

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50 and 72

RIN: 3150-AH39

Submission of Annual Financial Reports: Elimination of Requirement

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations so that licensees who file financial reports with the Securities and Exchange Commission (SEC) or the Federal Energy Regulatory Commission (FERC), need not submit annual financial reports, including the certified financial statements, to the Commission. The Commission is also amending its regulations so that Independent Spent Fuel Storage Installation (ISFSI) licensees who file financial reports with the SEC or the FERC, need not submit annual financial reports, including the certified financial statements, to the Commission.

EFFECTIVE DATE: The final rule is effective (insert date 75 days after publication in the *Federal Register*), unless significant adverse comments are received by (insert date 30 days after publication in 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 change. If the rule is withdrawn, timely notice will be published in the *Federal Register*.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number RIN 3150-AH39 in the subject line of your comments. Comments on rulemakings or petitions submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or

contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

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

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking website to Carol Gallagher (301) 415-5905; email cag@nrc.gov. Comments can also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm on Federal workdays. (Telephone (301)415-1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this rulemaking or petition may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Public Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.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. 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 e-mail to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Michael T. Jamgochian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-3224, e-mail MTJ1@nrc.gov.

SUPPLEMENTARY INFORMATION:

In accordance with § 553(b)(3)(B) of the Administrative Procedures Act, the NRC is using the direct final rule process for this rule because the NRC considers this action to be noncontroversial, and does not anticipate significant adverse comments. The Commission considers this rulemaking action noncontroversial because the annual reports and the certified financial statements currently required by §50.71 (b) and 72.80 (b), are typically written for the shareholders, and contain information pertaining to financial qualifications, that may be outdated by the time it is published. The reports can be found posted on the company's web site as well as on the SEC or FERC websites. The NRC has concluded that for licensees that are required to file financial reports with the SEC or the FERC, licensee financial information can be collected in a more cost-effective way than requiring licensees to submit the reports to the Commission, as required by 10 CFR 50.71 (b) and 10 CFR 72.80 (b). The NRC has access to other more current sources of information than the annual financial reports to assess the licensees' financial condition, making the submittal of the annual financial report to the NRC unnecessary. Additionally, NRC has the authority to request licensees to submit additional or more detailed information regarding their financial status if the Commission considers this information appropriate.

The amendments in this rule will become effective on (insert date 75 days after

publication in the *Federal Register*). However, if the NRC receives significant adverse comments on this direct final rule by (insert date 30 days after publication in the *Federal Register*), then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published elsewhere in this *Federal Register*. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

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, a substantive response is required when –

(A) The comment causes the 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 staff.

(2) The comment proposes a change or an addition to the rule and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

Background

Section 182.a of the Atomic Energy Act of 1954, as amended, provides that each application for a license shall state such information as the Commission, by rule or regulation, may determine to be necessary to decide the financial qualifications of the applicant as the Commission may deem appropriate for the license. The Act and the Commission's regulations reflect that the fundamental purpose of the financial qualifications provision of that section is the protection of the public health and safety and the common defense and security. Although the Commission's safety determinations required for the issuance of facility licenses are based upon extensive and detailed technical review, an applicant's financial qualifications can also contribute to the ability to meet its responsibilities on safety matters.

Discussion

In SECY-02-0081, "Staff Activities Related to the NRC Goal of Reducing Unnecessary Regulatory Burden on Power Reactor Licensees," dated May 13, 2002, the NRC staff described various interactions with stakeholders regarding ways to reduce unnecessary regulatory burden. By memorandum dated June 25, 2002, the Commission directed the staff to proceed with its evaluation of possible rule changes. In developing the initiative described in SECY-02-0081, the NRC staff had solicited observations and suggestions by placing a notice in the *Federal Register* (66 FR 22134; May 3, 2001) and sponsoring a workshop on May 31, 2001. In a response letter dated July 2, 2001, the Nuclear Energy Institute (NEI) provided a list of suggestions from its members for possible changes to several regulations that could reduce unnecessary regulatory burden. This list included the annual reports and the certified financial statements currently required by §§50.71(b) and 72.80(b).

These reports are typically written for the shareholders, and contain information pertaining to financial qualifications, such as:

- (1) A letter to the shareholders that covers the company's changing conditions, goals achieved or missed, and its outlook;
- (2) Sales and marketing data showing the product lines of the company, sales volume, and the products that produce the most revenue;
- (3) CPA (certified public accountant) opinion letter on the company's financials;
- (4) List of directors and officers;
- (5) Management discussion and analysis of significant financial trends;
- (6) Consolidated financial statements that show multi-year trends in revenue, spending, profits, inventory and debt;
- (7) Trends in the stock price;
- (8) Notes to the consolidated financial statements that explain most line items on the financials.

By comparing the company's past year performance to previous years, insights can be obtained as to how the company, as a whole, has been doing financially as of the end of the past year.

The information in the annual report and the certified financial statements may be outdated by the time they are published and submitted to the NRC. Accordingly, in many instances the NRC has been using a more current source of information, called Form 10-Q, the quarterly financial report submitted to the SEC. Form 10-Q usually contains:

- (1) The three months and the year-to-date income statement compared to the same period of the previous year;
- (2) The company's balance sheets;
- (3) The three months and year-to-date cash flow statements compared to the same period of the previous year;
- (4) Notes to the consolidated financial statements;

(5) Management discussion and analysis of financial condition and results of operations.

The Form 10-Q gives a snap shot of the company's performance on a quarterly basis. The report can be found posted on many company's web sites as well as on the SEC website. Form 1, submitted to the FERC, contains similar up-to-date financial information that can be electronically accessed by the staff.

The Commission has concluded that, for licensees that are required to file financial reports with the SEC or the FERC, licensees financial information can be collected in a more cost-effective way than requiring licensees to submit the reports required by 10 CFR 50.71 (b) and 10 CFR 72.80 (b). The NRC has access to other more current sources of information than the annual financial reports to assess the licensees' financial condition, making the submittal of the annual financial report to the NRC unnecessary. Additionally, NRC has the authority to request licensees to submit additional or more detailed information regarding their financial status if the Commission considers this information appropriate.

Accordingly, the Commission has concluded that 10 CFR 50.71(b) "Maintenance of records, making of reports" and 10 CFR 72.80(b) "Other records and reports" may be revised to eliminate reporting requirements for licensees who file financial reports with the SEC or the FERC.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this direct final rule, the NRC is eliminating the requirement to submit annual financial reports and certified financial statements to the Commission if financial reports are already submitted to the SEC or the FERC. These actions

do not constitute the establishment of a standard that contains generally applicable requirements.

Plain Language

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

Environmental Impact: Categorical Exclusion

The NRC determined that this direct final rule is categorically excluded from NEPA because it does not have a significant impact on the human environment and does not substantially modify the regulations and is a minor non-policy change of the type of action described in categorical exclusion 10 CFR 51.22 (c)(3)(iii) for rulemaking involving reporting requirements. This action eliminates the requirement to submit annual financial reports and certified financial statements to the Commission if financial reports are already submitted to the SEC or the FERC. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this direct final rule.

Paperwork Reduction Act Statement

This direct final rule decreases the information collection burden contained in section 50.71 (b) of 10 CFR Part 50 and section 72.80 (b) of 10 CFR Part 72 that is subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The burden reduction for this information collection is estimated to average .50 hour(s) per response. Because the burden

for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number(s) 3150-0011 and 3150-0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

A regulatory analysis has not been prepared for this direct final rule because this rule is considered a minor, nonsubstantive amendment; a relatively small impact on NRC licensees (\$400 annual savings per licensee) and no economic impact on the public.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact upon a substantial number of small entities. This final rule affects only the licensing and operation of nuclear power plants and independent spent fuel storage installations. The companies that own these facilities do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC.

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this final rule and, therefore, a backfit analysis is not required because these amendments do not involve any

provisions that would impose backfits as defined in 10 CFR 50.109(a)(1) or 10 CFR 72.62.

The final rule imposes no new requirements on licensees, nor does it alter procedures at nuclear facilities or ISFSIs. Rather, it no longer requires licensees and applicants to submit annual financial reports and certified financial statements to the Commission. Licensees are free to continue submitting reports to the NRC. Therefore, the proposed requirement constitutes a voluntary relaxation and is not a backfit.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 72

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

For the reasons set out in the preamble and under the authority of the Atomic Energy Act for 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR Part 50 and

10 CFR Part 72.

PART 50 - DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for 10 CFR part 50 continues to read as follows:

AUTHORITY: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(d), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.71, paragraph (b) is revised to read as follows:

§50.71 Maintenance of records, making of reports.

w * * * *

(a)

(b) With respect to any production or utilization facility of a type described in §50.21(b) or 50.22, or a testing facility, each licensee and each holder of a construction permit shall submit its annual financial report, including the certified financial statements, to the Commission, as specified in §50.4, upon issuance of the report. However, licensees and holders of a construction permit who submit a Form 10-Q with the Securities and Exchange Commission or a Form 1 with the Federal Energy Regulatory Commission, need not submit the annual financial report or the certified financial statement under this paragraph.

w * * * *

PART 72 - LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE.

3. The authority citation for 10 CFR part 72 continues to read as follows:

AUTHORITY: Secs, 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended; sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended; 202, 206, 88 Stat. 1242, as amended; 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241; sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148 (c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C.

10154). Section 72.96(d) also issued under section 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)), Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (U.S.C. 10198).

4. In § 72.80, paragraph (b) is revised to read as follows:

§72.80 Other records and reports.

* * * * *

(a)

(b) Each licensee shall furnish a copy of its annual financial report, including the certified financial statements, to the Commission. However, licensees who submit a Form 10-Q with the Securities and Exchange Commission or a Form 1 with the Federal Energy Regulatory Commission, need not submit the annual financial report or a certified financial statement under this paragraph.

Dated at Rockville, Maryland, this 2nd day of May, 2006.

For the Nuclear Regulatory Commission.

IRA

Luis A. Reyes,
Executive Director for Operations.

10154). Section 72.96(d) also issued under section 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)), Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (U.S.C. 10198).

4. In § 72.80, paragraph (b) is revised to read as follows:

§72.80 Other records and reports.

* * * * *

(a)

(b) Each licensee shall furnish a copy of its annual financial report, including the certified financial statements, to the Commission. However, licensees who submit a Form 10-Q with the Securities and Exchange Commission or a Form 1 with the Federal Energy Regulatory Commission, need not submit the annual financial report or a certified financial statement under this paragraph.

Dated at Rockville, Maryland, this 2nd day of May, 2006.

For the Nuclear Regulatory Commission.

/RA/

Luis A. Reyes,
Executive Director for Operations.

Enclosures:

1. Approved for Publication
2. Federal Register Notice of Proposed Rulemaking
3. Notice of Final Rule Signed by EDO
4. EDO Daily Note
5. EDO Weekly Note
6. SBREFA Forms
7. Congressional Letters

Enclosure 1: ML060270039 Enclosure 2: ML060270056 Enclosure 3: ML060270037 Enclosure 4: ML060270058
Enclosure 5: ML060270063 Enclosure 6: ML060270489 Enclosure 7: ML060270083
ADAMS Accession Number: ML060270034 Package Accession Number: ML053500098

OFFICE	PRAB:DPR		PRAB:DPR:BC		PFPB:DPR		OGC	
NAME	MJamgochian		SCoffin (MJamgochian for)		EMcKenna		STreby	
DATE	01/25/2006		10/07/2005		10/17/2005		03/30/2006	
OFFICE	Tech Editor		DPR:D		NMSS:D		RES:D	
NAME	PKleene		CGrimes		JStrosnider		CPaperiello	
DATE	02/07/2006		02/17/2006		10/13/2005		10/24/2005	
OFFICE	ADM		OCIO		OCFO		OE	
NAME	MLesar		BShelton		JFunches		MJohnson	
DATE	10/25/2005		01/13/2006		02/16/2006		02/14/2006	
OFFICE	PMAS:D		NRR:D		EDO			
NAME	Ccarpenter (TDietz for)		JDyer		LReyes			
DATE	02/08/2006		04/04/2006		05/02/06			