

application. As described in the notice of proposed rulemaking, that process is as follows:

Upon receipt of an ISFSI license application, after publishing a notice of docketing in the **Federal Register**, the NRC staff reviews the license application and applicant's supporting safety analysis report (SAR) describing the proposed ISFSI. This comprehensive, technical review by the NRC staff addresses all relevant public health and safety matters including site characteristics affecting construction and operating requirements for the proposed ISFSI, criteria for and design of the proposed installation, operation systems of the facility, site-generated waste confinement and management systems, measures to ensure the protection of the public and occupational workers from radiation and radioactive materials, analyses of potential accidents that might occur at the facility, and the applicant's plans for the conduct of ISFSI operations. In its review, the NRC staff may require further submittals from the applicant as necessary to complete the ISFSI application, will thoroughly review all of the applicant's supporting technical information, and will independently verify the applicant's safety analyses and design calculations if necessary. To document its review and conclusions, the NRC staff will prepare a comprehensive safety evaluation report (SER) detailing its safety findings and conclusions, as well as an environmental assessment (EA) for the proposed specific license for interim storage of spent fuel in an ISFSI. As noted, interested members of the public may obtain copies of these documents from NRC. None of these NRC staff technical activities would, in any way, be modified by this proposed amendment. (58 FR 31479; June 3, 1993.)

After issuance of an ISFSI license, NRC regulatory responsibilities during the 20-year license term include an inspection and enforcement program, providing for an NRC resident inspector at every licensed reactor site of an ISFSI in the United States, supplemented as necessary by teams of engineers and technical specialists, performing inspections in a wide variety of engineering and scientific disciplines, and ranging from civil and structural engineering to health physics and quality assurance. By means of selective examinations, NRC's inspection program seeks to ensure that each ISFSI licensee is meeting its responsibility for safe maintenance and operation of the ISFSI, in accordance with NRC regulations. The program is preventive in nature, and is designed to anticipate and preclude potentially significant public health and safety events or problems by identifying underlying safety concerns or latent vulnerabilities for prompt licensee management attention and adequate corrective action. NRC inspections supplement, rather than supplant, the licensee's programs, so as to provide an

independent check or verification of the effectiveness of those licensee programs and their strict conformance with NRC requirements.

The Commission, alone, is ultimately responsible and accountable for the successful regulation of spent fuel storage in licensed ISFSIs to protect the public health and safety. These rulemaking amendments do not change in any way the Commission's responsibility and accountability to the public and its elected representatives. Rather, in one respect, these amendments modify how the Commission will perform its responsibility (i.e., they eliminate a Commission vote before issuance of an ISFSI license at a reactor site). After the amendments become effective, however, the Commission will still have, and will still continue to fulfill, the responsibilities to supervise and direct the NRC staff's performance of the licensing, inspection, and enforcement activities described above. The NRC staff is required to keep the Commission fully and currently informed about significant proposed licensing actions. This means the Director, NMSS, must notify the Commission before issuance of any license for an ISFSI. The Director must also notify the Commission if the staff's inspection program reveals any significant public health and safety matter relating to ISFSI operations that are of regulatory concern. The NRC staff is also required to bring any significant policy issue regarding ISFSI activities to the Commission's attention for resolution. This means the Commission will continue to make any decision involving any significant new ISFSI issues that may arise in the future. In addition, any member of the public who has specific concerns about a proposed ISFSI license can bring them to the Commission for resolution in NRC's public hearing process, as described previously in this notice. In short, through these mechanisms, which are adequate and well-suited for the purpose, the Commission will continue to perform all of its health and safety responsibilities to the public, and will ensure that ISFSI regulation by NRC continues to take place under the Commission's supervision and direction. If new information becomes available that casts doubt on the adequacy of the oversight mechanisms, the Commission can and will take action which could include reversal of these rulemaking amendments.

4. *Comment:* ISFSI licensing should be the same as licensing for new reactors, an MRS or for the disposal repository which the Commission would need to specifically approve.

Several comments, opposing the proposed rule, express the view that the Commission should apply to specific ISFSI licenses the same Commission approval process it would use to license nuclear reactors, a monitored retrievable storage installation (MRS), and HLW disposal facilities.

One commenter, for example, stated that, given that the cumulative load of discharged irradiated spent fuel in a spent fuel pool could contain more radioactivity than an operating nuclear reactor, greater care should therefore be given to ISFSI licensing than to the reactor itself because the potential for release is greater. Another comment, adopting the view that ISFSI licensing should be in the same category as licensing nuclear reactors or amending such licenses, stated the Commission should not characterize Commission approval of ISFSI licenses as a "special exception." Other commenters stated that spent fuel is highly radioactive and its quantity increasing. Therefore, in their view, the requirement for Commission approval of ISFSI licensing, in addition to NRC staff review, as in the case of licenses to operate reactors, is consistent with the NRC's longstanding regulatory philosophy of redundancy of safeguards and defense-in-depth.

Several comments also opposed the proposed rule change on the ground that it would make ISFSI licensing less stringent than the licensing review afforded to disposal of spent fuel in a repository. One commenter, for example, stated that, in the absence of a viable disposal solution, storage of spent fuel in an ISFSI cannot be labeled "temporary," and should therefore be done under procedures comparably stringent to those for "permanent" disposal facilities.

Another commenter viewed elimination of Commission review to be at odds with the history of the MRS which was authorized only through Congressional action in the Nuclear Waste Policy Act and which could be constructed in the future only after further Congressional action. In this commenter's view, the amount of spent fuel stored at the various ISFSIs under NRC license was approaching the amount that might be expected to be stored at the MRS. Another commenter, who also compared the quantity of spent fuel stored in ISFSIs to the capacity of an MRS, stated that NRC was not properly perceiving the inherent hazards in spent fuel storage operations.

*Response:* The Commission agrees in part with the thrust of the comments, that is, that NRC regulations as applied should achieve a comparable level of