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Fuel Solutions Corporation



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DOCKET NUMBER
PROPOSED RULE **72**
(63FR39526)

October 6, 1998
BFS/NRC 98-017
Docket No. 72-1023
72-1007
File No. SNC-109

Secretary
US Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attn: Rulemakings and Adjudications Staff

Subject: Proposed Amendment to 10 CFR Part 72, Expanded Applicability of Regulations to Holders of, and Applicants for, Certificates of Compliance and Their Contractor and Subcontractors

Dear Sir,

In Federal Notice dated July 23, 1998, a proposed amendment to 10 CFR Part 72 was published which would expand its applicability to holders of, and applicants for, Certificate of Compliance and their contractors and subcontractors. BNFL Fuel Solutions (BFS), which is doing business as Sierra Nuclear Corporation, provides the following general comments below and provides more specific comments and recommendations to improve individual sections of the proposed rule in the attachment to this letter.

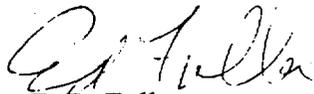
GENERAL COMMENTS

In summary, BFS supports the intent of the proposed revisions to 10 CFR Part 72. The purpose is to enhance the NRC's ability to take enforcement action against certificate holders and their contractors and subcontractors when legally binding requirements are violated. This expanded enforcement action is intended to enhance the safety and regulatory significance associated with the violations of the regulations. These changes should afford the NRC a graduated means to enforce the regulations.

BFS also finds that the proposed amendment improves the regulatory expectations for certificate holders, which should provide each certificate holder the opportunity to enhance its own safety and regulatory performance.

If any questions exist relative to this submittal, please contact me at (831) 438-6444.

Sincerely,



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ATTACHMENT

BFS respectfully provides the following specific comments to the proposed amendment to 10 CFR Part 72.

①

§72.146(c) currently reads: "The licensee shall subject design changes, including field changes, to design control measures commensurate with those applied to the original design. Changes in the conditions specified in the license require NRC approval." The proposed rulemaking would apply this requirement to certificate holders and applicants for the Certificate of Compliance (CofC).

Comment: BFS agrees that design changes should have appropriate controls. However, it is not clear whether design changes undertaken by the certificate holder require prior NRC approval. Currently, 10CFR72.48 identifies those changes that the licensee may make without prior NRC review, and 10CFR72.70 addresses the licensee's responsibilities to update their Safety Analysis Report (SAR). But the proposed rulemaking does not apply 10CFR 72.48 and 72.70 to the certificate holders. The proposed rule does not address whether prior NRC approval is required for a design change made by a certificate holder that would necessitate a revision of the cask SAR but would not specifically deviate from the CofC, and how the SAR will be updated to reflect these changes.

Recommendation: The proposed revision of 10CFR72.146(c) needs clarification of when prior NRC approval is required for certificate holders and the means to control changes to the SAR that do not require a change to the CofC.

The most direct method to address this comment is to revise Part 72 to apply 10 CFR 72.48 and 72.70 to certificate holders. BFS recognizes that NRC intends to pursue changes to 10CFR72.48 in the future. However, without changes to 10 CFR 72.48 and 72.40 at this time, some clarifications are necessary in order to implement the proposed revisions to 72.146(c).

②

§72.242 is added to require a written report when the design or fabrication deficiency affects the ability of structures, systems and components important to safety to perform their function.

Comment: An individual structure, system or component may perform more than one function. Some of these may be safety-related while other functions may not serve a safety function. As an example, a coating

may assist in heat removal as a function important to safety, but may also serve as aesthetic function. For this example, the proposed rule could be interpreted to require a written report addressing a deficiency associated with an aesthetic function, even though the particular component would be capable of performing its safety function. It would be an unwarranted use of industry and NRC resources to report deficiencies that do not affect a safety function.

Further, the deficiency may affect the safety function of such structures, systems, or components, but the deficiency may not prevent such structure, system, or component from performing its intended safety function. As an example, a deficiency in a coating may be discovered such that the manufacturer lowers its peak heat transfer rating. However, the cask design as stated in the Safety Analysis Report may not rely upon such a high rating. It would also be an unwarranted use of industry and NRC resources to report deficiencies that do not affect the ability of the component to perform its intended safety function.

Recommendation: Revise the proposed rulemaking to read as follows: "...deficiency affects the ability of structures, systems, and components important to safety to perform their intended safety function."

§72.242 is added which identifies additional record keeping and reporting requirements for certificate holders. The NRC estimates the burden associated with these new requirements in the Paperwork Reduction Act Statement provided with the Supplementary Information. The burden is estimated as 6 hours annually.

Comment: BFS agrees with the purpose of the proposed rulemaking. However, the annual burden for record keeping and reporting proposed by the revised Part 72 would far exceed 6 hours annually. The estimate of 6 hours annual would be sufficient to address the training of personnel to implement these new requirements, but would not be sufficient to address the actual record keeping and reporting. Of course, the actual burden any individual certificate holder would incur due the required record keeping and reporting would vary by certificate holder. BFS believes that the estimated burden is greater than 100 hours annually. However, BFS believes that the purpose of the final rule justifies this burden.

Recommendation: Recognize the more realistic burden associated with the proposed record keeping and reporting and document that the burden is justified by the intended purpose of the proposed rule.

§72.140(c)(2) was added to require certificate holders to obtain Commission approval of its quality assurance program prior to commencing fabrication or testing of a spent fuel storage cask.

Comment: 72.140(d) states that a quality assurance program which satisfies Appendix B to Part 50 is acceptable for Part 72. A certificate holder may have a quality assurance program that has been approved by the NRC under Part 71 or approved by the NRC for another Part 72 CofC application.

Recommendation: Revise 72.140(d) to include a quality assurance program which has been previously approved for Part 71 or Part 72 as a previously approved program acceptable for new CofC applications under Part 72.