

April 23, 1997

MEMORANDUM TO: FCLB Staff

FROM: Michael F. Weber, Chief
Licensing Branch
Division of Fuel Cycle Safety
and Safeguards, NMSS

SUBJECT: CONFIRMATORY REVIEWS CONDUCTED UNDER 10 CFR 70.32

Over the last couple months, Mary Adams, George Pangburn, and I have been reviewing the Licensing Branch's procedures for reviewing changes made by licensees to Material Control and Accountability programs, security plans, safeguards contingency plans, and emergency plans under 10 CFR 70.32. Part 70 allows licensees to make these changes without prior NRC approval provided that the changes do not decrease the effectiveness of licensee programs for public protection. Procedures for conducting reviews of such changes are described in the attachment.

It is important to point out that no license amendment is required for licensees to make changes under §70.32, as long as the "no decrease in effectiveness" test is met and NRC is promptly informed of the changes in accordance with the requirements. Nevertheless, FCLB needs to review the changes to confirm that they do not decrease effectiveness. In addition, inspectors in the Operations Branch and Regional offices need to be aware of the program changes to inspect effective implementation of the changes. FCLB project managers should inform lead inspectors about licensee changes under §70.32 and coordinate confirmatory reviews with the inspectors.

Pam Shea will incorporate the attached procedures in the next update of the FCLB Licensing Manual, which should be completed in June 1997. If you have any questions, please contact Mary, George, and me.

Attachment:
FCLB Licensing Manual Insert
on 70.32 Reviews

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

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Michael F. Weber, Chief
Licensing Branch
Division of Fuel Cycle Safety
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A handwritten signature in cursive script, reading "Michael F. Weber", is written over the typed name.

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Over the last couple months, Mary Adams, George Pangburn, and I have been reviewing the Licensing Branch's procedures for reviewing changes made by licensees to Material Control and Accountability programs, security plans, safeguards contingency plans, and emergency plans under 10 CFR 70.32. Part 70 allows licensees to make these changes without prior NRC approval provided that the changes do not decrease the effectiveness of licensee programs for public protection. Procedures for conducting reviews of such changes are described in the attachment.

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FCLB LICENSING MANUAL INSERT ON 70.32 REVIEWS

March 14, 1997

NRC regulations in 10 CFR 70.32 allow licensees to make changes to certain plans without prior approval by NRC provided that the changes do not decrease the effectiveness of licensee programs for public protection ("no decrease changes"). Specifically,

§§70.32(c)(1)(iii) allows licensees to make changes to MC&A programs,

§§70.32(d) allows licensees to change physical protection plans for special nuclear material in transit,

§§70.32(e) allows licensees to change security plans,

§§70.32(g) allows licensees to change safeguards contingency plans, and

§§70.32(i) allows licensees to change emergency plans.

In each case, the licensee is required to inform the NRC of these changes within a specified time period along with the determination that the changes do not decrease the effectiveness of the plan or program. The period allowed for reporting the changes ranges from 2 to 6 months depending on the program and special nuclear material characteristics. If changes are requested that would decrease the effectiveness, then licensees are required to request the changes by filing an amendment application in accordance with §70.34.

When "no decrease changes" are reported to NRC, FCLB will consult with the Lead Regional Inspector and conduct a limited review to confirm the licensee's determination that the changes do not decrease the effectiveness of the plan or program. The LA will assign a TAC number for the review and it will be entered on the status log for FCLB licensing actions. However, the review will be fee exempt and will not result in a change to the license. FCLB will confirm acceptance of the licensee's "no decrease change" determination in a letter back to the licensee typically within 30 days of receipt of the change notification. In no case, however, will FCLB "approve" the change, for such an approval would be tantamount to an amendment, which is explicitly not required by §70.32. FCLB will, for NRC's convenience, amend the license at the time of the next license amendment to ensure that the license reflects the most current version of the physical security, FPMC, contingency, and emergency plans.

If FCLB's review does not confirm that the changes do not decrease the effectiveness of the plan or program, then FCLB will inform the licensee in writing of the conclusion and request that the original program or plan be restored (without the offensive changes). Failure to restore the plan or program could result in enforcement action in accordance with an OGC opinion (Memorandum from Robert Fonner to Russ Rentschler, November 9, 1978). FCLB will consult with FCOB and the Regional office on whether a violation occurred in conformance with the NRC Enforcement Policy (see NRC Enforcement Manual, NUREG/BR-0195). If enforcement action is warranted, FCOB or Regional Office, in consultation with FCLB, will initiate the action. FCLB will provide support to FCOB or the region as needed to process the enforcement action.

In addition, if the licensee wishes to pursue the changes, the licensee may submit a request for an amendment to the license in accordance with §70.34. If an amendment request is submitted at a later date or if the licensee requests NRC to act upon the original change submittal as if it were an amendment request, the case will convert to fee billable status. In the latter instance, staff review hours that have already been invested in the review will be back charged to the licensee as part of the amendment review because this effort directly supports the amendment review.

The TAC and case will remain open on the FCLB tracking system until (1) NRC confirms acceptance of the "no decrease determination" by writing to the licensee, (2) NRC determines the change does decrease the effectiveness of the program and issues a letter to the licensee to restore the original program, (3) the licensee withdraws the change, or (4) NRC completes action on the change by issuing or denying an amendment request.

FCLB will not review draft submittals of "no decrease changes." The onus is on the licensee to make the initial determination in accordance with §70.32. In addition, the FCLB project manager will coordinate reviews of "no decrease changes" with lead inspectors in FCOB and regional offices to ensure that they are aware of the licensee's changes. This is intended to facilitate inspection planning so that implementation of the changes can be promptly reviewed through inspection and so that inspectors remain cognizant of licensee programs as part of their preparations for inspections.