



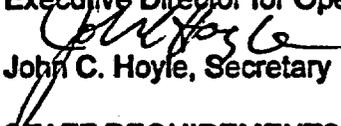
OFFICE OF THE
SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555
July 17, 1998

Action: Knapp, NMSS

Cys: Callan
Travers
Thompson
Norry
Blaha
Shelton, CIO
Meyer, ADM
Lieberman, OE
Collins, NRR
Gundersen, NMSS
Young, NMSS

MEMORANDUM TO: L. Joseph Callan
Executive Director for Operations

FROM: 
John C. Hoyle, Secretary

SUBJECT: STAFF REQUIREMENTS - SECY-98-148 - RULEMAKING PLAN:
10 CFR PART 72 - CLARIFICATION AND ADDITION OF
FLEXIBILITY

This is to advise you that the Commission has not objected to the proposed rulemaking plan to amend Part 72. The staff should complete the rulemaking as expeditiously as possible while resources are available, particularly in light of the administrative nature of many of the changes.

(NMSS)

(EDO suspense: 4/19/98)

9600159

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

RULEMAKING PLAN

Rulemaking Plan

10 CFR Part 72

Clarification and Addition of Flexibility

Regulatory Issues

The Commission's regulations at 10 CFR Part 72 were originally designed to provide specific licenses for the storage of spent nuclear fuel in an independent spent fuel storage installation (ISFSI) (45 FR 74693, November 12, 1980). In 1990, the Commission amended Part 72 to include a process for approving the design of spent fuel storage casks by issuance of a certificate of compliance (CoC) (Subpart L) and for granting a general license to reactor licensees (Subpart K) to use Nuclear Regulatory Commission (NRC)- approved casks for storage of spent nuclear fuel (55 FR 29181, August 17, 1990). Although the Commission intended that the requirements imposed in Subpart K for general licensees be in addition to, rather than in lieu of, appropriate existing requirements, ambiguity exists as to which Part 72 requirements, other than those in Subpart K, are applicable to general licensees. This rulemaking is primarily for the purpose of resolving that ambiguity.

In addition, staff has identified two aspects of Part 72 where it would be desirable to afford additional flexibility to licensees:

- 1) Staff anticipates that NRC may receive several applications for specific licenses for off-site ISFSI that will propose using storage casks previously approved by NRC and listed in 10 CFR 72.214 in Subpart K of Part 72. Under current regulation, the adequacy of the design of these previously approved casks could be at issue (particularly during the hearing process) in each specific license application. This would result in staff having to expend considerable resources in repeatedly re-examining and defending technical issues already resolved during the public rulemaking process. This rulemaking will enable a specific licensee to use a cask listed in 10 CFR 72.214 without necessitating staff review of the cask design or consideration of cask design issues in a hearing.
- 2) Section 72.234(c), which is part of the 1990 amendments to Part 72, prohibits fabrication of a spent fuel cask before NRC's issuance of a CoC for the cask model. At the time this rule was proposed, a commenter suggested that a fabricator be allowed to take the risk of beginning fabrication before the receipt of the CoC but the Commission took the position that since the CoC provides the specific criteria for cask design and fabrication, "[I]f a vendor has not received the certificate, then the vendor does not have the necessary approved specifications and may design and fabricate casks to meet

incorrect criteria." 55 FR 29185 (1990). Since 1990, the staff has reviewed and approved several cask designs. These reviews and follow up requests for additional information have established the staff's expectation for how NRC's criteria for cask design and fabrication should be met. In January 1997, staff issued NUREG-1536: "Standard Review Plan for Dry Cask Storage Systems" which informs CoC applicants of the staff's expectations in reviewing cask designs. In addition, two exemptions from 10 CFR 72.234(c) requirements have been requested and granted to allow applicants to begin fabrication prior to issuance of CoC. Future CoC applications are expected to propose cask designs similar to those which have been approved. Given these developments, staff believes that if cask fabrication is performed under an NRC-approved quality assurance(QA) program the risk will be small that a cask will be fabricated to meet incorrect criteria and that CoC applicants should be allowed to take that risk if they so choose. This rulemaking will permit cask construction before the CoC is issued under specified conditions when the applicant is willing to take the risk involved.

Existing Regulatory Framework

Currently 10 CFR Part 72 has requirements which apply to either a general license or specific license or both general and specific licenses.

Currently 10 CFR Part 72 does not allow the use of casks listed in 10 CFR 72.214 by specific licensee applicants without a full technical review of the cask design and an opportunity for a hearing on cask design issues by interested parties.

Currently 10 CFR 72.234(c) does not allow construction of a cask prior to issuance of a CoC.

How the Regulatory Problems Will be Addressed By Rulemaking

Each section in 10 CFR Part 72 will be clearly identified as to whom it applies; general license, specific licensee, CoC holder, or a combination of licensees or CoC holders.

Regulations will be developed to allow the use of a cask listed in 10 CFR 72.214 by a specific licensee without the need for staff to provide a technical review of the cask design nor a need to permit cask design issues to be heard in any adjudication of the license because the design has previously been certified by the NRC in the rulemaking process.

Regulations will be developed to allow the construction of a cask before a final CoC is issued provided that construction is performed under an NRC-approved quality assurance program and that the applicant bear all risks associated with early construction.

Rulemaking Options

- Option 1 - Conduct a rulemaking which will address the regulatory problems as described above.

The benefit of the rulemaking is that it will clarify the Part 72 regulations as they apply to general licensees, thereby avoiding the need to resolve on a case-by-case basis questions that arise as to which Part 72 regulations, other than those in Subpart K, are applicable. This will reduce resources spent by licensees and the staff in making these case-by-case determinations. The rulemaking will also reduce the burdens on licensees and the staff with respect to the review and adjudication of cask design issues where the cask design has already been reviewed and approved through rulemaking. The rulemaking will also provide increased flexibility to CoC applicants with respect to when a cask is fabricated and will reduce the need for the staff to consider requests for exemption from 10 CFR 72.234(c). The impact of this option consists primarily of the expenditure of NRC resources in conducting the rulemaking.

- **Option 2 - No action**

The benefit of the no action alternative is that NRC resources will be conserved because no rulemaking will be conducted. The impact of this alternative will be that the regulatory problems described above will not be addressed.

Preferred Option

The recommended action is to adopt the first option because it will set forth a clear regulatory base for licensees, general and specific. This will be done by specifying clearly what requirements apply to each entity. Attached is a staff position on the applicability of each section of 10 CFR Part 72 to general and specific licensees. (See attached page 8).

To allow specific licensees to use casks listed in 10 CFR 72.214 and simply reference the cask in a SAR, the staff proposes that a new section 72.24(r) be added to read as follows, "If the applicant intends to use a cask from the list of approved spent fuel storage casks in 72.214, the applicant may reference the applicable cask Certificate of Compliance without having to submit a separate safety analysis for the cask design. However, the applicant shall include as part of its Safety Analysis Report, an evaluation ensuring all conditions set forth in the Certificate of Compliance will be met." Companion changes to other Part 72 regulations will need to be made to clearly identify what findings the staff must make when an applicant uses a certified cask and when an applicant does not use a certified cask.

It is recommended that this rulemaking follow the standard two step process of proposed rule followed by final rule.

Office of General Counsel Legal Analysis

OGC has not identified any basis for a legal objection to this rulemaking.

Backfit Analysis

A backfit analysis is not required because this proposed amendment does not involve any provisions which would impose backfits as defined in 10 CFR § 72.62.

Agreement State Implementation Issues

This rule is classified as compatibility category "NRC" and addresses areas of exclusive NRC regulatory authority.

Major Rule

This is not a major rule.

Supporting Documents Needed

No supporting documents are needed.

Issuance by Executive Director for Operations or Commission

NMSS recommends Commission issuance.

Resources Needed to Complete Rulemaking

Resources to complete and implement the rulemaking are included in the FY 1998 budget.

- NMSS 1.5 FTE
- OGC 0.2 FTE
- Other 0.2 FTE
- No contractor support dollars are needed

Staff Level Working Group

Concurring Official

NMSS G. Gundersen, Task Leader
F. Young

C. Paperiello

OGC N. Jensen

J. Gray

Management Steering Group

A steering group is not required for this rulemaking.

Public Participation

Enhanced public participation is not needed in this simple rulemaking. This rulemaking plan will be placed on the rulemaking interactive website following EDO review and approval.

Schedule

Proposed Rule to EDO.....9 months after approval of rulemaking plan.

Final Rule to EDO.....6 months after public comment on proposed rule closes.

Document name: O:\gunderse\plan.wpd

To: Roberta Gordon, NRC

Fax: 301-415-5385

Ph: 301-415-7555

From: Ellen Kraus, WHE, etc.

Fax: 202-537-5133

Phone: 301-415-7808(2)
202-363-6433(1)

total pp. (5)

(1)

P. 2/5



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

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 clearly specify which sections in 10 CFR Part 72 apply to general licensees, specific licensees, or certificate holders to allow these persons to easily determine which sections of the regulations apply to their activities. In addition, these amendments will 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 without undergoing additional NRC review and the conditions under which early cask fabrication may take place.



These amendments would eliminate the uncertainty that now exists and reduce burden of NRC, to clarify the requirements of ~~10 CFR~~ Part 72 for applicants, licensees, and certificate holders.

Handwritten initials: "Ave" and "SN" in circles.

Handwritten note: "/ on NRC,"

This change will have no adverse impact on the health and safety of workers or the public and is not expected to impose a significant burden on licensees.

Sincerely,

Handwritten number: (2)

FEB 12 '99 12:51PM

P.3/5



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

**Dennis K. Rathbun, Director
Office of Congressional Affairs**

**Enclosure:
Federal Register Notice**

cc: Senator Bob Graham

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:

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These amendments would eliminate the uncertainty that now exists and reduce ^{the} burden ^{on} NRC, to clarify the requirements of ~~10 CFR~~ Part 72 for applicants, licensees, and certificate holders. This change will have no adverse impact on the health and safety of workers or the public and is not expected to impose a significant burden on licensees.

on NRC,

Sincerely,

Dennis K. Rathbun, Director
 Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Senator Bob Graham
 DISTRIBUTION: [O:\DiPalo\72con.wpd]
 GJPaperiello
 DACool
 PHolahan
 ADiPalo
 JMcCausland

Identical letter was sent to the Honorable Dan Shaefer
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NAME:	CPaperiello	DKRathbun		
DATE:	1 / 199	1 / 199		

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FEB 12 '99 12:51PM

P. 5/5



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

The Honorable Joe Barton, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, DC 20515

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 clearly specify which sections in 10 CFR Part 72 apply to general licensees, specific licensees, or certificate holders, to allow these persons to easily determine which sections of the regulations apply to their activities. In addition, these amendments will 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 without undergoing additional NRC review and the conditions under which early cask fabrication may take place.

These amendments would eliminate the uncertainty that now exists and reduce ^{the} burden ^{on} NRC to clarify the requirements of 10 CFR Part 72 for applicants, licensees, and certificate holders. This change will have no adverse impact on the health and safety of workers or the public and is not expected to impose a significant burden on licensees.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Ranking Member

(5)

5

(b) take pp.

262-363-6433

Phms: 301-415-7808

Fax: 202-537-5133

From: Ellen Kraus, NRC, etc.

Phs.: 301-415-7555/6191

Fax: 301-415-5385

To: Rebecca Jordan / Tony DiPaolo, NRC

*Looks good -
Thanks for
excellent
spacing!*

FOR: The Commissioners
FROM: William D. Travers
Executive Director for Operations
SUBJECT: PROPOSED RULE: 10 CFR PART 72 - CLARIFICATION AND
ADDITION OF FLEXIBILITY

PURPOSE:

To request Commission approval for publication of the proposed rule.

BACKGROUND:

10 CFR
Part 72 provides regulations for two types of licenses - general or specific - that may be used to store spent fuel. A general license is available to persons authorized to possess or operate nuclear power reactors under 10 CFR Part 50. A specific license is issued to a person upon application filed pursuant to regulations in Part 72. Part 72 does not clearly specify which sections, other than Subpart K, apply to general licensees. Subpart L, "Approval of Spent Fuel Storage Casks," applies to applicants and holders of Certificates of Compliance (CoC).
However, Part 72 also does not clearly specify which sections, other than Subpart L, apply to certificate holders.

U.S.
The staff anticipates that the Nuclear Regulatory Commission (NRC) may receive several

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The Commissioners

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applications for specific licenses for independent spent fuel storage installations (ISFSIs) that will propose using storage casks previously approved ^{in?} Subpart L of Part 72 (listed in § 72.214). Under the current regulation, the adequacy of the design of these previously approved casks could be at issue (particularly during the hearing process) in each specific license application. This would result in the staff having to expend considerable resources in repeatedly reexamining and defending technical issues already resolved during the NRC's approval of the cask design.

Don't abbreviate because only used once.
??

Section

CONTACTS: T. DiPalo, NMSS/IMNS

(301) 415-6181

Francis Young, NMSS/SFPO

(301) 415-3207

The Commissioners

3

Section 72.234(c) does not permit an applicant for a CoC to begin cask fabrication before the NRC issues the CoC. Over the last 4 years, the NRC has issued six exemptions from this regulation and has one additional request pending. The Commission granted these exemption requests based on the applicant's performance of the fabrication under an NRC-approved Quality Assurance (QA) program and under the premise that the applicant bears any financial risks associated with early fabrication.

The Commission approved the staff's rulemaking plan in a Staff Requirements Memorandum dated July 17, 1998.

DISCUSSION:

This proposed rulemaking will clearly specify which sections apply to general licensees, specific licensees, or certificate holders, and will allow these persons to clearly determine which sections of Part 72 apply to their activities. This clarification will eliminate the uncertainty that now exists, and it will reduce staff time in clarifying the requirements of Part 72 for applicants, licensees, and certificate holders.

This proposed rulemaking will specify the conditions under which an applicant for a specific license may use a cask previously approved by the NRC without necessitating staff review of the cask design nor consideration of cask design issues in a hearing. This additional flexibility will save the applicant considerable time and resources, in that an approved cask can be used without additional NRC review.

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The Commissioners

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This proposed rulemaking will specify under what conditions early cask fabrication may take place and will clarify that the risk of building a nonapproved cask falls on the applicant. Cask fabrication may be started before the design is approved by NRC, provided it is constructed under an NRC-approved QA program and that the applicant bears the risks, mainly financial, associated with early fabrication. ^{Am} Applicants ^{is} are currently required to conduct fabrication activities under an NRC-approved QA program. This rulemaking will allow ~~the~~ NRC to require that a certificate holder remediate a fabricated cask to conform with the Issued CoC without regard to the backfit provisions of ^{11 CFR} 72.62. Allowing applicants to start fabrication of casks before a CoC is issued, at their own risk, eliminates the need to process exemption requests, which use staff resources. This rulemaking will eliminate the need for exemption requests regarding cask fabrication before the CoC is issued.

RESOURCES:

The resources needed to complete and implement the rulemaking are included in the current budget. *must have at least 2 words on line*

RECOMMENDATIONS:

That the Commission:

1. Approve publication in the Federal Register of the ~~attached~~ notice of proposed rulemaking (Attachment 1), allowing 75 days for public comment.

redundant, I think.

Att. 1

(5)

The Commissioners

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2. To satisfy the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605 (b), certify that this rule, if promulgated, will not have significant impact on a substantial number of small entities. This certification is included in the attached Federal Register notice.

3. NOTE:

- a. The appropriate Congressional Committees will be informed (Attachment 2);
- b. A press release will be issued by the Office of Public Affairs when the proposed rulemaking is filed with the Office of the Federal Register (Attachment 3);
- c. A table is attached to aid in specifying the sections in Part 72 that apply to general licensees, specific licensees, and certificate holders (Attachment 4);
- d. The Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification regarding economic impact on small entities and the reasons for it, as required by the Regulatory Flexibility Act.
- e. The proposed rule contains new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501; et seq.).

(Att. 2
Att. 3
Att. 4

COORDINATION:

The Office of the General Counsel has no legal objection to the proposed rule. The Office of

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The Commissioners

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the Chief Financial Officer has reviewed the Commission paper for resource impacts and has no objection. The Office of the Chief Information Officer has reviewed the Commission paper for information technology and information management implications and concurs in it.

William D. Travers
Executive Director
for Operations

- Attachments:
- 1. Draft Federal Register Notice ✓
 - 2. Draft Congressional Letters ✓
 - 3. Draft Press Release ✓
 - 4. Table of Applicability ✓

(7)

The Commissioners

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2. To satisfy the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605 (b), certify that this rule, if promulgated, will not have significant impact on a substantial number of small entities. This certification is included in the attached Federal Register notice.
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 - c. A table is attached to aid in specifying the sections in Part 72 that apply to general licensees, specific licensees, and certificate holders (Attachment 4);
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COORDINATION:

The Office of the General Counsel has no legal objection to the proposed rule. The Office of the Chief Financial Officer has reviewed the Commission paper for resource impacts and has no objection. The Office of the Chief Information Officer has reviewed the Commission paper for information technology and information management implications and concurs in it.

(8)

The Commissioners

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William D. Travers

Executive Director

for Operations

- Attachments:
1. Draft Federal Register Notice
 2. Draft Congressional Letters
 3. Draft Press Release
 4. Table of Applicability

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NRC FORM 8C
(7-94)
NRCMD 3.57

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