RULEMAKING ISSUE
INFORMATION

December 18, 2001 SECY-01-0226

FOR: The Commissioners

FROM: William D. Travers
Executive Director for Operations

SUBJECT: FURTHER STREAMLINING OF THE RULEMAKING PROCESS FOR 10 CFR PART 72 CERTIFICATE OF COMPLIANCE RULEMAKINGS

PURPOSE:

To inform the Commission of the additional steps the staff has taken to expedite the rulemaking process for both new and amended Certificates of Compliance (CoCs) rulemakings.

BACKGROUND:

In SECY-98-188, the staff proposed a simplification of the rulemaking process for CoC rulemaking in order to expedite the approval process. These steps included the elimination of the rulemaking plan, use of standard formats, issuance of CoC rules under the Executive Director for Operations' (EDO) authority, and the intent to use a direct final rulemaking process for CoC rules if no substantive comments were received on the two subsequent CoC rulemakings. Based on the comments received on the Holtec Hi-Star design (64 FR 1542; January 11, 1999), the staff determined that the direct final rule approach could not be used at that time for initial certifications, but that the approach was appropriate for amendments to existing CoCs, except in unusual cases, where the U. S. Nuclear Regulatory Commission (NRC) had reason to believe that the amendment would be controversial (64 FR 48259, 48261; September 3, 1999). The staff also stated that NRC would reassess its ability to use the direct final rule approach for initial CoCs after gaining more experience with new listings.

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In SECY-00-0018, the staff informed the Commission of steps taken to expedite the rulemaking process for both new and amended CoCs, including the use of direct final rulemaking for CoC amendments. The staff developed the standard language for adding a new cask system to the listing in 10 CFR 72.214 which allowed for the reduction in time for office concurrence from three weeks to one week. The staff also informed the Commission of the intent to develop standard language for amendments. The staff emphasized the improved coordination between staff from the Spent Fuel Project Office (SFPO) and from the Division of Industrial and Medical Nuclear Safety (IMNS) and the formation of working groups to more efficiently process comments received on the proposed rules. The staff also noted that implementation of the amendments to 10 CFR 72.48 allowing CoC holders to make design changes without the prior approval of the NRC, effective on April 5, 2001, could reduce the number of amendments.

DISCUSSION:

Since issuance of SECY-00-0018, the staff has continued to evaluate the CoC rulemaking process in an effort to shorten the process and make it more efficient and effective. The changes discussed below will improve the efficiency and effectiveness of the CoC rulemaking process while maintaining the quality of the CoC rule packages. The changes also reduce the burden on both IMNS and SFPO Division management as well as the Office of Nuclear Material Safety and Safeguards (NMSS) management and Technical Assistants. The changes are also in alignment with the recommendations of the NMSS empowerment task force, in that the required levels of management concurrence have been reduced. The technical review continues to be completed by SFPO before the implementation of the rulemaking; therefore, the changes have no impact on safety.

To streamline the internal rulemaking process for amended CoCs, the staff has completed the development of standard language that is used for these CoC rulemakings. With this process improvement, the Offices of Nuclear Reactor Regulation, the Chief Financial Officer, Enforcement, and the Chief Information Officer now receive information copies of amendment rulemakings and do not concur in the rulemaking. This saves resources that would have been expended in tracking and reviewing the amendment rulemaking package in each office and improves the efficiency of the process. The Office of the General Counsel and the Office of Administration continue to conduct a review of the amendment rulemaking packages, and both offices have agreed to complete the review in 1 week instead of the normal 20 days specified in Management Directive 6.3. These changes have already been implemented. In addition to the standard language, the staff has developed generic schedules for new and amendment CoC rulemakings. The time savings discussed above are reflected in these schedules, which have been placed on the NMSS/IMNS webpage.

The staff has recently identified and implemented a modified approval process that eliminates approximately 3 additional weeks from the current schedule for both new and amended CoC rulemakings. Under the modified process, the Chief of the Rulemaking and Guidance Branch (RGB) has been delegated authority to issue the rulemaking package for office concurrence and has been delegated the authority to concur for NMSS and forward the CoC rulemaking to the EDO. RGB will inform the IMNS Division Director and the NMSS Director of any package that is considered to be controversial before forwarding it to the EDO. Additionally, any final CoC rulemaking that addresses public comments would be processed using the normal concurrence process for non-CoC rulemakings.

Under the modified process, SFPO management continues its responsibility for assuring the technical adequacy of the cask design by approving the CoC and the safety evaluation report (SER). RGB does not conduct the rulemaking until the SFPO technical review is completed and approved by SFPO management. NMSS office management and IMNS and SFPO division management receive information copies of the rulemaking at office concurrence. The internal rulemaking process does not alter the technical content of the CoC and SER package; the rulemaking is an action to codify the technical reviews and add to the list of approved spent fuel storage casks. Therefore, the modified process continues to provide adequate management controls over the technical content and achieves the agency's goal to be more effective and efficient. Public participation will not be changed, therefore, public confidence will not be impacted by the modified process. These changes will allow for staff and management time to be directed toward other activities that achieve agency goals.

By implementing the recent process changes discussed above, the resulting time-savings is about 33 percent (3 weeks) of the 9 weeks currently scheduled for development of a CoC rulemaking (direct final and proposed) package. Within the current CoC rulemaking (direct final and proposed) schedule of 23 weeks, 14 weeks is external time allotted for publication in the Federal Register, public comments, and obligations stemming from North America Free Trade Agreement considerations.

The staff has now used a direct final rule approach for 10 CoC amendments. To date, only the first direct final rule was withdrawn because of the receipt of significant adverse comments. The time for completing a rulemaking has been reduced from 11 months to 4 to 6 months, with further reductions expected with implementation of the modified process discussed above.

In addition, the staff is prepared, when appropriate, to use a direct final rule approach for new CoC rulemakings. The staff currently has a new CoC rulemaking in process -- if no significant adverse comments are received on the proposed rule, all future CoC rulemakings (both new and amended) will be conducted using the direct final rule approach. Use of a direct final rule for new CoC rulemakings was also a recommendation in the Office of the Inspector General audit report on "Review of NRC's Dry Cask Storage Program" (OIG-01-A-11). The last new CoC rulemaking received fewer comments than those in the past (14 comments versus more than 100). This indicates that these rulemakings are becoming more routine to the general public.

COORDINATION:

The Office of the General Counsel has no legal objection.

/RA/

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The Office of the General Counsel has no legal objection.

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