50.34 of this part with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license, and, if the license to be issued is a class 103 construction permit or initial operating license, the information required by § 50.33a. The Commission may require additional information such as data respecting proposed safeguards against hazards from radioactive materials and the applicant's qualifications to protect against such hazards. The application shall include also a statement of the purposes for which the transfer of the license is requested, the nature of the transaction necessitating or making desirable the transfer of the license, and an agreement to limit access to Restricted Data pursuant to § 50.37. The Commission may require any person who submits an application for license pursuant to the provisions of this section to file a written consent from the existing licensee or a certified copy of an order or judgment of a court of competent jurisdiction attesting to the person's right (subject to the licensing requirements of the Act and these regulations) to possession of the facility involved.

* * * * *

6. In Appendix L to Part 50, the heading of Appendix L and Definition 1 are revised, Definitions 3 through 6 are redesignated as Definitions 4 through 7, and a new Definition 3 is added, to read:

Appendix L to Part 50—Information Requested by the Attorney General for Antitrust Review of Facility Construction Permits and Initial Operating Licenses

* * * * *

I. Definitions

1. *Applicant* means the entity applying for authority to construct or initially operate subject unit and each corporate parent, subsidiary and affiliate. Where application is made by two or more electric utilities not under common ownership or control, each utility, subject to the applicable exclusions contained in § 50.33a, should set forth separate responses to each item herein.

* * * * *

3. *Initially operate* a unit means to operate the unit pursuant to the first operating license issued by the Commission for the unit.

* * * * *

Dated at Rockville, Maryland, this 27th day of October 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–28593 Filed 11–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG15

Clarification and Addition of Flexibility

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations on spent fuel storage to specify those sections of 10 CFR Part 72 that apply to general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a certificate. The proposed amendment is consistent with past NRC staff licensing practice and would eliminate any ambiguity for these persons by clarifying which portions of Part 72 apply to their activities. This proposed rule would eliminate the necessity for repetitious Part 72 specific license hearing reviews of cask design issues that the Commission previously considered and resolved during approval of the cask design. This proposed rule would also allow an applicant for a Certificate of Compliance (CoC) to begin cask fabrication under an NRC-approved quality assurance (QA) program before the CoC is issued.

DATES: Submit comments by January 18, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent by mail to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received, the regulatory analysis, and a Table of Applicability, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Anthony DiPalo, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6191, or e-mail at AJD@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Commission's regulations at 10 CFR Part 72 were originally designed to provide specific licenses for the storage of spent nuclear fuel in an independent spent fuel storage installation (ISFSI) (45 FR 74693; November 12, 1980). In 1990, the Commission amended Part 72 to include a process for approving the design of spent fuel storage casks and issuing a CoC (Subpart L) and for granting a general license to reactor licensees (Subpart K) to use NRC-approved casks for the storage of spent nuclear fuel (55 FR 29181; August 17, 1990). Although the Commission intended that the requirements imposed in Subpart K for general licensees be used in addition to, rather than in lieu of, appropriate existing requirements, ambiguity exists as to which Part 72 requirements, other than those in Subpart K, are applicable to general licensees.

In addition, the Commission has identified two aspects of Part 72 where it would be desirable to reduce the regulatory burden and provide additional flexibility to applicants for a specific license or for a CoC.

First, the staff anticipates that the Commission may receive several applications for specific licenses for ISFSI's that will propose using storage cask designs previously approved by NRC under the provisions of Subpart L of Part 72 (i.e., cask designs that have been issued a CoC and are listed in § 72.214). Section 72.18, ''Elimination of repetition,'' permits an applicant to incorporate by reference information contained in previous applications, statements, or reports filed with the NRC, including cask designs approved under Subpart L. Section 72.46 requires that in an application for a license under Part 72, the Commission shall issue or cause to be issued a notice of proposed action and opportunity for a license hearing in accordance with 10 CFR Part 2. Under current Part 72 regulations, the adequacy of the design of these previously approved casks could be at issue during a § 72.46 license hearing for a specific license

application (i.e., issues on the cask design which have been previously addressed by the Commission, including resolution of public comments, that could be the subject of license hearings).

Second, § 72.234(c), which was part of the 1990 amendments to Part 72, prohibits an applicant for a CoC from beginning fabrication of a spent fuel cask before the NRC issues a CoC for the cask design. However, an applicant for a specific license is currently allowed to begin fabrication of spent fuel storage casks before the license is issued. At the time the 1990 rule was proposed, a commenter suggested that a fabricator (i.e. applicant for a CoC) be allowed to take the risk of beginning fabrication before the receipt of the CoC. However, the Commission took the position, ''[i]f a vendor has not received the certificate, then the vendor does not have the necessary approved specifications and may design and fabricate casks to meet incorrect criteria,'' (55 FR 29185; August 17, 1990).

Since 1990, the Commission has reviewed and approved several cask designs. These reviews and follow-up requests for additional information have established the NRC's expectation as to how its criteria for cask design and fabrication should be met. In January 1997, the NRC published NUREG–1536, ''Standard Review Plan for Dry Cask Storage Systems,'' informing CoC applicants of its expectations in reviewing cask designs. Since then, the Commission has granted six exemptions from § 72.234(c) allowing applicants to begin fabrication prior to issuance of the CoC. One exemption request is currently under review by NRC. Additional exemption requests from § 72.234(c) requirements are anticipated.

Discussion

Clarification

This proposed rulemaking would eliminate the regulatory uncertainty that now exists in Part 72 by adding a new section § 72.13 which specifies which Part 72 regulations apply to general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a CoC.

Flexibility

First, this proposed rule would eliminate the necessity for repetitious § 72.46 specific license hearing board reviews of cask design issues that the Commission has previously considered during approval of the cask design. The Commission anticipates receipt of several applications, for specific ISFSI licenses, that will propose using storage cask designs previously approved by the NRC. Applicants for a specific license presently have the authority under § 72.18 to incorporate by reference into their application, information contained in previous applications, statements, or reports filed with the Commission, including information from the Safety Analysis Report on a cask design previously approved by the NRC under the provisions of Subpart L. The Commission believes previously reviewed cask design issues should be excluded from the scope of a license hearing. This is because the public had the right during the Subpart L approval process to comment on the adequacy of the cask design. The right of the public to comment on cask designs would not be affected by this rulemaking. For new cask design issues, this rulemaking would not limit the scope of staff's review of the application or of license hearings. For example, a cask's previously reviewed and approved thermal, criticality, and structural designs could not be raised as issues in a licensing hearing. However, design interface issues between the approved cask design and specific site characteristics (*e.g.,* meteorological, seismological, radiological, and hydrological) or changes to the cask's approved design may be raised as issues at a potential hearing. Furthermore, the rights of the public to petition the Commission under § 2.206 to raise new safety issues on the adequacy of the cask design would not be affected by this rulemaking.

Second, the proposed rule would permit an applicant for approval of a spent fuel storage cask design under Subpart L to begin fabrication of casks before the NRC has approved the cask design and issued the CoC. Currently, an applicant for a CoC is not permitted under § 72.234(c) to begin cask fabrication until after the CoC is issued. Applicants for a specific license, and their contractors, are currently allowed to begin fabrication of casks before the Commission issues their license. However, general licensees and their contractors (*i.e,* the certificate holder) are not allowed to begin fabrication before the CoC is issued. Consequently, this proposed rule would eliminate NRC's disparate treatment between general and specific licensees. In addition to allowing an applicant for a CoC to begin fabrication of a cask, comments would be requested on the need for a general licensee to also begin fabrication of a cask before issuance of the CoC. The Commission and the staff have previously determined that exemptions from the fabrication prohibition are authorized by law and do not endanger life or property, the common defense, or security and are otherwise in the public interest. The Commission anticipates that additional cask designs will be submitted to the NRC for approval and expects that these designs will be similar in nature to those cask designs that have already been approved. The Commission also expects that exemption requests to permit fabrication would also be received. This rulemaking would eliminate the need for such exemption requests.

This proposed rule would revise the quality assurance regulations in Subpart G of Part 72 to require that an applicant for a CoC, who voluntarily wishes to begin cask fabrication, must conduct cask fabrication under an NRC-approved QA program. Currently, applicants for a CoC are required by § 72.234(b) to conduct design, fabrication, testing, and maintenance activities under a QA program that meet the requirements of Subpart G. Prior NRC approval of the applicant's QA program is not required by § 72.234(b). However, § 72.234(c) precludes cask fabrication until after the CoC is issued. The Commission believes this proposed rule is a conditional relaxation to permit fabrication before the CoC is issued. Since NRC staff would approve the applicant's QA program as part of issuance of a CoC, staff approval of the QA program prior to fabrication is a question of timing (*e.g.,* when the program is approved, as opposed to imposing a new requirement for approval of a program). The Commission expects that any financial or scheduler risks associated with fabrication of casks prior to issuance of the CoC would be borne by the applicant. The Commission believes that the proposed rule is not a backfit because § 72.62 applies to licensees after the license is issued and does not apply to applicants prior to issuance of the license or CoC. This rule would require that a cask for which fabrication was initiated before issuance of the CoC must conform to the issued CoC before it may be used.

This proposed rule would also require an applicant for a specific license, who voluntarily wishes to begin fabrication of casks before the license is issued, to conduct fabrication under an NRC-approved QA program. Currently, an applicant for a specific license is required by § 72.140(c) to obtain NRC approval of its QA program before spent fuel is loaded into the ISFSI. The Commission does not believe this proposed rule would impose a separate requirement, rather it would require

different timing on when the QA program is approved.

This proposed rule would also revise § 72.140(d) to allow a licensee, applicant for a license, certificate holder, and applicant for a CoC to use an existing Part 50, 71, or 72 QA program that was previously approved by the NRC.

As a result of this proposed rule, both licensees and certificate holders will be required to accomplish any fabrication activities under an NRC-approved QA program. The Commission believes this proposed rule's increase in flexibility and change in timing of approval of a QA program is not a backfit.

In addition to an applicant's fabrication of a cask design prior to issuance of the CoC, the Commission is requesting comments on the need for a general licensee to also begin fabrication of a cask design, before the cask design is approved and the CoC is issued.

Section-by-Section Discussion of Proposed Amendments

This proposed rule would make several amendment changes to Part 72 which are characterized as follows. This proposed rule would eliminate the regulatory uncertainty that now exists in Part 72 and explicitly specifies which regulations apply to general licensees, specific licensees, and certificate holders. The proposed rule would eliminate the necessity for repetitious reviews in a specific license hearing of cask design issues that the Commission previously considered during approval of the cask design. The proposed rule would permit an applicant for approval of a spent fuel storage cask design to begin cask fabrication, at its own risk, before the NRC has issued the CoC. The proposed rule would require that NRC approval of the quality assurance program be obtained before cask fabrication can commence.

Section 72.13 Applicability

This new section identifies those sections of Part 72 that apply to specific licenses, general licenses, and Certificates of Compliance. No changes to the underlying regulations would result from this amendment, it is intended for clarification only.

Section 72.46 Public Hearings

A new paragraph (e) would be added to this section to indicate that the scope of any license hearing, for an application for an ISFSI license, shall not include any issues that were previously resolved by the Commission during the approval process of the design of a spent fuel storage cask, when the application incorporates by reference, information on the design of an NRC-approved spent fuel storage cask. The Commission considers rereview of cask design issues, which have been previously resolved as an unnecessary regulatory burden on applicants causing unnecessary expenditure of staff and hearing board resources. For example, the cask's previously reviewed and approved thermal, criticality, and structural designs could not be raised as issues in a hearing. However, design interface issues between the approved cask design and specific site characteristics (*e.g.*, meteorological, seismological, radiological, and hydrological) or changes to the cask's approved design may be raised as issues at a potential hearing.

This proposed rulemaking would not limit the scope of staff's review of the application or of license hearings, for new cask design issues that were not considered by the Commission during previous approval of the cask design. In addition, the rights of the public to petition the Commission under § 2.206 to raise new safety issues on the adequacy of the cask design would not be affected by this rulemaking.

Section 72.86 Criminal Penalties

Paragraph (b) of this section lists those Part 72 regulations for which criminal sanctions may not be issued, because the Commission considers these sections to be non-substantive regulations issued under the provisions of § 161(b), (i), or (o) of the Atomic Energy Act of 1954 (AEA).

Substantive regulations are those regulations that create duties, obligations, conditions, restrictions, limitations, and prohibitions (see final rule on ''Clarification of Statutory Authority for Purposes of Criminal Enforcement'' (57 FR 55062; November 24, 1992)). The Commission considers that the new § 72.13 would not be a substantive regulation, issued under the provisions of § 161(b), (i), or (o) of the AEA. Therefore, paragraph (b) of this section would be revised to add § 72.13 to indicate that willful violations of this new section would not be subject to criminal penalties.

Section 72.140 Quality Assurance Requirements

Paragraph (c)(1) would be revised to add applicants for a specific license and applicants for a CoC. Paragraph (c)(2) would be revised to add the requirement that an applicant for a specific license shall obtain NRC-approval of its QA program before beginning fabrication or testing of a spent fuel storage cask. Paragraph (c)(3) would be revised to indicate that an applicant for a CoC shall obtain NRC-approval of its QA program requirement before beginning fabrication or testing of a spent fuel storage cask. These revisions would result in consistent treatment of general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a CoC. These revisions would also ensure that the NRC has reviewed and approved a QA program before commencement of any fabrication or testing activities.

Paragraph (d) would be revised to clarify the use of previously approved QA programs by a licensee, applicant for a license, certificate holder, and applicant for a CoC. The Commission expects these persons to notify the NRC of their intent to use a QA program previously approved by the NRC under the provisions of Parts 50, 71, or 72.

Section 72.234 Conditions of approval

Paragraph (c) of this section would be revised to permit an applicant for a CoC to begin fabrication of spent fuel storage casks (under an NRC-approved QA program), at the applicant's own risk, before the NRC issues the CoC. The Commission expects that any risks associated with fabrication (*e.g.*, rewelding, reinspection, or even abandonment of the cask) would be borne by the applicant. The NRC would also require that a cask fabricated before the CoC was issued conform to the issued CoC before spent fuel is loaded. Requiring an applicant to conform a fabricated cask to the issued CoC would not be subject to the backfit review provisions of § 72.62.

Section 72.236 Specific Requirements For Spent Fuel Storage Cask Approval

The introductory text in this section before paragraph (a) would be revised as a conforming change to § 72.234(c) to indicate that all of the requirements in this section apply to both certificate holders and applicants for a CoC.

Criminal Penalties

For the purposes of Section 223 of the Atomic Energy Act (AEA), the Commission is issuing the proposed rule to amend 10 CFR 72.140, 72.234, and 72.236 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this

proposed rule is classified as Category NRC. Compatibility is not required for Category NRC regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of Title 10 of the Code of Federal Regulations.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing,'' directed that the government's writing be in plain language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995, (Pub. L. 104–113), requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. The NRC is proposing to amend its regulations on spent fuel storage in those sections of 10 CFR Part 72 that apply to general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a certificate. This proposed rule would eliminate the necessity for repetitious Part 72 specific license hearing reviews of cask design issues that the Commission previously considered and resolved during approval of the cask design. This proposed rule would also allow an applicant for a Certificate of Compliance (CoC) to begin cask fabrication before the CoC is issued. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in the categorical exclusion in 10 CFR 51.22(c)(2) and (3). This action represents amendments to the regulations which are corrective or of a minor or nonpolicy nature and do not substantially modify the existing regulations. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule would decrease the burden on licensees by eliminating the requirement to request an exemption to begin cask design before a license is issued, and by allowing all licensees and CoC holders to reference previously approved QA programs. The public burden reduction for this information collection would average 200 hours per exemption request. However, because no burden has previously been approved for exemption requests and no licensees are expected to reference previously approved QA programs in the foreseeable future, no burden reduction can be taken for this rulemaking. Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

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

Regulatory Analysis

Statement of the Problem and Objective

The Commission's regulations at 10 CFR Part 72 were originally designed to provide specific licenses for the storage of spent nuclear fuel in independent spent fuel storage installations (ISFSIs) (45 FR 74693; November 12, 1980). In 1990, the Commission amended Part 72 to include a process for approving the design of spent fuel storage casks and issuance of a CoC (Subpart L); and for granting a general license to reactor licensees (Subpart K) to use NRC-approved casks for storage of spent nuclear fuel (55 FR 29181; August 17, 1990). Although the Commission intended that the requirements imposed in Subpart K for general licensees be used in addition to, rather than in lieu of, appropriate existing requirements, ambiguity exists as to which of the Part 72 requirements, other than those in Subpart K, are applicable to general licensees. This rulemaking would resolve that ambiguity.

In addition, the Commission has identified two aspects of Part 72 where it would be desirable to reduce the regulatory burden for applicants, NRC staff, and hearing boards and to afford additional flexibility to applicants for a CoC:

First, this proposed rule would eliminate the necessity for repetitious reviews, during a Part 72 specific license hearing (§ 72.46), of cask design issues that the Commission has previously considered during approval of the cask design. The Commission anticipates receipt of several applications, for specific ISFSI licenses, that will propose using storage cask designs previously approved by the NRC. Applicants for a specific license presently have the authority under § 72.18 to incorporate by reference into their application, information contained in previous applications, statements, or reports filed with the Commission, including information from the Safety Analysis Report for a cask design previously approved by the NRC under the provisions of Subpart L. The Commission believes previously reviewed cask design issues should be excluded from the scope of a license hearing. This is because the public had the right to question the adequacy of the cask design, during the approval process under Subpart L. The right of the public to comment on cask designs would not be affected by this rulemaking. For new cask design issues, this rulemaking would not limit the scope of staff's review of the application or of license hearings. For example, a cask's previously reviewed and approved thermal, criticality, and structural designs could not be raised as issues in a hearing. However, design interface issues between the approved cask design and specific site characteristics (e.g., meteorological, seismological, radiological, and hydrological) or changes to the cask's approved design may be raised as issues at a potential hearing. In addition, the rights of the public to petition the Commission under § 2.206 to raise new safety issues on the adequacy of the cask design would not be affected by this rulemaking.

Second, the proposed rule would permit an applicant for approval of a spent fuel storage cask design under Subpart L to begin fabrication of casks before the NRC has approved the cask design and issued the CoC. Currently, an applicant for a CoC is not permitted under § 72.234(c) to begin cask fabrication until after the CoC is issued. Applicants for a specific license, and their contractors, are currently allowed to begin fabrication of casks before the Commission issues their license. However, general licensees and their contractors (i.e, the certificate holder) are not allowed to begin fabrication before the CoC is issued. Consequently, this proposed rule would eliminate NRC's disparate treatment between general and specific licensees. In addition to allowing an applicant for a CoC to begin fabrication of a cask prior to issuance of the CoC, comments would be requested on the need for a general licensee to also begin fabrication of a cask before the CoC is issued. The Commission and the staff have

previously determined that exemptions from the fabrication prohibition are authorized by law and do not endanger life or property, the common defense, or security and are otherwise in the public interest. The Commission anticipates that additional cask designs will be submitted to the NRC for approval and expects that these designs will be similar in nature to those cask designs that have already been approved. The Commission also expects that exemption requests to permit fabrication would also be received. Therefore, this rulemaking would eliminate the need for such exemption requests.

This proposed rule would revise the quality assurance regulations in Subpart G of Part 72 to require that an applicant for a CoC, who voluntarily wishes to begin cask fabrication, must conduct cask fabrication under an NRC-approved QA program. Currently, applicants for a CoC are required by § 72.234(b) to conduct design, fabrication, testing, and maintenance activities under a QA program that meets the requirements of Subpart G. Prior NRC approval of the applicant's QA program is not required by § 72.234(b). However, § 72.234(c) precludes cask fabrication until after the CoC is issued. The Commission believes this proposed rule is a conditional relaxation to permit fabrication before the CoC is issued. Since NRC staff would approve the applicant's QA program as part of issuance of a CoC, staff approval of the QA program prior to fabrication is a question of timing (e.g., when the program is approved, as opposed to imposing a new requirement for approval of a program). The Commission expects that any financial or scheduler risks associated with fabrication of casks prior to issuance of the CoC would be borne by the applicant. The Commission believes that the proposed rule is not a backfit because § 72.62 applies to licensees after the license is issued and does not apply to applicants prior to issuance of the license or CoC. This rule would require that a cask for which fabrication was initiated before issuance of the CoC must conform to the issued CoC before it may be used.

This proposed rule would also require an applicant for a specific license, who voluntarily wishes to begin fabrication of casks before the license is issued, to conduct fabrication under an NRC-approved QA program. Currently, an applicant for a specific license is required by § 72.140(c) to obtain NRC approval of its QA program before spent fuel is loaded into the ISFSI. The Commission does not believe this proposed rule would impose a separate requirement, rather it would require different timing on when the QA program is approved.

This proposed rule would also revise § 72.140(d) to allow a licensee, applicant for a license, certificate holder, and applicant for a CoC to use an existing Part 50, 71, or 72 QA program that was previously approved by the NRC.

As a result of this proposed rule both licensees and certificate holders will be required to accomplish any fabrication activities under an NRC-approved QA program. The Commission believes this proposed rule's increase in flexibility and change in timing of approval of a QA program is not a backfit.

The Commission expects that any risks associated with fabrication (e.g., rewelding, reinspection, or even abandonment of the cask) would be borne by the applicant. In particular, the staff would require that a cask, which was fabricated before the CoC was issued, must conform with the issued CoC. Requiring an applicant to conform a fabricated cask to the issued CoC would not be subject to the backfit review provisions of § 72.62.

Identification and Preliminary Analysis of Alternative Approaches to the Problem

- Option 1—Conduct a rulemaking that would address the regulatory problems as described above.

First, this proposed rulemaking would specify the sections in Part 72 that apply to general licensees, specific licensees, and certificate holders. This would eliminate the need to resolve on a case-by-case basis questions on which Part 72 sections are applicable to those activities. The proposed rule is administrative in nature and other than the cost of rulemaking, would have no impact.

Second, this rulemaking would reduce the regulatory burden on applicants, staff, and hearing board resources relating to any § 72.46 license hearings involving cask design issues associated with an application for a specific license, where the cask design has been previously approved by the NRC. Elimination of the need for repetitious reviews of cask design issues and licensing hearings on these same cask design issues together would save 1.0 FTE of applicant effort and 1.0 FTE of staff effort for each license application received. NRC expects to receive three applications in 1999 and six applications each year in 2000 and 2001. While applicants for a license are currently allowed to incorporate by reference information on cask design information, this rulemaking would reduce applicant burden associated with providing additional information on the cask design and responding to hearing board contentions on issues which have been previously reviewed.

Third, this rulemaking would also provide increased flexibility to applicants for a CoC by allowing them to begin cask fabrication, before the CoC is issued. This rulemaking would reduce the burden on applicants for a CoC associated with submission of requests for exemption from § 72.234(c). Certificate holders have requested these exemptions to take advantage of favorable business conditions (*i.e.*, they want to begin fabrication of casks a soon as possible to meet their contract obligations). Elimination of the need for submission and review of exemption requests from the cask fabrication requirement of § 72.234(c) would save 0.1 FTE of applicant effort and 0.1 FTE of staff effort, for each exemption request not received. Without this action, NRC expects that two requests for exemption from § 72.234(c) would be received each year in 1999 and beyond. This rulemaking would also eliminate the disparate treatment of general and specific licensees under Part 72, with respect to fabrication of spent fuel storage casks. This rulemaking would also reduce staff burden associated with review of such exemption requests. Because a certificate holder is currently required by § 72.140(c)(3) to obtain NRC approval of its QA program before commencing fabrication, and the staff is currently required to review and approve such programs, no increase in applicant burden or staff resources would occur with respect to the proposed change to § 72.140(c)(3). However, the timing of the staff review and approval of the QA program would change.

The impact of this option consists primarily of a reduction in regulatory burden on an applicant for a specific license, a reduction in regulatory burden and increase in regulatory flexibility for an applicant for a cask design, and a reduction in the expenditure of NRC resources involved in reviewing applications for a specific license, supporting license hearings, and reviewing requests for exemption from § 72.234(c). This option would result in the expenditure of NRC resources to conduct this rulemaking.

- Option 2—No action.

The benefit of the no action alternative is that NRC resources will be conserved because no rulemaking would be conducted. The impact of this alternative would be that the regulatory problems described above would not be addressed. Instead, applicant and staff resources will continue to be expended

on repetitious reviews of previously approved cask designs, conducting licensing hearings on previously approved cask design issues, and processing requests for exemption from § 72.234(c), to allow fabrication of casks.

Estimation and Evaluation of Values and Impacts

The clarification of which Part 72 sections apply to specific licensees, applicants for a specific license, general licensees, certificate holders, and applicants for a CoC alone would have no impacts other than the cost of rulemaking, because this action is administrative in nature.

The elimination of the need for repetitious reviews of cask design issues, that were previously reviewed by the NRC, and elimination of licensing hearings on these same cask design issues together would save 1.0 FTE of applicant effort and 1.0 FTE of staff effort for each license application received. NRC expects to receive three applications in 1999 and six applications each year in 2000 and 2001.

The elimination of the need for submission and review of exemption requests from the cask fabrication requirement of § 72.234(c) would save 0.1 FTE of applicant effort and 0.1 FTE of staff effort, for each exemption request not received. Without this action, NRC expects that two requests for exemption from § 72.234(c) would be received each year in 1999 and beyond.

Presentation of Results

The recommended action is to adopt the first option because it will set forth a clear regulatory base for Part 72 general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a CoC.

The recommended action would eliminate the need for repetitious license hearing adjudication of cask design issues that the Commission has previously reviewed in approving the cask design, when an applicant for a specific license has incorporated by reference a cask design that has been approved by the Commission under the provisions of Subpart L. This is because the public had the right to question the adequacy of the cask design during the approval process under Subpart L. The right of the public to comment on cask designs would not be affected by this rulemaking. This rulemaking would not limit the scope of staff's review of the application or license hearings for issues which were not considered by the Commission during previous approval of the cask design. In addition, the rights of the public to petition the Commission under § 2.206 to raise new safety issues on the adequacy of the cask design would not be affected by this rulemaking. The Commission considers rereview of cask design issues which have been previously evaluated and dispositioned as an unnecessary regulatory burden on applicants and an unnecessary expenditure of staff and hearing board resources. For example, the cask's previously reviewed and approved thermal, criticality, and structural designs could not be raised as issues in a hearing. However, design interface issues between the approved cask design and specific site characteristics (*e.g.*, meteorological, seismological, radiological, and hydrological) or changes to the cask's approved design may be raised as issues at a potential hearing. Therefore, this action has no safety impact.

The recommended action would permit an applicant for approval of a spent fuel storage cask design under Subpart L to begin fabrication of casks before the NRC has approved the cask design and issued the CoC. Currently, an applicant for a CoC is not permitted under § 72.234(c) to begin cask fabrication until after the CoC is issued. Applicants for a specific license, and their contractors, are currently allowed to begin fabrication of casks before the Commission issues their license. However, general licensees and their contractors (*i.e*, the certificate holder) are not allowed to begin fabrication before the CoC is issued. Consequently, this proposed rule would eliminate NRC's disparate treatment between general and specific licensees. In addition to allowing an applicant for a CoC to begin fabrication of a cask prior to issuance of the CoC, comments would be requested on the need for a general licensee to also begin fabrication of a cask before the CoC is issued. The Commission and the staff have previously determined that exemptions from the fabrication prohibition are authorized by law and do not endanger life or property, the common defense, or security and are otherwise in the public interest. The Commission anticipates that additional cask designs will be submitted to the NRC for approval and expects that these designs will be similar in nature to those cask designs that have already been approved. The Commission also expects that exemption requests to permit fabrication would also be received. Therefore, this rulemaking would eliminate the need for such exemption requests.

This proposed rule would revise the quality assurance regulations in Subpart G of Part 72 to require that an applicant for a CoC, who voluntarily wishes to begin cask fabrication, must conduct cask fabrication under an NRC-approved QA program. Currently, applicants for a CoC are required by § 72.234(b) to conduct design, fabrication, testing, and maintenance activities under a QA program that meet the requirements of Subpart G. Prior NRC approval of the applicant's QA program is not required by § 72.234(b). However, § 72.234(c) precludes cask fabrication until after the CoC is issued. The Commission believes this proposed rule is a conditional relaxation to permit fabrication before the CoC is issued. Since NRC staff would approve the applicant's QA program as part of issuance of a CoC, staff approval of the QA program prior to fabrication is a question of timing (*e.g.*, when the program is approved, as opposed to imposing a new requirement for approval of a program). The Commission expects that any financial or scheduler risks associated with fabrication of casks prior to issuance of the CoC would be borne by the applicant. The Commission believes that the proposed rule is not a backfit because § 72.62 applies to licensees after the license is issued and does not apply to applicants prior to issuance of the license or CoC. This rule would require that a cask for which fabrication was initiated before issuance of the CoC must conform to the issued CoC before it may be used.

This proposed rule would also require an applicant for a specific license, who voluntarily wishes to begin fabrication of casks before the license is issued, to conduct fabrication under an NRC-approved QA program. Currently, an applicant for a specific license is required by § 72.140(c) to obtain NRC approval of its QA program before spent fuel is loaded into the ISFSI. The Commission does not believe this proposed rule would impose a separate requirement, rather it would require different timing on when the QA program is approved.

This proposed rule would also revise § 72.140(d) to allow a licensee, applicant for a license, certificate holder, and applicant for a CoC to use an existing Part 50, 71, or 72 QA program that was previously approved by the NRC.

As a result of this proposed rule, both licensees and certificate holders will be required to conduct any fabrication activities under an NRC-approved QA program. The Commission believes this proposed rule's increase in flexibility and change in timing of approval of a QA program is not a backfit. Therefore, these actions have no safety impact.

The Commission expects that any risks associated with fabrication (*e.g.*, rewelding, reinspection, or even abandonment of the cask) would be borne by the applicant. In particular, the staff would require that a cask, which was fabricated before the CoC was issued, must conform with the issued CoC. Requiring an applicant to conform a fabricated cask to the issued CoC would not be subject to the backfit review provisions of § 72.62.

The total cost of this rulemaking to the NRC is estimated at 1.9 FTE. The total savings to the NRC for this rulemaking is estimated at 16.5 FTE over a 3-year period (1999 through 2001). The total savings to applicants is estimated at 15.0 FTE over the same 3-year period. Therefore, this action would be considered cost beneficial to both NRC and applicants, would reduce the burden on applicants, and would improve the efficiency and effectiveness of the NRC. Consequently, the Commission believes public confidence in the safe storage of spent fuel at independent spent fuel storage installations would not be adversely affected by this rulemaking.

Decision Rationale

The rationale is to proceed with this proposed rulemaking implementing the Commission approved rulemaking plan. This rulemaking would save both staff and applicant resources as discussed above.

The clarification of the provisions of Part 72 and their application to general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a CoC is administrative in nature and would have no safety impacts.

The elimination of the need for repetitious license hearings on cask design issues, that the NRC has previously reviewed and approved, in an application for a specific license would have no safety impacts. The public's right to comment on cask design issues, through the Subpart L cask approval process, will remain unchanged.

The flexibility to begin fabrication cask fabrication before the NRC issues the CoC, when combined with the requirement that cask fabrication must be performed under an NRC-approved QA program, would have no safety impacts.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule would clearly specify which sections of Part 72 apply to general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a certificate and allow these persons to determine which Part 72 regulations apply to their activity. This clarification will eliminate the ambiguity that now exists. This proposed rule would also eliminate the need for repetitious license-hearing reviews of cask design issues, that were previously reviewed and approved by the NRC, when the applicant for a specific license incorporates by reference information on a cask design that was previously approved by the NRC. Finally, this proposed rule would allow applicants for a CoC to begin fabrication of a cask design before the NRC has issued a CoC. Applicants desiring to begin fabrication shall use an NRC-approval QA program. The requirement to obtain NRC-approval of the applicant's QA program is not considered an additional burden. An applicant who has been issued a CoC, and is then considered a certificate holder, is currently required by § 72.140(c)(2) to obtain NRC-approval before fabrication or testing is commenced; consequently, no actual increase in burden occurs. Similarly, an applicant for a license is currently required to obtain NRC-approval prior to receipt of spent fuel or high-level waste; consequently, no actual increase in burden occurs. This proposed rule does not impose any additional obligations on entities that may fall within the definition of ''small entities'' as set forth in Section 601(6) of the Regulatory Flexibility Act; or within the definition of ''small business'' as found in Section 3 of the Small Business Act, 15 U.S.C. 632; or within the size standards adopted by the NRC on April 11, 1985 (60 FR 18344).

Backfit Analysis

The NRC has determined that the backfit rule, § 72.62, does not apply to this proposed rule. Because these amendments would not involve any provisions that would impose backfits as defined in § 72.62(a), a backfit analysis is not required.

List of Subjects in 10 CFR Part 72

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

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

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

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

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. Section 72.13 is added to Subpart A to read as follows:

§ 72.13 Applicability.

(a) This section identifies those sections, under this part, that apply to the activities associated with a specific license, a general license, or a certificate of compliance.

(b) The following sections apply to activities associated with a specific license: §§ 72.1; 72.2(a) through (e); 72.3 through 72.13(b); 72.16 through 72.34; 72.40 through 72.62; 72.70 through 72.86; 72.90 through 72.108; 72.120 through 72.130; 72.140 through 72.176; 72.180 through 72.186; 72.190 through 72.194; and 72.200 through 72.206.

(c) The following sections apply to activities associated with a general license: §§ 72.1; 72.2(a)(1), (b), (c), and (e); 72.3 through 72.6(c)(1); 72.7 through 72.13(a) and (c); 72.30(c) and (d); 72.32(c) and 72.32(d); 72.44(b), (d), (e),

and (f); 72.48; 72.50(a); 72.52; 72.54(d) through (m); 72.60; 72.62; 72.72 through 72.80(f); 72.82 through 72.86; 72.104; 72.106; 72.122; 72.124; 72.126; 72.140 through 72.176; 72.190 through 72.194; 72.210; 72.212; and 72.216 through 72.220.

(d) The following sections apply to activities associated with a certificate of compliance: §§ 72.1; 72.2(e) and (f); 72.3; 72.4; 72.5; 72.7; 72.9 through 72.13(a) and (d); 72.48; 72.84(a); 72.86; 72.124; 72.140 through 72.176; 72.214; and 72.230 through 72.248.

3. In § 72.46, paragraph (e) is added to read as follows:

§ 72.46 Public hearings.

* * * * *

(e) If an application for (or an amendment to) a specific license issued under this part incorporates by reference information on the design of an NRC-approved spent fuel storage cask, the scope of any public hearing held to consider the application will not include any cask design issues previously addressed by the Commission when it issued a Certificate of Compliance under subpart L of this part.

4. In § 72.86, paragraph (b) is revised to read as follows:

§ 72.86 Criminal penalties.

* * * * *

(b) The regulations in part 72 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 72.1, 72.2, 72.3, 72.4, 72.5, 72.7, 72.8, 72.9, 72.13, 72.16, 72.18, 72.20, 72.22, 72.24, 72.26, 72.28, 72.32, 72.34, 72.40, 72.46, 72.56, 72.58, 72.60, 72.62, 72.84, 72.86, 72.90, 72.96, 72.108, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.182, 72.194, 72.200, 72.202, 72.204, 72.206, 72.210, 72.214, 72.220, 72.230, 72.238, and 72.240.

5. In § 72.140, paragraphs (c) and (d) are revised to read as follows:

§ 72.140 Quality assurance requirements.

* * * * *

(c) *Approval of program:*

(1) Each licensee, applicant for a license, certificate holder, or applicant for a CoC shall file a description of its quality assurance program, including a discussion of which requirements of this subpart are applicable and how they will be satisfied, in accordance with § 72.4.

(2) Each licensee shall obtain Commission approval of its quality assurance program prior to receipt of spent fuel at the ISFSI or spent fuel and high-level radioactive waste at the MRS. Each licensee or applicant for a specific license shall obtain Commission approval of its quality assurance program prior to commencing fabrication or testing of a spent fuel storage cask.

(3) Each certificate holder or applicant for a CoC shall obtain Commission approval of its quality assurance program prior to commencing fabrication or testing of a spent fuel storage cask.

(d) *Previously approved programs.* A quality assurance program previously approved by the Commission as satisfying the requirements of appendix B to part 50 of this chapter, subpart H to part 71 of this chapter, or subpart G to this part will be accepted as satisfying the requirements of paragraph (b) of this section, except that a licensee, applicant for a license, certificate holder, and applicant for a CoC who is using an appendix B or subpart H quality assurance program shall also meet the recordkeeping requirements of § 72.174. In filing the description of the quality assurance program required by paragraph (c) of this section, each licensee, applicant for a license, certificate holder, and applicant for a CoC shall notify the NRC, in accordance with § 72.4, of its intent to apply its previously approved quality assurance program to ISFSI activities or spent fuel storage cask activities. The notification shall identify the previously approved quality assurance program by date of submittal to the Commission, docket number, and date of Commission approval.

6. In § 72.234, paragraph (c) is revised to read as follows:

§ 72.234 Conditions of approval.

* * * * *

(c) An applicant for a CoC may begin fabrication of spent fuel storage casks before the Commission issues a CoC for the cask; however, applicants who begin fabrication of casks without a CoC do so at their own risk. A cask fabricated before the CoC is issued shall be made to conform to the issued CoC prior to being placed in service or prior to spent fuel being loaded.

* * * * *

7. Section 72.236 is amended by revising the introductory text to read as follows:

§ 72.236 Specific requirements for spent fuel storage cask approval and fabrication.

The certificate holder and applicant for a CoC shall ensure that the requirements of this section are met.

* * * * *

Dated at Rockville, Maryland, this 26th day of October, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–28594 Filed 11–2–99; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[Docket No. PRM–73–10]

Petition From the State of Nevada; Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking: Extension of comment period.

SUMMARY: On September 13, 1999, the Nuclear Regulatory Commission (NRC) published for public comment a petition for rulemaking filed by the State of Nevada. The petitioner requested that the Commission amend its regulations governing safeguards for shipments of spent nuclear fuel against sabotage and terrorism. The petitioner requested that the NRC conduct a comprehensive assessment of the consequences of terrorist attacks that have the capability of radiological sabotage, including attacks against transportation infrastructure used during nuclear waste shipments, attacks involving capture of nuclear waste shipments and use of high energy explosives against a cask or casks, and direct attacks upon a nuclear waste shipping cask or casks using antitank missiles or other military weapons. The comment period was to have expired on November 29, 1999. John Allen, Chairman of the Hazardous Materials Transportation Committee of the Transportation Research Board, submitted a comment on October 11, 1999, and requested that the comment period be extended due to the tight filing date for the petition. In view of this request, the NRC believes it is appropriate to extend the comment period; therefore, the comment period is extended to January 28, 2000.

DATES: The comment period has been extended and now closes on January 28, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Send comments by mail addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

Hand-deliver comments to: 11555 Rockville Pike, Rockville, Maryland,