AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Chairman Gregory B. Jaczko

SUBJECT: SECY-10-0056 – FINAL RULE: 10 CFR PART 72 LICENSE AND CERTIFICATE OF COMPLIANCE TERMS (RIN 3150-AI09)

Approved _X___ Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached _X__ None ___

SIGNATURE

8/20/10
DATE

Entered on "STARS" Yes _X__ No ___

Chairman Jaczko's Comments on SECY-10-0056
"Final Rule: 10 CFR Part 72 License and Certificate of Compliance Terms"

I approve the final rule amending Part 72 which (1) changes the term limits for Certificates of Compliances (CoC) and site specific independent spent fuel storage installations (ISFSI), and (2) provides provisions that 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.

The staff has done a thorough review in identifying and comprehensively addressing the various issues associated with these issues. I agree that the extension in the time period, for initial and renewed licenses and CoCs, up to 40 years is supported by operating experience, research, and analysis. In 2006, the NRC completed a pilot risk assessment (NUREG-1864) of the storage of spent fuel in a dry cask storage system. The results of the study indicated that storing spent fuel in a dry cask storage system in accordance with the NRC's safety requirements provides a very high level of safety. As we are approaching 25 years of dry cask storage operational experience in the United States, the record of safe and secure storage of dry cask storage of spent fuel, protective of the environment, continues to be successfully demonstrated. In addition, we have experience (Surry and H.B. Robinson) in reviewing and granting license renewals for site specific ISFSI licenses and extending the license term to 40 years, albeit via exemptions.

Notwithstanding my support for this rule, I believe there will be complexities in its implementation, in particular for CoCs and general licensees using the CoCs. While the increase in term limits and the license renewal process for site specific licenses is relatively straight-forward, it is more complex for general licensees and CoCs. The CoC renewal process in this rulemaking ties together the renewal of the "paper design" (i.e., final safety analysis report and associated CoC) with the renewal of "operational casks" loaded with spent fuel. Development of sufficient implementation guidance (e.g., Standard Review Plan) will assist in alleviating these issues.

Renewing the "paper design" is focused on ensuring that future casks manufactured during the renewal period would provide a safe and secure means of storing spent fuel for up to 40 years. The staff has indicated that the renewal of the "paper design" would result in renewal of the original CoC and the associated amendments to it. Over the years, the staff has gained significant operational experience which has resulted in changes to review standards and technical acceptance criteria. The revised review standards and acceptance criteria have been applied to more recently approved amendments. In some cases, the review standards and criteria have been relaxed, and in other cases they are more restrictive (e.g., short term fuel cladding temperature limits during drying). As such, the staff should ensure that the renewed CoC governing the manufacturing of new casks during the renewal period is limited to those amendments that have been reviewed and approved to the staff's most recent review standards and acceptance criteria.

Renewing "operational casks" currently utilized by general licensees through a renewal of the CoC also presents potential complications. The CoC holder does not have direct access to maintenance and corrective actions programs and the associated records for operational casks. These programs and records, and similar front line operational experience are fundamental sources for identifying aging mechanisms and the extent of any degradation to operational casks. These records and programs are maintained by Part 50 licensees, not the CoC holder and CoC holders do not necessarily have access to these records. As mentioned in my vote for SECY-09-0069, there is a need to fully address possible site-specific aging issues for the casks used by general licensees. As many of the conditions (predominately environmental) impacting aging may vary dramatically from one generally licensed site to the next (e.g., from the arid conditions at the Palo Verde site, to the humid salt-laden environment at St. Lucie, to the freeze/thaw cycles experienced at Maine Yankee), the effects of aging on dry cask storage

systems and the resulting aging management program implemented by a licensee will vary from site to site. The staff has indicated that the renewal application should "bound" the aging effects, and an appropriate aging management program will need to be proposed in the CoC renewal application. As such, the staff should ensure that the application for the renewed CoC for operational casks incorporates direct operational experience to bound the aging effects and extent of potential degradation, and that documentation exists to demonstrate that it is representative of any and all sites where the operational casks are in use by general licensees.

The rule also allows general licensees (through an evaluation process) to implement changes authorized in an amended CoC to casks loaded under the initial or an earlier CoC. In concept, this should resolve many operational issues encountered by general licensees and increase the agency's efficiency (the current process has addressed many of these operational issues through exemptions). In practice, CoC amendments involve both operational and design changes. For a loaded cask to implement changes authorized by an amended CoC, it will need to meet the terms and conditions of the amended CoC. It is not clear how this will be met, in particular for design changes or operations that have occurred in the past (i.e., welding of canisters and drying of spent fuel). The staff should ensure that all terms and conditions are met when allowing a general licensee to transition from an earlier CoC amendment to a later amendment. In addition, although the application for a CoC amendment is "standalone", the terms and conditions of the resulting amended CoC are not standalone. Rather the amended CoC and associated terms and conditions reflect a continuum from the original CoC application through all past amendments. As such, in implementing changes authorized in an amended CoC to casks loaded under an earlier CoC, it is not enough to just look at the application supporting the amended CoC. Rather, an understanding of the terms and conditions in the amended CoC must be known and that could entail a review and assessment of additional prior amendments. As such, the staff should ensure that the process for allowing general licenses to implement changes authorized in an amended CoC requires an assessment of the basis for the terms and conditions in the amended CoC which may be the result of much earlier amendments.

8/26/10

Gregory B. Jaczko Date