

**Decision to Pursue Direct Final Rulemaking for NAC-UMS Maine Yankee Amendment**

**Pro's:**

1. Supported by staff position in SECY-00-0018, "Simplification of the Rulemaking Process for 10 CFR Part 72 Certificate of Compliance Rulemakings."

Basis: Staff position was that it would not use the direct final rulemaking approach for first time certificate approvals, however the staff would use a direct final rule approach for amendments to the existing cask systems **unless** there is reason to believe that the particular amendment will be controversial. The bases for this is that the staff did not anticipate routinely receiving significant adverse comments on amendments. The SECY stated that the policy would be re-evaluated after obtaining more experience with the process. Pursuit of a direct final rulemaking in this case would provide a unique data point for evaluation of the policy.

2. Consistent with July 20, 2000, schedule issued to NAC which states that the staff plans to pursue direct final rulemaking for NAC's scheduled amendments, which may reduce the 11 months it takes to complete a proposed rulemaking.

Basis: Stated intent in the schedule is to pursue direct final for amendments consistent with staff position in SECY-00-0018.

3. Maine Yankee amendment will not be "controversial" from a staff safety perspective, as it will necessarily have to be supported for approval via the staff's SER.

Basis: "Controversial", as a threshold, is difficult to measure in advance from a public interest standpoint. When examined from a safety perspective, this and any other amendment are not controversial in staff opinion.

4. A decision to pursue direct final rulemaking may temper accusations of an unnecessary burden on Maine Yankee due to unnecessary costly delays for both the review and the rulemaking.

Basis: If significant adverse comments are not received, approval of the amendment will meet Maine Yankee's loading schedule. Completion of the amendment in time to support Maine Yankee's schedule would be precluded by not choosing to pursue direct final.

5. The staff has successfully pursued the direct final approach for more significant and "controversial" rulemakings.

Basis: For example, the amendment to 50.54(a) with respect to Part 50 emergency plans is clearly more significant from a public interest and controversial perspective.

6. An unsuccessful direct final would still result in the amendment being effective 45 days earlier than a normal proposed rulemaking.

Basis: The public has 30 days, vice 75 days, to comment.

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### Con's:

1. Not supported by staff position in SECY-00-0018, "Simplification of the Rulemaking Process for 10 CFR Part 72 Certificate of Compliance Rulemakings."

Basis: Staff position was that it would not use the direct final rulemaking approach for first time certificate approvals, however the staff would use a direct final rule approach for amendments (thereby addressing "routine") to the existing cask systems **unless** there is reason to believe that the particular amendment will be controversial. This amendment is likely to draw substantial comment based on general CoC comment history and the specific history for the initial NAC-UMS rulemaking (adverse comments were received from Governor's of Maine and Connecticut, and a member of the public).

2. A decision to pursue the direct final approach may adversely impact public confidence and would be inconsistent with the publicly available SFPO "user need" memo dated March 30, 2000, which requested IMNS support and recommended use of the **proposed** rulemaking process on this amendment.

Basis: Staff planned normal proposed rulemaking prior to knowing that technical issues would render the time frames for completion of this process detrimental to Maine Yankee. Initial decision was based both on technical aspects (high burnup) and known public comments on the original NAC-UMS.

3. Pursuing direct final for this amendment would set a precedent that would make it difficult not choosing to pursue direct final for any other amendment during the trial period under the SECY.

Basis: Clearly a complex Part 72 amendment, with high burnup and preferential loading of particular note. Strong indication of likely political controversy from State governments.

4. An unsuccessful direct final rulemaking, the likely outcome based on staff judgement of the potential for significant adverse comments, would not result in the amendment becoming effective in time to meet Maine Yankee's April 2001 schedule. It may also erode public confidence as it is effectively results in a smaller public comment period by 45 days.

### Recommendation:

With respect to the strategic goals, the staff considers a decision to pursue direct final:

1. Safety - neutral
2. Effective and efficient - neutral (utilizes choice of existing options)
3. Reduce unnecessary burden - positive
4. Increase public confidence - negative

The **SFPO staff recommends pursuing the direct final approach**, primarily based on the neutral safety impact from the decision. Additionally, the Commission policy stated in SECY-00-0018 indicated that the staff would pursue the direct final approach for amendments to CoCs unless the amendment is controversial. Although we expect comments on this (and almost all) rulemakings, there is no technical issue in the amendment that we consider truly controversial.

## **EXEMPTION TO 72.212 AND 72.214 PROCESS**

<b><u>ACTION</u></b>	<b><u>EXEMPTION TASK</u></b>	<b><u>DURATION</u></b>
Maine Yankee	Request Exemption from 72.212 and 72.214	Day 1
SFPO	Prepare Safety Evaluation, Draft EA, Draft Exemption Letter (presumes that SER and CoC for cask are complete)	Day 15
SFPO	Obtain Concurrences on SE, Draft EA, Draft Exemption Letter, and Consult with State and Other Government Agencies	Day 28
SFPO	Resolve any Comments Finalize EA	Day 45
SFPO	Complete Commission Paper (Similar to ANO initial BPRA request) - Concurrent with SE and EA evaluation	Day 45
SFPO	Commission Paper Signed by EDO	Day 60
SFPO	Obtain concurrences for EA/FRN, Exemption letter (SFPO/OGC), Issue FRN	Day 67
SFPO	EA published in FRN	Day 73
SFPO	Staff Implementation of Commission Direction (SRM) - Issue letter granting exemption to Maine Yankee	Day 95