

Rulemaking Comments

From: REED, Joseph [jsr@nei.org] on behalf of KRAFT, Steven [spk@nei.org]
Sent: Friday, August 29, 2008 2:07 PM
Subject: Energy Institute Comments on Preliminary Draft Rule Language for 10 CFR Part 72, RIN 3150-AI09, 73 Federal Register 45173 (August 4, 2008)
Attachments: 08-29-08_NRC_Comments on Preliminary Draft Rule Language for 10 CFR Part 72.pdf;
08-29-08_NRC_Comments on Preliminary Draft Rule Language for 10 CFR Part 72
_Enclosure.pdf

August 29, 2008

DOCKETED
USNRC

September 2, 2008 (2:44pm)

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemakings and Adjudications Staff

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Subject: Nuclear Energy Institute Comments on Preliminary Draft Rule Language for 10 CFR Part 72, RIN 3150-AI09, 73 Federal Register 45173 (August 4, 2008)

Project Number: 689

The Nuclear Energy Institute (NEI), on behalf of the nuclear energy industry, is pleased to comment on the Nuclear Regulatory Commission's (NRC) preliminary draft rule language for 10 CFR Part 72 concerning licensing requirements for the independent storage of spent nuclear fuel. Industry commends NRC for providing an opportunity for public comment at this early stage of the rulemaking process. By providing opportunities for public input to draft regulatory tools and regulations, the NRC is helping assure a sound and predictable regulatory process.

This draft rule language proposes changes to 10 CFR Part 72 that increase the initial and renewal licensed duration of dry storage casks from 20 years to 40 years. This change appropriately recognizes that the lifetime of dry storage casks is well in excess of the current 20-year licensed term.

In addition to increasing the licensed life of dry storage casks, the draft language explicitly permits general licensees to operate a dry storage cask using a Certificate of Compliance (CoC) amendment that is more recent than the amendment or original CoC under which it was loaded. It is industry's view that the current 10 CFR Part 72 regulations implicitly permit this practice (NEI Letter dated March 31, 2008 on Draft RIS 2007-26). This viewpoint notwithstanding, industry welcomes the clarification to the regulations.

Industry's comments on the draft rule language are contained in the enclosure. To date, the need to renew a CoC listed in 10 CFR 72.214 has not arisen, and as a result, industry does not have experience with CoC renewals under Part 72. In anticipation of upcoming renewals, industry has provided some general comments in the enclosure that should be considered as the rule language is further developed.

Please do not hesitate to call me or Dr. Everett L. Redmond II (202-739-8122, elr@nei.org) if you have any questions.

Template = SECY-067

SECY-02

Sincerely,

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Received: from mail2.nrc.gov (148.184.176.43) by OWMS01.nrc.gov
(148.184.100.43) with Microsoft SMTP Server id 8.0.751.0; Fri, 29 Aug 2008
14:09:01 -0400

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Received: from tx02.mailwise.com ([216.75.199.17]) by mail2.nrc.gov with
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Received: from trk06.mailwise.com (trk06.mailwise.com [216.75.199.27]) by
tx02.mailwise.com (Postfix) with ESMTP id 8E20D26ED0A for

<Rulemaking.Comments@nrc.gov>; Fri, 29 Aug 2008 14:08:57 -0400 (EDT)

Received: by trk06.mailwise.com (MailWise LLC - Intelligent Email Protection,
from userid 1030) id 6447D24324F; Fri, 29 Aug 2008 14:08:56 -0400 (EDT)

Received: from NEIEXC01.nei.org (unknown [208.116.169.253]) by
trk06.mailwise.com (MailWise LLC - Intelligent Email Protection) with ESMTP
id 33F7D24329F; Fri, 29 Aug 2008 14:06:34 -0400 (EDT)

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Subject: Energy Institute Comments on Preliminary Draft Rule Language for 10 CFR Part 72,
RIN 3150-AI09, 73 Federal Register 45173 (August 4, 2008)

Date: Fri, 29 Aug 2008 14:06:31 -0400

Message-ID: <47623505B19EE34A96E8E7F9D2D80BE06574E1@neiexc01.nei.org>

X-MS-Has-Attach: yes

X-MS-TNEF-Correlator:

Thread-Topic: Energy Institute Comments on Preliminary Draft Rule Language for 10 CFR Part
72, RIN 3150-AI09, 73 Federal Register 45173 (August 4, 2008)

Thread-Index: AckKAfZq7JBa0obKQoOmaRkWwC2qeA==

From: "KRAFT, Steven" <spk@nei.org>

Sender: "REED, Joseph" <jsr@nei.org>

To: undisclosed-recipients;

X-MailWise-About: Scanned by MailWise Filter (<http://www.mailwise.com>)

X-MailWise-Version: 3.1.0

X-MailWise-Envelope-From: jsr@nei.org

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X-MailWise-Virus: NO Viruses were found in this e-mail

X-Mailwise-Rule: No Rules Hit

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Return-Path: jsr@nei.org



NUCLEAR ENERGY INSTITUTE

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August 29, 2008

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Subject: Nuclear Energy Institute Comments on Preliminary Draft Rule Language for 10 CFR Part 72, RIN 3150-AI09, 73 Federal Register 45173 (August 4, 2008)

Project Number: 689

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This draft rule language proposes changes to 10 CFR Part 72 that increase the initial and renewal licensed duration of dry storage casks from 20 years to 40 years. This change appropriately recognizes that the lifetime of dry storage casks is well in excess of the current 20-year licensed term.

In addition to increasing the licensed life of dry storage casks, the draft language explicitly permits general licensees to operate a dry storage cask using a Certificate of Compliance (CoC) amendment that is more recent than the amendment or original CoC under which it was loaded. It is industry's view that the current 10 CFR Part 72 regulations implicitly permit this practice (NEI Letter dated March 31, 2008 on Draft RIS 2007-26). This viewpoint notwithstanding, industry welcomes the clarification to the regulations.

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear material licensees, and other organizations and individuals involved in the nuclear energy industry

Rulemakings and Adjudications Staff

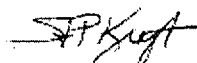
August 29, 2008

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Please do not hesitate to call me or Dr. Everett L. Redmond II (202-739-8122, elr@nei.org) if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "SP Kraft", written over a horizontal line.

Steven P. Kraft

c: Mr. Michael Weber, U.S. Nuclear Regulatory Commission
Ms. Catherine Haney, U.S. Nuclear Regulatory Commission
Mr. E. William Brach, U.S. Nuclear Regulatory Commission
Mr. Nader Mamish, U.S. Nuclear Regulatory Commission

**NUCLEAR ENERGY INSTITUTE (NEI)
COMMENTS ON DRAFT 10 CFR PART 72 RULE LANGUAGE
RIN 3150-AI09**

All 10 CFR Part 72 sections references below are from the preliminary draft language and do not necessarily correspond to the existing regulations unless otherwise noted.

Comment No. 1

10 CFR 72.3 item 1 under "time-limited aging analyses" – In the new definition for time-limited aging analyses the word "renewal" should be added after "license" in the second line of item (1). This limits the scope to the "license renewal" consistent with "storage cask renewal" in the last line of this paragraph.

Comment No. 2

10 CFR 72.3 item 5 under "time-limited aging analyses" – In item (5), the phrase "or within the scope of the spent fuel storage cask renewal" appears to be extraneous and not consistent with the earlier portions of item (5). Therefore, it is suggested that this phrase be removed.

Comment No. 3

10 CFR 72.3 item 5 under "time-limited aging analyses" – In the phrase "capability of structures, systems, and components to perform its intended" the word "its" should be changed to "their." This is an editorial correction.

Comment No. 4

10 CFR 72.3 item 6 under "time-limited aging analyses" – Industry recommends that the new 10 CFR Part 72 requirements regarding spent fuel storage cask time-limited aging analyses be developed using lessons-learned by the NRC Office of Nuclear Reactor Regulation (NRR) in the development of the 10 CFR Part 54 regulations for time-limited aging analyses. For example, 10 CFR Part 54 provides a definition for current licensing basis (CLB) and defines time-limited aging analyses as calculations and analyses that, among other criteria, are contained or incorporated by reference in the CLB. The fact that NRR chose to define CLB in Part 54 instead of simply using the design bases definition from 10 CFR Part 50 indicates that CLB is the more appropriate set of documents for time-limited aging analyses than design bases. Therefore, it is suggested that a definition of current licensing basis (CLB), consistent with the definition in Part 54, be added to Part 72, and that "design bases" in item 6 under "time-limited aging analyses" be changed to "current licensing basis."

Comment No. 5

10 CFR 72.24(r) – A program for the management of issues associated with aging should not necessarily be required for all initial applications. The applicant should make the determination as to the necessity of such a program. For example, it is recognized that an applicant applying for a license for 20 years (under the current regulations) would not provide such a program. Therefore, it is suggested that "as necessary" be added after "important to safety."

Comment No. 6

10 CFR 72.42 – References to an MRS have been removed from the draft wording for this section. This appears to be an editorial omission. Therefore, it is suggested that the current language in 72.42 in regards to an MRS be added to the draft language.

Comment No. 7

10 CFR 72.212 – Renumbering sections under §72.212(b) may create an administrative burden on licensees because they may have to resolve potential conflicts in site-specific evaluations that reference the regulations. Therefore, NRC is encouraged to maintain the current section numbering within §72.212 and add new material as new subsections.

Comment No. 8

10 CFR 72.212(a)(3) – It is suggested that “cask model” be changed to “cask design” in this paragraph. This is an editorial correction that makes this paragraph internally consistent and consistent with the wording in 10 CFR 72.240(a).

Comment No. 9

10 CFR 72.212(a)(3) – The last sentence of this paragraph states that “If a CoC expires, casks of that design must be removed from service.” Because dry cask storage systems are passive, “removed from service” is interpreted to mean unloaded. However, it must be recognized that unloading a single dry cask storage system can easily take a week or more to accomplish and since there are typically multiple casks at an independent spent fuel storage installation (ISFSI) it is not practical to expect a site to be able to remove all casks from service instantaneously. In addition, it will take considerably longer to remove from service casks at an ISFSI that is located at a decommissioned site compared to casks at an ISFSI that is located at an operating site. Therefore, it is suggested that the intent of “removed from service” be clarified, including a time frame for completion.

Comment No. 10

10 CFR 72.212(a)(3) – The proposed change in this paragraph significantly decreases the useable lifetime of a dry storage system. The current regulation permits each dry storage system loaded to operate for 20 years (the current licensed lifetime) while the proposed regulation prematurely shortens the useable lifetime of a dry storage system by linking the expiration date of each cask to the expiration date of the CoC. Specifically, a newly fabricated cask has 20 years of design life, under the current regulations, regardless of when in the term of the CoC the cask is placed into service. Therefore, it is suggested that the regulation be modified to permit a general licensee to use a dry storage system for a length of time equivalent to the licensed lifetime regardless of when the CoC expires.

Comment No. 11

10 CFR 72.212 (b)(2) – It is suggested that the proposed phrase “the amendment number to which the cask will fully conform, if applicable” be removed. Including this additional information in the registration letter for each cask is an unnecessary administrative burden without a commensurate increase in safety. The information described is maintained on-site and is available for review.

Comment No. 12

10 CFR 72.212(b)(3) – This paragraph is redundant. 10 CFR 72.212(b)(5)(i) provides the same requirement. Therefore, it is suggested that the proposed newly added 10 CFR 72.212(b)(3) be removed. If this paragraph is not removed, the following comment should be considered.

Use of the phrase “fully conforms” is overly restrictive. Licensees are aware of their general legal obligation to fully comply with the regulations, which already require them to fully comply with the Certificate of Compliance (CoC). It is common practice with general licensees that compliance with the CoC includes an implicit applicability provision that allows general licensees to not comply with CoC requirements that do not apply to their site or ISFSI (e.g. requirements for PWR fuel at a BWR

plant). Therefore, it is suggested that "fully conforms" should be changed to "conforms," or "conforms, as applicable."

Comment No. 13

10 CFR 72.212(b)(4) – This newly proposed section imposes an unnecessary administrative burden on the general licensee without a commensurate increase in safety. As worded, general licensees would have to resubmit a registration letter (originally submitted under 72.212(b)(2)) for each cask when a new Certificate of Compliance (CoC) is adopted for casks currently loaded. This will result in the general licensee having to generate and submit, and the NRC having to docket multiple letters (potentially one for every cask loaded) simultaneously each time a new amendment is adopted. Since the information described in this new section is maintained on-site and is available for review, it is suggested that this newly proposed section be removed.

Comment No. 14

10 CFR 72.212(b)(5)(i) – The current regulation, 10 CFR 72.212(b)(2)(i)(A), which this paragraph replaces, is more general than the proposed regulation and does not specifically refer to the cask. This generality encompasses the cask system, the facility, and administrative conditions of the CoC in a better manner than the proposed regulation. Therefore, it is suggested that the proposed regulation be reverted back to the current language. If this comment is not incorporated the following comments should be considered.

Use of the phrase "fully conforms" is overly restrictive. Licensees are aware of their general legal obligation to fully comply with the regulations, which already require them to fully comply with the Certificate of Compliance (CoC). It is common practice with general licensees that compliance with the CoC includes an implicit applicability provision that allows general licensees to not comply with CoC requirements that do not apply to their site or ISFSI (e.g. requirements for PWR fuel at a BWR plant).

In addition, it may not be possible for a cask already loaded to "fully conform" with all provisions of a CoC amendment that is newer than the one under which it was loaded. For example, if the newer amendment made changes to the Technical Specifications for loading (e.g. amendments to the VSC-24 changed weld testing requirements and boron concentration) it may not be possible to demonstrate that the already loaded cask complied with these new loading requirements when it was loaded. However, this should not affect the ability of this previously loaded cask to meet the requirements in the newer CoC associated with storage or unloading. If the proposed wording is promulgated, numerous CoC amendment requests and/or exemption requests may be required to approve only changes to CoC storage provisions that were already approved in earlier amendments. This is an unnecessary burden for both industry and the NRC.

Therefore, it is suggested that "fully conforms" be changed to "conforms," or "conforms, as applicable," and that the regulation be changed to recognize that an already loaded cask would have to meet the requirements of a newer CoC amendment for the time period after implementation of the newer amendment and not for the time period prior to implementation (e.g. loading).

Comment No. 15

10 CFR 72.212(b)(7) – As currently worded, the regulation could be interpreted to mean all modifications to the evaluations performed under this section require a full §72.48 evaluation against the eight criteria of §72.48(c). In practice, many changes will screen out of a full evaluation under §72.48(c) in accordance with the guidance in NEI 96-07, Appendix B and endorsed in Regulatory Guide 3.72. Therefore, it is suggested that the wording be clarified by replacing

"evaluate" and the phrase "using the requirements and criteria of §72.48(c)" with "review" and "in accordance with the provisions of §72.48," respectively.

In addition to the suggested changes above, the phrase "site parameters determination and analyses" is unnecessary and could be confusing. Therefore, it is suggested that this sentence be modified to read as follows (incorporating the changes suggested above): "Review any changes to the written evaluations required by paragraph (b)(5) of this section, in accordance with the provisions of §72.48."

If the industry's proposed wording change listed above is not incorporated, it is suggested that the newly added "and criteria of" (which does not appear in §72.212(b)(2)(ii) of the current regulation) be removed because this also implies that a full §72.48 evaluation must be performed whereas in practice, many changes will screen out of a full evaluation. In addition, adding this wording may create a conflict and confusion with the current accepted 72.48 guidance documentation, NEI 96-07, Appendix B which has been endorsed in Regulatory Guide 3.72.

Comment No. 16

10 CFR 72.212(b)(11) – The last sentence in 10 CFR 72.212(b)(7) of the current regulation reads "The licensee shall comply with the terms and conditions of the certificate." The proposed regulation modifies this sentence to read "The licensee shall fully comply with all of the terms, conditions, and specifications of the CoC and, for those casks to which the licensee has applied the changes of an amended CoC, the terms, conditions, and specifications of the amended CoC." Use of the phrase "fully comply" and the word "all" are overly restrictive. Licensees are aware of their general legal obligation to fully comply with the regulations, which already require them to fully comply with the Certificate of Compliance (CoC). It is common practice with general licensees that compliance with the CoC includes an implicit applicability provision that allows general licensees to not comply with CoC requirements that do not apply to their site or ISFSI (e.g. requirements for PWR fuel at a BWR plant). Therefore, it is suggested that "fully comply" should be reverted back to "comply" and the word "all" removed.

As worded, the last sentence of this paragraph implies that a general licensee must comply with all of the terms, conditions, and specifications of the both the CoC used to load a cask and the amended CoC that was applied after loading. This is not practical and may not be possible (see Comment No. 14 for additional discussion), and was probably not the intent of the draft language. Therefore, it is recommended that the additional reference to an amended CoC be removed since the word "certificate" in the current regulation is implicitly referring to both the original CoC and an amended CoC.

Comment No. 17

10 CFR 72.212(b)(11) – The phrase "and, for those casks to which the licensee has applied the changes of an amended CoC, the amended CoC," in the first sentence is redundant and unnecessary. At the beginning of the sentence CoC is implicitly referring to both the original CoC and an amended CoC since it is recognized that a general licensee may choose to load a cask to either the original CoC or an amended CoC. Therefore, it is suggested that this newly added phrase be removed.

Comment No. 18

10 CFR 72.236 – Since this section has been renumbered, 10 CFR 72.234(d)(2)(vii) of the current regulation will have to be modified to reference §72.236(k) rather than §72.236(j). This is an editorial correction.

Comment No. 19

10 CFR 72.236(b) – A program for the management of issues associated with aging should not necessarily be required for all initial applications. The applicant should make the determination as to the necessity of such a program. For example, it is recognized that an applicant applying for a license for 20 years (under the current regulations) would not provide such a program. Therefore, it is suggested that “as necessary” be added after “important to safety.”

Since 10 CFR 72.234(a) requires that the requirements of §72.236 be met, it would appear that a certificate holder will have to develop such a program before they submit their next amendment application after this regulation is finalized. However, certificate holders should not be required to develop this program for an amendment application which does not propose to change the licensed lifetime of the cask (currently 20 years). This program should only be required for license renewal applications or initial license applications as necessary. Therefore, it is suggested that this wording be modified as noted above.

Comment No. 20

10 CFR 72.236(b) – The wording “must be provide” should be changed to “must be provided.” This is an editorial correction.

Comment No. 21

10 CFR 72.240(a) – It is suggested that the wording “of a spent fuel storage cask” be removed in the first sentence. This is an unnecessary qualifier to “certificate holder” which is used in other parts of 10 CFR Part 72 without a similar qualifier.

Comment No. 22

10 CFR 72.240 and 10 CFR 72.212(a)(3) – Since none of the CoCs listed in 10 CFR 72.214 have reached their expiration date, industry does not have experience with the renewal process outlined in this section. As a result industry has a few generic comments and questions which NRC should consider.

- If a certificate holder or licensee renews a CoC, are all amendments to the CoC simultaneously renewed? Industry is assuming that a single renewal application for a CoC will be applicable to all amendments to a CoC.
- If a general licensee renews a CoC, is the renewal only applicable to that general licensee or is it applicable to all general licensees? Industry assumes that the renewal would be applicable to all general licensees.
- Industry assumes that 10 CFR 72.214 would be appropriately modified to list the new CoC expiration date if either a certificate holder or a general licensee renews a CoC.

Comment No. 23

Conforming changes to 10 CFR 72.13 should be made once the changes to the other portions of 10 CFR Part 72 are finalized.