

August 15, 2001

MEMORANDUM FOR: John F. Cordes, Director  
Office of Commission Appellate Adjudication

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

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 1:25 P.M., WEDNESDAY, AUGUST 15, 2001, COMMISSIONERS' CONFERENCE ROOM, ONE WHITE FLINT NORTH, ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)

I.SECY-01-0097 - Final Rule: Interim Storage for Greater than Class C Waste

The Commission approved a final rule amending 10 CFR Parts 30, 70, 72, and 150, subject to the changes to the Federal Register notice in the attachment. The amendments allow licensing for interim storage of power reactor-related greater than class C (GTCC) waste in a manner that is consistent with licensing the interim storage of spent fuel and would maintain Federal jurisdiction over the interim storage of reactor-related GTCC waste either on or off the reactor site. These amendments provide an option that simplifies and clarifies the licensing process and reduces the potential burden on licensees, the U.S. Nuclear Regulatory Commission (NRC), and Agreement States, with no adverse effect on public health and safety, or the environment.

Following incorporation of the changes described in the attachment and review by the Office of Management and Budget (OMB), the Federal Register notice should be reviewed by the Rules Review and Directives Branch in the Office of Administration and forwarded to the Office of the Secretary for signature and publication.

(EDO)(SECY Suspense: 11/15/01)

Attachment: Changes to the Federal Register notice in SECY-01-0097

cc: Chairman Meserve  
Commissioner Dicus  
Commissioner McGaffigan  
Commissioner Merrifield  
OGC  
CFO  
OCA  
OIG  
OPA  
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)  
PDR

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**Attachment**

**Changes to the *Federal Register* notice in SECY-01-0097**

The staff should make the following changes to the *Federal Register* notice:

1. Page 1, summary, revise line 3 to read '...consistent with current licensing for the...'
2. Page 3, paragraph 3, revise lines 2 and 3 to read '...sections of 10 CFR Part 72, thereby enabling licensees to manage in order to treat GTCC waste generated or used by commercial nuclear power plants in a manner similar...'
3. Page 3, footnote 2, revise lines 1 through 3 to read '~~Although~~ Granting the petition in this rulemaking is no longer needed for Trojan since its reactor vessel with internals (package) was shipped to the Hanford LLW site after the State of Washington defined this package as Class C waste. ~~the~~ The ...'
4. Page 5, second full paragraph, revise line 3 to read '...GTCC waste. One ~~questioned~~ doubted that inefficiencies...'
5. Page 6, paragraph 2, revise line 1 to read '...regulations are ~~not clear~~ silent on...'
6. Page 6, paragraph 3, revise line 2 to read '...will generate ~~relatively~~ small volumes of GTCC...'
7. Page 7, third full paragraph, revise line 3 to read '...multiple ~~licensing~~ licensable activities...'
8. Page 7, fourth full paragraph, revise line 2 to read '...10CFR Part 50 license, ~~one of the actions that must be completed is for the licensee to~~ must transfer...'
9. Page 8, first full paragraph, revise line 8 to read '...their 10 CFR Part 50 license (and thus the 10CFR ...'

10. Page 11, paragraph 1, revise line 4 to read ‘...The action ~~deals~~ addresses only with GTCC waste...’

11. Page 11, paragraph 1, revise line 18 to read ‘...storage of GTCC waste within these facilities under exclusive NRC’s jurisdiction. ...’

12. Page 11, paragraph 1, revise line 21 to read ‘... disposal of GTCC waste, is an inefficient approach, that could lead to inconsistent regulation. ...’

13. Page 11, paragraph 1, revise last line through page 12, line 2 to read ‘... Moreover, it is inefficient for NRC and an Agreement State to both spend scarce resources to license and inspect an ISFSI that stores both spent fuel and for a State to spend scarce resources to license and inspect the same ISFSI for co-located GTCC waste. GTCC waste ...’

14. Page 12, insert after ‘GTCC waste.’ in line 2: The NRC requested Agreement State input on ways in which Agreement States, if permitted to take jurisdiction over reactor-related GTCC waste, would ensure consistency with a national regulatory scheme. Only two States responded to this request. Though both States asserted that their programs would be compatible with federal regulations, neither said that their programs would be identical. Indeed, one state argued that each state program should be evaluated on its own. The States have rightly pointed out that States have already developed regulatory programs for Class A, B, C, and non-reactor GTCC waste that adequately protect health and safety. The issue, however, is whether a regulatory scheme that would call for back and forth federal jurisdiction over reactor-related GTCC waste, and multiple States’ jurisdiction over the same waste in between, promotes a reasonably predictable and stable regulatory environment. In our view, the better reading of the applicable statutes is that reactor-related GTCC waste deserves special treatment, especially because of federal responsibility for disposal of such waste, and it should be set apart from other waste and be subject to exclusive federal jurisdiction over the storage of reactor-related GTCC waste.

15. Page 13, second full paragraph, revise lines 4 and 5 to read ‘...simpler for both licensees and the NRC, ~~relative to approval and management~~

16. Page 14, first full paragraph, revise line 8 to read ‘...in ~~utilizing~~ applying 10 CFR Part 72 storage criteria...’

17. Page 14, third full paragraph, revise lines 3 and 4 to read ‘...also determined (not based on public comments) that additional sections within 10 CFR Part 72 ~~(not based on public comments)~~ also needed to be removed...’

18. Page 15, line 3, revise line 3 to read ‘...comments resulted in clarification of the preamble and §72.120 ~~being clarified regarding with regard to the~~ commingling ...’

19. Page 15, first full paragraph, revise entire paragraph to read

‘In addition, during the review of comments, NRC staff identified the need for several ~~necessary~~ clarifications in the final rule that are not specifically based on public comments. The clarifying changes that NRC made are: ~~a clarification to~~ §72.2(a) regarding power reactor-related GTCC waste is being modified to clarify that GTCC waste does not have to be stored in a complex that is designed and constructed specifically for storage of spent fuel; ~~the change in the proposed rule to~~ the definition in §72.3 of “spent fuel cask or cask” in the proposed rule is being withdrawn to eliminate an unnecessary storage requirement; §72.6 is being revised to clearly indicate clearly that reactor-related GTCC waste, if stored under 10 CFR Part 72, can only be stored under the provisions of a 10 CFR Part 72 specific license; §72.24(r) in the proposed rule, however, the final rule is being removed removing this addition to be more for consistency consistent with 10CFR Part 50’s handling of radioactive material; §72.40(b) in the proposed rule is being revised from the proposed rule to the final rule because to correct an error (the proposed rule inadvertently removed existing text instead of adding a new introductory sentence) and to remove reference to the Atomic Safety and Licensing Appeal Board, which has been removed since this board no longer exists; and modification of §§72.72, 72.76, and 72.78 are being modified to clarify the reporting requirements for special nuclear material as specified in 10CFR 74.13(a)(1).

20. Page 16, paragraph 2, revise lines 4 and 5 to read, ‘... These wastes are ~~too~~ integrally related to the operation of reactors, since because these wastes consist...’

21. Page 17, paragraph 1, revise line 1 to read ‘... In short, ~~under longstanding agency rules,~~ we conclude that a State ...’

22. Page 17, paragraph 1, revise line 3 to read ‘...view of a commenting State, ~~therefore,~~ issuance of a final rule...’

23. Page 17, paragraph 1, revise line 6 to read ‘... ~~Certainly, n~~ Nothing in the AEA...’

24. Page 17, paragraph 3, revise line 2 to read ‘... jurisdiction over ordinary non-GTCC low-level radioactive waste...’

25. Page 18, paragraph 4, revise line 6 to read ‘... ISFSIs” since because the State...’

26. Page 19, paragraph 3, revise lines 4 and 5 to read ‘... one commenter noted that ~~they have~~ it had been actively involved with NEI on this issue and fully endorsed NEI’s comments...’

27. Page 19, paragraph 3, revise line 7 to read ‘... The commenter notes d ...’

28. Page 19, paragraph 4, revise lines 2 and 3 to read ‘...encourages d the NRC to continue the development of a rule which is prudent, practical, reasonable and consistent to ~~assure~~ ensure that the interim ...’

29. Page 20, revise line 1 to read ‘... The commenter notes d...’
30. Page 20, first full paragraph, revise lines 1 and 2 to read ‘Response: ~~The NRC is not making any changes to the final rule that the NRC believes would negate the industry’s general support for this rulemaking. Since these comments support the rulemaking, no response is necessary.~~’
31. Page 20, fourth full paragraph, revise line 4 to read ‘... believe this change would simplify disposal.’
32. Page 21, revise lines 7 through 11 to read ‘...contained within the fuel assembly, and BWR channels that are an integral part of the fuel assembly ~~which do not require special handling~~. These same non-fuel components will ultimately be disposed of in the Federal repository in accordance with the Standard Contract. The commenters believe that the proposed rule definition of reactor-related GTCC waste is unclear in that ~~the commenters believe that these it might be seen to include those non-fuel components. are included within NRC’s category of reactor-related GTCC ...~~’
33. Page 22, first full paragraph, revise line 2 to read ‘... to classify this such material as GTCC...’
34. Page 22, first full paragraph, revise lines 4 and 5 to read ‘...However, it is not deemed to be GTCC waste when it is placed within the a spent fuel cask ~~because it is with the associated~~ with fuel assemblies. ...’
35. Page 22, third full paragraph, revise lines 3 through 6 to read ‘...containers and ~~expects~~ reflects an expectation that the applicant ~~to~~ will ensure that the co-location of GTCC waste does not adversely affect the safe storage of spent fuel and the operation of the ISFSI. The proposed rule solicited input on a number of issues, such as on what can be stored, commingling, and performance criteria, and the scope of material subject to the rule. ...’
36. Page 23, revise line 2 to read ‘...yet to be made. In the commenter’s view, tThe NRC should...’
37. Page 23, first full paragraph, revise line 1 to read ‘...Commission does not ~~believe~~ agree that this rulemaking ~~to be~~ is “premature...”’
38. Page 23, first full paragraph, revise lines 2 through 4 to read ‘... Act.” In addition, this rulemaking responds to a petition for rulemaking submitted by Portland General Electric (PRM-72-2). The proposed rule provided a complete regulatory proposal and a set of questions for the purpose of soliciting additional information that would help form and the Commission intended this to be the basis for the final rule. The questions asked in the proposed rule were added to fine tune the proposal.
39. Page 23, first full paragraph, revise line 6 to read ‘...~~do the fine tuning for the proposal.~~ finalize the Statement of Considerations and rule.’
40. Page 23, second full paragraph, revise line 1 to read ‘...has developed the a final rule...’
41. Page 24, paragraph 3, revise line 5 through page 25, line 1 to read ‘...radioactive material (including GTCC waste), ~~the NRC believes~~ there is no need...’
42. Page 25, second full paragraph, revise line 3 to read ‘... ~~Reference is made to Subpart K, however, f~~ For clarity...’
43. Page 26, third full paragraph, revise line 2 to read ‘... Parts 30/70 licenses are is needed. ...’
44. Page 26, third full paragraph, revise line 5 to read ‘... Therefore, to promote effectiveness and efficiency, the...’
45. Page 29, revise line 8 to read ‘...rulemaking as ~~they~~ it believes that it is not advisable...’
46. Page 30, revise lines 2 and 3 to read ‘... from DOE that ~~they~~ it will accept commingled canisters, the utilities would take significant risks to commingle because ~~t~~The casks...’
47. Page 30, first full paragraph, revise line 2 to read ‘... spent fuel and storage of such materials within an ISFSI ...’
48. Page 30, first full paragraph, revise line 7 to read ‘...these ~~type types~~ [or use singular, this type] of components...’
49. Page 30, first full paragraph, revise line 10 to read ‘...not as GTCC waste if they are stored with the associated spent fuel. ...’
50. Page 31, revise lines 1 and 2 to read ‘...components should be with ~~its~~ the associated spent fuel ~~assembly.~~’
51. Page 31, first full paragraph, revise lines 3 through 6 to read ‘... spent fuel. ~~In developing the rule, the NRC was cognizant of both potential DOE disposal criteria for GTCC waste to preclude unnecessarily allowing a storage option that is unacceptable for disposal and potential adverse interactions between spent fuel and various types of GTCC waste. The NRC...~~’
52. Page 31, second full paragraph, revise lines 2 through 5 to read ‘...This storage arrangement would be ~~done~~ undertaken at the licensee’s own risk that segregation of this material may be required prior to transporting the spent fuel for final disposal. The NRC would expect that the a licensee’s decision process to commingle solid metal components with spent fuel would consider ...’

53. Page 32, revise line 1 to read '~~The NRC expects that~~However, when DOE does provide disposal criteria, the NRC ~~will expect to revise our the...~~'
54. Page 32, first full paragraph, revise line 1 to read '~~However, I~~the NRC agrees...'
55. Page 32, first full paragraph, revise lines 5 through 7 to read '~~...such a result~~, these decomposition products might adversely ~~effect~~ affect the integrity of the spent fuel cladding. The NRC concludes, however, that resins and plastics, that may be classified as GTCC waste, can be...'
56. Page 32, second full paragraph, revise lines 2 through 4 to read '~~... from DOE on their~~ its current intentions with regards to disposal of GTCC waste. In response to the proposed rule, DOE did not provide ~~the NRC the~~ information for that causes the NRC...'
57. Page 34, paragraph 1, revise line 4 to read '~~...spent fuel canisters can evaporate~~ cause evaporation and the build up of...'
58. Page 34, paragraph 3, add a comma in line 2 to read '~~...decomposition, including flammable gases,~~ should only...'
59. Page 35, second full paragraph, revise line 1 to read 'Five industry commenters ~~were mixed~~ provided differing views: ~~in that~~ some believe ...'
60. Page 36, paragraph 1, revise line 1 to read 'Five industry commenters ~~were mixed in that~~ provided differing views: some...'
61. Page 36, revise last line to read '~~...the AEA. South Carolina also noted that,~~ while although the Low Level Radioactive Waste Policy...'
62. Page 38, delete first part of first full paragraph and combine it with previous paragraph to read '~~... or by rule. Illinois notes that, in the NRC's draft rulemaking plan, the NRC suggested that Agreement States voluntarily relinquish their licensing authority for GTCC waste but that three of the four Agreement State comments the NRC received opposed this concept. Illinois charges that the NRC now proposes a rule that would nullify Agreement State authority based on efficiency and consistency of licensing but that this ignores the provisions of the AEA for termination of an Agreement. Illinois disputes ...~~'
63. Page 39, first full paragraph, revise line 8 to read '~~... the Commission now believes~~ concludes that the Commission...'
64. Page 39, second full paragraph, change commas to dashes in lines 6 and 7 to read '~~... non-reactor-related GTCC waste,--~~ programs that have been found compatible with the NRC's own program for regulating such wastes, ~~--~~ section 274 Agreements...'
65. Page 39, second full paragraph, revise lines 9 and 10 to read '~~...wastes are too~~ integrally related to the operation of reactors, ~~since~~ because these wastes...'
66. Page 40, revise line 2 to read '~~...matters so~~ integral to the operation...'
67. Page 40, first full paragraph, revise line 1 to read '~~In short, under longstanding agency rules,~~ a State entering...'
68. Page 40, first full paragraph, add a footnote to line 5, at the end of the paragraph. Footnote text is: The Commission's action today serves to preserve NRC jurisdiction over reactor-related GTCC waste both at the facility site, which is where most such waste now resides, and at other locations. Although Section 150.15(a)(1)(i) refers only to waste "at the facility site," that language is not confining because of the "is-not-limited-to" preamble. Our conclusion that such waste should be subject to exclusive NRC jurisdiction is reinforced by considering Sections 274(c)(1) and (4) of the AEA and by Sections 3(b)(1)(d) and 3(b)(2) of the Low Level Radioactive Waste Policy Amendments Act, discussed subsequently.
69. Page 40, second full paragraph, revise line 1 to read '~~...consistent with statutory law~~ the AEA.'
70. Page 41, second full paragraph, revise lines 6 and 7 and continuing on page 42 to read '~~... Since~~ Because the NRC indisputably has jurisdiction over GTCC waste while a reactor licensed under 10 CFR Part 50 is being operated and similarly has jurisdiction over its disposal, it ~~makes obvious sense~~ is reasonable for the NRC to retain regulatory authority over ~~the higher-activity, more integrally related to reactor operations,~~ GTCC waste...'
71. Page 42, revise lines 5 through 10 to read '~~... Ordinary low-level~~ Low-level radioactive waste not exceeding the Class C limits is different, because no statute assigns the federal government ultimate responsibility for disposal, or the NRC explicit responsibility for regulating disposal, of such waste, ~~nor is such waste so integrally related to reactor operations.~~ Thus, issuance of this final rule does not affect the States' long-standing practice of exercising regulatory jurisdiction over ordinary non-GTCC low-level radioactive waste...'
72. Page 42, first full paragraph, revise lines 4 and 5 to read '~~... It is difficult to argue the sense of this, and impossible to argue its necessity. It is difficult to see the practical sense in this, let alone a practical necessity.~~'
73. Page 43, revise lines 1 through 3 to read '~~... Nonetheless, it would be a non sequitur to argue that, because the NRC and an Agreement State can work well together, they both should have regulatory power at, say,~~ Nonetheless, that the

NRC and an Agreement State can work well together does not prove that they both should have regulatory authority at an NRC-regulated ISFSI that contains both a cask with spent fuel, regulated by the NRC, co-located with and reactor-related GTCC waste in an NRC-regulated spent fuel cask.

74. Page 43, third full paragraph, revise line 2 to read '...storage of ~~all~~ reactor-related GTCC waste so as to ensure...'

75. Page 44, revise line 7 to read '... work to ~~assure~~ ensure such compatibility. ...'

76. '~~... Nonetheless, compatibility, like safety, is ultimately not the NRC's doing. Only the Agreement States can establish and maintain compatible programs. The NRC can only measure assess the degree of compatibility and protection of health and safety, through the Integrated Materials Performance Evaluation Program, and take the steps necessary to enforce that seek to ensure compatibility and protection of health and safety where it is missing. In the absence of a widespread and clear commitment on the part of the States to ensure compatible regulation of the storage of reactor-related GTCC waste, the NRC does not have a strong practical justification for exercising its discretion in such a way as to permit States to exercise jurisdiction over storage of all such waste. Under circumstances in which the NRC must exercise jurisdiction of GTCC waste during reactor operations and at the time of disposal, the NRC does not have a strong practical justification for exercising its discretion in such a way as to permit allowing States to exercise jurisdiction over storage of all such waste in the interim period before disposal. At this time, it is unclear whether a consistent national regulatory scheme could be established and maintained if States exercised jurisdiction over storage of all such wastes. ...~~'

77. Page 47, paragraph 1, revise line 11 to read '... ~~rule is mute on~~ does not address the disposition...'

78. Page 48, first full paragraph, revise punctuation in line 2 to read '... requirements~~7~~, liability for harm resulting from GTCC waste~~7~~ and ...'

79. Page 48, first full paragraph, revise line 4 to add hyphen: '... the Price-Anderson...'

Also add the hyphen to the name as needed on page 50.

80. Page 48, first full paragraph, add comma to line 9 to read '... to be an "owner~~2~~" thus shedding...'

81. Page 48, second full paragraph, revise line 1 to read '... Response: The NRC finds that most of these comments are not germane to this rulemaking, which provides general standards for the storage of reactor-related GTCC wastes. Issues associated with an away-from-reactor ISFSI can appropriately be addressed in a specific licensing action concerning such a facility. In any event, the NRC...'

82. Page 49, delete last two sentences in lines 9 through 13: ~~Separately, the NRC notes that an assessment of the environmental impacts associated with the transportation of radioactive material to and from an away-from-reactor ISFSI would be addressed to the extent appropriate in a licensing action on an away-from-reactor ISFSI. Therefore, the NRC believes that the storage of GTCC waste need not be limited to a reactor site.~~

83. Page 49, first full paragraph, revise lines 5 through 7 to read '... conditions ~~for~~ requiring the maintenance of appropriate amounts of liability insurance up to \$200 million. (\$200 million is the maximum insurance currently commercially available to cover offsite public liability and is the amount required for large power reactors.)...'

84. Page 50, revise line 11 to read '... 42 U.S.C. § 2210n(1)(B).

85. Page 50, first full paragraph, revise lines 2 and 3 to read '... by which allocation of liability might be made among customers ~~would retain title to the GTCC waste stored and allocation of liability would be made among them.~~ ...'

86. Page 51, revise line 2 to read '...the environment in the event of an emergency. '

87. Page 51, first full paragraph, revise line 4 through end of para. to read '... regulations in Title 49 CFR. The term cask is commonly used throughout the nuclear power industry to refer to one or more types of transport packaging, but it is also generally accepted that the correct term is "packaging" rather than "cask." Spent fuel dry storage has extended the application of the term cask, yet it is not formally defined in either Title 10 CFR or Title 49 CFR. The commenter noted that the proposed rule included a definition for the terms "spent fuel storage cask or cask," but believes that ~~although the intent is good,~~ the definition may raise more questions than it resolves ~~in that the definition because it~~ focuses on a container and not a package. The term container is not defined in either Title 10 CFR or Title 49 CFR, resulting in a new definition which is based on an undefined term. Does cask refer to (1) a package, (2) packaging, or (3) something else? This is particularly important when referring to "casks that have been certified...under Part 71," which would suggest a specific package or packaging. The commenter believes that Title 10 CFR should avoid any term related to transportation which would create an inconsistency with Title 49 CFR. The commenter proposes several alternative solutions based on the intended meaning of cask to maintain consistency with Title 49 CFR and believes the term should be reviewed by the Department of Transportation and incorporated into 49 CFR 171.8 during the next revision.'

88. Page 52, paragraph 1, revise line 5 to read '...The NRC ~~believes~~ concludes, however, that the definition ~~for~~ of the term...'

89. Page 52, paragraph 1, add commas in lines 6 and 8 to read '... characteristics~~2~~ such as criticality, shielding, thermal loading, and structural integrity and not all the components of a typical transportation packaging~~2~~ such as an impact

limiter. ...'

90. Page 52, paragraph 1, revise line 10 to read '... packages, ~~an~~ attempting to relate...'

91. Page 52, paragraph 1, revise lines 13 through 15 to read '... within a cask, ~~and a~~ Attempting to change these terms within NRC regulations would require corresponding changes in DOT regulations, which is beyond the scope of this rulemaking.'

92. Page 52, paragraph 3, add a comma to line 1: '...Accordingly, the final...'

93. Page 53, paragraph 2, revise line 1 to read '... new paragraph, it ~~was~~ previously...'

94. Page 63, revise line 1 and move it to precede heading on page 62. '...5. The heading of Part 72 is revised to read as presented ~~above~~ below:

95. Page 48, second full paragraph, revise line 2 to read '...that ~~the~~ GTCC waste should... '