



NUCLEAR ENERGY INSTITUTE

Felix M. Killar, Jr.
DIRECTOR, MATERIAL
LICENSEES PROGRAMS

DOCKET NUMBER
PETITION RULE ~~PRM~~ 30-61
(61 FR 43193)

May 24, 1996

Mr. John C. Hoyle
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001



ATTENTION: Chief, Docketing and Service Branch

Dear Mr. Hoyle:

The Nuclear Energy Institute (NEI),* on behalf of the material licensees, hereby submits a Petition for Rulemaking pursuant to 10 CFR 2.800 *et seq.* NEI's Petition for Rulemaking requests that the U.S. Nuclear Regulatory Commission (NRC) amend 10 CFR 30.36 to add section 10 CFR 30.36(e)(1) and renumber existing section 10 CFR 30.36(e) to 10 CFR 30.36(e)(2), to amend 10 CFR 40.42 to add section 10 CFR 40.42(e)(1) and renumber existing section 10 CFR 40.42(e) to 10 CFR 40.42(e)(2), to add section 10 CFR 70.38(e)(1) and renumber existing section 10 CFR 70.38(e) to 10 CFR 70.38(e)(2). The new sections allow, within a predetermined time period, material licensees to continue monitoring and maintaining facilities, separate buildings, or outside storage areas, which have not been in use for 24 months, rather than being required to begin the decommissioning process after 24 months of inactivity.

As outlined in the enclosed petition, the new sections provide for a monitoring and maintenance program, along with assurance of funding to carry out this program for a specified time period, as well as the assurance of adequate funding for decommissioning. The monitoring and maintenance programs will be subject to NRC concurrence and will be designed to prevent radioactive releases or contamination exposure, exceeding 10 CFR 20 limits, to the work force and/or members of the public.

9611250058 960524
PDR PRM
30-61 PDR

* NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. 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.

DS10



Mr. John C. Hoyle

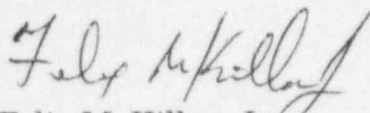
May 24, 1996

Page 2

The proposal in this Petition for Rulemaking allows licensees to make informed business decisions. It will benefit both licensees and the NRC because a clear alternative with the necessary requirements will be set forth directly in the regulations.

We would be pleased to discuss this petition and to respond to any questions NRC staff may have regarding its content or application. We would appreciate it if the NRC could complete the review as promptly as possible as the full effect of the "Timeliness Rule" occurs on August 15, 1996.

Sincerely,

A handwritten signature in cursive script, appearing to read "Felix M. Killar, Jr.", written in dark ink.

Felix M. Killar, Jr

Enclosure

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the Matter of a)	
Proposed Rulemaking)	
Regarding Amendments to)	
10 CFR 30.36)	Docket No.
10 CFR 40.42 and)	
10 CFR 70.38)	

PETITION FOR RULEMAKING

This Petition for Rulemaking is submitted pursuant to 10 CFR Section 2.802 by the Nuclear Energy Institute (NEI) on behalf of material licensees. Petitioners request that the U.S. Nuclear Regulatory Commission (NRC), following notice and opportunity for comment, amend certain portions of the regulations contained in 10 CFR Sections 30.36, 40.42, and 70.38 in order to establish a more flexible alternative to the current regulations in these sections governing the required decommissioning of any facility, separate building or outside area that has not been in use or had any principal activities for a period of 24 months and is unsuitable for unrestricted release in accordance with current NRC requirements.

STATEMENT OF PETITIONER'S INTEREST

NEI is the organization of the nuclear energy industry responsible for coordinating the combined efforts of material licensees, utilities and other nuclear industry organizations in all matters involving generic regulatory policy issues and regulatory aspects of generic operational and technical issues affecting the nuclear industry. NEI's members include utilities, major architect/engineering firms, all of the major nuclear fuel supply vendors and all of the major manufacturers of radionuclides and radiopharmaceuticals. Because NEI's material licensee members are subject to the requirements of 10 CFR Sections 30.32, 40.42 and 70.38, NEI is an "interested person" within the meaning of 10 CFR 2.802.

GROUNDS FOR PROPOSED ACTION

For the reasons outlined below, NEI requests that the NRC consider an alternative to the mandatory decommissioning of material facilities after they have been inactive for at least 24 months. This alternative would allow licensees to place facilities, buildings, etc., in a standby mode for more than 24 months, providing that they submit an acceptable monitoring and maintenance plan to the NRC. This alternative would take the place of mandatory decommissioning or requesting a delay of decommissioning. This proposal provides the NRC assurances that workers and members of the public will be protected during the extended standby mode. It would also provide assurance to the NRC that financial requirements for monitoring and maintenance will be available and final decommissioning funding will also be available.

The last ten years have brought maturity to the U.S. nuclear industry. Since there have been few new reactors brought on line, it would be expected, therefore, that the fuel cycle facilities, i.e., mines, mills, conversion plants, enrichment facilities, and fabrication facilities would be in a steady-state mode. This is not the case, due in large part to the international market. Mines and mills that were on standby for several years are now beginning to start up. Conversion facilities and enrichment plants have cycled up and down in response to international policy and the influx of low enriched products from countries of the former Soviet Union. The domestic fabrication market has also been very active in response to the international market. Even during this period of relative world peace, commercial facilities that supported the armed forces have been called back into operation or are prepared to respond if called. The standby duration for these facilities is generally unknown. They may be on standby for 12 months, but in most cases it is longer.

The by-product material industry has been similarly affected. Isotopes that have been displaced by other isotopes or non-radioactive materials are being put back into production for other uses. New industrial and medical applications continue to be developed. Facilities that have been idle for months or years are being placed back into production to support these demands. Unfortunately, with the "Timeliness in Decommissioning of Material Facilities" rule, which was published in the July 15, 1994, *Federal Register* (59 FR 36026), a regulatory constraint was imposed on these facilities. This constraint did not previously exist and it does not provide a reasonable alternative. The only alternatives for licensees with facilities, separate buildings, or outside storage areas not in use for 24 months is either decommissioning or request a delay or postponement of decommissioning. Decommissioning as an alternative is not attractive since it essentially takes away any flexibility to respond to market swings. The delay or postponement as set out in the regulations has limited utility. It does not provide any grounds for the request or the basis for the approval of a request. This petition if adopted, would provide an alternative with requirements clearly set forth right in the regulation.

There are instances where mills and mines have been on standby more than two years and have then reopened. The Plateau Resources mill, as an example, is reopening after being on standby for 14 years. The recent U.S. Navy contract with Nuclear Fuel Services, Inc. (NFS) means that NFS will be forced to request a delay or postponement for those facilities which will be used in the future to either manufacture or support manufacture of Naval nuclear fuel. The timeliness regulation precludes a facility from being placed in an unlimited standby mode.

BACKGROUND

In the late 1980's, the NRC began to study how it should address facilities that had not operated for some period of time and had not started the decommissioning process. This study was initiated as a result of a number of facilities where the owners had gone into bankruptcy, could not be identified, or involved sites with unique decommissioning or financial issues which had to be resolved in order to complete decommissioning.

A list was made of the facilities, which fell into one of the above three categories, and it became known as the Site Decommissioning Management Plan (SDMP). A second study was undertaken by the NRC for the purpose of determining if establishing regulations to prevent other licensees from falling into one of the three categories was appropriate. The two key antecedents for licensees falling into the categories were identified. The first was the regulations did not state a specific time period for decommissioning, either from when operations ceased, or time to complete decommissioning once decommissioning started. The second was that if decommissioning was delayed for a long period of time, safety practices became lax, key personnel left, management interest waned, bankruptcy was more likely, corporate takeover and other unforeseen changes occurred, which complicated or further delayed decommissioning.

In January 1990, the Commissioners directed the staff to establish timeline criteria for decommissioning of material licensees' sites. Efforts were undertaken by the Office of Nuclear Material Safety and Safeguards (NMSS) and the Office of Nuclear Regulatory Research (RES) to establish the requirements for timely decommissioning. The work continued throughout 1990 and 1991 and culminated in SECY-92-057 dated February 19, 1992. In June 1992, the Commissioners issued a Staff Requirements Memorandum (SRM) approving the proposed rulemaking with comments. The Notice of Proposed Rulemaking was published in the *Federal Register* for comments on January 13, 1993 (53 FR 4099).

The comment period ended March 29, 1993. The NRC received 17 comment letters, including one submitted by the U.S. Council for Energy Awareness (USCEA). USCEA is one of the predecessor organizations to NEI. The comments dated March 29, 1993, focused on the lack of a standby provision in the rule.

The proposed rule included four major points. First, it was to establish a time limit of 24 months of inactivity after which a licensee must submit notification to the NRC. Second, it was to establish a time limit of 12 months following the notification of ceasing operations to submit the decommissioning plan. Third, it was to provide a provision for requests to delay or postpone the initiation of the decommissioning process. Fourth, it was 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. In response to the industry proposal to provide the standby alternative to the 24-month inactivity followed by the submittal of a decommissioning plan or request for a delay or postponement, the NRC provided the following:

"The NRC staff does not propose that the Commission adopt the suggestion to extend the 24 month period of inactivity before notification. The time period proposed by the Commission appears reasonable and licensees may file for exemption if they anticipate a longer period of temporary inactivity. The commenters did not provide adequate substantial rationale for selecting an alternative schedule. They stated that adequate funds to maintain their sites during the period of inactivity should be an acceptable means to permit extension of the inactive period beyond 24 months. The staff proposes to the Commission that this maintenance funding is not acceptable because issues such as bankruptcy, corporate takeover, or other unforeseen changes in the company's financial status, and loss of interest by the parent company may result in a loss of funding for site maintenance or decommissioning and could result in abandonment of the site." (SECY-94-135)

STATEMENT IN SUPPORT OF PROPOSED ACTION

The history of the timeliness rulemaking indicates that the overall objective of the NRC was to assure timely decommissioning of material licensees' facilities following termination of the license or inactivity of the site for a specified period of time. The final rule as published in the *Federal Register* on July 15, 1994 (59 FR 36027) accomplishes this objective. In meeting this objective, the final rule also has the potential to eliminate important components from the nuclear industry infrastructure. These components, facilities, buildings, etc., may be called upon in future years to support continuing operation or potential industry expansion. It may not have been NRC's intent to eliminate infrastructure, but the delay/postponement provision and the absence of an alternative monitoring and maintenance program essentially do just that.

The NRC's position does not reflect the cohesive industry of today. In the 1970's and early 1980's, there was a major slump in the industry. The grand plans for nuclear were tempered by reality, and the general nuclear market collapsed. A large number of companies who jumped on the nuclear power bandwagon found themselves in financial trouble. These poorly financed or managed licensees are no longer in operation. The market and industry has matured. Demand has stabilized within a respectable range. For individual companies, variations in this range means going from standby mode to full production. Companies understand today's market and are willing to assume the holding costs to keep facilities in the standby mode. The ability to establish a standby mode is functionally unavailable under the timeliness rule.

The staff 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 staff's dismissal did not take into consideration the related NRC regulations on decommissioning and transfer of ownership. The current series of regulations in Parts 30, 40, and 70 assure adequate funding is available for decommissioning of a site. Recent regulations enhance this assurance. 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 which provides benefit to the nation while providing protection for the health and safety of the public.

The NRC regulations were not intended to give the NRC jurisdiction over the commercial aspects of the licensee. A company which has a valid NRC/Agreement State License and operates within the conditions of the license, should make the commercial decision on starting and stopping operations along with when to place buildings or facilities in the standby mode and how long to maintain them in the standby mode. NRC regulations should not impose restrictions on facilities or sites which have the potential to impact commercial decisions. The following proposed rule removes these restrictions, at the same time enhancing NRC's ability to assure the public's health and safety from a site or building that is in the standby mode.

DISCUSSION OF PROPOSED RULE BY SECTION

I. Introduction and Scope

The proposed 10 CFR 30.36(e)(1), 10 CFR 40.42(e)(1), and 10 CFR 70.38(e)(1) provide an alternative to licensees that previously did not exist. At the same time they provide more flexibility to the licensee. These changes also enhance the NRC's ability to assure that public health and safety is maintained at sites or facilities that are in an extended standby mode. The proposed rule provides the NRC with three new provisions. First, it provides a program for the ongoing maintenance and radiation protection for the site or building. This program is specific to the site conditions and would be more detailed than the current operating health and safety program. Second, it would provide the NRC with financial data to support the costs of the maintenance and radiation protection program. Third, it would provide the NRC with the time period the facility will be in the standby mode. This would be used in conjunction with the financial data to demonstrate that funding is available for the length of time the building/facility is projected to be in the standby mode.

II. General Requirements

The current rule would remain essentially unchanged; the goals of the timeliness rule are the same. This provision provides the licensee with the ability to maintain a site or building in a standby mode for a predetermined period of time rather than being forced to decommission. The licensee would have the ability to reactivate the facility, or notify the NRC of the intention to decommission the facility at any time during the predetermined period. At the end of the period, the licensee would either demonstrate the financial ability to continue the standby mode, with the maintenance and radiation protection program for an additional period of time, or submit the decommissioning plan.

III. Specific Requirements

There are three specific requirements to implement this proposal. These requirements which must be submitted within 24 months of the cessation of principal activities within the facility, building or storage area include:

- (1) providing the financial assurance for the ultimate decommissioning;
- (2) providing a description of the monitoring and maintenance program that will be followed; and
- (3) providing the financial assurance for carrying out the monitoring and maintenance program for the period of time requested.

Even though other parts of the regulation provide for the funding of ultimate decommissioning, it is made a specific requirement in the section. This is done for two reasons. First, it provides additional assurance that when a facility is placed in the standby mode, if market conditions deteriorate and decommissioning is to proceed, the funding is available. Second, it assures that decommissioning funding will not be affected by the facility being placed in the standby mode. The NRC will be assured that funding for the standby mode does not negatively impact decommissioning funding.

The description of the monitoring and maintenance program is to provide NRC the assurance that the public and worker health and safety are not being impacted by the standby mode of the facility, building, or storage area. This program will be an extension of the operating maintenance and radiation protection programs. The major difference will be the monitoring. As an example, during operation, leaks or defective equipment are identified by the work force. In the standby mode there will only be a skeleton crew; therefore, leak detection, defective equipment, sampling, etc., will need to be incorporated into the monitoring program. Since most, if not all, radioactive material will be removed, the leak-detection equipment monitoring will be for the purpose of containment of residual contamination. A requirement to submit this program to the NRC for concurrence provides the NRC the assurance that residual contamination does not become a health and safety issue.

The requirement that the licensee provides the NRC with the financial assurances demonstrating it can carry out the monitoring and maintenance program for the specified period of time, assures the NRC that funding is available to protect worker and public safety during the standby mode. By submitting this financial assurance for the standby mode period, along with the financial assurance for ultimate decommissioning, the licensee demonstrates to the NRC that funding for protection during the standby mode and funding for decommissioning are available and a protracted standby mode would not negatively impact a decommissioning decision later in a plant's life.

The final requirement of providing this information within 24 months of the cessation of principal activities affords the NRC opportunity to evaluate the program and stay within the decision period of the current rule. It also places the burden on the licensee to submit a complete and acceptable application, or proceed with decommissioning, or the postponement alternative.

TEXT OF PROPOSED RULE

Section 30.36(e)(1): In lieu of decommissioning, the licensee may monitor and maintain a facility, separate building or outside storage area as described above in (d)(3) or (d)(4) in accordance with an approved program, provided the proposed plan is submitted to the Commission within 24 months of the cessation of principal activities within the facility, separate building or outside storage area and 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.

Current § 30.36(e) is renumbered as § 30.36(e)(2)

Section 40.42(e)(1): In lieu of decommissioning, the licensee may monitor and maintain a facility, separate building or outside storage area as described above in (d)(3) or (d)(4) in accordance with an approved program, provided the proposed plan is submitted to the Commission within 24 months of the cessation of principal activities within the facility, separate building or outside storage area and 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.

Current § 40.42(e) is renumbered as § 40.42(e)(2)

Section 70.38(e)(1): In lieu of decommissioning, the licensee may monitor and maintain a facility, separate building or outside storage area as described above in (d)(3) or (d)(4) in accordance with an approved program, provided the proposed plan is submitted to the Commission within 24 months of the cessation of principal activities within the facility, separate building or outside storage area and 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.

Current § 70.38(e) is renumbered as § 70.38(e)(2)

APPENDIX

SUPPLEMENTARY ANALYSES IN SUPPORT OF THE PETITION FOR RULEMAKING

INTRODUCTION

Pursuant to 10 CFR 2.802, a petition for rulemaking must establish the problem for which the petitioner seeks redress, the proposed solution identified in the rulemaking, and the substantive basis for the proposed solution. In turn, the NRC must evaluate the procedural and substantive merit of the proposed action against the dictates of the Atomic Energy Act and evaluate the ramification(s) of the proposed actions against several statutes in addition to the Atomic Energy Act. Specifically, the other statutes that must be addressed are the National Environmental Policy Act, the Paperwork Reduction Act and the Regulatory Flexibility Act. Also, the NRC must draft a Regulatory Analysis if certain criteria are met and determine whether 10 CFR 50.109, the backfit rule, is applicable; if so, an additional evaluation must be conducted. Petitioner submits the following information to assist the NRC in its analyses.

THE NATIONAL ENVIRONMENTAL POLICY ACT

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires that federal agencies consider the expected environmental impact of a proposed rule and any reasonable alternatives to the action proposed.

The adoption of the proposed rule by the NRC would not constitute a major federal action significantly affecting the quality of the human environment such that the analysis of the environmental impact must be undertaken by the NRC. First, action on the petition for rulemaking is subject to a categorical exclusion under Section 51.22(c)(1). Second, the nature of the proposed rule fits within the category of Section 51.22(c)(2) as it is an amendment to the current regulations, which is corrective in nature and does not substantially modify existing regulation in that the proposed rule is an alternative to the current regulation that achieves the same goals. More importantly, the implementation of the proposed rule, if adopted, would not have any material environmental consequences. The goal of the current regulation would merely be achieved through more effective means.

However, the adoption of the proposed rule might be considered to be of a policy nature (see also Section 51.22(c)(2)) that would require the preparation of an environmental assessment. The NRC may wish, therefore, to consider, out of an abundance of caution, the preparation of an environmental assessment in accordance with Section 51.21 to ensure that no claim could be made that the NEPA process was circumvented. We believe that such an analysis will result in a finding of no significant environmental impact pursuant to Section 51.31.

EXECUTIVE ORDER 12898

Adoption of the proposed rule by the NRC will have no disparate impact on persons or populations that are the subject of Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

THE PAPERWORK REDUCTION ACT

The objective of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is to ensure that the Office of Management and Budget has the opportunity to review and approve regulatory actions that create an increased burden due to additional information collection requirements imposed by the federal government. This statute does not apply to the instant rulemaking.

REGULATORY FLEXIBILITY ACT

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC must certify that a proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities. With respect to the proposed modifications to the NRC's timeliness regulation, the NRC may make this determination because no impact on small entities is expected.

REGULATORY ANALYSIS

Under certain circumstances, the NRC is required to perform a regulatory analysis. The purpose of the analysis is to assure that the NRC obtains adequate information regarding the need for and consequences of a proposed regulatory action and that the NRC appropriately considers costs and benefits of alternative regulatory actions.

A regulatory analysis must be prepared if it is determined that the proposed action contemplated by the rule will likely result in any of the following:

(1) an annual effect on the economy of \$100,000,000 or more in direct or indirect costs; (2) a significant impact on health, safety or the environment; or, (3) a substantial increase in the cost to NRC licensees, permit holders or applicants; to federal, state or local governments; and geographic regions. Also, preparation of the analysis may be required by the Commission or the Executive Director for Operations. Taking the criteria verbatim, the following discussion supports a conclusion that the NRC is not required to perform a regulatory analysis on the proposed modifications to the NRC's timeliness regulations.

Based on available information, the total direct cost savings for a typical facility, through implementation of the proposed rule, are estimated to be as much as \$130,000 per year, depending on specific conditions and the level of detail contained in the facility's current license. Under the proposed rule, each licensee would determine whether the costs of maintaining a facility in the standby mode are commensurate with the potential benefits received, as opposed to terminating the license and attempting to get a new license for those operations in the future. As a result, it is expected that only those changes that are cost-beneficial to a licensee will be implemented by that licensee. As a result, it is not expected that any modification will be undertaken where costs exceed the benefits to be received. Perhaps the greatest practical benefit will be the ability of licensees to modify their current programs, when and as appropriate, to ensure that their attention and resources are able to be focused on matters of safety-significance.

No significant impact on health, safety or the environment will result from the adoption of the proposed rule. In fact, the proposed rule is expected to provide a positive impact on health and safety by ensuring that both licensee and NRC resources will be focused on matters of safety-significance more effectively than under the current rule. As described above, no significant impact on the environment is expected through NRC adoption of the proposed rule or by licensee implementation of its provisions.

Similarly, the adoption of the proposed rule will not result in a substantial increase in the cost to NRC licensees, permit holders or applicants; to federal, state or local governments; or to geographic regions. Because the rule would be promulgated as an alternative to the current rule, no cost to licensees or any other entity will be incurred through the promulgation of the rule. With respect to its implementation, licensees are not expected to implement any provision that is not cost-beneficial. Those licensees that choose to modify their programs, in accordance with the proposed rule, will not establish any burden on federal, state or local governments, other than for the ongoing NRC oversight. No geographical region implications will result from the adoption of this rule.

THE BACKFIT RULE

Under Section 50.109, a backfit is defined as "the modification of or addition to systems, structures, components, or design of a facility...or the procedures or organization required to design, construct or operate a facility; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previously applicable staff position."

In the context of the proposed rule, a critical aspect of Section 50.109 is that it only applies to a new obligation imposed by the NRC; it is the mandatory nature of the regulatory change that controls the applicability of Section 50.109. Because the proposed rule would be promulgated as an alternative to the existing regulation, it offers licensees a new option not previously sanctioned by the NRC, but it does not impose additional obligations. Under the proposed rule, the licensee would be free to choose either to continue to comply with the existing regulation or to voluntarily choose to comply with the NRC's new regulation to the appropriate extent. Because the new regulation represents an opportunity for licensees to improve the effective use of their resources, voluntary implementation is appropriate and likely to achieve significant benefits.