

who is interested) that a proposed ISFSI is safe, then the Commission believes it should make those rulemaking amendments.

6. *Comments:* The revision is a useful simplification of existing procedures that does not create any impacts adverse to safety. Given the proven safety and reliability of ISFSIs, NRC licensing procedures should not have layers of unnecessary reviews that are not used in other NRC licensing actions.

Several comments received on the notice of proposed rulemaking favor the NRC proposed rule change. One commenter stated the amendments do not change the fact that the license applicant must still undergo a comprehensive public health and safety review, environmental assessment and an opportunity for public hearing, in order to ensure the proposed ISFSI is safe and in compliance with NRC regulations. The commenter noted the only change would be elimination of Commissioner approval.

Another comment supporting the change stated it would make ISFSI procedures more like NRC licensing procedures for other types of facilities handling nuclear materials, and justified it on the basis of the safety and reliability of spent fuel dry storage in ISFSI. The commenter also noted the rule is consistent with Congress' intent in the Nuclear Waste Policy Act (Sec. 131(a)(2)) that directs the Federal government to expedite additional spent fuel storage capacity and encourage dry storage technologies which have been proven to be safe. It further argued the change was in keeping with NRC initiatives elsewhere to reduce unnecessary regulatory burdens without reducing public health and safety protection. It also noted the only practical effect of the change was to eliminate mandatory Commission review in uncontested licensing action.

*Response:* The Commission generally agrees with this comment. However, the Commission notes that substantial reliance is being placed in this rulemaking on the demonstrated safety and reliability of dry storage at reactors in ISFSIs to date. In this connection, although NRC has an important regulatory role outlined elsewhere in this notice, licenses have the primary responsibility for safe ISFSI operations, to protect the public health and safety, and to abide by NRC regulations. If circumstances warrant in a particular case, or if significant new information becomes available, the Commission could require specific Commission authorization before issuance of any ISFSI license in a future case.

7. *Comment:* The rule needs to reflect that DOE continues to pursue plans for interim storage.

The U.S. Department of Energy (DOE) submitted a comment expressing concern that the notice of proposed rulemaking printed in the **Federal Register** gave the erroneous impression that DOE is not pursuing plans respecting interim storage. In recounting the history of the MRS, the DOE states the Nuclear Waste Policy Act of 1982 (NWPAA) adopted a policy of spent fuel disposal in repositories and did not authorize large-scale storage facilities. DOE goes on to state that Congress amended the NWPAA in 1987 to authorize an MRS subject to specific conditions, after DOE recommended a mandated MRS site-specific proposal. The DOE comment also indicates that DOE plans continue to include interim storage. DOE requests the discussion accompanying the proposed rulemaking change should be revised to accurately reflect DOE's position.

*Response:* The rulemaking record should be corrected to reflect the facts set forth in DOE's letter. The Commission did not intend any of its statements in the notice of proposed rulemaking to imply circumstances contrary to those described by DOE.

8. *Comment:* The Commission's proposal not to extend the rule change to the MRS, thereby continuing the need for express Commission authorization before the Director could issue an MRS license, drew opposing views.

Several comments took opposing positions on the Commission's proposal not to eliminate Commissioner authorization for issuance of a license under Part 72 for the MRS. One commenter posited that an MRS might be simple in design and operation, much like an ISFSI, and therefore ought to be licensed by the Director, NMSS, without the need for specific authorization by the Commission. The comment recognized that the proposed MRS design might be more complex than an ISFSI, in which case the MRS license could be reviewed by Commission before issuance.

Another commenter, however, agreed with the Commission's proposal not to change the requirement for express Commission authorization of an MRS license, arguing the different procedure is justified by a fundamental difference between an ISFSI and an MRS, as those facilities are defined in Part 72.

*Response:* As the differing comments reflect, there is, at this time, no DOE license application or DOE-proposed design for an MRS that is before the Commission. In addition, the Commission has no basis to speculate

on any interim storage design that DOE might propose for licensing, including whether it would be similar to the ISFSI facilities licensed by NRC to date. Therefore, inasmuch as the Commission cannot now determine that NRC licensing experience with ISFSIs would be directly applicable to an MRS, it has decided not to eliminate the requirement for express Commission authorization before issuance by the Director, NMSS, of any initial license for the acquisition, receipt or possession of spent fuel, high-level waste and associated radioactive material, for the purpose of storage at an MRS by DOE. In this connection, the Commission notes that the DOE letter referred to in comment 7 does not disagree with this aspect of the NRC rulemaking amendments.

Similarly, various plans have received mention recently regarding possible private ISFSIs at non-DOE sites (e.g., a new off-site ISFSI for the Prairie Island plant located within Goodhue County, Minnesota at a site not on Prairie Island). However, the Commission has no basis to speculate on these possible facilities or their designs. Therefore, since the Commission cannot determine that its ISFSI licensing experience would be directly applicable to these possible facilities, it has decided not to eliminate the requirement for express Commission authorization before issuance by the Director, NMSS, of any initial license for the acquisition, receipt or possession of spent fuel, high-level waste and associated radioactive material, for the purpose of storage at an ISFSI that is not located at a reactor site.

9. *Comment:* The Commission should not make rule changes that would result in an ISFSI being licensed by Agreement States.

One comment questions the proposed rule change on the ground that it might open ISFSI siting to licensing by Agreement States which may not be technically prepared to handle the responsibility.

*Response:* The proposed rule does not open ISFSIs to licensing by Agreement States. As the comment correctly notes, a number of States have agreements with the Commission or its predecessor, the Atomic Energy Commission, pursuant to section 274 of the Atomic Energy Act of 1954. These agreements typically provide for the Commission to discontinue, and the State to assume, responsibility for regulating certain nuclear materials in order to protect the public health and safety. However, under section 274 of the Act, the Commission will not discontinue regulatory responsibility for special nuclear materials in quantities sufficient