republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TS.

For additional procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

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; the Nuclear Waste Policy Act of 1982, 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, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

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

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–10 (42 U.S.C. 2014, 2021, 2021b, 2111).

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, 2244 (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. In § 72.214, Certificate of Compliance 1030 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1030.

Initial Certificate Effective Date: January 10, 2007.

Amendment Number 1 Effective Date: July 21, 2010.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the NUHOMS® HD Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1030.

Certificate Expiration Date: January 10, 2027.

Model Number: NUHOMS® HD–32PTH.

* * * * *

Dated at Rockville, Maryland, this 19th day of April 2010.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. 2010–10674 Filed 5–6–10; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Parts 430 and 431

[Docket No. EERE–2010–BT–CE–0014]

RIN 1904–AC23

Revisions to Energy Efficiency Enforcement Regulations

AGENCY: Office of Energy Efficiency and Renewable Energy and Office of the General Counsel, Department of Energy.

ACTION: Request for Information (RFI); request for comment.

SUMMARY: The U.S. Department of Energy (DOE or the "Department") intends to expand and revise its existing energy efficiency enforcement regulations for certain consumer products and commercial and industrial equipment covered under the Energy Policy and Conservation Act of 1975, as amended (EPCA or the "Act"). These regulations provide for manufacturer submission of compliance statements and certification reports to DOE, maintenance of compliance records by manufacturers, and the availability of enforcement actions for improper certification or upon a determination of noncompliance. To facilitate this process and to allow interested parties to provide suggestions, comments, and information, DOE is publishing this request for information. This request identifies several areas on which DOE is particularly interested in receiving information; however, any input and suggestions considered relevant to the topic are welcome.

DATES: Written comments and information are requested on or before June 7, 2010.

ADDRESSES: Interested persons are encouraged to submit comments using the *Federal eRulemaking Portal* at *http://www.regulations.gov*. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2010–BT–CE–0014, by any of the following methods:

- *E-mail:* to *EnforcementRFI@hq.DOE.gov*. Include EERE–2010–BT–CE–0014 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Revisions to Energy Efficiency Enforcement Regulations, EERE–2010–BT–CE–0014, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Phone: (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy,

Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Phone: (202) 586–2945. Please submit one signed paper original.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking.

Docket: For access to the docket to read background documents, or comments received, go to the *Federal eRulemaking Portal* at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information may be sent to Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: 202–287–6122. E-mail: *Celia.Sher@hq.doe.gov*; and Mr. Richard Karney, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: 202–586–9449. E-mail: *Richard.Karney@ee.doe.gov*.

SUPPLEMENTARY INFORMATION:

Authority and Background: EPCA authorizes DOE to enforce compliance with the energy and water conservation standards (all references herein referring to energy use and consumption include water use and consumption; all references to energy efficiency include water conservation) established for certain consumer products and commercial equipment. 42 U.S.C. 6299–6305 (consumer products), 6316 (commercial and industrial equipment). To ensure that all covered products distributed in the United States comply with DOE's energy conservation standards, the Department has promulgated enforcement regulations that include specific certification and compliance requirements. See Title 10 of the Code of Federal Regulations (10 CFR) part 430, subpart F; 10 CFR part 431, subparts B, K, S, T, U, and V.

The Department is considering revising its enforcement procedures to ensure that all of its energy efficiency regulations are rigorously and consistently enforced. The Department is issuing this initial request for information to allow interested parties an opportunity to provide information that will assist DOE in reforming the existing enforcement process. This initial request will be followed by a notice of proposed rulemaking that will be based on the information received as a result of this notice and other data and information gathered by DOE.

Public Participation

A. Submission of Information

DOE will accept comments in response to this RFI under the timeline provided in the **DATES** section above. Comments submitted to the Department through the eRulemaking Portal or by e-mail should be provided in WordPerfect, Microsoft Word, PDF, or text file format. Those responding should avoid the use of special characters or any form of encryption, and wherever possible, comments should include the electronic signature of the author. Comments submitted to the Department by mail or hand delivery/courier should include one signed original paper copy. No telefacsimiles will be accepted.

Comments submitted in response to this notice will become a matter of public record and will be made publicly available.

The Department encourages interested parties to contact DOE if they would like to meet in person to discuss their comments. The Department's policy governing ex parte communications is posted on the Office of the General Counsel's Web site at: *http://www.gc.energy.gov/1309.htm*.

B. Issues on Which DOE Seeks Information

For this RFI, DOE requests comments, information, and recommendations on the following concepts for the purpose of revising current enforcement regulations in Parts 430 and 431 of 10 CFR. As set forth below, we seek comment on DOE's requirements for (1) Certification; (2) Enforcement Testing and Adjudication; (3) Verification Testing; (4) Waivers; and (5) the Application of our Regulations to Distinctive Products. The sequence of these proposals does not reflect any specific DOE preference.

(1) Certification Requirements

a. Under existing Department rules, manufacturers of covered products must satisfy a one-time certification requirement for each basic model. DOE would like to establish an annual certification requirement, similar to the Federal Trade Commission's (FTC) reporting requirements under the FTC's Appliance Labeling Rule (see 16 CFR 305.8). DOE is also considering options to consolidate filings with FTC, the Environmental Protection Agency (EPA) and other agencies, as appropriate, to reduce the reporting burdens on manufacturers. To the extent there are covered products not already required to file annual reports with FTC, this would increase the reporting burden on the manufacturers of those products. What are the costs and benefits of switching to an annual filing process for certification?

b. DOE is also considering implementing a recertification requirement when there is a change to a basic model that either increases or decreases energy efficiency or energy consumption. Section 10 CFR 430.62(b) presently provides for such reporting to DOE only if there is a change that increases energy consumption or decreases energy efficiency. This system creates a disconnect between the information certified to DOE and the energy consumption or energy efficiency of products actually on the market. DOE is looking for ways to have a more current and complete picture of the energy consumption and energy efficiency of the covered products being distributed in the U.S. Requiring recertification for any change in energy consumption or energy efficiency is one way to address this issue. With regard to recertification, should the Department establish a threshold percentage change in energy consumption or energy efficiency that must be reached before any recertification requirement is triggered? If we move to such a system, should the threshold percentage be product specific? Are there reasons why DOE should not require recertification for energy efficiency improvements? For example, would such a requirement create a disincentive to making such improvements? If so, to what extent? Are there alternative ways to address the Department's interest in obtaining more current and complete certification data?

c. In conjunction with the possible recertification requirement referenced above, DOE is interested in pursuing improvements to the manner in which basic model numbers are designated, so that the number that is provided to DOE for certification is clearly associated with the model number used to identify the unit in the market. A more unified numbering system would assist the Department and the public in identifying the market-based model number that corresponds with what is certified to DOE.

d. Under existing regulations, the sampling procedures to be used for compliance certification purposes are set forth in 10 CFR 430.24, and the sampling procedures to be used for enforcement testing (to determine compliance with the applicable energy conservation standard) are set forth in

Appendix B to Subpart F of Part 430. The Department seeks comment regarding any needed changes in the current sampling plans and the reasons the changes are warranted for a given product. DOE seeks comment on whether the sampling procedures for compliance certification and enforcement testing should be identical.

e. The regulations currently permit in-house, as well as independent, certification testing. In light of issues identified through DOE's recent enforcement efforts and the Government Accountability Office's recent report on ENERGY STAR, DOE requests comment on whether all covered products should be required to be independently tested for certification purposes.

f. Currently, the certification regulations allow a manufacturer or private labeler to elect to use a third party to submit certification reports to DOE. Should DOE continue to permit this practice? If so, what recourse should be available if a third party fails to follow through on filing for the manufacturer or labeler? Should that recourse be available if the third party fails just once to file on behalf of the manufacturer or labeler? Should DOE disallow a third party with a history of poor performance (*e.g.,* failure to submit certification reports, submission of inaccurate information, submission of incomplete information) from acting as a third party representative?

(2) Enforcement Testing and Adjudication

a. Pursuant to EPCA, DOE has authority to initiate enforcement actions to ensure compliance with its standards. The current regulations provide for enforcement testing upon DOE's receipt of written information that a covered product may be violating a standard. DOE contemplates revising its procedures to allow the Department more flexibility in its initiation of enforcement actions. For example, DOE is considering initiating and performing its own testing at the DOE-owned National Energy Technology Laboratory (NETL) Appliance Technology Evaluation Center (ATEC). DOE seeks comments on the use of its own facility for testing and the relationship of DOE testing as compared to industry testing.

In addition, DOE contemplates initiating enforcement actions, as needed, in response to credible information, or with reference to a set of established factors, such as: Manufacturer history of non-compliance; product class history of non-compliance; third party referrals from other regulatory agencies, advocacy groups, consumers, or competitors; models or technologies new to the marketplace; or other factors indicating that a model may not comply with the applicable standard. The Department seeks comment on this concept. Information relating to enforcement testing is also requested on the following:

(i) *Unit selection.* How should units be selected for enforcement testing? For example, should the units be manufacturer provided, supplied by the manufacturer's distributor, obtained off-the-shelf from a retailer, or should DOE have the ability to choose from any of these options? Should the cost allocation for the unit be the same regardless of how the product is obtained (*e.g.,* off-the-shelf or manufacturer provided)?

Under the current rules for enforcement testing, a manufacturer in receipt of a DOE test notice must ship a select number of units for testing as specified on the notice. In situations where the manufacturer keeps limited inventory, the manufacturer may need to build units specifically for enforcement testing, rather than providing DOE off-the-shelf, or already manufactured units. This creates a circumstance vulnerable to bias, which could undermine the overall effectiveness of enforcement testing. Are there suggestions regarding how the Department should address unit selection in these situations?

(ii) *Cost allocation for testing.* Should the cost of performing the enforcement testing be assumed by the manufacturer or DOE? Should the cost allocation of the testing be different if the product is found in compliance? What other factors should be taken into consideration when determining how to distribute the cost of testing?

(iii) *Sampling plan.* The Department seeks comment regarding any needed changes in the current enforcement sampling plans and the reasons the changes are warranted for a given product. As discussed above, the Department seeks comment regarding the adequacy of the current sampling plan for enforcement testing and whether the plans for enforcement and certification testing should be identical. *See* Part B, Section (1)d. above.

(iv) *Manufacturer role.* How should manufacturers be apprised of enforcement testing steps, including: Test set up; test conditions; and test data and reports? Should manufacturers have the opportunity to do additional testing? If so, what conditions and timeframe should govern such testing?

(3) Verification Testing

a. DOE is considering instituting a new requirement for periodic verification testing that would be applicable to all basic models certified with DOE. This requirement would be separate from enforcement testing and would be used to verify that the units distributed into commerce continue to be at the certified levels. DOE seeks comment on whether DOE should require manufacturers and/or private labelers to perform verification testing according to specified conditions and criteria.

b. With regard to such verification testing, the Department seeks comment on the following conditions and criteria:

Information Flow

(i) With what frequency should verification testing be required? What specific criteria should be used? Should this be an annual requirement?

(ii) What percentage of basic models should be verification tested annually, and how should units be selected? How many units of each model should be tested? What level of tolerance would be acceptable if only one unit is tested?

(iii) What level of information resulting from the verification testing should be communicated to DOE (*e.g.,* test data, test reports, final results)?

(iv) When and with what frequency should verification testing information be communicated to DOE? Should performance of verification testing be documented on the certification report?

(v) What steps should be taken if a basic model fails the verification testing? What information should be communicated to DOE and when should it be communicated?

(vi) What level of access should DOE and its representatives have to testing done pursuant to DOE regulations (such as the ability to observe testing)?

Testing Laboratories

(i) DOE contemplates that testing done to verify compliance would be performed by independent labs. What level of independence from the manufacturer should be required? We also seek comment on whether we should require that verification testing be done by a different lab than the lab that performed the certification testing.

(ii) DOE understands that some industry associations have in place or are currently developing verification testing programs. How should such industry verification programs tie into DOE's verification testing process? How would ties to such programs affect those manufacturers that are not members of industry associations? What information

should verification programs provide to DOE (*i.e.,* test reports) and with what frequency?

(iii) Should DOE require labs to be accredited to international standards such as International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) 17025, or specifically accredited to perform DOE testing? Should labs that manufacturers use for verification testing be accredited by DOE? By an accreditation body like the National Institute of Standards and Technology's National Voluntary Laboratory Accreditation Program?

(iv) What conditions should DOE require for labs doing verification testing to ensure unbiased, consistent, and robust results? For example, should DOE require that all labs performing verification testing be calibrated with the same frequency, in order to ensure consistency across labs? Should all verification testing labs be required to participate in round robin testing? How should such round robin testing be conducted to ensure accurate and consistent lab results?

Cost

(i) Should verification testing be paid for by the manufacturer or private labeler? DOE requests comments regarding the cost burden placed on manufacturers for the above described verification testing. Please provide a detailed description of the costs and supporting information.

c. DOE seeks comment on whether it should conduct its own random verification testing of products separate from any required manufacturer verification testing. If so, what conditions and criteria should govern DOE performed verification testing?

(4) Waivers

Under existing regulations in 10 CFR 430.27, manufacturers have the option of seeking a waiver from the test procedure when a basic model contains a design characteristic that either prevents testing according to the prescribed test procedures or causes the test procedure to evaluate the basic model in a manner so unrepresentative of the model's true energy consumption characteristics as to provide materially inaccurate comparative data. DOE is considering establishing a mandatory waiver requirement, which would obligate manufacturers to obtain a waiver in those instances where the test procedure does not evaluate the energy or water consumption characteristics in a representative manner or where the test procedure yields materially inaccurate comparative data. This requirement would apply whether the product consumes more energy or less energy than would be measured by the applicable test procedure. DOE requests comments on this concept.

(5) Application of Regulations to Distinctive Products

DOE has an interest in creating a consistent, uniform enforcement framework across industries, manufacturers and products. Deviations from this approach must be justified based on distinctive product characteristics. We are interested in comments on the following questions relating to products that may justify unique approaches to certification, verification, and enforcement:

a. DOE understands some niche products or large commercial products are manufactured at very low quantities on a made-to-order basis. How should DOE's testing requirements and procedures be applied to these products? For example, how should units of these products be selected for testing?

b. Some products, such as electric motors, are distributed in commerce or imported into the U.S. as components of other products where the component product is not readily accessible. When products with regulated components are imported into the U.S., how can DOE best ensure that the components are compliant with U.S. regulations?

Docket: For direct access to the docket to read background documents, or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC, 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

Procedural Requirements: Today's regulatory action has been determined not to be a significant regulatory action under section 3(f)(1) of Executive Order 12866, "Regulatory Planning and Review", 58 FR 51735 (Oct. 4, 1993).

Statutory Authority: 42 U.S.C. 6299–6305; 6316.

Issued in Washington, DC, on May 4, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Scott Blake Harris,

General Counsel.

[FR Doc. 2010–10894 Filed 5–6–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0437; Directorate Identifier 2009–NM–130–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 737–200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Model 737–200, –300, –400, and –500 series airplanes. This proposed AD would require repetitive inspections for cracking of certain fuselage frames and stub beams, and corrective actions if necessary. This proposed AD also provides for an optional repair, which would terminate the repetitive inspections. For airplanes on which a certain repair is done, this proposed AD would also require repetitive inspections for cracking of certain fuselage frames and stub beams, and corrective actions if necessary. This proposed AD results from reports of the detection of fatigue cracks at certain frame sections, in addition to stub beam cracking, caused by high flight cycle stresses from both pressurization and maneuver loads. We are proposing this AD to detect and correct fatigue cracking of certain fuselage frames and stub beams and possible severed frames, which could result in reduced structural integrity of the frames. This reduced structural integrity can increase loading in the fuselage skin, which will accelerate skin crack growth and could result in rapid decompression of the fuselage.

DATES: We must receive comments on this proposed AD by June 21, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m.