

April 2, 2010

MEMORANDUM TO: R. W. Borchardt
Executive Director for Operations

FROM: Charles L. Miller, Director **/RA Cynthia Carpenter for/**
Office of Federal and State Materials
and Environmental Management Programs

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

Enclosed for your signature is a final rule (Enclosure 1) entitled "License and Certificate of Compliance Terms" that amends U.S. Nuclear Regulatory Commission (NRC) regulations to Part 72. We are requesting that you sign this final rule since there were no significant public comments received and there were no significant changes made from the proposed rule. These amendments include changes that enhance the effectiveness and efficiency of the licensing process for spent nuclear fuel storage. Specifically, they extend and clarify the term limits for storage cask Certificates of Compliance (CoCs) and independent spent fuel storage installation (ISFSI) specific licenses. The amendments also provide consistency between the general and specific ISFSI license requirements, and allow general licensees subject to these regulations to implement changes authorized by an amended CoC to a cask loaded under the initial CoC or an earlier amended CoC (a "previously loaded cask").

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 (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 Regulatory Analysis (Enclosure 2) and the Environmental Assessment (Enclosure 3) supporting the final rule are also provided.

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

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basis for this rulemaking, the 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.

Notices: A notice to the Commission that the Executive Director for Operations has signed the enclosed *Federal Register* Notice is included as a Daily Item to the Commission (Enclosure 4). The Approved for Publication can be found in Enclosure 5. The appropriate Congressional committees will be notified.

Coordination: The Offices of Administration, Enforcement, Nuclear Material Safety and Safeguards, Nuclear Security and Incident Response, Information Services, and Nuclear Reactor Regulation concur with these amendments. The Office of the General Counsel has no legal objection. The Office of the Chief Financial Officer has reviewed the final rule for resource implications and has no objection. 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*.

Enclosures:

1. *Federal Register* Notice of Final Rulemaking
2. Regulatory Analysis
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