

of the Patterson variety of apricots for the 1995 season. The grade requirements for the Patterson variety currently specified in section 922.321 will resume April 1, 1996, for the 1996 and future seasons. Color and size requirements for the Patterson variety will remain unchanged.

The Committee met on May 11, 1995, and unanimously recommended the suspension of grade requirements for the Patterson variety. The Committee requested that this suspension be made effective by July 1, 1995, since the harvest of the Patterson variety is expected to begin shortly thereafter.

The Committee meets prior to each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Washington apricots which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Information available to the Committee indicates that the Patterson variety of apricots experienced severe hail damage this season. The excessive damage was a result of location and stage of fruit development. The Patterson variety is the latest variety of apricots produced within the production area. Earlier varieties of apricots did not experience significant hail damage.

This suspension will enable handlers to ship a larger portion of the Patterson variety to the fresh market this season, than if the minimum grade requirements were not suspended. Without suspension of the grade requirements for the Patterson variety, most of the fruit could not be shipped to fresh markets. Last year, 151 tons of the Patterson variety were shipped into the fresh market. Information available to the Committee indicates that with suspension of the grade requirements for the Patterson variety, approximately 125 tons might be shipped to the fresh market. Since the Patterson variety is the latest variety of apricots shipped within the production area, the suspension of the grade requirements for this variety should not adversely affect the marketing of other varieties.

Suspension of the grade requirements for the Patterson variety is intended to increase fresh shipments to meet

consumer needs and improve returns to producers.

Based on the above information, the Administrator of the AMS has determined that this interim final rule will not have a significant impact on a substantial number of small entities and that the action set forth herein will benefit producers and handlers of the Patterson variety of apricots grown in designated counties in Washington.

After consideration of all available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action suspends the current grade requirements for the Patterson variety of Washington apricots; (2) the Committee unanimously recommended this rule at a public meeting and all interested persons had an opportunity to provide input; (3) shipment of the Patterson variety of apricots is expected to begin in early July, and this rule should apply to the entire season's shipments; (4) handlers of the Patterson variety of apricots are aware of this rule and they need no additional time to comply with the relaxed requirements; and (5) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 922 is amended as follows:

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR part 922 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 922.321, paragraph (a)(1) is revised to read as follows:

§ 922.321 Apricot Regulation 21.

(a) * * *

(1) *Minimum grade and maturity requirements.* Such apricots that grade not less than Washington No. 1 and are

at least reasonably uniform in color: *Provided*, That the grade requirement shall not apply to apricots of the Patterson variety handled during the 1995 season through March 31, 1996: *Provided further*, That such apricots of the Moorpark variety in open containers shall be generally well matured; and

* * * * *

Dated: June 15, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95-15109 Filed 6-21-95; 8:45 am]

BILLING CODE 3410-02-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150-AE17

Emergency Planning Licensing Requirements for Independent Spent Fuel Storage Facilities (ISFSI) and Monitored Retrievable Storage Facilities (MRS)

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations, in accordance with the Nuclear Waste Policy Act of 1982, for the emergency planning licensing requirements for Independent Spent Fuel Storage Facilities (ISFSI) and Monitored Retrievable Storage Facilities (MRS). The amendments are necessary to ensure that local authorities will be notified in the event of an accident so that they may take appropriate action. The regulation will provide a level of preparedness at these facilities that is consistent with NRC's defense-in-depth philosophy.

EFFECTIVE DATE: September 20, 1995.

FOR FURTHER INFORMATION CONTACT: Michael T. Jamgochian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301-415-6534).

SUPPLEMENTARY INFORMATION:

Background

On May 27, 1986 (51 FR 19106), following Commission approval, the proposed revision to 10 CFR part 72 relating to licensing requirements for Independent Spent Fuel Storage Facilities (ISFSI) and Monitored Retrievable Storage Facilities (MRS), including requirements for emergency planning, was published in the **Federal Register** for comment.

On November 30, 1988 (53 FR 31651), the Commission published the final rule outlining the licensing requirements for ISFSI and MRS but reserved the emergency planning licensing requirements for a later date.

On May 24, 1993 (58 FR 29795), the Commission published for public comment the proposed emergency planning licensing requirements for ISFSI and MRS. This final rule codifies the emergency planning licensing requirements.

Discussion

On April 7, 1989 (54 FR 14051), the Commission published in the **Federal Register** the final regulations relating to Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees (10 CFR parts 30, 40, and 70).

These regulations require certain NRC fuel cycle and other radioactive materials licensees that engage in activities that may have the potential for a significant accidental release of NRC licensed materials to establish and maintain approved emergency plans for responding to such accidents.

Although applicable to those licensed under different parts of the Commission's regulations, the requirements for emergency plans in parts 30, 40, and 70 contain similar provisions because they are designed to protect the public against similar radiological hazards. The proposed revision of 10 CFR part 72 as published for comment on May 24, 1993 (58 FR 29795), would also require applicants for an ISFSI and MRS license to submit an emergency plan. Although the texts of the Fuel Cycle final emergency planning requirements and the parallel provisions of the proposed Emergency Preparedness licensing requirements for ISFSI and MRS are not identical, these provisions have the same purpose and use the same approach. In both cases, the proposed regulations require onsite emergency planning with provisions for offsite emergency response in terms of coordination and communication with offsite authorities and the public. It is therefore appropriate that in both cases these requirements should be expressed in the same manner.

The Commission has determined that the emergency planning licensing requirements for 10 CFR part 72

licensees should be similar to those requirements already codified in § 70.22 for part 70 licensees. Nonetheless, the Commission wishes to establish unique provisions in the emergency planning requirements for MRS facilities (and certain more complex ISFSIs) versus typical ISFSI facilities. The Commission anticipates a potential need for enhanced emergency planning requirements appropriate to the entire range of operations which may be conducted at an MRS facility (or ISFSI that may be repackaging or handling spent fuel). The Commission acknowledges that, to date, accidents that have been postulated and analyzed for either an ISFSI or MRS would result in similar offsite doses. The analysis of potential onsite and offsite consequences of accidental releases associated with the operation of an ISFSI is contained in NUREG-1140. This evaluation shows that the maximum dose to a member of the public offsite due to an accidental release of radioactive materials would not exceed 1 rem effective dose equivalent, which is within the EPA Protective Action Guides or an intake of 2 milligrams of soluble uranium (due to chemical toxicity).

Thus, the consequences of worst-case accidents involving an ISFSI located on a reactor site would be inconsequential when compared to those involving the reactor itself. Therefore, current reactor emergency plans cover all at- or near-reactor ISFSI's. An ISFSI that is to be licensed for a stand-alone operation will need an emergency plan established in accordance with the requirements in this rulemaking. NUREG-1140 concluded that the postulated worst-case accident involving an ISFSI has insignificant consequences to the public health and safety. Therefore, the final requirements to be imposed on most ISFSI licensees reflect this fact, and do not mandate formal offsite components to their onsite emergency plans.

Similarly, the Commission has conducted an analysis of potential onsite and offsite consequences of accidental release associated with the operation of an MRS. The analysis is contained in NUREG-1092. This evaluation shows that the maximum dose to a member of the public offsite due to an accidental release of

radioactive materials would likely not exceed 1 rem effective dose equivalent which is within the EPA Protective Action Guides or an intake of 2 milligrams of soluble uranium (due to chemical toxicity).

In the final NRC Generic Environmental Impact Statement on the handling and storage of light water reactor fuel,¹ it is stated that

* * * To be a potential radiological hazard to the general public, radioactive materials must be released from a facility and dispersed offsite. For this to happen:

- The radioactive material must be in a dispersible form
- There must be a mechanism available for the release of such materials from the facility, and
- There must be a mechanism available for offsite dispersion of such released material.

Although the inventory of radioactive material contained in 1000 MTHM of aged spent fuel may be on the order of a billion curies or more, very little is available in a dispersible form; there is no mechanism available for the release of radioactive materials in significant quantities from facility; and the only mechanism available for offsite dispersion is atmosphere dispersion * * *.

Furthermore, NRC has conducted Safety Evaluations on many different storage systems. Those studies included evaluations of the effects of corrosion, handling accidents such as cask drops and tipovers, explosions, fires, floods, earthquakes, and severe weather conditions. As documented in each of those Safety Evaluation Reports (SER), NRC was not able to identify any design basis accident that would result in the failure of a confinement boundary. However, to provide a conservative bounding analysis of the threat to the public health and safety, the failure of the confinement barrier was postulated. As discussed in each of the SERs and again in the response to Issue 48 the consequences of this postulated failure do not result in an increased risk to the public health and safety.

In the environmental assessment for 10 CFR Part 72,² the accident judged the most severe was the failure of a packaged fuel element. In this analysis, the accident involves the failure of a storage system containing 1.7 MTHM. The postulated individual doses are presented in Table 1.³

¹ NUREG-0575 Vol. 1 sec. 4.2.2 Safety and Accident Considerations.

² NUREG-1092 Environmental Assessment for Part 72 "Licensing Requirements for Independent Spent Fuel and High-Level Radioactive Waste."

³ NUREG-1092 Table 2.2.4-2

TABLE 1.—TOTAL DOSE TO AN INDIVIDUAL AS A RESULT OF A FUEL CANISTER FAILURE ACCIDENT AT A SURFACE STORAGE INSTALLATION (MREM)

Pathway	Skin	Total Body	Thyroid	Lung
Air Submersion	1.0×10^{-1}	1.1×10^{-3}	1.1×10^{-3}	1.1×10^{-3}
Inhalation		1.2×10^{-5}	1.1×10^{-2}	7.3×10^{-5}
Total	1.0×10^{-1}	1.1×10^{-3}	1.2×10^{-2}	1.1×10^{-3}

Note: The maximum individual is defined as a permanent resident at a location 1600 meters southeast of the stack with a time-integrated atmospheric dispersion coefficient (E/Q of 1.5×10^{-4} sec/m³). The accident involves failure of a fuel canister containing approximately 1.7 MTHM.

Since the time these calculations were performed, the storage canisters have increased in capacity, and today the capacity of the largest approved design is approximately 9 MTHM. However, because dose varies directly with inventory, when the totals are increased by a factor of ten, they are still a very small fraction of the 300 mrem/yr⁴ an individual receives from natural background radiation, and is below the EPA protective action guides.

Nonetheless, the Commission believes it appropriate to require enhanced offsite emergency planning at an MRS (as well as any ISFSI that conducts similar operations) because of the broader scope of activities which could be performed at such a facility.

In addition to the handling and repackaging for storage of large numbers of individual fuel bundles, which involves the receipt, inspection, and transfer of several thousand transport casks, MRS operations may also encompass the consolidation of the stored fuel into casks for subsequent geological disposal after interim storage. At this time, a final MRS design has not been selected. The MRS may be a large industrial facility equipped to handle the loading, unloading, and decontaminating of a large number of spent fuel shipping containers arriving by both truck and rail. It could also include facilities to disassemble the fuel bundles and consolidate that fuel into special storage/transport containers, and facilities to handle solidified high-level waste. These facilities would require the equipment necessary to process low- and high-level waste that would be associated with the above operations. It is also possible, however, for an MRS facility to serve primarily as a warehouse operation, limited solely to accepting, sorting and later transshipping a large number of multi-purpose canister (MPC) systems of the type being considered by DOE.

The Multi-Purpose-Canister (MPC) being considered by the DOE would be used to store and transport spent fuel. The MPC system provides a sealed

canister into which spent fuel would be loaded. After loading, the MPC is evacuated, backfilled with an inert gas, and then permanently sealed. At this point the MPC concept offers several options: the sealed canister could be placed into a storage overpack at the reactor site, or it could be placed in a transportation overpack for movement to an ISFSI or MRS. After arriving at the ISFSI or MRS the MPC would most likely be placed in the storage configuration awaiting transport to the geological repository. When the repository is ready to accept fuel, several options would exist. The canisters could be placed into the transport overpack for movement to the geological repository. Once there, the canister could be transferred directly into the disposal overpack for emplacement into the repository. An option to repackage the spent fuel into disposal canisters allowing the optimum configuration required at the repository remains possible. This could take place at either the repository or MRS. Because the canister may only be opened once during its entire storage life and individual fuel elements only handled under a controlled environment, the MPC concept appears to reduce the overall risk to public health and safety.

Given the uncertainties in the design and operation of an MRS, the Commission believes it prudent to plan and provide for an enhanced level of emergency planning to include some offsite preparedness should operation of a MRS (or any ISFSI conducting similar operations) present accident risks that exceed those analyzed in NUREGs 1140 and 1092. Because the level of risk to the public health and safety from such an MRS (or ISFSI) may exceed that from a typical ISFSI, the relevant emergency planning requirements should be enhanced to include an offsite component. To achieve this goal, the final enhanced emergency plan requirements are modeled after 10 CFR 50.47(d). The intent of 10 CFR 50.47(d) was to mandate a minimum level of offsite response capability during initial reactor licensing and low power operations. This same level of response

capability is considered appropriate to MRS (and any comparable ISFSI) operations. Because much of the language needed to achieve this level of offsite protection has already been codified in 10 CFR Part 50, similar language is included within the final emergency planning requirements for an MRS (and ISFSI) (10 CFR 72.32(b)(15)(i-vi)).

The Commission notes that, for both types of facilities, this rulemaking is not required in order to provide adequate safety and may not be justified based solely on a comparison of the anticipated costs of implementing these regulations to the increase in public health and safety. Rather, the Commission believes that it is justified in terms of safety enhancement such as the intangible benefit of being able to assure the public that local authorities will be notified in the event of an accident so that they may take appropriate actions. The NRC feels that such preparedness is prudent and consistent with the NRC's philosophy of defense-in-depth.

Public Comments

The NRC received a total of 25 comment letters. Five were from utilities, two were from organizations representing utilities, eight were from State and/or local emergency management agencies, three were from the Mescalero Indian Tribe, five were from environmental/intervener groups, one was from a private citizen, and one was from the Department of Energy.

One of the letters that opposed the proposed regulation came from a member of the Mescalero Indian Tribe and included the signatures of 40 other tribal members who agreed with opposition to the proposed rule change. Opposition also came from the private citizen, all of the intervener/ environmental groups, and a local governmental official.

Letters that were generally in agreement with the proposed rule change were submitted by the Mescalero Tribal MRS Program Manager, the Department of Energy, all of the utilities, all of the State governmental

⁴NRC Report No. 94.

agencies, and from the industry groups (though the industry group letters expressed a preference for deferring the MRS portion of the regulation (10 CFR 72.32(b)) because the industry groups considered it premature).

The comment letters that were received provided many thought-provoking and constructive comments. The Commission's evaluation of and response to these comments is presented in the following section.

Issue 1. The frequency for conducting offsite communication checks (quarterly) and onsite exercises (annually) for MRS should not be more conservative than for ISFSI communications checks (semiannually) and onsite exercises (biennially). The increase in frequency is not justified by experience or analysis.

Response. The Commission agrees that the onsite exercise requirements should be biennial rather than annual. Nonetheless, the quarterly communication checks will remain unchanged due to the obvious importance of reliable communications capabilities.

Issue 2. The proposed rule, 10 CFR 72.32(a)(15) states that the review shall include certain "arrangements" and "other organizations." Those items are not listed as specific elements to be included in the plan. It is inferred that they do not need to be addressed other than in the information regarding offsite interface activities required by paragraphs (a)(7), (a)(8), (a)(9), (a)(10), (a)(12), and (a)(14). As written, the paragraph imposes a review requirement upon the NRC and is merely informational to the applicant.

Response. The Commission agrees and has rewritten §§ 72.32(a)(15) and 72.32(b)(15) in the final regulations.

Issue 3. The discussion section and the proposed rule regarding the frequency of communications checks should be consistent. The discussion section indicates quarterly checks (page 29796, Section xii) and the proposed rule in 10 CFR 72.32(a)(12)(i) indicates semiannual checks. Semiannual checks are appropriate.

Response. The Commission disagrees. The discussion section referred to relates to a Final Rulemaking for Fuel Cycle and Material licensees published on April 7, 1989 (54 FR 14051). The requirement for quarterly communication checks is identical to that requirement for an MRS (and comparable ISFSI). The semiannual communication checks are for a typical, storage only ISFSI. There is no inconsistency.

Issue 4. At a site where the affected ISFSI site could be contiguous to a Part

50 licensed site, the 10 CFR 50.47 emergency plans should apply automatically. This would preclude the unnecessary expenditure of limited utility, State, local and Federal resources; avoid duplication in emergency preparedness; and minimize confusion offsite. In order to limit confusion, change the existing proposed first sentence of 10 CFR 72.32(a) to read: "For an ISFSI that is located on (or immediately adjacent to) the site of a nuclear power reactor * * *"

Response. The Commission agrees and has incorporated this concept into the final regulation by referencing the exclusion area as defined in 10 CFR part 100.

Issue 5. The following areas of the proposed rule introduce inconsistencies that require clarification: Paragraphs (a)(1) through (a)(13) of 10 CFR 72.32 list specific information to be included in the emergency plan. Paragraph (a)(16) also appears to list specific information to be included. However, it is unclear whether paragraphs (a)(14) and (a)(15) are intended to be specific information included in the emergency plan or review and comment requirements related to the submittal of the emergency plan which do not have to be included as specific information in the plan. The discussion contained in the supplementary information section of the **Federal Register** notice implies that these paragraphs are review and comment requirements only. "* * * the proposed requirements to be imposed on ISFSI licensee * * * do not mandate formal offsite components to their onsite emergency plans." (58 FR 29797, May 24, 1993.)

Response. The Commission agrees and has clarified paragraphs (a)(14) and (a)(15).

Issue 6. 10 CFR 72.32(a)(15), Offsite Arrangement: The wording "* * * arrangements to accommodate State local staff at the licensee's near-site emergency facility have been made, * * *," should be deleted from § 72.32(a)(15). The nature of potential emergency events at ISFSIs do not require personnel from State and local governments to respond in a staff capacity, and do not require near-site emergency facilities to be available. The proposed rule already requires that the emergency facilities at the site, and the emergency response staff for the facility, be adequate for emergency planning purposes.

Response. The Commission agrees and has incorporated this comment in the final regulation.

Issue 7. 10 CFR 72.32(b)(14), Offsite Review: The request for the offsite response organization to comment as to

whether an offsite component to emergency preparedness at an MRS is reasonable, appropriate, or premature at this time. We believe that it is, in fact, premature at this time. The analyses that have already been done undoubtedly contain a considerable amount of conservatism. It is far easier to add requirements later, should they be found to be recommended, than to remove them when they are confirmed to be excessive later.

Response. See Commission Response to Issue 18.

Issue 8. 10 CFR 72.32(a)(13), Hazardous Chemicals: The certification deals with hazardous materials at the facility. The last phrase of the statement does not clearly convey this message. To clarify, the commenters suggest replacing the phrase, "if applicable to the applicant's activities at the proposed place of use of special nuclear material," with "with respect to hazardous materials at the facility."

Response. The Commission agrees and has clarified the final rule accordingly.

Issue 9. 10 CFR 72.32(a)(14), Offsite Review: The proposed rule should only require the 60-day comment period for offsite response organizations prior to the initial plan submittal to the NRC. Subsequent plan changes should not have this 60-day time restriction built into the submittal process unless the plan changes involve offsite response organizations.

Response. The Commission agrees and has changed the final rule accordingly.

Issue 10. 10 CFR 72.32(a)(12)ii, Offsite Participation: "Participation of offsite response organizations in biennial exercises, although recommended, is not required," sends a message to State and local agencies that they may need extensive planning to accommodate the facility. There is nothing unique to a potential release from an ISFSI that is not enveloped by the utility and associated State and local emergency plans to support an operating plant or one with a possession only license. State and local agencies should be provided a copy of the facility's plan and be asked to take part in "table-top" exercises to help them understand their role.

Response. The Commission disagrees, because offsite response organizations should also become familiar with the facility.

Issue 11. 10 CFR 73.32(a)(12)(i), Exercises: The listed drills are capitalized, creating the impression that they are specific types of drills, such as those described in NUREG-0654, for the conduct of similar type drills for

operating power reactors. Furthermore, ISFSIs, in view of the relatively passive nature of the facility and the potential consequence of a release as compared to operating power reactors, do not warrant this frequency. Drills should be held biennially.

Response. See the Commission's Response to Issue 12. Additionally, the frequency of these drills have been changed from semiannual to annual.

Issue 12. It is recommended that the existing wording, "* * * Radiological/Health Physics, Medical, and Fire Drills should be conducted semiannually * * *," be reworded in a manner similar to 10 CFR 50.47(b)(14) as follows: "Periodic drills shall be conducted to develop and maintain key skills."

Response. The Commission disagrees because it believes that it is beneficial to specify the types of drills necessary.

Issue 13. 10 CFR 72.32(a)(12)(i), Exercises: Semiannual fire drills may not be appropriate for an ISFSI because there are no flammable materials associated with the facility.

Response. The frequency of these drills has been changed and will be required annually.

Issue 14. 10 CFR 72.32(a)(8), Notification and Coordination: The means to promptly notify offsite response organizations should be limited to using commercial telephones. Ring-down systems should not be necessary to meet this requirement.

Response. Ring-down systems are not mentioned in the proposed or final regulations.

Issue 15. 10 CFR 72.32(a)(6), Assessment of Releases: Extensive dose assessment methodology is not necessary to implement the emergency plans.

Response. The proposed rule did not suggest requiring and the final regulation does not require "Extensive" dose assessment.

Issue 16. 10 CFR 72.32(a)(8), Notification and Coordination: The Emergency Response Data System (ERDS) provides for the automated transmission of a limited data set of selected onsite parameters (e.g., system pressure, temperature, radiation monitoring). The activation of the ERDS does not apply to nuclear power facilities that are shut down permanently or indefinitely. The activation of ERDS should not apply to ISFSI incidents even located at operating plant sites.

Response. The proposed rule did not suggest requiring and the final regulation does not require the use of ERDS.

Issue 17. 10 CFR 72.32(a)(3), Classification Requirements: The implementation guidance for the rule should provide for the simplest and easiest understood classification, notification, and reporting system for non-emergency events. NUREG-1140 "A Regulatory Analysis on Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licenses," August 1991 Section 2.27 (Spent Fuel Storage) supports the discussion that EPA's protective action guides would not be exceeded during an accident. Therefore, both classifications for a site and general emergency should not be considered. Redundant classifications, notifications and reports for non-emergency events, such as Notifications of Unusual Events (NOUEs), 1-hour non-emergency event reports, and four-hour non-emergency event reports used for operating reactors, should not apply to ISFSIs and MRSs. These conclusions are based on the magnitude, duration, and energy involved in an incident involving spent fuel storage facilities. These analyses have been docketed as part of submittals to the NRC to license individual ISFSIs. For actual ISFSI and MRS emergencies, the emergency classification, "Alert," should be sufficient. A "NOUE" classification for ISFSI and MRS emergency planning should not be necessary.

Response. The proposed rule did not suggest requiring and the final regulation does not require the use of notification of unusual events "NOUE" or "general" emergency classification.

Issue 18. EEL/WASTE supports adoption of proposed § 72.32(a) that would establish emergency planning requirements for ISFSI. EEL/WASTE recommends that NRC defer proposed § 72.32(b) that would establish emergency planning requirements for MRSs. Because no final design for MRS facilities has been selected, there is no rational basis to determine the level of radiological hazards for which emergency planning requirements are designed. It is therefore premature for the NRC to establish emergency planning requirements for MRS facilities.

Response. The Commission disagrees. The proposed emergency planning licensing requirements for an MRS as published in the **Federal Register** on May 24, 1993 (58 FR 29795), have provided to the public some insight as to what the Commission now feels would be appropriate and reasonable emergency planning licensing requirements for an MRS. One comment stated that, "We have concluded that minimum requirements, such as those currently proposed by the NRC

rulemaking process, should serve as guidance for the starting point from which Emergency Planning and Licensing Requirements can be fully developed." Also, the Department of Energy stated that it "* * * intends to work closely with the host community to develop a comprehensive emergency response plan with offsite components that will not only encompass the requirements contained in 10 CFR 72.32(b)(15), but likely will exceed them."

Issue 19. The proposed rule does not require MRS operators to notify local residents of any increased exposure, nor does it require MRS operators to develop a plan for evacuation. This rule is an unfair burden on local emergency responders with little or no training for these type of emergencies. There is specialized training and equipment for radiation accidents and exposure; therefore, the proposed rules should provide for the training and obtaining equipment for the local responders.

Response. The Commission disagrees. The emergency planning regulations specifically require in 10 CFR 72.32(b)(8), "Notification and coordination. A commitment to and a brief description of the means to promptly notify offsite response organizations * * *" In 10 CFR 72.32(b)(9), (10), and (12), the licensee is required to provide:

Information to be communicated: A brief description of the types of information on facility status; radioactive releases; and recommended protective actions, if necessary, to be given to offsite response organizations and to the NRC. "Training. A brief description of the training the licensee will provide workers on how to respond to an emergency and any special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel." * * * The licensee shall invite offsite response organizations to participate in the annual exercises.

Additionally, in 10 CFR 72.32(b)(15) and (b)(16) the licensee is required to identify:

(ii) Provisions that exist for prompt communications among principal response organizations to offsite emergency personnel who would be responding onsite.

(iii) Adequate emergency facilities and equipment to support the emergency response onsite are provided and maintained.

(iv) Adequate methods, systems, and equipment for assessing and monitoring actual or potential consequences of a radiological emergency condition are available.

(v) Arrangements are made for medical services for contaminated and injured onsite individuals.

(vi) Radiological Emergency Response Training has been made available to those off site who may be called to assist in an emergency on site.

(16) Arrangements made for providing information to the public.

Issue 20. Although it is true that emergency plans for ISFSI and MRS need not be equivalent to emergency plans for reactors due to the relatively passive natures of the ISFSI and MRS, offsite emergency planning should not be eliminated for either type of facility. The proposed rule indicates that the maximum offsite dose due to an accidental release of radioactive material from either type of facility would probably not exceed 1 rem. However, 1 rem is within the Environmental Protection Agency (EPA) Protective Action Guides of 1–5 rem whole body, and it is the lower limit of these guides which is to be used as the basis for taking protective actions in emergency response. The commenter would also question whether worst-case scenarios have been considered in the evaluation of potential offsite doses. Worst-case scenarios would include acts of radiological sabotage, such as terrorist attacks employing explosives. Offsite emergency planning is a prudent measure to take against such uncertainties. Offsite plans may not be needed for a 10-mile radius, as is the case for power reactors, but they should not be eliminated for ISFSI and MRS. Reducing the radius of the Emergency Planning Zone (EPZ) (perhaps to 1–5 miles, as appropriate) is the proper response to the reduced hazard posed by the ISFSI and MRS. A reduced zone will provide the basis and flexibility for an enhanced offsite response in those events where this is necessary.

Response. Emergency planning requirements for power reactors, fuel cycle facilities, ISFSIs and MRSs are all based on a spectrum of accidents, including worst-case severe accidents. Emergency planning focuses on the detection of accidents and the mitigation of their consequences. Emergency planning does not focus on the initiating events. Therefore, based on the potential inventory of radioactive material, potential driving forces for distributing that amount of radioactive material, and the probability of the initiation of these events, the Commission concludes that the offsite consequences of potential accidents at an ISFSI or a MRS would not warrant establishing Emergency Planning Zones.

Issue 21. In the interest of protecting public health and safety, appropriate offsite agencies should be notified immediately of any classifiable accident at an ISFSI or MRS. Section 72.32(a)8 should specify that the agency(ies) with responsibility to respond to accidents receive the notifications. In Illinois,

IDNS should be notified of all such accidents. Consequently, we request that any licensee submitting a plan for approval under 10 CFR part 72 for an ISFSI or MRS in Illinois specifically provide in its emergency plan for timely notifications to IDNS. The notifications are important to ensure that emergency response actions are not unduly or unnecessarily delayed.

Response. The Commission agrees. This comment focuses on the rationale that was used in proposing the following requirements:

A commitment to, and a brief description of, the means to promptly notify offsite response organizations and request offsite assistance, including medical and “The licensee shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the initial submittal of the licensee’s emergency plan before submitting it to NRC.” * * * The licensee shall provide any comments received within the 60 days to the NRC with the emergency plan.

Issue 22. The requirements for exercises are appropriate for the facilities involved. We do believe, however, that offsite participation in these exercises should be an integral, not perfunctory, part of the exercise process. Invitations to participate should be both timely and informative, maximizing the opportunity for productive interaction between licensee and offsite personnel. The rule should require that licensees document timely invitations to offsite agencies to participate in annual or biennial exercises, and offsite participation actually resulting from these invitations.

Response. The Commission does not believe that it is necessary for the rule to require licensees to document timely invitations for offsite participation in exercises. NRC expects licensees will do so on their own initiative. Experience has shown that cooperative interactions between licensee and offsite authorities generally are quite productive.

Issue 23. Proposed 10 CFR 72.32(a)(12)(ii) and (b)(12)(ii): Participation of offsite response organizations in exercises should be required.

Response. The Commission believes that this requirement would be unnecessary in that experience shows almost all offsite authorities that are invited to participate in exercises do participate without being required to do so.

Issue 24. Proposed 10 CFR 72.32(a)(12)(i): For the ISFSI, communications checks with offsite response organizations should be conducted quarterly, not semiannually,

and onsite exercises conducted annually, not biennially.

Response. The Commission disagrees due to the very low probability of offsite consequences resulting from potential accidents at these facilities in conjunction with the low probability of a significant accident occurring.

Issue 25. Proposed 10 CFR 72.32(a)(3) and (b)(3): These provisions limit the accident classification levels to an alert for the ISFSI and a site area emergency for the MRS. For both facilities, the accident classification system should include the general emergency. This might be necessary in cases of radiological sabotage.

Response. The Commission disagrees. An essential element of a General Emergency is that “A release can be reasonably expected to exceed EPA Protective Action Guidelines exposure levels off site for more than the immediate site area.” As previously discussed, NRC studies have concluded that the maximum offsite dose would be less than 1 rem which is within the EPA Protective Action Guides.

Issue 26. Proposed 10 CFR 72.32(a)(8) and (b)(8): Time limits ought to be established for notifying offsite response organizations and the NRC. An appropriate time limit is 15 minutes.

Response. The Commission has established a reasonable time limit for notification which has proven to be adequate in the past. “The licensee shall also commit to notify the NRC operations center immediately after notifications of the appropriate offsite response organizations and not later than one hour after the licensee declares an emergency.”

Issue 27. Proposed 10 CFR 72.32(a)(15) and (b)(15)(i): The phrase, “and other organizations capable of augmenting the planned onsite response have been identified” should be modified to include the requirement that arrangements should be made (such as letters of agreement) with any organizations so identified.

Response. The Commission believes that offsite response organizations will respond in the event of an actual emergency in order to protect the health and safety of the public. Therefore, the Commission does not believe that this requirement would be necessary.

Issue 28. On page 29797 of the proposed rule, first column, the statement is made: “As a result of the above evaluation, the Commission is proposing that the emergency planning licensing requirements for part 72 licensees be similar to those requirements already codified in 10 CFR 70.22 for other part 70 licensees.” Should this statement also include 10

CFR 70.24 (Criticality Accident requirements)? Because the racking arrangement of spent fuel storage is changing in a manner that places spent fuel assemblies closer than in the past because of storage space needs, criticality accidents possibilities might increase, especially in the dry cell storage.

Response. The Commission disagrees. Criticality is only a concern during a wet loading and unloading evolution. Additionally, such activities would not be expected to occur under a 10 CFR part 72 ISFSI license and, therefore, there is no basis to change 10 CFR part 72 criticality requirements.

Issue 29. Because 10 CFR part 72 contains no language that parallels 10 CFR 50.54(x), we recommend that something similar to it be considered as part of this rulemaking. During the operating life of an Independent Spent Fuel Storage Facility or Monitored Retrievable Storage Facility, it is possible that an unanticipated situation may arise where the most correct action would be one that is not allowed by the license or technical specifications. The writers of 10 CFR part 50 foresaw this eventuality and allowed a licensee to:

Take reasonable action that departs from license condition or a technical specification in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent.

Although we never expect to invoke this option, prudence dictates that we should thoughtfully plan and develop procedures that allow for the possibility of low probability events where deviating from a technical specification or any other license condition is the most correct action. Adding this provision to the part 72 rule gives us a legal basis to include it in our procedures. As a licensee under both 10 CFR parts 50 and 72, we feel that similar language has been useful under 10 CFR part 50 for developing procedures, and that it would be equally useful under 10 CFR part 72.

Response. The Commission agrees. The final rule reflects this comment.

Issue 30. In § 72.32(a)(12)(ii), the proposed rule states that the licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. We disagree with this provision since it excludes our emergency planning (EP) staff from the critique. The individuals who develop the plans are EP experts. These are exactly the individuals that should critique the

exercises. As the rule is written, we would have to maintain an EP expert on staff whose only EP job function would be to critique exercises. At all other times, this individual would have to remain at arms length from the EP program. A better use of resources would be to allow individuals from the EP staff to be a part of the team that critiques exercises.

Response. The Commission agrees and has modified the final regulation to state "the licensee shall critique each exercise using individuals not having direct implementation responsibility for conducting the exercise."

Issue 31. In § 72.32(a)(14), NRC has proposed that an applicant for an ISFSI submit the proposed emergency plan to offsite response organizations (which are expected to respond in case of an onsite accident) 60 days in advance of submittal to NRC. Comments would then be forwarded to the NRC upon submittal of the ISFSI application. This requirement should be deleted as the current licensing process for review and approval of an ISFSI license affords all parties a sufficient amount of time to review and comment on the licensee's entire application to include the emergency plan. Furthermore, licensees have gained sufficient experience from the operating nuclear power plant environment to recognize the benefits of working with the offsite authorities in order to ensure adequacy of an emergency plan and its implementation. A requirement to instruct applications to do as much is unnecessary.

Response. The Commission disagrees. The Commission believes that requiring participation by offsite organizations in the development of the emergency plan significantly helps establish coordination and working relationships between the principals.

Issue 32. In § 72.32(a)(15), NRC proposed to require that the licensee of an ISFSI provide for a "near-site emergency facility" for State and local staff. This requirement should be deleted as it implies that an offsite emergency response facility is needed, when in fact NRC's own studies in NUREG-1140 demonstrate that the consequences of an accident at an ISFSI are insignificant in terms of the public health and safety. Furthermore, NRC has generally affirmed this conclusion through its evaluation of Defueled Emergency Plans for nuclear power plants which are permanently defueled but continue to store spent fuel on site (Possession Only License). The emergency plans for these facilities are appropriately focused on the onsite aspects of emergency response, while maintaining the ability to notify offsite

authorities such as the fire, police, and medical personnel who play a role in addressing onsite emergency response. No licensee-provided "near-site" facility is needed for such offsite authorities to implement their onsite emergency planning responsibilities.

Response. The Commission agrees. This change is incorporated in the final regulation.

Issue 33. Mitigation of consequences (§ 72.32(a)(5)): The NRC proposes that the licensee describe those actions which would be taken to mitigate the consequences of each type of accident. This requirement should be revised to require that the licensee describe the response actions for each classification of emergency.

Response. The regulation already requires, "Information to be communicated. A brief description of the types of information on facility status; radioactive releases; and recommended protective actions, if necessary, to be given to offsite response organizations and to the NRC."

Issue 34. Responsibilities (§ 72.32(a)(7)): The term "offsite response organizations" should be revised to "offsite authorities" in recognition of the findings of NUREG-1140, i.e., the consequences of accidental releases associated with the operation of an ISFSI would not exceed the EPA Protective Action Guidelines. The term "offsite response organizations" connotes a need for formal offsite components to the onsite emergency plan and thus, an offsite emergency response plan. This interpretation would be inconsistent with the conclusions of NUREG-1140 which postulated the worst-case accidents involving an ISFSI and found that the consequences were insignificant in terms of public health and safety. To preclude misinterpretation, the term "offsite authorities" should be used.

Response. The Commission disagrees that the term "offsite response organizations" connotes the need for "formal offsite components" to the onsite emergency plan. The term simply refers to those offsite organizations that may be needed to respond to an emergency (medical, fire department, police, etc.)

Issue 35. Information to be communicated (§ 72.32(a)(9)): As concluded by the NRC in NUREG-1140, the consequences of the postulated worst-case accident involving an ISFSI are insignificant in terms of public health and safety. Therefore, because no offsite protective actions are needed, this requirement should be revised to require that the licensee communicate

only onsite facility status to offsite authorities.

Response. The Commission disagrees with the suggestion to delete the requirement that licensees notify offsite organizations of recommended protective actions. The Commission acknowledges that the consequences of a postulated worst-case accident involving an ISFSI are insignificant in terms of public health and safety. Nonetheless, the Commission also recognizes the need for offsite organizations to be informed by licensees so that, in the event of an accident, protective actions may or may not need to be taken.

Issue 36. Notification and coordination (§ 72.32(a)(8)): As recommended for § 72.32(a)(7), the term "offsite response organizations" should be revised to "offsite authorities."

Response. See Commission Response to Issue 34.

Issue 37. Types of accident (§ 72.32(a)(2)): The NRC has proposed that the licensee identify the "types of accidents" that could occur at an ISFSI installation "for which protective actions may be needed." This requirement should be deleted because the analysis of potential accidents and their consequences, as documented in NUREG-1140, demonstrates that there are no accidents for which protective actions for the public may be needed. Furthermore, even if there were such accidents, the emergency plan is not the appropriate document for a description of the types of accidents that could occur. As is similarly done for operating reactors, any discussion on types of accidents is contained in the ISFSI Safety Analysis Report that supports the license application. Therefore, the licensee should be required only to identify the classification of accidents in 10 CFR 72.32(a)(3) and, in general, response to those classifications, as is similarly required for operating plants.

Response. The Commission agrees to delete the words "* * * for which protective action may be needed." Nonetheless, the Commission believes that licensees should identify the types of accidents in the emergency plan in the same manner as part 30, 40, and 70 licensees have done since 1989.

Issue 38. At a minimum, NRC should revise the term "protective actions" to "protective measures." The term "protective actions," as used by operating reactors, connotes the need for an offsite emergency response plan. In the case of an ISFSI, there is no need for an offsite emergency response plan because the consequences of potential accidents which can occur will not exceed the EPA Protective Action

Guidelines. Furthermore, the term "protective measures" is now commonly used by Possession Only License holders to distinguish between onsite and offsite needs. Therefore, to preclude misinterpretation, we recommend that the term "protective measures" be used.

Response. The Commission disagrees. There is nothing in the emergency planning licensing regulations for ISFSI that requires, implies, specifies or connotes the need for a formal offsite emergency response plan.

Issue 39. Changing the proposed 10 CFR part 72 to require local involvement in the creation of the emergency response plan and require funding of local emergency planning and preparedness activities directly attributable to the additional and above ordinary risk of Spent Fuel Storage Facilities and Monitored Retrievable Storage Facilities is appropriate, given the above ordinary risk such facilities present to the local government units in their vicinity.

Response. In view of the requirements in this rule, regarding the potential involvement by local governments, a licensee may have an incentive based on its own self-interest to assist in providing manpower, items of equipment, or other resources that the local governments may need but are themselves unable to provide. The Commission believes that the question of whether the NRC should or could require a licensee to contribute to the expenses incurred by local governments in assisting in emergency planning and preparedness is beyond the scope of the rule.

Issue 40. Provisions should be included in the proposed rule to exempt Independent Spent Fuel Storage Installations (ISFSI) with very limited radionuclide inventories from the emergency planning requirements. This is best accomplished by establishing certain threshold values for the radiological consequences of potential accidents below which exemption can be granted.

Response. The Commission does not agree. An ISFSI is licensed to store specific inventories of radionuclides. The requirements focus on the emergency planning licensing requirements of an ISFSI, not the amount of fuel that may or may not be stored in an individual ISFSI during a specific time period.

Issue 41. 10 CFR 72.32(a)(12)(ii) specifies that the licensee critique each exercise using individuals not having direct responsibility for the plan. This regulation, while well intentioned, is burdensome, costly, and does not allow

the personnel with emergency preparedness knowledge to identify and correct potential weaknesses. This statement seems to satisfy the requirements for independent review, not exercise performance (i.e., similar to § 50.54(t)).

Response. See Commission Response to Issue 30.

Issue 42. 10 CFR 72.32(a) does not define the term, "site of a nuclear power reactor." Does the term mean the owner controlled area, the site boundary, or protected area? Based on the definition of the term, the regulations could require some licensees that build ISFSI near their nuclear power plants but not on the site to have two emergency plans established. Consideration should be given to clarifying terms in order to avoid this problem especially since nuclear power plant emergency plans are substantially more extensive than ISFSI emergency plans.

Response. The Commission agrees. The final regulations states "not located within the exclusion areas as defined in 10 CFR Part 100 of a nuclear power reactor."

Issue 43. The 10 CFR Part 70 emergency planning requirements (§ 70.22), which served as the model for the proposed rule, includes a provision for relief based on potential radioactive consequences. It contains the option of demonstrating that the consequences of an accidental release are below certain levels and thereby eliminated the need for emergency preparedness. We recommend that a parallel provision be included in the proposed rule for the ISFSI. This would enable ISFSI with minimal radioactive sources to avoid the substantial costs associated with emergency preparedness which would far outweigh the negligible benefit to the safety of the public.

Response. See Commission Response to Issue 40.

Issue 44. Unfortunately, the public is not very reassured by the idea that the only offsite emergency planning that the discussion on the MRS cites is that the operators of the facility should have current phone numbers of offsite emergency services. Nor is the public very reassured that the NRC asserts that the maximum off-site exposure from an MRS would be 1 rem. If this were true, there is a legitimate concern about being subjected to radiation equivalent to 50 additional chest x-rays—presumably without any notification or disclosure, let alone opportunity to avoid such irradiation. However, it does not seem credible that one could gather together the highest concentration of radioactivity on the planet and assert that there will be virtually no risk of

exposure. This overlooks, at the very least, the potential for malicious attack on the facility from the air, such as the United States has engaged in wiping out "strategic targets" in other countries.

Response. A more accurate characterization of the offsite emergency planning component for an MRS is as follows: "(7) Responsibilities. A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the NRC;" and "(9) Information to be communicated. A brief description of the types of information on facility status; radioactive release; and recommended protective actions, if necessary, to be given to offsite response organizations and to the NRC." and "(10) * * * special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel;" and "(12) * * * The licensee shall invite offsite response organizations to participate in the annual exercises."

Additionally, the offsite emergency planning component for an MRS includes:

- (i) Arrangements for requesting and effectively using offsite assistance on site have been made.
- (ii) Provisions exist for prompt communications among principal response organizations to offsite emergency personnel who would be responding onsite.
- (iv) Adequate methods, systems, and equipment for assessing and monitoring actual potential consequence of a radiological emergency condition are available.
- (vi) Radiological Emergency Response Training has been made available to those offsite who may be called to assist in an emergency onsite.

(16) Arrangements made to provide information to the public.

Also, see the Commission's response to Issue 46.

Issue 45. The discussion of MRS emergency planning indicates the dependence upon offsite emergency responders. The fact that individuals would be called upon to respond to radiological crises without any special training, without protective gear and equipment is deeply disturbing to local community officials with whom we have reviewed this proposal. The full liability for dealing with emergency situations should reside with the operators of such a facility and those who are specially trained and understand that they are at risk, and are compensated on that basis. Dependence upon untrained local responders in a true emergency would amount to human sacrifice, and is not acceptable.

Response. The regulations allow for extensive coordination, communication, and training of offsite response organizations. (See Commission Response to Issue 19.)

Issue 46. Although the MRS will represent the largest concentration of irradiated fuel, to date, in one location, the U.S. Nuclear Regulatory Commission has recently proposed a rule that would waive any offsite emergency planning or evacuation, in direct contradiction to the promises of safety to prospective host communities.

Response. In the final NRC Generic Environmental Impact Statement on the handling and storage of light water reactor fuel,⁵ it is stated that

* * * To be a potential radiological hazard to the general public, radioactive materials must be released from a facility and dispersed offsite. For this to happen:

- The radioactive material must be in a dispersible form

- There must be a mechanism available for the release of such materials from the facility, and
- There must be a mechanism available for offsite dispersion of such released material.

Although the inventory of radioactive material contained in 1000 MTHM of aged spent fuel may be on the order of a billion curies or more, very little is available in a dispersible form; there is no mechanism available for the release of radioactive materials in significant quantities from facility; and the only mechanism available for offsite dispersion is atmosphere dispersion * * *

Furthermore, NRC has conducted Safety Evaluations on many different storage systems. Those studies included evaluations of the effects of corrosion, handling accidents such as cask drops and tipovers, explosions, fires, floods, earthquakes, and severe weather conditions. As documented in each of those Safety Evaluation Reports (SER), NRC was not able to identify any design basis accident that would result in the failure of a confinement boundary. However, to provide a conservative bounding analysis of the threat to the public health and safety, the failure of the confinement barrier was postulated. As discussed in each of the SERs and again in the response to Issue 48 the consequences of this postulated failure do not result in an increased risk to the public health and safety.

In the environmental assessment for 10 CFR part 72,⁶ the accident judged the most severe was the failure of a packaged fuel element. In this analysis, the accident involves the failure of a storage system containing 1.7 MTHM. The postulated individual doses are presented in Table 1.⁷

TABLE 1.—TOTAL DOSE TO AN INDIVIDUAL AS A RESULT OF A FUEL CANISTER FAILURE ACCIDENT AT A SURFACE STORAGE INSTALLATION (MREM)

Pathway	Skin	Total body	Thyroid	Lung
Air Submersion	1.0×10^{-1}	1.1×10^{-3}	1.1×10^{-3}	1.1×10^{-3}
Inhalation		1.2×10^{-5}	1.1×10^{-2}	7.3×10^{-5}
Total	1.0×10^{-1}	1.1×10^{-3}	1.2×10^{-2}	1.1×10^{-3}

Note: The maximum individual is defined as a permanent resident at a location 1600 meters southeast of the stack with a time-integrated atmospheric dispersion coefficient (E/Q of 1.5×10^{-4} sec/m³). The accident involves failure of a fuel canister containing approximately 1.7 MTHM.

Since the time these calculations were performed, the storage canisters have increased in capacity, and today the capacity of the largest approved design is approximately 9 MTHM. However, because dose varies directly with

inventory, when the totals are increased by a factor of ten, they are still a very small fraction of the 300 mrem/yr⁸ an individual receives from natural background radiation, and is below the EPA protective action guides.

Also see the Commission's response to Issues 19 and 48.

Issue 47. It is premature for the Commission to make a rule with regard to emergency planning for an MRS. We also agree with others who point out

⁵NUREG-0575 Vol. 1 sec. 4.2.2 Safety and Accident Considerations.

⁶NUREG-1092 Environmental Assessment for part 72 "Licensing Requirements for Independent Spent Fuel and High-Level Radioactive Waste."

⁷NUREG-1092 Table 2.2.4-2

⁸NRCP Report No. 94.

that the MRS is a significantly different facility than an ISFSI—for two reasons. The first is the difference in the amount of irradiated fuel that would be present at the site: it is four orders of magnitude greater at an MRS than a single reactor site's load. The second is the fact that the MRS, according to the most common model described, would be a repackaging center for the waste. This industrial scale handling of high-level waste and irradiated fuel raises many safety and release concerns.

Response. See the Commission's response to Issues 18 and 48.

Issue 48. The commenter believes that the massive concentration of irradiated fuel at the reactor sites should have been the occasion for revisiting the emergency planning for each nuclear power plant. The irradiated fuel inventory on site far exceeds the amount of radioactive material contained within the reactor core at any one time. The fact that irradiated fuel has been forced to accumulate at reactor sites is no reason to now dismiss that greater radiological hazard that it poses to the populace and the environment. A rulemaking on the ISFSI in our view should include; "at reactor site facilities" and examine the current emergency planning with regard to the potential for much greater releases in the event of sabotage or natural disaster.

Response. For there to be a significant environmental impact resulting from an accident involving the dry storage of spent nuclear fuel, a significant amount of the radioactive material contained within a cask must escape its packaging and enter the biosphere. There are two primary factors that protect the public health and safety from this event. The first is the design requirements for the cask that are imposed by regulation. The regulatory requirements, as codified in the 10 CFR part 72, have sufficient safety margins so that, during normal storage cask handling operations, off-normal events, adverse environmental conditions, and severe natural phenomena, the casks will not release a significant part of its inventory to the biosphere. Furthermore, the cask must be designed to provide confinement safety functions during the unlikely but credible design basis events, as required in § 72.122(b). In addition, § 72.122(h)(i) requires that the fuel clad be protected against degradation that leads to gross rupture, and § 72.122(1) requires that the fuel be retrievable. During the design evaluation process, these provisions received careful consideration. These general design criteria place an upper bound on the energy a cask can absorb before the fuel is damaged. No credible dynamic events

have been identified that could impart such significant amounts of energy to a storage cask after that cask is placed at the ISFSI.

Additionally, there is a second factor which does not rely upon the cask itself but considers the age of the spent fuel and the lack of dispersal mechanisms. There exists no significant dispersal mechanism for the radioactive material contained within a storage cask. In the case of an operating nuclear power plant, the dispersal mechanism for radioactive material in the spent fuel is either derived from the heat produced during the fission process or the decay heat which exists in the short period immediately following shutdown. During these times, the potential exists for an accident that could cause the fuel cladding to fail. However, emergency systems exist at every power plant to protect against just such an occurrence. On the other hand, spent fuel stored in an ISFSI is required to be cooled for at least 1 year. Based on the design limitations, the majority of spent fuel is cooled greater than 5 years. At this age, spent fuel has a heat generation rate that is too low to cause significant particulate dispersal in the unlikely event of a cask confinement boundary failure. Therefore, the consequences of worst-case accidents involving an ISFSI located on a reactor site would be significantly less than those accidents involving the reactor. Therefore, current reactor emergency plans adequately provide for the protection of the public from the ISFSI located at or near reactor sites.

Issue 49. An ISFSI not at a reactor warrants site-specific emergency planning that includes evacuation of surrounding population at least as stringent as nuclear reactor licensing. For example, specific provisions should be included requiring: (1) Coordination of the on-site plan with the off-site local and state emergency management agencies; (2) training of the potential off-site responders; and (3) public information/education for local populations.

Response. The Commission does not agree that as a general matter emergency plans for an ISFSI must include evacuation planning. Nonetheless the Commission agrees that the specific provisions mentioned in the comment should be and are specifically included in the proposed and final emergency planning licensing requirements for ISFSI and MRS. See 10 CFR 72.32(a) (10), (12), (14), and (16) and 10 CFR 72.32(b) (10), (12), (14), (15), and (16).

Issue 50. There is no mention of financing the affected jurisdictions to provide the requisite resources to

support the planning, operations, response, exercises, recovery and equipment requirements defined as necessary in the plan for off-site agency response.

Response. See the Commission's response to Issue 39.

Issue 51. The NRC should defer to premature the proposed § 72.32(b), which would establish emergency planning requirements for MRS's, until a final MRS design has been selected. Until it is decided whether such facilities would be equivalent, in the Commission's words, to "a large industrial facility" or merely to "a warehouse operation," there is no rational basis to determine the appropriate level of emergency planning requirements.

Response. See Commission Response to Issue 18.

Issue 52. NRC should prepare a full environmental impact statement before issuing any emergency response guidelines. The potential for environmental damage from accidents during the transportation, storage and repackaging of spent fuel rods cannot even be calculated until DOE determines whether to develop a universal cask or a dual purpose cask for transportation/storage/disposal of spent fuel rods. Until this very preliminary decision is made, there is no way of determining what level of activity (or the dangers from that activity) will actually take place at an MRS facility. NRC's response to this uncertainty, "to mandate a minimum level of offsite response capability" does not address potential and very real risks to the public.

Response. The Commission disagrees. The Commission stated the following in the preamble to the proposed rule:

The Commission has determined under the National Environmental Policy Act of 1969, as amended, the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment; and therefore, an environmental impact statement is not required. The rule would not affect the probability or the size of accidental radioactive releases. It might in some cases reduce the doses people near the facility site could receive. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. The environmental assessment and finding of no significant impact are contained in Section 4.3 of NUREG-1140, "A Regulatory Analysis on Emergency Preparedness for Fuel Cycle and

Other Radioactive Material Licensees.”⁹ Single copies are available upon written request from NRC Distribution Section, Office of Administration, USNRC, Washington, DC 20555.

Issue 53. An MRS facility poses far greater potential risk to the public than even a nuclear power plant simply by virtue of the quantity of spent fuel rods to be stored. For example, a nuclear power plant stores no more than 1 metric ton of spent fuel while the MRS facility is authorized to store from 10,000 to 15,000 metric tons of spent fuel. Therefore, licensing procedures and requirements for an MRS facility must be more strict than even those required for a nuclear power plant.

Response. See the Commission's Response to Issue 48.

Issue 54. The NRC must require off-site evacuation planning for MRS facilities. NRC estimates that “the maximum dose to a member of the public offsite due to an accidental release of radioactive materials would likely not exceed 1 rem effective dose equivalent” cannot be defended because of the uncertainties. Without an EIS, NRC must at a minimum assume that an MRS facility poses an equal danger to the public as a nuclear reactor does. CCNS therefore recommends that NRC minimally require a 10-mile radius evacuation plan for MRS facilities.

Response. See the Commission's Response to Issue 48.

Issue 55. The NRC's requirement to “notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of contaminated injured onsite workers” is completely unrealistic. The current applicants for MRS facilities are all Indian Nations whose reservations are located in rural areas with no emergency response training, equipment or expertise for handling nuclear emergencies. At a minimum, NRC's proposed rule must require training and equipment for both emergency response personnel as well as hospital facilities.

Response. See the Commission's Response to Issue 19.

Additionally, the Commission received 21 suggested editorial changes to the wording of the proposed regulations. Those changes that improved or clarified the proposed regulations were incorporated into the final regulations. Those suggested

changes in wording that departed from the Commission's original intent were not incorporated into the final regulations.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, the Commission's regulations in subpart A of 10 CFR part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore, an environmental impact statement is not required. The rule does not affect the probability or the size of accidental radioactive releases. It might in some cases reduce the doses people near the facility site could receive. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. The environmental assessment and finding of no significant impact are contained in 4.3 of NUREG-1140, “A Regulatory Analysis on Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees.”

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval number 3150-0132.

Public reporting burden for this collection of information is estimated to average 625 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for further reducing reporting burden to the Information and Records Management Branch, T-6F33, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0132), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the accident scenarios considered by the Commission as well as the costs and

benefits of actions considered. The analysis is available by contacting Michael T. Jamgochian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301-415-6534).

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 6059b), the Commission certifies that this rule does not have a significant economic impact upon a substantial number of small entities.

The final rule requires the development and implementation of emergency plans by licensees who are authorized to possess significant amounts of radioactive material. These companies do not fall within the definition of a small business found in the Small Business Act, 15 U.S.C. 632, or within the small business size standards set forth in 13 CFR part 121. The final rule will affect three (3) licensees. Two licensees hold 10 CFR part 50 licenses and are required to comply with the provisions respecting emergency plans set out in part 50. Thus, the final rule does not impose a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act of 1980.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109 and 10 CFR 72.62, do not apply to this rule change because these amendments do not involve any provisions which would impose backfits as defined in § 50.109(a)(1) or in 10 CFR 72.62. The final rule does not change or impose additional requirements on any ISFSI currently licensed under 10 CFR part 72. For existing ISFSIs at reactor sites, the final rule continues the current option to comply with 10 CFR 50.47. For G.E. Morris, the only ISFSI licensed under 10 CFR part 72 for operation away from a reactor site, the licensee currently is required to have emergency response capabilities that will comply with this rule. Therefore, inasmuch as the rule imposes no requirements on any part 50 facility and imposes no new or different requirements on any part 72 facility after a license has been issued, a backfit analysis is, therefore, not required for this final rule.

List of Subjects in 10 CFR Part 72

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

⁹Copies of NUREGs may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402-9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555-0001.

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 552, and 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 is revised 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. 295 as amended by Pub. L. 102-486, sec. 7902, 106 Stat. 3123 (42 U.S.W. 5851); sec. 102, Pub. L. 91-190, 83 Stat. (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. 935 (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, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 96 Stat. 2230 (42 U.S.C. 10153) and 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. Section 72.32 is revised to read as follows:

§ 72.32 Emergency Plan.

(a) Each application for an ISFSI that is licensed under this part which is: Not located on the site of a nuclear power reactor, or not located within the exclusion area as defined in 10 CFR part 100 of a nuclear power reactor, or located on the site of a nuclear power reactor which does not have an operating license, or located on the site of a nuclear power reactor that is not authorized to operate must be accompanied by an Emergency Plan that includes the following information:

(1) *Facility description.* A brief description of the licensee's facility and area near the site.

(2) *Types of accidents.* An identification of each type of radioactive materials accident.

(3) *Classification of accidents.* A classification system for classifying accidents as "alerts."

(4) *Detection of accidents.* Identification of the means of detecting an accident condition.

(5) *Mitigation of consequences.* A brief description of the means of mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment.

(6) *Assessment of releases.* A brief description of the methods and equipment to assess releases of radioactive materials.

(7) *Responsibilities.* A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the NRC; also responsibilities for developing, maintaining, and updating the plan.

(8) *Notification and coordination.* A commitment to and a brief description of the means to promptly notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point must be established. The notification and coordination must be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the NRC operations center immediately after notifications of the appropriate offsite response organizations and not later than one hour after the licensee declares an emergency.¹⁰

(9) *Information to be communicated.* A brief description of the types of information on facility status; radioactive releases; and recommended protective actions, if necessary, to be given to offsite response organizations and to the NRC.

(10) *Training.* A brief description of the training the licensee will provide workers on how to respond to an emergency and any special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel.

¹⁰These reporting requirements do not supersede or release licensees of complying with the requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99-499 or other State or Federal reporting requirements.

(11) *Safe condition.* A brief description of the means of restoring the facility to a safe condition after an accident.

(12) *Exercises.* (i) Provisions for conducting semiannual communications checks with offsite response organizations and biennial onsite exercises to test response to simulated emergencies. Radiological/Health Physics, Medical, and Fire drills shall be conducted annually. Semiannual communications checks with offsite response organizations must include the check and update of all necessary telephone numbers. The licensee shall invite offsite response organizations to participate in the biennial exercise.

(ii) Participation of offsite response organizations in biennial exercises, although recommended, is not required. Exercises must use scenarios not known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for conducting the exercise. Critiques of exercises must evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques must be corrected.

(13) *Hazardous chemicals.* A certification that the applicant has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99-499, with respect to hazardous materials at the facility.

(14) *Comments on Plan.* The licensee shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the initial submittal of the licensee's emergency plan before submitting it to NRC. Subsequent plan changes need not have the offsite comment period unless the plan changes affect the offsite response organizations. The licensee shall provide any comments received within the 60 days to the NRC with the emergency plan.

(15) *Offsite assistance.* The applicant's emergency plans shall include a brief description of the arrangements made for requesting and effectively using offsite assistance on site and provisions that exist for using other organizations capable of augmenting the planned onsite response.

(16) Arrangements made for providing information to the public.

(b) Each application for an MRS that is licensed under this part and each application for an ISFSI that is licensed

under this part and that may process and/or repackage spent fuel, must be accompanied by an Emergency Plan that includes the following information:

(1) *Facility description.* A brief description of the licensee facility and area near the site.

(2) *Types of accidents.* An identification of each type of radioactive materials accident.

(3) *Classification of accidents.* A classification system for classifying accidents as "alerts" or "site area emergencies."

(4) *Detection of accidents.* Identification of the means of detecting an accident condition.

(5) *Mitigation of consequences.* A brief description of the means of mitigating the consequences of each type of accident, including those provided to protect workers on site, and a description of the program for maintaining the equipment.

(6) *Assessment of releases.* A brief description of the methods and equipment to assess releases of radioactive materials.

(7) *Responsibilities.* A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the NRC; also responsibilities for developing, maintaining, and updating the plan.

(8) *Notification and coordination.* A commitment to and a brief description of the means to promptly notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point must be established. The notification and coordination must be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the NRC operations center immediately after notifications of the appropriate offsite response organizations and not later than one hour after the licensee declares an emergency.¹¹

(9) *Information to be communicated.* A brief description of the types of information on facility status; radioactive releases; and recommended protective actions, if necessary, to be

given to offsite response organizations and to the NRC.

(10) *Training.* A brief description of the training the licensee will provide workers on how to respond to an emergency and any special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel.

(11) *Safe condition.* A brief description of the means of restoring the facility to a safe condition after an accident.

(12) *Exercises.* (i) Provisions for conducting quarterly communications checks with offsite response organizations and biennial onsite exercises to test response to simulated emergencies. Radiological/Health Physics, Medical, and Fire Drills shall be held semiannually. Quarterly communications checks with offsite response organizations must include the check and update of all necessary telephone numbers. The licensee shall invite offsite response organizations to participate in the biennial exercises.

(ii) Participation of offsite response organizations in the biennial exercises, although recommended, is not required. Exercises must use scenarios not known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for conducting the exercise. Critiques of exercises must evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques must be corrected.

(13) *Hazardous chemicals.* A certification that the applicant has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99-499, with respect to hazardous materials at the facility.

(14) *Comments on Plan.* The licensee shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the initial submittal of the licensee's emergency plan before submitting it to NRC. Subsequent plan changes need not have the offsite comment period unless the plan changes affect the offsite response organizations. The licensee shall provide any comments received within the 60 days to the NRC with the emergency plan.

(15) *Offsite assistance.* The applicant's emergency plans shall include the following:

(i) A brief description of the arrangements made for requesting and effectively using offsite assistance on

site and provisions that exist for using other organizations capable of augmenting the planned onsite response.

(ii) Provisions that exist for prompt communications among principal response organizations to offsite emergency personnel who would be responding onsite.

(iii) Adequate emergency facilities and equipment to support the emergency response onsite are provided and maintained.

(iv) Adequate methods, systems, and equipment for assessing and monitoring actual or potential consequences of a radiological emergency condition are available.

(v) Arrangements are made for medical services for contaminated and injured onsite individuals.

(vi) Radiological Emergency Response Training has been made available to those offsite who may be called to assist in an emergency onsite.

(16) Arrangements made for providing information to the public.

(c) For an ISFSI that is:

(1) located on the site, or

(2) located within the exclusion area as defined in 10 CFR part 100, of a nuclear power reactor licensed for operation by the Commission, the emergency plan required by 10 CFR 50.47 shall be deemed to satisfy the requirements of this section.

(d) A licensee with a license issued under this part may take reasonable action that departs from a license condition or a technical specification (contained in a license issued under this part) in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent.

Dated at Rockville, MD, this 16th day of June 1995.

For the U.S. Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 95-15285 Filed 6-21-95; 8:45 am]

BILLING CODE 7590-01-P

INTERNATIONAL TRADE COMMISSION

19 CFR Part 210

Filing of Complaints and Supplements to Complaints Alleging Unfair Practices in Import Trade

AGENCY: International Trade Commission.

¹¹ These reporting requirements do not supersede or release licensees of complying with the requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99-499 or other State or Federal reporting requirements.