

PDR
AG 15-1

June 25, 1998

SECY-98-148

FOR: The Commissioners

FROM: L. Joseph Callan
Executive Director for Operations

SUBJECT: RULEMAKING PLAN: 10 CFR PART 72 - CLARIFICATION AND
ADDITION OF FLEXIBILITY

PURPOSE:

To inform the Commission that the Executive Director for Operations intends to implement the enclosed rulemaking plan to amend 10 CFR Part 72.

ISSUE:

Part 72 provides regulations for two types of license, general or specific, that may be used to store spent fuel. A general license is issued under 10 CFR 72.210 to persons authorized to possess or operate nuclear power reactors, under Part 50 of this chapter. A specific license is issued to a named person in an application filed pursuant to regulations in Part 72. Part 72 does not clearly specify which sections, other than Subpart K, apply to general licensees.

The staff anticipates that the Nuclear Regulatory Commission (NRC) may receive several applications for specific licenses, for offsite independent spent fuel storage installations (ISFSIs), that will propose using storage casks previously approved (listed in 10 CFR 72.214) in Subpart K of Part 72. 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 re-examining and defending technical issues already resolved during the public rulemaking process.

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**NOTE: TO BE MADE PUBLICLY
AVAILABLE WHEN THE FINAL SRM
IS MADE AVAILABLE**

Following an initial request from, and issuance of an April 26, 1994 exemption to Sierra Nuclear, the staff has received multiple submittals to allow fabrication of storage casks prior to issuance of a Certificate of Compliance (CoC). During the current year for example, the staff has received five exemption requests, of which three have been granted. The staff's position is that construction of casks may begin before a CoC is issued, provided that construction is performed under an NRC-approved quality assurance (QA) program and that the applicant bears all risks associated with early construction.

DISCUSSION:

This rulemaking will clearly specify which sections apply to general licensees, specific licensees, or both general and specific licensees, and will allow general licensees 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 and licensees.

This rulemaking will specify the conditions under which a specific licensee may use a cask listed in 10 CFR 72.214 without necessitating staff review of the cask design nor consideration of cask design issues in a hearing. This additional flexibility will save the specific licensee considerable time and resources in that an approved cask can be used without additional NRC review.

This rulemaking will specify under what conditions early cask construction may take place and will clarify that the risk of building a non-approved cask falls on the applicant. Cask fabrication will be able to be started before its approval by NRC, provided it is constructed under an NRC-approved QA program and that the applicant bears the risks, mainly financial, associated with early construction. Allowing applicants to start construction 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 reduce the need for exemption requests regarding cask fabrication.

COORDINATION:

The Office of the General Counsel has no legal objection to this rulemaking plan. The Office of the Chief Financial Officer has reviewed this Commission Paper for resource impacts and has no objection. The Office of the Chief Information Officer has reviewed the rulemaking plan for information technology and information management implications and concurs in it. However, the plan suggests a reduction in burden for reporting requirements that must be submitted to the Office of Management and Budget for review no later than the date the proposed rule is forwarded to the Federal Register for publication.

NRC FORM 8B
(7-94)
NRCMD 3.57

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RESOURCES:

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

RECOMMENDATION:

Note that it is my intention to implement the rulemaking plan within ten days from the date of this paper unless directed otherwise by the Commission.


L. Joseph Callan
Executive Director
for Operations

Attachment: Rulemaking Plan

NRC FORM 8
(7-94)
NRCMD 3.57

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