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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

RIN 3150-AH13

#### List of Approved Spent Fuel Storage Casks: FuelSolutions™ Cask System Revision

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations revising the BNFL Fuel Solutions (FuelSolutions™) cask system listing within the “List of approved spent fuel storage casks” to include Amendment No. 3 to Certificate of Compliance Number 1026. Amendment No. 3 will modify the Technical Specifications. The current Technical Specifications require that if the W-21 canister is required to be removed from its storage cask, then the canister must be returned to the spent fuel building. The modified Technical Specifications will provide an alternative to returning the canister to the spent fuel building by returning it to the transfer cask. Specifically, Technical Specifications 3.3.2 and 3.3.3 propose returning the W-21 canister to the transfer cask while restoring normal storage conditions. The amendment also includes several editorial changes to Technical Specifications 3.1.1, 3.3.2, and 3.3.3.

**DATES:** The final rule is effective May 7, 2003, unless significant adverse comments are received by March 24, 2003. 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. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC’s rulemaking Web site at <http://ruleforum.llnl.gov>. You may also provide comments via this Web site by uploading 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](mailto:CAG@nrc.gov).

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC’s Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC’s Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC’s public documents. An electronic copy of the proposed Certificate of Compliance (CoC) and preliminary safety evaluation report can be found under ADAMS Accession No. ML023310579. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

CoC No. 1026, the revised Technical Specifications (TS), the underlying Safety Evaluation Report (SER) for Amendment No. 3, and the Environmental Assessment, are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Nuclear Material Safety and

Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6219, e-mail [jmm2@nrc.gov](mailto:jmm2@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Jayne M. McCausland, telephone (301) 415-6219, e-mail [jmm2@nrc.gov](mailto:jmm2@nrc.gov), of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that “[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.” Section 133 of the NWPA states, in part, that “[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 218(a) for use at the site of any civilian nuclear power reactor.”

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72 entitled “General License for Storage of Spent Fuel at Power Reactor Sites” (55 FR 29181; July 18, 1990). This rule also established a new subpart L within 10 CFR part 72, entitled “Approval of Spent Fuel Storage Casks” containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on January 16, 2001 (66 FR 3444), that approved the FuelSolutions™ cask design and added it to the list of NRC-approved cask designs in § 72.214 as CoC No. 1026.

##### Discussion

On May 28, 2002, and as supplemented October 3, 2002, the certificate holder, BNFL Fuel Solutions, submitted an application to the NRC to

amend CoC No. 1026 to change the W-21 canister Technical Specifications (TS) and bases to provide an alternative to returning the canister to the spent fuel building by returning it to the transfer cask. Specifically, TS 3.3.2 and TS 3.3.3 propose returning the W-21 canister to the transfer cask while restoring normal storage conditions. The amendment also includes several editorial changes to TS 3.1.1, TS 3.3.2, and TS 3.3.3. No other changes to the FuelSolutions™ cask system design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there is still reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the FuelSolutions™ cask design listing in § 72.214 by adding Amendment No. 3 to CoC No. 1026. The amendment consists of changes to the TS to provide an alternative to returning the W-21 canister to the spent fuel building by returning it to the transfer casks. The amendment also includes several editorial changes. The particular Technical Specifications that are changed are identified in the NRC staff's SER for Amendment No. 3.

The amended FuelSolutions™ cask system, when used under the conditions specified in the CoC, the Technical Specifications, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured.

### Discussion of Amendments by Section

#### *Section 72.214 List of Approved Spent Fuel Storage Casks*

Certificate No. 1026 is revised by adding the effective date of Amendment Number 3.

### Procedural Background

This rule is limited to the changes contained in Amendment 3 to CoC No. 1026 and does not include other aspects of the FuelSolutions™ cask system design. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on May 7, 2003. However, if the NRC receives significant adverse comments by March 24, 2003,

then the NRC will publish a document that withdraws this action and will address the comments, received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**, in a subsequent rule. The NRC will not initiate a second comment period on this action.

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, in a substantive response:

(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 CoC or TS.

### 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. In this direct final rule, the NRC would revise the FuelSolutions™ cask system design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

### 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 rule is classified as compatibility 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 Atomic Energy Act of 1954, as amended (AEA) or the provisions of the title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

### 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 direct final 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.

### Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule would amend the CoC for the FuelSolutions™ cask system within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. Amendment No. 3 will modify the present cask system design to change the W-21 canister Technical Specifications (TS) and bases to provide an alternative to returning the canister to the spent fuel building by returning it to the transfer cask. Specifically, TS 3.3.2 and TS 3.3.3 propose returning the W-21 canister to the transfer cask while restoring normal storage conditions. The amendment also includes several editorial changes to TS 3.1.1, TS 3.3.2, and TS 3.3.3.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-

0001, telephone (301) 415-6219, e-mail [jmm2@nrc.gov](mailto:jmm2@nrc.gov).

### Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150-0132.

### 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.

### Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On January 16, 2001 (66 FR 3444), the NRC issued an amendment to part 72 that approved the FuelSolutions™ cask design by adding it to the list of NRC-approved cask designs in § 72.214. On May 28, 2002, and as supplemented October 3, 2002, the certificate holder, BNFL Fuel Solutions Corporation, submitted an application to the NRC to modify the Technical Specifications (TS). The current TS require that if the W-21 canister is required to be removed from its storage cask, then the canister must be returned to the spent fuel building. The modified TS will provide an alternative to returning the canister to the spent fuel building by returning it to the transfer cask. Specifically, TS 3.3.2 and TS 3.3.3 propose returning the W-21 canister to the transfer cask while restoring normal storage conditions. The amendment also includes several editorial changes to TS 3.1.1, TS 3.3.2, and TS 3.3.3.

The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to each general license. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption.

Approval of the direct final rule will eliminate this problem and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

### Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and BNFL Fuel Solutions Corporation. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

### Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

### Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness 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, Office of Management and Budget.

### List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, 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; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

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

1. The authority citation for part 72 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).

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. In § 72.214, Certificate of Compliance 1026 is revised to read as follows:

### § 72.214 List of approved spent fuel storage casks.

\* \* \* \* \*

*Certificate Number:* 1026.

*Initial Certificate Effective Date:*

February 15, 2001.

*Amendment Number 1 Effective Date:*

May 14, 2001.

*Amendment Number 2 Effective Date:*

January 28, 2002.

*Amendment Number 3 Effective Date:*

May 7, 2003.

*SAR Submitted by:* BNFL Fuel Solutions Corporation.

*SAR Title:* Final Safety Analysis Report for the FuelSolutions™ Spent Fuel Management System.

*Docket Number:* 72-1026.

*Certification Expiration Date:*

February 15, 2021.

*Model Number:* WSNF-220, WSNF-221, and WSNF-223 systems; W-150 storage cask; W-100 transfer cask; and the W-21 and W-74 canisters.

\* \* \* \* \*

Dated in Rockville, Maryland, this 7th day of January, 2003.

For the Nuclear Regulatory Commission.

**William D. Travers,**

*Executive Director for Operations.*

[FR Doc. 03-4107 Filed 2-20-03; 8:45 am]

BILLING CODE 7590-01-P

## FEDERAL TRADE COMMISSION

### 16 CFR Part 305

#### Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Trade Commission ("Commission") is amending the Appliance Labeling Rule ("Rule") to require clothes washer manufacturers to submit their annual energy data for clothes washers on October 1 rather than March 1 as currently required. This change will make FTC's reporting date consistent with that of the Canadian energy labeling program.

**EFFECTIVE DATE:** February 21, 2003.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202-326-2889); [hnewsome@ftc.gov](mailto:hnewsome@ftc.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The Commission issued the Appliance Labeling Rule in 1979, 44 FR 66466 (Nov. 19, 1979), in response to a directive in the Energy Policy and Conservation Act of 1975 ("EPCA").<sup>1</sup> The Rule covers, among other things, eight categories of major household appliances: refrigerators and refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, furnaces, and central air conditioners.

The Rule requires manufacturers of all covered appliances to disclose specific

energy consumption or efficiency information (derived from the Department of Energy ("DOE") test procedures) at the point of sale in the form of an "EnergyGuide" label and in catalogs. The Rule requires manufacturers to include, on labels, an energy consumption or efficiency figure and a "range of comparability." This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models similar to the labeled model.

The Rule requires manufacturers, after filing an initial report, to report annually the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. 16 CFR 305.8(b). Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. Under Section 305.10 of the Rule, to keep the required information on labels consistent with these changes, the Commission publishes new ranges (but not more often than annually) if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission publishes a statement that the prior ranges remain in effect for the next year.

##### **II. Changes to Reporting Date for Clothes Washers**

In a February 7, 2003 letter to Commission staff, the Association of Home Appliance Manufacturers (AHAM) requested that the Commission amend the reporting date for clothes washer data from March 1 to October 1 of each year. This change will ensure that FTC's submission deadline is consistent with the Canadian reporting period for clothes washers. The Canadian program, administered by Natural Resources Canada, provides manufacturers with a three month period to submit data, which usually begins sometime in September of each year. This amendment will allow manufacturers to compile and submit their annual reports to both agencies in the same time period.

For this year, the change in reporting date will also allow manufacturers to provide the FTC with new energy information based on the most recent DOE test procedure for these products. A new DOE test procedure for clothes washers (see 10 CFR Part 430, Subpt. B, App. J1) and a new energy standard for clothes washers will become effective

on January 1, 2004.<sup>2</sup> For any particular model, the application of the new test procedure is likely to produce energy consumption figures different from those yielded by the existing DOE test. The current ranges of comparability for clothes washers are based on data for models that have been tested under the current DOE test. AHAM has indicated that it plans to submit data in October 2003 for clothes washers that comply with the 2004 standard and have been tested under the new procedure. This will allow the Commission to review this data and, if appropriate, publish new ranges that reflect new 2004 compliant models tested under the new procedure. Clothes washer labels printed in early 2004 would then provide energy consumption figures and ranges of comparability that reflect the new procedure. By publishing the new ranges as early as possible, the Commission hopes to reduce any confusion that may result from the transition from the old test procedure to the new one.

In its February 7, 2003 letter, AHAM also requested that the Commission allow its members to use the new test results for EnergyGuide labels printed before January 1, 2004. AHAM also proposed clarifying changes to the clothes washer label. The Commission will address these additional issues separately.

##### **III. Non-Substantive Change to Dishwasher Reporting Date**

The Commission is also amending the language in the Rule in §§ 305.8(b) and 305.10(a) to eliminate obsolete language related to the publication of ranges and the submission of data for dishwashers in 2002 (see 67 FR 35008 (May 17, 2002)).

##### **IV. Administrative Procedure Act**

The amendments published in this notice involve minor, procedural changes to the submission date for data already required by the Rule. These technical amendments merely alter the dates on which compliance is required and do not affect the requirements of the Rule nor do the amendments alter the frequency with which regulated entities must comply with these requirements. Accordingly, the Commission finds for good cause that public comment and a 30-day effective date for these technical, procedural amendments are unnecessary (5 U.S.C. 553(b)(A)(B) and (d)).

<sup>2</sup> See 62 FR 45484 (August 27, 1997) and 66 FR 3314 (January 12, 2001).

<sup>1</sup> 42 U.S.C. 6294. The statute also requires the Department of Energy to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.