

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Availability of draft rule wording.

SUMMARY: The Nuclear Regulatory Commission (NRC) is making available the draft wording of a possible amendment of its regulations. The proposal would amend 10 CFR 50.44, "Standards for combustible gas control system in light-water-cooled power reactors," and associated regulations based on experience gained from a fundamental reevaluation of the need for the regulation, the application of risk insights, and the incorporation of performance-based concepts, to the degree practicable. The proposed changes effectively "rebaselines" the existing regulation for current licensees and consolidates combustible gas control regulations for future applicants and licensees. The changes should reduce the regulatory burden for all applicants and licensees and improve the effectiveness of 10 CFR 50.44. Additional conforming changes to 10 CFR 50.34, 50.46, and 10 CFR part 52 are also identified. The availability of the draft wording is intended to inform stakeholders of the current status of the NRC staff's activities to amend 10 CFR 50.44 and to provide stakeholders the opportunity to comment on the draft changes. The NRC staff has also provided additional information within the body of the draft rule language which is bracketed ("[]") to facilitate understanding of the staff's intent and the development of guidance for the proposed rule. As a result of the draft wording changes, certain technical specifications in the standard technical specifications can be deleted or modified. The NRC staff is also making

the draft technical specification changes associated with the draft wording of 10 CFR 50.44 available for stakeholders comments. The draft changes to NUREGs 1430, 1431, 1432, 1433, and 1434 are attached.

DATES: Comments should be submitted by December 31, 2001. Any comments received after this date may not be considered during drafting of the proposed rule. Because of scheduling considerations in preparing a proposed rule, the NRC staff requests that stakeholders provide their comments at their earliest convenience before the end of the comment period, if practicable.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, Mail Stop O-16C1 or deliver written comments to One White Flint North, 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking Web site through the NRC's home page at <http://ruleforum.llnl.gov>. This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher at (301) 415-5905 or by e-mail to cag@nrc.gov. Copies of any comments received and certain documents related to this rulemaking may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/NRC/ADAMS/index.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by email to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Anthony W. Markley, Risk-Informed Initiatives, Environmental, Decommissioning, and Rulemaking Branch, Division of Regulatory Improvement Programs, Office of

Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; Telephone: (301) 415-3165; Internet: awm@nrc.gov.

SUPPLEMENTARY INFORMATION: Since the Commission published a Policy Statement on the Use of Probabilistic Risk Assessment in 1995, the NRC staff's efforts to consider risk insights in the regulatory infrastructure have evolved over the years. In SECY-98-0300, dated December 23, 1998, under Option 3, the staff proposed to add provisions to Part 50 for risk-informed alternative regulations, revise existing requirements to reflect risk-informed considerations, and to remove unnecessary or ineffective regulations. In SECY-00-0198, dated September 14, 2000, the staff provided specific recommendations for risk-informed changes to 10 CFR 50.44. In a Staff Requirements Memorandum dated January 19, 2001, the Commission directed the staff to proceed with risk-informed revisions to 10 CFR 50.44. In SECY-01-0162, dated August 23, 2001, the NRC staff subsequently communicated to the Commission its recommended approach and discussed issues involving 10 CFR 50.44.

During the development of the Option 3 effort, Mr. Bob Christie of Performance Technology, Inc. submitted letters dated October 7 and November 9, 1999 that requested changes to the regulations in 10 CFR 50.44. These letters have been characterized as a petition for rulemaking and assigned the Docket No. PRM-50-68. The petition was published for comment in the **Federal Register** on January 12, 2000 (65 FR 1829). The issues associated with 10 CFR 50.44 which were raised by the petitioner were discussed in SECY-00-0198 and will be addressed in the proposed rulemaking.

The NRC also received a petition for rulemaking filed by the Nuclear Energy Institute. The petition was docketed on April 12, 2000, and has been assigned Docket No. PRM-50-71. The petition was published for comment in the **Federal Register** on May 30, 2000 (65 FR 34599). The petitioner requests that the NRC amend its regulations to allow nuclear power plant licensees to use zirconium-based cladding materials other than zircaloy or ZIRLO, provided the cladding materials meet the requirements for fuel cladding

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

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

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

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

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

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150-AG87

List of Approved Spent Fuel Storage Casks: FuelSolutions™ Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

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

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

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

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

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT:

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

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

Procedural Background

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

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

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

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

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

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

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