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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 72

RIN 3150-AE64

Interim Storage of Spent Fuel in an Independent Spent Fuel Storage Installation at a Reactor Site; Site-Specific License to a Qualified Applicant

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its procedures to permit the Director of Nuclear Material Safety and Safeguards to issue a site-specific license to a qualified applicant for the interim storage of spent fuel in an independent spent fuel storage installation (ISFSI) at a reactor site following satisfactory completion of NRC safety and environmental reviews and after any public hearing on the application. The amendment eliminates the need for express Commission authorization for each ISFSI license, but does not affect the scope of NRC review of an ISFSI license application or change the present opportunity for public hearing provided for in the NRC rules of practice.

EFFECTIVE DATE: May 30, 1995.

ADDRESSES: The documents referenced in this final rule are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Copies of NUREG-0575 and NUREG-1092 may also be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC. 20013-7028. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: C. William Reamer, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415-1640.

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I. Background

Under 10 CFR Part 72, the NRC will issue a specific license for the interim storage of nuclear power plant spent fuel in an independent spent fuel storage installation (ISFSI) if NRC determines the application meets the requirements of the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*) and the Commission's regulations. An ISFSI is a facility that is specifically designed and constructed for interim spent fuel storage, after use of the nuclear fuel as a source of energy in a nuclear power reactor, until its shipment to the U.S. Department of Energy's (DOE) planned geologic repository for disposal of radioactive waste. Part 72 applies to site-specific licenses for storage of spent fuel in an ISFSI (up to 20 years with renewal at the option of the NRC) or a monitored retrievable storage installation (MRS) (up to 40 years with renewal at the option of the NRC). Although Part 72 also applies to spent fuel storage in approved casks at an ISFSI at a reactor site pursuant to a general license (10 CFR part 72, subpart K), the general license is not covered or affected by this rulemaking.

On June 3, 1993 (58 FR 31478), the Commission proposed rulemaking to modify the Commission's procedures for the issuance of a specific ISFSI license to a qualified applicant. After considering the public comments received in response to the Commission's request, the Commission has decided to adopt the proposed rule as final with one clarification. Specifically, the final rule covers an ISFSI at a reactor site. (The proposed rule was not explicit on this point.)

II. Summary of Proposed Rule

As set forth in its notice of proposed rulemaking (58 FR 31478-81), the Commission proposed to amend the procedures that authorize the NRC Director of Nuclear Material Safety and Safeguards (or the Director's designee) to issue a site-specific license for the interim storage of spent fuel in an ISFSI under 10 CFR part 72. This type of license would be issued after the NRC completes a comprehensive, documented, public health and safety review; prepares an environmental assessment and determines that issuing the license would conform to all statutory and regulatory requirements; and after an opportunity for a public hearing has been offered and any requested hearing is complete. The amendment would end the current internal practice under which the Director obtained the Commission's express authorization for each ISFSI license, after the NRC review and determination that a license should be issued under 10 CFR part 72, but before the Director actually issued the license. However, the proposed rule would not affect, in any way, existing procedures for the NRC review or the opportunity for public hearing.

III. Public Comments and the Commission's Response

In response to publication of the proposed rule and request for public comments, including extension of the public comment period (58 FR 48004; September 14, 1993), NRC received 11 written comments. (Copies of the comment letters are available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC). In some instances, similar comments were offered by more than one commenter, and comments were therefore grouped into the categories that are set forth below, together with the Commission's response.

1. *Comment:* The proposed rule forecloses public participation in important reactor spent fuel storage decisions.

Several comments took issue with the Commission's statement in the notice of proposed rulemaking that the amendment would not affect the opportunity for a public hearing provided in NRC's rules of practice. One commenter argued the amendment