

RULEMAKING ISSUE AFFIRMATION

May 3, 2010

SECY-10-0056

FOR: The Commissioners

FROM: R. W. Borchardt
Executive Director for Operations

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

PURPOSE:

To request Commission approval to publish a final rule, in the *Federal Register*, that amends 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." The amendments 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 amendments extend and clarify the terms for storage cask Certificates of Compliance (CoCs) and for both general and specific independent spent fuel storage installation (ISFSI) licenses. The amendments also impose certain aging management requirements for both specific license and CoC renewals. Finally, the amendments also allow Part 72 general licensees to implement changes authorized by a later CoC amendment to a cask loaded under the initial CoC or an earlier CoC amendment (a "previously loaded cask"). This rulemaking is needed to improve the regulatory efficiency of Part 72. This paper does not address any new commitments or resource implications.

BACKGROUND:

In a Staff Requirements Memorandum (SRM) dated August 26, 2009, the Commission approved publication of the proposed rule on License and Certificate of Compliance Terms

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(SECY-09-0069, April 27, 2009). It was published in the *Federal Register* on September 15, 2009 (74 FR 47126). The comment period closed November 30, 2009, and five comment letters were received. Commenters on the proposed rule included a Federal agency, a stakeholder consortium, a licensee, an industry organization, and an Indian tribe. The comments are discussed in detail in the *Federal Register* notice (Enclosure 1). The Commission has considered all of the significant questions of policy in connection with the proposed rule and no significant adverse questions or comments have been received on the proposed rule or no substantial changes in regulatory text were necessary. However, recognizing that all of the Commissioners may not be familiar with the background on this issue, the staff has decided not to issue this Final Rule under the delegated authority granted to the Executive Director by the Commission in NRC Management Directive 6.3.

DISCUSSION:

This final rule extends the initial and renewal license terms for specific ISFSI licenses from a term not to exceed 20 years to a term not to exceed 40 years. The final rule also requires that any license renewal application must include an analysis that considers the effects of aging on structures, systems, and components important to safety for the requested renewal term. As a basis for this rulemaking, the U. S. Nuclear Regulatory Commission (NRC) imposed certain aging management requirements for the renewals of the specific licenses for the Surry and H.B. Robinson ISFSIs.

At the present time, there are also no aging management requirements for renewals of CoCs (which apply to general licenses). 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 Part 72 general licensees. By implementing these aging management requirements for both specific license renewals and for CoC renewals, the final rule establishes regulatory consistency between specific and general licensees. Likewise, the final rule establishes regulatory consistency between general licenses and specific licenses by setting the renewal term for CoCs to a term not to exceed 40 years.

The CoC is the NRC's approval of a particular cask design and sets forth the terms and conditions under which Part 72 general licensees may use casks fabricated under that CoC at ISFSIs established under the Part 72 general license. Under 10 CFR Part 72, CoC holders periodically upgrade a cask's design through NRC approved CoC amendments. The NRC approval process for CoC amendments ensures 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 final rule resolves a question concerning the application of changes authorized by a CoC amendment to a previously loaded cask (a cask loaded under the initial CoC or an earlier CoC amendment). Under the current rules, a general licensee seeking to implement changes authorized by a later CoC amendment to a previously loaded cask must apply to NRC for an exemption, if the CoC amendment alters the terms and conditions of the CoC under which the cask was loaded. The final rule will 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 final rule reduces 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. The final rule does not permit

partial implementation of a CoC amendment without prior NRC approval because this could result in a cask being in an unanalyzed condition.

The staff has developed regulatory guidance in the form of a standard review plan (SRP) entitled “Standard Review Plan for Renewal of Independent Spent Fuel Storage Installation Licenses and Dry Cask Storage System Certificates of Compliance.” The SRP provides guidance to the staff in reviewing the effects of aging on storage casks or ISFSI sites. The SRP also assists 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 SRP following the publication of this final rule.

The staff assessed the revisions to 10 CFR Part 72 against the NRC’s strategic performance goals to ensure adequate protection of public health and safety; and ensure adequate protection in the secure use and management of radioactive materials. The staff determined that the final rule is consistent with the NRC’s strategic goals. Also, by eliminating unnecessary and costly exemptions which consume resources, the amendments 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 enclosed notice of final rulemaking (Enclosure 1).
2. To satisfy the requirement of the Regulatory Flexibility Act, 5 U.S.C. 605 (b), certify that this rule, if promulgated, will not have significant impact on a substantial number of small entities. This certification is included in the enclosed *Federal Register* notice.
3. Note:
 - a. 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);
 - b. A regulatory analysis has been prepared for this rulemaking (Enclosure 2);
 - c. An environmental assessment and an associated finding of no significant impact has been prepared for this rulemaking (Enclosure 3);

- d. The staff has determined that this action is not a “major rule,” as defined in the Congressional Review Act of 1996 [5 U.S.C 804(2)] and has confirmed this determination with the Office of Management and Budget (OMB). The appropriate Congressional and Government Accountability Office contacts will be informed;
- e. The appropriate Congressional committees will be informed;
- f. A press release will be issued by the Office of Public Affairs when the final rulemaking is filed with the Office of the Federal Register; and
- g. The final rule contains amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.) that must be submitted to the OMB for its review and approval before publication of the final rule in the *Federal Register*.

COORDINATION:

The Office of the General Counsel has no legal objection to this final rule. The Office of the Chief Financial Officer has reviewed this Commission Paper for resource implications and has no objections.

/RA/

R. W. Borchardt
Executive Director
for Operations

Enclosures:

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

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Enclosures:

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

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