

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC-2009-0558; NRC-2008-0649; Docket Number PRM-72-6]

RIN 3150-AI78

Independent Spent Fuel Storage Installation Security Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Discontinuation of rulemaking activity and denial of petition for rulemaking.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is discontinuing a rulemaking activity that would have codified the security orders issued to independent spent fuel storage installation (ISFSI) licensees after the terrorist attacks of September 11, 2001 (post-9/11 security orders). The NRC is also denying a petition for rulemaking, dated November 24, 2008, filed by Ms. Sandra Gavutis, Executive Director of C-10 Research and Education Foundation, Inc. The purpose of this document is to inform members of the public of the discontinuation of the rulemaking activity, announce the NRC's final decision to deny the petition for rulemaking, and provide a brief explanation for the NRC's decision. The rulemaking activity will no longer be reported in the NRC's portion of the Unified Agenda of Regulatory and Deregulatory Actions (the Unified Agenda).

DATES: As of [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], the rulemaking activity discussed in this document is discontinued and the petition for rulemaking is denied.

ADDRESSES: Please refer to Docket IDs NRC-2009-0558 or NRC-2008-0649 for additional information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2009-0558 or NRC-2008-0649. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Andrew Carrera, Office of Nuclear Material Safety and Safeguards; telephone: 301-415-1078; e-mail: Andrew.Carrera@nrc.gov; or Duane White, Office of Nuclear Security and Incident Response; telephone: 301-287-3627; e-mail: Duane.White@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Background

A. Independent Spent Fuel Storage Installation (ISFSI) Security Requirements Rulemaking

Following the events of September 11, 2001, the NRC issued security orders to all ISFSI licensees. Specifically, in 2002, the agency issued ISFSI interim compensatory measure security orders for co-located, standalone, decommissioning reactor, dry storage, and wet storage ISFSIs. On October 23, 2002, the NRC published two notices in the *Federal Register* issuing these orders regarding interim measures for all ISFSI licensees (67 FR 65150 and 67 FR 65152). Subsequently, on August 18, 2004, the NRC issued orders to all ISFSI licensees for additional security measures for access authorization and fingerprinting at ISFSIs. On August 25, 2004, the NRC published a notice in the *Federal Register* issuing these orders regarding additional security measures associated with access authorization (69 FR 52314). Although security requirements for ISFSI licensees differed depending on the type of license (general or specific), the post-9/11 security orders ensured that a protective strategy was in place for all ISFSIs, regardless of license type.

On December 16, 2009, the NRC published a notice in the *Federal Register* issuing the draft regulatory basis for the proposed rulemaking to update the security requirements for facilities storing spent nuclear fuel at ISFSIs (74 FR 66589). The draft regulatory basis set forth three objectives for the rulemaking:

1) Update the ISFSI and monitored retrievable storage installation security requirements to improve the consistency and clarity of the regulations in part 73 of title 10 of the *Code of Federal Regulations* (10 CFR), “Physical Protection of Plants and Materials,” for general and specific ISFSI licensees, and to incorporate lessons learned from security inspections and reactor force-on-force evaluations conducted since the ISFSI security regulations were last updated in the 1990s.

2) Make generically applicable requirements similar to those imposed on ISFSI licensees by the post-9/11 security orders.

3) Use a risk-informed and performance-based structure in updating the ISFSI and monitored retrievable storage installation security regulations.

In 2018, the Commission directed the staff to proceed with the ISFSI security requirements rulemaking with the exclusive scope of codifying the requirements of the post-9/11 security orders into the NRC’s regulations.

B. Petition for Rulemaking

In 10 CFR 2.802, “Petition for rulemaking—requirements for filing,” the NRC provides an opportunity for any interested person to petition the Commission to issue, amend, or rescind any regulation. The NRC received a petition for rulemaking (PRM), dated November 24, 2008, filed by Ms. Sandra Gavutis (the petitioner), Executive Director of C-10 Research and Education Foundation, Inc. (ADAMS Accession No. ML083470148). The petitioner requested that the NRC amend its regulations

concerning dry cask safety, security, transferability, and longevity. The petitioner made 12 specific requests in the petition. The NRC docketed the petition as PRM-72-6 and noticed it in the *Federal Register* for public comment on March 3, 2009 (74 FR 9178). The NRC received over 9,000 comment submissions on the PRM, including comments from industry, the American Society of Mechanical Engineers (ASME), nongovernmental organizations, and members of the public. The overwhelming majority of the comment submissions were identical (form) e-mails. All form e-mail comments, ASME, and the Berkeley Fellowship of Unitarian Universalists Social Justice Committee supported the petition. The Nuclear Energy Institute and the Strategic Team and Resource Sharing organization opposed the petition. The staff discussed its review of the petition and the comments received in SECY-12-0079, "Partial Closure of Petition for Rulemaking (PRM-72-6) C-10 Research and Education Foundation, Inc.," dated June 1, 2012 (ADAMS Accession No. ML12068A130), and summarized the comments in a *Federal Register* notice dated October 16, 2012 (77 FR 63254). In a *Federal Register* notice dated October 16, 2012 (77 FR 63254), the NRC denied nine of the petitioner's 12 specific requests (Requests 1–3, 5–8, 10, and 12), reserved two requests for future rulemaking determination (Requests 4 and 9), and accepted one request (Request 11) for consideration as part of the ISFSI security requirements rulemaking effort. Subsequently, in a *Federal Register* notice dated June 24, 2016 (81 FR 41258), the NRC announced its final decision to deny Requests 4 and 9. As stated in the petition, Request 11 of PRM-72-6 requested that the NRC amend its regulations to do the following:

Require "Hardened On-Site Storage" (HOSS) at all nuclear power plants as well as away-from-reactor dry casks storage sites: that all nuclear industry interim on-site or off-site dry cask storage installations or ISFSIs be fortified against terrorist attack. In addition, all sites should be safeguarded against accident and age-related leakage.

II. Decision to Withdraw Rulemaking and Deny Petition

The NRC analyzed necessary actions to implement the 2018 Commission direction, as well as implications of the new direction for other related ongoing and anticipated activities. The NRC determined that a limited-scope rulemaking to solely codify the post-9/11 security orders is not necessary for adequate protection of health and safety and the common defense and security, would not further improve public health and safety or common defense and security, and would not be justified, based on a net cost of approximately (\$1.1 million) to develop and implement, as no significant quantitative or qualitative benefits could be identified.

The NRC held a public meeting on July 10, 2019, to discuss the status of the proposed rulemaking on ISFSI security requirements and potential options. The meeting was attended by a total of 52 individuals, including industry representatives, members of the public, and NRC staff. Thirty-six individuals participated by Webinar or teleconference. During the public meeting the NRC staff provided opportunity for public input on the option of discontinuing the ISFSI security requirements rulemaking activity with the exclusive scope of codifying the post-9/11 security orders. The NRC staff also solicited stakeholder input on whether the NRC should issue guidance relating to ISFSI security requirements. The NRC received two comments during the meeting. One commenter questioned the reason why the NRC was not continuing the rulemaking as presented in the 2009 draft regulatory basis. This commenter also questioned if the NRC staff still support conclusions in the 2009 draft regulatory basis regarding overall facility vulnerability. Another commenter agreed with the option to discontinue this rulemaking activity based on the costs involved for both the industry and NRC. This commenter also indicated that, for efficiency, guidance on ISFSI security requirements

could be considered as part of guidance development associated with the ongoing rulemaking in SECY-18-0055, "Proposed Rule: Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning," dated May 7, 2018 (ADAMS Accession No. ML18012A021), rather than as a stand-alone document. The NRC issued a summary of the public meeting on August 2, 2019 (ADAMS Accession No. ML19198A014).

For Request 11 of PRM-72-6, the NRC re-evaluated the petitioner's request and concluded that the petitioner's suggested course of action is not consistent with the Commission's 2018 direction and therefore is beyond the scope of this rulemaking. Therefore, the NRC is denying Request 11 and will no longer consider this issue in rulemaking.

The NRC staff presented its recommendation to the Commission in SECY-19-XXXX, dated [INSERT date of SECY-19-XXXX]. On [INSERT date of SRM-SECY-19-XXXX], the Commission issued SRM-SECY-19-XXXX, which approved the staff's recommendation to discontinue this rulemaking activity and deny Request 11 of PRM- 72-6.

III. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

DOCUMENT	DATE	ADAMS ACCESSION NO. OR FEDERAL REGISTER CITATION
"Order Modifying Licenses (Effective Immediately)"	October 23, 2002	67 FR 65150
"Order Modifying Licenses (Effective Immediately)"	October 23, 2002	67 FR 65152

"In the Matter of All Independent Spent Fuel Storage Installation Licensees Order Modifying License (Effective Immediately)"	August 25, 2004	69 FR 52314
Petition for Rulemaking, "The C-10 Research and Education Foundation Inc. Petition for NRC Rulemaking to Upgrade Interim Dry Cask Storage Code Requirements"	November 24, 2008	ML083470148
10 CFR Part 72, "C-10 Research and Education Foundation, Inc.; Receipt of Petition for Rulemaking"	March 3, 2009	74 FR 9178
Draft Technical Basis for Rulemaking Revising Security Requirements for Facilities Storing Spent Nuclear Fuel and High-Level Radioactive Waste, Revision 1	December 16, 2009	ML093280743
SECY-12-0079, "Partial Closure of Petition for Rulemaking (PRM-72-6) C-10 Research and Education Foundation, Inc."	June 1, 2012	ML12068A090
10 CFR Part 72, "Petition for Rulemaking Submitted by C-10 Research and Education Foundation, Inc.: Petition for rulemaking; partial consideration in the rulemaking process"	October 16, 2012	77 FR 63254
10 CFR Part 72, "Petition for Rulemaking Submitted by C-10 Research and Education Foundation, Inc.: Petition for rulemaking; denial"	June 24, 2016	81 FR 41258
SECY-18-0055, "Proposed Rule: Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning"	May 7, 2018	ML18012A021

Summary of July 10 th public meeting on ISFSI Security Requirements rulemaking	August 2, 2019	ML19198A014
SECY-19-XXXX		
SRM-SECY-19-XXXX		

IV. Conclusion

In accordance with 10 CFR 2.803(i)(2), “Petition for rulemaking—NRC action,” the NRC is no longer pursuing the ISFSI security requirements rulemaking, and is denying PRM-72-6 for the reasons cited in this document. In the next edition of the Unified Agenda, the NRC will update the entries for the rulemaking activity and references to these documents to indicate that the rulemaking and petition for rulemaking are no longer being pursued. The rulemaking activity will appear in the completed actions section of that edition of the Unified Agenda but will not appear in future editions. If the NRC decides to pursue a similar or related rulemaking activity in the future, it will inform the public through a new rulemaking entry in the Unified Agenda.

Dated at Rockville, Maryland, this day of 2019.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission.