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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150-AH05

List of Approved Spent Fuel Storage Casks: VSC-24 Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Pacific Sierra Nuclear Associates VSC-24 system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 4 to Certificate of Compliance No. 1007. Amendment No. 4 will modify the present cask system design to permit the storage of different specific fuel control elements as integral components to fuel assemblies under a general license. Technical Specification (TS) 1.1.1 will be amended to change the flood condition velocity from 7.62 meters per second (m/s) [25 feet per second (ft/s)] to 5.39 m/s (17.7 ft/s); TS 1.2.1, 1.2.4, and 1.2.6 will be amended to address the additional fuel control elements approved for storage, and TS 1.2.10 will be deleted to eliminate redundant requirements for controlling moderator density.

DATES: The final rule is effective February 3, 2002, unless significant adverse comments are received by December 20, 2002. 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 If the rule is withdrawn, timely notice will be published in the **Federal Register**.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 website at <http://ruleforum.llnl.gov>. You may also provide comments via this website 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.

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.

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 (SER) can be found under ADAMS Accession No. ML 022490171. 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.

CoC No. 1007, the revised Technical Specifications (TS), the underlying SER for Amendment No. 4, 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.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415-6219, e-mail 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 April 7, 1993 (58 FR 17948), that approved the VSC-24 design and added it to the list of NRC-approved cask designs in § 72.214 as CoC No. 1007.

Discussion

On March 30, 2001, and as supplemented on July 26, 2001, and April 29, May 16, and August 8, 2002, BNFL Fuel Solutions Corporation submitted an application to the NRC to amend CoC No. 1007 to permit a part 72 licensee to store different specific fuel

control elements as integral components to fuel assemblies. The certificate holder for the VSC-24 system is Pacific Sierra Nuclear Associates, which is a partnership between BNFL Fuel Solutions Corporation and Sierra Nuclear Corporation. Specifically, TS 1.1.1 will be amended to change the flood condition velocity from 7.62 meters per second (m/s) [25 feet per second (ft/s)] to 5.39 m/s (17.7 ft/s); TS 1.2.1, 1.2.4, and 1.2.6 will be amended to address the additional fuel control elements approved for storage; and TS 1.2.10 will be deleted to eliminate redundant requirements for controlling moderator density. The NRC staff revised TS 1.2.1 to limit the allowable fuel burnup to specifically 45 gwd/mtu, which clarified the previous ambiguous terminology. No other changes to the VSC-24 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 VSC-24 design listing in § 72.214 by adding Amendment No. 4 to CoC No. 1007. The amendment consists of revisions to TS 1.1.1 to change the flood condition velocity from 7.62 meters per second (m/s) [25 feet per second (ft/s)] to 5.39 m/s (17.7 ft/s) and TS 1.2.1, 1.2.4, and 1.2.6 to address the additional fuel control elements approved for storage. In addition, TS 1.2.10 is deleted to eliminate redundant requirements for controlling moderator density. The particular TS which are changed are identified in the NRC Staff's SER for Amendment No. 4.

The amended VSC-24 system, when used in accordance with the conditions specified in the CoC, the TS, 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. 1007 is revised indicating the addition of Amendment No. 4 and its effective date.

Procedural Background

This rule is limited to the changes contained in Amendment 4 to CoC No. 1007 and does not include other aspects of the VSC-24 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 February 3, 2003. However, if the NRC receives significant adverse comments by December 20, 2002, 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**. 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.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action. However, if the NRC receives significant adverse comments by December 20, 2002, 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**.

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.

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 VSC-24 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.

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 VSC-24 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. The amendment will modify the present cask system design to permit a Part 72 licensee to store different specific fuel control elements as integral components to fuel assemblies. TS 1.1.1 will be amended to change the flood condition velocity from 7.62 meters per second (m/s) [25 feet per second (ft/s)] to 5.39 m/s (17.7

ft/s); TS 1.2.1, 1.2.4, and 1.2.6 will be amended to address the additional fuel control elements approved for storage; and TS 1.2.10 will be deleted to eliminate redundant requirements for controlling moderator density. 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, email 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 April 7, 1993 (58 FR 17948), the NRC issued an amendment to Part 72 that approved the VSC-24 design by adding it to the list of NRC-approved cask designs in § 72.214. On March 30, 2001, and as supplemented on July 26, 2001, and April 29, May 16, and August 8, 2002, BNFL Fuel Solutions Corporation submitted an application to the NRC to amend CoC No. 1007 to permit a part 72 licensee to store different specific fuel control elements as integral components to fuel assemblies. TS 1.1.1 will be amended to change the flood condition velocity from 7.62 meters per second (m/s) [25

feet per second (ft/s)] to 5.39 m/s (17.7 ft/s); TS 1.2.1, 1.2.4, and 1.2.6 will be amended to address the additional fuel control elements approved for storage; and TS 1.2.10 will be deleted to eliminate redundant requirements for controlling moderator density.

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 1007 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1007.

Initial Certificate Effective Date: May 7, 1993.

Amendment Number 1 Effective Date: May 30, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: May 21, 2001.

Amendment Number 4 Effective Date: February 3, 2003.

SAR Submitted by: Pacific Sierra Nuclear Associates.

SAR Title: Final Safety Analysis Report for the Ventilated Storage Cask System.

Docket Number: 72-1007.

Certificate Expiration Date: May 7, 2013.

Model Number: VSC-24.

* * * * *

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 1st day of Nov., 2002.

William D. Travers,

Executive Director for Operations.

[FR Doc. 02-29485 Filed 11-19-02; 8:45 am]

BILLING CODE 7590-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 366

RIN 3064-AC29

Minimum Standards of Integrity and Fitness for an FDIC Contractor

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is issuing this rule which governs conflicts of interest, ethical responsibilities, and use of confidential information by independent contractors seeking to do business with the FDIC. This rule ensures that any individual who is performing, directly or indirectly, any function or service on behalf of the FDIC meets minimum standards of integrity and fitness. It also prohibits certain persons from performing any service on behalf of the FDIC. This rule makes four changes from the interim final rule that the FDIC published on May 15, 2002. These changes are described below in Section II of the **SUPPLEMENTARY INFORMATION**.

EFFECTIVE DATE: December 20, 2002.

FOR FURTHER INFORMATION CONTACT: Martin A. Blumenthal, Counsel, (202) 736-0359, Peter M. Somerville, Counsel, (202) 736-0110, or Thomas E. Nixon, Senior Attorney, (202) 898-8766, Legal

Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Overview

This rule sets forth integrity and fitness provisions for FDIC contractors in three areas. The first area regards those persons from whom the FDIC is prohibited from entering into a contract. The second area identifies integrity and fitness responsibilities for independent contractors. These include conflicts of interest, minimum standards of ethical responsibility, confidential information, and information that contractors must disclose to the FDIC. The last area regards a contractor's expectations, rights and obligations. These include what advice and determinations the FDIC will provide a contractor, reconsiderations and reviews of those determinations, and the possible consequences a person may face for violating the provisions of this rule.

B. Authority

The statutory authorities for adopting this rule are our general rulemaking authority found at section 9 (Tenth) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1819 (Tenth); and sections 12(f)(3) and (4) of the FDI Act, 12 U.S.C. 1822(f)(3) and (4). Section 19 of the Resolution Trust Corporation Completion Act (RTCCA), Public Law 103-204, 107 Stat. 2369 (1993), required the addition of section 12(f) to the FDI Act.

We may establish other integrity and fitness policies where we determine such policies are required by law or appropriate to maintain the integrity of our programs. Any such policies may be independent of, in conjunction with, or in addition to the restrictions set forth in this rule.

We may also, temporarily or permanently, suspend this rule or exempt a person from compliance with any part of this rule for good cause shown, in order to protect our interests or to provide an orderly transfer of services to another person.

C. Background

The contractor integrity and fitness rules, based on statutory requirements, are regulatory tools the FDIC uses to assure that certain of its contractors meet minimum standards of competence, experience, integrity and fitness. See Federal Home Loan Bank Act, section 21A(p)(6), as added by section 501(a) of the Financial

Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73, 103 Stat. 183. This statute was enacted to ensure that no person who contributed to the failure of an insured depository institution could contract with the FDIC without disclosure and considerable scrutiny.

On June 24, 1994, we published a proposed rule applicable to independent contractors (59 FR 32661-32668), as required by section 12(f)(3) of the FDI Act, 12 U.S.C. 1822(f)(3). That rulemaking proposed standards governing conflicts of interest, ethical responsibilities, and use of confidential information. It also proposed procedures for ensuring that independent contractors meet minimum standards for competence, experience, integrity, and fitness. We received six comment letters. After careful consideration of each comment and numerous changes that the Office of Government Ethics (OGE) requested, we made appropriate modifications to the proposal resulting in the reorganization and modification of some provisions.

On March 11, 1996, we adopted an interim final rule entitled, "Contractor Conflicts of Interest", (61 FR 9590), with the concurrence of OGE. We determined that an interim final rule was appropriate in order to allow interested parties to comment on the rule while providing prompt implementation of the rule to satisfy concerns relating to the merger of the RTC into the FDIC. We received only one comment on the interim final rule and it was non-substantive.

On May 15, 2002, we published an interim final rule requesting public comment. The interim rule represented a fundamental reconsideration of our obligations under the RTCCA. We received no public comments in response to our May 2002 interim final rule.

II. Final Rule

We are adopting the May 2002 interim final rule with four minor changes. First, in the interim final rule, § 366.12(c) stated that contractors are required to disclose waste, fraud, abuse or corruption to us. We are adding to § 366.12(c) a telephone number and an email address that can be used to make such reports to the FDIC Inspector General. Second, in the interim final rule, § 366.12(d)(4) prohibited contractors from making impermissible gifts or entertainment to an FDIC employee. We are extending this prohibition to gifts made by FDIC contractors to other FDIC contractors, as well as FDIC employees. This is because there can be occasions in which FDIC