

Industry Comments on Draft RIS 2007-26

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Nuclear Waste Policy Act

- **Section 218(a) of the NWPA states**
"...technologies that the Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission."



Introduction

- **All amendments have received NRC approval**
- **Applying newer amendments to casks loaded under older amendments is not explicitly prohibited by 10CFR72**

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Motivation for adopting a newer amendment for operation

- **A general licensee may want to change surveillance requirements to maintain adequate level of safety and eliminate unnecessary operational burden/dose**
- **If all casks are operated to the same set of requirements, the potential for configuration control and human performance errors is reduced**

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Motivation for adopting a newer amendment for operation (continued)

- **As an example, one general licensee currently operates all casks under amendment 4. The casks were loaded under amendments 2, 3, and 4**
- **According to the RIS, this general licensee would have to operate cask 1-16 to amendment 2, casks 17-34 to amendment 3, and casks 35-53 to amendment 4**
 - **Each amendment may have different surveillance and/or unloading requirements**

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Regulatory Precedent

- **Palisades loaded 17 VSC-24 casks with non-fuel components which were not authorized**
- **The inspection report 72-0007/2000001 documented that the general licensee would request an amendment to the CoC to include the previously unauthorized materials**

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Regulatory Precedent (continued)

- **The inspection report also states:
“Because another plant has the same condition, the VSC-24 owner’s group has decided to submit one amendment for the plants.”**
- **A single amendment rather than multiple exemptions was the efficient way to resolve the issue**

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Current Status

- **At least 6 general licensees are operating casks in accordance with newer amendments than the amendment(s) under which they were loaded**
- **This affects approximately 160 casks**

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Current Status (continued)

- **Reverting back to the original amendment used for loading is possible for most general licensees. However, the time and cost for this effort will be significant with no safety benefit**
- **This will result in less conservative requirements in some cases (e.g., the VSC-24 allowable lift height was reduced in a later amendment)**

Industry's Position on the RIS

- **RIS 2007-26 should not be issued**
- **The Part 72 regulations, as written, are internally consistent and permit current industry practice**
- **If the RIS is issued as currently worded, it will create significant inconsistencies in interpreting Part 72 regulations**

RIS Language Concerning 72.212

- **The draft RIS states:**
“The NRC’s position is that the phrase “prior to use” (in 72.212) means before the cask is loaded with spent nuclear fuel.”
- **The phrase “prior to use” does not mean that changes cannot be made at a later time**

RIS Language Concerning 72.212 (continued)

- **Industry’s view is that “Prior to use” means prior to initial ISFSI operation or implementing a change thereafter (modifying a procedure, adopting a later amendment, etc.)**
- **10 CFR 72.212 provides for changes to the 212 Evaluation via 10 CFR 72.48, which may occur after loading (e.g. unloading procedures)**

RIS Language Concerning CoC Amendments

- **The RIS says “The NRC’s practice is to consider each CoC amendment as a new design basis.”**
- **NRC’s current practice does not include reviewing each amendment as if it were a new application**

RIS Language Concerning CoC Amendments

- **The draft RIS states:
“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.”**

RIS Language Concerning CoC Amendments (continued)

- **The Safety Evaluation Report (SER) for an amendment discusses only the proposed changes**
- **The SER for an amendment does NOT cover the entire CoC or design**
- **10 CFR 72.212 requires a general licensee to review the FSAR and SER**

RIS Language Concerning CoC Amendments (continued)

- **Because the SER for each amendment only addresses the changes, the general licensee must review the SER for the original CoC and all amendments up to and including the one they wish to use**
- **If each CoC amendment is “a separate and distinct CoC” then the SER issued for an amendment should apply to the entire CoC and not just the amended portions**

RIS Language Concerning CoC Amendments (continued)

- **10 CFR 72.214 shows a single expiration date for each CoC. If each amendment was a separate CoC, one would expect different expiration dates**
- **10 CFR 72.246 refers to “issuance of an initial CoC.” This phrase implies that subsequent amendments are part of the same CoC**

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RIS Language Concerning 72.48

- **The draft RIS states:
“Section 72.48(c) does not expressly refer to previously loaded casks.”**
- **72.48(c) does not refer to the condition of the cask at all (unloaded or loaded)**
- **A general licensee or a certificate holder may do a 72.48 evaluation for a loaded cask (e.g., cask repair)– this is not expressly prohibited**

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RIS Language Concerning 72.48 (continued)

- **72.48(c)(2) states:**
“... a general licensee shall request that the certificate holder obtain a CoC amendment pursuant to 72.244, prior to....”
- **72.48(c)(2) does NOT state that this is only applicable to casks that have not been loaded**
- **General licensees have followed the requirements of 72.48(c)(2) for loaded casks**

Potential Compliance Problems

- **If NRC considers each amendment to be a separate and distinct CoC,**
 - **Does 10 CFR 72.232(d), which requires notification to NRC prior to fabrication of the first spent fuel storage cask, apply to each amendment?**
 - **Do 90-day notifications apply to each amendment?**
 - **Do dry runs apply to each amendment?**

The Future

- **If the RIS is issued, rulemaking should be performed to permit current industry practice**
- **In the interim, affected general licensees should be permitted to continue to operate as they have been without incurring enforcement action**

The Future (continued)

- **At least 4 general licensees, not affected by the RIS, plan to submit exemption requests to operate casks using technical specifications that have already been approved by the NRC as certificate amendments**