

SUPPLEMENTARY INFORMATION:**Background**

These changes are necessary due to the Biennial Review of Fees for the Freedom of Information Act, as required by the Chief Financial Officer's Act of 1990 and Office of Management and Budget (OMB) Circular No. A-25. Specifically, 10 CFR part 9, section 9.37(a) will be changed from GG-7/7 to GG-7/6 and 9.37(c) will be changed from ES-4 to ES-Maximum.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

Paperwork Reduction Act Statement

This final rule does not contain information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this final rule; therefore, a backfit analysis is not required for this final rule because these amendments are administrative in nature and do not involve any provisions that would impose backfits as defined in 10 CFR chapter I.

Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 9

Freedom of Information Act Regulations, Privacy Act Regulations, Government Sunshine Act Regulations, and Production or Disclosure in Response to Subpoenas or Demands of Courts or Other Authorities.

Rulemaking Procedure

Because this amendment constitutes a minor administrative change to the

regulations, the notice and comment provisions of the Administrative Procedure Act do not apply under 5 U.S.C. 553(b)(B).

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 5 U.S.C. 553, the NRC is adopting 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); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

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

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

Subpart C is also issued under 5 U.S.C. 552b.

■ 2. In § 9.37, paragraphs (a) and (c) are revised to read as follows:

§ 9.37 Fees for search and review of agency records by NRC personnel.

* * * * *

(a) Clerical search and review at a salary rate that is equivalent to a GG-7/step 6, plus 16 percent fringe benefits;

* * * * *

(c) Senior executive or Commissioner search and review at a salary rate that is equivalent to an ES-Maximum, plus 16 percent fringe benefits.

Dated at Rockville, Maryland, this 6th day of July, 2010.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

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NUCLEAR REGULATORY COMMISSION**10 CFR Part 72**

[NRC-2009-0538]

RIN 3150-AI75

List of Approved Spent Fuel Storage Casks: NUHOMS® HD Revision 1; Withdrawal

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing a direct final rule that would have revised the NUHOMS® HD cask system listing

within the list of approved spent fuel storage casks to include Amendment No. 1 to Certificate of Compliance (CoC) Number 1030. The NRC is taking this action because the applicant identified that a certain Technical Specification (TS) for Boral characterization was not written precisely and in a manner that could be readily and demonstrably implemented. Specifically, the requirements for meeting TS 4.3.1, "Neutron Absorber Tests," which references Section 9.1.7.3 of the Safety Analysis Report (SAR), are not precisely quantified in that it requires that "the average size of the boron carbide particles in the finished product is approximately 50 microns after rolling." Use of language such as "average" and "approximately" is imprecise, and no ranges or statistical variations are specified. The NRC will publish a revised direct final rule along with its companion proposed rule after the necessary revisions to the TS are made.

DATES: The direct final rule published May 6, 2010 (75 FR 24786), is withdrawn.

FOR FURTHER INFORMATION CONTACT:

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Jayne.McCausland@nrc.gov.

SUPPLEMENTARY INFORMATION: On May 6, 2010 (75 FR 24786), the NRC published in the **Federal Register** a direct final rule that would have amended its regulations in 10 CFR 72.214 to revise the NUHOMS® HD System listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 1 to the CoC. Amendment No. 1 would have modified the present cask system by adding Combustion Engineering 16x16 class fuel assemblies as authorized contents, reducing the minimum off-normal ambient temperature from -20 °F to -21 °F, expanding the authorized contents of the NUHOMS® HD System to include pressurized water reactor fuel assemblies with control components, reducing the minimum initial enrichment of fuel assemblies from 1.5 weight percent uranium-235 to 0.2 weight percent uranium-235, clarifying the requirements of reconstituted fuel assemblies, adding requirements to qualify metal matrix composite neutron absorbers with integral aluminum cladding, deleting use of nitrogen for draining the water from the dry shielded canister (DSC) and allowing only helium as a cover gas during DSC cavity water removal operations, and making

corresponding changes to the technical specifications.

The NRC also published a companion proposed rule on May 7, 2010 (75 FR 25120). A correction notice was published on May 17, 2010 (75 FR 27401), to correctly specify an effective date of July 21, 2010. The direct final rulemaking and the companion proposed rulemaking were published in the **Federal Register** on different dates instead of being published concurrently on the same date.

The rulemaking is being withdrawn because the applicant identified that a certain TS for Boral characterization was not written precisely and in a manner that could be readily and demonstrably implemented. Specifically, the requirements for meeting TS 4.3.1, "Neutron Absorber Tests," which references Section 9.1.7.3 of the SAR, are not precisely quantified in that it requires that "the average size of the boron carbide particles in the finished product is approximately 50 microns after rolling." Use of language such as "average" and "approximately" is imprecise, and no ranges or statistical variations are specified.

The NRC will publish a revised direct final rule along with its companion proposed rule after the necessary revisions to the TS are made.

Dated at Rockville, Maryland, this 8th day of July, 2010.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

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OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2201

Regulations Implementing the Freedom of Information Act

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Review Commission (OSHRC) revises its regulations implementing the Freedom of Information Act (FOIA). The regulations have been updated to reflect the amendments to the FOIA from the Openness Promotes Effectiveness in our National Government Act of 2007 (OPEN Government Act), as well as changes in OSHRC's own policies and procedures.

DATES: This rule is effective on August 16, 2010.

FOR FURTHER INFORMATION CONTACT:

Jennifer D. Marr, FOIA Public Liaison, or Robert M. Kahn, Office of the General Counsel, *via telephone:* (202) 606-5410, or *via e-mail:* jmarr@oshrc.gov or rkahn@oshrc.gov.

SUPPLEMENTARY INFORMATION: OSHRC is publishing a final rule revising its regulations implementing the FOIA. On April 28, 2010, OSHRC published for comment a notice of proposed rulemaking (NPRM) in the **Federal Register** that proposed revisions to OSHRC's regulations at 29 CFR part 2201, implementing the FOIA, 5 U.S.C. 552, as amended. 75 FR 22320, Apr. 28, 2010. Interested persons were afforded an opportunity to participate in the rulemaking process through submission of written comments on the NPRM. OSHRC received no public comments. OSHRC has reviewed the proposed regulations and adopts them in this final rule.

I. Background

OSHRC makes several substantive and technical revisions to its regulations implementing the FOIA (5 U.S.C. 552, as amended) that fall within two general categories. First, OSHRC modifies its existing FOIA regulations to reflect the amendments to the FOIA contained in the OPEN Government Act, Public Law 110-175, 121 Stat. 2524. The OPEN Government Act amended various FOIA administrative procedures, such as when an agency may toll the statutory time for responding to FOIA requests and how to indicate exemptions authorizing deletion of materials under the FOIA on the responsive record.

Second, as a result of the Chief FOIA Officer's review of OSHRC's FOIA operations, OSHRC revises its regulations to further clarify its policies and procedures relating to the processing of FOIA requests and the administration of its FOIA operations. These revisions include changes to the description of the OSHRC reading rooms and to OSHRC fee policies.

II. Section-by-Section Analysis

In 29 CFR 2201.3, OSHRC revises the description of the Chief FOIA Officer's duties in paragraph (a) to reflect the more detailed description of those duties set forth under the OPEN Government Act. 5 U.S.C. 552(k). Additionally, OSHRC adds a description of the FOIA Public Liaison's duties in paragraph (c) to reflect the responsibilities described in the OPEN Government Act. 5 U.S.C. 552(a)(6)(B)(ii), (l). In paragraph (d) OSHRC revises the FOIA Service Center's contact information. OSHRC

also revises paragraph (d) to add information about status requests provided by the FOIA Service Center. 5 U.S.C. 552(a)(7)(B).

In 29 CFR 2201.4, OSHRC revises paragraph (c) to clarify the type of records publicly available in the e-FOIA Reading Room and where to access them. OSHRC changes paragraph (d) to explain the procedures for using OSHRC's on-site e-FOIA Reading Room. OSHRC also revises its definition of "Representative of the news media, or news media requester" in paragraph (e) to reflect the definition provided in the OPEN Government Act. 5 U.S.C. 552(a)(4)(A)(ii). OSHRC also adds definitions of "Exceptional circumstances" and "Record" to paragraph (e), based on the description of these terms in the OPEN Government Act. 5 U.S.C. 552(a)(4)(A)(viii), (f)(2).

In 29 CFR 2201.6, OSHRC revises paragraph (a) to add the tolling requirements set forth in the OPEN Government Act. 5 U.S.C. 552(a)(6)(A)(ii). Following the new requirement in the OPEN Government Act, OSHRC revises its procedure for making deletions within records as set forth in paragraph (g) to include, where technically feasible, marking the exemption under which each deletion is made. 5 U.S.C. 552(b). OSHRC also creates a new paragraph (h) describing how OSHRC assigns tracking numbers to incoming FOIA requests and notifies a requester of the tracking number assigned to the request. 5 U.S.C. 552(a)(7)(A). In addition, OSHRC creates a new paragraph (i) to indicate that when searching for responsive records, OSHRC will ordinarily consider only records in its possession as of the date it begins its search. Finally, OSHRC makes minor grammatical corrections to paragraphs (c) and (d)(3).

In 29 CFR 2201.7, OSHRC revises the copying fee provision in paragraph (b)(1) and the search fee provision in paragraph (b)(2) to reflect the new requirements for each in the OPEN Government Act. 5 U.S.C. 552(a)(4)(A)(viii). OSHRC revises paragraph (e) to consider requests for which fees are likely to exceed \$25 received only after the requester agrees to pay the actual or estimated fee.

In 29 CFR 2201.10, OSHRC updates paragraph (a) to reflect the new maintenance of statistics requirements in the OPEN Government Act. 5 U.S.C. 552(e).

III. Analysis of Comments Received

OSHRC received no comments to the proposed rules.