

# Proposed Rules

Federal Register

Vol. 60, No. 143

Wednesday, July 26, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 9

RIN 3150-AD83

#### Revision of Specific Exemptions Under the Privacy Act

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations implementing the Privacy Act of 1974, as amended (Privacy Act), to reflect the addition of exemptions in subsections (j)(2) and (k)(5) to an existing system of records and to update the list of exemptions that apply to specific NRC systems of records.

**DATES:** Submit comments by September 5, 1995. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Docketing and Services Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm Federal workdays. Examine comments received at: The NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Jona L. Souder, Privacy Act Program Manager, Freedom of Information/Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Telephone: 301-415-7170.

**SUPPLEMENTARY INFORMATION:** The proposed amendments to 10 CFR Part 9 would add exemptions authorized by subsections (j)(2) and (k)(5) of the Privacy Act to those that are currently

in place for NRC-18, Office of the Inspector General (OIG) Investigative Records—NRC, under subsections (k)(1), (k)(2), and (k)(6). Under subsection (j)(2), the head of an agency may by rule exempt any system of records within the agency from certain provisions of the Privacy Act if the system of records is maintained by an agency or component thereof that performs as one of its principal functions any activity pertaining to the enforcement of criminal laws and that consists of:

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status;

(2) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

NRC-18 contains information of the type described above and is maintained by the Office of the Inspector General (OIG), a component of NRC which performs as one of its principal functions investigations into violations of criminal law in connection with NRC's programs and operations in accordance with the Inspector General Act of 1978, as amended. Therefore, pursuant to subsection (j)(2), NRC proposes to exempt information maintained in this system of records from all provisions of the Privacy Act except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e)(6), (e)(7), (e)(9), (e)(10), (e)(11), and (i).

The disclosure of information contained in NRC-18, including the names of persons or agencies to whom the information has been transmitted, would substantially compromise the effectiveness of OIG investigations. Knowledge of these investigations could enable suspects to prevent detection of criminal activities, conceal or destroy evidence, or escape prosecution. Disclosure of this information could lead to the intimidation of, or harm to, informants and witnesses, and their families, and could jeopardize the safety

and well-being of investigative and related personnel, and their families. The imposition of certain restrictions on the way investigative information is collected, verified, or retained would significantly impede the effectiveness of OIG investigatory activities and could preclude the apprehension and successful prosecution of persons engaged in fraud or criminal activity. The exemption is needed to maintain the integrity and confidentiality of criminal investigations, to protect individuals from harm, and for the following specific reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at the individual's request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure would alert the subjects of an investigation to the existence of the investigation and that they are subjects of the investigation. The release of this information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel, and their families, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(2) 5 U.S.C. 552a(c)(4) requires an agency to inform outside parties of correction of and notation of disputes about information in a system in accordance with subsection (d) of the Privacy Act. Because this system of records is being exempted from subsection (d) concerning access to records, this section is inapplicable to the extent that the system of records will be exempted from subsection (d) of the Privacy Act.

(3) 5 U.S.C. 552a (d) and (f) require an agency to provide access to records, make corrections and amendments to records, and notify individuals of the existence of records upon their request. Providing individuals with access to records of an investigation, the right to contest the contents of those records, and the opportunity to force changes to be made to the information in these

records would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Permitting the access normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate with investigators; lead to suppression, alteration, fabrication, or destruction of evidence; endanger the physical safety of confidential sources, witnesses, law enforcement personnel, and their families; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach to satisfy any Government claims growing out of the investigation.

(4) 5 U.S.C. 552a(e)(1) requires an agency to maintain in agency records only "relevant and necessary" information about an individual. This provision is inappropriate for investigations because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear. In other cases, what may appear to be a relevant and necessary piece of information may become irrelevant in light of further investigation.

In addition, during the course of an investigation, the investigator may obtain information that relates primarily to matters under the investigative jurisdiction of another agency, and that information may not be reasonably segregated. In the interest of effective law enforcement, OIG investigators should retain this information because it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

(5) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual, when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The general rule that information be collected "to the greatest extent practicable" from the target individual is not appropriate in investigations. OIG investigators should be authorized to use their professional judgment as to the appropriate sources and timing of an investigation. It is often necessary to conduct an investigation so the target does not suspect that he or she is being investigated. The requirement to obtain the information from the

targeted individual may put the suspect on notice of the investigation and thwart the investigation by enabling the suspect to destroy evidence and take other action that would impede the investigation. This requirement may also prevent an OIG investigator from gathering information and evidence before interviewing an investigative target in order to maximize the value of the interview by confronting the target with the evidence or information. In certain circumstances, the subject of an investigation cannot be required to provide information to investigators and information must be collected from other sources. It is often necessary to collect information from sources other than the subject of the investigation to verify the accuracy of the evidence collected.

In addition, the statutory term "to the greatest extent practicable" is a subjective standard. It is impossible to define the term adequately so that individual OIG investigators can consistently apply it to the many fact patterns present in OIG investigations.

(6) 5 U.S.C. 552a(e)(3) requires an agency to inform each person whom it asks to supply information on a form that can be retained by the person of the authority under which the information is sought and whether disclosure is mandatory or voluntary, of the principal purposes for which the information is intended to be used, of the routine uses that may be made of the information, and of the effects on the person, if any, of not providing all or some part of the requested information. The application of this provision could provide the subject of an investigation with substantial information about the nature of that investigation that could interfere with the investigation. Moreover, providing such a notice to the subject of an investigation could seriously impede or compromise an undercover investigation by revealing its existence and could endanger the physical safety of confidential sources, witnesses, investigators, and their families, by revealing their identities.

(7) 5 U.S.C. 552a(e)(4) (G) and (H) require an agency to publish a **Federal Register** notice concerning its procedures for notifying an individual at his or her request, if the system of records contains a record pertaining to him or her, how to gain access to such a record, and how to contest its content. Because this system of records is being exempted from subsections (d) and (f) of the Privacy Act concerning access to records and agency rules, respectively, these requirements are inapplicable to the extent that the system of records will be exempted from these

requirements. However, OIG has published some information concerning its notification, access, and contest procedures. Under certain circumstances, OIG could decide it is appropriate for an individual to have access to all or a portion of his or her records in the system.

(8) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish notice of the categories of sources of records in the system of records. To the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information, to protect privacy and physical safety of witnesses and informants, and to avoid the disclosure of investigative techniques and procedures. OIG will continue to publish such a notice in broad generic terms as is its current practice.

(9) 5 U.S.C. 552a(e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in making any determination about the individual. Much the same rationale is applicable to this proposed exemption as that set out previously in item (4) (duty to maintain in agency records only "relevant and necessary" information about an individual). Although the OIG makes every effort to maintain records that are accurate, relevant, timely, and complete, it is not always possible in an investigation to determine with certainty that all of the information collected is accurate, relevant, timely, and complete. During a thorough investigation, a trained investigator would be expected to collect allegations, conflicting information, and information that may not be based upon the personal knowledge of the provider. When OIG decides to refer the matter to a prosecutive agency, for example, that information would be in the system of records and it may not be possible until further investigation is conducted, or indeed in many cases until after a trial (if at all), to determine the accuracy, relevance, and completeness of some information. This requirement would inhibit the ability of trained investigators to exercise professional judgment in conducting a thorough investigation. Moreover, fairness to affected individuals is ensured by the due process they are accorded in any trial or other proceeding resulting from the OIG investigation.

(10) 5 U.S.C. 552a(g) provides for civil remedies if any agency fails to comply with the requirements concerning

access to records under subsections (d)(1) and (3) of the Privacy Act, maintenance of records under subsection (e)(5) of the Privacy Act, and any other provision of the Privacy Act, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual. Allowing civil lawsuits for alleged Privacy Act violations by OIG investigators would compromise OIG investigations by subjecting the sensitive and confidential information in the OIG system of records to the possibility of inappropriate disclosure under the liberal civil discovery rules. That discovery may reveal confidential sources, the identity of informants, and investigative procedures and techniques, to the detriment of the particular criminal investigation as well as other investigations conducted by OIG.

The pendency of such a suit would have a chilling effect on investigations, given the possibility of discovery of the contents of the investigative case file. A Privacy Act lawsuit could become a strategic weapon used to impede OIG investigations. Because the system would be exempt from many of the Privacy Act's requirements, it is unnecessary and contradictory to provide for civil remedies from violations of those specific provisions.

Under subsection (k)(5) of the Privacy Act, the head of an agency may by rule exempt any system of records within the agency from certain provisions of the Privacy Act if the system of records contains investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information. However, these records would be exempt only to the extent that the disclosure of this material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

NRC-18 contains information of the type described above. Therefore, in accordance with subsection (k)(5), NRC proposes to exempt information maintained in this system of records from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of the Privacy Act to honor promises of confidentiality should the data subject request access to or amendment of the records, or access to the accounting of disclosure of the records for the following reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to grant access to the accounting of disclosures including the date, nature, and purpose of each disclosure, and the identity of the recipient. The release of this information to the record subject could alert them to the existence of the investigation or prosecutive interest by NRC or other agencies. This could seriously compromise case preparation by prematurely revealing the existence and nature of the investigation; compromise or interfere with witnesses, or make witnesses reluctant to cooperate; and could lead to suppression, alteration, or destruction of evidence.

(2) 5 U.S.C. 552a(d) and (f) require an agency to provide access to records, make corrections and amendments to records, and notify individuals of the existence of records upon their request. Providing individuals with access to records of an investigation, the right to contest the contents of those records, and the opportunity to force changes to be made to the information in the records would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claims growing out of the investigation or proceeding.

(3) 5 U.S.C. 552a(e)(1) requires agencies to maintain only "relevant and necessary" information about an individual in agency records. This provision is inappropriate for investigations because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(4) Because this system of records is being exempted from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information under subsections (d) and (f) of the Privacy Act, the **Federal Register** notice requirements of 5 U.S.C. 552a(e)(4) (G) and (H) are inapplicable.

(5) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish notice of the categories of sources of records in the

system of records. To the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect the privacy and physical safety of witnesses and informants. However, the OIG will continue to publish such a notice in broad generic terms as is its current practice.

In addition, 10 CFR 9.95 is being amended to update the list of exemptions that apply to specific systems of records. The list, as amended, will include NRC-23, Office of Investigations Indices, Files, and Associated Records—NRC, and NRC-35, Drug Testing Program Records—NRC, for which corresponding Part 9 amendments were not previously prepared when each new system was established. NRC-40 has been deleted from this list because a review of the system revealed that the subsections (k)(5) and (k)(6) exemptions of the Privacy Act were no longer needed. This amendment will eliminate any confusion regarding the specific exemption(s) applicable to each system of records.

#### **Environmental Impact—Categorical Exclusion**

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

#### **Paperwork Reduction Act Statement**

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0043.

#### **Regulatory Analysis**

This proposed rule would add exemption (j)(2) of the Privacy Act to the NRC regulations that describe the exempt systems of records. This is an administrative regulatory action that would make NRC's regulations consistent with the regulations applicable to the majority of the statutorily appointed Inspectors General. The proposed rule would also clearly link each system of records to the specific exemption(s) of the Privacy Act under which the system is exempt. As such, the proposed rule would not have an economic impact on any class

of licensee or the NRC. By more clearly indicating the exemptions under which a system is exempt and by conforming NRC's regulations to those of the majority of statutorily appointed Inspectors General, the proposed rule may provide some benefit to those who may be required to use these regulations.

The alternative to the proposed rule would be to refrain from adopting the identified exemptions. As discussed in this notice, however, failure to adopt the proposed rule could have detrimental effects on the OIG's investigative program and its ability to obtain and protect information.

This constitutes the regulatory analysis for this proposed rule.

### Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The amendments to 10 CFR part 9 are procedural in nature and will aid an NRC office to perform its criminal law enforcement functions. In addition, the amendments will eliminate any confusion regarding specific exemptions available to each affected Privacy Act system of records notice.

### Backfit Analysis

The NRC has determined that the backfit rule 10 CFR 50.109 does not apply to this proposed rule and, therefore, a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

### List of Subjects in 10 CFR Part 9

Criminal penalties, Freedom of information, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

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, 552a, and 553; the NRC is proposing to adopt the following amendments to 10 CFR part 9.

## PART 9—PUBLIC RECORDS

1. The authority citation for part 9 continues to read as follows:

**Authority:** Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A also issued under 5 U.S.C. 552; 31 U.S.C. 9701; Pub. L. 99-570.

Subpart B also issued under 5 U.S.C. 552a. Subpart C also issued under 5 U.S.C. 552b.

2. In § 9.52, paragraph (b)(4) is revised to read as follows:

### § 9.52 Types of requests.

\* \* \* \* \*

(b) *Requests for accounting of disclosures.* \* \* \* (4) Disclosures expressly exempted by NRC regulations from the requirements of 5 U.S.C. 552a(c)(3) pursuant to 5 U.S.C. 552a(j)(2) and (k).

3. In § 9.61, current paragraph (b) is redesignated as paragraph (c), and a new paragraph (b) is added to read as follows:

### § 9.61 Procedures for processing requests for records exempt in whole or in part.

\* \* \* \* \*

(b) *General exemptions.* Generally, 5 U.S.C. 552a(j)(2) allows the exemption of any system of records within the NRC from any part of section 552a except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i) of the act if the system of records is maintained by an NRC component that performs as one of its principal functions any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crimes, or to apprehend criminals, and consists of—

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release and parole, and probation status;

(2) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

\* \* \* \* \*

4. In § 9.80, paragraphs (a) (6), (10), and (11) are revised and a new paragraph (a)(12) is added to read as follows:

### § 9.80 Disclosure of record to persons other than the individual to whom it pertains.

(a) \* \* \*

(6) To the National Archives and Records Administration as a record that has sufficient historical or other value to warrant its continued preservation by the United States Government, or to the Archivist of the United States or

designee for evaluation to determine whether the record has such value;

\* \* \* \* \*

(10) To the Comptroller General, or any authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) Pursuant to the order of a court of competent jurisdiction; or

(12) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

5. Section 9.95 is revised to read as follows:

### § 9.95 Specific exemptions.

The following records contained in the designated NRC Systems of Records (NRC-5, NRC-9, NRC-11, NRC-18, NRC-22, NRC-23, NRC-28, NRC-29, NRC-31, NRC-33, NRC-35, NRC-37, and NRC-39) are exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) in accordance with 5 U.S.C. 552a(k). In addition, the records contained in NRC-18 are exempt from the provisions of 5 U.S.C. 552a and the regulations in this part, under 5 U.S.C. 552a(j)(2), except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i). Each of these systems of records is subject to the provisions of § 9.61:

(a) Contracts Records Files, NRC-5 (Exemptions (k)(1) and (k)(5));

(b) Equal Employment Opportunity Discrimination Complaint Files, NRC-9 (Exemption (k)(5));

(c) General Personnel Records (Official Personnel Folder and Related Records), NRC-11 (Exemptions (k)(5) and (k)(6));

(d) Office of the Inspector General (OIG) Investigative Records, NRC-18 (Exemptions (j)(2), (k)(1), (k)(2), (k)(5), and (k)(6));

(e) Personnel Performance Appraisals, NRC-22 (Exemptions (k)(1) and (k)(5));

(f) Office of Investigations Indices, Files, and Associated Records, NRC-23 (Exemptions (k)(1), (k)(2), and (k)(6));

(g) Recruiting, Examining, and Placement Records, NRC-28 (Exemption (k)(5));

(h) Nuclear Documents System (NUDOCS), NRC-29 (Exemption (k)(1));

(i) Correspondence and Records, Office of the Secretary, NRC-31 (Exemption (k)(1));

(j) Special Inquiry File, NRC-33 (Exemptions (k)(1), (k)(2), and (k)(5));

(k) Drug Testing Program Records, NRC-35 (Exemption (k)(5));

(l) Information Security Files and Associated Records, NRC-37 (Exemptions (k)(1) and (k)(5)); and

(m) Personnel Security Files and Associated Records, NRC-39 (Exemptions (k)(1), (k)(2), and (k)(5)).

Dated at Rockville, Md., this 18th day of July, 1995.

For the Nuclear Regulatory Commission.

**James M. Taylor,**

*Executive Director for Operations.*

[FR Doc. 95-18319 Filed 7-25-95; 8:45 am]

BILLING CODE 7590-01-P

## 10 CFR Part 72

[Docket No. PRM-72-1]

### Maryland Safe Energy Coalition; Denial of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM-72-1) from Richard Ochs submitted on behalf of the Maryland Safe Energy Coalition. The petitioner requested several amendments to the regulations governing the independent storage of spent fuel in dry casks.

**ADDRESSES:** Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection and/or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gordon E. Gundersen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6195.

#### SUPPLEMENTARY INFORMATION:

##### The Petition

On June 23, 1993, Mr. Richard Ochs, on behalf of the Maryland Safe Energy Coalition, filed a petition for rulemaking with the NRC.

The petition relates to generic requirements for the licensing of independent storage of spent fuel in dry casks found in the Commission's regulations contained in 10 CFR Part 72. In particular, Subpart B provides information required to be submitted in a license application, Subpart C provides requirements for the issuance and conditions of a license, Subpart D provides the requirements for the records that must be kept by a licensee, and Subpart E provides requirements for evaluation of the storage facility site.

The petitioner requested that the NRC amend 10 CFR Part 72 to read as follows:

1. In § 72.22(e)(2), "Contents of application: General and financial

information," add "Specify the planned life of the ISFSI."

2. In § 72.22(e)(3), "Contents of application: General and financial information," change "after the removal of spent fuel and/or high-level radioactive waste" to "if the spent fuel and/or the high-level radioactive waste is removed."

3. In § 72.42, "Duration of license; renewal," add a new paragraph (d) to read "No license will be issued before 90 days after the final safety evaluation report (SER) is published."

4. In § 72.44(c)(3), "License conditions," add paragraph (v) to read "dry storage casks must be monitored continuously for radioactivity at the exit cooling vents."

5. In § 72.46(d), "Public hearings," add "The time prescribed for a notice of opportunity for a hearing or petition for leave to intervene will extend from the notice of proposed action through 90 days after the final SER is published."

6. In § 72.72(a), "Material balance, inventory, and records requirements for stored materials," after the first sentence add "The records must include the history and condition of all spent fuel assemblies including a description of any defective fuel, such as fuel that is cracked, swollen, blistered, pinholed, or offgassing."

7. In § 72.104(a) "Criteria for radioactive materials in effluents and direct radiation from ISFSI or MSR," in place of "real" put "maximally exposed"; after "individual" add "or fetus"; change "25 mrem" to "5 mrem"; change "75 mrem" to "15 mrem"; and change "25 mrem" to "5 mrem". The sentence would then read, "\* \* \* dose equivalent to any maximally exposed individual or fetus who is located beyond the controlled area must not exceed 5 mrem to the whole body, 15 mrem to the thyroid and 5 mrem to any other organ \* \* \*"

This petition for rulemaking stems from earlier actions regarding the Calvert Cliffs Independent Spent Fuel Storage Installation (ISFSI). On December 21, 1992, the petitioner filed a petition requesting that the NRC institute a proceeding pursuant to § 2.206 with regard to the Calvert Cliffs ISFSI. In acknowledging the receipt of the December 21, 1992, petition, the Director, Office of Nuclear Material Safety and Safeguards, indicated that to the extent it addressed generic issues related to dry cask storage, the appropriate course of action would be to file a petition for rulemaking. The Director's decision dated August 16, 1993, denied the § 2.206 petition, Baltimore Gas and Electric Company (Calvert Cliffs Independent Spent Fuel

Storage Installation), DD-9-14 (August 16, 1993); 58 FR 44863 (August 25, 1993). This rulemaking petition filed on June 23, 1993, addresses many of the generic issues that were raised in the December 21, 1992, § 2.206 petition.

#### Basis for Request

As a basis for the requested action, the petitioner stated that, as an environmental consumer organization, the Maryland Safe Energy Coalition is interested in the minimization and safe storage of nuclear waste including spent fuel at nuclear power plant sites in general.

The petitioner indicated that it is particularly concerned about spent fuel storage at the Calvert Cliffs Nuclear Power Plant, which is operated by Baltimore Gas and Electric Company (BG&E). The petitioner stated that even though the spent fuel at Calvert Cliffs is stored under a specific Part 72 license, many of the generic requirements proposed by the petitioner would be the same or similar to the specific requirements applicable to independent spent fuel storage at Calvert Cliffs.

#### Public Comments on the Petition

A notice of filing of petition for rulemaking was published in the **Federal Register** on September 8, 1993 (58 FR 47222). Interested persons were requested to submit written comments or suggestions concerning the petition by November 22, 1993. The NRC received five comment letters from the industry and industrial associations, four from individuals, one from an environmental group, and two from governmental agencies. The commenters were evenly split, six supporting all or parts of the petition and six rejecting the petition. The supporters' comments generally supported the additional 90 days to review the Safety Evaluation Report (SER), the need for records because of the uncertainty of knowing how long the spent fuel will be stored, the need for continuously monitoring radiation leaving storage cask vents, and lower radiation limits. The commenters objecting to the petition were more specific, often citing the Director's decision under § 2.206, *Baltimore Gas & Electric Co.* (Calvert Cliffs Independent Spent Fuel Storage Installation), DD-93-14, August 16, 1993. Concerning extending the opportunity for hearing or petition to 90 days after the final SER is issued, the objecting commenters cited the NRC hearing and petition processes as providing ample opportunity for public participation. In refuting the lower radiation limits, the objectors cited studies and reports by respected organizations and other regulations