

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 50

Fire Protection

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Availability of draft rule wording.

SUMMARY: The Nuclear Regulatory Commission (NRC) is making available the draft wording of a possible amendment to its regulations. The NRC has initiated this rulemaking to amend Title 10 of the Code of Federal Regulations (10 CFR) part 50.48, "Fire protection," to endorse the National Fire Protection Association (NFPA) Standard 805, "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants 2001 Edition," with exceptions, as a voluntary alternative fire protection requirement for holders of operating nuclear power plant licenses. In support of this rulemaking effort, the NRC is seeking public comment on the draft rule language.

DATES: Comments should be submitted within 45 days from the date of this notice. Any comments received after this date may not be considered during drafting of the proposed rule. Because of scheduling considerations in preparing a proposed rule, the NRC staff requests that stakeholders provide their comments at their earliest convenience before the end of the comment period, if practicable.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, Mail Stop O-16C1 or deliver written comments to One White Flint North, 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking Web site through the NRC's home page 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 web site, contact Ms. Carol Gallagher at (301) 415-5905 or by e-mail to cag@nrc.gov. Copies of any comments received and certain documents related to this rulemaking may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The NRC maintains an Agencywide Documents 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/NRC/ADAMS/index.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to pdrr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Leon E. Whitney, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001, telephone (301) 415-3081, e-mail: lew1@nrc.gov.

SUPPLEMENTARY INFORMATION: The NRC's existing fire protection requirements are derived from General Design Criterion 3, "Fire protection," of Appendix A to 10 CFR part 50, 10 CFR 50.48, "Fire protection," and for plants operating before January 1, 1979, certain provisions of Appendix R to 10 CFR part 50, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979." Exemptions approved by the staff may apply for individual licensees.

The current (10 CFR 50.48) fire protection requirements were developed before the staff or industry had the benefit of probabilistic risk assessments (PRAs) for fires and before there was a significant body of operating experience. These deterministic fire protection requirements have been described by industry representatives and some members of the public as "prescriptive" and an "unnecessary regulatory burden." In the late 1990s, the Commission provided the NRC staff with guidelines to identify and assess performance-based approaches to regulation (see SECY-00-0191, and a

Commission White Paper, "Risk-Informed and Performance-Based Regulation," issued as a Staff Requirements Memorandum (SRM) to SECY-98-144). This guidance was in addition to the risk-related guidance in the NRC's Probabilistic Risk Assessment Policy Statement and Regulatory Guide 1.174, "An Approach for Using PRA in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis."

On January 13, 2001, the National Fire Protection Association Standards Council issued NFPA 805, 2001 Edition, as a performance-based American National Standard for light water nuclear power plants. As stated in Section 1.1 of the standard, "This standard specifies the minimum fire protection requirements for existing light water nuclear power plants during all phases of plant operation, including shutdown, degraded conditions, and decommissioning." The U.S. Nuclear Regulatory Commission staff cooperatively participated in the development of NFPA 805. In the opinion of the NRC staff, with certain exceptions noted in Sections (c)(2) of the proposed rule revision, NFPA 805 could serve as a risk-informed, performance-based, voluntary alternative to the fire protection requirements of 10 CFR 50.48(b) and (f). Therefore, the staff requested (in SECY-00-009) and received Commission approval for proceeding with a rulemaking to permit reactor licensees to adopt NFPA 805, as excepted, as a voluntary alternative fire protection licensing basis for the requirements of 10 CFR 50.48(b) and (f). However, licensees which choose not to change their fire protection licensing basis would continue to be subject to the requirements of 10 CFR 50.48(b) and (f) as before.

ALTERNATIVE CONSENSUS STANDARDS: This draft rule revision is consistent with the requirements of the National Technology Advancement and Transfer Act of 1995, as the rule revision would endorse an industry consensus standard, NFPA 805, with exceptions. The NRC is seeking public comment on the proposed rule revision language. The NRC is also seeking public comment regarding whether there are consensus standards other than NFPA 805 that could be considered as

voluntary alternatives to current fire protection regulations.

This draft rule language is preliminary and may be incomplete in one or more respects. This draft rule language has been released to inform stakeholders of the current status of the contemplated 10 CFR 50.48 rule change and to provide stakeholders with an opportunity to comment on a draft version. Comments received prior to publishing the proposed rule revision will be considered in the development of the proposed rule revision. As appropriate, the Statements of Consideration for the proposed rule will briefly discuss substantive changes made to the rule language as a result of comments received. Comments may be provided through the rulemaking Web site at <http://ruleforum.llnl.gov> or by mail as indicated under the **ADDRESSES** heading. The NRC may post updates periodically on the rulemaking web site that may be of interest to stakeholders.

Dated at Rockville, Maryland, this 12th day of December 2001.

For the Nuclear Regulatory Commission.

John N. Hannon,

Chief, Plant Systems Branch, Division of Systems Safety and Analysis, Office of Nuclear Reactor Regulation.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: NCUA proposes to amend its rule that permits a federal credit union to provide reasonable retirement benefits to its employees and officers. The amendments clarify the scope of the rule.

DATES: Comments must be received on or before February 19, 2002.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. You are encouraged to fax comments to (703) 518-6319 or e-mail comments to regcomments@ncua.gov instead of mailing or hand-delivering them. Whatever method you choose, *please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT:

Frank Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION: Section 701.19(a) states that a federal credit union (FCU) may provide reasonable retirement benefits for its employees and officers. 12 CFR 701.19(a). NCUA wishes to clarify that the scope of § 701.19(a) is not limited only to retirement benefits, but is more broadly applicable to other employee benefit plans.

As competition to attract and retain highly qualified employees has increased and the employee benefits marketplace has become more sophisticated, FCUs are increasingly providing more diverse and less traditional forms of employee benefits including, for example, deferred compensation plans and stock option plans. As a result, FCUs need flexibility to use safe, reasonable and efficient methods to fund their employee benefit obligations. In addition to providing this flexibility, the proposed rule updates the regulatory language to reflect current employee benefits terminology including renaming the rule "Benefits for Employees of Federal Credit Unions."

An FCU investing on its own behalf is subject to the investment provisions of the Federal Credit Union Act (Act) and NCUA regulations. 12 U.S.C. 1757(7), (8), (15); 12 CFR part 703. In legal opinion letters, the NCUA's Office of General Counsel has stated that these investment provisions do not apply when an FCU is acting under its authority to provide and fund retirement or other employee benefits. 12 U.S.C. 1761b(12); 12 CFR 701.19. NCUA's long-standing position is that an FCU may purchase an otherwise impermissible investment to fund an employee benefit obligation as long as there is a direct connection between the investment and the employee benefit obligation it serves to fund. In that context, NCUA has also stated that once the obligation ceases to exist, the FCU must divest itself of the impermissible investment.

For example, an FCU is generally not permitted to purchase equity investments when investing for its own account. An FCU that is obligated under an employee benefit plan to provide an employee with 100 shares of XYZ Corporation stock on a specific date, however, may purchase and hold 100 shares of that stock for that purpose. It may not, however, purchase 100 shares of ABC Corporation stock. In that instance, there would not be a sufficient

connection between the investment and the obligation to be funded.

NCUA is aware that it is not uncommon for for-profit corporations to provide employee benefits that contain investment options the employee may exercise after he or she has separated or retired from the employer. For example, an employer may grant an employee the option to purchase a fixed number of shares in a mutual fund for a fixed price on a specific date after the employee separates or retires from the employer.

These post-separation or post-retirement options would require a prudent FCU to buy and hold shares in that mutual fund to fund the potential obligation it faces after its employee has separated or retired. In legal opinion letters, the NCUA's Office of General Counsel has also taken the position that an FCU may hold an impermissible investment to fund an ongoing employee benefit obligation after the employee separates or retires provided the investment option period is reasonable. Upon the exercise or expiration of the option, the FCU must divest itself of the impermissible investment. The proposed regulation incorporates the positions taken by the Office of General Counsel in these legal opinion letters.

An FCU must comply with safety and soundness standards by ensuring that the kind and value of employee benefits it offers are reasonable given its size and financial condition. Furthermore, an FCU's authority to offer and fund an employee benefit plan does not guarantee the permissibility of the plan under other laws, such as the Employee Retirement Income Security Act (ERISA) or the Internal Revenue Code. 29 U.S.C. 1001; 26 U.S.C. 1.

Additionally, FCUs with assets over \$10 million are reminded that they are required to account for their employee benefit plans in accordance with generally accepted accounting principles (GAAP). FCUs with assets under \$10 million are not required to follow GAAP, but are encouraged to do so in this context. All FCUs are encouraged to seek the advice of an independent accountant if they have questions regarding the proper accounting for these benefit plans.

Finally, § 701.19(b) provides that an FCU acting as a fiduciary, as defined in ERISA, must obtain appropriate liability coverage as provided in 410(b) of ERISA. NCUA wishes to clarify that 410(b) of ERISA describes certain kinds of insurance coverage and permits certain parties to purchase that insurance, but does not require any party to purchase insurance. 29 U.S.C. 1110.