

# Proposed Rules

Federal Register

Vol. 65, No. 112

Friday, June 9, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

[Docket No. PRM-72-5]

#### Nuclear Energy Institute; Receipt of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; Notice of receipt.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Nuclear Energy Institute. The petition has been docketed by the NRC and has been assigned Docket No. PRM-72-5. The petitioner is requesting that the NRC regulations governing storage of spent nuclear fuel be amended to establish a more efficient process for issuing and amending certificates of compliance (CoC) for dry cask storage of spent nuclear fuel under a general license. The petitioner believes the current NRC process of traditional notice and comment rulemaking is not appropriate for the routine task of maintaining a list of certified casks and that the burden of maintaining this listing in the regulations outweighs any benefit. The petitioner proposes that the list of CoCs be deleted from the regulations and that NRC should notice applications for new CoCs and amendments in the **Federal Register** for a 60-day comment period. The petitioner also proposes that amendments for existing CoCs that do not have the potential to have a significant impact on public health and safety be immediately effective upon publication of the amendment in the **Federal Register**.

**DATES:** Submit comments by August 23, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

**ADDRESSES:** Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemakings and Adjudications staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (<http://ruleforum.llnl.gov>). At this site, you may view the petition for rulemaking, this **Federal Register** notice of receipt, and any comments received by the NRC in response to this notice of receipt. Additionally, you may upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415-5905 (e-mail: [CAG@nrc.gov](mailto:CAG@nrc.gov)).

For a copy of the petition, write to David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Documents related to this action are available for public inspection at the NRC Public Document Room (PDR) located at the Gelman Building, 2120 L Street, NW, Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:**

David L. Meyer, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301-415-7162 or Toll-Free: 1-800-368-5642 or E-mail: [DLM1@NRC.Gov](mailto:DLM1@NRC.Gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The Nuclear Regulatory Commission received a petition for rulemaking dated April 18, 2000, submitted by the Nuclear Energy Institute (petitioner). The petitioner is requesting that the regulations in 10 CFR Part 72 governing storage of spent nuclear fuel in dry storage casks be amended. Specifically, the petitioner is requesting that the NRC establish a more efficient process for issuing new and amending existing certificates of compliance (COC) for dry cask storage of spent nuclear fuel under a general license. The petitioner believes that the current process of traditional notice and comment rulemaking for issuing and amending CoCs is inefficient and that the burden

of maintaining the list of approved dry storage casks in § 72.214 outweighs any benefit.

The petitioner has concluded that the listing of CoCs in § 72.214 is not necessary and believes that removal of these requirements will have no impact. The petitioner requests that the regulations in 10 CFR Part 72 be amended by removing § 72.214. Instead, the petitioner proposes that NRC notice applications for new CoCs and amendments to existing CoCs in the **Federal Register** for a 60-day comment period. When the NRC determines that an amendment to an existing CoC does not have the potential to have a significant impact on public health and safety, the petitioner recommends that the amendment become immediately effective upon publication in the **Federal Register**. The petitioner recommends that initial applications and significant amendments would not become effective until the NRC has evaluated public comments and published its findings in the **Federal Register**.

The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition has been docketed as PRM-72-5. The NRC is soliciting public comment on the petition for rulemaking.

**Discussion of the Petition**

The petitioner notes that the NRC Spent Fuel Project Office staff is currently considering an alternative process to the NRC's current practice of listing and amending CoCs by rulemaking. The petitioner supports the NRC staff's efforts and encourages the NRC to expeditiously amend 10 CFR Part 72 to establish an efficient process for issuing new and amending existing CoCs for dry cask storage of spent nuclear fuel under a general license. The petitioner requests that the NRC consider a streamlined process proposed by the petitioner that focuses opportunities for public input on issues that have the potential to have a significant impact on public health and safety. The petitioner proposes that the NRC discontinue the use of traditional notice and comment rulemaking and that § 72.214, the listing of CoCs, be repealed.

The petitioner believes there is no benefit in using rulemaking for the ministerial act of maintaining a list of

certified casks and that the burden of maintaining the list in the regulations outweighs any benefit. The petitioner has concluded that the list of certified casks neither affords any additional authority on the CoC holder nor places additional weight on requirements that govern dry cask usage. The petitioner proposes that NRC notice applications for new CoCs and amendments to existing CoCs in the **Federal Register** for a 60-day comment period. For amendments to certified casks, applicants could propose that the requested amendment has no potential to adversely affect public health and safety. If NRC agreed with the applicant and found that no significant hazard exists, the amendment would be effective immediately upon publication in the **Federal Register**. The petitioner proposes that initial applications and other amendments would not become effective until the NRC evaluated public comments and published its findings in the **Federal Register**.

The petitioner notes that by 2005, as many as 50 plants will require dry cask spent fuel storage to continue operating or to proceed through decommissioning. In the Nuclear Waste Policy Act of 1982, as amended (NWPAA), Congress conferred responsibility on the Federal Government to "expedite the effective use of existing storage facilities and the addition of new needed storage capacity" at civilian nuclear power facilities. The petitioner also notes that cask vendors must amend CoCs frequently to meet the growing need for dry cask storage and that, by 2001, the fuel discharged from operating plants will exceed the maximum licensed burnup limits of current casks. The petitioner contends that the current NRC practice of issuing CoCs and associated amendments by rulemaking is inadequate because it takes about 24 months to amend CoCs through the rulemaking process. The petitioner believes that with a 24-month response time, the unavailability of dry casks will impede plant operations and decommissioning at some point.

The petitioner contends that NRC's practice of listing and amending cask CoCs by cask-specific rulemaking goes beyond Congress' intent in the NWPAA. The petitioner believes that by issuing more than ten CoCs under 10 CFR Part 72, the NRC has fulfilled its legislative obligation and demonstrated that the regulations are sufficient to certify technologies for use as directed in the NWPAA. The petitioner states that conducting cask-specific rulemakings wastes resources and requires constant reconsideration of the same technical issues. The petitioner believes that

many CoC amendments do not involve new or novel technical issues and are only being reviewed to demonstrate that a certificate holder has complied with NRC requirements for cask certification.

The petitioner recommends that NRC provide notice in the **Federal Register** and consider public comments before issuing CoCs for new casks and amendments to existing CoCs that potentially impact public health and safety. The petitioner states that proceeding in this manner would show that the NRC provides for public input and does not waste the agency's or the public's resources that could be directed toward actions on new casks and issues that may significantly affect public health and safety and away from actions that only demonstrate compliance with existing requirements and guidance. The petitioner also believes that the process for issuing and amending CoCs for spent fuel storage should be similar to that used for transportation CoCs under 10 CFR Part 71. The petitioner states that it is illogical to certify casks used for the dual purpose of storage and transportation by two entirely different processes. The petitioner further states that the certification process for transportation CoCs has been effective since its inception over 20 years ago and that no reason exists for the process for certification of casks for storage to be any more demanding than that for certifying casks for transportation.

The petitioner recommends that NRC consider an application process for new CoCs as follows: Submittal of application for new CoC; NRC prepares a draft Safety Evaluation Report (SER); the draft CoC and SER are noticed in the **Federal Register** for public comment; NRC publishes its findings in a **Federal Register** notice; and the CoC and SER are issued.

The petitioner recommends the following process for amendments to existing CoCs. The change to the CoC is identified and developed by the CoC holder, and an evaluation under § 72.48, "Changes, tests, and experiments" is performed to determine if prior NRC approval is needed. If NRC's approval is not required, the amendment may be implemented and the Safety Analysis Report (SAR) is updated. If prior NRC approval is required, the CoC holder performs a "Significant Impact" evaluation and submits the proposed amendment to the NRC. If the NRC agrees that the proposed amendment poses "No Significant Impact," the amendment is published in the **Federal Register** and becomes immediately effective upon publication, the change is implemented, and the SAR is updated. If the NRC does not determine that the

amendment poses no significant impact, the draft CoC is published in the **Federal Register** for a 60-day public comment period. After the comment period expires, the NRC publishes its findings in a **Federal Register** notice, the change is implemented, and the SAR is updated.

The petitioner proposes that § 72.214, "List of approved spent fuel storage casks" be deleted from the regulations. The petitioner also proposes that § 72.238, "Issuance of an NRC Certificate of Compliance" be amended by inserting the following language after the existing codified text:

The Director, Office of Nuclear Material Safety and Safeguards, or the Director's designee will publish each initial application and each application for amendment in the **Federal Register** for a 60-day comment period. An application may include a proposed determination that the amendment proposed does not involve a "significant impact consideration" based on an analysis of the criteria listed below. Upon receipt of an application, the Director, or the Director's designee will make a determination of whether it agrees with the applicant's "no significant impact considerations" proposal. If the Director or the Director's designee agrees with the applicant's proposed determination, the amendment will be effective upon publication in the **Federal Register** prior to receipt and analysis of public comments.

An amendment is considered to have the potential to pose a significant impact if subsequent use of the cask would:

- (a) Result in a significant increase in the probability or consequences of an accident previously evaluated;
- (b) Create the possibility for a new or different kind of accident from any accident previously evaluated; or
- (c) Involve a significant reduction in a margin of safety.

The petitioner has also submitted examples of amendments considered likely to involve significant impact considerations that it proposes for inclusion in a regulatory guidance document. These would be amendments that result in a significant increase in offsite doses and leakage across the confinement boundary, an increase in Keff above 0.95 without compensatory changes, significant increases in mechanical stress beyond allowable limits in codes referenced in the NRC Standard Review Plans (SRPs), and cladding temperatures that significantly exceed SRP limits.

Lastly, the petitioner has submitted examples of amendments it believes would not likely involve significant impact considerations that it proposes for inclusion in a regulatory guidance document. Examples include amendments that consist of:

(1) An administrative change to technical specifications (TS) including a change to achieve consistency throughout the TS, correction of an error, or a change in nomenclature.

(2) A TS change to ensure that no significant increase exists in the probability or consequences of analyzed accidents and does not significantly reduce safety margins such as an increase in the allowable leak rate compensated by an increase in fill gas quantity, an increase in the allowable handling height of the cask compensated by energy absorbing features, addition of a more reactive fuel design that could lead to Keff exceeding 0.95 compensated by an increase in areal poison density of fixed neutron poison sheets, and an increase in helium backfill pressure compensated by increased material properties to prevent components from exceeding code allowables.

(3) A change in the TS that includes an additional limitation, such as a more stringent surveillance requirement.

(4) A change that may result in some increase to the probability or consequences of a previously analyzed accident or may reduce the safety margin in some way, but where the results are within all acceptable criteria at the time of approval, such as an increase in Keff or offsite exposures beyond "minimal."

(5) Replacing explicit limits on fuel assemblies, decay heat, and source terms with a table that incorporates limits and ensures that these limits are met by prescribing minimum cooling times for various combinations of enrichment versus burnup.

(6) Substitution of another NRC-approved quality assurance program for fabrication of casks such as modifying Part 50, Appendix B for Part 72.

(7) A change to a CoC that consists of minor changes to storage operations that remain within regulatory requirements such as a reduction in the center-to-center cask spacing in the Independent Spent Fuel Storage Installation (ISFSI), a reduced storage cask temperature monitoring frequency, an increased time duration without transfer cask annulus cooling for canisters with fuel loading below a certain kilowatt level, or a reduction in the areal poison density in boral fixed poison sheets offset by an increase in the allowable percentage of the manufacturer's minimum assured boron content in criticality calculations.

(8) An expansion of the cask capacity including the number of bundles, higher initial enrichment, or higher burnup bundles when certain conditions are satisfied.

(9) Inclusion of a more recent NRC requirement than is contained in the licensee's CoC or site-specific license.

(10) Inclusion of an exception or alternative approved by the NRC for another licensee.

(11) Administrative improvements such as the use of generic organization position titles that clearly indicate position function as opposed to specific titles or use of generic organization charts to delineate functional responsibilities.

### The Petitioner's Conclusions

The petitioner has concluded that the NRC requirements governing storage of spent nuclear fuel in 10 CFR Part 72 should be amended to establish a more efficient process for issuing and amending CoCs for dry cask storage under a general license. The petitioner has also concluded that the current NRC process of traditional notice and comment rulemaking is not appropriate for the routine task of maintaining a list of certified casks and that the burden of maintaining this listing in the regulations outweighs any benefit. The petitioner requests that the list of CoCs be removed from the regulations and that the NRC notice applications for new CoCs and amendments to existing CoCs in the **Federal Register** for a 60-day comment period. The petitioner also requests that amendments for existing CoCs that have no potential to have a significant impact on public health and safety be immediately effective upon publication in the **Federal Register**.

Dated at Rockville, Maryland, this 5th day of June, 2000.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 00-14686 Filed 6-8-00; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 73

#### Re-evaluation of Power Reactor Physical Protection Regulations and Position on a Definition of Radiological Sabotage

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Request for comments.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is re-evaluating its power reactor physical protection regulations and the proposed definition of radiological sabotage, using

performance criteria as the basis. The purpose of this re-evaluation is to state precisely what kinds of sabotage-induced events a licensee is expected to protect against. This request invites public comment on these issues. The NRC is publishing as an attachment to this **Federal Register** Notice, a Commission paper entitled, "Staff Re-Evaluation of Power Reactor Physical Protection Regulations and Position on a Definition of Radiological Sabotage," (SECY-00-0063).

**DATES:** Submit comments by August 23, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Attention: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website at (<http://ruleforum.llnl.gov>). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415-5905 (e-mail: [CAG@nrc.gov](mailto:CAG@nrc.gov)).

The attached Commission paper is associated with a rulemaking plan, "Physical Security Requirements for Exercising Power Reactor Licensees' Capability to Respond to Safeguards Contingency Events," which is located on the NRC's rulemaking website.

Copies of any comments received and certain documents related to this re-evaluation may be examined at the NRC Public Document Room, 2120 L Street NW, (Lower Level), Washington, DC. These same documents may be viewed and downloaded electronically via the rulemaking website.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Rosano, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-2933, e-mail: [RSS@nrc.gov](mailto:RSS@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

#### Background

In a Staff Requirements Memorandum (SRM) of November 22, 1999, the Commission approved the staff's recommendation in SECY-99-241 (Rulemaking Plan, Physical Security Requirements for Exercising Power Reactor Licensees' Capability to