

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication

IMPLEMENTATION OF CERTIFICATE OF COMPLIANCE AMENDMENTS TO PREVIOUSLY
LOADED SPENT FUEL STORAGE CASKS

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to issue a regulatory issue summary (RIS) to inform addressees of requirements concerning the implementation of changes authorized by a 10 CFR Part 72 dry storage cask Certificate of Compliance (CoC) amendment to a cask loaded under the original CoC or an earlier amendment thereto ("previously loaded cask"). The NRC will include review of this matter in future inspections to verify compliance with these requirements.

This Federal Register notice is available through the NRC's Agencywide Documents Access and Management System (ADAMS) under accession number ML073541293.

DATES: Comment period expires [insert date that is 75 days after publication in the Federal Register]. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSEES: Submit written comments to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T6-D59, Washington, DC 20555-0001, and cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to NRC Headquarters, 11545 Rockville Pike (Room T-6D59), Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

FOR FURTHER INFORMATION, CONTACT: Robert A. Nelson at 301-492-3294 or by email at ran@nrc.gov

SUPPLEMENTARY INFORMATION:

NRC REGULATORY ISSUE SUMMARY 2007-26

IMPLEMENTATION OF CERTIFICATE OF COMPLIANCE AMENDMENTS TO PREVIOUSLY LOADED SPENT FUEL STORAGE CASKS

ADDRESSEES

All general licensees under the provisions of Subpart K, of Part 72 of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 72, "General License for Storage of Spent Fuel at Power Reactor Sites."

INTENT

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to inform addressees of requirements concerning the implementation of changes authorized by a 10 CFR Part 72 dry storage cask Certificate of Compliance (CoC) amendment to a cask loaded under the original CoC or an earlier amendment thereto ("previously loaded cask"). The NRC will include review of this matter in future inspections to verify compliance with these requirements. No specific action or written response is required.

BACKGROUND

The NRC initially considered this issue after a general licensee sought clarification about the application of a CoC amendment to a previously loaded cask. Subsequently, during the May 2007 Nuclear Energy Institute Dry Storage Information Forum, NRC staff described agency requirements for the implementation of CoC amendments to previously loaded casks. Staff told forum participants that 10 CFR Part 72 requires licensees to obtain NRC approval if licensees wish to apply any changes of a CoC amendment to a previously loaded cask, if such changes result in a change to the terms or conditions (including the technical specifications) of the CoC under which the cask was loaded.

Some licensees have asserted that 10 CFR 72.48 allows them to apply some or all of the changes of a CoC amendment to a previously loaded cask without obtaining express NRC approval. This essentially, allows an “upgrade” of the CoC. NRC’s position is that such an upgrade, if it involves a change to a term, condition, or specification of the CoC, would be tantamount to amending the design basis of the previously loaded cask, and as such, express NRC approval is required.

SUMMARY OF ISSUE

10 CFR 72.210 grants the authority to store spent fuel in an independent spent fuel storage installation (ISFSI) at power reactor sites to persons authorized to possess or operate nuclear power reactors under the provisions of 10 CFR Part 50. Regulations at 10 CFR 72.212 set forth the conditions of such a general license, including the condition that such spent fuel must be stored in casks, the design of which is approved under the provisions of 10 CFR Part 72. The NRC issues a CoC for each approved cask design.

Further, 10 CFR 72.212 requires the general licensee to notify the NRC at least 90 days before the first storage of spent fuel under the general license.¹ Thereafter, the licensee must register the use of each cask with the NRC no later than 30 days after using that cask to store spent fuel. In addition, the licensee must provide certain information, including the cask certificate number, model number, and identification number.² Regulations at 10 CFR 72.212 require that licensees “[p]erform written evaluations, prior to use, that establish that: [the] conditions set forth in the Certificate of Compliance have been met.”³ The NRC’s position is that the phrase “prior to use” means before the cask is loaded with spent nuclear fuel.

¹ 10 CFR 72.212(b)(1)(i).

² 10 CFR 72.212(b)(1)(ii).

³ 10 CFR 72.212(b)(2)(i)(A).

Regulations at 10 CFR 72.212 also require that any changes made to the written evaluation required by that section must be made in accordance with 10 CFR 72.48(c), the NRC regulation governing changes, tests, and experiments made by a licensee or a certificate holder to a spent fuel storage cask design.⁴ Regulations at 10 CFR 72.48(c) permit a licensee to make changes to a cask design, without obtaining express NRC approval if such changes do not require, “a change in the terms, conditions, or specifications incorporated in the CoC.”⁵

If the CoC holder or a general licensee (through the CoC holder) desires to amend the CoC, such that the amendment results in a change to the terms, conditions, or specifications of the CoC, then the CoC holder must submit a proposed CoC amendment to NRC. Such an amendment must be approved by NRC before it can be effective.⁶ Amendments for each approved cask design are listed in 10 CFR 72.214.

The NRC’s practice is to consider each CoC amendment as a new design basis. Thus, each CoC amendment requires an NRC rulemaking before the amendment is effective.⁷ Each CoC amendment is considered a separate and distinct CoC, accompanied by its own certificate (setting forth terms, conditions, and specifications) and safety evaluation report. Moreover, an amendment to a CoC may not amend all previous CoC amendments; thus, each succeeding amendment does not necessarily encompass all previous amendments.

Further, a previously loaded cask is bound by the terms, conditions, and specifications of the CoC under which the cask was loaded. The applicable NRC regulation states that the licensee shall:

⁴ 10 CFR 72.212(b)(ii).

⁵ 10 CFR 72.48(c)(1)(ii)(B).

⁶ 10 CFR 72.244 and 72.246.

⁷ 54 FR 19379, 19380 (May 5, 1989) (“Storage casks certified in the future will be routinely added to the listing in § 72.214 through rulemaking procedures”).

“Maintain a copy of the Certificate of Compliance and documents referenced in the certificate for each cask model used for storage of spent fuel, until use of the cask model is discontinued. The licensee shall comply with the terms and conditions of the certificate.”⁸

Therefore, a licensee seeking to implement changes from a later CoC amendment to a previously loaded cask must obtain NRC approval if the changes alter the terms and conditions of the CoC under which the cask was loaded. NRC approval would be in the form of an exemption.⁹ Specifically, the licensee would seek an exemption from the requisite provisions of 10 CFR 72.212 and 72.214, namely: (a) 10 CFR 72.212(a)(2) (i.e., general license limited to storage of spent fuel in casks approved under the provisions of this part); (b) 10 CFR 72.212(b)(2)(i)(A) (i.e., perform written evaluations before use establishing that conditions set forth in the CoC have been met); (c) 10 CFR 72.212(b)(7) (i.e., licensee to comply with the terms and conditions of the CoC); and (d) 10 CFR 72.214 (i.e., list of each approved CoC and CoC amendment). As an example, NRC granted an exemption from these regulations to a licensee, allowing the licensee to implement a change approved in Amendment 2 to CoC 1014, for casks loaded under Amendment 1 at the licensee’s ISFSI.¹⁰

Some general licensees have asserted that 10 CFR 72.48 provides a basis to apply CoC amendment changes to a previously loaded cask, without express NRC approval, even if such changes result in a change to the terms, conditions, or specifications of the CoC under which the cask was loaded. The NRC does not interpret 10 CFR 72.48 (nor 10 CFR 72.212) to allow for such a cask upgrade without express NRC approval. The only reference to 10 CFR 72.48 in

⁸ 10 CFR 72.212(b)(7).

⁹ 10 CFR 72.7 (“The Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest”).

¹⁰ 71 FR 70551 (December 5, 2006).

10 CFR 72.212 is that the licensee “shall evaluate any changes to written evaluations required by [10 CFR 72.212(b)(2)(i)] using the requirements of § 72.48(c).”¹¹ Section 72.48(c) does not expressly refer to previously loaded casks. It also does not appear to contemplate a licensee’s application of a newer CoC amendment’s changes, either in whole or in part, to a previously loaded cask without NRC approval. Section 72.48(c) refers only to “cask design as described in the [final safety analysis report] FSAR.”¹²

The October 4, 1999, Statement of Consideration to the rule that revised 10 CFR 72.48 explained the purpose of 10 CFR 72.48(c) as establishing the conditions that a licensee must meet to: (a) make changes to cask design as described in the FSAR; (b) make changes to the procedures as described in the FSAR; or (c) conduct tests or experiments not described in the FSAR, without prior NRC approval.¹³ Specifically, those conditions are that the change, test, or experiment will not require a change in the technical specifications, terms, conditions or specifications incorporated in the CoC, or will not meet any of the criteria in 10 CFR 72.48 paragraph (c)(2).¹⁴ Failure to meet these conditions will require the licensee to seek NRC approval. By these criteria, any “upgrade” to the design basis of a previously loaded cask that requires a change to the terms, conditions, or specifications of that cask’s CoC will require express NRC approval before the “upgrade” can be implemented.

¹¹ 10 CFR 72.212(b)(2)(ii). Section 72.212(b)(2)(i)(A)-(C) requires the licensee to perform written evaluations, before cask use, that: (a) establish that the conditions set forth in the CoC have been met; (b) the cask storage pads and areas have been designed to adequately support static and dynamic loads of the stored casks; and (c) the requirements of 10 CFR 72.104 have been met (10 CFR 72.104 concerns limiting radiation exposure from ISFSI operations).

¹² 10 CFR 72.48(c)(1).

¹³ 64 FR 53582, 53609 (October 4, 1999).

¹⁴ Paragraph (c)(2) of 10 CFR 72.48 lists additional criteria which, if triggered, require a licensee or certificate holder to obtain NRC approval for the desired change, test, or experiment, e.g., the change, test, or experiment results “in more than a minimal increase in the frequency of occurrence of an accident previously evaluated in the FSAR (as updated).” 10 CFR 72.48(c)(2)(i).

Certainly, upon NRC approval of a new CoC amendment for a particular cask model, a licensee can load an empty cask of that model under that amendment, provided the loading is otherwise in accordance with 10 CFR 72.212. A previously loaded cask, however, relies upon an earlier design basis, and the licensee's use of that previously loaded cask is bounded by the terms, conditions, and specifications of the CoC under which that cask was loaded.

BACKFIT DISCUSSION

This RIS only provides clarification of 10 CFR Part 72, Subparts L and K requirements. This RIS does not impose a regulatory staff position or interpretation of the Commission's rules that is either new or different from a previously applicable position. Further, this RIS requires no action or written response. Any addressee action in accordance with the information contained in this RIS is strictly voluntary. Thus, under the provisions of 10 CFR 50.109 and 72.62 this RIS does not constitute a backfit. Consequently, the staff did not perform a backfit analysis.

FEDERAL REGISTER NOTIFICATION

A notice of opportunity for public comment on this RIS was published in the *Federal Register* (xx FR xxxxx), on {January xx, 2008}. Comments were received from {indicate the number of commentors by type}. The staff considered all comments. The staff's evaluation of the comments is publicly available through NRC's Agencywide Documents Access and Management System under Accession No. ML #####.

CONGRESSIONAL REVIEW ACT

This RIS is not a rule as designated by the Congressional Review Act (5 U.S.C. 801-808), and therefore it is not subject to the Act.

PAPERWORK REDUCTION ACT STATEMENT

This RIS does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150-0011, which expires on June 30, 2010, and 3150-0132, which expires on April 30, 2008.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

CONTACT

Please direct any questions about this matter to the technical contact listed below or to the appropriate regional office.

Michael J. Case, Director

Division of Policy and Rulemaking

Office of Nuclear Reactor Regulation

E. William Brach, Director

Division of Spent Fuel Storage and Transportation

Office of Nuclear Material Safety
and Safeguards

Technical Contact: Robert A. Nelson, NMSS
(301) 492-3294

Enclosure: "Recently Issued FSME/NMSS Generic Communications"

END OF DRAFT REGULATORY ISSUE SUMMARY

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/NRC/ADAMS/index.html>. If you do not have access to ADAMS or

if you have problems in accessing the documents in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1-800-397-4209 or 301-415-4737 or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 21st day of December 2007.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Thomas W. Alexion, Acting Chief
Generic Communications Branch
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation