special processes, including welding, heat treating, and nondestructive testing, are controlled and accomplished by qualified personnel using qualified procedures in accordance with applicable codes, standards, specifications, criteria, and other special requirements.

§ 72.160 Licensee inspection.

The licensee shall establish and execute a program for inspection of activities affecting quality by or for the organization performing the activity to verify conformance with the documented instructions, procedures, and drawings for accomplishing the activity. The inspection must be performed by individuals other than those who performed the activity being inspected. Examinations, measurements, or tests of material or products processed must be performed for each work operation where necessary to assure quality. If direct inspection of processed material or products cannot be carried out, indirect control by monitoring processing methods, equipment, and personnel must be provided. Both inspection and process monitoring must be provided when quality control is inadequate without both. If mandatory inspection hold points, which require witnessing or inspecting by the licensee's designated representative and beyond which work should not proceed without the consent of its designated representative, are required, the specific hold points must be indicated in appropriate documents.

§ 72.162 Test control.

The licensee shall establish a test program to ensure that all testing required to demonstrate that the structures, systems, and components will perform satisfactorily in service is identified and performed in accordance with written test procedures that incorporate the requirements of this part and the requirements and acceptance limits contained in the ISFSI or MRS license. The test procedures must include provisions for assuring that all prerequisites for the given test are met, that adequate test instrumentation is available and used, and that the test is performed under suitable environmental conditions. The licensee shall document and evaluate the test results to ensure that test requirements have been satisfied.

§ 72.164 Control of measuring and test equipment.

The licensee shall establish measures to ensure that tools, gauges, instruments, and other measuring and testing devices used in activities affecting quality are properly controlled, calibrated, and adjusted at specified periods to maintain accuracy within necessary limits.

§ 72.166 Handling, storage, and shipping control.

The licensee shall establish measures to control, in accordance with work and inspection instructions, the handling, storage, shipping, cleaning, and preservation of materials and equipment to prevent damage or deterioration. When necessary for particular products, special protective environments, such as inert gas atmosphere, and specific moisture content and temperature levels must be specified and provided.

§ 72.168 Inspection, test, and operating status.

(a) The licensee shall establish measures to indicate, by the use of markings such as stamps, tags, labels, routing cards, or other suitable means, the status of inspections and tests performed upon individual items of the ISFSI or MRS. These measures must provide for the identification of items which have satisfactorily passed required inspections and tests where necessary to preclude inadvertent bypassing of the inspections and tests.

(b) The licensee shall establish measures to identify the operating status of structures, systems, and components of the ISFSI or MRS, such as tagging valves and switches, to prevent inadvertent operation.

§ 72.170 Nonconforming materials, parts, or components.

The licensee shall establish measures to control materials, parts, or components that do not conform to the licensee's requirements in order to prevent their inadvertent use or installation. These measures must include, as appropriate, procedures for identification, documentation, segregation, disposition, and notification to affected organizations. Nonconforming items must be reviewed and accepted, rejected, repaired, or reworked in accordance with documented procedures.

§ 72.172 Corrective action.

The licensee shall establish measures to ensure that conditions adverse to quality, such as failures, malfunctions, deficiencies, deviations, defective material and equipment, and nonconformances, are promptly identified and corrected. In the case of a significant condition adverse to quality, the measures must ensure that the cause of the condition is determined and corrective action is taken to preclude repetition. The identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken must be documented and reported to appropriate levels of management.

§ 72.174 Quality assurance records.

The licensee shall maintain sufficient records to furnish evidence of activities affecting quality. The records must include the following: design records, records of use and the results of reviews, inspections, tests, audits, monitoring of work performance, and materials analyses. The records must include closely related data such as qualifications of personnel, procedures, and equipment. Inspection and test records must, at a minimum, identify the inspector or data recorder, the type of observation, the results, the acceptability, and the action taken in connection with any noted deficiencies. Records must be identifiable and retrievable. Records pertaining to the design, fabrication, erection, testing, maintenance, and use of structures, systems, and components important to safety shall be maintained by or under the control of the licensee until the Commission terminates the license.

§ 72.176 Audits.

The licensee shall carry out a comprehensive system of planned and periodic audits to verify compliance with all aspects of the quality assurance program and to determine the

effectiveness of the program. The audits must be performed in accordance with written procedures or checklists by appropriately trained personnel not having direct responsibilities in the areas being audited. Audited results must be documented and reviewed by management having responsibility in the area audited. Follow-up action, including re-audit of deficient areas, must be taken where indicated.

Subpart H—Physical Protection

§ 72.180 Physical security plan.

The licensee shall establish a detailed plan for security measures for physical protection. The licensee shall retain a copy of the current plan as a record until the Commission terminates the license for which the procedures were developed and, if any portion of the plan is superseded, retain the superseded material for three years after each change. This plan must consist of two parts. Part I must demonstrate how the applicant plans to comply with the applicable requirements of Part 73 of this chapter and during transportation to and from the proposed ISFSI or MRS and must include the design for physical protection and the licensee's safeguards contingency plan and guard training plan. Part II must list tests, inspections, audits, and other means to be used to demonstrate compliance with such requirements.

§ 72.182 Design for physical protection.

The design for physical protection must show the site layout and the design features provided to protect the ISFSI or MRS from sabotage. It must include:

(a) The design criteria for the physical protection of the proposed ISFSI or MRS;

(b) The design bases and the relation of the design bases to the design criteria submitted pursuant to paragraph (a) of this section; and

(c) Information relative to materials of construction, equipment, general arrangement, and proposed quality assurance program sufficient to provide reasonable assurance that the final security system will conform to the design bases for the principal design criteria submitted pursuant to paragraph (a) of this section.

§ 72.184 Safeguards contingency plan.

(a) The requirements of the licensee's safeguards contingency plan for dealing with threats and radiological sabotage must be as defined in § 73.40(b) of this chapter. This plan must include Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix, the first four categories of information relating to nuclear facilities licensed under Part 50 of this chapter. (The fifth category of information, Procedures, does not have to be submitted for approval.)

(b) The licensee shall prepare and maintain safeguards contingency plan procedures in accordance with Appendix C to 10 CFR Part 73 for effecting the actions and decisions contained in the Responsibility Matrix of the licensee's safeguards contingency plan. The licensee shall retain a copy of the current procedures as a record until the Commission terminates the license for which the procedures were developed and, if any portion of the procedures is superseded, retain the superseded material for three years after each change.

§ 72.186 Change to physical security and safeguards contingency plans.

(a) The licensee shall make no change that would decrease the safeguards effectiveness of the physical security plan, guard training plan or the first four categories of information (Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix) contained in the licensee safeguards contingency plan without prior approval of the Commission. A licensee desiring to make a change must submit an application for a license amendment pursuant to § 72.56.

(b) The licensee may, without prior Commission approval, make changes to the physical security plan, guard training plan, or the safeguards contingency plan, if the changes do not decrease the safeguards effectiveness of these plans. The licensee shall maintain records of changes to any such plan made without prior approval for a period of three years from the date of the change and shall furnish to the Regional Administrator of the appropriate NRC Regional Office specified in Appendix A of Part 73 of this chapter, with a copy to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, a report containing a description of each change within two months after the change is made.

Subpart I—Training and Certification of Personnel

§ 72.190 Operator requirements.

Operation of equipment and controls that have been identified as important to safety in the Safety Analysis Report and in the license must be limited to trained and certified personnel or be under the direct visual supervision of an individual with training and certification in the operation. Supervisory personnel who personally direct the operation of equipment and controls that are important to safety must also be certified in such operations.

§ 72.192 Operator training and certification program.

The applicant for a license under this part shall establish a program for training, proficiency testing, and certification of ISFSI or MRS personnel. This program must be submitted to the Commission for approval with the license application.

§ 72.194 Physical requirements.

The physical condition and the general health of personnel certified for the operation of equipment and controls that are important to safety must not be such as might cause operational errors that could endanger other in-plant personnel or the public health and safety. Any condition that might cause impaired judgment or motor coordination must be considered in the selection of personnel for activities that are important to safety. These conditions need not categorically disqualify a person, if appropriate provisions are made to accommodate such defect.

Subpart J—Provision of MRS Information to State Governments and Indian Tribes

§ 72.200 Provision of MRS information.

(a) The Director, Office of Nuclear Material Safety and Safeguards, or the Director's designee shall provide to the Governor and legislature of any State in which an MRS authorized under the Nuclear Waste Policy Act of 1982, as amended, is or may be located, to the Governors of any contiguous States, to each affected unit of local government and to the governing body of any affected Indian tribe, timely and complete information regarding determinations or plans made by the Commission with respect to siting, development, design, licensing, construction, operation, regulation or decommissioning of such monitored retrievable storage facility.

(b) Notwithstanding paragraph (a) of this section, the Director or the Director's designee is not required to distribute any document to any entity if, with respect to such document, that entity or its counsel is included on a service list prepared pursuant to Part 2 of this chapter.

(c) Copies of all communications by the Director or the Director's designee under this section shall be placed in the

Commission's Public Document Room and shall be furnished to DOE.

§ 72.202 Participation in license reviews.

State and local governments and affected Indian tribes may participate in license reviews as provided in Subpart G of Part 2 of this chapter.

§ 72.204 Notice to States.

If the Governor and legislature of a State have jointly designated on their behalf a single person or entity to receive notice and information from the Commission under this part, the Commission will provide such notice and information to the jointly designated person or entity instead of the Governor and the legislature separately.

§ 72.206 Representation.

Any person who acts under this subpart as a representative for a State (or for the Governor or legislature thereof) or for an affected Indian tribe shall include in the request or other submission, or at the request of the Commission, a statement of the basis of his or her authority to act in such representative capacity.

The following conforming amendments are also made to other parts of the Commission's regulations in Chapter 1, Title 10 of the Code of Federal Regulations.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

2. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 68 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 544. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K 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). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1659 (42 U.S.C. 2021j).

3. In § 2.104, paragraph (e) is revised to read as follows:

§ 2.104 Notice of hearing.

* * * * *

(e) The Secretary will give timely notice of the hearing to all parties and to other persons, if any, entitled by law to notice. The Secretary will transmit a notice of hearing on an application for a license for a production or utilization facility, for a license for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee, for a license under Part 61 of this chapter, for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter, and for a license under Part 72 of this chapter to acquire, receive or possess spent fuel for the purpose of storage in an independent spent fuel storage installation (ISFSI) to the governor or other appropriate official of the State and to the chief executive of the municipality in which the facility is to be located or the activity is to be conducted or, if the facility is not to be located or the activity conducted within a municipality, to the chief executive of the county (or to the Tribal organization, if it is to be so located or conducted within an Indian reservation). The Secretary will transmit a notice of hearing on an application for a license under Part 72 of this chapter to acquire, receive or possess spent fuel, high-level radioactive waste or radioactive material associated with high-level radioactive waste for the purpose of storage in a monitored retrievable storage installation (MRS) to the same persons who received the notice of docketing under § 72.16(e) of this chapter.

4. In § 2.105, paragraph (a) is amended by deleting the word "or" at the end of paragraph (6), by redesignating paragraphs (7), (8) and (9) as paragraphs (9), (10) and (11) and by adding new paragraphs (7) and (8) to read as follows:

§ 2.105 Notice of proposed action.

(a) * * *

(7) A license under Part 72 of this chapter to acquire, receive or possess spent fuel for the purpose of storage in an independent spent fuel storage installation (ISFSI) or to acquire, receive or possess spent fuel, high-level radioactive waste or radioactive material associated with high-level radioactive waste for the purpose of storage in a monitored retrievable storage installation (MRS);

(8) An amendment to a license specified in paragraph (a)(7) of this section when such an amendment presents a genuine issue as to whether the health and safety of the public will be significantly affected; or

* * * * *

5. In § 2.764, paragraph (c) is revised to read as follows:

§ 2.764 Immediate effectiveness of initial decision directing issuance or amendment of construction permit or operating license.

* * * * *

(c) An initial decision directing the issuance of an initial license for the construction and operation of an independent spent fuel storage installation (ISFSI) or monitored retrievable storage installation (MRS) under 10 CFR Part 72 shall become effective only upon order of the Commission. The Director of Nuclear Material Safety and Safeguards shall not issue an initial license for the construction and operation of an independent spent fuel storage installation (ISFSI) or a monitored retrievable storage installation (MRS) under 10 CFR Part 72 until expressly authorized to do so by the Commission.

* * * * *

6. In Appendix C, Table 1A, is revised to read as follows:

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

TABLE 1A—BASE CIVIL PENALTIES

	Plant operations, construction, health physics and an EP	Safeguards	Transportation	
			Greater than Type A quantity [1]	Type A quantity or less [2]
a. Power reactors	$100,000	$100,000	$100,000	$5,000
b. Test reactors	10,000	10,000	10,000	2,000
c. Research reactors and critical facilities	5,000	5,000	5,000	1,000
d. Fuel fabricators and industrial processors [3]	25,000	[4] 100,000	25,000	5,000
e. Mills and uranium conversion facilities	10,000	—	5,000	2,000
f. Industrial users of material [5]	10,000	—	5,000	2,000
g. Waste disposal licensees	10,000	—	5,000	2,000
h. Academic or medical institutions [6]	5,000	—	2,500	1,000
i. Independent spent fuel and monitored retrievable storage installations	25,000	100,000	25,000	5,000
j. Other material licensees	1,000	—	2,500	1,000

[1] Includes irradiated fuel, high level waste, unirradiated fissile material and any other quantities requiring Type B packaging.
[2] Includes low specific activity waste (LSA), low level waste, Type A packages, and excepted quantities and articles.
[3] Large firms engaged in manufacturing (or distribution of byproduct, source, or special nuclear material.
[4] This amount refers to Category 1 licensees (or defined in 10 CFR 73.2(bb)). Licensed fuel fabricators not authorized to possess Category 1 material have a base penalty amount of $50,000.
[5] Includes industrial radiographers, nuclear pharmacies, and other industrial users.
[6] This applies to nonprofit institutions not otherwise categorized under sections "a" through "g" in this table.

* * * * *

PART 19—NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS; INSPECTIONS

7. The authority citation for Part 19 is revised to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 19.11(a), (c), (d), and (e) and 19.12 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 19.13 and 19.14(a) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

8. Section 19.2 is revised to read as follows:

§ 19.2 Scope.

The regulations in this part apply to all persons who receive, possess, use, or transfer material licensed by the Nuclear Regulatory Commission pursuant to the regulations in Parts 30 through 35, 39, 40, 60, 61, 70, or 72 of this chapter, including persons licensed to operate a production or utilization facility pursuant to Part 50 of this chapter.

9. In § 19.3, paragraph (d) is revised to read as follows:

§ 19.3 Definitions.

* * * * *

(d) "License" means a license issued under the regulations in Parts 30 through 35, 39, 40, 60, 61, 70, or 72 of this chapter, including licenses to operate a production or utilization facility pursuant to Part 50 of this chapter. "Licensee" means the holder of such a license.

* * * * *

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

10. The authority citation for Part 20 is revised to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 68 Stat. 930, 933, 935, 936, 937, 948, as amended (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 20.408 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 20.101, 20.102, 20.103 (a), (b) and (f), 20.104 (a) and (b), 20.105(b), 20.106(a), 20.201, 20.202(a), 20.205, 20.207, 20.301, 20.303, 20.304, and 20.305 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 20.102, 20.103(e), 20.401-20.407, 20.408(b) and 20.409 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

11. Section 20.2 is revised to read as follows:

§ 20.2 Scope.

The regulations in this part apply to all persons who receive, possess, use, or transfer material licensed pursuant to the regulations in Parts 30 through 35, 39, 40, 60, 61, 70, or 72 of this chapter, including persons licensed to operate a production or utilization facility pursuant to Part 50 of this chapter.

12. In § 20.408, paragraph (a)(5) is revised to read as follows:

§ 20.408 Reports of personnel monitoring on termination of employment or work.

(a) This section applies to each person licensed by the Commission to:

* * * * *

(5) Possess spent fuel in an independent spent fuel storage installation (ISFSI) or possess spent fuel or high level radioactive waste in a monitored retrievable storage installation (MRS) pursuant to Part 72 of this chapter; or

* * * * *

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

13. The authority citation for Part 21 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2201, 2282); secs. 201, as amended, 206, 88 Stat. 1242, as amended, 1246 (42 U.S.C. 5841, 5846).

Sec. 21.2 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 21.6, 21.21(a) and 21.31 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 21.21, 21.41 and 21.51 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

14. Section 21.2 is revised to read as follows:

§ 21.2 Scope.

The regulations in this part apply, except as specifically provided otherwise in Parts 31, 34, 35, 39, 40, 60, 61, 70, or 72 of this chapter, to each individual, partnership, corporation, or other entity licensed pursuant to the

regulations in this chapter to possess, use, and/or transfer within the United States source material, byproduct material, special nuclear material, and/or spent fuel and high-level radioactive waste, or to construct, manufacture, possess, own, operate and/or transfer within the United States, any production or utilization facility, or independent spent fuel storage installation (ISFSI) or monitored retrievable storge installation (MRS), and to each director (see § 21.3(f)) and responsible officer (see § 21.3(j)) of such a licensee. The regulations in this part apply also to each individual, corporation, partnership or other entity doing business within the United States, and each director and responsible officer of such organization that constructs (see § 21.3(c)) a production or utilization facility licensed for manufacture, construction or operation (see § 21.3(h)) pursuant to Part 50 of this chapter, an independent spent fuel storage installation (ISFSI) for the storage of spent fuel licensed pursuant to Part 72 of this chapter or a monitored retrievable storage installation (MRS) for the storage of spent fuel or high-level radioactive waste licensed pursuant to Part 72 of this chapter, or supplies (see § 21.3(1)) basic components (see § 21.3(a)) for a facility or activity licensed, other than for export, under Parts 30, 39, 40, 50, 60, 61, 70, 71, or 72 of this chapter. Nothing in these regulations should be deemed to preclude either an individual or a manufacturer/supplier of a commerical grade item (see § 21.3(a-1)) not subject to the regulations in this part from reporting to the Commission a known or suspected defect or failure to comply and, as authorized by law, the identity of anyone so reporting will be withheld from disclosure.[1]

[1] NRC Regional Officers will accept collect telephone calls from individuals who wish to speak to NRC representatives concerning nuclear safety-related problems. The location and telephone numbers (for nights and holidays as well as regular hours) are listed below:

Region:		
I	(Philadelphia)	(215) 337-5000
II	(Atlanta)	(404) 331-4503
III	(Chicago)	(312) 790-5500
IV	(Dallas)	(817) 860-8100
IV	Uranium Recovery Field Office (Denver)	(303) 236-2805
V	(San Francisco)	(415) 943-3700

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

15. The authority citation for Part 51 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041. Sections 51.20, 51.30, 51.60, 51.61, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021).

16. In § 51.20, paragraph (b)(9) is revised to read as follows:

§ 51.20 Criteria for an identification of licensing and regulatory actions requiring environmental impact statements.

* * * * *

(b) The following types of actions require an environmental impact statement or a supplement to an environmental impact statement:

* * * * *

(9) Issuance of a license pursuant to Part 72 of this chapter for the storage of spent fuel in an independent spent fuel storage installation (ISFSI) at a site not occupied by a nuclear power reactor, or for the storage of spent fuel or high-level radioactive waste in a monitored retrievable storage installation (MRS).

* * * * *

17. In § 51.30, a new paragraph (c) is added to read as follows:

§ 51.30 Environmental assessment.

* * * * *

(c) An environmental assessment for a proposed action regarding a monitored retrievable storage installation (MRS) will not address the need for the MRS or any alternative to the design criteria for an MRS set forth in section 141(b)(1) of the Nuclear Waste Policy Act of 1982 (96 Stat. 2242, 42 U.S.C. 10161(b)(1)).

18. In § 51.60, paragraphs (a), (b)(1)(iii) and (b)(4) are revised to read as follows:

§ 51.60 Environmental report—materials licenses.

(a) Each applicant for a license or other form of permission, or an amendment to or renewal of a license or other form of permission issued pursuant to Parts 30, 32, 33, 34, 35, 39, 40, 61, 70 and/or 72 of this chapter, and covered by paragraphs (b)(1) through (b)(5) of this section, shall submit with its application to the Director of Nuclear Material Safety and Safeguards the number of copies, as specified in § 51.66, of a separate document, entitled "Applicant's Environmental Report" or "Supplement to Applicant's Environmental Report," as appropriate. The "Applicant's Environmental Report" shall contain the information specified in § 51.45. If the application is for an amendment to or a renewal of a license or other form of permission for which the applicant has previously submitted an environmental report, the supplement to applicant's environmental report may be limited to incorporating by reference, updating or supplementing the information previously submitted to reflect any significant environmental change, including any significant environmental change resulting from operational experience or a change in operations or proposed decommissioning activities. If the applicant is the U.S. Department of Energy, the environmental report may be in the form of either an environmental impact statement or an environmental assessment, as appropriate.

(b) * * *

(1) * * *

(iii) Storage of spent fuel in an independent spent fuel storage installation (ISFSI) or the storage of spent fuel or high-level radio-active waste in a monitored retrievable storage installation (MRS) pursuant to Part 72 of this chapter.

* * * * *

(4) Amendment of a license to authorize the decommissioning of an independent spent fuel storage installation (ISFSI) or a monitored retrievable storage installation (MRS) pursuant to Part 72 of this chapter.

* * * * *

19. Section 51.61 is revised to read as follows:

§ 51.61 Environmental report—independent spent fuel storage installation (ISFSI) or monitored retrievable storage installation (MRS) license.

Each applicant for issuance of a license for storage of spent fuel in an independent spent fuel storage installation (ISFSI) or for the storage of spent fuel and high-level radioactive waste in a monitored retrievable storage installation (MRS) pursuant to Part 72 of this chapter shall submit with its application to the Director of Nuclear Material Safety and Safeguards the number of copies, as specified in § 51.66 of a separate document entitled "Applicant's Environmental Report—ISFSI License" or "Applicant's

Environmental Report—MRS License," as appropriate. If the applicant is the U.S. Department of Energy, the environmental report may be in the form of either an environmental impact statement or an environmental assessment, as appropriate. The environmental report shall contain the information specified in § 51.45 and shall address the siting evaluation factors contained in Subpart E of Part 72 of this chapter. Unless otherwise required by the Commission, in accordance with the generic determination in § 51.23(a) and the provisions in § 51.23(b), no discussion of the environmental impact of the storage of spent fuel at an ISFSI beyond the term of the license or amendment applied for is required in an environmental report submitted by an applicant for an initial license for storage of spent fuel in an ISFSI, or any amendment thereto.

20. In § 51.80, paragraph (b) is revised to read as follows:

§ 51.80 Draft environmental impact statement—materials license.

* * * * *

(b)(1) *Independent spent fuel storage installation (ISFSI).* Unless otherwise determined by the Commission and in accordance with the generic determination in § 51.23(a) and the provisions of § 51.23(b), a draft environmental impact statement on the issuance of an initial license for storage of spent fuel at an independent spent fuel storage installation (ISFSI) or any amendment thereto, will address environmental impacts of spent fuel only for the term of the license or amendment applied for.

(2) *Monitored retrievable storage installation (MRS).* As provided in sections 141 (c), (d), and (e) and 148 (a) and (c) of the Nuclear Waste Policy Act of 1982, as amended (NWPA) (96 Stat. 2242, 2243, 42 U.S.C. 10161 (c), (d), (e); 101 Stat. 1330–235, 1330–236, 42 U.S.C. 10168 (a) and (c)), a draft environmental impact statement for the construction of a monitored retrievable storage installation (MRS) will not address the need for the MRS or any alternative to the design criteria for an MRS set forth in section 141(b)(1) of the NWPA (98 Stat. 2242, 42 U.S.C. 10161(b)(1)) but may consider alternative facility designs which are consistent with these design criteria.

21. In § 51.97, a new paragraph (b) is added to read as follows:

§ 51.97 Final environmental impact statement-materials license.

* * * * *

(b) *Monitored retrievable storage facility (MRS).* As provided in sections 141 (c), (d), and (e) and 148 (a) and (c) of the Nuclear Waste Policy Act of 1982, as amended (NWPA) (96 Stat. 2242, 2243, 42 U.S.C. 10161 (c), (d), (e); 101 Stat. 1330–235, 1330–236, 42 U.S.C. 10168 (a), (c)) a final environmental impact statement for the construction of a monitored retrievable storage installation (MRS) will not address the need for the MRS or any alternative to the design criteria for an MRS set forth in section 141(b)(1) of the NWPA (96 Stat. 2242, 42 U.S.C. 10161(b)(1)) but may consider alternative facility designs which are consistent with these design criteria.

§ 51.101 [Amended]

22. The references to §§ 72.11, 72.20 and 72.31(b) in the second sentence of paragraph (a)(2) of § 51.101 are redesignated respectively as §§ 72.16, 72.34 and 72.40(b).

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

23. The authority citation for Part 70 is revised to read as follows:

Authority: Sections 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273): §§ 70.3, 70.19(c), 70.21(c), 70.22 (a), (b) (d)-(k), 70.24 (a) and (b), 70.32 (a)(3), (5) and (3), (d) and (i), 70.36, 70.39 (b) and (c), 70.41(a), 70.42 (a) and (c), 70.56, 70.57 (b), (c), and (d), 70.58 (a)-(g)(3), and (h)-(j) are issued under sec. 161b, 68 Stat. 948 as amended (42 U.S.C. 2201(b)); §§ 70.7, 70.20a (a) and (d), 70.20b (c) and (e), 70.21(c), 70.24(b), 70.32 (a)(6), (c), (d), (e), and (g), 70.36, 70.51(c)-(g), 70.56, 70.57 (b) and (d), 70.58 (a)-(g)(3) and (h)-(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.5, 70.9, 70.20b (d) and (e), 70.38, 70.51 (b) and (l), 70.52, 70.53, 70.54, 70.55, 70.58 (g)(4), (k) and (l), 70.59, and 70.60 (b) and (c) are issued under sec. 161o, 68 Stat 950, as amended (42 U.S.C. 2201(o)).

24. In § 70.1, paragraph (c) is revised to read as follows:

§ 70.1 Purpose

* * * * *

(c) The regulations in Part 72 of this chapter establish requirements, procedures, and criteria for the issuance of licenses to possess:

(1) Spent fuel and other radioactive materials associated with spent fuel storage in an independent spent fuel storage installation (ISFSI), or

(2) Spent fuel, high-level radioactive waste, and other radioactive materials associated with the storage in a monitored retrievable storage installation (MRS), and the terms and conditions under which the Commission will issue such licenses.

25. In § 70.20a, paragraph (b) is revised to read as follows:

§ 70.20a General license to possess special nuclear material for transport.

* * * * *

(b) Notwithstanding any other provision of this chapter, the general license issued under this section does not authorize any person to conduct any activity that would be authorized by a license issued pursuant to Parts 30 through 35, 39, 40, 50, 72, 110, or other sections of this part.

* * * * *

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

26. The authority citation for Part 73 is revised to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); secs. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Sec. 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 73.21, 73.37(g) and 73.55 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 73.20, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, 73.57, and 73.67 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 73.20(c)(1), 73.24(b)(1), 73.26 (b)(3), (h)(6), and (k)(4), 73.27 (a) and (b), 73.37(f), 73.40 (b) and (d), 73.46 (g)(6) and (h)(2), 73.50 (g)(2), (3)(iii)(B) and (h), 73.55 (h)(2), and (4)(iii)(B), 73.57, 73.70, 73.71 and 73.72 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

27. In § 73.1, paragraph (b)(6) is revised to read as follows:

§ 73.1 Purpose and scope.

* * * * *

(b) * * *

(8) This part prescribes requirements for the physical protection of spent fuel stored in either an independent spent fuel storage installation (ISFSI) or a monitored retrievable storage installation (MRS) licensed under Part 72 of this chapter.

* * * * *

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

28. The authority citation for Part 75 is revised to read as follows:

Authority: Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201); sec. 201, as amended, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 75.4 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), the provisions of this part are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

29. In § 75.4, paragraph (k)(4) is revised to read as follows:

§ 75.4 Definitions.

As used in this part:

* * * * *

(k) "Installation" means:

* * * * *

(4) An independent spent fuel storage installation (ISFSI) or a monitored retrievable storage installation (MRS) as defined n § 72.3 of this chapter; or

* * * * *

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

30. The authority citation for Part 150 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688, as amended (42 U.S.C. 2201, 2021); sec. 201, as amended, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 150.20(b) (2)-(4) and 150.21 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § 150.14 is issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 150.16-150.19 and 150.20(b)(1) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

31. In § 150.15, paragraph (a)(7) is revised to read as follows:

§ 150.15 Persons not exempt.

(a) * * *

(7) The storage of:

(i) Spent fuel in an independent spent fuel storage installation (ISFSI) or

(ii) Spent fuel and high level radioactive waste in a monitored retrievable storage installation (MRS) licensed pursuant to Part 72 of this chapter.

* * * * *

Dated at Rockville, Maryland, this 12th day of August, 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-18773 Filed 8-18-88; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R-0635]

Home Mortgage Disclosure; Revisions to Regulation C

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has adopted a revised Regulation C (Home Mortgage Disclosure). The revised regulation incorporates recent amendments to the Home Mortgage Disclosure Act that were contained in the Housing and Community Development Act of 1987. These statutory amendments permanently extend the act and expand its coverage to include mortgage banking subsidiaries of bank and savings and loan holding companies, and savings and loan service corporations that originate or purchase mortgage loans. Other revisions stem from a review made in accordance with the Board's Regulatory Improvement Program.

The HMDA-1 form, which is used by banks, thrifts, and other depository institutions for reporting loan data, remains essentially unchanged. The Board has adopted a separate form HMDA-2 for use by mortgage banking subsidiaries of holding companies and newly covered service corporations, because these institutions are required to exclude FHA loans from their reports.

EFFECTIVE DATES: September 19, 1988, except that the provisions in § 203.2 (f) and (g) related to the reporting of mobile and manufactured home loans will take effect on January 1, 1989. Mortgage banking subsidiaries of bank and savings and loan holding companies and savings and loan service corporations will be required to report data for calendar year 1988 in March of 1989.

FOR FURTHER INFORMATION CONTACT: John C. Wood, Senior Attorney, or Thomas J. Noto or Linda Vesperany, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at 202-452-2412 or 202-452-3667; for the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at 202-452-3544.

SUPPLEMENTARY INFORMATION:

(1) Background

The Board's Regulation C (12 CFR Part 203) implements the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq.*). It requires depository institutions that have over $10 million in assets, and have offices in metropolitan statistical areas (MSAs) or primary metropolitan statistical areas (PMSAs), to disclose annually their originations and purchases of mortgage and home improvement loans. Data must be itemized by census tract (or by county, in some instances) and also by type of loan. A statement covering the data on a calendar year basis must be made available to the public and reported to the institution's federal supervisory agency by March 31 following the calendar year for which the data are compiled.

When originally passed in 1975, HMDA contained a "sunset" provision under which the act was to expire in 1980. A number of temporary extensions were enacted and, in the Housing and Community Development Act of 1987 (Pub. L. 100-242, section 565, 101 Stat. 1815, 1945), the Congress permanently extended HMDA by striking the sunset provision from the act. The statutory amendments were signed into law on February 5, 1988. In addition to the permanent extension, these amendments expanded the coverage of HMDA to include mortgage banking subsidiaries of bank holding companies and savings and loan holding companies, as well as savings and loan service corporations.

On May 13, 1988, the Board published for public comment an amended Regulation C to implement these and other changes (53 FR 17081). With some changes that are identified in the

Nuclear Regulatory Commission, Withdrawal of Notice of Opportunity to Request a Hearing on Waste Control Specialists LLC's Consolidated Interim Spent Fuel Storage Facility Project, 82 Fed. Reg. 33,521 (July 20, 2017)

identify additional opportunities for improving customers' experience.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2017-15212 Filed 7-19-17; 8:45 am]

BILLING CODE 7515-01-P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for Materials Research—Partnership for Research and Education in Materials, University of Puerto Rico at Humacao (UPRH) (#1203) Site Visit

Date and Time: August 17, 2017; 8:00 a.m.–6:00 p.m.; August 18, 2017; 8:00 a.m.–12:00 p.m.

Place: University of Puerto Rico at Humacao, PR 908, Humacao, 00792 Puerto Rico.

Type of Meeting: Part-Open.

Contact Person: Dr. Jose Caro, Program Director, Partnership for Research and Education in Materials, PREM, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230; Telephone (703) 292-4914.

Purpose of Meeting: NSF site visit to provide advice and recommendations concerning further NSF support for the Center.

Agenda

Thursday, August 17, 2017

7:15 a.m. Bus leaves Hotel in Palmas del Mar, Humacao to UPRH
7:45 a.m.–8:15 a.m. Continental Breakfast Executive Session for Site Visit Team. (Closed)
8:15 a.m.–8:30 a.m. Break
8:30 a.m.–8:45 a.m. Welcome and Overview by Administration
8:45 a.m.–9:30 a.m. PI's Overview of PREM
9:30 a.m.–9:45 a.m. Q&A for PI's and Administrator's Overviews
9:45 a.m.–10:15 a.m. Partner Institutions Interactions Q&A
10:15 a.m.–10:30 a.m. Break
10:30 a.m.–12:00 a.m. Research Presentations/Q&A
12:00 p.m.–12:15 p.m. Q&A for Science Presentations
12:15 p.m.–1:15 p.m. Lunch with students and post docs (no faculty).
1:15 p.m.–2:15 p.m. Facilities Overview and Visit
2:15 p.m.–2:45 p.m. Visiting Team with University Management (Closed)
2:45 p.m.–4:00 p.m. Poster Session with refreshments
4:00 p.m.–5:00 p.m. Executive session—SV Team only (Closed)
5:00 p.m.–5:45 p.m. SV Team meets with PREM Management Team
5:45 p.m. Adjourn
6:00 p.m. Bus leaves from Natural Sciences Building for dinner
6:30 p.m. Dinner (Panel and Faculty): El Makito Restaurant, Naguabo,PR
9:00 p.m. Bus leaves Restaurant to Hotel (Approximate time)

Friday, August 18, 2017

7:00 a.m. Bus leaves hotel to UPRH
7:30 a.m.–8:00 a.m. Continental Breakfast
8:00 a.m.–9:30 a.m. Education and Outreach Activities
9:30 a.m.–9:45 a.m. Q&A for Educational and Outreach Presentations
9:45 a.m.–10:00 a.m. Break
10:00 a.m.–11:45 a.m. Executive Sessions for Site Visit Team only (Closed)
11:45 a.m.–12:00 p.m. NFS Debriefing with PREM PI
12:00 p.m. End of Site Visit
12:00 p.m. Working Lunch for Site Visit Team

Reason for Closing: The work being reviewed during closed portions of the site visit will include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 17, 2017.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2017-15264 Filed 7-19-17; 8:45 am]

BILLING CODE 7555-01-P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: Closed teleconference of the Committee on Strategy of the National Science Board, to be held Tuesday, July 25, 2017 from 10:30 a.m. to 12:00 Noon. EDT.

PLACE: This meeting will be held by teleconference at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Committee Chair's opening remarks; Review and discussion of the FY 2019 budget submission to the Office of Management and Budget; Committee Chair's closing remarks.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Kathy Jacquart, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292-8000.

You may find meeting information and updates (time, place, subject matter or status of meeting) at *http://www.nsf.gov/nsb/notices/.*

Dated: July 17, 2017.

Chris Blair,

Executive Assistant to the NSB Office.

[FR Doc. 2017-15309 Filed 7-18-17; 11:15 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72-1050; NRC-2016-0231]

Waste Control Specialists LLC's Consolidated Interim Spent Fuel Storage Facility Project

AGENCY: Nuclear Regulatory Commission.

ACTION: License application; withdrawal of notice of opportunity to request a hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing the notice of opportunity to request a hearing for Waste Control Specialists LLC's application to construct and operate a Consolidated Interim Storage Facility (CISF) for spent nuclear fuel at WCS's facility in Andrews County, Texas.

DATES: July 20, 2017.

ADDRESSES: Please refer to Docket ID NRC-2016-0231 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC-2016-0231. 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 *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select "*ADAMS Public Documents*" and then 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*. For the convenience of the reader, the ADAMS accession numbers are provided in a table in the "Availability of Documents" Section II of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John-Chau Nguyen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0262; email: *John-Chau.Nguyen@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

By letter dated April 28, 2016, as supplemented on July 20, August 19, August 31, September 27, October 7, November 16, December 16, December 22, 2016, and March 16, 2017, WCS submitted an application for a specific license pursuant to part 72 of title 10 of the *Code of Federal Regulations* (10 CFR), "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste." In its letter, WCS requested authorization to store up to 5,000 metric tons of uranium for a period of 40 years in a CISF.

In addition, by letter dated July 21, 2016, WCS requested that the NRC initiate its environmental impact statement (EIS) process for the WCS CISF license application as soon as practicable. By letter dated October 7, 2016, the NRC informed WCS of its decision to start the EIS process in advance of making a decision on docketing the application. On November 14, 2016 (81 FR 79531), the NRC published a notice in the **Federal Register** announcing its intent to prepare an EIS and to open the scoping period for the EIS.

By letter dated January 26, 2017, the NRC informed WCS of its decision to accept the application and proceed with the technical review. Subsequently, on January 30, 2017 (82 FR 8773), the NRC published a notice in the **Federal Register** announcing the acceptance for docketing and opportunity to request a hearing and to petition for leave to intervene of the WCS application.

By letter dated March 16, 2017, WCS submitted Revision 1 to its license application. By letter dated April 18, 2017, WCS requested that the NRC temporarily suspend all safety and environmental review activities as well as public participation activities associated with WCS' license application. On April 19, 2017, WCS and the NRC staff jointly requested that the Commission withdraw the hearing notice, explaining that a new **Federal Register** notice to provide a fresh opportunity for interested persons to request a hearing would be issued if review of the application resumes. On May 10, 2017, the NRC staff granted WCS' request to temporarily suspend all safety and environmental review activities as well as public participation activities associated with its license application. On June 22, 2017, the Commission granted WCS's and the NRC staff's request and further directed that the NRC staff to publish a **Federal Register** notice withdrawing the opportunity to request a hearing on this license application and directed the NRC staff to publish a new notice of opportunity to request a hearing in the **Federal Register** if WCS requests that the NRC staff resume its review of WCS's application.

II. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No.
WCS submittal of CISF license application, with Environmental Report	ML16132A533
WCS letter with schedule for response to NRC request for supplemental information	ML16193A314
WCS initial submittal in response to NRC request for supplemental information	ML16229A537
WCS submittal of supplemental security information	ML16235A467
WCS request for NRC to begin EIS process as soon as practicable	ML16229A340
WCS second submittal in response to NRC request for supplemental information	ML16265A454
WCS submittal of additional supplemental security information	ML16280A300
NRC response to WCS request to begin EIS process as soon as practicable	ML16285A317
WCS third submittal in response to NRC request for supplemental information	ML16287A527
WCS fourth submittal in response to NRC request for supplemental information	ML16330A116
WCS fifth submittal in response to NRC request for supplemental information	ML16356A346
WCS sixth submittal in response to NRC request for supplemental information	ML17018A292
NRC letter accepting application for review	ML17018A168
WCS license application Revision 1 submittal	ML17062A007
WCS request NRC to temporarily suspend all safety and environmental review activities	ML17110A206
NRC granting WCS request to temporarily suspend all safety and environmental review activities	ML17129A314

Dated at Rockville, Maryland, this 13th day of July 2017.

For the Nuclear Regulatory Commission.

John McKirgan,

Chief, Spent Fuel Licensing Branch, Division of Spent Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2017–15239 Filed 7–19–17; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81146; File No. SR–NYSEMKT–2017–44]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.38E To Specify the Ranking of an Odd Lot Order That Has a Display Price That Is Better Than Its Working Price

July 14, 2017.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 30, 2017, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.38E (Odd and Mixed Lots) to specify the ranking of an odd lot order that has a display price that is better than its working price. The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.38E (Odd and Mixed Lots) to specify the ranking of an odd lot order that has a display price that is better than its working price.

Rule 7.38E provides that the working price of an odd lot order will be adjusted both on arrival and when resting on the Exchange Book based on the limit price of the order as follows:

- If the limit price of an odd lot order is equal to or worse than the contra-side PBBO, it will have a working price equal to the limit price.
- If the limit price of an odd lot order is better than the contra-side PBBO, it will have a working price equal to the contra-side PBBO.
- If the PBBO is crossed, the odd lot order will have a working price equal to the same-side PBB or PBO.

By moving the working price, an odd lot order to buy (sell) will not trade at a price above (below) the PBO (PBB), or if the PBBO is crossed, above (below) the PBB (PBO). In either case, if the odd lot order is ranked Priority 2—Display Orders,[4] its display price would not change when its working price is adjusted.

Exchange rules are currently silent regarding how a resting odd lot order that has a display price that is better than its working price would be ranked for trading at that working price.[5] This scenario would only occur if a resting odd lot order is displayed at a price, and then an Away Market PBBO crosses that display price. In that limited scenario, pursuant to Rule 7.38E(b)(1) described above, the working price of the odd-lot order would be adjusted to a price inferior to the display price, but it would remain displayed at the now crossed price.

The Exchange proposes to specify that in such case, the ranking and priority category applicable to such an order at its display [sic], *i.e.*, the price it is displayed and Priority 2—Display Orders, would govern its ranking for purposes of a trade at its different, inferior working price.[6] This ranking would differ from the Exchange's general rule that an order is ranked based on its working price.[7] However, the Exchange believes that if the display price of an order is better than its working price, such order has already demonstrated a public willingness to trade at a more aggressive price because it continues to be published in a market data feed at the more aggressive display price.[8] In such case, the order should receive the benefit of the ranking (both price and priority category) associated with its better display price when determining how that order would be traded at its working price. In other words, an odd-lot order with a better display price than its working price would not be ranked based on its working price, including that it would not be assigned Priority 3—Non-Display Orders at its working price.

The Exchange further believes that if an odd-lot order is assigned a new working price that is worse than its display price, such order should not be assigned a new working time. In other words, when trading at its working price, its time ranking would be based on the working time associated with its display price.[9] Maintaining the original working time of such order would ensure that it maintains its original ranking, even if it trades at a different price.

To effect this change, the Exchange proposes to amend Rule 7.38E(b)(1) to provide that an odd-lot order ranked Priority 2—Display Orders would not be assigned a new working time if its working price is adjusted under Rule 7.38E(b)(1). In addition, if the display price of an odd lot order to buy (sell) is above (below) its working price, it would be ranked based on its display price.[10]

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] As described in Rule 7.36E(e)(2), Priority 2—Display Orders are non-marketable Limit Orders with a displayed working price.

[5] Pursuant to Rule 7.38E(b)(1), on arrival, an odd lot order's working price may be adjusted consistent with the terms of the order. However, an arriving odd-lot order would not be assigned a working price that would be inferior to the price at which the arriving odd lot order would be displayed.

[6] As described in Rule 7.36E(c), an order is ranked based on price, priority category, and time. Such ranking is only applicable once an order is resting on the Exchange Book.

[7] Rule 7.36E(d) provides that all orders are ranked based on the working price of the order. Rule 7.36E(e)(3) generally provides that non-marketable orders for which the working price is not displayed have third priority behind Market Orders and non-marketable Limit Orders that are displayed at their working price. This proposed rule change would be an exception to these rules.

[8] *See* Rule 7.36E(b)(1) (odd-lot sized orders are considered displayed for ranking purposes).

[9] Rule 7.36E(f)(2) provides that an order is assigned a new working time any time the working price of the order changes. This proposed rule change would be an exception to this general rule.

[10] For example, assume the PBBO is 10.07 × 10.10 and the Exchange receives orders ranked Priority

Continued

Nuclear Regulatory Commission, Notice of Revised License Application and Opportunity to Request a Hearing and to Petition for Leave to Intervene in Interim Storage Partner's Waste Control Specialists Consolidated Interim Storage Facility, 83 Fed. Reg. 44,070 (Aug. 29, 2018)

construction permit for the RPF even if the 10 CFR 70.21(f) timing requirement has not been met. The NRC is considering issuing the requested exemption. The proposed action would not significantly: (a) Affect probabilities of evaluated accidents; (b) affect margins of safety; (c) affect the effectiveness of programs contained in licensing documents; (d) increase effluents; (e) increase occupational radiological exposures; or (f) affect operations or decommissioning activities of the RPF. The reason the environment would not be significantly affected is because the requested exemption affects only the timing of construction and does not affect the previous evaluation regarding the environmental impacts of constructing and operating the NWMI RPF, as described in the Environmental Impact Statement for Construction Permit for the Northwest Medical Isotopes Radioisotope Production Facility, Final Report (NUREG–2209). The impacts of connected 10 CFR part 70 actions at the RPF were evaluated in NUREG–2209. On the basis of the EA included in Section II of this document, and incorporated herein by reference, the NRC has determined not to prepare an EIS for the proposed action. The related environmental documents are: (a) NWMI Exemption request dated December 17, 2017, as supplemented on March 12, 2018 (ADAMS Accession Nos. ML17362A040 and ML18088A175); (b) NWMI Preliminary Safety Analyses Report, Chapter 19, "Environmental Report," Corvallis, OR, revision OA dated June 2015, (ADAMS Accession Nos. ML15210A123, ML15210A128, ML15210A129, and ML15210A131; and (c) NUREG–2209, "Environmental Impact Statement for the Construction Permit for the Northwest Medical Isotopes Radioisotope Production Facility," issued in May 2018 (ADAMS Accession No. ML17130A862).

This FONSI and other related environmental documents may be examined, and/or copied for a fee, at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Publicly-available records are also accessible online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland this 24th day of August, 2018.

For the Nuclear Regulatory Commission.

Brian W. Smith,

Deputy Director, Division of Fuel Cycle Safety, Safeguards, and Environmental Review, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2018–18757 Filed 8–28–18; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 72–1050; NRC–2016–0231]

Interim Storage Partner's Waste Control Specialists Consolidated Interim Storage Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Revised license application; opportunity to request a hearing and to petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received a request from Interim Storage Partners, a joint venture between Waste Control Specialists, LLC (WCS) and Orano CIS, L.L.C. by letters dated June 8, 2018, and July 19, 2018, to resume NRC staff review of a license application for the WCS Consolidated Interim Storage Facility (CISF) in Andrews County, Texas. By letter dated April 18, 2017, the previous applicant, WCS, asked NRC to temporarily suspend all safety and environmental review activities.

DATES: A request for a hearing or petition for leave to intervene must be filed by August 29, 2018. Any potential party as defined in section 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by September 10, 2018.

ADDRESSES: Please refer to Docket ID NRC–2016–0231 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0231. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@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 *http://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*. For the convenience of the reader, the ADAMS accession numbers are provided in a table in the "Availability of Documents" section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John-Chau Nguyen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0262; email: *John-Chau.Nguyen@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC received, by letter dated April 28, 2016, an application from WCS for a specific license pursuant to 10 CFR part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste." WCS proposed to construct a Consolidated Interim Storage Facility (CISF) on its approximately 60.3 square kilometer (14,900 acre) site in western Andrews County, Texas. WCS currently operates facilities on this site that process and store Low-Level Waste and Mixed Waste (*i.e.*, waste that is considered both hazardous waste and Low-Level Waste). The facility also disposes of both hazardous waste and toxic waste.

On January 30, 2017, the NRC published two notices in the **Federal Register**: (1) A notice describing the closing date for the scoping period for the Environmental Impact Statement (EIS), and dates, times, and locations of scoping meetings wherein the NRC received oral comments as part of the EIS scoping process (82 FR 8771); and (2) a notice of its acceptance of the WCS application and an opportunity to request a hearing and petition for leave to intervene (82 FR 8773). On March 16, 2017 (82 FR 14039), the NRC published a notice in the **Federal Register** of an extension to the scoping period and

additional public meetings. On April 4, 2017, and in a corrected notice dated April 10, 2017, the NRC published in the **Federal Register** (82 FR 16435; 82 FR 17297) an order granting all petitioners an extension of time until May 31, 2017, to file hearing requests on WCS's license application. On July 20, 2017 (82 FR 33521), the NRC published a notice in the **Federal Register** that WCS had asked NRC to temporarily suspend all safety and environmental review activities. The July 20, 2017, notice in the **Federal Register** withdrew the notice of opportunity to request a hearing for WCS's application and explained that the NRC staff would publish a notice in the **Federal Register** if WCS requested that the NRC staff resume its review of WCS's application.

By letters dated June 8, 2018, and July 19, 2018, NRC received a request from Interim Storage Partners (ISP), a joint venture between WCS and Orano CIS, LLC to resume NRC staff review of the license application for the WCS Consolidated Interim Storage Facility (CISF) in Andrews County, Texas. ISP provided Revision 2 of the License Application, including a revised Safety Analysis Report and Environmental Report. In its June 8, 2018, letter, ISP stated that the Physical Security Plan and Safeguards Contingency Plan submitted with Revision 1 of its License Application remain applicable to the current application. The NRC staff has determined that Revision 1 of the Emergency Plan also remains applicable to the current application. Though ISP is the new owner, the name of the proposed facility remains the WCS CISF.

An NRC administrative completeness review found the revised application acceptable for a technical review. Prior to issuing the license, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (AEA), and the NRC's regulations. The NRC's findings will be documented in a safety evaluation report and an EIS.

II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR part 2. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. A copy of the regulations is also available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d), the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions set forth in this section. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to

submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html*. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html*. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html*, by email to *MSHD.Resource@nrc.gov*, or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd*, unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

IV. Availability of Documents

The documents identified in this **Federal Register** notice are accessible to interested persons in ADAMS under the accession numbers identified in the table below.

Title	ADAMS accession No.
WCS CISF License Application, Revision 2, with Safety Analysis Report and Environmental Report	ML18206A595
WCS CISF Physical Security Plan, Revision 1, and Safeguards Contingency Plan, and Guard Training and Qualification Plan (redacted).	ML17075A289
WCS submittal of Supplemental Security Information (redacted)	ML16235A467
WCS submittal of Supplemental Security Information (redacted)	ML16280A300
WCS CISF Emergency Plan, Rev. 1	ML17082A054

V. Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI)). Requirements for access to SGI are primarily set forth in 10 CFR parts 2 and 73. Nothing in this Order is intended to conflict with the SGI regulations.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI or SGI is necessary to respond to this notice may request access to SUNSI or SGI. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI or SGI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI, SGI, or both to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) If the request is for SUNSI, the identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention; and

(4) If the request is for SGI, the identity of each individual who would have access to SGI if the request is granted, including the identity of any expert, consultant, or assistant who will aid the requestor in evaluating the SGI. In addition, the request must contain the following information:

(a) A statement that explains each individual's "need to know" the SGI, as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1). Consistent with the definition of "need to know" as stated in 10 CFR 73.2, the statement must explain:

(i) Specifically why the requestor believes that the information is necessary to enable the requestor to proffer and/or adjudicate a specific contention in this proceeding;[2] and

(ii) The technical competence (demonstrable knowledge, skill, training, or education) of the requestor to effectively utilize the requested SGI to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

(b) A completed Form SF–85, "Questionnaire for Non-Sensitive Positions," for each individual who would have access to SGI. The completed Form SF–85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR part 2, subpart C, and 10 CFR 73.22(b)(2), to determine the requestor's trustworthiness and reliability. For security reasons, Form SF–85 can only be submitted electronically through the electronic questionnaire for investigations processing (e-QIP) website, a secure website that is owned and operated by the Office of Personnel Management. To obtain online access to the form, the requestor should contact the NRC's Office of Administration at 301–415–3710.[3]

(c) A completed Form FD–258 (fingerprint card), signed in original ink, and submitted in accordance with 10 CFR 73.57(d). Copies of Form FD–258 may be obtained by writing the Office of Administrative Services, Mail Services Center, Mail Stop P1–37, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by email to *MAILSVC.Resource@nrc.gov*. The fingerprint card will be used to satisfy the requirements of 10 CFR part 2, subpart C, 10 CFR 73.22(b)(1), and Section 149 of the Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for an FBI identification and criminal history records check.

(d) A check or money order payable in the amount of $324.00[4] to the U.S. Nuclear Regulatory Commission for each individual for whom the request for access has been submitted.

(e) If the requestor or any individual(s) who will have access to SGI believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements in 10 CFR 73.59, the requestor should also provide a statement identifying which exemption the requestor is invoking and explaining the requestor's basis for believing that the exemption applies. While processing the request, the Office of Administration, Personnel Security Branch, will make a final determination whether the claimed exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of their exemption status prior to submitting their request. Persons who are exempt from the background check are not required to complete the SF–85 or Form FD–258; however, all other requirements for access to SGI, including the need to know, are still applicable.

Note: Copies of documents and materials required by paragraphs C.(4)(b), (c), and (d) of this Order must be sent to the following address: U.S. Nuclear Regulatory Commission, Attn: Personnel Security Branch, Mail Stop TWFN–03–B46M, 11555 Rockville Pike, Rockville, MD 20852.

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

[2] Broad SGI requests under these procedures are unlikely to meet the standard for need to know; furthermore, NRC staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requestor's need to know than ordinarily would be applied in connection with an already-admitted contention or non-adjudicatory access to SGI.

[3] The requestor will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and email address. After providing this information, the requestor usually should be able to obtain access to the online form within one business day.

[4] This fee is subject to change pursuant to the Office of Personnel Management's adjustable billing rates.

These documents and materials should *not* be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required.

D. To avoid delays in processing requests for access to SGI, the requestor should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

E. Based on an evaluation of the information submitted under paragraphs C.(3) or C.(4) above, as applicable, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI or need to know the SGI requested.

F. For requests for access to SUNSI, if the NRC staff determines that the requestor satisfies both E.(1) and E.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.[5]

G. For requests for access to SGI, if the NRC staff determines that the requestor has satisfied both E.(1) and E.(2) above, the Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requestor in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. Those conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[6] by each individual who will be granted access to SGI.

H. Release and Storage of SGI. Prior to providing SGI to the requestor, the NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22. Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

I. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI or SGI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

J. Review of Denials of Access.

(1) If the request for access to SUNSI or SGI is denied by the NRC staff either after a determination on standing and requisite need, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) Before the Office of Administration makes a final adverse determination regarding the trustworthiness and reliability of the proposed recipient(s) for access to SGI, the Office of Administration, in accordance with 10 CFR 2.336(f)(1)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient(s) have an opportunity to correct or explain the record.

(3) The requestor may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(4) The requestor may challenge the Office of Administration's final adverse determination with respect to trustworthiness and reliability for access to SGI by filing a request for review in accordance with 10 CFR 2.336(f)(1)(iv).

(5) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

K. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[7]

L. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

[5] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[6] Any motion for Protective Order or draft Non-Disclosure Agreement or Affidavit for SGI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 180 days of the deadline for the receipt of the written access request.

[7] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI request submitted to the NRC staff under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 24th of August, 2018.

For the Nuclear Regulatory Commission.

Rochelle C. Bavol, Acting,

Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information in This Proceeding

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non Safeguards Information (SUNSI) and/or Safeguards Information (SGI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (*e.g.*, showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no "need," no "need to know," or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes a final adverse determination regarding access to SGI, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff trustworthiness or reliability determination under 10 CFR 2.336(f)(1)(iv).
A	If access granted: Issuance of a decision by a presiding officer or other designated officer on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of opportunity to request a hearing and petition for leave to intervene), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2018–18758 Filed 8–28–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Senior Executive Service Performance Review Board

AGENCY: U.S. Nuclear Waste Technical Review Board.

ACTION: Notice of Performance Review Board membership.

SUMMARY: This notice announces the membership of the Nuclear Waste Technical Review Board (NWTRB) Senior Executive Service (SES) Performance Review Board (PRB).

DATES: August 27, 2018.

FOR FURTHER INFORMATION CONTACT: Neysa M. Slater-Chandler by telephone at 703–235–4480, or via email at *slater-chandler@nwtrb.gov*, or via mail at 2300 Clarendon Blvd., Suite 1300, Arlington, VA 22201.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c)(1) through (5) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards.

The PRB shall review and evaluate the initial summary rating of a senior executive's performance, the executive's response, and the higher-level official's comments on the initial summary rating. In addition, the PRB will review

Nuclear Regulatory Commission, Interim Storage Partners, LLC; WCS Consolidated Interim Storage Facility; Issuance of Materials License and Record of Decision 86 Fed. Reg. 51,926 (Sept. 17, 2021)

comments from private citizens and industry organizations. The NRC staff's evaluation and resolution of the public comments are documented in ADAMS under Accession No. ML21211A578.

III. Congressional Review Act

NUREG–1021, Revision 12, is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated: September 14, 2021.

For the Nuclear Regulatory Commission.

Christian B. Cowdrey,

Chief, Operator Licensing and Human Factors Branch, Division of Reactor Oversight, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–20171 Filed 9–16–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of September 20, 27, October 4, 11, 18, 25, 2021.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of September 20, 2021

There are no meetings schednled for tbe week of September 20, 2021.

Week of September 27, 2021—Tentative

Thursday, September 30, 2021

9:00 a.m. Strategic Programmatic Overview of the Operating Reactors and New Reactors Business Lines (Public Meeting); (Contact: Candace De Messieres: 301–415–8395)

Additional Information: Due to COVID–19, there will be no physical public attendance. The public is invited to attend the Commission's meeting live by webcast at the Web address—*https://video.nrc.gov/.*

Week of October 4, 2021—Tentative

Tuesday, October 5, 2021

10:00 a.m. Meeting with the Advisory Committee on the Medical Uses of Isotopes (Public Meeting); (Contact: Don Lowman: 301–415–5452)

Additional Information: Due to COVID–19, there will be no physical public attendance. The public is invited to attend the Commission's meeting live by webcast at the Web address—*https://video.nrc.gov/.*

Friday, October 8, 2021

10:00 a.m. Meeting with the Advisory Committee on Reactor Safeguards (Public Meeting); (Contact: Larry Burkhart: 301–287–3775)

Additional Information: Due to COVID–19, there will be no physical public attendance. The public is invited to attend the Commission's meeting live by webcast at the Web address—*https://video.nrc.gov/.*

Week of October 11, 2021—Tentative

There are no meetings scheduled for the week of October 11, 2021.

Week of October 18, 2021—Tentative

There are no meetings scheduled for the week of October 18, 2021.

Week of October 25, 2021—Tentative

Thursday, October 28, 2021

10:00 a.m. Meeting with the Organization of Agreement States and the Conference of Radiation Control Program Directors (Public Meeting); (Contact: Celimar Valentin-Rodriguez: 301–415–7124)

Additional Information: Due to COVID–19, there will be no physical public attendance. The public is invited to attend the Commission's meeting live by webcast at the Web address—*https://video.nrc.gov/.*

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Tyesha.Bush@nrc.gov* or *Betty.Thweatt@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: September 15, 2021.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2021–20286 Filed 9–15–21; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–1050; NRC–2016–0231]

Interim Storage Partners, LLC; WCS Consolidated Interim Storage Facility; Issuance of Materials License and Record of Decision

AGENCY: Nuclear Regulatory Commission.

ACTION: License and record of decision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued Materials License No. SNM–2515 to Interim Storage Partners, LLC (ISP) to construct and operate the WCS Consolidated Interim Storage Facility (CISF) as proposed in its license application, as amended, and to receive, possess, store, and transfer spent nuclear fuel and Greater-than-Class-C radioactive waste at the WCS CISF in Andrews County, Texas. ISP will be required to operate under the conditions listed in Materials License No. SNM–2515. The NRC staff has published a record of decision (ROD) that supports the NRC's decision to approve ISP's license application for the WCS CISF and to issue the license.

DATES: September 17, 2021.

ADDRESSES: Please refer to Docket ID NRC–2016–0231 when contacting the NRC about the availability of information regarding this document. You may access publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2016–0231. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@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 access 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 ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the section of this document entitled, **SUPPLEMENTARY INFORMATION.**

• *Attention:* The 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 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John-Chan Ngnyen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0262; email: *John-Chau.Nguyen@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC has issued a license to ISP for its WCS CISF in Andrews County, Texas (ADAMS Package Accession No. ML21188A096). Materials License No. SNM–2515 authorizes ISP to construct and operate its facility as proposed in its license application, as amended, and to receive, possess, store, and transfer spent nuclear fuel, including a small quantity of mixed-oxide fuel, and Greater-than-Class-C radioactive waste at the WCS CISF. The license authorizes ISP to store up to 5,000 metric tons of uranium [5,500 short tons] of spent nuclear fuel for a license period of 40 years. ISP will be required to operate under the conditions listed in Materials License No. SNM–2515.

The NRC staff's ROD that snpports the NRC's decision to approve ISP's license application for the WCS CISF and to issue Materials License No. SNM–2515 is available in ADAMS under Accession No. ML21222A214. The ROD satisfies the regulatory requirement in section 51.102 paragraph (a) of title 10 of the *Code of Federal Regulations* (10 CFR), which requires that a Commission decision on any action for which a final environmental impact statement (EIS) has been prepared be accompanied by or include a concise public ROD. As discussed in the ROD and the final EIS for ISP's license application for a CISF for spent nuclear fuel in Andrews County, Texas (ADAMS Accession No. ML21209A955), the NRC staff considered a range of reasonable alternatives that included the No-Action alternative, as required by the National Environmental Policy Act of 1969, as amended; storage at a government-owned CISF; alternative design and storage technologies; and alternative locations. The final EIS documents the environmental review, including the NRC staff's recommendation to issue an NRC license to ISP to construct and operate a CISF for spent nuclear fuel at the proposed location, subject to the determinations in the NRC staff's safety review of the application. The final EIS conclnsion is based on the NRC staff's independent environmental review, as well as (i) the license application, which inclndes the environmental report and supplemental docnments and ISP's responses to the NRC staff's requests for additional information; (ii) consnltation with Federal, State, Tribal, and local agencies and input from other stakeholders, including members of the public; and (iii) the assessments provided in the final EIS.

The NRC staff prepared a final safety evaluation report that documents the staff's safety and security review of the application (ADAMS Accession No. ML21188A101). The staff's safety and security review found that the application met applicable NRC regulations in 10 CFR part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater than Class C Waste."

Documents related to the application carry Docket ID NRC–2016–0231. These documents for the ISP license inclnde the license application, the applicant's safety analysis report, emergency plan, physical security plan, environmental report, updates to these documents, and applicant supplements and responses to NRC staff requests for additional information, and the NRC staff's final safety evaluatiou report, final EIS, and ROD.

ISP's request for a materials license was previously noticed in the **Federal Register** on November 14, 2016 (81 FR 79531). A notice of docketing with an opportunity to request a hearing and to petition for leave to intervene was published in the **Federal Register** on January 30, 2017 (82 FR 8773). Four groups of petitioners filed petitions to intervene. An Atomic Safety and Licensing Board considered petitions and admitted one contention. The Board subsequently dismissed the contention as moot after ISP supplemented its application with information that the contention had noted was missing, and the Board subsequently terminated the adjudicatory proceeding. Intervenors appealed the decisions to the Commission, and the Commission affirmed the Board decisions, with one new contention remanded to the Board for consideration. The Board subsequently dismissed the remanded contention, and the Commission denied an appeal of the Board decision.

In issuing a materials license to ISP for the WCS CISF, the NRC has determined based on its review of this application that there is reasonable assurance that: (i) The activities authorized by the license can be conducted without endangering the health and safety of the public; and (ii) these activities will be conducted in compliance with the applicable regulations of 10 CFR part 72. The NRC has further determined that the issuance of the license will not be inimical to the common defense and security.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," the details with respect to this action, including the final safety evaluation report and accompanying docnmentation and license, are available electronically in the ADAMS Pnblic Documents collection at *https://www.nrc.gov/reading-rm/adams.html*. From this site, yon can access ADAMS, which provides text and image files of the NRC public documents.

II. Availability of Documents

The docnments identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No.
1. Initial application, safety analysis report (SAR) and environmental report (ER), dated April 28, 2016	ML16133A070 (Package).
2. Application Revision 1, SAR Revision 1, and ER Revision 1, dated March 16, 2017	ML17082A021 (Package).
3. Application Revision 2, SAR Revision 2, and ER Revision 2, dated July 19, 2018	ML18206A595 (Package).
4. ER Revision 3, dated February 17, 2020	ML20052E144 (Package).

Document	ADAMS accession No.
5. SAR Revision 3, dated May 22, 2020	ML20150A337 (Package).
6. Application Revision 3, dated August 24, 2020	ML20237F470.
7. SAR Revision 4, September 2, 2020	ML20261H419 (Package).
8. Application Revision 4 and SAR Revision 5, dated April 12, 2021	ML21105A766 (Package).
9. Applicant response to request for additional information, dated July 19, 2018	ML18208A437.
10. Applicant response to request for additional information, dated January 7, 2019	ML19009A099.
11. Applicant response to request for additional information, dated March 22, 2019	ML19085A055.
12. Applicant response to request for additional information, dated May 31, 2019	ML19156A048 (Package).
13. Applicant response to request for additional information, dated June 26, 2019	ML19197A044.
14. Applicant response to request for additional information, dated June 28, 2019	ML19184A159 (Package).
15. Applicant response to request for additional information, dated June 28, 2019	ML19190A227 (Package).
16. Applicant response to request for additional information, dated July 31, 2019	ML19217A231 (Package).
17. Applicant response to request for additional information, dated August 20, 2019	ML19235A157 (Package).
18. Applicant response to request for additional information, dated September 18, 2019	ML19270E399.
19. Applicant submittal of supplemental information, dated September 20, 2019	ML19268A113 (Package).
20. Applicant response to request for additional information, dated November 21, 2019	ML19337B502 (Package).
21. Applicant response to request for additional information, dated January 6, 2020	ML20015A448 (Package).
22. Applicant response to request for additional information, dated January 17, 2020	ML20028E843 (Package).
23. Applicant response to request for additional information, dated January 22, 2020	ML20028D890 (Package).
24. Applicant response to request for additional information, dated February 14, 2020	ML20052D995 (Package).
25. Applicant response to request for additional information, dated February 14, 2020	ML20052E047 (Package).
26. Applicant submittal of supplemental information, dated March 5, 2020	ML20071F152 (Package).
27. Applicant response to request for additional information, dated March 16, 2020	ML20083J964 (Package).
28. Applicant response to request for additional information, dated April 7, 2020	ML20105A133 (Package).
29. Applicant response to request for additional information, dated April 7, 2020	ML20105A171 (Package).
30. Applicant response to request for additional information, dated May 18, 2020	ML20139A173 (Package).
31. Applicant response to request for additional information, dated June 11, 2020	ML20163A008.
32. Applicant submittal of supplemental information, dated July 21, 2020	ML20203M040.
33. Applicant submittal of supplemental information, dated January 27, 2021	ML21027A147.
34. Draft Environmental Impact Statement, dated May 2020	ML20122A220.
35. Overview of the Draft Environmental Impact Statement, dated May 2020	ML20121A016.
36. Overview of the Draft Environmental Impact Statement (Spanish language version), dated May 2020	ML20136A148.
37. Final Environmental Impact Statement, dated July 2021	ML21209A955.
38. Overview of the Final Environmental Impact Statement, dated July 2021	ML21200A050.
39. Final Safety Evaluation Report, dated September 2021	ML21188A101.
40. NRC Staff's Record of Decision, dated September 13, 2021	ML21222A214.
41. Materials License for ISP, dated September 13, 2021	ML21188A096 (Package).

Dated: September 13, 2021.

For the Nuclear Regulatory Commission.

Shana R. Helton,

Director, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2021–20092 Filed 9–16–21; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2020–171; CP2020–172; CP2020–179; CP2020–182; CP2020–196]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 21, 2021.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominaut or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).