

(g) *Applications of other regulations.*
 (1) The term "indefinite employee" as used in the following includes an emergency-indefinite employee: Section 316.801, Part 351, and Subpart G of Part 550 of this chapter.

(2) The selection procedures of part 333 of this chapter apply to emergency-indefinite employees appointed outside the register under paragraph (b) of this section.

(3) Despite the provisions in § 831.201(a)(11) of this chapter, an employee serving under an emergency-indefinite appointment under authority of this section is excluded from retirement coverage, except as provided in paragraph (b) of § 831.201 of this chapter.

(h) *Promotion, demotion, or reassignment.* An agency may promote, demote, or reassign an emergency-indefinite employee to any position for which it is making emergency-indefinite appointments.

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 BILLING CODE 6325-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 51

Requirements for Licensee Actions Regarding the Disposition of Spent Fuel Upon Expiration of the Reactors' Operating Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has determined, in a separate proceeding known as the "Waste Confidence" rulemaking proceeding that there is reasonable assurance that one or more mined geologic repositories for commercial high-level radioactive waste and spent fuel will be available by 2007-2009. However, the Commission recognizes that there are circumstances under which spent fuel generated prior to that time may remain at reactor sites after the expiration of reactor operating licenses. Some reactor operating licenses will expire or the permanent shutdown of some reactors could occur prior to the 2007-2009 period. Also, since there are not expected to be any safety or environmental problems which would create a need to move fuel offsite, there is some possibility that an election of onsite spent fuel storage after reactor operating license operation may be appropriate. The Commission has considered the safety and environmental impacts of such extended spent fuel storage in the "Waste

Confidence" proceeding and for the reasons discussed therein and highlighted below, finds that extended storage for up to 30 years after the expiration of an operating license will result in no significant safety or environmental impacts. The Commission believes there is reasonable assurance that no later than 30 years after the expiration date of the operating license for any commercial power reactor, sufficient repository capacity will have been made available to dispose of all commercial high-level radioactive waste and spent fuel in existence. Thus there is no reasonable probability that spent fuel will unavoidably remain at a reactor site at the end of that 30-year period. Accordingly, the Commission hereby proposes a rule providing that the environmental and safety implications of spent fuel storage after the termination of reactor operating licenses need not be considered further in Commission proceedings for the issuance of an operating license or licensee amendment for a nuclear power plant, despite some probability that such storage may be elected or necessary. The proposed rule also applies to proceedings for licensing spent fuel storage in independent spent fuel storage installations under Part 72, since the same safety and environmental considerations apply as for storage in reactor basins.

The Commission hereby proposes a rule whereby in proceedings for licensing of facilities at which spent fuel will be stored, or proceedings for licensing the expansion of storage capacity at existing facilities, the NRC will continue to require consideration of reasonable foreseeable safety and environmental impacts of spent fuel storage for the period of the license or amendment applied for but will not require consideration of the safety and environmental impacts of storage of spent fuel beyond the expiration of the license or amendment applied for. However, the Commission's proposed rule would require reactor licensees to submit their plans for NRC review and approval 5 years before their operating licenses expire on specifically how spent fuel at these sites will be managed.

Accordingly, the Commission hereby proposes amendments to the Code of Federal Regulations which define procedures to be followed by the licensee to ensure the continued safe management of spent fuel beyond the expiration date of reactor operating licenses and which address the environmental aspects of extended spent fuel storage past the expiration of reactor operating licenses or license for

storage in an independent spent fuel storage installation. The amendments are set forth here to complement and complete the Commission findings resulting from the Waste Confidence rulemaking proceeding.

DATES: Comments should be filed with the Commission's Secretary not later than July 5, 1983. Comments received after this date will be considered if it is practicable to do so, but assurance of consideration cannot be given except as to comments received on or before that date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Attn.: Docketing and Service Branch.

Hand deliver comments to: Room 1121, 1717 H St., N.W., Washington, D.C. between 8:15 a.m. and 5:00 p.m.

Examine comments received at: The NRC Public Document Room, 1717 H St., N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dennis Rathbun or Clyde Jupiter, Office of Policy Evaluation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (202) 634-3295.

SUPPLEMENTARY INFORMATION:

Background

By a Notice of Proposed Rulemaking dated October 18, 1979, 44 FR 61372 (October 25, 1979), the Nuclear Regulatory Commission ("Commission" or "NRC") began a generic rulemaking proceeding "to reassess its degree of confidence that radioactive wastes produced by nuclear facilities will be safely disposed of, to determine when any such disposal will be available, and whether such wastes can be safely stored until they are safely disposed of." This proceeding became known as the "Waste Confidence" rulemaking proceeding, and was conducted partially in response to a remand by the United States Court of Appeals for the D.C. Circuit. *State of Minnesota v. NRC*, 602 F.2d 412 (1979). *State of Minnesota* involved a challenge to license amendments to permit the expansion of spent fuel pool storage capacities at two nuclear powerplants. It was contended that uncertainty regarding ultimate disposal of commercial nuclear wastes required the Commission to consider the safety and environmental implications of storing spent fuel in the pools for an indefinite period following expiration of the plants' operating licenses. The Commission had excluded consideration of such long-term on-site storage from the license amendment proceedings, relying on its earlier finding that safe

permanent disposal of reactor wastes would be available when needed.

The Court of Appeals agreed with the Commission that, in accordance with the "rule of reason" implicit in the National Environmental Policy Act (NEPA), impacts of extended on-site storage of spent fuel need not be considered in licensing proceedings unless such storage was reasonably foreseeable and not merely a theoretical possibility. The Court held, however, that the Commission's statement of reasonable confidence in the timely availability of waste disposal solutions was "not the product of a rulemaking record devoted expressly to considering the question" and furthermore did not address the particular problem whether disposal solutions would be available before the expiration of plant operating licenses. *Id.* at 417. Accordingly, the D.C. Circuit remanded to the Commission for determination "whether there is reasonable assurance that an off-site storage solution will be available by the years 2007-09, the expiration of the plants operating licenses, and if not, whether there is reasonable assurance that the fuel can be stored safely at the site beyond those dates." *Id.* at 418. The Court noted that "the breadth of the questions involved and the fact that the ultimate determination can never rise above a prediction suggest that the determination may be a kind of legislative judgment for which rulemaking would suffice." *Id.* at 417. The Court agreed that the Commission "may proceed in these matters by generic determinations." *Id.* at 419. *Accord, Potomac Alliance v. NRC*, 682 F.2d 1030 (D.C. Cir. 1982).

Amendment to Part 51

The Commission announced the conclusions it reached in the Waste Confidence rulemaking proceeding. The Commission found that there is reasonable assurance that one or more mined geologic repositories for commercial high-level radioactive waste and spent fuel will be available by 2007-09. However, some reactor operating licenses may expire without being renewed or some reactors may be permanently shut down prior to this period. Since independent spent fuel storage installations have not yet been extensively developed, there is then a probability that some onsite spent fuel storage after license expiration may be necessary or appropriate. In addition, the Commission also realizes that some spent fuel may be stored in existing or new storage installations for some period beyond 2007-2009. The Commission hereby proposes a rule providing that the environmental and

safety implications of such storage after the termination of reactor operating licenses need not be considered in Commission proceedings related to issuance or amendment of a reactor operating license. This rule has the effect of continuing the Commission's practice, employed in the proceedings reviewed in *State of Minnesota*, of limiting considerations of safety and environmental impacts of spent fuel storage in licensing proceedings to the period of the license in question and not requiring the NRC staff or the applicant to address the impacts of extended storage past expiration of the license applied for. The rule relies on the Commission's generic determination in the Waste Confidence proceeding that the licensed storage of spent fuel for 30 years beyond the reactor operating license expiration either at or away from the reactor site is feasible, safe, and would not result in a significant impact on the environment. For the reasons discussed in the Waste Confidence decision, the Commission believes there is reasonable assurance that adequate disposal facilities will become available during this 30-year period. Thus, there is no reasonable probability that storage will be unavoidable past the 30-year period in which the Commission had determined that storage impacts will be insignificant. The same safety and environmental considerations apply to fuel storage installations licensed under Part 72 as for storage in reactor basins. Accordingly, in licensing actions involving (a) the storage of spent fuel in new or existing facilities, or (b) the expansion of storage capacity at existing facilities, the NRC will continue to require consideration of reasonably foreseeable safety and environmental impacts of spent fuel storage only for the period of the license applied for. The amendment to 10 CFR Part 51 confirms that the environmental consequences of spent fuel storage in reactor facility storage pools or independent spent fuel storage installations for the period following expiration of the reactor or facility license or amendment applied for need not be addressed in any environmental report, impact statement, impact assessment, safety analysis report, or other analysis prepared in connection with the reactor operating license or amendment to the operating license, or initial license for an independent spent fuel storage installation, or amendment thereto.

The Commission's conclusions with respect to safety and environmental impacts of extended storage beyond expiration of current operating licenses

are supported by the record in NRC's waste confidence proceeding and by NRC's experience in more than 80 individual safety and environmental evaluations conducted in storage licensing proceedings. The record of the Waste Confidence proceeding indicates that significant release of radioactivity from spent fuel under licensed storage conditions is highly unlikely because of the resistance of the spent fuel cladding against corrosive mechanisms and the absence of any conditions that would provide a driving force for dispersal of radioactive material. The non-radiological environmental impacts associated with site preparation and construction of storage facilities are and will continue to be considered by the NRC at the time applications are received to construct these facilities, which are licensed under NRC's regulations in either 10 CFR Part 50 for reactors or 10 CFR Part 72 for independent spent fuel storage installations. There are no significant additional non-radiological consequences which could adversely affect the environment for storage past the expiration of operating licenses at reactors and independent spent fuel storage installations.

The amendment to Part 51 published here consists of two parts: paragraph (e) (1) and paragraph (e)(2). Paragraph (e)(1) is a restatement of a final generic Commission determination based on the Waste Confidence rulemaking proceeding, while paragraph (e)(2) establishes the procedures for implementing that generic determination in individual licensing cases. The Commission requests public comment on paragraph (e) (2).

Amendment to Part 50

The Commission is also proposing an amendment to 10 CFR Part 50 as set forth here, concerning the management of spent fuel from nuclear power reactors whose operating licenses may expire prior to the availability of a repository. The procedures established by this amendment are intended to confirm that there will be adequate lead time for whatever actions may be needed at individual reactor sites to assure that the management of spent fuel following the expiration of the reactor operating license will be accomplished in a safe and environmentally acceptable manner.

The Commission proposes that Part 50, § 50.54 be amended to establish requirements that the licensee for an operating nuclear power reactor shall no later than 5 years prior to expiration of the reactor operating license submit

plans for NRC review and approval of the actions which the licensee proposes for management of all irradiated fuel at the reactor upon expiration of its operating license. No specific course of action is required of the licensee by the NRC. Licensee actions could include, but are not necessarily limited to, continued storage of spent fuel in the reactor spent fuel storage basin; storage in an independent spent fuel storage installation (refer to 10 CFR § 72.3(m)) located at the reactor site or at another site; transshipment to and storage of the fuel at another operating reactor site in that reactor's basin; reprocessing of the fuel if it appears that licensed reprocessing facilities will be available; or disposal of the fuel in a repository. The proposed actions must be consistent with NRC requirements for licensed possession of irradiated or spent fuel (as defined in § 72.3(v)) and must be capable of being authorized by the NRC and implemented by the licensee on a timely basis. The licensee's plans must specify how the financial costs of extended storage or other disposition of spent fuel will be funded. Further, the licensee's plans must describe the proposed disposition of all irradiated fuel from the reactor. The licensee shall notify the NRC of any significant changes to these plans; changes are not precluded provided that the licensee maintains the capability to manage the spent fuel safely.

The Commission notes that extended storage of spent fuel at a reactor beyond the expiration date of the operating license will require an amendment to the Part 50 license to cover possession only of the reactor and spent fuel under the requisite provisions of Parts 30, 50 and 70, or an authorization pursuant to Part 72, "Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation" (ISFSI). This rulemaking does not alter the requirements and provisions of Part 72 with respect to environmental considerations (§ 72.20), nor provisions of Part 51 (§ 51.5(a)(10) and § 51.5(b)(4)(iv)) with respect to the performance of environmental assessments of the impacts of spent fuel storage in an independent spent fuel storage installation or extended storage in a reactor spent fuel pool. This means that the NRC staff will continue to perform environmental reviews before issuing a license under 10 CFR Part 72 or an amendment for extend storage under 10 CFR Part 50. Notice of the receipt of a license application for storage of spent fuel pursuant to Part 72 will be published in the **Federal Register**.

Related Commission Actions

On March 13, 1978, an Advance Notice of Proposed Rulemaking was published by NRC in the **Federal Register** (43 FR 10370) that indicated that the NRC was reevaluating its decommissioning policy and considering amending its regulations to provide more specific guidance on decommissioning of nuclear facilities. In January 1981, NRC published a "Draft Generic Environmental Impact Statement on Decommissioning Nuclear Facilities" (NUREG-0586). Proposed amendments to 10 CFR Parts 30, 40, 50, 70, and 72 are being prepared by the NRC staff for Commission consideration. The proposed amendments for decommissioning would allow unrestricted use of a reactor or independent spent fuel storage installation site and would permit termination of the license. However, the storage of irradiated fuel either in a reactor basin or in an independent spent fuel storage installation would require restricted access and management of the storage facility to protect public health and safety. Thus, any continued storage of spent fuel beyond expiration of an operating license would be licensed under either Parts 50 or 72 and could preclude final decommissioning of the site.

Amendments

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, Section 301 of Public Law 96-295, and Section 553 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendments to Parts 50 and 51 of Title 10, Chapter 1, of the Code of Federal Regulations is contemplated.

The Commission requests public comment on the proposed new paragraph, 10 CFR 50.54(x), to be added to 10 CFR Part 50. The Commission also requests public comment on the proposed new paragraph 10 CFR 51.5(e)(2), to be added to 10 CFR Part 51. The Commission does not request comment on the proposed paragraph, 10 CFR 51.5(e)(1), which restates a conclusion of the Commission's "Waste Confidence" proceeding.

List of Subjects

10 CFR Part 50

Administrative practice and procedure, Antitrust, Classified information, Emergency medical services, Fire prevention, Intergovernmental relations, Nuclear power plants and reactors, Penalty,

Radiation protection, Reactor siting criteria, 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.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. In § 50.34 immediately following paragraph (w), a new paragraph (x) is added to read as follows:

§ 50.54 Conditions of licenses.

Whether stated therein or not, the following shall be deemed conditions in every license issued.

* * * * *

(x) For operating nuclear power reactors, the licensee shall, no later than 5 year before expiration of the reactor operating license, submit written notification to the Commission for its review and approval of the program by which the licensee intends to manage and provide funding for the management of all irradiated fuel at the reactor upon expiration of the reactor operating license until ultimate disposal of the spent fuel in a repository. The licensee must demonstrate to NRC that the elected actions will be consistent with NRC requirements for licensed possession of irradiated nuclear fuel and that the actions will be implemented on a timely basis. Where implementation of such actions require NRC authorizations, the licensee shall verify in the notification that submittals for such actions have been made to NRC and shall identify them. A copy of the notification shall be retained by the licensee as a record until expiration of the reactor operating license. The licensee shall notify the NRC of any significant changes in the proposed waste management program as described in the initial notification.

PART 51—LICENSING AND REGULATORY POLICY AND PROCEDURES FOR ENVIRONMENTAL PROTECTION

1. 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); National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853, 854, as amended (42 U.S.C. 4332, 4334, 4335).

2. In § 51.5 immediately following paragraph (d)(4) a new paragraph (e) is added to read as follows:

§ 51.5 Actions requiring preparation of environmental impact statements, negative declarations, environmental impact appraisals; actions excluded.

(e)(1) The Commission has made a generic determination that no significant environmental impacts will result from the storage of spent fuel for up to 30 years or more beyond the expiration of reactor operating licenses in onsite reactor facility storage pools or independent spent fuel storage installations located at reactor or away-from-reactor sites. Further, the Commission believes there is reasonable assurance that one or more mined geologic repositories for commercial high-level radioactive waste and spent fuel will be available by the years 2007-09, and that sufficient repository capacity will be available within 30 years beyond expiration of any reactor operating license to dispose of commercial high-level radioactive waste and spent fuel originating in such reactor and generated up to that time.

(2) Accordingly, the environmental consequences of spent fuel storage in reactor facility storage pools or independent spent fuel storage installations for the period following expiration of the reactor or storage installation license applied for need not be addressed in any environmental report, impact statement, impact assessment, safety analysis report, or other analysis prepared in connection with a reactor operating license or amendment to the operating license or initial license for an independent spent fuel storage installation, or amendment thereto. This rule does not alter any pre-existing regulatory requirements for consideration in licensing proceedings of safety or environmental consequences of spent fuel storage for the term of the license or amendment applied for.

Dated at Washington, D.C. this 16th day of May 1983.

For the Commission,¹

Samuel J. Chilk,

Secretary of the Commission.

Commissioner Gilinsky's Separate Views Regarding Proposed Amendments to 10 CFR Parts 50 and 51 (Waste Confidence Proceeding)

May 13, 1983.

The current generation of nuclear power plants was licensed on the assumption that

¹ Commissioner Gilinsky dissented from this action and his separate views are attached.

spent fuel would be retained on site for a brief period, prior to being sent away for reprocessing. It has now become obvious that the spent fuel will, in fact, be kept on-site for an extended period of time, in many cases beyond the operating life of the plants.

The Commission apparently recognizes that its past assumptions on the disposition of spent fuel no longer hold true but is doing nothing about this beyond making a broad finding that extended on-site storage is acceptable from the point of view of safety. While I agree that there is no obstacle in principle to extended on-site storage, I think it is clear that each power reactor site will have to be examined in detail. The rule proposed by the Commission puts off addressing the practical aspects of this problem for many years, and in some cases, decades.

In the case of new reactors which are applying for operating licenses, the rule should require the utility to show that there will be no impediment to storing on-site the spent fuel which will be generated during the plant's useful life. In view of the uncertainties about the availability of off-site disposal capacity, the Commission should, in addition, require a showing that there is no impediment to continuing such storage for some reasonable period of time after the likely end of operation. The utilities should also be required to commit themselves formally to financing on-site fuel storage until the fuel can be moved off-site. In the case of reactors which are already in operation, the utilities should be asked to make similar showings within a few years.

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FEDERAL TRADE COMMISSION

16 CFR PART 423

Amendment to Trade Regulation Rule Concerning Care Labeling of Textile Wearing Apparel and Certain Piece Goods

AGENCY: Federal Trade Commission.

ACTION: Final amendments to trade regulation rule.

SUMMARY: The Federal Trade Commission issues a final amendment to 16 CFR Part 423, which is retitled Care Labeling of Textile Wearing Apparel and Certain Piece Goods, as amended. The trade regulation rule, as amended, requires manufacturers and importers of textile wearing apparel and certain piece goods to provide labels for their products which disclose information for cleaning and care of the product. The rule is intended to assist consumers in making informed purchase decisions concerning the care characteristics of competing products, and to enable consumers and cleaners to avoid product damage caused by the use of improper cleaning procedures.

This notice contains the Statement of Basis and Purpose for the amendments to the Rule and the text of the Rule as amended.

EFFECTIVE DATE: These amendments to the Rule are being submitted to the Congress for review in accordance with Section 21 of the Federal Trade Commission Improvements Act of 1980, 15 U.S.C. 57a-1. Under that section, a rule becomes effective unless both Houses of Congress disapprove the rule within 90 calendar days of continuous session after the rule is submitted. Because computation of the 90 day period is not possible in advance (see section 21(g) of the Improvements Act), the Commission cannot specify an effective date for this Rule. The Commission intends that it become effective 90 days after the conclusion of congressional review and will publish a further notice of effective date in the *Federal Register* as soon as possible thereafter.

ADDRESS: Requests for copies of the Rule and Statement of Basis and Purpose should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Earl Johnson, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, D.C. 20580, (202) 376-2891.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Introduction

- A. Overview of the amended rule
- B. Background of this proceeding

II. Basis for amended rule

- A. Existing care labeling practices
 - 1. Introduction
 - 2. Improper labeling
 - a. Insufficient care labeling
 - b. Inconsistent care labeling
 - c. Inaccurate care labeling
- B. Unfair and deceptive acts and practices—§ 423.5

C. Remedial requirements—§§ 423.2, .6-.8

- 1. Introduction
- 2. Legal Basis of the current rule
- 3. Legal Basis of the amended rule
- 4. Reasonable basis requirement
- 2. Section 423.6—Textile Wearing Apparel
 - a. Section 423.6(a)—Attachment of labels
 - b. Section 423.6(b)(1)—Washing instructions
 - (1) Washing method and temperature description
 - (2) Drying instructions
 - (3) Ironing instructions
 - (4) Bleaching instructions
 - (5) Warnings