

August 26, 2009

MEMORANDUM TO: R. W. Borchardt
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS – SECY-09-0069 – PROPOSED RULE:
10 CFR PART 72 LICENSE AND CERTIFICATE OF
COMPLIANCE TERMS (RIN 3150-AI09)

The Commission has approved of the proposed amendments to Part 72 in the *Federal Register*, subject to the comments and changes indicated below, and commends the staff for planning to issue a draft Standard Review Plan for public comment shortly after publication of the proposed rule.

Comments and changes to the *Federal Register* notice in SECY-09-0069

1. The staff should specifically elicit comments on the issue of the application of certificate of compliance amendments to previously loaded casks, as well as whether or not the evaluations performed by the licensees should be required to be reviewed and approved by the NRC.

2. The staff should elicit comments on whether the requirement for an aging management program for certificates of compliance would fully address possible site-specific aging issues (e.g., different environmental conditions) for general licensees.

3. On page 11, lines 3 to 5 from the top, replace the sentence that starts with “Requests for license terms longer than 40 years ...” with the following new paragraph:

“The license term (i.e., initial license or renewed license) establishes specific intervals for the systematic evaluation of systems, structures, and components important to safety to ensure their safe operation. For licensing purposes, the Commission has determined that the license term for dry spent fuel cask storage is limited to 40 years or less depending on the technical justification submitted by the licensee. However, if a licensee requested that a specific license period be longer than 40 years, that license application would have to provide additional information on the long-term material degradation of dry spent fuel storage casks, as well as associated aging management activities, to justify safe operation during the extended period, and the NRC would need to evaluate this information. This discussion about license renewal terms longer than 40 years does not imply that the spent fuel cannot be safely stored beyond the maximum allowed 40 year license term. In fact, the regulations place no restrictions on the number of times the license can be renewed. The key element in approving an initial license application or renewal application is a finding of reasonable assurance that the public health and safety will be protected during the license term. This finding arises from the review of the technical basis.”

4. Section II.E. of the *Federal Register* notice should be revised by replacing the text on page 12 that starts with, "In fact, former NRC Commissioner..." with:

The NRC recognizes that a cask design certified years ago may not meet the latest standards, yet it may be fully acceptable to continue to store fuel already in casks of that design. Furthermore, there would be significant safety considerations if spent fuel were to be repackaged. When considering repackaging, safety considerations associated with the repackaging operation should be weighed against any safety concerns with leaving the spent fuel in its existing storage container. Renewal for an existing loaded cask should consider the initial licensing basis. For an unloaded cask or an older cask design whose CoC has expired, it would be prudent to review it against the latest standards.

This passage should be moved to the end of section II.E. as a stand-alone paragraph.

Also in this section, in the middle paragraph on page 12, the second sentence should be revised to start, "Thus, this interpretation of "reapproval" is more in the nature of a "renewal," in that ..."

Comment on the Draft Environmental Assessment and Finding of No Significant Impact

1. On page 4, 1st full paragraph, last sentence, the staff should verify that 100 years of wet storage was endorsed in 1990.

cc: Chairman Jaczko
Commissioner Klein
Commissioner Svinicki
OGC
CFO
OCA
OPA
Office Directors, Regions, ACRS, ASLBP (via E-Mail)
PDR