

July 8, 1999

MEMORANDUM TO: William D. Travers
Executive Director for Operations

FROM: Annette Vietti-Cook, Secretary /s/

SUBJECT: STAFF REQUIREMENTS - SECY-99-147 -PROPOSED
RULEMAKING - DOMESTIC LICENSING OF SPECIAL
NUCLEAR MATERIAL

The Commission has approved publication for public comment the notice of proposed rulemaking for Part 70 related to the domestic licensing of special nuclear material subject to the comments noted below and the changes provided in the attachment.

(EDO)

(SECY Suspense:

7/30/99)

The Commission has approved the current staff position to defer a backfit provision until the safety basis has been established and incorporated in the license, and after licensees and staff have gained experience with implementation of the integrated safety analysis (ISA) requirements of the rule. The Federal Register notice (FRN) should solicit comments on what would constitute a reasonable period of time, including supporting rationale, before a backfit provision should be implemented. The rulemaking package for the final rule should include the staff's assessment, justification, and conclusions concerning a backfit provision.

The Commission has approved the current staff position on items to be included in the ISA, including the ISA summary. The staff should consider the use of public meetings and workshops to discuss and refine the proposed rule requirements and associated guidance, in particular the ISA summary and Standard Review Plan (SRP). The ISA Guidance Document and updated versions of the draft SRP should be posted on the web to enhance distribution and solicitation of input. During the public comment period and development of the final rule, the staff should make continued use of NRC's website.

The staff should ensure that decommissioning guidance for fuel cycle licensees includes consideration of the risks addressed in the operational ISA.

Notwithstanding the Commission's approval of the current staff's position in the previous paragraphs, the Commission offers the following general comments for resolution during development of the final rule.

1. The reporting frequency for ISA summary updates needs to be reconsidered. It appears that the 90-day frequency proposed by the staff is inconsistent with comparable requirements placed upon power reactor licensees. The staff should solicit specific comments from stakeholders on this issue during the public comment period. Absent a compelling justification to the contrary, the staff should adopt an annual update requirement.

2. The proposed rule employs various terms that could support a variety of interpretations, such as “unlikely” and “promptly”. Although these terms have a common qualitative definition which can be found in any dictionary, the use of these terms without bounding definitions when setting regulatory requirements may contribute to unnecessary confusion for licensees, license reviewers, inspectors, and enforcement specialists. The staff should ensure that such terms and the context of their use are defined clearly in the final SRP.
3. During the review and refinement process, the staff should ensure that the SRP continues to clearly acknowledge that licensees and applicants may provide alternative approaches to those presented in the SRP.

The staff should submit a draft Federal Register notice containing the draft final rule and the draft final SRP to the Commission for approval."

(EDO)

(SECY Suspense:

5/15/2000)

Attachment: Changes related to the proposed rulemaking on Part 70.

cc: Chairman Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
CIO
CFO
OCA
OIG
OPA
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
PDR
DCS

Changes to the FRN

1. On page 50, paragraphs (3)(i), revise line 1 to read ‘ ... 6 months of ~~<the date of publication of the final rule>~~ **the effective date of the rule**, submit for NRC’
2. On page 50, paragraphs (3)(ii), revise line 1 to read ‘ ... 4 years of ~~<the date of publication of the final rule>~~ **the effective date of the rule**, complete an integrate’

Changes to the Press Release

3. On page 1, paragraph 1, revise line 2 to read ‘ ... safety margin for some **facilities** licensed ~~facilities~~ **under Part 70 of Title 10 of the Code of Federal Regulations** that possess’
4. On page 1, add at the end of paragraph 1: ‘The rule does not apply to the U.S. Enrichment Corporation’s gaseous diffusion plants that are regulated under Part 76.’
5. On page 1, paragraph 2, revise lines 3 and 4 to read ‘ ... could exceed specified **requirements criteria**. **The amendment updates a rule under which licensees generally have operated safely for many years by clarifying the safety basis used by NRC to license such facilities.**’
6. On page 1, paragraph 3, revise line 4 to read ‘...In addition, **in 1993**, NRC concluded’
7. On page 1, add a paragraph after items (1)-(3), ‘Licensees have agreed to the need for a formal safety analysis and some licensees have committed during the last license renewal to perform such an analysis and submit the results to NRC for review by a specific date.’
8. On page 1, add a paragraph after the paragraph added in comment 7 as follows:

The proposed rule represents an extraordinary effort by the NRC and the Fuel Cycle industry and other stakeholders over several years that has included review of two draft rules, a petition for rulemaking, several public meetings and workshops, and Commission briefings by NRC staff and representatives of the Fuel Cycle industry. Since August 1998, NRC has utilized an enhanced public process to identify areas of mutual concern and those where agreement could be reached in whole or in part. To facilitate this process, the Commission held two public briefings, and the staff held four public workshops and made extensive use of the NRC’s Internet website to disseminate information and solicit input from stakeholders. These efforts have significantly narrowed the differences between the staff and stakeholders on the proposed amendments to Part 70. In addition, during the public comment period on the proposed rule and while finalizing the rule, the staff intends to conduct additional public meetings and utilize the NRC website for information exchange.

9. On page 2, paragraph 1, revise line 3 to read ‘ ... fuel assemblies, uranium enrichment

(other than USEC's gaseous diffusion plants); enriched uranium'

10. On page 2, paragraph 3, revise line 1 to read 'For the purpose of this rulemaking, a "critical mass" of special'
11. On page 2, delete the last paragraph.
12. On page 3, paragraph 1, revise line 5 to read '... conducted within four years of the effective date of the rule.'
13. On page 3, add to the end of paragraph 4, 'The staff intends to conduct public meetings to discuss the proposed rule and related guidance which will be announced in the Federal Register and on NRC's website.'

Changes to the Congressional letters

14. Add the following to the end of the 1st paragraph:

The proposed rule represents an extraordinary effort by the NRC and the Fuel Cycle industry and other stakeholders over several years that has included review of two draft rules, a petition for rulemaking, several public meetings and workshops, and Commission briefings by NRC staff and representatives of the Fuel Cycle industry. Since August 1998, NRC has utilized an enhanced public process to identify areas of mutual concern and those where agreement could be reached in whole or in part. To facilitate this process, the Commission held two public briefings, and the staff held four public workshops and made extensive use of the NRC's Internet website to disseminate information and solicit input from stakeholders. These efforts have significantly narrowed the differences between the staff and stakeholders on the proposed amendments to Part 70. In addition, during the public comment period on the proposed rule and while finalizing the rule, the staff intends to conduct additional public meetings and utilize the NRC website for information exchange.
15. In paragraph 2, add the following after the 1st sentence:

These facilities generally have operated safely for many years. However, it is NRC's belief that Part 70 can be improved in light of the more systematic safety analysis provided through the use of the integrated safety analysis methodology and the fact that NRC and licensees have agreed to the need for a formal safety analysis. As part of the last license renewal, licensees have committed to perform such analyses and submit the results to NRC for review by a specific date. Amending Part 70 also allows NRC to codify the safety basis used for licensing these facilities while providing a framework for licensees to make certain changes to their safety program.
16. In paragraph 2, revise line 9 to read '... application for the docket; and 5) allow'
17. In paragraph 2, revise line 10 to read '... NRC approval consistent with current practice.'
18. At the end of paragraph 3, add 'NRC will keep you informed of this important rulemaking

effort.'