

CFR 70.24 (Criticality Accident requirements)? Because the racking arrangement of spent fuel storage is changing in a manner that places spent fuel assemblies closer than in the past because of storage space needs, criticality accidents possibilities might increase, especially in the dry cell storage.

*Response.* The Commission disagrees. Criticality is only a concern during a wet loading and unloading evolution. Additionally, such activities would not be expected to occur under a 10 CFR part 72 ISFSI license and, therefore, there is no basis to change 10 CFR part 72 criticality requirements.

*Issue 29.* Because 10 CFR part 72 contains no language that parallels 10 CFR 50.54(x), we recommend that something similar to it be considered as part of this rulemaking. During the operating life of an Independent Spent Fuel Storage Facility or Monitored Retrievable Storage Facility, it is possible that an unanticipated situation may arise where the most correct action would be one that is not allowed by the license or technical specifications. The writers of 10 CFR part 50 foresaw this eventuality and allowed a licensee to:

Take reasonable action that departs from license condition or a technical specification in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent.

Although we never expect to invoke this option, prudence dictates that we should thoughtfully plan and develop procedures that allow for the possibility of low probability events where deviating from a technical specification or any other license condition is the most correct action. Adding this provision to the part 72 rule gives us a legal basis to include it in our procedures. As a licensee under both 10 CFR parts 50 and 72, we feel that similar language has been useful under 10 CFR part 50 for developing procedures, and that it would be equally useful under 10 CFR part 72.

*Response.* The Commission agrees. The final rule reflects this comment.

*Issue 30.* In § 72.32(a)(12)(ii), the proposed rule states that the licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. We disagree with this provision since it excludes our emergency planning (EP) staff from the critique. The individuals who develop the plans are EP experts. These are exactly the individuals that should critique the

exercises. As the rule is written, we would have to maintain an EP expert on staff whose only EP job function would be to critique exercises. At all other times, this individual would have to remain at arms length from the EP program. A better use of resources would be to allow individuals from the EP staff to be a part of the team that critiques exercises.

*Response.* The Commission agrees and has modified the final regulation to state "the licensee shall critique each exercise using individuals not having direct implementation responsibility for conducting the exercise."

*Issue 31.* In § 72.32(a)(14), NRC has proposed that an applicant for an ISFSI submit the proposed emergency plan to offsite response organizations (which are expected to respond in case of an onsite accident) 60 days in advance of submittal to NRC. Comments would then be forwarded to the NRC upon submittal of the ISFSI application. This requirement should be deleted as the current licensing process for review and approval of an ISFSI license affords all parties a sufficient amount of time to review and comment on the licensee's entire application to include the emergency plan. Furthermore, licensees have gained sufficient experience from the operating nuclear power plant environment to recognize the benefits of working with the offsite authorities in order to ensure adequacy of an emergency plan and its implementation. A requirement to instruct applications to do as much is unnecessary.

*Response.* The Commission disagrees. The Commission believes that requiring participation by offsite organizations in the development of the emergency plan significantly helps establish coordination and working relationships between the principals.

*Issue 32.* In § 72.32(a)(15), NRC proposed to require that the licensee of an ISFSI provide for a "near-site emergency facility" for State and local staff. This requirement should be deleted as it implies that an offsite emergency response facility is needed, when in fact NRC's own studies in NUREG-1140 demonstrate that the consequences of an accident at an ISFSI are insignificant in terms of the public health and safety. Furthermore, NRC has generally affirmed this conclusion through its evaluation of Defueled Emergency Plans for nuclear power plants which are permanently defueled but continue to store spent fuel on site (Possession Only License). The emergency plans for these facilities are appropriately focused on the onsite aspects of emergency response, while maintaining the ability to notify offsite

authorities such as the fire, police, and medical personnel who play a role in addressing onsite emergency response. No licensee-provided "near-site" facility is needed for such offsite authorities to implement their onsite emergency planning responsibilities.

*Response.* The Commission agrees. This change is incorporated in the final regulation.

*Issue 33.* Mitigation of consequences (§ 72.32(a)(5)): The NRC proposes that the licensee describe those actions which would be taken to mitigate the consequences of each type of accident. This requirement should be revised to require that the licensee describe the response actions for each classification of emergency.

*Response.* The regulation already requires, "Information to be communicated. A brief description of the types of information on facility status; radioactive releases; and recommended protective actions, if necessary, to be given to offsite response organizations and to the NRC."

*Issue 34.* Responsibilities (§ 72.32(a)(7)): The term "offsite response organizations" should be revised to "offsite authorities" in recognition of the findings of NUREG-1140, i.e., the consequences of accidental releases associated with the operation of an ISFSI would not exceed the EPA Protective Action Guidelines. The term "offsite response organizations" connotes a need for formal offsite components to the onsite emergency plan and thus, an offsite emergency response plan. This interpretation would be inconsistent with the conclusions of NUREG-1140 which postulated the worst-case accidents involving an ISFSI and found that the consequences were insignificant in terms of public health and safety. To preclude misinterpretation, the term "offsite authorities" should be used.

*Response.* The Commission disagrees that the term "offsite response organizations" connotes the need for "formal offsite components" to the onsite emergency plan. The term simply refers to those offsite organizations that may be needed to respond to an emergency (medical, fire department, police, etc.)

*Issue 35.* Information to be communicated (§ 72.32(a)(9)): As concluded by the NRC in NUREG-1140, the consequences of the postulated worst-case accident involving an ISFSI are insignificant in terms of public health and safety. Therefore, because no offsite protective actions are needed, this requirement should be revised to require that the licensee communicate