

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



August 14, 2006

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-06-0152

TITLE: TITLE 10 CODE OF FEDERAL REGULATIONS PART 72
LICENSE AND CERTIFICATE OF COMPLIANCE TERMS

The Commission (with Chairman Klein and Commissioners McGaffigan and Lyons agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of August 14, 2006. Commissioner Merrifield and Jaczko approved an alternative approach.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

A handwritten signature in black ink, appearing to read "Annette L. Vietti-Cook", written over a horizontal line.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Klein
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons
OGC
EDO
PDR

VOTING SUMMARY - SECY-06-0152

RECORDED VOTES

| | APRVD | DISAPRVD | ABSTAIN | NOT PARTICIP | COMMENTS | DATE |
|------------------|-------|----------|---------|-----------------|----------|---------|
| CHRM. KLEIN | X | | | | X | 7/31/06 |
| COMR. McGAFFIGAN | X | | | | X | 7/24/06 |
| COMR. MERRIFIELD | X | X | | | X | 7/26/06 |
| COMR. JACZKO | X | | | | X | 7/25/06 |
| COMR. LYONS | X | | | | | 7/20/06 |

COMMENT RESOLUTION

In their vote sheets, Chairman Klein and Commissioners McGaffigan and Lyons approved the staff's recommendation. Commissioners Merrifield and Jaczko approved an alternative approach. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on August 14, 2006.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: CHAIRMAN KLEIN


SUBJECT: **SECY-06-0152 - TITLE 10 CODE OF FEDERAL
REGULATIONS PART 72 LICENSE AND
CERTIFICATE OF COMPLIANCE TERMS**

Approved Disapproved Abstain

Not Participating

COMMENTS: Below Attached None

See attached comments.



SIGNATURE

July 31, 2006

DATE

Entered on "STARS" Yes No

Chairman Klein's Comments on SECY-06-0152

I approve the staff's recommendations as a reasonable approach to adding flexibility and clarity to the regulatory requirements associated with spent fuel dry cask storage. I also agree that the "alternative approach" to add rulemaking to increase the terms for initial and/or renewed site-specific ISFSI licenses from 20 to 40 years is not necessary at this time.

A 40-year renewal period is reasonable and has been sufficiently justified from a technical review perspective during the ISFSI license renewal for Surry and H.B. Robinson. On the other hand, DOE currently predicts that a high level waste repository will be operational in 2017. There are only 4 site-specific ISFSI licenses which will expire before 2017, the earliest in 2010. Under the current regulations, a 20 year renewal in 2010 would provide 13 years from the time the repository begins accepting fuel (2017) to when the license will again expire (in 2030). This should provide a sufficient amount of time to transfer the fuel. In view of the large number of rulemaking efforts currently facing the NRC, combined with the relatively few renewals that may be necessary, there appears to be a limited benefit to pursuing the alternative approach. Should the need arise to revisit this issue due to changing conditions, the staff should reconsider rulemaking to address this issue at that time.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MCGAFFIGAN
SUBJECT: **SECY-06-0152 - TITLE 10 CODE OF FEDERAL
REGULATIONS PART 72 LICENSE AND
CERTIFICATE OF COMPLIANCE TERMS**

Approved Disapproved Abstain

Not Participating

COMMENTS: Below Attached None

/RA/
SIGNATURE

July 24, 2006
DATE

Entered on "STARS" Yes No

Commissioner McGaffigan's Comments on SECY-06-0152

I approve the staff's recommended approach to rulemaking for Part 72 license and Certificate of Compliance (CoC) terms. Since there are no potential applicants for new site-specific ISFSIs, and at most six existing site-specific ISFSIs could reasonably be expected to request exemptions for a 40-year license renewal term, I agree that we don't need to pursue the alternative approach at this time.

This is an important rulemaking. I support waiving the rulemaking plan. I hope that the staff will be as transparent as possible in developing the proposed rule package, including making draft text available for comment to stakeholders, and holding public meetings, if necessary, prior to formal submission of the proposed rule to the Commission. Transparency in the early stages of this rulemaking should lead to efficiency in the latter stages.

| | |
|------------------------|----------------------|
| <u>/RA/</u> | <u>July 24, 2006</u> |
| Edward McGaffigan, Jr. | (Date) |

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: **SECY-06-0152 - TITLE 10 CODE OF FEDERAL
REGULATIONS PART 72 LICENSE AND
CERTIFICATE OF COMPLIANCE TERMS**

Approved X, in part Disapproved X, in part Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached X None _____

/RA/
SIGNATURE

07/26/06
DATE

Entered on "STARS" Yes X No _____

Comments from Commissioner Merrifield on SECY-06-0152:

I disapprove the staff's recommended approach and approve the alternative approach as modified in the following paragraphs. The alternative approach includes the staff's recommended approach addressing certificates of compliance (CoCs) for individual cask designs as well as rulemaking to extend the plant specific initial licensing of independent spent fuel storage installations (ISFSIs) to 40 years, if justified, and allow renewals for up to 40 years, if justified.

In the staff requirements memorandum for SECY-04-0175, the Commission addressed the renewal term for a site specific ISFSI license and determined that, if technically justified, a 40 year renewal term is appropriate and the staff should evaluate a 40 year renewal term for any licensee which requests such an exemption to the existing regulatory requirement. The staff was also directed to consider rulemaking to address the initial term and renewal term. SECY-06-0152 was submitted in response to the Commission direction.

In SECY-06-0152, the staff recommends maintaining the status quo and not conducting rulemaking to modify either the initial licensing period or the term of the renewed license for site specific ISFSIs for reasons very similar to the justification expressed when the regulations were initially imposed. Although there are multiple elements to the staff's reasoning, it can be simplistically stated that the high level waste repository will be operational relatively soon (i.e., in the next decade or so). Before the waste is transferred to the repository, staff expects to process no new ISFSI site specific license applications and only about 6 site specific license renewals. Therefore staff believes it is more cost beneficial to continue to process exemptions to the regulations than to actually amend the regulations. I believe the staff is just as overly optimistic today as the Commission was years ago when these standards were initially developed. Currently, DOE predicts that a high level waste repository will be operational in 2017, if a significant list of exceptions do not occur. Even if one were to optimistically assume the repository were to be licensed and commenced operation by 2017, the campaign to ship spent fuel to the repository could possibly take 20 or more years to complete. In addition, DOE may start reprocessing spent fuel which may extend the time spent fuel needs to remain in storage until the reprocessing facilities are built and operational. Even after the proposed reprocessing facility becomes operational, the processing capacity of the facility as well as the need for new fuel will determine the rate at which spent fuel can be removed from storage. So even with the staff's assumptions, there may be a need to continue to store spent fuel for an extended period longer than anticipated by the staff. As a regulator, the NRC should not take a position, one way or the other, on the potential future license application for a high level waste repository. Additionally, our regulatory practices for spent fuel storage, and in particular the terms for the duration of regulatory licenses or certificates, should not be overly influenced by DOE's proposed schedules for the high level waste program.

There are two reasons I believe the initial terms and renewal terms for both the ISFSI and CoCs should be extended to 40 years. First, it strengthens the Commission's waste confidence decision to state, based on a safety analysis, that the ISFSI site as well as the individual storage canisters can safely perform their functions for a long period of time. Licensees will have sufficient motivation to transfer spent fuel to a repository as soon as practical once it is operational regardless of the term of the specific license for an ISFSI or CoC for a storage cask. Second, concerning the renewal term, licensees need the predictability of a regulatory requirement as opposed to the uncertainty of the exemption process. One reason more

licensees may be opting for operating the ISFSI under a general license is that the general license is valid for as long as the Part 50 license is valid and never requires a specific renewal.

Specifically related to ISFSIs and this rulemaking activity, the staff should consider imposition of conditions to managing the effects of aging as part of the initial license for the ISFSIs or as part of the conditions under the general license conditions if that option is pursued.

Concerning the CoC for individual storage casks, the initial term and extensions (whether they be termed reapproval or renewal) could be justified for up to 40 years to be consistent with the ISFSI rulemaking. The staff has raised a number of reasonable questions which should be addressed under the rulemaking process. For example, when does the current 20 year period start and end, particularly for facilities using the general license approach? Who is responsible for applying for the certificate renewal, the vendor or the licensee? More importantly, how are the casks tracked at each site so that it is clearly understood when each CoC should be renewed? The staff has raised these questions in the SECY-06-0152 and they should be raised as part of the rulemaking package.

One element that is not addressed in SECY-06-0152, which should be discussed in the rulemaking package, concerns dual use systems, i.e., casks systems designed for both storage and transportation. The rulemaking package should discuss the impact and relationship of changing the CoC term on the transportation aspects of this cask systems. If any significant conflicts are identified, staff will also need to propose a solution.

Another element not fully addressed in the Commission paper, but which should be fully addressed in the rulemaking, concerns the reapproval of CoCs. Specifically, SECY-06-0152 does discuss that for the CoC there is a distinct difference between certificate reapproval and certificate renewal. Reapproval means the certificate is based on new or current standards and renewal means the certificate is based on the original standards. The current regulations focus on reapproval. The paper acknowledges the NRC should address this issue as part of the rulemaking effort but leaves the distinct impression that staff will be focusing solely on the definition of reapproval. Staff does not discuss how they intend to address this issue. Simply stating that cask CoC's will be periodically reapproved against the latest standards is not an acceptable process. A cask loaded with fuel for 20 years is unlikely to meet the latest standards but yet be fully acceptable for continuing to store the existing fuel. In addition, there are significant safety considerations if the spent fuel must be repackaged to a cask that does meet the latest design standards. The NRC should not be forcing such repackaging efforts unless there are clearly identified safety concerns with leaving the spent fuel in its existing storage containers. Reapproval for an existing loaded cask should consider the initial licensing basis. For an unloaded cask or an older cask design whose CoC has expired, it would be prudent to review it against the latest standards. This is a complex issue and I will not prejudge the staff's recommendations. However, the proposed rulemaking should clearly present the staff's recommendations to address this concern.

Based on the information submitted to the Commission, staff does not need to develop a rulemaking plan for this effort.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: **COMMISSIONER JACZKO**
SUBJECT: **SECY-06-0152 - TITLE 10 CODE OF FEDERAL
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Approved Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below Attached _____ None _____

I support the staff "alternative approach" and concur with
Commissioner McGaffigan's comments regarding the rulemaking
plan and transparency.

/RA/
SIGNATURE

7/25/06
DATE

Entered on "STARS" Yes No _____

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

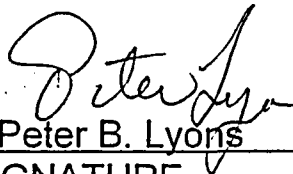
FROM: COMMISSIONER LYONS

SUBJECT: **SECY-06-0152 -- TITLE 10 CODE OF FEDERAL
REGULATIONS PART 72 LICENSE AND
CERTIFICATE OF COMPLIANCE TERMS**

Approved X Disapproved Abstain

Not Participating

COMMENTS: Below Attached None X



Peter B. Lyons
SIGNATURE

71 20 106
DATE

Entered on "STARS" Yes X No