Proposed Rules

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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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

[Docket No. PRM–2–14; NRC–2007–0011]

State of Nevada; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for Rulemaking: Denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or Commission) is denying a petition for rulemaking submitted by the State of Nevada (Nevada or petitioner). The petition requests that NRC modify its regulation regarding issues specified for review in a notice of hearing for the Department of Energy (DOE) application for a high-level waste (HLW) repository construction authorization at Yucca Mountain, Nevada. The petitioner asserts that the proposed regulation would ''fill a gap'' in the NRC's current regulations. Further, petitioner asserts that the proposed regulation fulfills the Commission's intent when it first required a hearing for any docketed applications for construction of a HLW repository. NRC is denying the petition because it is inconsistent with current NRC rules and inconsistent with the Commission's intent when it originally established regulations requiring an opportunity for a hearing for all docketed HLW repository construction applications.

ADDRESSES: Publicly available documents related to this petition, including the petition for rulemaking, the comments received, and NRC's letter of denial to the petitioner may be viewed electronically on public computers in NRC's Public Document Room (PDR), 01F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents may also be viewed and downloaded electronically via the federal rulemaking Web site at *http://www.regulations.gov* by searching Docket ID: [NRC–2007–0011]. For questions about regulations.gov, contact Carol Gallagher at (301) 415–5905.

Publicly available documents are also available electronically at the NRC's Electronic Reading Room 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. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR reference staff at (800) 387–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Sean Croston, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Mail Stop O15–D21, Washington, DC 20555–0001, telephone: (301) 415–2585, e-mail: *sean.croston@nrc.gov.*

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I. Introduction

On June 19, 2007, the State of Nevada (Nevada) submitted a Petition for Rulemaking (PRM), docketed as PRM–2–14. The NRC published a **Federal Register** notice of receipt for PRM–2–14 on August 29, 2007. *See* 72 FR 49668. PRM–2–14 asks NRC to amend 10 CFR 2.104, Notice of hearing, one of the 10 CFR Part 2 rules of practice for licensing proceedings.

A. Regulatory Background

10 CFR 2.101(e)(8) states the Commission's finding that ''a hearing is required in the public interest, prior to issuance of a construction authorization'' for a HLW geologic repository. *See* 46 FR 13974 (February 25, 1981). The proposed facility at Yucca Mountain is a HLW geologic repository and falls within the scope of § 2.101(e)(8). Section 2.101(e)(8) also requires the NRC to ''recite the matters specified in § 2.104(a)'' in the notice of docketing for any such hearings.

When Nevada filed its petition on June 19, 2007, the former 10 CFR 2.104(a) (2006) set out requirements for notices for hearing, which included specifying ''the matters of fact and law to be considered.'' For mandatory hearings (hearings required by statute for production or utilization facility construction permit applications and for licensing the construction and operation of uranium enrichment facilities), this regulation effectively required the presiding officer to review specified matters, even if those matters were not raised by parties in admitted contentions. After Nevada filed PRM–2–14, the Commission concluded a prior rulemaking amending § 2.104, which removed all specified matters from notices for hearing under § 2.104(a). *See* 72 FR 49412 (August 28, 2007).

B. The Petition

PRM–2–14 would add a new paragraph (f) to 10 CFR 2.104. The proposed paragraph would apply to hearings on construction authorizations for HLW geologic repositories, such as the Yucca Mountain proceeding. Paragraph (f)(2) would order the Atomic Safety and Licensing Board (ASLB) to independently ''determine'' whether the application, hearing record, and staff review contain sufficient information. Paragraph (f)(3) would mandate an independent ASLB review of compliance with the Nuclear Waste Policy Act of 1982 and 10 CFR Part 51, along with an independent review of environmental and other factors in the record, before the presiding officer could make a decision on authorization. Finally, paragraph (f)(4) would reiterate that the ASLB must make the required determinations regardless of whether the issues were covered by admitted contentions. Paragraphs (f)(2) and (f)(4) also state that, in making the required ''determinations,'' the ASLB should not conduct a *de novo* review of the application.

Nevada suggests that in the Yucca Mountain hearing, ''the scope of [the] issues and of [the] required findings by the presiding officer must extend beyond admitted contentions,'' as is the case in reactor construction permit hearings. *See* PRM–2–14 at 4. Nevada argues that in requiring a hearing for

HLW geologic repositories, the Commission ''must'' have meant to require procedures and reviews analogous to those in its reactor construction permit hearings, ''because otherwise, [NRC's] decision to hold a mandatory hearing would be nothing more than an empty gesture.'' *Id.* Nevada also comments that it would be inappropriate to allow the staff, rather than the Commission, to specify the scope of issues for the Yucca Mountain hearing.

C. Public Comments on the Petition

The NRC received two comments on the petition. A comment submitted by the Nevada Nuclear Waste Task Force, Inc. (NNWTF) supported the petition. The NNWTF asserted that NRC hearings often fail to cover ''many important safety and environmental issues.'' The NNWTF also claimed that mandatory reviews of uncontested issues would ''provide an independent check on the NEPA and safety decisions of the NRC Staff, whose conclusions on uncontested issues would otherwise escape any meaningful and public review.'' On the other hand, a comment submitted by the Department of Energy (DOE) opposed the petition. The DOE argued that the petition was late and unnecessary in light of recent amendments to 10 CFR 2.104, and would impose greater requirements for the Yucca Mountain HLW hearing than would apply to other mandatory NRC hearings. The DOE also stated that PRM–2–14 would conflict with 10 CFR 51.109(e).

II. Reasons for Denial

A. Recent Amendments to § 2.104

PRM–2–14 does not take note of recent NRC rule changes regarding 10 CFR 2.104, which removed many of its previous requirements. The rule no longer requires presiding officers in mandatory reactor construction permit hearings to consider a specific list of procedural, safety, and environmental issues regardless of admitted contentions. *See* 72 FR 49412 (August 28, 2007). As a result, the issue-review procedure that Nevada would like to apply to the Yucca Mountain HLW hearing no longer exists elsewhere in the agency's procedures; thus the requested provisions would no longer be ''patterned essentially after 10 CFR 2.104(b),'' *see* PRM–2–14 at 4, nor would they conform to agency ''precedents.'' *Id.* Rather, granting PRM–2–14 would lead to different issue review requirements and would not provide the consistent process that Nevada allegedly seeks. In particular, PRM–2–14 would impose greater requirements for the Yucca Mountain HLW hearing than now apply to other NRC hearings.

B. Conflict With 10 CFR Part 2, Subpart J

By petitioning for ''independent determinations'' of various procedural, safety and environmental issues in the Yucca Mountain HLW hearing, *see* PRM–2–14 at 5–6, Nevada is essentially asking the Commission to mandate *sua sponte* review of those topics by the presiding officer to the extent that they are not reviewed pursuant to admitted contentions. But the NRC has previously adopted 10 CFR 2.1027, which specifies that in a HLW hearing, ''the Presiding Officer * * * shall make findings of fact and conclusions of law on, and otherwise give consideration to, only those matters put into controversy by the parties and determined to be litigable issues in the proceeding.'' In the **Federal Register**, the Commission explained that it did ''not believe that *sua sponte* authority is necessary * * * where a hearing is required * * * and where the parties will include entities that should be well-prepared and have had substantial involvement in the HLW licensing process.'' 54 FR 39389 (September 26, 1989). Nevada has not provided any information that contradicts the premise in that assessment.

Additionally, 10 CFR 2.1023(c)(2) already provides that ''the Commission shall review * * * those issues that have not been contested in the proceeding before the Presiding Officer.'' This Commission-level review is explicitly ''not part of the adjudicatory proceeding.'' *Id.* When the Commission indicated in the regulations that it would review the uncontested matters outside of the adjudicatory process, it clearly contemplated that these issues would not be subject to a hearing. It states that, ''even if no hearing has been held, the Director of Nuclear Material Safety and Safeguards will not issue a construction authorization * * * until expressly authorized to do so by the Commission.'' 46 FR 13974 (February 25, 1981). Thus, even if there were no admitted contentions, the Commission, not a presiding officer, would review the construction authorization, including all uncontested matters.

The NRC also set out a schedule for the Yucca Mountain HLW hearing at Appendix D to 10 CFR Part 2. *See also* 10 CFR 2.1026(a) (requiring the presiding officer at the Yucca Mountain HLW hearing to adhere to the schedule at Appendix D). The Commission did not include time for review of uncontested issues by the presiding officer. This is additional evidence that, contrary to Nevada's assertion, the Commission clearly did not intend to require reviews and procedures analogous to those then in existence for construction permit proceedings.

C. Conflict With 10 CFR Part 51

Nevada's proposed § 2.104(f)(3) would require the presiding officer to ''determine whether the requirements of section 102(2)(A), (C), and (D) of NEPA * * * have been complied with in the proceeding.'' This proposed requirement is inconsistent with 10 CFR 51.109, which prescribes the presiding officer's review of environmental impact statements (EISs) under section 102(2)(A), (C) and (D) of the National Environmental Policy Act (NEPA). Section 51.109(e) requires the presiding officer to conduct such a review only if it is impracticable to adopt DOE's EIS. The petition would ignore this limitation and mandate an independent review in each case, regardless of the adequacy of DOE's EIS.

D. Determination of Issues at Hearing

Nevada recommends specifying the issues for the Yucca Mountain hearing by regulation because it would be inappropriate to allow the staff, in an adversary role, to specify the scope of issues. The long-standing agency practice outside of reactor construction permit proceedings, however, has been to specify issues for hearing in the notice of hearing, not through regulation. Nevada must have been aware of this because it openly models its proposed rule after the issues listed in the *USEC* notice of hearing, which were not spelled out by any regulation. *See USEC, Inc. Notice of Hearing,* 69 FR 61411 (October 18, 2004). Moreover, Nevada's concern that the NRC staff will be responsible for determining the scope of issues is unfounded. ''The Commission,'' not the staff, ''will clearly define the precise scope of the hearing [and] outline the appropriate general issue areas to be considered in the proceeding * * *.'' 56 FR 7794 (February 26, 1991).

E. Commission's Intent in Issuing § 2.101(e)(8)

Nevada argues that when the NRC required a hearing for a HLW repository construction authorization at 10 CFR 2.101(e)(8), the Commission ''must'' have meant to require exhaustive procedural, safety and environmental reviews by the presiding officer, because otherwise a mandatory hearing would be ''meaningless.'' *See* PRM–2–14 at 4.

Nevada suggests that if there were no contested issues, the required hearing would have to cover something, so the presiding officer should review key procedural, safety and environmental issues at a minimum.

An examination of the Commission's development of the position that a hearing would be held for Yucca Mountain indicates that it evolved from the unique nature of any decision on an application for a HLW repository, not from the regulatory framework for reactor licensing.

Before the Commission issued 10 CFR 2.101(e)(8), commenters noted ''the national importance of [HLW repositories] and the concern that state and local governments and the general public have expressed with regard to nuclear waste disposal'' and asked the NRC to require hearings before the construction of a HLW repository. *See* SECY–80–0474: Final Rule—10 CFR Part 60, Disposal of High-Level Radioactive Wastes in Geologic Repositories, Encl. B, App. B, PDR No. 6, ADAMS Accession No. ML041350273 (October 17, 1980). In response, the Commission determined that it would require a hearing, agreeing that a Yucca Mountain hearing would involve ''numerous novel technical, policy, and legal issues of national importance.'' *See* NRC Response to Nevada's Petition on Procedures for the Yucca Mountain Licensing Hearing at 2, ML031631253 (July 8, 2003).

The Commission then reaffirmed its motivation for requiring a hearing when it noted that the Yucca Mountain proceeding would be a ''unique'' hearing, ''likely to involve multiple parties,'' with ''a large number of disputes over material facts.'' *See* 69 FR 2204 (January 14, 2004). In such an environment, the Commission believed it would be best to ''provide an on-the-record hearing'' in order to ''advance public confidence in the Commission's repository licensing process.'' *Id.* This language also affirms that the Commission expectation was that it would offer an opportunity for a hearing on Yucca Mountain and expected to receive requests from multiple parties for such a hearing, indicating that the Commission discussion was in the context of a ''contested'' hearing and was not addressing uncontested issues.

Nevada's claim that the Commission must have required hearings for HLW geologic repository applications solely to increase the scope of issues before the presiding officer does not find support in the record. In the second paragraph of its own petition, Nevada explicitly recognized ''the wide public interest in Yucca Mountain. * * *'' *See* PRM–2–14 at 1. The record clearly shows that the Commission focused on a hearing as a method of public involvement, rather than a means of mandating or expanding the scope of review. The petition does not advance the Commission's prior plans in any form.

Nevada's theoretical question regarding the Commission's intent where a ''mandatory'' HLW construction authorization request did not result in any admissible contentions is, as a practical matter, only an academic exercise. The regulatory history shows that the Commission reasonably anticipated and was providing for a contested hearing for Yucca Mountain. *See* Appendix D to 10 CFR Part 2 (listing the milestone schedule for the Yucca Mountain HLW hearing, which does not include a review of uncontested issues); 10 CFR 2.1001 (assuming standing for a number of interested parties in the Yucca Mountain proceedings); 56 FR 7792 (February 26, 1991) (stating the Commission's expectation of well-prepared parties and thorough identification of issues for litigation); 54 FR 39389 (September 26, 1989) (expressing the Commission's view that there was ''little likelihood that a significant issue will be overlooked'' by admitted parties).

While the discussions in the supporting documentation for the rulemaking process addressing the hearing issue could have been clearer, the regulations themselves leave little doubt as to the Commission's intent. That intent always was to assure that an opportunity to request a hearing was provided. The Commission anticipated that the opportunity would result in the filing of a successful request. However, as noted earlier, 10 CFR 2.1023(c)(2) shows that the Commission always contemplated, and expressly provided that uncontested issues would be considered outside of the adjudicatory process.

The NRC has always expected to receive large numbers of contentions, and recent events show that these predictions were well-founded. The DOE submitted its repository license application for Yucca Mountain on June 3, 2008, and Nevada alone disclosed its plan to file between ''251–500'' contentions in the proceeding. *See U.S. Department of Energy* (High-Level Waste Repository: Pre-Application Matters, Advisory PAPO Board), Nevada Response to the Board's Notice and Memorandum of March 6, 2008 (March 24, 2008) at 2. The Commission stated that the contested hearing on DOE's Yucca Mountain application would likely be ''one of the most expansive and complex adjudicatory proceedings in agency history.'' *See U.S. Department of Energy* (High-Level Waste Repository: Pre-Application Matters, Advisory PAPO Board), CLI–08–18 (August 13, 2008). In such an environment, there is little likelihood that the presiding officer at the Yucca Mountain hearing will be left without any issues to review.

Finally, Nevada refers to the Yucca Mountain hearing as a ''mandatory hearing'' and suggests that its proposed rules are necessary because of the hearing's ''mandatory'' nature. In 2005, the Commission clarified that in current usage, a ''mandatory hearing'' is ''a hearing that must take place even if no intervenor contests the license application,'' covering both contested and uncontested issues. *See Exelon Generating Company, LLC (Early Site Permit for Clinton ESP Site) et al.*, CLI–05–17, 62 NRC 5 (July 28, 2005). This conception of a ''mandatory hearing'' stems from statutory provisions concerning reactor construction permit applications and construction and operation of uranium enrichment facilities. *Id.* at 26–27. The Commission did not extend its definition of ''mandatory hearing'' to hearing opportunities, such as the Yucca Mountain construction authorization hearing opportunity referenced in 10 CFR 2.101(e)(8). Any references to the Yucca Mountain hearing as a ''mandatory'' hearing used that term as a common synonym for the Commission mandating an opportunity to request a hearing as a matter of discretion, and do not indicate any intent to extend uncontested hearing procedures to the Yucca Mountain proceeding. In fact, the Commission generally disfavors the broad ''mandatory hearing'' process and will not apply it when it is not legally required. *See generally* Staff Requirements Memorandum—COMDEK–07–0001/COMJSM–07–0001, Report of the Combined License Review Task Force, ML071760109 (June 22, 2007). Likewise, the adoption of 10 CFR 2.1023, 2.1027, and Appendix D to 10 CFR Part 2 show that the Commission never planned to grant the presiding officer in the Yucca Mountain hearing any authority to conduct *sua sponte* review of uncontested issues.

III. Conclusion

The petition would conflict with existing 10 CFR Part 2, Subpart J regulations by requiring the presiding officer at HLW repository application hearings to review procedural, safety and environmental issues without regard to whether those issues were raised in admitted contentions. The requested provisions are also

inconsistent with 10 CFR 51.109 and the amended 10 CFR 2.104 requirements for other NRC hearings. Most importantly, the proposal is contrary to Commission intent when, in its discretion, it decided on the specific hearing requirements to apply to the Yucca Mountain application for a construction authorization. Nevada does not provide adequate support for its claim that its proposed provisions are a necessary consequence of the Commission's past positions. The requested rulemaking is both unwise and contrary to the Commission's long-standing policy.

For these reasons, the Commission denies PRM–2–14.

Commissioner Gregory B. Jaczko's Disapproval of the Denial of Petition for Rulemaking PRM–2–14

I disapprove the decision denying the State of Nevada's petition for rulemaking to specify issues for the Yucca Mountain proceeding. With respect to PRM–2–14, I believe some changes to the issues specified for hearing with respect to the Department of Energy's (DOE) application to construct a geologic waste repository at Yucca Mountain may be warranted, but that a rulemaking is not necessary to effect those changes. Instead, the Commission can formulate the Notice of Hearing on the DOE application to address whatever issues raised by the petition that may have merit. Accordingly, I would grant the petition with the understanding that it would be addressed in the hearing notice, and not in a rulemaking.

In its petition, Nevada presumes that a hearing will be conducted on all uncontested issues. With respect to such uncontested hearings, I believe that the goal of the petition's request that the Licensing Board conduct uncontested hearings on the application is better accomplished by the Commission. We have decided in the context of combined license (COL) proceedings to conduct uncontested hearings ourselves, and the rationale for that decision applies equally to this proceeding as to COL proceedings. For a matter as significant as this proceeding—and the majority references the significance of this proceeding in its denial of petition—I do not believe the Commission should eliminate the review of uncontested issues in the hearing process. If, as the majority argues, there are no uncontested issues because ''there is little likelihood that the presiding officer at the Yucca Mountain hearing will be left without any issues to review,'' then there will be nothing to address in this hearing. If, however, some issues are not contested, my approach would ensure that all issues are properly addressed in a hearing. Simply put, the majority decision's reliance on intervenors to divulge and review all matters relevant to safety is misguided. In addition, I do not believe the majority interpretation of our regulations—namely that the Commission never intended to address uncontested issues in the hearing—is torturous and weak, relying on an unsubstantiated interpretation of § 2.1023(c).

I note that the majority would interpret the Commission's rules as follows: 10 CFR 2.101(e)(8) requires that the Notice of Hearing state that ''a hearing is required in the public interest'' but this does not mean that there will be a hearing on all uncontested issues. The interpretation refers to § 2.1023(c)(2), which states that the Commission will review uncontested issues outside the adjudicatory process, as precluding hearings on uncontested issues. Nonetheless, 10 CFR 51.109(e)(4) requires that the presiding officer (which could be an Atomic Safety and Licensing Board) make findings with respect to uncontested environmental issues, and the Notice provides for consideration of such issues in the hearing. Moreover, the Licensing Board would not have jurisdiction to consider uncontested safety issues, pursuant to 10 CFR 2.1027. Only the Commission would have such jurisdiction.

The upshot of the above is that under the view favored by the majority, uncontested environmental issues would be decided by the presiding officer (the Licensing Board or the Commission itself) in a hearing, but uncontested safety issues would only be considered by the Commission outside the adjudicatory process. I do not believe it makes sense to have a ''mandatory'' hearing on uncontested environmental issues, but not on uncontested safety issues, which fall within our core Atomic Energy Act responsibilities. Rather, in order to bolster public confidence, I would rewrite the Notice of Hearing to provide for hearings on both uncontested safety and environmental issues. I believe the Commission itself should hear these uncontested issues, whether safety or environmental, within the context of the adjudicatory process, just as we plan to do in combined license (COL) proceedings.

Moreover, under the approach taken in the draft Notice of Hearing, the provision for Licensing Board review of uncontested environmental issues under § 51.109 appears to conflict with the prohibition on Board review of uncontested issues in § 2.1027, and the Commission's ultimate review of such uncontested environmental issues in the adjudication would seemingly conflict with the provisions of § 2.1023. In contrast, the approach I recommend has the advantage of interpreting 10 CFR 2.1027 together with § 51.109(e)(4) such that the Licensing Board would be precluded from hearing uncontested environmental issues (under § 2.1027), and the Commission would function as the presiding officer for such uncontested issues (under § 51.109(e)(4)). This approach would similarly apply § 2.1027 with respect to uncontested safety issues, so that the Commission, rather than the Licensing Board, would conduct a hearing on such issues. This approach would also apply the language of § 2.101(e)(8) in a more literal fashion. Given the murkiness of the history and meaning of § 2.101(e)(8), such clarification is warranted.

This approach is also consistent with § 2.1023. Section 2.1023 provides for Commission review of both uncontested and contested issues outside the adjudicatory process under the Commission's supervisory authority. Obviously, contested issues will be decided in the adjudicatory proceeding. I believe § 2.1023 merely states our inherent supervisory authority to review any particular issue if the result of the adjudicatory proceeding is that the application should be granted, but a license has not yet been issued. The Commission would have this authority even if § 2.1023 did not exist. The language of § 2.1023(c)(2) (regarding uncontested issues) that states the Commission review is not part of the adjudicatory proceeding is parallel to language in § 2.1023(c)(1) (regarding contested issues). To interpret the language in § 2.1023(c)(2) to bar uncontested safety issues from adjudication (but not uncontested environmental issues) seems strained to me.

With respect to the issues specified for adjudication, I note that the Commission stated in the 1991 Statements of Consideration on Subpart J (56 FR 7787) that we would more clearly define the precise scope of the hearing in the Notice. The time has come for us to do so. In this regard, Nevada's petition for rulemaking requests that the Notice of Hearing specify that the presiding officer make findings that the standards of in §§ 63.10, 63.21, and 63.24(a) and the requirements of § 63.31 have been met. I believe that specifying these sections in the Notice of Hearing has merit, particularly with respect to § 63.31, and I would include in the Notice a

paragraph similar to paragraph 2.(1) on page 5 of Nevada's petition. While the Notice of Hearing requires the general finding that all the Commission's regulations have been met, and I would not delete this, reference to the specific regulations may help the parties and Licensing Boards focus on the issues most pertinent to the Yucca Mountain proceeding.

Additional Views of the Commission

The Commission majority does not share Commissioner Jaczko's dissenting views. The Commission is responding to Nevada's arguments, which rest largely on a mistaken interpretation of the current rules. Nevada did not show that the existing rules are inadequate to permit a thorough and probing evaluation of a HLW repository application. The Commission's notice of denial reflects careful consideration of Nevada's petition and explains in considerable detail the reasons why the petition should be denied.

We also see no need for Commissioner Jaczko's proposal that the Commission hold adjudicatory hearings on uncontested safety and environmental issues. Such an approach would not only be a departure from long-standing rules but would likely and unnecessarily prolong what promises to be the most thoroughly-contested and complex licensing review in NRC history. Our existing rules require the staff to conduct a sound and exhaustive review, permit interested parties to intervene and litigate what we anticipate to be a very large number of contentions about the adequacy of the application, and, as Commissioner Jaczko acknowledges, provide for a Commission review of both uncontested and contested issues outside the adjudicatory process. While we agree with Commissioner Jaczko that public confidence in our decision making is of vital importance, we also believe that the multiple layers of review provided under our existing rules will be more than adequate to provide that confidence. Deviating from our well-established rules would not serve that objective.

Dated at Rockville, Maryland, this 17th day of October 2008.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8–25290 Filed 10–21–08; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 740

RIN 3133–AD52

Accuracy of Advertising and Notice of Insured Status

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: Section 740.4 of NCUA's rules requires that a federally insured credit union continuously display the official NCUA sign at every teller station or window where insured funds or deposits are normally received. Section 740.4(c) requires that tellers accepting share deposits for both federally insured credit unions and nonfederally insured credit unions also post a second sign adjacent to the official NCUA sign. Currently, the rules require this second sign to list each federally insured credit union served by the teller along with a statement that only these credit unions are federally insured. Due to the evolution of shared branch networks it is now difficult for some tellers to comply with this second signage requirement and, accordingly, NCUA is proposing to revise the rule to replace the required listing of credit unions with a statement that not all of the credit unions served by the teller are federally insured and that members should contact their credit union if they need more information.

DATES: Comments must be received by November 21, 2008.

ADDRESSES: You may submit comments by any of the following methods. (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *NCUA Web Site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html*. Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov*. Include ''[Your name] Comments on FCU Bylaws'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGC Mail@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Elizabeth Wirick, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

Part 740 of NCUA's regulations addresses the notice and advertising requirements applicable to credit unions insured by the National Credit Union Share Insurance Fund (NCUSIF) administered by NCUA. 12 CFR part 740. Section 740.4(a) requires these federally insured credit unions post a sign at all teller stations that normally receive deposits. This official NCUA sign reads: ''Your savings federally insured to at least $100,000 and backed by the full faith and credit of the United States Government'' accompanied by the acronym ''NCUA'' and the words ''National Credit Union Administration, a U.S. Government Agency.'' 12 CFR 740.4(a). The official NCUA sign informs and reassures members that their share deposits are guaranteed, to certain limits, by the U.S. Government in the event the credit union fails.

Section 740.4(c) imposes additional requirements on federally insured credit unions participating in shared branch networks. Generally, federally insured credit unions are prohibited from accepting funds at teller stations or windows where nonfederally insured credit unions also receive deposits. 12 CFR 740.4(c). Tellers in shared branch networks (e.g., ''Credit union centers, service centers, or branches servicing more than one credit union'') are currently exempted from this prohibition, but only if they display a specific sign at each station or window above or beside the official NCUA sign. *Id.* This second sign must state that ''[o]nly the following credit unions serviced by this facility are federally insured by the NCUA,'' followed by the full name of each federally insured credit union displayed in lettering ''of such size and print to be clearly legible