

to form a critical mass. Because spent nuclear fuel may contain special nuclear materials in such quantities, Agreement States therefore have no authority to license spent fuel storage in an ISFSI.

The Commission's exclusive authority to license ISFSIs is reflected in § 72.8 of NRC regulations which provides that "Agreement States may not issue licenses covering the storage of spent fuel in an ISFSI * * *." The foregoing regulation would be unchanged by this rulemaking.

IV. Section-by-Section Analysis

This portion of the notice contains a section-by-section analysis of the rulemaking amendments. A comparable analysis was provided in the notice of proposed rulemaking for these amendments (58 FR 31478; June 3, 1993). The following analysis, among other things, clarifies that the rulemaking amendments apply only to an ISFSI located at a reactor site.

A. Rules of Practice (10 CFR 2.764)

The Commission is amending 10 CFR 2.764(c) to modify the references in the section to "an independent spent fuel storage installation (ISFSI)" by adding at the end of each of the references the words "located at a site other than a reactor site." As amended, the provision continues to apply in the future to licensing of an independent spent fuel storage installation (ISFSI) located at a site other than a reactor site or licensing of a monitored retrievable storage installation (MRS) under 10 CFR part 72. The amendment eliminates the requirement of express Commission authorization before issuance by the Director of NMSS (or the Director's designee) of each initial license for interim storage of spent fuel in an ISFSI at a reactor site. The general rule applies under which the Director, NMSS, has delegated authority, when no public hearing on the application has been requested, to issue a license for an ISFSI at a reactor site under 10 CFR part 72 following satisfactory completion of NRC's environmental assessment and public health and safety review, without obtaining additional, express authorization from the Commission to do so. Further, under the amendment to 10 CFR 2.764, if the application is the subject of a public hearing, then the Director will issue the license for an ISFSI at a reactor site only after an initial decision of the Atomic Safety and Licensing Board directing issuance of the license, but without the Director being required to obtain the additional, express authorization of the Commission to do so. In this

connection, 10 CFR 2.764 (a) and (b) are being clarified to explicitly incorporate "a license under 10 CFR part 72 to store spent fuel in an independent spent fuel storage installation (ISFSI) at a reactor site" to thereby cover any application for a specific ISFSI license at a reactor site that is the subject of a public hearing.

Under other provisions of the Commission's rules pertaining to the opportunity for public hearing that are not being changed, a party to the hearing could request Commission review and ask the Commission to stay the effectiveness of the Board's decision (including any direction for issuance of any ISFSI license at a reactor site) pending that review (10 CFR 2.786, 2.788). If the Commission granted a stay, then the Director would not issue the license until the terms of the stay, if any, were met or until further order of the Commission.

B. Licensing Requirements for ISFSIs (10 CFR 72.46)

The amendment of 10 CFR 72.46(d) modifies the reference to "an ISFSI" in the last sentence of paragraph (d) by adding at the end of the reference the words "located at a site other than a reactor site." As amended, the sentence continues to apply to licensing of an ISFSI located at a site other than a reactor site or licensing of the MRS. Thus, under the amendment, the Director, NMSS, will have delegated authority to issue a specific license for interim storage of spent fuel in an ISFSI at a reactor site. He/she is not required to seek the express authorization of the Commission to do so. However, the Director's authority will continue to be subject to the limitation that the Commission will be fully and currently informed and will address any significant questions of policy relating to a specific license for interim storage of spent fuel in an ISFSI at a reactor site.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this rule is the type of action described in categorical exclusion 10 CFR 51.22(c) (1) and (3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

VI. Paperwork Reduction Act Statement

This rule does not contain a new or amended information collection requirement subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the

Office of Management and Budget, approval numbers 3150-0136 and -0132.

VII. Regulatory Analysis

The Nuclear Regulatory Commission is making changes to internal procedures that are administrative in nature. The changes will not have any significant impact on the public health and safety or the U.S. economy. The amendments create no new regulatory burdens, or result in the use of resources by NRC licensees or by the staff of the NRC or an Agreement State. The Commission's current procedures require the Director, NMSS, to obtain express authorization of the Commission before issuing a license to construct and operate an ISFSI. The amendments will authorize the Director to issue a license for interim storage of spent fuel in an ISFSI at a reactor site without seeking express authorization from the Commission to do so. The costs of the amendments, in this regard, are likely to be less than the costs of the current procedure since the amendments will reduce the layers of agency review. The foregoing discussion constitutes the regulatory analysis for this final rule.

VIII. Regulatory Flexibility Act Certification

The final rule does not have a significant economic impact on a substantial number of small entities. The rule sets forth internal procedures of an administrative nature for issuance of licenses for ISFSIs at reactor sites. Owners of nuclear power reactors do not fall within the scope of the definition of "small entities" set forth in section 601(3) of the Regulatory Flexibility Act (15 U.S.C. 632) or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121. Thus, in accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC hereby certifies that this final rule will not have a significant economic impact upon a substantial number of small entities.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 72.62, does not apply to this rule and that a backfit analysis is not required because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 72.62(a) (see also 10 CFR 50.109).