

August 3, 1998

FOR: The Commissioners

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

SUBJECT: A PROPOSED SIMPLIFICATION OF THE RULEMAKING PROCESS FOR CERTIFICATE OF COMPLIANCE RULEMAKINGS

## PURPOSE:

To inform the Commission of the staff's proposed recommendation for simplification of the rulemaking process for certificate of compliance (CoC) rulemakings to expedite the approval process without affecting the health and safety of the public.

## BACKGROUND:

In 1990, the Commission amended Part 72 to provide for the storage of spent nuclear fuel under a general license on the site of a nuclear reactor in casks approved for storage by the NRC and granted a Certificate of Compliance (CoC). Under the process established by the Commission, cask designs are to be approved in a rulemaking which would add the cask design to the "List of approved spent fuel storage casks" in 10 CFR 72.214. The 1990 rulemaking also approved four cask designs. Subsequent rulemakings have placed three additional cask designs on the 72.214 list.

In 1994, after the most recent CoC rulemaking, the Commission approved revisions in NRC's rulemaking process, including a requirement that a rulemaking plan be prepared at the outset of a proposed rulemaking which will serve to define the regulatory problem, identify why NRC action is necessary, outline alternatives, and assist agency decision makers in apportioning agency resources and determining whether the rulemaking should go forward. These revisions were placed in Manual Directive (MD) 6.3. MD 6.3 provides that a rulemaking plan is not needed when the rulemaking "is purely administrative in nature."

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## DISCUSSION:

The Spent Fuel Project Office is currently reviewing several applications for CoCs for spent fuel storage casks or dual purpose casks which will substantially increase the number of CoC rulemakings. To streamline the rulemaking process for CoC rulemakings, the staff proposes to dispense with the preparation of rulemaking plans for these rulemakings. A rulemaking plan is not needed to assist agency decision makers in determining whether a rule should go forward because the Commission has already determined that rulemaking will be the process for approving new cask designs for use under the general license. A rulemaking plan is also not needed for the purpose of identifying and resolving potential problems because CoC rulemakings are mainly administrative in nature. The staff intends to closely follow the format used for the proposed and final rules in the most recent CoC rulemakings for the TN-24 cask (58 FR 51762 (1993)) and the Standardized NUHOMS Horizontal Modular System (59 FR 65898 (1994)). The goal is to save 0.5 full-time equivalent in resources, and 6 months time for each new certificate of compliance rulemaking completed by the staff. In addition, as stated above, staff plans to closely track the format used in the most recent CoC rulemakings which should serve to abbreviate document preparation.

The staff plans to use other methods of abbreviating CoC rulemakings in the future. The Commission concluded in the proposed rule for the initial CoCs that, due to the routine nature of these rulemakings and the absence of significant policy questions, future additions to the 72.214 list would be made under the rulemaking authority delegated to the EDO (54 FR 19380 (1989)). The staff intends to issue CoC rules under the EDO's authority. If no substantive comments are received on the next two rulemakings, staff will then utilize the direct final rulemaking process for subsequent CoC rules.

## COORDINATION:

The Office of General Counsel has no legal objection to this paper.

## RECOMMENDATION:

That the Commission:

1. Approve the simplification of the rulemaking process for CoC rulemakings by agreeing that future CoC rulemakings will not need a rulemaking plan.

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