

September 24, 2007

MEMORANDUM TO: Chairman Klein
Commissioner Jaczko
Commissioner Lyons

FROM: Luis A. Reyes */RA/*
Executive Director for Operations

SUBJECT: STAFF CONSIDERING TWO ADDITIONAL REVISIONS IN THE
CURRENT 10 CFR PART 72 RULEMAKING EFFORT

The purpose of this memorandum is to inform the Commission that the staff is considering two additional revisions to 10 CFR Part 72, not previously discussed in SECY-06-0152, "Title 10 Code of Federal Regulations Part 72 License and Certificate of Compliance Terms," dated July 7, 2006. Previously the staff recommended several revisions to Part 72 that would allow longer approval terms for storage casks used by general licensees. At that time, the staff recommended not to revise the regulations to allow similar longer approval terms for specific licensees. This recommendation was based on a staff determination that there would be limited need for this term flexibility. The Commission approved the staff recommendations in the Staff Requirements Memorandum (SRM) regarding SECY-06-0152 dated August 14, 2006. The staff has subsequently determined that the additional rulemaking effort needed to include longer approval terms for specific licensees would be minimal. Further, extending the approval terms for both general and specific licensees would provide regulatory consistency between Part 72 general and specific licensees. The staff plans to amend Part 72 to allow the same flexibility for longer approval terms for both specific licensees and general licensees.

Another question that has arisen recently is whether a Part 72 general licensee can apply changes authorized in a dry storage cask Certificate of Compliance (CoC) amendment to a cask loaded under the terms and conditions of the original CoC or an earlier amendment thereto (a "previously loaded cask"). The staff has concluded that the current Part 72 regulation allows a general licensee to apply the changes of a CoC amendment to a previously loaded cask only after obtaining express NRC approval by exemption [see enclosed memorandum from Francis X. Cameron, Assistant General Counsel for Rulemaking and Fuel Cycle, dated March 22, 2007 (ML071210376)].

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To resolve this Part 72 question, the staff is taking the following actions. First, the staff plans to issue a generic communication to notify each general licensee that the practice of applying CoC amendment changes to previously loaded casks, without NRC approval, is not permitted by the current regulations. Also, the staff will pursue an Enforcement Guidance Memorandum (EGM) to give uniform guidance for disposition of any potential non-compliances that are a result of this practice. Second, the staff believes a rulemaking change is necessary to allow a licensee to apply the changes from a CoC amendment to a previously loaded cask without express NRC approval, while still ensuring that such an action protects public health and safety, the environment, and fulfills all security requirements. The staff believes that coupling any such potential CoC amendment rulemaking with the rulemaking approved by the August 14, 2006, SRM would increase efficiency and effectiveness in the rulemaking process by allowing timely promulgation of a CoC amendment revision, while reducing the duplicative efforts that would be associated with two independent rulemaking efforts.

The staff recognizes that expansion of the scope of this rulemaking will impact the schedule for submittal of the rule to the Commission from April 2008 to April 2009. This is because the topic of the expanded scope involves significant technical, policy, and legal issues which will need to be carefully considered and fully developed. The staff will also need additional time for the development of the technical basis for the new topics, including additional interactions with stakeholders. Extending the rulemaking by one year will have little to no impact on the industry. The Commission has previously provided staff guidance to continue considering exemption requests for extension of storage cask license renewal term limits, as appropriate, pending development of the rulemaking. The staff anticipates only two specific storage cask license renewal applications and no storage cask certificate renewals to be received during this extended rulemaking period.

The staff plans to issue a generic communication informing general licensees of this issue, plans to issue an EGM to give uniform guidance for disposition of any potential non-compliances that result from this practice, and plans to proceed with the rulemaking as discussed above. The staff's efforts will include developing proposed rule text and supplementing the technical basis document for the current Part 72 rulemaking.

Enclosure:

Memo from Francis X. Cameron to
William H. Ruland dated March 23, 2007

cc: SECY
OGC
OCA
OPA
CFO