

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, and 70

[Docket No. PRM-30-61]

Nuclear Energy Institute, Receipt of
a Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Nuclear Energy Institute (NEI) on behalf of nuclear material licensees. The Commission has docketed the petition Docket No. PRM-30-61. The petitioner requests that the NRC amend its regulations governing monitoring and maintenance programs for the decommissioning process at facilities of special nuclear materials licensees. The petitioner's suggested amendments would allow material licensees to continue monitoring and maintaining facilities, separate buildings, or outside storage areas that have not been used for 24 months, rather than requiring licensees to begin the decommissioning process after 24 months of inactivity.

DATE: Submit comments by (75 days after publication in the Federal Register). Comments received after this date will be

considered if it is practical to do so, but assurance of consideration can be given only to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Electronic access is explained at the end of the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301-415-7163 or Toll Free: 800-368-5642.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission (NRC) received a petition for rulemaking dated May 24, 1996, from the Nuclear Energy Institute (NEI). The petition was docketed as PRM-30-61 on

May 29, 1996. The petitioner requests that the NRC amend the regulations in 10 CFR Parts 30, 40, and 70 to establish a more flexible alternative to the current provisions required for decommissioning any facility, separate building, or outside area after it has been inactive for at least 24 months.

The petitioner discusses the NRC's Site Decommissioning Plan to address facilities that had not operated for some period of time and had not started the decommissioning process. The study that led to the plan was initiated because the owners of a number of facilities had gone into bankruptcy or could not be identified, and because a number of sites had unique decommissioning or financial issues to be resolved in order to complete decommissioning.

The NRC began a second study to determine the appropriateness of establishing regulations to prevent other licensees from falling into one of three categories. Two key antecedents for licensees falling into the categories were identified. First, the regulations did not state a specific time period for decommissioning, either from when operations ceased or from the time decommissioning started to the time it was completed. Second, if decommissioning was delayed for a long period of time, safety practices could become lax, key personnel

could leave, management interest would wane, or bankruptcy, corporate takeover, and other unforeseen changes could occur, all of which would complicate or further delay decommissioning.

The petitioner states that in January 1990, the NRC directed its staff to establish timeline criteria for decommissioning the sites of materials licensees. The petitioner describes NRC staff began efforts to establish the requirements for timely decommissioning. The work culminated in SECY-92-057, dated February 19, 1992. In June 1992, the NRC issued a staff requirements memorandum approving the proposed rulemaking. The notice for comments was published in the Federal Register on January 13, 1993 (53 FR 4099). The comment period expired on March 29, 1993. The NRC received 17 comment letters, including one from the predecessor organization to NEI. This comment focused on the lack of a standby provision in the rule.

The petitioner further states that the proposed rule included four major points: first, to establish a time limit of 24 months of inactivity, after which a licensee must submit notification to the NRC; second, to establish a time limit of 12 months following the notification of ceasing operations to submit the decommissioning plan; third, to provide a provision for requests to delay or postpone the initiation of the

decommissioning process; and fourth, to establish a time period for completing decommissioning. Most of the comments the NRC received were focused on the timing of each aspect and the lack of residual contamination criteria. The NRC decided not to adopt the suggestion to extend the 24-month period of inactivity before notification because the commenters did not provide adequate substantiating rationale for selecting an alternative schedule.

The Petitioner

The petitioner is the Nuclear Energy Institute (NEI), the organization that coordinates unified nuclear industry policy on matters affecting the nuclear energy industry. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

Supporting Statement

The petitioner believes that NRC's overall objective was to ensure timely decommissioning of material licensees' facilities following termination of the license or inactivity of the site for a specified period of time. Although the final rule

(July 15, 1994; 59 FR 36027) accomplishes this objective, the petitioner believes that it also has the potential to eliminate important components from the nuclear industry infrastructure. These components, facilities, and buildings may be needed in future years to support continuing operation or potential industry expansion. The petitioner states that it may not have been NRC's intent to eliminate components of this infrastructure, but the delay and postponement provision and the absence of an alternative monitoring and maintenance program essentially does just that.

The petitioner believes that NRC's position does not reflect the cohesive industry of today; specifically, the market and industry have matured and demand has stabilized within a respectable range. The petitioner states that companies understand today's market and are willing to assume the holding costs to keep facilities in the standby mode. Furthermore, the petitioner states that the ability to establish a standby mode is functionally unavailable under the timeliness rule. NRC dismissed the proposed alternative standby mode extension on the grounds that adequate, substantial rationale for an alternative were not provided and that demonstrating adequate funds to maintain the site was unacceptable because bankruptcy, corporate

takeover, or other unforeseen changes in the company's financial status could result in abandonment of the site.

The petitioner believes that the NRC's staff dismissal of the proposed alternative did not take into consideration related NRC regulations on decommissioning and transfer of ownership. The current series of regulations in Parts 30, 40, and 70 ensures adequate funding is available for decommissioning of a site. Similar regulations for the transfer of ownership provide the NRC with assurances that companies who hold the license have sufficient financial ability to use the radioactive material in a manner that provides benefit to the nation, while providing protection for the health and safety of the public.

According to the petitioner, NRC regulations were not intended to give the NRC jurisdiction over the commercial aspects of the licensee's activities. The petitioner believes that a company that has a valid NRC or Agreement State license and operates within the conditions of the license should make the commercial decision on starting and stopping operations, as well as deciding when to place buildings or facilities in the standby mode and how long to maintain them in this mode. The petitioner believes that NRC regulations should not impose restrictions on

facilities or sites that have the potential to impact commercial decisions.

The petitioner has included an appendix entitled "Supplementary Analyses in Support of the Petition for Rulemaking," which contains analyses of issues that the NRC must consider, including the effect of the proposed action on the environment and small business entities, the paperwork required of those affected by the change, and whether or not a regulatory analysis must be performed or the backfit rule applies to this action.

The NRC is soliciting public comment on the petition submitted by NEI that requests the following changes to 10 CFR Parts 30, 40, and 70.

The Petitioner's Proposed Amendment

The petitioner recommends the following amendments to 10 CFR Parts 30, 40, and 70.

1. The petitioner proposes that §30.36 be amended by redesignating paragraph (e) as (e)(2) and adding a new paragraph (e)(1) to read as follows:
Section 30.36 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

* * * * *

(e) * * *

(1) In lieu of decommissioning, the licensee may monitor and maintain a facility, separate building or outside storage area as described in paragraphs (d)(3) or (d)(4) of this section in accordance with an approved program, provided the proposed plan is submitted to the NRC within 24 months of the cessation of principle activities within a facility, separate building or outside storage area. The program includes:

(i) Financial assurance for decommissioning;

(ii) A description of the monitoring and maintenance plan that is to be implemented, which will assure that any remaining contamination will be contained and that worker and public safety will be assured; and

(iii) Financial assurance to support the monitoring and maintenance program for the standby period requested.

* * * * *

2. The petitioner proposes that §40.42 be amended by redesignating paragraph (e) as (e)(2) and adding a new paragraph (e)(1) to read as follows:

Section 40.42 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

* * * * *

(e) * * *

(1) In lieu of decommissioning, the licensee may monitor and maintain a facility, separate building or outside storage area as described in paragraph (d)(3) or (d)(4) of this section in accordance with an approved program, provided the proposed plan is submitted to the NRC within 24 months of the cessation of principle activities within the facility, separate building or outside storage area. The program includes:

(i) Financial assurance for decommissioning;

(ii) A description of the monitoring and maintenance plan that is to be implemented, which will assure that any remaining contamination will be contained and that worker and public safety will be assured; and

(iii) Financial assurance to support the monitoring and maintenance program for the standby period requested.

* * * * *

3. The petitioner proposes that §70.38 be amended by redesignating paragraph (e) as (e)(2) and adding a new paragraph (b)(1) to read as follows:

Section 70.38 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

* * * * *

(e) * * *

(1) In lieu of decommissioning, the licensee may monitor and maintain a facility, separate building, or outside storage area as described in paragraph (d)(3) or (d)(4) of this section in accordance with an approved program, provided the proposed plan is submitted to the NRC within 24 months of the cessation of principle activities within a facility, separate building or outside storage area. The program includes:

(i) Financial assurance for decommissioning;

(ii) A description of the monitoring and maintenance plan that is to be implemented, which will assure that any remaining contamination will be contained and that worker and public safety will be assured; and

(iii) Financial assurance to support the monitoring and maintenance program for the standby period requested.

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Electronic Access

Comments may be submitted electronically in either ASCII text or WordPerfect format (version 5.1 or later) by calling the NRC Electronic Bulletin Board (BBS) on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one

of the commonly available communications software packages, or directly via Internet. Background documents on this rulemaking also are available for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number 800-303-9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT-100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and data bases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld also can be accessed by a direct-dial telephone number for the main FedWorld BBS, 703-321-3339, or by using Telnet via Internet: fedworld.gov. If using 703-321-3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has an option "U.S. Nuclear Regulatory

Commission" that will take the user to the NRC online main menu. The NRC online area also can be accessed directly by typing `"/go nrc"` at a FedWorld command line. If NRC is accessed from FedWorld's main menu, the user may return to FedWorld by selecting the "Return to FedWorld" option from the NRC online main menu. However, if NRC is accessed at FedWorld by using NRC's toll-free number, the user will have full access to all NRC systems, but the user will not have access to the main FedWorld system.

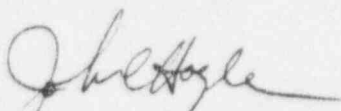
If FedWorld is contacted using Telnet, the user will see the NRC area and menus, including the Rules Menu. Although the user will be able to download documents and leave messages, he or she will not be able to write comments or upload files (comments). If FedWorld is contacted using FTP, all files can be accessed and downloaded, but uploads are not allowed. Only a list of files will be shown, without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FedWorld also can be accessed through the World Wide Web, like FTP, that mode only provides access for downloading files and does not display the NRC Rules Menu.

For more information on NRC bulletin boards, call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555, telephone 301-415-5780; e-mail AXD3@nrc.gov.

Dated at Rockville, Maryland, this 15th day of August, 1996.

For the Nuclear Regulatory Commission.


John C. Hoyle,
Secretary of the Commission.