

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: SECY-99-175 - PROPOSED RULE: 10 CFR PART 72 -
CLARIFICATION AND ADDITION OF FLEXIBILITY

Approved Disapproved Abstain

Not Participating

COMMENTS: *See attached comments.*


SIGNATURE

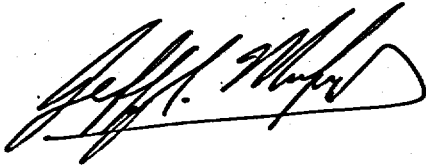
8/25/99
DATE

Entered on "AS" Yes No

COMMISSIONER MERRIFIELD'S COMMENTS ON SECY 99-175

I approve the staff's proposal to publish the proposed changes to 10 CFR Part 72 described in SECY 99-175 subject to the following changes:

- (1) The discussion under "Environmental Impact" on page 13 of the Federal Register Notice does not provide sufficient information to justify the categorical exclusions under 51.22(c)(2) and (3). Before publishing the proposed rule, the staff should revise the FRN to provide clear and convincing information to support the categorical exclusion. If sufficient supporting information can not be assembled, the staff should take actions as appropriate under 10 CFR Part 51.



8/25/99

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NOTATION VOTE

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RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MCGAFFIGAN

SUBJECT: SECY-99-175 - PROPOSED RULE: 10 CFR PART 72 -
CLARIFICATION AND ADDITION OF FLEXIBILITY

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:
See attached comment and edits.

INFORMATION ROUTING ONLY	
<u>Paperello</u>	
<u>Virgilio</u>	
<u>Linden</u>	
cc: <u>NMNS</u>	RMT
FCSS	PAT
<u>SPFO</u>	
DWM	
Other: <u>DiPaio</u>	
	<u>2/10/99</u>

Edward M. McGaffigan Jr.

SIGNATURE
8/13/99

DATE

Entered on "AS" Yes X No _____

Commissioner McGaffigan's Comments on SECY-99-175

I approve publication of the proposed amendments for Part 72, "Clarification and Addition of Flexibility to Part 72." I suggest that the staff establish points of contact within the Department of Energy (DOE) to inform DOE of all Part 72 rulemakings and solicit comments from DOE on such rulemakings.

Suggested edits to the draft Congressional letters and press release are indicated on the attached pages.

EMG



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

*Identical changes are needed
to the Rep. Barton letter.*

The Honorable James M. Inhofe, Chairman
Subcommittee on Clean Air, Wetlands,
Private Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed for the information of the Subcommittee is a copy of a Notice of Proposed Rulemaking to be published shortly in the Federal Register. The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to specify those sections in 10 CFR Part 72 that apply to general licensees, specific licensees, certificate holders, and applicants for a specific license or a certificate of compliance to allow these entities to more clearly *X* determine which sections of the regulations apply to their activities. In addition, these amendments would incorporate flexibility into 10 CFR Part 72 by specifying the conditions under which an applicant for a specific license may use an NRC-approved cask design without *being* *subject* *to* *>* undergoing additional NRC license hearings, and the conditions under which early cask fabrication may take place *>* prior to NRC approval.

These amendments would eliminate regulatory uncertainty, reduce the regulatory burden on applicants for a 10 CFR Part 72 license, and provide increased flexibility to manufacturers of spent fuel storage casks. This proposed change would have no detrimental impact on public health and safety *&* and the right of the public to comment on cask designs would not be affected by this rulemaking.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Senator Bob Graham

The proposed rule would require NRC approval of the quality assurance program before cask fabrication can commence.

D R A F T

(For SECY paper)

**NRC PROPOSES CHANGES TO REGULATIONS
ON SPENT FUEL CASK FABRICATION, HEARING SCOPE**

The Nuclear Regulatory Commission is proposing to amend its regulations ^{in 10 CFR Part 72} on ^{for} storage of spent fuel from nuclear power plants to allow ^g storage cask manufacturers to begin fabrication—at their own risk—before NRC approves their ^g use of the cask. ^g

The proposed amendments would also provide that previously approved cask designs could not be challenged during a licensing hearing.

These changes would reduce the regulatory burden and provide additional flexibility for both applicants and licensees.

NRC has two processes for approving spent fuel storage: (1) a specific license for an independent spent fuel storage installation (ISFSI), in which NRC conducts a detailed review of an application to build and operate the installation on a specific site and (2) a general license, in which a nuclear power plant licensee may use storage casks previously approved by the NRC, without having a specific license or detailed review by NRC (although certain site-specific issues are examined).

The NRC anticipates that it may receive applications for specific licenses for ISFSI's that will propose using casks already approved by the NRC for use under a general license. Under current regulations, the adequacy of the design of these previously approved casks could be at issue during a licensing hearing.

The proposed rule states that if a specific license application for an ISFSI incorporates information on the design of an NRC-approved spent fuel storage cask, the

scope of any public hearing held to consider the application will not include any cask design issues previously addressed by the Commission.

This would eliminate the need for repetitious reviews by a hearing board. In addition, the public would have already had an opportunity to comment on each cask design before it was approved for use under a general license, since the Commission issues a Federal Register notice seeking public comments before deciding whether to incorporate a design into its regulations as approved for use.

With regard to cask fabrication, current regulations prohibit an applicant for NRC approval of a cask design for use under a general license from beginning fabrication of the cask before the NRC issues a certificate of compliance. Applicants for a specific license for an ISFSI, in contrast, are permitted to begin early fabrication of casks before the license is issued. The proposed revisions to the regulations would eliminate this differing NRC treatment between general and specific licensees.

Early fabrication would be at the risk of the applicant, who would have to bear the costs of any actions required to conform a fabricated cask to the conditions of the NRC certificate of compliance.

Interested persons are invited to submit comments within 75 days of publication of a Federal Register notice on this subject, which is expected shortly. Written comments should be sent to the Secretary, Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

Comments may also be submitted electronically via the NRC's interactive rulemaking web site at <http://www.nrc.gov/NRC/rule.html>.

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