[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150-AI91

[NRC-2011-0008]

List of Approved Spent Fuel Storage Casks: MAGNASTOR® System, Revision 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is amending its spent fuel storage regulations by revising the NAC International, Inc. (NAC) MAGNASTOR® System listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 2 to Certificate of Compliance (CoC) Number 1031. Amendment No. 2 will revise: Technical Specification (TS) 3.3.2 to reduce the transportable storage canister removable surface contamination limits; TS 4.1.1 to add various boron-10 areal densities for use with Pressurized Water Reactor and Boiling Water Reactor baskets and to replace the fuel tube orthogonal pitch with the minimum fuel tube outer diagonal dimension; Table 2.1-2, "ASME Code Alternatives for MAGNASTOR® components," of the Final Safety Analysis Report to correct the code reference; and Appendices A and B of the TSs to make editorial corrections.

DATES: The final rule is effective **[insert date 75 days after publication in the *Federal Register*]**, unless significant adverse comments are received by **[insert date 30 days after**

publication in the *Federal Register*]. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the *Federal Register*.

ADDRESSES: You can access publicly available documents related to this document using the following methods:

- **Federal Rulemaking Web site:** Go to http://www.regulations.gov and search for documents filed under Docket ID NRC-2011-0008. Address questions about NRC dockets to Carol Gallagher, telephone: 301-492-3668; e-mail: Carol.Gallagher@nrc.gov.
- **NRC's Public Document Room (PDR):** The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Copies may also be obtained from the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- **NRC's Agencywide Documents Access and Management System (ADAMS):** Publicly available documents created or received at the NRC are available electronically in the NRC Library at http://www.nrc.gov/reading-rm/adams.html. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. An electronic copy of the proposed CoC, TSs, and preliminary safety evaluation report (SER) can be found under ADAMS Package Accession Number ML103300181. The ADAMS Accession Number for the NAC application, dated March 22, 2010, is ML112630346.

FOR FURTHER INFORMATION CONTACT: Gregory Trussell, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-6445, e-mail: Gregory.Trussell@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that "the Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] 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." Section 133 of the NWPA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic:218(a)] for use at the site of any civilian nuclear power reactor."

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 72, which added a new Subpart K within 10 CFR Part 72, entitled "General License for Storage of Spent Fuel at Power Reactor Sites"

(55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR Part 72, entitled "Approval of Spent Fuel Storage Casks," which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on November 21, 2008 (73 FR 70587), that approved the MAGNASTOR® cask design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as Certificate of Compliance (CoC) No. 1031.

Discussion

On March 22, 2010, and as supplemented on March 30, March 31, June 8, July 1, November 10, and November 19, 2010, and April 22 and May 17, 2011, NAC, the holder of CoC No. 1031, submitted an application to the NRC that requested an amendment to CoC No. 1031. Specifically, NAC requested changes to revise: TS 3.3.2 to reduce the transportable storage canister removable surface contamination limits; TS 4.1.1 to add various boron-10 areal densities for use with Pressurized Water Reactor and Boiling Water Reactor baskets and to replace the fuel tube orthogonal pitch with the minimum fuel tube outer diagonal dimension; Table 2.1-2, "ASME Code Alternatives for MAGNASTOR® components," of the Final Safety Analysis Report to correct the code reference; and Appendices A and B of the TSs to make editorial corrections.

As documented in the SER, the NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there continues to be reasonable assurance that public health and safety will be adequately protected.

This direct final rule revises the MAGNASTOR® System listing in 10 CFR 72.214 by adding Amendment No. 2 to CoC No. 1031. The amendment consists of the changes previously described, as set forth in the revised CoC and TSs. The revised TSs are identified in the SER.

The amended MAGNASTOR® System cask design, when used under the conditions specified in the CoC, the TSs, and NRC regulations, will meet the requirements of 10 CFR Part 72; thus, adequate protection of public health and safety will continue to be ensured. When this direct final rule becomes effective, persons who hold a general license under 10 CFR 72.210 may load spent nuclear fuel into MAGNASTOR® System casks that meet the criteria of Amendment No. 2 to CoC No. 1031 under 10 CFR 72.212.

Discussion of Amendments by Section

§ 72.214 List of approved spent fuel storage casks.

Certificate No. 1031 is revised by adding the effective date of Amendment Number 2.

Procedural Background

This rule is limited to the changes contained in Amendment No. 2 to CoC No. 1031 and does not include other aspects of the MAGNASTOR® System. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become

effective on **[insert date 75 days after publication in the *Federal Register*]**. However, if the NRC receives significant adverse comments on this direct final rule by **[insert date 30 days after publication in the *Federal Register*]**, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published elsewhere in this issue of the *Federal Register*. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TSs.

For detailed instructions on filing comments, please see the companion proposed rule published elsewhere in this issue of the *Federal Register*.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104-113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the MAGNASTOR® System cask design listed in § 72.214 (List of Approved Spent Fuel Storage Casks). This action does not constitute the establishment of a standard that contains generally applicable requirements.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the *Federal Register* on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has prepared an environmental assessment and, on the basis of this environmental assessment, has made a finding of no significant impact. This rule will amend the CoC for the MAGNASTOR® System cask design within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. The CoC amendment will revise TS 3.3.2 to reduce the transportable storage canister removable surface contamination limits; TS 4.1.1 to add various boron-10 areal densities for use with Pressurized Water Reactor and Boiling Water Reactor baskets and to replace the fuel tube orthogonal pitch with the minimum fuel tube outer diagonal dimension; Table 2.1-2, "ASME Code Alternatives for MAGNASTOR® components," of the Final Safety Analysis Report to correct the code reference;

and Appendices A and B of the TSs to make editorial correction changes.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC PDR, Room O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Single copies of the environmental assessment and finding of no significant impact are available from Gregory Trussell, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301- 415-6445, e-mail: Gregory.Trussell@nrc.gov.

Paperwork Reduction Act Statement

This rule does not contain any information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget (OMB), Approval Number 3150-0132.

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.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR Part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214. On November 21, 2008 (73 FR 70587), the NRC issued an amendment to 10 CFR Part 72 that approved the MAGNASTOR® System cask design by adding it to the list of NRC-approved cask designs in 10 CFR 72.214. On March 22, 2010, and as supplemented on March 30, March 31, June 8, July 1, November 10, and November 19, 2010, and April 22 and May 17, 2011, NAC, the holder of CoC No. 1031, submitted an application to the NRC to revise: TS 3.3.2 to reduce the transportable storage canister removable surface contamination limits; TS 4.1.1 to add various boron-10 areal densities for use with Pressurized Water Reactor and Boiling Water Reactor baskets and to replace the fuel tube orthogonal pitch with the minimum fuel tube outer diagonal dimension; Table 2.1-2, “ASME Code Alternatives for MAGNASTOR® components,” of the Final Safety Analysis Report to correct the code reference; and Appendices A and B of the TSs to make editorial corrections.

The alternative to this action is to withhold approval of Amendment No. 2 and to require any 10 CFR Part 72 general licensee seeking to load spent nuclear fuel into MAGNASTOR® System casks under the changes described in Amendment No. 2 to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, each interested 10 CFR Part 72 licensee would have to prepare, and the NRC would have to review, a separate

exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of the direct final rule is consistent with previous NRC actions. Further, as documented in the SER and the environmental assessment, the direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and NAC International, Inc. These entities do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined in 10 CFR Chapter 1. Therefore, a backfit analysis is not required.

Congressional Review Act

Under the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 72.

PART 72--LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 549 (2005).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1031 is revised to read as follows:

* * * * *

Certificate Number: 1031.

Initial Certificate Effective Date: February 4, 2009.

Amendment Number 1 Effective Date: August 30, 2010.

Amendment Number 2 Effective Date: **[insert date 75 days after publication in the *Federal Register*]**.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the MAGNASTOR® System.

Docket Number: 72-1031.

Certificate Expiration Date: February 4, 2029.

Model Number: MAGNASTOR.

* * * * *

Dated at Rockville, Maryland, this 27th day of October, 2011.

For the Nuclear Regulatory Commission.

/RA/

Michael F. Weber,
Acting Executive Director for Operations

2. In § 72.214, Certificate of Compliance 1031 is revised to read as follows:

* * * * *

Certificate Number: 1031.

Initial Certificate Effective Date: February 4, 2009.

Amendment Number 1 Effective Date: August 30, 2010.

Amendment Number 2 Effective Date: **[insert date 75 days after publication in the *Federal Register*]**.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the MAGNASTOR® System.

Docket Number: 72-1031.

Certificate Expiration Date: February 4, 2029.

Model Number: MAGNASTOR.

* * * * *

Dated at Rockville, Maryland, this 27th day of October, 2011.

For the Nuclear Regulatory Commission.

/RA/

Michael F. Weber,
Acting Executive Director for Operations

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