

March 24, 1998

FOR: The Commissioners

FROM: L. Joseph Callan /s/
Executive Director for Operations

SUBJECT: RULEMAKING PLAN:ELIMINATION OF 30-DAY HOLD IN LOADING SPENT FUEL AFTER PREOPERATIONAL TESTING OF INDEPENDENT SPENT FUEL STORAGE OR MONITORED RETRIEVABLE STORAGE INSTALLATIONS

PURPOSE:

To inform the Commission that the Executive Director for Operations intends to sign the enclosed Rulemaking Plan to amend 10 CFR 72.82(e).

ISSUE:

Section 72.82(e) requires a 30-day hold time after preoperational testing of an independent spent fuel storage installation (ISFSI) or monitored retrievable storage installation before spent fuel or high-level waste can be loaded into a dry storage cask. This hold-time is unnecessary as the U.S. Nuclear Regulatory Commission (NRC) staff is on site and evaluates preoperational testing in real time. Also, requests for exemptions to shorten this time have been received and granted by NRC and continuing to grant exemptions should be avoided in the regulatory process.

DISCUSSION:

By a memorandum dated March 15, 1996, the Office of Nuclear Material Safety and Safeguards (NMSS) requested that 10 CFR 72.82(e) be amended to make the submittal of a report detailing preoperational test acceptance criteria and test results optional at the discretion of the Regional Administrator or Director, NMSS. This proposed rulemaking was briefly described in the Rulemaking Activity Plan (SECY-96-176 (August 8, 1996), Attachment 2, p.36). The Commission, in its October 9, 1996, Staff Requirements Memorandum on SECY-96-176, stated that it did not object to moving forward with this rulemaking to shorten or eliminate the 30-day hold period, but noted "...that continued vigilance is needed in the development of staff and industry guidance in the area of dry cask storage" and that "...[s]pecific emphasis should be placed on assuring that loading and unloading procedures for both normal and abnormal occurrences are in place and appropriate."

In January 1997, NMSS published NUREG-1536, "Standard Review Plan for Dry Cask Storage Systems." Section 8 - "Operating Procedures," specifies that the applicant's safety analysis report should present acceptable operating sequences, guidance, and generic procedures for three key operations: (1) cask loading, (2) cask handling and storage operations, and (3) cask unloading. NRC Inspection Procedures 60854, "Preoperational Testing of an ISFSI" and 60855, "Operation of an ISFSI" together require specific reviews of a licensee's normal, abnormal, and emergency operating procedures, including loading and unloading procedures, and provide specific guidance to the staff on evaluating the adequacy of the operating procedures.

This rulemaking will remove 10 CFR 72.82(e) from the U.S. Code of Federal Regulations. This will eliminate both the submittal of a report not needed by NRC and a 30-day hold period that has proved to be unnecessary, for regulatory purposes. Further, the rulemaking will obviate the licensee's need to submit an exemption request and the staff's review and disposition of such requests. The NRC inspection program now in place (e.g., Inspection Manual Chapter 2690, Inspection Procedure 60854), will assure that the staff is satisfied that the licensee is prepared to load spent fuel into the ISFSI.

As a result of this action, the general public will no longer be able to access the data and information now available in the report on the preoperational test acceptance criteria and test results that is submitted by licensees to NRC and placed in the NRC Public Document Room (PDR) and local public document room. However, the public will have access to equivalent information in the inspection reports placed in NRC's PDR. The public already has access to a list of preoperational tests because they are contained in the Safety Analysis Report, which is contained in NRC's PDR.

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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 concurs that there will be no information technology or management impacts.

RECOMMENDATION:

Note that it is my intention to approve the Rulemaking Plan within ten days from the date of this paper.

L. Joseph Callan
Executive Director for Operations

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

ATTACHMENT

Rulemaking Plan

10 C.F.R. Part 72

Elimination of 30-day Hold in Loading Spent Fuel After Preoperational Testing of Independent Spent Fuel Storage or Monitored Retrievable Storage Installations

Regulatory Issue

Section 72.82(e) requires licensees to submit to the NRC a report of the preoperational test acceptance criteria and test results at least 30 days before the receipt of spent fuel or high-level waste for loading into an Independent Spent Fuel Storage Installation (ISFSI) or Monitored Retrievable Storage Installation (MRS). The 30-day period was established to allow the NRC staff time to review the report of the preoperational test acceptance criteria and test results prior to a licensee beginning initial loading. The licensee is not required to obtain NRC approval of the report. The 30-day hold established by this requirement creates a potentially significant financial burden for licensees because, during the 30-day period, the licensee can perform no loading activities even though the licensee is ready to load spent fuel or high-level waste.

In the past, the NRC staff has resolved this problem by granting requests from licensees for an exemption from the 30-day period in 10 C.F.R. 72.82(e). In granting these exemptions, the NRC staff has determined that a 30-day period was not needed for review of the licensee's report of preoperational test acceptance criteria and test results. This is because the NRC has an extensive oversight presence during the preoperational testing phase of ISFSIs, reviewing the acceptance criteria and test results in real time. The staff anticipates that if 10 C.F.R. 72.82(e) is not amended or removed, additional requests for exemptions will be made in the future. Routine granting of exemptions should be avoided in the regulatory process.

Existing Regulatory Framework

Currently 10 C.F.R. 72.82(e) reads as follows: "A report of the preoperational test acceptance criteria and test results must be submitted to the appropriate Regional Office specified in Appendix A of part 73 of this chapter with a copy to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, at least 30 days prior to the receipt of spent fuel or high-level radioactive waste."

How the Regulatory Problem Will be Addressed By Rulemaking

An unnecessary reporting requirement and holding period will be removed from the NRC regulations.

Rulemaking Options

- Option 1 - Remove 10 C.F.R. 72.82(e).
- Option 2 - Revise 10 C.F.R. 72.82(e) to reduce the 30-day hold to 5 days.
- Option 3 - No action.

Impacts

- Option 1 - A report of the preoperational test criteria and test results will no longer be available in the NRC Public Document Room (PDR) system. However, NRC inspection reports will contain NRC findings on the preoperational testing and assessments on the licensee's readiness to commence loading spent fuel and these inspection reports will be available in the Public Document Room system.
- Option 2 - Under this option, the licensee must still submit an unnecessary report and must still observe a specific holding period which might not be needed in particular circumstances. It is possible an exemption might still be sought to further reduce the holding period.
- Option 3 - The licensee has a 30-day hold and would still be required to produce a report that is not used by the staff. Licensee's desiring to commence loading before 30 days have passed would still have to request an exemption which would have to be processed by the NRC.

Benefits

- Option 1 - This action will reduce the burden on licensees because the licensee will no longer have to submit a report not needed by NMSS or the Regions and the licensee will not have to wait 30 days before loading spent fuel or high-level waste. This will enable the licensee to use the crew

assembled for fuel transfer when the lessons of preoperational testing are fresh in their minds and will contribute to efficiency of operations by avoiding an artificial and unnecessary idle time. The NRC staff observers of spent fuel loading will be similarly benefitted. Also, this change would provide burden relief for both licensees and the staff because requests for exemptions would not be necessary.

- Option 2 - The burden on licensees would be reduced in that the 30-day hold after preoperational testing would be reduced to 5 days. With only a 5-day hold period, the licensee can keep the loading crew on site, and the actual loading can be performed by the crew with preoperational testing still fresh in their minds. The public will still have access to the report of the preoperational acceptance criteria and test results by means of the NRC's PDR system. In addition, requests for exemptions should not be necessary.
- Option 3 - Staff resources are conserved in the short-term because no rulemaking will be developed and promulgated. The public will still have access to the report of the preoperational acceptance criteria and test results by means of the NRC's PDR system.

Preferred Option

The recommended action is to adopt the first option because it eliminates the submittal of a report not needed by the NRC and eliminates a 30-day hold period which has proved to be unnecessary for regulatory purposes. The licensee's need to submit an exemption request and the staff effort to review and resolve such requests will both be eliminated. The NRC inspection program now in place (i.e., Inspection Manual Chapter 2690 and Inspection Procedures 60854 and 60855) assures that NRC staff will both review licensee normal, abnormal, and emergency operating procedures, including loading and unloading procedures, and observe implementation of those procedures during preoperational testing. Consequently, the NRC staff will be in a position to make sure that any problems are resolved before spent fuel loading begins. Also, insofar as this regulation serves to assure notice to the NRC that spent fuel load is scheduled, it is not necessary because the general licensee is required to notify the NRC at least 90 days prior to spent fuel load (10 C.F.R. 72.212(b)(1)(i)) and the specific licensee cannot load spent fuel until NRC has granted a license. While the public will no longer have access to the report on preoperational test acceptance criteria and test results, it will have access to equivalent information in the inspection reports which are placed in the NRC's PDR. The public already has access to a list of preoperational tests because they are contained in the Safety Analysis Report, which is contained in the NRC's PDR.

To implement the recommended option, it is proposed that 10 C.F.R. 72.82(e) be removed.

It is recommended that this rulemaking follow the standard two step process of proposed rule followed by final rule. This rulemaking will not result in any decrease in the oversight of licensee activities by the NRC or in the safety of licensee operations.

Office of General Counsel Legal Analysis

OGC has not identified any basis for a legal objection to this rulemaking. The proposed amendment would eliminate the requirement that Part 72 licensees submit a report of the preoperational test acceptance criteria and test results at least 30 days prior to the receipt of spent fuel or high-level radioactive waste on the ground that NRC's inspection program assures that NRC staff will be present for observance of preoperational testing and will be in a position to assure that a licensee is prepared to safely load spent fuel or high-level radioactive waste. Thus, the report and the 30-day hold period are not needed for NRC's regulatory activities and their elimination will reduce an unnecessary regulatory burden on licensees.

The rule does not constitute a backfit under 10 C.F.R. 72.62 because it does not require a change to existing structures, systems, components, procedures or organization. Environmental review is not needed because this rulemaking comes within the provisions of the categorical exclusion at 10 C.F.R. 51.22(c)(3)(iii). The estimated burden reduction due to the elimination of this report is two hours annually, within a context of 21,454 information collection burden hours in the current OMB Part 72 clearance. This may not be significant enough to trigger the requirements of the Paperwork Reduction Act of 1995. The proposed rule will be reviewed by OCIO and OGC to determine if the rule will require OMB clearance. The final rule must be evaluated for compliance with the Small Business Regulatory Enforcement Act of 1996.

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 C.F.R. 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

None.

Issuance by Executive Director for Operations or Commission

NMSS recommends EDO issuance.

Resources Needed to Complete Rulemaking

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

- NMSS 0.2FTE
- OGC 0.1FTE
- Other 0.1FTE
- No contractor support dollars are needed

Staff Level Working GroupConcurring Official

NMSS	G. Gundersen P. Brochman	C. Paperiello
NRR	W. Reckley	S. Collins
OGC	N. Jensen	K. Cyr

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.....4 months after approval of rulemaking plan.

Final Rule to EDO.....12 months after approval of rulemaking plan.