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Secretary of the Commission
U.S. Nuclear Regulatory Commission
ATTN: Rulemakings and Adjudication Staff
Washington, DC 20555-0001

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(64FR41338)

Reference: Comments on Proposed Rule 10CFR70: Domestic Licensing of Special Nuclear Material; Possession of Critical Mass of Special Nuclear Material (Federal Register Vol. 64, No. 146, pp. 41338-41357, dated July 30, 1999)

Dear Sir:

In response to a request for public input in the referenced Federal Register notice, BWXT's Naval Nuclear Fuel Division submits the attached comments.

BWXT generally endorses the proposed revision to 10CFR70 as a positive step toward achieving a risk-informed/performance-based regulatory framework. The attached comments reflect areas in the rule language where BWXT believes improvements are necessary.

BWXT would also like to endorse the comments submitted by the Nuclear Energy Institute on behalf of the fuel cycle industry.

Sincerely,

Arne F. Olsen

Attachment

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Section	Comment
70.4	The definition of “available and reliable to perform their function when needed” appears throughout the proposed revisions to the rule. This definition requires measures be implemented that “ensure continuous compliance”. BWXT believes this language indicates a level of certainty that is not realistic. A better choice of terminology would be “provides reasonable assurance”.
70.62(a)	This section implies the Safety Program has only three elements. This may be true when discussing an Integrated Safety Analysis, which will identify Items Relied on for Safety and their associated Management measures. This is not true, however, in relation to the requirements of 10CFR70.22 for contents of a license application. BWXT believes the Safety Program is much more comprehensive and includes occupational safety (e.g., Radiation Protection Program required by 10CFR20) as well as accident safety, which is the focus of Subpart H. BWXT suggests that attempts to define the Safety Program be deleted from 70.62(a). The requirements contained in 70.62 a–d can be retained without creating a less than comprehensive definition of the Safety Program.
70.62(a)(3)	This section is very prescriptive in requiring a “log” to be available which documents failures of items relied on for safety. BWXT believes the requirement should be rewritten to be performance based rather than prescriptive. A performance-based requirement could state “each licensee shall maintain records of failures...which are retrievable and available for inspection”. Most licensees have an incident reporting and corrective action system, which is used for all activities at the facility. As long as these systems meet the performance objective it seems unnecessary for the rule language to be prescriptive in how it is met.
70.62(c)(3)(i)	This section requires a plan to be submitted within 6 months of the effective date of the rule. This requirement should pertain only if a licensee has not already completed the actions outlined in 70.62(c)(3)(ii)
70.62(c)(3)	There is no mention of timeframe for a licensee to come into compliance with the revisions to the rule that are <u>not</u> related to completion of the ISA and submittal of a summary. When 10CFR20 was revised, licensees were given one year until the requirements become effective in which to implement programmatic changes. 10CFR20.1008 specifically addressed potential contradictions between license applications and regulations. It seems probable that conforming license amendments will be required to correct inconsistencies in areas not related to the ISA (e.g., reporting requirements) and to achieve compliance with 70.65(a). BWXT recommends an effective date sufficiently far into the future that programmatic changes can be implemented at the operating facilities and that any necessary conforming license amendments can be completed.

Section	Comment
70.65(a)	The concept of establishing a safety program under 70.62 is confusing. As stated in the previous comment on 70.62(a), the requirements for including the additional information as part of a license application can be included without creating a narrowly focused definition of the safety program.
70.72(c)(1)(i)	This section seems clear until the reader tries to understand the footnote, which attempts to explain new types of accident sequences. Taken literally, which we must be able to do with regulations, this footnote will require nearly all process changes to require a license amendment. This outcome is in direct conflict with commission directives issued during the development of the rule. BWXT recommends the footnote be deleted. The language in 70.72(c)(1)(i) is completely adequate in the absence of the footnote.
70.72(d)(1)	BWXT believes the 90-day update requirement is unnecessary and is inconsistent with the requirements in 10CFR50.71 for reactor licensees whose potential consequences are significantly greater than those at fuel facilities. BWXT supports an annual update of the ISA Summary.
70.72(d)(3)	This section requires annual submittal summarizing <u>all</u> changes to <u>records</u> required by 70.62(a)(2). The requirements for records in 70.62(a)(2) apply to all records described in 70.62(b) through (d). These records include Process Safety Information (70.62(b)) which enables the performance of the Integrated Safety Analysis. This would include procedures, drawings, detailed equipment lists, etc. BWXT does not believe NRC requires a summary of changes to this type information.
70.73	NRC should consider including a maximum timeframe for license renewal that is substantially longer than the current practice of 10 years. If a “living license” is truly the outcome, as described in the Supplementary Information, it seems renewal periods as long as 20 years would be appropriate.
Appendix A (b)	The terminology in (b)(1) clearly ties the failure to the performance requirements. The phrase, “and which results in failure to meet the performance requirements of Sec. 70.61”, is very clear. This phrase should be consistently included in (b)(2)-(5) using the exact same wording.

Specific comments were also solicited in the following topics:

1. Backfit Provision

BWXT believes the Backfit Provision should be immediately effective. This view has been clearly articulated in past meetings and in the NEI comments on this rule.

If the backfit provision is not immediately effective, an alternative would be to make it effective for facilities or systems for which the ISA has been completed and take ISA Summary submitted to NRC.

In either case, backfit language should be included in the rule now with dates or circumstances under which it is effective.

2. NRC-OSHA Preemption

BWXT has no comment

3. ISA Methodology

BWXT believes the proposed rule offers sufficient flexibility.

4. ISA Summary Update Frequency

As stated in comments to 72.72, BWXT believes an annual update to the ISA Summary is adequate and consistent with 10CFR50.