

April 14, 1999

SECY-99-115

FOR: The Commissioners

FROM: William D. Travers /s/  
Executive Director for Operations

SUBJECT: FINAL RULE: AMENDMENTS TO 10 CFR PART 72–MISCELLANEOUS  
CHANGES TO LICENSING REQUIREMENTS FOR THE INDEPENDENT  
STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL  
RADIOACTIVE WASTE

PURPOSE:

To request Commission approval to publish a notice of final rulemaking.

BACKGROUND:

The Commission directed the staff to issue the proposed rule in the Staff Requirements Memorandum (SRM) on SECY-98-033, dated May 8, 1998 (Attachment 1).

The rulemaking plan was submitted for Commission approval in SECY-97-069, dated March 28, 1997. The proposed rule was submitted for Commission approval in SECY-98-033, dated February 26, 1998, and published in the Federal Register on June 8, 1998, for a 75-day comment period. U.S. Nuclear Regulatory Commission experience in applying 10 CFR Part 72 has indicated that certain additions and clarifications to the regulations were needed. This rulemaking makes eight miscellaneous changes to Part 72. These changes differentiate the requirements for the storage of spent fuel under wet and dry conditions, clarify requirements for the content and submission of various reports, and specify that quality assurance (QA) records must be maintained as permanent records when identified with activities and items important to safety.

CONTACT: Mark Au, NMSS/IMNS  
(301) 415-6181

DISCUSSION:

In response to the notice of proposed rulemaking, four comment letters were received, with 19 comments. All commenters supported the rulemaking. After analyzing the comments, the staff agreed with and incorporated the recommended changes with the exception of three comments. These are as follows:

1. One commenter believed that two of the changes being adopted in this final rule do not comply with the Backfit Rule: (1) the amendment to § 72.140(d) requiring that Part 72 licensees who rely on Part 50, Appendix B, QA programs must also meet the requirement of § 72.174 for retention of records until termination of the license; and (2) the amendment to § 72.75(d) requiring detailed specific information to meet existing reporting requirements. The commenter noted that these changes will involve changes in license procedures and therefore, in the commenter's view, should be considered a backfit under § 72.62(a)(2) which defines "backfitting" as "the addition, elimination, or modification, after the license has been issued, of ... [p]rocedures or organization required to operate an ISFSI or MRS."

The staff has not adopted this comment based on a longstanding legal interpretation that the Backfit Rule is not applicable to recordkeeping and reporting requirements. We note that this interpretation was stated in SECY-93-086 (April 1, 1993) and that the Commission's June 30, 1993, SRM on this paper did not express any objection to this interpretation. The staff's position that the Backfit Rule does not apply to recordkeeping and reporting requirements is stated in the Charter of the CRGR, Revision 6 (April 1996), in footnote 11:

Reporting requirements such as those contained in 10 CFR 50.72 and 10 CFR 50.73 (for power reactors), or those contained in [10 CFR 30.50] and 10 CFR 70.52 (for nuclear material activities), are more akin to information requests covered under 10 CFR 50.54(f) than they are to modifications covered under the backfit rule (10 CFR 50.109). They should be justified by evaluation against criteria similar to the analogous provision in 10 CFR 50.54(f), i.e., by demonstrating that the burden of reporting is justified in view of the potential safety benefits to be obtained from the information reported.

The potential burden on licensees from recordkeeping and reporting requirements is considered in the context of meeting the requirements of the Paperwork Reduction Act, as well as in the Regulatory Analysis. The proposed response to Comment 7 in the attached FRN explicitly states that the Commission views the backfitting provisions in Parts 50 and 72 as not applicable to reporting and recordkeeping requirements. The staff requests Commission approval of this position in approving this final rule.

2. A second commenter noted that the present, and proposed, § 72.140(d) would allow an existing QA program which meets the requirements of 10 CFR Part 50, Appendix B, to satisfy the requirements of Part 72 and requested that a QA program that meets the requirements of Part 71, Subpart H, also be allowed to satisfy the requirements of Part 72. Although staff agrees that the QA program requirements in 10 CFR Parts 50, 71, and 72 are equivalent, this comment has not been accepted because this issue is being considered in a separate rulemaking.

3. One commenter noted that an advance notice of proposed rulemaking (63 FR 39522, July

23, 1998) is proposing changes to some of the requirements in 10 CFR 50.73(b) which specify the information which must be included in written event reports pertaining to human performance (10 CFR 50.73(b)(2)(J)) and that this same information from the existing § 50.73(b) is being added to § 72.75(d)(2) in this rulemaking. This rulemaking will make the requirements in Part 72 for written event report information consistent with the present requirements of Part 50. Should the Part 50 rulemaking go forward, the staff will consider whether conforming changes to Part 72 would be appropriate.

#### COORDINATION:

The Office of the General Counsel has no legal objection to this paper. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections. The Office of the Chief Information Officer has reviewed the rule for information technology and information management implications and concurs in the rulemaking.

#### RECOMMENDATIONS:

That the Commission:

1. Approve the Notice of Final Rulemaking for publication (Attachment 2).
2. Certify that this rule, if promulgated, will not have a negative economic impact on a substantial number of small entities, to satisfy requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b).
3. Note:
  - a. The rulemaking would be published in the Federal Register.
  - b. The regulatory analysis will be available in the Public Document Room (Attachment 3).
  - c. Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification regarding economic impact on small entities and the reasons for it, as required by the Regulatory Flexibility Act.
  - d. The Office of Public Affairs has determined that a public announcement is not necessary for the rulemaking.
  - e. The appropriate Congressional committees will be informed (Attachment 4).
  - f. Office of Management and Budget (OMB) clearance is not required because the burdens for both information collections are insignificant.

- g. The staff has determined that this is not a “major” rule as defined in the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804(2), and has confirmed this determination with the OMB. The appropriate Congressional and General Accounting Office contacts will be informed (Attachment 5).

William D. Travers  
Executive Director  
for Operations

Attachments:

1. SRM on SECY-98-033, dated May 8, 1998
2. Federal Register Notice
3. Regulatory Analysis
4. Congressional Letters
5. SBREFA Letters

May 8, 1998

MEMORANDUM TO: L. Joseph Callan  
Executive Director for Operations

FROM: John C. Hoyle, Secretary /s/

SUBJECT: STAFF REQUIREMENTS - SECY-98-033 - PROPOSED RULE:  
MISCELLANEOUS CHANGES TO 10 CFR PART 72, LICENSING  
REQUIREMENTS FOR THE INDEPENDENT STORAGE OF  
SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE  
WASTE

The Commission has approved publication of the notice of proposed rulemaking in the Federal Register for a 75-day comment period. The statement in the Objectives section of the Draft Regulatory Analysis should be modified as follows:

The intent of this proposed rulemaking is to clarify that **Part 72** requirements that all **Part 72** licensees, including those licensees under an Appendix B; **to Part 50** QA program, maintain QA records permanently until termination of the license.

(EDO) (SECY Suspense: 5/29/98)

Prior to publication of the proposed notice of rulemaking, the Office of Congressional Affairs should determine that there is no potential impact with the removal of the Federal interim storage program from the "Purpose" and "Scope" sections on the waste bills being currently considered by the Senate and House.

(OCA) (SECY suspense: 5/22/98)

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SECY NOTE: THIS SRM, SECY-98-033, AND THE COMMISSION VOTING RECORD CONTAINING THE VOTE SHEETS OF ALL COMMISSIONERS WILL BE MADE PUBLICLY AVAILABLE 5 WORKING DAYS FROM THE DATE OF THIS SRM.

cc: Chairman Jackson  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
OGC  
CIO  
CFO  
OCA  
OIG  
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)  
PDR  
DCS

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SECY NOTE: THIS SRM, SECY-98-033, AND THE COMMISSION VOTING RECORD  
CONTAINING THE VOTE SHEETS OF ALL COMMISSIONERS WILL BE MADE  
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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150-AF80

Miscellaneous Changes to  
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 Regulatory Commission (NRC) is amending its regulations to correct several inconsistencies and to clarify certain sections of its regulations pertaining to the storage of spent fuel and high-level radioactive waste. The amendments differentiate the requirements for the storage of spent fuel under wet and dry conditions, clarify requirements for the content and submission of various reports, and specify that quality assurance (QA) records must be maintained as permanent records when identified with activities and items important to safety. These amendments are necessary to facilitate NRC inspections to verify compliance with reporting requirements to ensure the protection of public health and safety and the environment.

EFFECTIVE DATE: (Insert 60 days after date of publication).

FOR FURTHER INFORMATION CONTACT: M. L. Au, telephone (301) 415-6181, e-mail mla@nrc.gov, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

Background

The Commission's licensing requirements for the independent storage of spent nuclear fuel and high-level radioactive waste are contained in 10 CFR Part 72. NRC experience in applying Part 72 has indicated that certain additions and clarifications to the regulations are necessary. The NRC published a proposed rule in the Federal Register on June 9, 1998 (63 FR 31364).

When Subpart L of Part 72 was issued in 1990, the purpose and scope of these regulations (i.e., to approve the design of spent fuel storage casks and issue a Certificate of Compliance (CoC)) was not clearly indicated in §§ 72.1 and 72.2. Additionally, § 72.2 referred to a Federal Interim Storage Program; however, the statutory authorization for this program has expired.

The current regulations contain information in multiple locations on where to send Part 72 reports and applications to the NRC. These requirements were inconsistent and did not ensure that received information was properly docketed.

The current regulations in § 72.44 on reporting annual summaries of radioactive

effluents released from dry storage casks impose an unnecessary regulatory burden on Part 72 licensees by requiring submittal of these reports on a schedule that is different from that required by 10 CFR Part 50. Most Part 72 licensees are also Part 50 licensees. Consequently, this regulation imposed an unnecessary regulatory burden on Part 72 licensees.

The current regulations in § 72.75 on reporting requirements for specific events and conditions are inconsistent with the reporting requirements for similar reactor-type events contained in § 50.73.

The regulations in §§ 72.122 and 72.124 on instrumentation and neutron poison efficacy requirements are unduly burdensome when applied to dry storage cask technology. The Commission has received nine requests for exemption from these regulations over the last three years.

The current regulations in Subpart G (quality assurance (QA) requirements) regarding retention of Part 72 QA records differ from the retention requirements imposed on Part 50 license holders. However, § 72.140(d) currently allows a Part 72 license holder to take credit for its Part 50 QA program in meeting the requirements of Subpart G with the result that differing retention requirements are imposed on Part 72 licensees.

## Discussion

This final rule makes eight clarifying changes to Part 72. These changes differentiate the requirements for the storage of spent fuel under wet and dry conditions and ensure that necessary information is included in reports and that QA records are maintained permanently when identified with activities and items important to safety. These reports and records are needed to facilitate NRC inspections to verify compliance with reporting requirements to ensure protection of public health and safety and the environment.

The following are a group of eight miscellaneous items of changes to the regulations:

1. Modify §§ 72.1 and 72.2 to include spent fuel storage cask and remove superseded information.

The purpose (§ 72.1) and scope (§ 72.2) were not modified when the Commission amended Part 72 on July 18, 1990 (55 FR 29181). Part 72 was amended to include a process for providing a general license to a reactor licensee to store spent fuel in an independent spent fuel storage installation (ISFSI) at power reactor sites (Subpart K) and a process for the approval of spent fuel storage casks (Subpart L). Although the language in these sections may be read to include the general license provisions of Subpart K, the approval process for spent fuel storage casks in Subpart L is not referenced. This rulemaking makes the purpose and scope sections complete by specifically referencing the Subpart L cask approval process. Additionally, this rule removes information in the purpose and scope sections, regarding the Federal interim storage program, because the statutory authorization for the interim storage program has expired (61 FR 35935; July 9, 1996).

2. Change the requirement for making initial and written reports in §§ 72.4 and 72.216.

The change to § 72.4 provides that, except where otherwise specified, all communications and reports are to be addressed to NRC's Document Control Desk (DCD) rather than to the Director, Office of Nuclear Material Safety and Safeguards (NMSS). Three current regulations govern the submission of written reports under Part 72 (§§ 72.75, 72.216(b), and 50.72(b)(2)(vii)(B), which is referenced in § 72.216(a)). Under § 72.75(d)(2), a report is sent to the DCD. However §§ 50.72(b)(2)(vii)(B) and 72.216(b) indicate that the report be sent, as instructed in § 72.4, to the Director, NMSS. To achieve consistency, § 72.4 is revised to instruct that reports shall be sent to the DCD. Licensing correspondence forwarded to the NRC's DCD ensures proper docketing and distribution. Also, § 72.216(c) is revised to correct an error in the paragraph designation. The current regulation § 72.75(a)(2) and (3) is revised to read § 72.75(b)(2) and (3).

3. Change the requirement for submittal of the dry cask storage effluent report in § 72.44.

Currently, § 72.44(d)(3) requires that a dry cask storage effluent report be submitted to the appropriate NRC regional office within the first 60 days of each year. Section 50.36a(a)(2) requires that a similar report be submitted to the Commission once each year specifying liquid and gaseous effluents from reactor operations.

The revision permits reactor licensees, who also possess licenses for ISFSIs, to submit their dry cask storage effluent report to the NRC once each year, at the same time as the effluent report from their reactor operations. The dry cask storage effluent report would be

submitted within 60 days after the end of the 12-month monitoring period. However, after the effective date of this final rule, the licensee may submit the dry cask report covering a shorter period of time to synchronize the reporting schedule with the annual reactor effluent report.

4. Clarify the reporting requirements for specific events and conditions in § 72.75.

Section 72.75 contains reporting requirements for specific events and conditions, including the requirement in § 72.75(d)(2) for a follow-up written report for certain types of emergency and non-emergency notifications. This rule clarifies the specific information required to meet the intent of the existing reporting requirement. A comparable reporting requirement already exists for similar reactor type events in § 50.73(b). This rule will provide greater consistency between Parts 50 and 72, on event notification requirements. Since the reporting requirement already exists, a minimal increase in the licensee's reporting burden will occur by clarifying the format and content.

5. Clarify the requirement for capability for continuous monitoring of confinement storage systems in § 72.122(h)(4).

Currently, § 72.122(h)(4) requires the capability for continuous monitoring of storage confinement systems. The meaning of "continuous" is open to interpretation and does not differentiate between monitoring requirements for wet and dry storage of spent fuel. Wet storage requires active heat removal systems which involve a monitoring process that is "continuous" in the sense of being uninterrupted. Because of the passive nature of dry storage, active heat removal systems are not needed and monitoring can be less frequent. This rule clarifies that the frequency of monitoring can be different for wet and dry storage systems.

6. Clarify the requirement specifying instrument and control systems for monitoring dry spent fuel storage in § 72.122(i).

Section 72.122(i) requires that instrumentation and control systems be provided to monitor systems important to safety, but does not distinguish between wet and dry spent fuel storage systems. For wet storage, systems are required to monitor and control heat removal. For dry storage, passive heat removal is used and a control system is not required. Instrumentation systems for dry spent fuel storage casks must be provided in accordance with cask design requirements to monitor conditions that are important to safety over anticipated ranges for normal conditions and off-normal conditions. This rule clarifies that control systems are not needed for dry spent fuel storage systems.

7. Clarify the requirement for dry spent fuel storage casks on methods of criticality control in § 72.124(b).

Section 72.124(b) requires specific methods for criticality control, including the requirement that where solid neutron absorbing materials are used, the design must provide for positive means to verify their continued efficacy. This requirement is appropriate for wet spent fuel storage systems, but not for dry spent fuel storage systems. The potentially corrosive environment under wet storage conditions is not present in dry storage systems, because an inert environment is maintained. Under these conditions, there is no mechanism to significantly degrade the neutron absorbing materials. In addition, the dry spent fuel storage casks are sealed and it is not practical nor desirable to penetrate the integrity of the cask to make the measurements verifying the efficacy of neutron absorbing materials. This rule clarifies that positive means for verifying the continued efficacy of solid neutron absorbing materials are not

required for dry storage systems, when the continued efficacy may be confirmed by demonstration or analysis before use.

8. Clarify the requirements in § 72.140(d) concerning the previously approved QA program in conformance with Appendix B of 10 CFR Part 50.

Section 72.174 specifies that QA records must be maintained by or under the control of the licensee until the Commission terminates the license. However, § 72.140(d) allows a holder of a Part 50 license to use its approved Part 50, Appendix B, QA program in place of the Part 72 QA requirements, including the requirement for QA records. Appendix B allows the licensee to determine what records will be considered permanent records. Thus, Part 50 licensees using an Appendix B, QA program could choose not to make permanent all records generated in support of Part 72 activities. This rule requires these licensees to follow the Part 72 requirement to maintain QA records until termination of the Part 72 license.

## Summary of Public Comments on the Proposed Rule

The NRC received four letters containing comments responding to the proposed rule published in the Federal Register on June 9, 1998 (63 FR 31364). These comments were considered in the development of the final rule. The primary objective of this rulemaking is to clarify requirements for certain sections of the regulations. The amendments differentiate the requirements for the storage of spent fuel under wet and dry conditions, clarify requirements for the content and submission of various reports, and specify that QA records must be maintained as permanent records. Copies of the public comments are available for review in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20003-1527.

Four comment letters were received in response to the proposed rule. One was from the Department of Energy (DOE) Idaho Operations Office, one was from a private enterprise, and two were from nuclear power plant licensees. All commenters were supportive of the proposed rule.

### Public Comments

1. Comment: One commenter believed that to ensure consistency with existing regulations in Part 72 and with another NRC proposed rulemaking, "Expand Applicability of Regulations to Holders of, and Applicants for, Certificates of Compliance and Their Contractors and Subcontractors" (63 FR 39526; July 23, 1998), which proposes to define a Certificate of Compliance (CoC) as a certificate approving the "design" of a spent fuel storage cask (as opposed to approving a cask), changes should be made to sections §§ 72.1 and 72.2(f).

Response: The Commission agrees with this comment. Changes have been made to §§ 72.1 and 72.2(f) to reflect the fact that Certificates of Compliance are issued to approve spent fuel storage cask designs rather than individual casks. In addition, in § 72.2(f), the phrase “in accordance with the requirements of this part as stated in § 72.236”, which appears in the proposed rule, has been changed to “in accordance with the requirements of subpart L of this part” to reflect the fact that all the requirements of subpart L pertain to the issuance of certificates of compliance.

2. Comment: One commenter noted that the proposed revision to § 72.4 removes existing language which provides the street address for NRC’s headquarters office. The commenter noted that this information is necessary for persons who wish to either mail communications to the NRC using a private courier service (e.g., FedEx or UPS) or deliver their communication in person. Additionally, § 72.4 did not provide any guidance for instances in which the due date for a report or written communication falls on a weekend or holiday. In that regard the language in § 50.4(e) should be used as an example.

Response: The Commission agrees with this comment. The current language in § 72.4 containing the street address to be used for personal delivery is being retained. In addition, the suggested changes have been made for reports due on the weekend or a holiday. The Public Docket Room at 2120 L Street NW, Washington, DC, has been removed from the address listing because it is no longer receiving mail deliveries, as all mail is now delivered to NRC Headquarters.

3. Comment: For § 72.44(d)(3), one commenter was concerned that allowing flexibility in the timing for submitting the annual report could create “ratcheting” of the due date and result

in the submittal of each report earlier than required to avoid lateness. The change proposed by the commenter to require that each report be submitted within 60 days from the end of each monitoring period and not to exceed the 12-month reporting interval would ensure timely submittal of these reports.

Response: The Commission agrees that the language in the proposed rule needs clarification. The Commission has added language in the final rule to clarify that the report must be submitted within 60 days after the end of the 12-month monitoring period. This change will allow flexibility in timing of submitting the annual report without resulting in the submittal of each report earlier than required to avoid lateness.

4. Comment: Two commenters noted that current § 72.75(d)(2) requires a written follow-up report when an event or condition requires an emergency notification under § 72.75(a) or a non-emergency four-hour report under § 72.75(b), but that a written follow-up report is not required when the event or condition requires a non-emergency 24-hour report under § 72.75(c). The second commenter suggested that the NRC clarify its expectation for Part 72 licensees regarding the use of NRC Form 366 and the format and guidance contained in NUREG 1022, Revision 1, "Events Reporting Guidelines 10 CFR 50.72 and 50.73."

Response: The Commission agrees with the comment on the first issue and the suggested change has been made to require a written follow-up report after a 24-hour oral notification. The written report is required for documentation for future use and inspections. With respect to the second issue, the Commission believes that use of NRC Form 366 and the guidance contained in NUREG-1022, Rev. 1, is an acceptable method for preparing written event reports; however, licensees are not required to follow this method if the written report

contains all the information required by § 72.75(d)(2). Therefore, no change has been made to address the second issue.

5. Comment: One commenter recommended not specifying the address and addresses in different sections of the regulations where licensees submit reports to NRC. Instead, the commenter recommended the use of one initial location to indicate where reports are submitted to simplify the regulations and ensure a consistent approach. Further, the references in Part 72 to the location where persons are to submit information to the NRC should use the phrase "in accordance with § 72.4" instead of providing a specific address in each individual section. This approach would be consistent with the approach taken in other sections in Part 72 as well as Part 50. This would allow future changes to the NRC receiving address to involve fewer sections of the regulations. The commenter identified §§ 72.44(d)(3), 72.75(d)(2) and 72.140(d) as sections where this change should be made.

Response: The Commission agrees and has made the suggested changes in the final rule.

6. Comment: One commenter noted that the proposed amendment to § 72.75 appears to be inconsistent with the advance notice of proposed rulemaking (ANPR) for 10 CFR 50.73 (63 FR 39522; July 23, 1998) concerning the format and content for reporting reactor events and conditions.

Response: An objective of the § 72.75 rulemaking was to make the Part 72 independent spent fuel storage installations (ISFSI) reporting requirements consistent with the current reactor requirements in § 50.73. The final proposed reporting requirements for specific events and

conditions in § 72.75 are consistent with the current requirements in § 50.73. If the reporting requirements in § 50.73 should change, the staff will consider whether conforming changes to § 72.75 would be appropriate.

7. Comment: One commenter believed that the retention of QA records until termination of the license for Part 72 licensees, and the addition of specific information to meet the existing reporting requirement, do not comply with the Backfit Rule. The commenter indicates that both of these amendments will introduce changes to licensee procedures which are not justified by the substantial increase in protection standard and asserts that the NRC appears to be applying a new test; i.e., whether the changes are sufficiently trivial to ignore the Backfit Rule.

Response: Under § 72.62, “backfitting” includes the modification, after the license has been issued, of procedures or organization required to operate an ISFSI or MRS. This backfitting provision is very similar to the Backfit Rule in § 50.109 which is applicable to reactor licensees. The staff’s position, as stated in the Charter of the Committee to Review Generic Requirements (CRGR), Revision 6, dated April 1996, in footnote 11 is, “...(11) Reporting requirements such as those contained in 10 CFR 50.72 and 10 CFR 50.73 (for power reactors), or those contained in 10 CFR 50.50 [10 CFR 30.50] and 10 CFR 70.52 (for nuclear materials activities), are more akin to information requests covered under 10 CFR 50.54(f) than they are to modifications covered under the backfit rule (10 CFR 50.109). They should be justified by evaluation against criteria similar to the analogous provision in 10 CFR 50.54(f), i.e., by demonstrating that the burden of reporting is justified in view of the potential safety benefits to be obtained from the information reported.”

No change has been made to the final rule because the Commission views the

backfitting provisions in Parts 50 and 72 as not applicable to reporting and recordkeeping requirements. If it were necessary for an information collection and reporting requirement to meet the current standard for imposing a backfit (i.e., a substantial increase in protection of the public health and safety), the Commission would be placed in the untenable position of attempting to show that information requests would substantially increase public health and safety, without knowing the actual results of the request. Therefore, the commenter's suggested change is rejected.

8. Comment: One commenter recommended that the proposed change to § 72.140(d) should also include QA programs which satisfy the requirements of Subpart H of 10 CFR Part 71. The commenter believes that QA requirements in Part 71 are equivalent to the QA requirements in Parts 50 and 72.

Response: While the staff agrees that the QA program requirements in Parts 50, 71, and 72 are equivalent, this comment is beyond the scope of this rulemaking. This issue is being considered in a separate rulemaking.

9. Comment : One commenter recommended that the wording in §§ 72.75(d)(2)(ii)(5) and (6) be revised to change the word "plant" to "facility" to be consistent with wording in § 72.75(d)(2)(ii).

Response: The Commission agrees with this comment and the change has been made.

10. Comment: One commenter recommended adding "spent fuel storage" in the second and third sentences to better describe "cask design requirements" in § 72.122(h)(4).

Response: The Commission agrees with this comment and the change has been made.

11. Comment: One commenter recommended replacing the terms “systems” and “facility” in the third sentence of § 72.124(b) with the term “cask”.

Response: The Commission is not adopting this comment. The term “facility” includes casks but is not limited to casks. It is possible that different noncask design configurations could be proposed. In reviewing this comment, the staff recognized that a mistake had been made in the proposed rule language in this section. The proposed rule stated “demonstration and analysis”, this has been corrected to read “demonstration or analysis.”

12. Comment: One commenter recommended that the term “notification” be used in place of the term “initial report” in the first sentence of § 72.75(d)(2) to help distinguish between verbal and written communications.

Response: The Commission agrees with the comment and the change has been made.

13. Comment: One commenter stated that there is no provision in Part 72 for changes to NRC approved quality assurance programs comparable to the Part 50 provision at § 50.54(a)(3) unless a licensee has a § 72.140(d) QA program incorporating an approved Part 50 program. The commenter requests that a program change provision similar to those found in § 72.44(e) and 72.44(f) be provided to allow for changes to a QA program without NRC approval in defined circumstances.

Response: The proposed recommendation is beyond the scope of this rulemaking

action.

14. Comment: DOE requested that § 72.80(b) be clarified to exclude DOE from the requirement to submit a copy of its annual financial report.

Response: The Commission agrees with the comment and Section 72.22(e) has been revised to exclude DOE from financial assurance requirements.

#### Specific Changes in Regulatory Text

The following section is provided to assist the reader regarding the specific changes made to each section or paragraph in 10 CFR Part 72. For clarity and content, a substantial portion of a particular section or paragraph may be repeated, while only a minor change is being made. This approach will allow the reader to effectively review the specific changes without cross-reference to existing material that has been included for content, but has not been significantly changed.

Sections 72.1 (Purpose) and 72.2 (Scope): These sections are revised to remove superseded information regarding the Federal Interim Storage Program that has expired and to indicate that Subpart L provides requirements, procedures, and criteria for approval of spent fuel storage cask designs and issuance of a Certificate of Compliance.

Sections 72.4 and 72.216: These revisions specify that all communications and reports are addressed to the NRC's Document Control Desk.

Section 72.44: This revision permits reactor licensees, who also possess licenses for ISFSIs, to submit dry cask storage effluent report once each year at the same time as the effluent report for reactor operations, instead of submitting dry cask storage effluent report within 60 days of the beginning of each year.

Section 72.75: This change incorporates specific format and content information requirements comparable to reporting requirements that already exist for similar reactor type events in § 50.73(b).

Section 72.122(h)(4): This revision is made to state that periodic monitoring instead of continuous monitoring is appropriate for dry spent fuel storage.

Section 72.122(i): This section specifies the differences between wet pool spent fuel storage instrumentation and control systems and dry spent fuel storage cask instrumentation systems.

Section 72.124(b): This change is made to state that a positive means for verifying the continued efficacy of solid neutron absorbing materials is not required for dry storage systems, when the continued efficacy is confirmed by demonstration or analysis before use.

Section 72.140(d): This change requires all licensees, including a holder of a Part 50 license using its approved Part 50, Appendix B, QA program, to follow the requirement in § 72.174 to maintain Part 72 QA records until termination of the Part 72 license.

Under the “Policy Statement on Adequacy and Compatibility of Agreement State Programs” approved by the Commission on June 30, 1997, and published in the Federal Register (62 FR 46517, September 3, 1997), this rule is classified as compatibility Category “NRC.” Compatibility is not required for Category “NRC” regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of Title 10 of the Code of Federal Regulations, and although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State’s administrative procedure laws, but does not confer regulatory authority on the State.

#### Environmental Impact: Categorical Exclusion

The NRC has determined that Items 1, 5, 6, and 7 of this rule are the types of action described as a categorical exclusion in 10 CFR 51.22(c)(2) and Items 2, 3, 4 and 8 of this rule are the types of action described as a categorical exclusion in 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

#### Paperwork Reduction Act Statement

This final rule increases the burden on licensees by increasing a record retention period from 3 years to life. The public burden for this information collection is estimated to average 38 hours per request. 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 3150-0132.

## Public Protection Notification

If a means used to impose information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond, to the information collection.

## Regulatory Analysis

The NRC has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC and concludes that the final rule results in an incremental improvement in public health and safety that outweighs the small incremental cost associated with this proposed change. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Single copies of the analysis may be obtained from M. L. Au, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6181; or e-mail [mla@nrc.gov](mailto:mla@nrc.gov).

## Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This rule affects only the operators of independent spent fuel storage installations (ISFSI). These companies do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

## Criminal Penalties

For the purpose of Section 223 of the Atomic Energy Act of 1954 (AEA), the Commission is issuing the final rule to amend 10 CFR 72; 72.44, 72.75, 72.140, and 72.216 under one or more of § 161(b), (i), of (o) of AEA. Willful violation of the rule will be subject to criminal enforcement.

## Small Business Regulatory Enforcement Fairness Act

In accordance with the 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 of OMB.

### Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 72.62, does not apply to this rule, because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 72.62(a). Therefore, a backfit analysis is not required for this rule.

### List of Subjects in 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 72.

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

1. The authority citation for Part 72 continues to read as follows:

AUTHORITY: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 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 sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 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 (42 U.S.C. 10198).

2. Section 72.1 is revised to read as follows:

§ 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 these licenses. The regulations in this part also establish requirements, procedures, and criteria for the issuance of licenses to the Department of Energy (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). The regulations in this part also establish requirements, procedures, and criteria for the issuance of Certificates of Compliance approving spent fuel storage cask designs.

3. In § 72.2, paragraph (e) is removed, paragraph (f) is redesignated as paragraph (e) and a new paragraph (f) is added to read as follows:

§ 72.2 Scope.

a.                   ★                   ★                   ★                   ★

(f) Certificates of Compliance approving spent fuel storage cask designs shall be issued in accordance with the requirements of subpart L of this part.

4. Section 72.4 is revised to read as follows:

§ 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 U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001. Written communications, reports, and applications may be delivered in person to the Nuclear Regulatory Commission at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738 between 7:30 am and 4:15 pm eastern time. If the submittal deadline date falls on a Saturday, or Sunday, or a Federal holiday, the next Federal working day becomes the official due date.

5. In § 72.44, paragraph (d)(3) is revised to read as follows :

§ 72.44 License conditions.

★ ★ ★ ★ ★  
(d) ★ ★ ★

(3) An annual report be submitted to the Commission in accordance with § 72.4, 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 that 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. The report must be submitted within 60 days after the end of the 12-month monitoring period.

5. ★ ★ ★ ★ ★

6. In § 72.75, paragraph (d)(2) is revised, and paragraphs (d)(3), (d)(4), (d)(5), (d)(6) and (d)(7) are added to read as follows:

§ 72.75 Reporting requirements for specific events and conditions.

- 6.                   ★                   ★                   ★                   ★
- d.               ★                   ★                   ★

(2) Written report. Each licensee who makes an initial notification required by paragraphs (a), (b), or (c) of this section also shall submit a written follow-up report within 30 days of the initial notification. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all the necessary information and the appropriate distribution is made. These written reports must be sent to the Commission, in accordance with § 72.4. These reports must include the following:

(i) A brief abstract describing the major occurrences during the event, including all component or system failures that contributed to the event and significant corrective action taken or planned to prevent recurrence;

(ii) A clear, specific, narrative description of the event that occurred so that knowledgeable readers conversant with the design of ISFSI or MRS, but not familiar with the details of a particular facility, can understand the complete event. The narrative description must include the following specific information as appropriate for the particular event:

(A) ISFSI or MRS operating conditions before the event;

(B) Status of structures, components, or systems that were inoperable at the start of the event and that contributed to the event;

(C) Dates and approximate times of occurrences;

(D) The cause of each component or system failure or personnel error, if known;

(E) The failure mode, mechanism, and effect of each failed component, if known;

(F) A list of systems or secondary functions that were also affected for failures of components with multiple functions;

(G) For wet spent fuel storage systems only, after failure that rendered a train of a safety system inoperable, an estimate of the elapsed time from the discovery of the failure until the train was returned to service;

(H) The method of discovery of each component or system failure or procedural error;

(I)(1) Operator actions that affected the course of the event, including operator errors, procedural deficiencies, or both, that contributed to the event;

(2) For each personnel error, the licensee shall discuss:

(i) Whether the error was a cognitive error (e.g., failure to recognize the actual facility condition, failure to realize which systems should be functioning, failure to recognize the true nature of the event) or a procedural error;

(ii) Whether the error was contrary to an approved procedure, was a direct result of an error in an approved procedure, or was associated with an activity or task that was not covered by an approved procedure;

(iii) Any unusual characteristics of the work location (e.g., heat, noise) that directly contributed to the error; and

(iv) The type of personnel involved (e.g., contractor personnel, utility-licensed operator, utility nonlicensed operator, other utility personnel);

(J) Automatically and manually initiated safety system responses (wet spent fuel storage systems only);

(K) The manufacturer and model number (or other identification) of each component that failed during the event;

(L) The quantities and chemical and physical forms of the spent fuel or HLW involved;

(3) An assessment of the safety consequences and implications of the event. This

assessment must include the availability of other systems or components that could have performed the same function as the components and systems that failed during the event;

(4) A description of any corrective actions planned as a result of the event, including those to reduce the probability of similar events occurring in the future;

(5) Reference to any previous similar events at the same facility that are known to the licensee;

(6) The name and telephone number of a person within the licensee's organization who is knowledgeable about the event and can provide additional information concerning the event and the facility's characteristics;

(7) The extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name.

6. In § 72.122, paragraphs (h)(4) and (i) are revised to read as follows:

§ 72.122 Overall Requirements.

7.                   ★                   ★                   ★                   ★  
(h)   ★                   ★                   ★

(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. For dry spent fuel storage, periodic monitoring is sufficient provided that periodic monitoring is consistent with the dry spent fuel storage cask design requirements. The monitoring period must be based upon the spent fuel storage cask design requirements.

9.                   ★                   ★                   ★                   ★  
(i) *Instrumentation and control systems.* Instrumentation and control systems for wet

spent fuel storage 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. Instrumentation systems for dry spent fuel storage casks must be provided in accordance with cask design requirements to monitor conditions that are important to safety over anticipated ranges for normal conditions and off-normal conditions. Systems that are required under accident conditions must be identified in the Safety Analysis Report.

10.           ★           ★           ★           ★

7. In § 72.124, paragraph (b) is revised to read as follows:

§ 72.124 Criteria for nuclear criticality safety.

11.           ★           ★           ★           ★

(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 must provide for positive means of verifying their continued efficacy. For dry spent fuel storage systems, the continued efficacy may be confirmed by a demonstration or analysis before use, showing that significant degradation of the neutron absorbing materials cannot occur over the life of the facility.

12.           ★           ★           ★           ★

8. In § 72.140, paragraph (d) is revised to read as follows:

§ 72.140 Quality assurance requirements.

13.



(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, except that a licensee using an Appendix B quality assurance program also shall meet the requirement of § 72.174 for recordkeeping. Prior to initial use, the licensee shall notify the Commission, in accordance with § 72.4, of its intent to apply its previously approved Appendix B quality assurance program to ISFSI activities. The licensee shall identify the program by date of submittal to the Commission, docket number, and date of Commission approval.

9. In § 72.216, paragraph (c) is revised to read as follows:

§ 72.216 Reports.

14.           ★           ★           ★           ★

(c) The general licensee shall make initial and written reports in accordance with §§ 72.74 and 72.75, except for the events specified by § 72.75(b)(2) and (3) for which the initial reports will be made under paragraph (a) of this section.

Dated at Rockville, Maryland, this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

For the Nuclear Regulatory Commission.

\_\_\_\_\_  
Annette L. Vietti-Cook,  
Secretary of the Commission.

## **REGULATORY ANALYSIS**

### **Miscellaneous Changes to 10 CFR Part 72**

#### **Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste**

##### **Statement of the Problem**

The Nuclear Regulatory Commission (NRC) is amending its regulations to correct several inconsistencies and to clarify certain sections of its regulations pertaining to the storage of spent fuel and high-level radioactive waste. The amendments differentiate the requirements for the storage of spent fuel under wet and dry conditions, clarify requirements for the content and submission of various reports, and specify that quality assurance (QA) records must be maintained as permanent records when identified with activities and items important to safety. These amendments are necessary to facilitate NRC inspections to verify compliance with reporting requirements to ensure the protection of public health and safety and the environment. Those changes made to improve the organization and readability of the existing language of paragraphs being revised do not add any burden to licensees and are not discussed further in this regulatory analysis.

The changes that differentiate the requirements for the storage of spent fuel under wet and dry conditions are intended to clarify the existing requirements for storage under dry conditions. Section 72.124(b) requires specific methods for criticality control, including the requirement that where solid neutron absorbing materials are used, the design must provide for positive means to verify their continued efficacy. Dry spent fuel storage casks are sealed and it

is neither practical nor desirable to penetrate the integrity of the cask to make the measurements to verify the continued efficacy of neutron absorbing materials. The rule clarifies that continued efficacy may be confirmed by demonstration or analysis before use. In addition, the term “continuous” monitoring does not differentiate between monitoring requirements for wet and dry storage of spent fuel. Because of the passive nature of dry storage, active heat removal systems are not necessary and monitoring can be less frequent. The rule clarifies that the frequency of monitoring can be different for wet and dry storage systems. Section 72.122(i) requires that instrumentation and control systems be provided to monitor systems important to safety, but does not distinguish between wet and dry spent fuel storage systems. The rule clarifies that control systems are not needed for dry spent fuel storage systems due to the passive heat removal. The rule further clarifies that instrumentation systems for dry spent fuel storage casks must be provided in accordance with cask design requirements to monitor conditions that are important to safety. These rule changes are not adding new requirements to the regulations but provide clarification on the existing requirements so that licensees that use dry storage are not burdened with requirements that are inappropriate for dry systems. These changes are not discussed further in this regulatory analysis.

Part 72, Subpart G allows a holder of a Part 50 license to use its approved Part 50, Appendix B, QA program. This has introduced an inconsistency with the record retention requirements for Part 72 Licensees. If the QA program is approved under Part 72, § 72.174(d) specifies that QA records considered to be important to safety must be maintained until the Commission terminates the license. However, Part 50, Appendix B, does not contain a similar provision for record retention, therefore, there is no requirement to maintain the QA records until the termination of the Part 72 license. In approving Part 72, Subpart G, the Commission intended QA records that are considered to be important to safety to be maintained until

termination of the Part 72 license. Part 72 licensees who are using a Part 50, Appendix B, QA program currently maintain the QA records as permanent records on a voluntary basis. To assure that these licensees continue to maintain the necessary QA records and to address the record retention inconsistency, the amendment to Part 72 codifies the requirement that those licensees which use a Part 50, Appendix B, QA program maintain the QA records considered important to safety until the Commission terminates the Part 72 license.

### **Objectives**

The objectives of the amendments are as follows:

- (1) To clarify specific reporting and record keeping requirements in § 72.75.
- (2) To clarify that Part 72 requires that all licensees, including those licensees under an Appendix B to Part 50 QA program, maintain QA records permanently until termination of the license.

### **Cost and Benefit Analysis**

#### **Costs:**

1. Section 72.75 contains reporting requirements for specific events and conditions, including the requirement in § 72.75(d)(2) for a follow-up written report for certain types of emergency and nonemergency notifications. This rule clarifies the specific information required to meet the intent of the existing reporting requirement. A comparable reporting requirement already exists for similar reactor events in § 50.73(b). This rule incorporates the format and

content outlined in § 50.73(b) into § 72.75(d)(2) to clearly inform licensees of the information necessary for the NRC staff's review.

Relative to the clarification of requirements in § 72.75(d), the staff has revised the regulatory analysis and recalculated the associated reporting burden. The clarification of reporting and record keeping requirements in § 72.75 is estimated to produce an incremental annual burden per licensee of about 21 hrs. This is based on the differential between the average number of hours currently expended to produce a report under § 50.73 (50 hours) vs. the average number of hours currently expended to produce a report under § 72.75(d) (8 hours), and an average number of reports per year of 0.5 per licensee. Assuming 20 licensees will be affected by this change, the total annual increase in burden is about 420 hours. Given that the current industry-wide burden to meet the Part 72 reporting and record keeping requirements is about 21,000 hours, this represents an increase of only 2 percent and is judged to be insignificant.

In current dollars, and based on a current labor rate of \$71.00 per hour, the annual increased burden is estimated at approximately \$1500 per licensee, or \$30,000 for all licensees affected by this regulatory change. The lifetime cost, assuming an average remaining life of 20 years and a 7 percent real discount rate is estimated at \$16,000 per licensee, or \$320,000 for all licensees.

2. All Part 72 licensees, including those who have adopted an Appendix B to Part 50 QA program, currently maintain the QA records that are prescribed in § 72.174 as permanent records. However, the maintenance of QA records beyond those required under Appendix B is voluntary on the part of licensees who have adopted an Appendix B, QA program. Permanent

QA records retention is needed to ensure traceability of systems or components for future use to determine root cause of accidents and analysis of failure. For general Part 72 licensees, records are needed if the license is converted to a specific license and records are needed to ensure proper decommissioning of the facility. Because there is no assurance that these additional records would continue to be maintained in the future, NRC's regulatory analysis policy prescribes that for base case cost-benefit calculations, it is appropriate to give no credit for those voluntary actions and to view this as an incremental burden of the proposed regulatory action. The staff estimates that the 20-year present worth cost to a reactor licensee to maintain all permanent records is on the order of \$100,000 per licensee. This assumes an average one-time cost of \$40,000 for a vault or cabinet, an annual labor cost of \$6000 to maintain the records, and an annual storage fee of \$500. The present worth of the annual cost is based on a 7 percent real discount rate over a 20-year period which corresponds to the life of the license. Based on discussion with NRC staff directly involved in oversight of § 72.174 requirements, it is estimated that the permanent independent spent fuel storage installation (ISFSI) records represent no more than 5 percent of the total permanent records required to be maintained by a reactor licensee. Thus, it is estimated that the 20-year incremental burden resulting from this rule change is \$5000 per licensee. This figure is equally applicable to both reactor and nonreactor licensees storing spent fuel. Given that there are about 50 licensees who could rely on their Appendix B, QA program in lieu of § 72.142, the life-time incremental burden for the affected licensee population is approximately \$250,000.

For sensitivity analysis purposes, it is useful to recognize that this new regulatory requirement is currently being met under existing licensee practices, and in terms of real dollar outlay there is no change in burden associated with this regulatory action. This presumes, however, that absent this proposed change, licensees using an Appendix B, QA program would

continue to permanently maintain all records generated in support of Part 72 activities. The emphasis on making reports with the necessary information and maintaining permanent QA records until termination of the license would be on those activities and items that are identified as being important to safety.

**Benefits:**

The benefits associated with these rule changes are that necessary information is included in reports and QA records are maintained permanently when identified with activities and items important to safety. In the staff's view, this incremental benefit exceeds the relatively small incremental cost associated with this change.



The Honorable Joe Barton  
Chairman, Subcommittee on Energy  
and Power  
United States House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

The U.S. Nuclear Regulatory Commission intends to publish the enclosed final amendments to 10 CFR Part 72, in the Federal Register, shortly. The amendments differentiate the requirements for the storage of spent fuel under wet and dry conditions, clarify requirements for the content and submission of various reports, and specify that quality assurance records must be maintained as permanent records. The rule, when promulgated, also corrects several inconsistencies and clarifies certain sections in this regulation.

Sincerely,

Dennis K. Rathbun, Director  
Office of Congressional Affairs

Enclosure: Federal Register Notice

cc: Ranking Member

The Honorable James M. Inhofe, Chairman  
Subcommittee on Clean Air, Wetlands, Private  
Property and Nuclear Safety  
Committee on Environment and Public Works  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

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Sincerely,

Dennis K. Rathbun, Director  
Office of Congressional Affairs

Enclosure: Federal Register Notice

cc: Senator Bob Graham