



**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 51**

**[Docket No. PRM-51-29; NRC-2012-0215]**

**Rescinding Spent Fuel Pool Exclusion Regulations**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; notice of receipt.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has received a petition for rulemaking from the Commonwealth of Massachusetts (Commonwealth or petitioner) requesting that the NRC rescind its regulations excluding consideration of spent fuel pool storage impacts from license renewal environmental review. The petition was filed on June 2, 2011, with the NRC's Atomic Safety Licensing Board (ASLB) in conjunction with a request for a waiver of the NRC's spent fuel pool exclusion regulations. The petitioner requested that, if the ASLB rejected the Commonwealth's waiver petition, the NRC initiate a rulemaking. On November 28, 2011, the ASLB denied the Commonwealth's waiver petition, and on March 8, 2012, in a Commission Memorandum and Order, the petition for rulemaking was referred to NRC staff. The NRC is not requesting public comment period on this petition at this time.

**ADDRESSES:** Please refer to Docket ID **NRC-2012-0215** when contacting the NRC about the availability of information for this petition. You may access information related to this petition, which the NRC possesses and are publicly available, by any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for

Docket ID **NRC-2012-0215**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; e-mail: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

- **NRC's Agencywide Documents Access and Management System (ADAMS):**

You may access publicly available documents online in the NRC Library at

<http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “[Begin Web-based](#)

[ADAMS Search](#).” For problems with ADAMS, please contact the NRC's Public Document

Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to

[pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced in this

notice (if that document is available in ADAMS) is provided the first time that a document is referenced.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-492-3667, e-mail: [Cindy.Bladey@nrc.gov](mailto:Cindy.Bladey@nrc.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. The Petitioner**

The Commonwealth of Massachusetts, Office of the Attorney General, Environmental Protection Division has filed this petition (ADAMS Accession No. ML12254A005) with the NRC.

### **II. The Petition**

The petitioner requests that the NRC institute a rulemaking to rescind the regulations excluding consideration of spent fuel storage impacts from license renewal environmental review. Specifically, the petitioner requests that the spent fuel pool exclusion regulations in § 51.71(d) of Title 10 of the *Code of Federal Regulations* (10 CFR) and appendix B to subpart A of 10 CFR part 51, be rescinded because these regulations “generically classify the environmental impacts of high-density pool storage of spent fuel as insignificant and thereby permit their exclusion from consideration in environmental impact statements (EISs) for renewal of nuclear power plant operating licenses.”

The petitioner argues that “the appropriate vehicle for revising the conclusions that underlie the spent fuel pool exclusion regulations is a waiver [of 10 C.F.R. § 51.71(d) and 10 C.F.R. part 51 subpart A, appendix B], because . . . many of the implications of the Fukushima accident for the Pilgrim NPP license renewal proceeding are site specific.” The petition continues: “[i]n the alternative, in the event that the ASLB denies the Commonwealth’s Waiver Petition, pursuant to 10 C.F.R. 2.802(a), the Commonwealth asks the NRC to rescind the spent fuel pool exclusion regulations across the board, in a rulemaking.” The petition specifically states that, if the ASLB determines that a waiver is not justified, “the Secretary should rescind the spent fuel exclusion regulations on a generic basis.” The petitioner states that rescinding

the spent fuel pool exclusion regulations is necessary to challenge “the adequacy of the environmental impact analysis and severe accident mitigation alternatives (SAMA) analysis performed by Entergy Corp. and the NRC in support of their proposal to re-license the Pilgrim nuclear power plant (NPP), in light of significant new information revealed by the Fukushima accident.” The petitioner states that “significant new information yielded by the Fukushima accident shows fundamental errors or oversights in the key environmental analyses relied on by the NRC for its generic designation of spent fuel storage impacts as insignificant . . . .” The petitioner further states that “[t]he purpose of the spent fuel pool exclusion regulations—to make a generic finding of no significant impact for all NPPs—would not be served where the Fukushima accident has demonstrated that environmental impacts of spent fuel storage are so significant and where the insights from the Fukushima accident have such a plant-specific application.”

In an ASLB Memorandum and Order dated November 28, 2011, the Commonwealth of Massachusetts’s request for a waiver was denied (ADAMS Accession No. ML11332A152). Subsequently, in a Commission Memorandum and Order dated March 8, 2012, the Commonwealth’s petition for rulemaking was referred to NRC staff for appropriate resolution (ADAMS Accession No. ML12068A187). NRC staff has determined that the Commonwealth’s petition for rulemaking has met the basic requirements set forth in 10 CFR 2.802(c). The petitioner has specified the regulations that it would like revoked. Additionally, the petitioner has stated its grounds for and interest in this action. Lastly, the petition sets forth the specific issues involved, provides views and arguments in favor of the petitioner’s position, and provides

relevant data to support the request to rescind 10 CFR § 51.71(d) and 10 CFR part 51 subpart A, appendix B. Because the petitioner has satisfied the acceptance criteria in 10 CFR 2.802(c), the NRC has accepted, and will review the petition for rulemaking. The NRC is not requesting public comment on this petition at this time.

Dated at Rockville, Maryland, this 13<sup>th</sup> day of December 2012.

For the Nuclear Regulatory Commission.

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Annette L. Vietti-Cook,  
Secretary of the Commission.

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