

AFFIRMATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MCGAFFIGAN

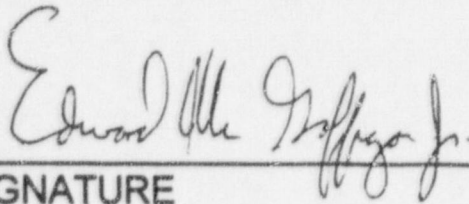
SUBJECT: **SECY-99-115 - FINAL RULE: AMENDMENTS TO 10 CFR  
PART 72-MISCELLANEOUS CHANGES TO LICENSING  
REQUIREMENTS FOR THE INDEPENDENT STORAGE OF  
SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE  
WASTE**

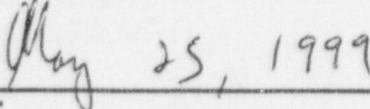
Approved ✓ Disapproved        Abstain       

Not Participating       

COMMENTS:

See attached comments and edits.

  
\_\_\_\_\_  
SIGNATURE

  
\_\_\_\_\_  
DATE

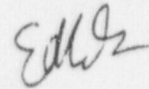
Entered on "AS" Yes ✓ No

Commissioner McGaffigan's Comments on SECY-99-115

I approve issuance of the final rule on miscellaneous changes to Part 72. I encourage the Spent Fuel Project Office staff to keep abreast of the rulemaking effort on 10 CFR 50.73 (SECY-99-119) by the Office of Nuclear Reactor Regulation staff since it has the potential to necessitate further modifications to 10 CFR 72.75.

With regard to the backfit issue, I concur with the comments and suggested edits of Commissioner Merrifield that provide a fuller discussion of this issue in the Federal Register notice.

Suggested minor edits to the notice are indicated on the attached pages.

A handwritten signature in black ink, appearing to read "Ed McGaffigan", is located in the lower right quadrant of the page.

The current regulations in § 72.44 on reporting annual summaries of radioactive effluents released from dry storage casks impose an unnecessary regulatory burden on Part 72 licensees by requiring submittal of these reports on a schedule that is different from that required by 10 CFR Part 50. Most Part 72 licensees are also Part 50 licensees. Consequently, this regulation imposed an unnecessary regulatory burden on Part 72 licensees.

The current regulations in § 72.75 on reporting requirements for specific events and conditions are inconsistent with the reporting requirements for similar reactor-type events contained in § 50.73.

*current*  
The regulations in §§ 72.122 and 72.124 on instrumentation and neutron poison efficacy requirements are unduly burdensome when applied to dry storage cask technology. The Commission has received nine requests for exemption from these regulations over the last three years. X

The current regulations in Subpart G (quality assurance (QA) requirements) regarding retention of Part 72 QA records differ from the retention requirements imposed on Part 50 license holders. However, § 72.140(d) currently allows a Part 72 license holder to take credit for its Part 50 QA program in meeting the requirements of Subpart G with the result that differing retention requirements are imposed on Part 72 licensees.



## Summary of Public Comments on the Proposed Rule

The NRC received four letters containing <sup>nineteen</sup> comments responding to the proposed rule published in the Federal Register on June 9, 1998 (63 FR 31364). These comments were considered in the development of the final rule. The primary objective of this rulemaking is to clarify requirements for certain sections of the regulations. The amendments differentiate the requirements for the storage of spent fuel under wet and dry conditions, clarify requirements for the content and submission of various reports, and specify that QA records must be maintained as permanent records. Copies of the public comments are available for review in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20003-1527. X

Four comment letters were received in response to the proposed rule. One was from the Department of Energy (DOE) Idaho Operations Office, one was from a private enterprise, and two were from nuclear power plant licensees. All commenters were supportive of the proposed rule.

### Public Comments

1. Comment: One commenter believed that to ensure consistency with existing regulations in Part 72 and with another NRC proposed rulemaking, "Expand Applicability of Regulations to Holders of, and Applicants for, Certificates of Compliance and Their Contractors and Subcontractors" (63 FR 39526; July 23, 1998), which proposes to define a Certificate of Compliance (CoC) as a certificate approving the "design" of a spent fuel storage cask (as opposed to approving a cask), changes should be made to sections §§ 72.1 and 72.2(f).

contains all the information required by § 72.75(d)(2). Therefore, no change has been made to address the second issue.

5. Comment: One commenter recommended not specifying the address and addresses in different sections of the regulations where licensees submit reports to NRC. Instead, the commenter recommended the use of one initial location to indicate where reports are submitted to simplify the regulations and ensure a consistent approach. Further, the references in Part 72 to the location where persons are to submit information to the NRC should use the phrase "in accordance with § 72.4" instead of providing a specific address in each individual section. This approach would be consistent with the approach taken in other sections in Part 72 as well as Part 50. This would allow future changes to the NRC receiving address to involve fewer sections of the regulations. The commenter identified §§ 72.44(d)(3), 72.75(d)(2) and 72.140(d) as sections where this change should be made.

✓ Response: The Commission agrees and has made the suggested changes in the final rule.

6. Comment: One commenter noted that the proposed amendment to § 72.75 appears to be inconsistent with the advance notice of proposed rulemaking (ANPR) for 10 CFR 50.73 (63 FR 39522; July 23, 1998) concerning the format and content for reporting reactor events and conditions.

Response: An objective of the § 72.75 rulemaking was to make the Part 72 independent spent fuel storage installations (ISFSI) reporting <sup>of format and content</sup> requirements consistent with the current reactor requirements in § 50.73. The final proposed reporting requirements for specific events and

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