



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

October 14, 2010

OFFICE OF THE  
SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-10-0056

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

The Commission (with all Commissioners agreeing) approved the final rule as noted in an Affirmation Session and recorded in the Staff Requirements Memorandum (SRM) of October 14, 2010.

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 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 Svinicki  
Commissioner Apostolakis  
Commissioner Magwood  
Commissioner Ostendorff  
OGC  
EDO  
PDR

VOTING SUMMARY - SECY-10-0056

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACZKO	X				X	8/26/10
COMR. SVINICKI	X				X	8/31/10
COMR. APOSTOLAKIS	X					7/15/10
COMR. MAGWOOD	X				X	8/27/10
COMR. OSTENDORFF	X				X	8/12/10

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the final rule as noted in an affirmation session and reflected in the SRM issued on October 14, 2010.

**AFFIRMATION ITEM**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary  
FROM: Chairman Gregory B. Jaczko  
SUBJECT: SECY-10-0056 – FINAL RULE: 10 CFR PART 72  
LICENSE AND CERTIFICATE OF COMPLIANCE  
TERMS (RIN 3150-AI09)

Approved  Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_\_\_ Attached  None \_\_\_\_\_

  
\_\_\_\_\_  
SIGNATURE

8/20/10  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No \_\_\_\_\_

**Chairman Jaczko's Comments on SECY-10-0056**  
**"Final Rule: 10 CFR Part 72 License and Certificate of Compliance Terms"**

I approve the final rule amending Part 72 which (1) changes the term limits for Certificates of Compliance (CoC) and site specific independent spent fuel storage installations (ISFSI), and (2) provides provisions that allow Part 72 general licensees to implement changes authorized by a later CoC amendment to a cask loaded under the initial CoC or an earlier CoC amendment.

The staff has done a thorough review in identifying and comprehensively addressing the various issues associated with these issues. I agree that the extension in the time period, for initial and renewed licenses and CoCs, up to 40 years is supported by operating experience, research, and analysis. In 2006, the NRC completed a pilot risk assessment (NUREG-1864) of the storage of spent fuel in a dry cask storage system. The results of the study indicated that storing spent fuel in a dry cask storage system in accordance with the NRC's safety requirements provides a very high level of safety. As we are approaching 25 years of dry cask storage operational experience in the United States, the record of safe and secure storage of dry cask storage of spent fuel, protective of the environment, continues to be successfully demonstrated. In addition, we have experience (Surry and H.B. Robinson) in reviewing and granting license renewals for site specific ISFSI licenses and extending the license term to 40 years, albeit via exemptions.


Notwithstanding my support for this rule, I believe there will be complexities in its implementation, in particular for CoCs and general licensees using the CoCs. While the increase in term limits and the license renewal process for site specific licenses is relatively straight-forward, it is more complex for general licensees and CoCs. The CoC renewal process in this rulemaking ties together the renewal of the "paper design" (i.e., final safety analysis report and associated CoC) with the renewal of "operational casks" loaded with spent fuel. Development of sufficient implementation guidance (e.g., Standard Review Plan) will assist in alleviating these issues.

Renewing the "paper design" is focused on ensuring that future casks manufactured during the renewal period would provide a safe and secure means of storing spent fuel for up to 40 years. The staff has indicated that the renewal of the "paper design" would result in renewal of the original CoC and the associated amendments to it. Over the years, the staff has gained significant operational experience which has resulted in changes to review standards and technical acceptance criteria. The revised review standards and acceptance criteria have been applied to more recently approved amendments. In some cases, the review standards and criteria have been relaxed, and in other cases they are more restrictive (e.g., short term fuel cladding temperature limits during drying). As such, the staff should ensure that the renewed CoC governing the manufacturing of new casks during the renewal period is limited to those amendments that have been reviewed and approved to the staff's most recent review standards and acceptance criteria.

Renewing "operational casks" currently utilized by general licensees through a renewal of the CoC also presents potential complications. The CoC holder does not have direct access to maintenance and corrective actions programs and the associated records for operational casks. These programs and records, and similar front line operational experience are fundamental sources for identifying aging mechanisms and the extent of any degradation to operational casks. These records and programs are maintained by Part 50 licensees, not the CoC holder and CoC holders do not necessarily have access to these records. As mentioned in my vote for SECY-09-0069, there is a need to fully address possible site-specific aging issues for the casks used by general licensees. As many of the conditions (predominately environmental) impacting aging may vary dramatically from one generally licensed site to the next (e.g., from the arid conditions at the Palo Verde site, to the humid salt-laden environment at St. Lucie, to the freeze/thaw cycles experienced at Maine Yankee), the effects of aging on dry cask storage

systems and the resulting aging management program implemented by a licensee will vary from site to site. The staff has indicated that the renewal application should "bound" the aging effects, and an appropriate aging management program will need to be proposed in the CoC renewal application. As such, the staff should ensure that the application for the renewed CoC for operational casks incorporates direct operational experience to bound the aging effects and extent of potential degradation, and that documentation exists to demonstrate that it is representative of any and all sites where the operational casks are in use by general licensees.

The rule also allows general licensees (through an evaluation process) to implement changes authorized in an amended CoC to casks loaded under the initial or an earlier CoC. In concept, this should resolve many operational issues encountered by general licensees and increase the agency's efficiency (the current process has addressed many of these operational issues through exemptions). In practice, CoC amendments involve both operational and design changes. For a loaded cask to implement changes authorized by an amended CoC, it will need to meet the terms and conditions of the amended CoC. It is not clear how this will be met, in particular for design changes or operations that have occurred in the past (i.e., welding of canisters and drying of spent fuel). The staff should ensure that all terms and conditions are met when allowing a general licensee to transition from an earlier CoC amendment to a later amendment. In addition, although the application for a CoC amendment is "standalone", the terms and conditions of the resulting amended CoC are not standalone. Rather the amended CoC and associated terms and conditions reflect a continuum from the original CoC application through all past amendments. As such, in implementing changes authorized in an amended CoC to casks loaded under an earlier CoC, it is not enough to just look at the application supporting the amended CoC. Rather, an understanding of the terms and conditions in the amended CoC must be known and that could entail a review and assessment of additional prior amendments. As such, the staff should ensure that the process for allowing general licenses to implement changes authorized in an amended CoC requires an assessment of the basis for the terms and conditions in the amended CoC which may be the result of much earlier amendments.

  
\_\_\_\_\_  
Gregory B. Jaczko

8/26/00  
Date

**AFFIRMATION ITEM**

**RESPONSE SHEET**


**TO:** Annette Vietti-Cook, Secretary  
**FROM:** COMMISSIONER SVINICKI  
**SUBJECT:** SECY-10-0056 – FINAL RULE: 10 CFR PART 72  
LICENSE AND CERTIFICATE OF COMPLIANCE  
TERMS (RIN 3150-AI09)

Approved XX Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below XX Attached XX None \_\_\_\_\_

I approve for publication in the *Federal Register* the notice of final rulemaking (Enclosure 1 to SECY-10-0056), subject to the attached, minor edits. This rulemaking improves the regulatory efficiency of Part 72 and the rulemaking package was of high quality. I compliment the staff on a job well done.

  
\_\_\_\_\_  
SIGNATURE

08/31/10  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No \_\_\_\_\_

technical basis of the rulemaking with stakeholders. In addition, on August 4, 2008, the NRC staff made preliminary draft rule text available for comment to stakeholders on Regulations.gov (Docket ID NRC-2008-0361). The only external stakeholders that submitted comments were the Nuclear Energy Institute and Florida Power and Light. The comments generally supported the rulemaking. The "Discussion" section of this document includes NRC responses to significant stakeholder comments.

The NRC published the proposed rule, "License and Certificate of Compliance Terms" in the *Federal Register* on September 15, 2009 (74 FR 47126), for public comment. The NRC received five comment letters on the proposed rule. These comments and the NRC responses are discussed in Section III of this document, "Summary and Analysis of Public Comments on the Proposed Rule."

## II. Discussion

### A. *What action is the NRC taking, and why?*

The NRC is revising Part 72 requirements for specific and general ISFSI licensees and Part 72 requirements pertaining to CoCs to enhance the effectiveness and efficiency of the licensing process.

For specific ISFSI licenses, the Commission is codifying a technical approach consistent with that applied in granting the 40-year exemptions for the Surry and H. B. Robinson specific ISFSI license renewals, so that all specific ISFSI licensees will have the flexibility to request initial and renewal terms not to exceed 40 years while ensuring safe and secure storage of spent nuclear fuel.

For CoCs, the Commission is also allowing the flexibility for CoC applicants and CoC holders to request, respectively, initial terms and renewal terms not to exceed 40 years. The

response to Question "C" of this section discusses the technical basis for this change. Under this change, applicants and CoC holders will be required to demonstrate that design and operational programs are suitable for the requested term. The NRC staff has developed a standard review plan (SRP) for renewal applications. The final rule amendments also clarify the term (length) of the general license, particularly, as the general license term relates to CoC renewals (see the response to Question "I" of this section for further detail).

For both specific licenses and CoCs, the final rule adds a requirement that renewal applicants must provide time-limited aging analyses (TLAAs) and a description of an aging management program (AMP) (see the responses to Questions "F", "G", and "H") to ensure that storage casks will perform as designed under extended license terms.

The NRC is replacing the term "reapproval," which is used to describe the process of extending the CoC terms, to "renewal" for consistency with specific license terminology. Question "E" of this section discusses the rationale for this change.

The final rule will also allow general licensees to implement changes authorized by a CoC amendment to a previously loaded cask, provided that the loaded cask then conforms to the CoC amendment codified by the NRC in § 72.214 and thus, continues to ensure the safe and secure storage of spent nuclear fuel. Question "N" of this section discusses the rationale for this change.

***B. Whom does this action affect?***

The final rule will affect Part 72 specific and general licensees and CoC holders and applicants for a CoC.

***C. Why is the NRC increasing initial terms and renewal terms for specific ISFSI licenses from not to exceed 20 years to not to exceed 40 years?***



The NRC is amending § 72.42 to increase the initial terms and renewal terms for specific ISFSI licenses from not to exceed 20 years to not to exceed 40 years . This increase is consistent with the NRC staff's findings regarding the safety of spent nuclear fuel storage, as documented in the renewal exemptions issued to the Surry and H. B. Robinson ISFSIs. During the review for the Surry and H. B. Robinson renewal applications, the NRC staff evaluated the technical data resulting from an NRC-supported research program at the Idaho National Laboratory (INL), formerly Idaho National Engineering and Environmental Laboratory, and also considered experience with spent fuel storage casks used at Surry. Under the INL research program, INL opened a storage cask after the fuel had been stored for approximately 15 years. At Surry, several casks were also opened after less than 15 years of storage as a result of some faulty weather covers, which were corrected. Summaries of the findings regarding the condition of the fuel and cask components follow:

(1) Cladding creep is a time-dependent change in the dimension of the cladding resulting from high temperature and stress. It was considered as a potential degradation mechanism during storage. Confirmatory inspection of the spent fuel stored at INL verified that no cladding creep had occurred. The spent fuel in storage at Surry also supports this finding. The NRC staff expects very little to no fuel degradation at the end of an extended licensing period. The established limits for cladding temperature during storage <sup>and accompanied by a</sup> continually decreasing level of cladding stress and temperature, further remove creep as a degradation mechanism. Assessment <sup>of these factors</sup> indicated <sup>will</sup> that cladding creep <sup>would</sup> not be an issue <sup>during a 40 year term</sup> X

(2) The NRC staff also expects limited degradation of other internal components because there are no significant corrosive influences in the inert environment, either for the fuel or for other components. The INL inspection verified that there was no indication of corrosion for any internal canister components. The NRC staff has also concluded that radiation levels are too low to significantly alter the properties of the metals for any storage canister

components.

(3) The other external components of the storage systems (which are exposed to weathering effects) would already be covered by an inspection and corrective action program, or routine maintenance, to ensure that any degradation will be identified and assessed for its importance to safety, and will be addressed through corrective actions to ensure continued safe operation of the storage system.

Based on these findings, the Commission concludes that, with appropriate aging management and maintenance programs, license terms not to exceed 40 years are reasonable and protect public health and safety.

*D. Can applicants apply for an initial term or renewal term greater than 40 years?*

This final rule amends § 72.42 by extending the term allowed for specific ISFSI licenses from not to exceed 20 years to not to exceed 40 years. This extension applies to both the initial terms and renewal terms. Any request for a term greater than 40 years would be processed as an exemption under § 72.7. The NRC does not plan to ordinarily grant license term requests for greater than 40 years. As discussed in Question "C" of this section, the NRC believes that terms that do not exceed 40 years are reasonable and provide adequate protection of public health and safety, if the applicant demonstrates to the NRC appropriate aging management and maintenance programs.

If an applicant requests a specific license term greater than 40 years, that applicant would have to provide information on the long-term material degradation of spent fuel storage casks, as well as associated aging management activities, to justify safe operation during such an extended period, and the NRC would need to evaluate this information.

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

*G. What is an "aging management program" (AMP)?*

An AMP is a program for addressing aging effects that may include prevention, mitigation, condition monitoring, and performance monitoring. The final rule adds a definition of AMP to the Part 72 definitions section, § 72.3, because SSCs must be evaluated to demonstrate that aging effects will not compromise the SSCs' intended functions during the renewal period.

*H. Why is the NRC requiring an AMP?*

The NRC is amending §§ 72.42 and 72.240 to require that applicants for specific license and CoC renewals describe in their applications a program for the management of issues associated with aging that could adversely affect SSCs. In this regard, degradation of the SSCs at an ISFSI, such as degradation due to corrosion, <sup>and</sup> radiation, ~~and creep~~, are time-dependent mechanisms and are expected to be addressed in renewal applications. AMP requirements will ensure that SSCs will perform as designers intended during the renewal period. AMP requirements will be reflected in the terms, conditions and technical specifications of the renewed CoC and thus made applicable to the general licensee per 10 CFR 72.212(b). For specific licensees, AMP requirements will be reflected in the terms and conditions of the renewed specific license.

*I. Why is the NRC changing the 20-year general license term for cask designs approved for use under the general license provisions? When would a general license term begin and end?*

The final rule changes the 20-year general license term limit for the storage of spent fuel in casks fabricated under a CoC to be consistent with the revisions to CoC initial and renewal terms (which establish a CoC term not to exceed 40 years).

Under § 72.210, a general license for the storage of spent fuel in an ISFSI at power reactor sites is issued to those persons authorized to possess or operate nuclear power reactors under 10 CFR Parts 50 or 52. The general license is limited to that spent fuel which the general licensee is authorized to possess at the site under the Part 50 or 52 license for the site. The general license is further limited to storage of spent fuel in casks approved and fabricated under the provisions of Subpart L of Part 72; the approved cask designs are listed in § 72.214. Currently, the general licensee's authority to use a particular cask design under an approved CoC terminates 20 years after the date that the general licensee first uses the particular cask to store spent fuel, unless the cask's CoC is renewed, in which case the general license terminates 20 years after the CoC renewal date. In the event the cask's CoC were to expire, any loaded spent fuel storage casks of that design will need to be removed from service after a storage period not to exceed 20 years.

This final rule amends §§ 72.3 and 72.212(a)(3) to clarify the term of the general license and to match the term of the general license to the term of the applicable CoC. The final rule also amends § 72.3 by adding a definition for the phrase "the term certified by the cask's Certificate of Compliance," which is defined to mean, for a CoC that is not renewed, the period of time commencing with the CoC effective date and ending with the CoC expiration date, and for a renewed CoC, the period of time commencing with the most recent CoC renewal date and ending with the CoC expiration date.

The final rule amends § 72.212(a)(3) to clarify that the term of the general license runs through any renewal periods, unless otherwise specified in the CoC. In addition, the final rule also amends § 72.212(a)(3) to clarify that the general license term for those casks placed into service during the final renewal term of a CoC (i.e., during the CoC term immediately preceding the expiration of the CoC), or similarly, during the term of a CoC that is not renewed, begins when the cask is first used (i.e., when the cask is loaded with spent fuel) and expires after a

*J. Are there possible conflicts that could arise for storage cask designs that are granted a term extension that are also approved for a different term limit as a transportation package?*

The Commission raised this issue in its SRM for SECY-06-0152, dated August 14, 2006. The NRC staff does not foresee any possible conflicts. The current regulations in Part 72 encourage, but do not require, storage cask designs to have a compatible, approved transportation cask. So called "dual use" systems must be separately certified under the requirements in 10 CFR Part 71 (transportation) and Part 72 (storage). Typically, the only common item between these systems is the inner canister, which holds the spent fuel contents.

Part 71 certificates for transportation packages are issued for a 5-year term whereas Part 72 CoCs are issued for much longer periods (under the current regulations, all approved CoCs have 20-year terms; under this final rule, the CoC term is extended to a not to exceed 40-year term). For each transportation cask certified under 10 CFR Part 71, the CoC specifies "approved contents." The description of the approved contents for a spent fuel transportation package defines the acceptable fuel types and characteristics and, typically, it is the condition of the fuel, not its age, that determines its acceptability. Spent fuel stored in casks, even for extended terms, is not expected to experience any significant degradation that would affect its acceptability to be shipped in a suitable transportation cask. The Part 72 general design criteria require fuel retrievability (§ 72.122(l)) and for CoC applications, the design of the storage cask should consider, to the extent practicable, compatibility with removal of the stored spent fuel from a reactor site, transportation, and ultimate disposition by the Department of Energy (§ 72.236(m)). Based upon the NRC-supported INL research program and the Surry and H. B. Robinson ISFSI renewal applications, the NRC staff has concluded that typical spent fuel can be safely stored in casks without appreciable degradation.

If the condition of spent fuel, or its storage canister, was believed to have degraded

during extended storage such that it no longer met the criteria for approved contents, a licensee would have other alternatives for transport of that spent fuel. A new or modified approved transportation cask might be used, or the fuel might be repackaged, to place it in an acceptable configuration.

*K. How does the NRC track cask expiration dates?*

Section 72.212(b)(2) of the final rule will require general licensees to register use of each cask with the Commission no later than 30 days after using that cask to store spent fuel. To register casks, licensees must submit their name and address, reactor license and docket numbers, the name and title of a person responsible for providing additional information concerning spent fuel storage under the general license, the cask certificate number, the amendment number, if applicable, cask model number, and the cask identification number. With this information, the Commission will know the loading and expiration dates of each cask. This information will also enable the NRC to schedule any necessary inspections and will permit the NRC to maintain an independent record of use for each cask.

*L. Who is responsible for applying for CoC renewals?*

X The final rule retains the structure of the current rule, which emphasizes that the certificate holder (the cask vendor) applies for cask renewal. If the certificate holder chooses not to apply for the renewal of a particular cask design or is no longer in business, a licensee, a licensee's representative, or another certificate holder may apply for renewal in its place. If the applicant for CoC renewal seeks to fabricate this cask design, it must satisfy the applicable requirements of Part 72, including establishment and maintenance of the requisite quality assurance (QA) program (general licensees may rely upon previously established Part 50 or 71 QA programs if they meet the requirements of §§ 72.140 and 72.174).

amendment, then the cask would be considered as conforming with the terms and conditions of the newer CoC amendment without having to meet the new loading requirements.

*P. Do later CoC amendments encompass earlier CoC amendments?*

No, later CoC amendments do not encompass earlier amendments unless the language of the later CoC amendment expressly indicates otherwise. Generally, when the NRC reviews an amendment to a CoC, the NRC staff considers the changes associated with the amendment request only and limits its review to the bounding conditions of the analysis. Specific changes associated with earlier CoC amendments for previously loaded casks are not considered during the review process for a later amendment. Thus, depending on the nature of the changes, later amendments do not necessarily encompass earlier amendments and sometimes may be inconsistent with earlier amendments.

*Q. Why can't general licensees use the § 72.48 process to apply CoC amendment changes to previously loaded casks?*

The principal requirement of § 72.48 regarding changes to cask designs is that the desired changes do not result in a change in the terms, conditions, or specifications incorporated in the CoC. A previously loaded cask is bound by the terms, conditions, and technical specifications of the CoC applicable to that cask at the time the licensee loaded the cask. Thus, under § 72.48, a licensee may only make those cask design changes that do not result in a change to the terms, conditions, or specifications of the CoC under which the cask was loaded. The final rule will not amend § 72.48, but will amend § 72.212 by authorizing a general licensee to apply the changes authorized by a CoC amendment to a previously loaded cask, provided that after the changes have been applied, the cask conforms to the terms and conditions, including the technical specifications, of the CoC amendment.

R. If a general licensee selects and purchases a cask fabricated under an earlier CoC amendment, but does not load the cask, can the general licensee adopt the most recent CoC amendment for the empty cask before loading it?

Adoption of the most recent CoC amendment depends on the nature of the changes between the CoC amendment under which the cask system was fabricated and the most recent amendment. CoC amendments are routinely requested by cask manufacturers or vendors (also referred to as the certificate holders) to account for advances in cask design and technology. Some amendments will be associated with cask hardware changes. A cask system that was purchased under an older amendment may or may not be able to be modified to a cask system that meets the most recent amendment.

As revised by this final rule, § 72.212(b)(5) will require that general licensees perform written evaluations demonstrating that the cask, once loaded with spent fuel, will conform to the terms, conditions and specifications of a CoC or an amended CoC listed in § 72.214. In the case of an unloaded cask fabricated under the initial or earlier CoC amendment, the cask cannot be loaded under a later CoC amendment if the § 72.212(b)(5) evaluation shows that the cask, once loaded, will fail to meet the terms, conditions and specifications of the later CoC amendment. If the evaluation demonstrates that the terms, conditions and specifications of the later CoC amendment are met, then the cask can be loaded under the later CoC amendment.

S. What are the NRC's plans for providing guidance and examples of aging analyses and AMPs to licensees?

X The NRC has developed NUREG-1927 <sup>g</sup>entitled, "Standard Review Plan for Renewal of Independent Spent Fuel Storage Installation Licenses and Dry Cask Storage System Certificates of Compliance." This SRP provides guidance to the NRC staff in reviewing the <sup>e</sup>



## MISCELLANEOUS ITEMS AND RULE LANGUAGE REVISIONS

### Comment 27:

A commenter stated that, contrary to the first sentence of Section II, "Discussion," Question "K" of the proposed rule, the current regulations do not require general licensees to maintain or submit a cask loading schedule to the NRC. The commenter requested that the NRC delete this language or revise the wording.

### Response:

The intent of the response to Question "K" of the proposed rule was to inform readers that general licensees keep track of loading and expiration dates of each loaded cask. The NRC understands, however, that this is not an express regulatory requirement. As such, the NRC has rephrased Question "K" to ask how the NRC tracks cask expiration dates and has made clarifying changes to the response to Question "K." The registration letters required by the regulations, as amended by this final rule, provide the NRC with the requisite information to track cask expiration dates. X

### Comment 28:

A commenter suggested that in Section II, "Discussion," Question "T" of the proposed rule, the regulation should include a provision to permit licensees with existing § 72.212 reports to maintain the current regulatory numbering system and not have to revise these reports to reflect the redesignated sections within the proposed regulation.

### Response:

The NRC disagrees with the comment that a provision be added to the regulations. There is no requirement to revise past § 72.212 reports to reflect the redesignation of provisions in § 72.212(b) resulting from the amendments of this final rule. Past § 72.212 reports can remain formatted to the regulation that was in effect at the time the report was written. Section 72.212 reports written after the effective date of this final rule must conform to the redesignations in the final rule.

**Comment 29:**

A commenter stated that the phrase “no later than 30 days after using (loading) that cask” in Section II, “Discussion,” Question “U” of the proposed rule and § 72.212(b)(2) is too vague. The commenter suggested replacing the above language with the following: “placing the cask in storage at the ISFSI” to clearly establish a start date.

**Response:**

In response to the commenter, the NRC is not going to change the rule text; this rule language has been in effect since 1990 without any controversy. Rather, the NRC is clarifying its response to Question “U” of this document by removing the term “loading” from the response. It is the NRC’s position that the 30-day clock starts when the loaded cask has been deployed in the ISFSI.

**Comment 30:**

A commenter stated that the phrase “casks of that design” as used in § 72.212(a)(3) is unclear. The commenter recommended that the phrase be clarified or revised to be consistent with the language used earlier in the section, “cask[s] fabricated under a Certificate of

**AFFIRMATION ITEM**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary  
FROM: Commissioner Apostolakis  
SUBJECT: SECY-10-0056 – FINAL RULE: 10 CFR PART 72  
LICENSE AND CERTIFICATE OF COMPLIANCE  
TERMS (RIN 3150-AI09)

Approved  X  Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_\_\_ Attached \_\_\_\_\_ None  X



\_\_\_\_\_  
SIGNATURE

7/15/10

\_\_\_\_\_  
DATE

Entered on "STARS" Yes  X  No \_\_\_\_\_

**AFFIRMATION ITEM**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER MAGWOOD  
SUBJECT: SECY-10-0056 – FINAL RULE: 10 CFR PART 72  
LICENSE AND CERTIFICATE OF COMPLIANCE  
TERMS (RIN 3150-AI09)

Approved  Disapproved  Abstain

Not Participating

COMMENTS: Below  Attached  None



\_\_\_\_\_  
SIGNATURE

27 August 2010

\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No

**Commissioner Magwood's Comment on SECY-10-0056**  
**"Final Rule 10 CFR 72 License and Certificate of Compliance Terms (RIN 3150-A109)"**

I approve the staff's recommendation to publish the final amendments to 10 CFR 72 in the Federal Register. This rule will make our regulatory framework more efficient while maintaining adequate protection of public health and safety and the environment. I commend the staff for adding aging management requirements for renewal of Certificates of Compliance (CoC). It is important that both specific and general license ISFSI sites have the same aging requirements during license renewal and CoC renewals. I believe that the revised rule provides a consistent basis for requirements under Part 72 specific licenses and CoCs applicable to general licensees. I agree with the Chairman that some challenges might exist for the CoC holder in that it does not have direct access to records and data associated with maintenance and corrective actions programs for operational casks. Therefore staff must continue to ensure that renewal application processes for CoCs incorporate complete information obtained from operational experience in order to bound aging effects as well as to inform the aging management program. Moreover, a complete understanding of the cask operational experience will help to ensure that the original licensing basis is maintained throughout the renewal term.



William D. Magwood, IV

27 AUGUST 2010

Date

**AFFIRMATION ITEM**

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary  
**FROM:** COMMISSIONER OSTENDORFF  
**SUBJECT:** SECY-10-0056 – FINAL RULE: 10 CFR PART 72  
LICENSE AND CERTIFICATE OF COMPLIANCE  
TERMS (RIN 3150-AI09)

Approved  Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

**COMMENTS:** Below \_\_\_\_\_ Attached  None \_\_\_\_\_

*W. Ostendorff*  
\_\_\_\_\_  
SIGNATURE

*8/12/10*  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No \_\_\_\_\_

## **Commissioner Ostendorff's comments on SECY 10-0056 "Final Rule 10 CFR 72 License and Certificate of Compliance Terms"**

I approve publication of the final rule amending 10 CFR Part 72 License and Certificate of Compliance (CoC) Terms for Spent Nuclear Fuel Storage. This revised rule is the outcome of the Commission recognizing the need to update its regulation after reviewing and approving the exemption request for the Surry ISFSI license renewal. The credence given to the technical analyses and license conditions developed during that license renewal was demonstrated by the Commission's direction to apply the approved guidance regarding the Surry exemption to future exemption requests without additional Commission approval.

The staff's paper, including the analyses referenced in the paper, provide sufficient technical basis to justify extension of the licensing terms. Given that a sound technical basis exists for periods of interim storage even beyond 40 years, it is efficient to extend the licensing terms. In light of the renewals that have been granted for Surry and H.B. Robinson, it is prudent to extend the terms to a period consistent with the staff's previous decisions, which were based on the current available knowledge from research and operational experience. I appreciate the work done by the staff in preparing this final rule, and I believe the outcome of these amendments will continue to ensure the safe management of spent fuel storage, while also improving regulatory consistency.

The amended rule adheres to NRC's principles of regulatory reliability and clarity by providing a consistent basis for the requirements under Part 72 specific licenses and CoCs applicable to general licensees. It is not only logical, but also practical, for the same regulatory requirements to apply to both specific and general-license ISFSI sites given that the same cask design and technical circumstances could apply in either licensing circumstance.

The rule also promotes efficiency and stability in the NRC's regulatory process by permitting licensees to implement changes authorized by a later CoC amendment to a cask loaded under the initial CoC or earlier amendment, which will avoid future burdensome exemptions. After reviewing the statements of consideration for prior Part 72 rulings, I believe exemptions of this nature were neither foreseen nor intended. As a matter of principle, exemptions from regulations should be preserved for rare occasions; the Commission should proactively obviate the need for exemptions that are the aftereffect of ill-considered or impractical rules.

The revised rule appropriately focuses the NRC staff's attention on the most safety significant issues. Notably, the changes aligning the general license and CoC terms will avoid unnecessary operational risks of fuel repackaging that could be a potential result of the current misalignment. Also, the requirement for an aging management plan for renewed CoCs focuses on the key aging mechanisms and identifies actions to mitigate aging effects so that the original licensing basis is maintained throughout the renewal term.

This rule has benefited from thorough staff technical analysis, insightful public comments on the associated guidance, and thoughtful Commission policy direction given during the process of reviewing the prior related exemption requests. Consequently, the requirements are technically sound, and place the appropriate boundaries on renewal terms by clarifying that the rule does not permit cumulative renewal terms and by requiring aging management programs for renewals.