

RULEMAKING ISSUE NOTATION VOTE

April 27, 2009

SECY-09-0069

FOR: The Commissioners

FROM: R. W. Borchardt
Executive Director for Operations

SUBJECT: PROPOSED RULE: 10 CFR PART 72 LICENSE AND
CERTIFICATE OF COMPLIANCE TERMS (RIN 3150-AI09)

PURPOSE:

To request Commission approval to publish a proposed rule, in the *Federal Register*, that would amend Title 10 of the *Code of Federal Regulations* (CFR) Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste." Proposed changes to 10 CFR 72.3, 72.24, 72.42, 72.212, 72.230, 72.236, 72.238, and 72.240 relate to the independent storage of spent nuclear fuel. These changes would clarify the license term limits for dry storage cask Certificates of Compliance (CoCs) and independent spent fuel storage installation (ISFSI) licenses. The proposed action would also allow Part 72 general licensees to implement changes authorized by an amended CoC to a cask loaded under the initial CoC or an earlier amended CoC. This rulemaking is needed to improve the regulatory efficiency of Part 72.

BACKGROUND:

On November 29, 2004, the Commission issued a Staff Requirements Memorandum (SRM), for SECY-04-0175, "Options for Addressing the Surry Independent Spent Fuel Storage Installation License-Renewal Period Exemption Request," which authorized the staff to approve 40-year license renewal term for the Surry ISFSI, with appropriate license conditions to manage the effects of aging. The SRM also directed the staff to: (1) initiate a program to review the

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technical basis for future rulemaking; (2) provide recommendations on the license term for Part 72 CoCs for spent nuclear fuel dry cask storage systems; and (3) apply the Commission-approved guidance for Part 72 renewals to future site-specific exemption requests without further Commission approval. In response, the staff submitted a Commission paper (SECY-06-0152) entitled, "Title 10 Code of Federal Regulations Part 72 License and Certificate of Compliance Terms," on July 7, 2006, to recommend the scope of rulemaking. On August 14, 2006, the Commission issued an SRM, for SECY-06-0152, which authorized the staff to proceed with rulemaking proposals laid out in SECY-06-0152. In addition, the Commission specifically directed staff to address the following points in the rulemaking: (1) clarify the start of the 20-year term limit for cask designs approved under general license provisions; (2) identify whether the cask vendor or licensee is responsible for renewing CoCs; (3) discuss possible conflicts that could arise for storage cask designs that are granted a license term extension and that have been approved for transport with a different license term; (4) discuss how the cask expiration dates are tracked at each general license site so that it is clearly understood when the CoC for each cask design must be renewed; and (5) clarify the difference between CoC reapproval and renewal. These issues are addressed in the "Discussion" section of the *Federal Register* Notice (Enclosure 1) within Questions/Answers I, L, J, K, and E, respectively.

As this rulemaking commenced, the U.S. Nuclear Regulatory Commission (NRC) staff identified a related issue from approving Amendment 4 to CoC 72-1026, which revised cask monitoring and surveillance requirements for the BNG Fuel Solutions W-150 storage cask. Subsequent to the approval, the certificate holder requested guidance from the NRC on the implementation of the changes authorized by the CoC amendment to previously loaded casks. The staff's position is that under the existing requirements in Part 72 a previously loaded cask is bound by the terms, conditions, and technical specifications of the CoC applicable to that cask at the time the licensee loaded the cask. Therefore, under the current regulations, general licensees that want to apply changes approved by a CoC amendment to a previously loaded cask must request an exemption from the NRC, if these changes result in a change to the terms or conditions of the CoC under which the cask was loaded.

In SRM-COMSECY-07-0032, "Staff Requirements - Recommended Staff Actions Regarding Correspondence with Allegers Involving Security-Related Concerns," dated December 12, 2007, the Commission stated it had no objection to the staff's proposal to consider two additional revisions to Part 72 as part of the rulemaking effort approved in SRM-SECY-06-0152. Specifically, the Commission noted that the staff may amend Part 72 to allow a licensee to apply changes for a CoC amendment to a previously loaded cask without NRC approval and to allow the same flexibility for longer approval terms for both specific and general licensees, while still ensuring that the action protects public health and safety and promotes the common defense and security.

In SRM-SECY-06-0152, the Commission directed the staff to be as transparent as possible in developing the proposed rule package. In response, the staff held public meetings on November 7, 2006, and February 29, 2008, to discuss the technical bases of the rulemaking with stakeholders. In addition, on August 4, 2008, the staff made preliminary draft rule text available for comment to stakeholders on Regulations.gov (Docket ID NRC-2008-0361). Comments were received from the Nuclear Energy Institute and Florida Power and Light which generally supported the rulemaking. The "Discussion" section of the *Federal Register* Notice includes NRC responses to significant stakeholder comments. Public input on the preliminary draft

language resulted in revisions related to the implementation of later CoC amendments to previously loaded casks, as well as clarifying changes to the proposed regulation.

DISCUSSION:

This proposed rule would extend the initial and renewal license terms for site-specific ISFSI licenses from a term not to exceed 20 years to a term not to exceed 40 years. Any license renewal application would need to include an analysis that considers the effects of aging on structures, systems, and components important to safety for the requested renewal term. In approving the renewed site-specific licenses for the Surry and H.B. Robinson ISFSIs, the staff imposed certain aging management requirements. At the present time, there are no similar requirements for general licensees. Because the same cask design could be used at both specific and general license ISFSI sites, it is necessary and appropriate to impose the same aging management requirements on general licensees. Similarly, the proposed rule would establish regulatory consistency between specific and general licensees by setting the license duration as not to exceed 40 years for both.

Under 10 CFR Part 72, dry storage cask fabricators periodically upgrade a cask's design through NRC approved CoC amendments. The NRC approval process for CoC amendments ensure that the proposed design upgrade continues to result in a cask that can safely store spent fuel assemblies (i.e., within the cask's analyzed condition). This proposed rule would resolve a question concerning the application of changes authorized by a CoC amendment to a previously loaded cask. A general licensee seeking to implement changes from a later CoC amendment to a previously loaded cask must obtain NRC approval or an exemption, if the amendment alters the terms and conditions of the CoC under which the cask was loaded. The proposed rule would allow licensees to apply a CoC amendment to a previously loaded cask without prior NRC approval, provided the cask conforms to the amended CoC, and thus remains in an analyzed condition. The proposed rule would reduce the number of exemption requests that licensees must prepare and the NRC must evaluate, thereby increasing the efficiency of NRC's regulatory process while maintaining safety and security, and reducing the regulatory burden on licensees and saving NRC resources. Partial implementation of the changes of a CoC amendment without prior NRC approval remains prohibited because the cask would be in an unanalyzed condition.

The staff has developed regulatory guidance in the form of a draft standard review plan (SRP) entitled "Standard Review Plan for License Renewal of Independent Spent Fuel Storage Installations." The SRP would provide guidance to the staff in reviewing the effects of aging on dry storage casks or ISFSI sites. The SRP would also assist potential applicants in identifying the primary elements to be included in a renewal application and measures necessary to ensure that the cask or ISFSI can be operated during the renewal period without undue risk to the health and safety of the public. The staff plans to publish the draft SRP for public comment following the publication of this proposed rule.

The staff assessed the proposed revisions to 10 CFR Part 72 against the NRC's strategic performance goals which are: (1) ensure adequate protection of public health and safety, and the environment; and (2) ensure adequate protection in the secure use and management of radioactive materials. The staff determined that the proposed rule is consistent with the agency's strategic goals. Also by eliminating unnecessary and costly exemptions, which consume resources and delay regulatory actions, the proposed amendments would support the

NRC's organizational excellence objectives of ensuring that its actions are efficient, effective, realistic, and timely. In support of NRC's openness strategies, NRC held public meetings with stakeholders during the development of the technical bases and made preliminary draft rule language available on Regulations.gov for public review and comment.

AGREEMENT STATE ISSUES:

This rule is classified as compatibility category "NRC" and addresses only areas of exclusive NRC regulatory authority. Therefore, Agreement States would not need to make conforming changes to their regulations.

RECOMMENDATIONS:

That the Commission:

1. Approve for publication, in the *Federal Register*, the proposed amendments to Part 72 (Enclosure 1).
2. Note:
 - a. That the proposed amendments will be published in the *Federal Register*, allowing 75 days for public comment.
 - b. That the Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification and the reasons for it, as required by the Regulatory Flexibility Act, 5 U.S.C. 605(b).
 - c. That a draft Regulatory Analysis has been prepared for this rulemaking (Enclosure 2).
 - d. That a draft Environmental Assessment has been prepared for this rulemaking (Enclosure 3).
 - e. That appropriate Congressional committees will be informed of this action.
 - f. That a press release will be issued by the Office of Public Affairs when the proposed rulemaking is filed with the Office of the Federal Register.
 - g. Office of Management and Budget (OMB) review is required and a clearance package will be forwarded to OMB no later than the date the proposed rule is submitted to the Office of the Federal Register for publication.

RESOURCES:

The required resources to implement and complete the preferred option, which is to complete the final rulemaking, are: Fiscal Year (FY) 2009, 0.8 full-time equivalent (FTE) [0.5 Office of Federal and State Materials and Environmental Management Programs (FSME), 0.1 Office of Nuclear Material Safety and Safeguards (NMSS), 0.1 Office of Administration (ADM), and 0.1 Office of the General Counsel (OGC)] and FY 2010, 0.7 FTE (0.5 FSME, 0.1 NMSS, and

0.1 OGC). The required resources are included in the FY 2009 and 2010 budgets for FSME, NMSS, ADM, and OGC. Contract support has been used to develop the OMB Supporting Statement (approximately \$56,000).

COORDINATION:

The Office of the General Counsel has no legal objection to the proposed rulemaking. The Office of the Chief Financial Officer has reviewed this Commission Paper for resource implications and has no objections. The rule proposes changes in information collection requirements that must be submitted to OMB no later than the date the proposed rule is forwarded to the Office of the Federal Register for publication.

/RA Martin Virgilio for/

R. W. Borchardt
Executive Director
for Operations

Enclosures:

1. *Federal Register* Notice
2. Draft Regulatory Analysis
3. Draft Environmental Assessment

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