

# Proposed Rules

Federal Register

Vol. 67, No. 140

Monday, July 22, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 956

[Docket No. FV02-956-1 PR]

#### Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Establishment of Grade and Inspection Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on the establishment of grade and inspection requirements for Walla Walla sweet onions. This proposed rule was recommended by the Walla Walla Sweet Onion Marketing Committee (Committee), the agency responsible for local administration of the marketing order regulating the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon. This rule would require that all Walla Walla sweet onions handled prior to June 10 of each marketing season be inspected and be at least U.S. Commercial grade. By establishing minimum standards early in the season, this rule is expected to improve producer returns by ensuring that early-season sweet onions are mature and marketable, while satisfying the consumer demand for consistently good quality produce. The cost of the required inspections would be fully funded by the Committee, and there would be no minimum quantity exemption from inspection prior to June 10 because the Committee would be funding the required inspections.

**DATES:** Comments must be received by September 20, 2002.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237,

Washington, DC 20250-0237; Fax: (202) 720-8938, or E-mail:

[moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov). Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:**

Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204-2807; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 956, both as amended (7 CFR part 956), regulating the handling of Walla Walla sweet onions grown in Southeast Washington and Northeast Oregon, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any

handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would establish grade and inspection requirements for Walla Walla sweet onions. Specifically, this rule would require that all Walla Walla sweet onions shipped prior to June 10 be inspected by the Federal-State Inspection Service (Inspection Service) and be at least U.S. Commercial grade. The proposed rule also provides that the Committee would enter into an agreement with the Inspection Service to fund the costs of the inspections required under this rule. And lastly, this rule would modify the minimum quantity inspection provision in § 956.64 by providing that the provision not apply for shipments made prior to June 10 of each marketing season.

Section 956.61 of the order provides authority for the Committee to recommend the establishment, modification, suspension or termination of handling regulations and § 956.62 provides authority for the issuance of grade and maturity regulations. Section 956.64 provides authority for the establishment and modification of minimum quantity exemptions. Section 956.70(f) provides for inspection during any period in which Walla Walla sweet onions are regulated, as well as providing that the Committee may enter into an agreement with the Inspection Service with respect to the cost and funding of inspection.

At a meeting held on February 12, 2002, the Committee passed a motion recommending to USDA that: (1) A regulation be established requiring that all onions shipped prior to June 10 be inspected and certified as being at least U.S. Commercial grade; (2) the cost of the required inspections be fully funded

by the Committee; (3) there be no minimum quantity exemption from inspection since the Committee would be funding the required inspections; and (4) the Committee be given the authority to administratively change the June 10 date to an earlier date. Seven members voted in favor of the motion, two in opposition and one member abstained. The members supporting the motion believe that the shipment of poor quality, immature onions early in the season result in low consumer acceptance, hurt repeat purchases, and have a price depressing effect on good quality onions. The three members not initially supporting grade and inspection requirements wanted additional time to evaluate the recommendation and were concerned about the potential cost of funding the inspections.

The Committee met again on February 20, 2002, to discuss ways of amending the recommendation to meet the concerns of those who did not support the initial recommendation. Individuals not in support of the original motion suggested that parameters be established to limit the number of inspections, or alternatively, that limits be placed on the total amount the Committee would be required to expend on inspections. They also expressed concern that not all handlers shipped poor quality and immature onions early in the season and that it was important that this problem not be viewed as an industry-wide problem.

There were seven Committee members in attendance at the February 20 meeting. All of those in attendance, which included two of the members opposed to the initial action, voted in favor of a motion recommending to USDA that: (1) A regulation be established requiring that all onions shipped prior to June 10 be inspected and certified as being at least U.S. Commercial grade; (2) the cost of the required inspections be fully funded by the Committee; (3) there be no minimum quantity exemption from inspection since the Committee would be funding the required inspections; and (4) the Committee be given the authority to administratively change the June 10 date to an earlier or later date. This recommendation was subsequently submitted to USDA. Following review of this proposal, USDA notified the Committee, that the recommendation to grant the Committee authority to administratively change the date when inspections would be required would not be proposed because such a change should be subject to rulemaking.

As a consequence, the Committee met once again on April 9, 2002, and with

a quorum of seven of the ten members present, unanimously recommended that: (1) All Walla Walla sweet onions shipped prior to June 10 be inspected and certified as being at least U.S. Commercial grade; (2) the cost of the required inspections be fully funded by the Committee; and (3) there be no minimum quantity exemption from inspection since the Committee would fund the required inspections. This modified recommendation dropped the proposed provision containing authority for the Committee to administratively change the dates when inspections would be required. Further, Committee members determined that there was not a need to put a cap on the amount of money the Committee would fund for the cost of inspection. Onion shipments prior to June 10 are expected to be minimal with inspection costs being estimated to approximate \$3,000. The Committee plans to provide in its budget \$4,500 for the cost of inspection in case its shipment estimate is low. The Committee calculated that with an estimated inspection fee of \$0.06 per 50-pound container on small lots, \$4,500 would pay for the inspection of 75,000 50-pound containers of onions. Committee members believed that it was very unlikely that 75,000 50-pound containers of onions could be shipped prior to June 10.

The Walla Walla sweet onion harvesting and marketing season generally starts in mid-June and ends late in August, with shipments peaking in July. Depending upon cultural practices and weather, a few producers may start harvesting and marketing onions in early June. Also, depending upon whether the onions were planted in the autumn or the spring, harvest may extend past the end of August. There have also been some recent attempts at controlled atmosphere storage with sales reported as late as November.

The primary objective of this proposed rule is to prevent disorderly marketing conditions caused by the shipment of poor quality, immature Walla Walla sweet onions early in the season thereby improving producer returns, and providing the consumer with a quality product. A secondary objective is to help prevent onions from other production areas from being mislabeled and marketed as Walla Walla sweet onions.

According to the Committee, a few producers and handlers of Walla Walla sweet onions harvest and market poor quality, immature onions early in the season. Immature onions tend to break down prematurely, becoming soft and spongy. Buyers who have purchased

poor quality, immature onions often delay or fail to make repeat purchases of additional Walla Walla sweet onions. Walla Walla sweet onions are non-storage, summer onions that should be harvested when mature and immediately marketed. If buyers refuse to purchase additional Walla Walla sweet onions, demand for such onions decreases. Buyer dissatisfaction and reduced repeat purchases have a price depressing effect on good quality onions. Shipment of poor quality, immature onions early in the marketing season can set a negative market tone for the entire season that results in depressed producer returns.

The rule would require all Walla Walla sweet onions handled prior to June 10 of each season to be inspected as discussed below. The Committee also recommended that there not be a minimum quantity exemption from inspection prior to June 10 since the Committee would be funding the cost of inspection and because small shipments of poor quality, immature onions can be damaging to the market for good quality onions. The Committee reports that early-season sales of immature onions in the past have been made by both large and small entities.

Under this proposed rule, the Inspection Service would inspect all Walla Walla sweet onions being shipped prior to June 10. The onions would have to, at least, meet the requirements of U.S. Commercial grade as defined in the U.S. Standards for Grades of Onions (Other than Bermuda-Granex-Grano and Creole Type), as amended (7 CFR 51.2830 through 51.2854.) Any lot of Walla Walla sweet onions meeting a minimum of U.S. Commercial grade would be issued an inspection certificate validating the shipment of such onions.

With regard to the early-season onions, the feature the Committee is most interested in under the U.S. Commercial grade designation is maturity. Under § 51.2841 of the U.S. Standards, "mature" is defined to mean "well cured." Included in this definition is an exception for "mid-season onions," a term used to describe onions that

"\* \* \* are not customarily held in storage and are considered mature when harvested in accordance with good commercial practice at a stage which will not result in the onions becoming soft or spongy." Walla Walla sweet onions are considered a "mid-season" onion. The USDA's Shipping Point and Market Inspection Instructions for Onions further explains that "mid-season onions" are onions "\* \* \* harvested during the summer for

immediate shipment and consumption in only a fairly-well cured state." These definitions and instructions are designed to provide the Inspection Service with the ability to more accurately grade the various summer, non-storage onions grown in the northern United States, including Walla Walla sweet onions.

The Committee also believes that this rule would help in the monitoring and prevention of any early season mislabeling and sale of onions grown outside the defined production area as Walla Walla sweet onions. The Committee reports that various roadside produce stands and Farmers' Markets located outside the production area have sold onions mislabeled as Walla Walla sweet onions that are not produced within the order's defined production area. The shipments of poor quality onions produced outside the production area that are misrepresented and mislabeled as Walla Walla sweet onions are price depressing for Walla Walla sweet onions. The Committee believes that requiring a valid inspection certificate on all lots of Walla Walla sweet onions being shipped prior to June 10 would enhance the Committee's compliance efforts in preventing this misrepresentation and mislabeling.

The Committee also expends funds to help educate consumers and retailers regarding Walla Walla sweet onions, including information about the marketing season and the current regulation (§ 956.162) that requires each container of Walla Walla sweet onions to be conspicuously marked with the Committee's trademarked logo.

The Committee believes that the establishment of mandatory early-season inspection and certification would help ensure that poor quality, immature onions are kept out of the market and that poor quality onions from other production areas are not misrepresented as Walla Walla sweet onions. With the establishment of this regulation, the Committee believes the marketing of Walla Walla sweet onions would be improved, producer returns would be increased, and consumer confidence would be maintained for the entire season.

This rule also includes a conforming change to § 956.163 Handling for specified purposes. Section 956.163 currently specifies that assessment and container-marking requirements specified in Part 956 shall not be applicable to shipments of onions for the purposes listed in § 956.163. Such purposes include shipments for relief or to charitable institutions, livestock feed, processing, seed, and other

noncompetitive outlets. This conforming change would add handling requirements specified in this part to the requirements that do not apply to shipments of onions for purposes listed in § 956.163.

This proposed change would not impact the onion import regulation under section 8e of the Act. Section 8e provides that whenever two or more marketing orders regulating the same agricultural commodity produced in different areas of the United States are concurrently in effect, the importation into the United States of any such commodity shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of the order which, as determined by the Secretary, regulates the commodity produced in the area with which the imported commodity is in most direct competition. It has been previously determined that onions imported during the period March 10 through June 4 of each year are in most direct competition with onions grown in designated counties in South Texas under Marketing Order No. 959 and that the imported onions must meet the grade, size, quality, and maturity requirements imposed under that order. During the period June 5 through March 9 of each marketing year, imported onions are in most direct competition with onions grown in designated counties in Idaho and Malheur County, Oregon, under Marketing Order No. 958, and imported onions must comply with the grade, size, quality, and maturity requirements imposed under that order.

#### **Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 37 producers of Walla Walla sweet onions and approximately 21 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual

receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

According to the Washington Agricultural Statistics Service, approximately 576,000 50-pound containers of Walla Walla sweet onions were produced for market in 2001 with an average F.O.B. value of \$9.70 per 50-pound container. Thus, in 2001 the industry realized gross receipts of about \$5,587,000 for the sale of fresh Walla Walla sweet onions, providing each of the 21 handlers, on average, gross annual receipts of about \$266,000. Furthermore, based on the Committee's estimate of an average packing cost for Walla Walla sweet onions of \$2.75 per 50-pound container, returns to producers would have been about \$6.95 per 50-pound container, or just less than \$110,000 on average. Based on the foregoing, it can be concluded that a majority of handlers and producers of Walla Walla sweet onions may be classified as small entities.

This rule would establish grade and inspection requirements for Walla Walla sweet onions. Specifically, this rule would require that all Walla Walla sweet onions handled prior to June 10 be U.S. Commercial grade, or better. This rule would also provide that the current minimum quantity exemption from inspection (2000 pounds per shipment) not apply to onion shipments prior to June 10 of each marketing season. This rule was unanimously recommended by the Committee at a meeting held in Walla Walla, Washington, on April 9, 2002, following discussions at meetings held on February 12 and 20, 2002. Authority for the proposed rule is contained in §§ 956.61, 956.62, 956.64, and 956.70 of the order.

The Committee discussed the impact this change could have on handlers and producers in terms of cost. This rule would have costs associated with it due to the cost of inspection. All handlers, both small and large, would be required to have all sweet onions that are shipped prior to June 10 inspected and certified. However, the Committee is concerned with the impact any regulation would have on the industry's small handlers and producers, and recommended that the Committee cover the cost of the inspections that would be required by this proposed rule. The Committee anticipates that the total annual cost of such a regulation would approximate \$3,000. The funds designated for the early-season inspection costs would originate from assessment income and thus be spread out over the entire industry. Based on

the 576,000 50-pound containers of Walla Walla sweet onions produced in 2001, this could amount to about \$0.0052 per 50-pound container of sweet onions handled during any given season. The Committee plans on incurring this additional cost without increasing the current \$0.21 per 50-pound container assessment rate. The Committee believes that the costs associated with this proposed regulation would not be significant, and that the benefits would outweigh any costs. As noted earlier, poor quality Walla Walla sweet onions, particularly immature onions, shipped early in the marketing season are price depressing on the shipment of good quality onions and reduce producer returns.

The Committee discussed alternatives to this rule at all three of its meetings, including the establishment of various dates other than June 10, various methods of mitigating the impact of the rule on small handlers, and not establishing any regulation. The Committee explored the idea of establishing a date as early as June 1 and as late as June 15 as the date prior to which inspections would be required. During this discussion, it was thought that a date earlier than June 10 would not adequately prevent immature onions from being marketed. In addition, the Committee determined that a date later than June 10, although decreasing the chance that immature onions would be marketed, could be too expensive for the Committee to fund. The Committee decided that June 10 was the best date based on the historical start of the Walla Walla sweet onion season.

The Committee considered that each handler pay directly for the cost of inspection, but believed that funding through assessments would be preferable. Consideration was given to the impact on small handlers. The Committee was of the view that funding through assessments would be better in terms of any negative impact on small handlers. Other options were considered including limiting each handler to two inspections a day and establishing an inspection cost ceiling for each handler that, once met, would require the handler to pay for any additional inspections prior to June 10. However, funding through assessments was considered the most reasonable and practical method to fund the inspection requirements proposed herein.

The Committee also discussed how it could annually meet and modify the date prior to which inspections would be required. The Committee included in its initial recommendation a provision that would allow it to administratively modify the date, as established in the

rule, to a date earlier in the season. At the request of a producer, this provision was modified by the Committee at the February 20 meeting to include provision that the Committee be able to administratively modify the date to either an earlier date or a later date than that established by the rule. Under this alternative, the Committee would meet annually and take action, if appropriate, to modify this date administratively, without utilizing the rulemaking process. USDA reviewed the recommendation and notified the Committee that the recommendation to grant the Committee authority to administratively change the date when inspections would be required would not be proposed because such a change should be subject to rulemaking.

Finally, the Committee discussed and rejected the idea of not establishing any early-season inspection requirement because it strongly believes that some type of action is needed to help create orderly marketing and improve producer returns.

This rule would establish grade and inspection requirements for Walla Walla sweet onions handled prior to June 10. Although inspection certificates would be issued by the Inspection Service, this action would not impose any additional reporting or recordkeeping requirements on either small or large sweet onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. However, as previously mentioned, Walla Walla sweet onions would have to meet certain requirements set forth in the standards issued under the Agricultural Marketing Act of 1946 (7 CFR 1621 *et seq.*).

In addition, the Committee's meetings were widely publicized throughout the Walla Walla sweet onion industry and all interested persons were invited to attend and participate in Committee deliberations on all issues. Like all Committee meetings, the Committee meetings on February 12, February 20, and April 9, 2002, were public meetings and all entities, both large and small, were able to express views on this issue. In addition, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/>

*fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons the opportunity to respond to this proposal, including any regulatory and informational impacts of this action on small businesses. All written comments timely received will be considered before a final determination is made on this matter.

#### List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 956 is proposed to be amended as follows:

#### **PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON**

1. The authority citation for 7 CFR part 956 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 956.163(a) is amended by revising the introductory text of paragraph (a) to read as follows:

#### **§ 956.163 Handling for specified purposes.**

(a) Assessment, container marking, and handling regulations specified in this part shall not be applicable to shipments of onions for any of the following purposes:

\* \* \* \* \*

3. A new subpart—Handling Regulations—consisting of § 956.362 is added to read as follows:

#### **Subpart—Handling Regulations**

##### **§ 956.362 Handling Regulation.**

No person shall handle any quantity of Walla Walla Sweet Onions prior to June 10 of each marketing season unless such onions are handled in accordance with paragraphs (a) and (b) of this section, or unless such onions are handled in accordance with § 956.163.

(a) *Grade requirement.* U.S. Commercial grade or better.

(b) *Inspection.* No handler shall handle any onions unless such onions are inspected by the Federal-State Inspection Service and are covered by a valid inspection certificate. The minimum quantity exemption provision in § 956.64 of this part shall not apply to any quantity of Walla Walla sweet onions shipped prior to June 10 of each marketing season. The Committee shall enter into an agreement pursuant to

§ 956.70(f) with the Federal-State Inspection Service in which the Committee agrees to fund all required inspections prior to June 10 of each marketing year.

(c) *Definitions.* The term "U.S. Commercial" shall have the same meaning as when used in the United States Standards for Grades of Onions (Other than Bermuda-Granex-Grano and Creole Type), as amended (7 CFR 51.2830 through 51.2854) including the tolerances set forth therein.

Dated: July 15, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02-18256 Filed 7-19-02; 8:45 am]

BILLING CODE 3410-02-P

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

RIN 3150-AG93

#### Geological and Seismological Characteristics for Siting and Design of Dry Cask Independent Spent Fuel Storage Installations and Monitored Retrievable Storage Installations

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to amend its licensing requirements for dry cask modes of storage of spent nuclear fuel, high-level radioactive waste, and power reactor-related Greater than Class C waste in an independent spent fuel storage installation (ISFSI) or in a U.S. Department of Energy (DOE) monitored retrievable storage installation (MRS). These amendments would update the seismic siting and design criteria, including geologic, seismic, and earthquake engineering considerations. The proposed rule would allow NRC and its licensees to benefit from experience gained in the licensing of existing facilities and to incorporate the rapid advancements in the earth sciences and earthquake engineering. The proposed amendments would make the Part 72 regulations compatible with the 1996 revision to Part 100 that addressed uncertainties in seismic hazard analysis, and commensurate with the risk associated with an ISFSI or MRS.

**DATES:** The comment period expires October 7, 2002. Comments received after this date will be considered if it is practical to do so, but the NRC is able

to assure consideration only for comments received on or before this date.

**ADDRESSES:** Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide electronic comments via the NRC's interactive rulemaking website at (<http://ruleforum.llnl.gov>). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher at (301) 415-5905, or e-mail [cag@nrc.gov](mailto:cag@nrc.gov).

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room (PDR), Room O-1F21, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking website.

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr@nrc.gov](mailto:pdr@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Keith K. McDaniel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: (301) 415-5252, e-mail: [kkm@nrc.gov](mailto:kkm@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Objectives
- III. Applicability
- IV. Discussion
- V. Related Regulatory Guide
- VI. Discussion of Proposed Amendments by Section
- VII. Specific Question for Public Comment
- VIII. Criminal Penalties
- IX. Agreement State Compatibility
- X. Plain Language
- XI. Voluntary Consensus Standards
- XII. Finding of No Significant Environmental Impact: Availability
- XIII. Paperwork Reduction Act Statement
- XIV. Regulatory Analysis
- XV. Regulatory Flexibility Certification
- XVI. Backfit Analysis

## I. Background

In 1980, the Commission added 10 CFR part 72 to its regulations to establish licensing requirements for the independent storage of spent nuclear fuel and high-level radioactive waste (HLW) (45 FR 74693; November 12, 1980). In 1988, the Commission amended part 72 to provide for licensing the storage of spent nuclear fuel and HLW in an MRS (53 FR 31651, August 19, 1988). Subpart E of part 72 contains siting evaluation factors that must be investigated and assessed with respect to the siting of an ISFSI or MRS, including a requirement for evaluation of geological and seismological characteristics. ISFSI and MRS facilities are designed and constructed for the interim storage of spent nuclear fuel that has aged for at least one year, and other solidified high-level radioactive materials that are pending shipment to a high-level radioactive waste repository or other disposal.

The original regulations envisioned ISFSI and MRS facilities as spent fuel pools or single, massive dry storage structures. The regulations required seismic evaluations equivalent to those for a nuclear power plant (NPP) when the ISFSI or MRS is located west of the Rocky Mountain Front (west of approximately 104° west longitude), referred to hereafter as western U.S., or in areas of known seismic activity east of the Rocky Mountain Front (east of approximately 104° west longitude), referred to hereafter as eastern U.S. A seismic design requirement, equivalent to the requirements for a NPP (appendix A to part 100) seemed appropriate for these types of facilities, given the potential accident scenarios. For those sites located in eastern U.S., and not in areas of known seismic activity, the regulations allowed for less stringent alternatives.

For other types of ISFSI or MRS designs, the regulation required a site-specific investigation to establish site suitability commensurate with the specific requirements of the proposed ISFSI or MRS. The Commission explained that for ISFSIs that do not involve massive structures, such as dry storage casks and canisters, the required design earthquake ground motion (DE) will be determined on a case-by-case basis until more experience is gained with the licensing of these types of units (45 FR 74697).

For sites located in either the western U.S. or in areas of known seismic activity in the eastern U.S., the regulations in 10 CFR part 72 currently require the use of the procedures in appendix A to part 100 for determining