



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

August 26, 2009

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-09-0069

TITLE: PROPOSED RULE: 10 CFR PART 72 LICENSE AND
CERTIFICATE OF COMPLIANCE TERMS (RIN 3150-A109)

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of August 26, 2009.

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 Jaczko
Commissioner Klein
Commissioner Svinicki
OGC
EDO
PDR

VOTING SUMMARY - SECY-09-0069

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACZKO	X				X	7/31/09
COMR. KLEIN	X				X	6/17/09
COMR. SVINICKI	X				X	8/4/09

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on August 26, 2009.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: CHAIRMAN JACZKO
SUBJECT: SECY-09-0069 – PROPOSED RULE: 10 CFR PART 72
LICENSE AND CERTIFICATE OF COMPLIANCE
TERMS (RIN 3150-AI09)

Approved Disapproved Abstain

Not Participating

COMMENTS: Below Attached None



SIGNATURE

7/31/09

DATE

Entered on "STARS" Yes No

**Chairman Jaczko's Comments on SECY-09-0069,
"Proposed Rule: 10 CFR Part 72 License and Certificate of Compliance Terms"**

I approve the staff's recommendation to publish the proposed amendments to 10 CFR 72 in the Federal Register for public comment. I commend the staff for planning to issue a draft Standard Review Plan for public comment at the same time as this proposed rule. Staff should ensure that they specifically elicit comments on the issue of the application of certificate of compliance amendments to previously loaded casks, as well as whether or not the evaluations performed by the licensees should be required to be reviewed and approved by the NRC. Staff should also elicit comments on whether the requirement for an aging management program for certificates of compliance would fully address possible site-specific aging issues (e.g., different environmental conditions) for general licensees.

In addition to the above comments, I have attached one edit to the Federal Register Notice.


7/31/09

Gregory B. Jaczko

This quote should be replaced by a quote from direction given by the Commission as a whole, or this quote should be deleted from the FRN.

standards. In fact, former NRC Commissioner Merrifield commented in his response to SECY-06-0152, that a cask design certified years ago may not meet the latest standards, but yet may be fully acceptable for continuing to store the fuel already in the cask design. He further stated that, “[t]here 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.”

In addition, the Statements of Consideration (55 FR 29184; July 18, 1990) for the final rule that added the general license provisions to Part 72 stated that the intent of reapproval is not to reevaluate the initial licensing basis: “[t]he procedure for reapproval of cask designs was not intended to repeat all the analyses required for the original approval.” Thus, this interpretation of “reapproval” as expressed by former NRC Commissioner Merrifield and the referenced Statements of Consideration, is more in the nature of a “renewal,” in that the initial licensing basis does not need to be reevaluated to extend CoC terms.

The referenced Statements of Consideration also reported that, “[t]he Commission believes that the staff should review spent fuel storage cask designs periodically to consider any new information, either generic to spent fuel storage or specific cask designs, that may have arisen since issuance of the Certificate of Compliance.” Clearly, measures would need to be taken if the “new information” involves safety concerns. These measures would depend on the nature of the safety concerns and the cask design. Requests for Additional Information (RAIs) may be generated during the renewal process to prompt licensees/applicants to address such safety concerns.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER KLEIN
SUBJECT: SECY-09-0069 – PROPOSED RULE: 10 CFR PART 72
LICENSE AND CERTIFICATE OF COMPLIANCE TERMS
(RIN 3150-A109)

Approved X Disapproved Abstain

Not Participating

COMMENTS: Below X Attached None

I approve the proposed amendments to 10 CFR Part 72 for publication in the *Federal Register*. These proposed changes will make our regulatory framework more efficient while maintaining adequate protection of public health and safety and of the environment. These efficiencies will be important for external stakeholders and, moreover, they will also significantly benefit the conduct of the NRC's business in the area of spent fuel regulation, which will continue to face a challenging workload for the foreseeable future.



SIGNATURE

6/17/2009

DATE

Entered on "STARS" Yes / No

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER SVINICKI
SUBJECT: SECY-09-0069 – PROPOSED RULE: 10 CFR PART 72
LICENSE AND CERTIFICATE OF COMPLIANCE
TERMS (RIN 3150-AI09)

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached XX None ___



SIGNATURE

08/4/09

DATE

Entered on "STARS" Yes No ___

Commissioner Svinicki's Comments on SECY-09-0069
Proposed Rule: 10 CFR Part 72 License and Certificate of Compliance Terms
(RIN 3150-A109)

I approve for publication, in the *Federal Register*, the proposed amendments to 10 CFR Part 72 (Enclosure 1 to SECY-09-0069), subject to the attached edits. I further endorse and incorporate (below) the comments of Commissioner Lyons, who voted to approve this matter on May 7, 2009 prior to his departure from the Commission.

The comments of Commission Lyons' on SECY-09-0069:

I approve the staff's recommendation to publish the proposed amendments to 10 CFR Part 72, in the *Federal Register*. I also want to acknowledge staff's efforts having developed a draft Standard Review Plan entitled "Standard Review Plan for License Renewal of Independent Fuel Storage Installations" that will be published for comment shortly after publication of the proposed rule. The combination of a proposed rule and draft Standard Review Plan will serve as a very useful tool in communicating to licensees and the public NRC's vision of the proposed regulatory requirements.



Kristine L. Svinicki

08/4/09

the NRC staff believes that 40-year increments are reasonable without undue risk to the public or to the environment, if there are appropriate aging management and maintenance programs.

Requests for license terms longer than 40 years would require additional information on the long-term material degradation of dry spent fuel storage casks, and the NRC staff would need to evaluate this information.

CONTEXT
NEEDED
IN LIGHT
OF
STAFF'S

PROPOSED
CONFIDENCE
FINDING IN 120
YEARS OF DRY
STORAGE .

E. Why is the NRC changing the word "reapproval" to "renewal"?

The NRC is changing the word "reapproval" to "renewal" in the proposed rule to be consistent with the terminology used in other license requirements under Part 72. Currently, § 72.240 uses "reapproval" to describe the process of extending the terms of CoCs. This process, however, is quite different from the rest of Part 72. For example, § 72.42 uses the word "renewal" to define the process for extending the term of site-specific ISFSI licenses, and § 72.212(a)(3) uses "renewal" to define the process for the continued use of storage casks of a particular design at a given site. Although "reapproval" and "renewal" are similar words, they are subject to different regulatory interpretations. "Renewal" typically implies a process whereby a new license, subject to the same requirements as the original, replaces an expired license. "Reapproval" could imply a process to reevaluate the design bases in accordance with current review standards, which may be different from the standards in place at initial certification and storage cask use.

By using the word "renewal," the proposed rule revisions would remove ambiguity from the process for extending the terms of CoCs, as opposed to the uncertainty of extending CoC terms based on reevaluation of design bases using current standards. Although the NRC continuously updates its review standards, no compelling safety concerns have been identified to warrant the removal of spent fuel from a cask design that does not meet the latest review

proposed rule published in the *Federal Register* on May 27, 1986 (51 FR 19106), contain specific analyses showing that the potential environmental impacts from dry storage of spent fuel in casks are small. The "Environmental Assessment for Proposed Rule Entitled 'Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear Power Reactor Sites'" for the proposed rule published in the *Federal Register* on May 5, 1989 (54 FR 19379), assessed the environmental impact of dry cask storage and concluded with a finding of no significant impact.

Dry storage of spent fuel has a long history, both in the United States and other countries. The NRC has considered environmental impacts associated with dry storage of spent fuel in other Commission rulemakings and licensing actions on which this assessment is based. In the statements of consideration to the NRC's Waste Confidence rule issued in 1990 (55 FR 38474, 38482; September 18, 1990), the Commission stated that it did not dispute a conclusion from a 1988 European study that dry spent fuel storage is safe and environmentally acceptable for a period of 100 years. The Commission further stated that spent fuel can be stored safely and without significant environmental impact, in either wet storage or in wet storage followed by dry storage, for at least 100 years (55 FR 38511).

VERIFY:
OCC/ NMS SHOULD VERIFY THAT 100 YRS OF WET STORAGE WAS ENDORSED IN 1990.

Environmental impacts caused by dry cask storage systems for spent fuel under either a site-specific or general license are not considered significant. No effluents have been detected from the sealed dry cask storage systems. However, activities associated with cask loading and decontamination may result in some small incremental liquid and gaseous effluent. Cask loading and decontamination will be conducted under 10 CFR Part 50 reactor operating licenses and effluents will be controlled within reactor technical specifications. Because reactor sites are relatively large, any incremental doses to the public offsite due to direct radiation exposure from the spent fuel storage casks are expected to be small and, even when combined with the dose contribution from reactor operations, will be well within the annual dose equivalent of 0.25 mSv (25 mrem) limit to the whole body specified in 10 CFR 72.104. Incremental impacts on collective