

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[Docket No. PRM-72-7; NRC-2012-0266]

Spent Fuel Cask Certificate of Compliance Format and Content

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; receipt and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt for a petition for rulemaking (PRM), dated October 3, 2012, which was filed with the NRC by Anthony R. Pietrangelo on behalf of the Nuclear Energy Institute (NEI or the petitioner). The petition was docketed by the NRC on October 18, 2012, and assigned Docket No. PRM-72-7. The petitioner requests that the NRC add a new rule that governs the format and content of spent fuel storage cask Certificates of Compliance (CoCs), extend the backfit rule to CoCs, and make other improvements that result in “more efficient and effective NRC oversight of dry cask storage activities as well as improved implementation of dry cask storage requirements by industry.”

DATES: Submit comments by [INSERT DATE 75 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this petition for rulemaking, which the NRC possesses and are publicly available, by searching on <http://www.regulations.gov> under Docket ID NRC-2012-0266. You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2012-0266. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; e-mail: Carol.Gallagher@nrc.gov.
- **E-mail comments to:** Rulemaking.Comments@nrc.gov. If you do not receive an automatic e-mail reply confirming receipt, then contact us at 301-415-1677.
- **Fax comments to:** Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.
- **Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.
- **Hand deliver comments to:** 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301-415-1677.

For additional direction on accessing information and submitting comments, see “Accessing Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

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.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC-2012-0266 when contacting the NRC about the availability of information for this petition for rulemaking. You may access information related to this petition for rulemaking, which the NRC possesses and is publicly available, by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2012-0266.

- **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 "[ADAMS Public Documents](#)" and then 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. The incoming petition is in ADAMS under Accession No. ML12299A380.

- **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.

B. Submitting Comments

Please include Docket ID NRC-2012-0266 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. The Petitioner

The NEI is the policy organization for the nuclear energy and technologies industry. The NEI's petition states that its "members include entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, and other organizations and entities involved in the nuclear energy industry." These include CoC "holders, and licensees – under both the specific and general license provisions – regulated by the NRC through 10 CFR Part 72 [part 72 of Title 10 of the *Code of Federal Regulations* (10 CFR)]." The petitioner states that its primary interest in submitting this petition is that it "is responsible for coordinating the combined efforts of licensees and CoC holders on

matters involving generic NRC regulatory policy issues, and generic operations and technical regulatory issues affecting the activities of NRC-licensed independent spent fuel storage installations (ISFSIs) and NRC-certified dry storage cask designs.”

III. The Petition

In its petition (ADAMS Accession No. ML12299A380), the petitioner requests that the NRC initiate a rulemaking to amend 10 CFR part 72. The petitioner requests that the NRC regulations be amended as follows:

1. Add a new rule to “provide specific criteria for the format and content to be included in a spent fuel storage cask Certificate of Compliance (CoC).”

2. Revise the backfit rule in 10 CFR 72.62 to apply to CoCs and CoC holders, ensuring that the addition, elimination, or modification, after the license has been issued, of structures, systems, or components of an ISFSI or Monitored Retrievable Storage (MRS) facility, or the procedures or organization required to operate an ISFSI or MRS are limited to “situations where the Commission finds that the proposed change will yield a substantial increase in the overall protection of public health and safety and is cost-justified.”

3. Delete the requirement in 10 CFR 72.212(b)(6) for general licensees to review the NRC Safety Evaluation Report (SER) related to the CoC or amended CoC prior to use of the general license.

4. Clarify the regulatory requirements in 10 CFR 72.212(b)(10), which requires the licensee “to review various plans and programs that are governed by other regulations.”

5. Remove the requirement in 10 CFR 72.236 that the empty weight be marked on the storage cask.

6. Amend 10 CFR 72.124 to clarify the applicability of the criticality monitoring exemptions “to reflect that criticality monitoring does not apply to spent fuel dry storage,

including cask loading, preparation, onsite transport and storage operations governed by a Part 72 license.”

The petitioner states that these changes are necessary “to achieve needed improvements to regulatory efficiency and effectiveness, . . . can only be achieved by amending the regulations, and . . . are not currently being considered by the NRC.”

A. Discussion of Proposed Amendments to 10 CFR Part 72

1. Add a New Rule for CoC Format and Content

The petitioner states that amending 10 CFR part 72, subpart L, to provide specific criteria for CoC format and content “would provide the largest benefit to regulatory clarity and stability by assuring that the level of detail in CoCs is consistent and risk informed.” Currently, the regulatory requirements for spent fuel storage cask approval and fabrication are contained in

10 CFR 72.236, and apply to the applicants and holders of CoCs for spent fuel storage casks.

The petitioner asserts that “these regulations do not provide specific requirements for the CoC format and content” and “[a]s a result, the content of existing CoCs and associated documents varies, with respect to both the type of information included and the level of detail provided.”

The petitioner states that making format changes to CoCs ensures “clarity with respect to the division of responsibilities between CoC holders and licensees in implementing the CoC. . . .”

Additionally, the petitioner asserts that changes related to the content of the CoC will clarify the specific details that must be included in the CoC, improving “efficiencies in licensing by focusing on the safety significant aspects of cask use.” The petitioner believes these changes would “reduce the number of unnecessary CoC amendments by eliminating the need for NRC review of less-safety-significant information that is currently included in many CoCs.”

2. Revise the Backfit Rule in 10 CFR 72.62 to Apply to CoCs and CoC Holders

The petitioner requests that 10 CFR 72.62, subpart C, be amended, so that the backfitting protections provided to general and specific licensees are applied to CoCs and CoC holders. The petitioner also requests that conforming changes be made to 10 CFR 72.13. The petitioner argues that “[n]ew or amended NRC staff positions should not be imposed on a CoC or CoC holder, unless the NRC official communicating that position has first ascertained whether the new or changed position is a backfit.” The petition goes on to state that “if a staff proposed position is identified as a backfit, the staff should determine expeditiously whether the backfit is needed to ensure adequate protection of the public health and safety, or to comply with Commission rules or orders, the CoC itself, or written CoC holder commitments.” The petitioner states that “[p]ositions identified as CoC backfits that do not fall into one of these exceptions, should be imposed on CoCs and CoC holders only after documentation of a determination indicating that there is a substantial increase in the overall protection of the public health and safety, or the common defense and security, and that the direct and indirect costs of implementation are outweighed by the increased protection.” The petitioner believes that this change “would improve consistency between the way in which specific licensees, CoC holders and general licensees are regulated, and would ensure that changes to CoCs are imposed only after an adequate justification has been developed.”

3. Delete the Requirement in 10 CFR 72.212(b)(6) for General Licensees to Review the SER

The petitioner requests that 10 CFR part 72, subpart K, be amended “to remove the requirement for the general licensee to perform the NRC SER compliance evaluation.” The petitioner states that 10 CFR 72.212 “requires general licensees to perform a compliance evaluation of the Safety Analysis Report (SAR), referenced in the CoC, or the amended CoC. . . .” The petitioner argues that “since the review of the cask SAR referenced in the CoC

or amended CoC, would encompass the evaluation of the site-specific parameters versus the cask design bases information” the “[r]eview of the SER is extraneous, as the SER will not contain any new requirements or commitments that are not already contained in the CoC and FSAR.”

4. Clarify the Requirement in 10 CFR 72.212(b)(10) for Review of Programs and Plans Governed by Other Parts of the Regulations

The petitioner requests that 10 CFR 72.212 be amended to clarify requirements “that general licensees perform a review of the emergency plan (EP), quality assurance program (QAP), training program, and radiation protection program (RP), to determine if their effectiveness is decreased and, if so, prepare the necessary changes and seek and obtain the necessary approvals.” The petitioner suggests that currently the rule may be interpreted as imposing additional change control requirements different than the existing change control requirements provided for in 10 CFR part 50. The petitioner argues that changes should be made that “would remove ambiguity and duplication, and improve clarity by simply directing the general licensee to the appropriate governing regulations for 10 CFR Part 50 program change control.”

5. Remove Requirement in 10 CFR 72.236 that the Empty Weight be Marked on the Storage Cask

The petitioner requests that 10 CFR part 72, subpart L, be amended to remove the requirement that the empty weight be marked on storage casks. Currently, 10 CFR 72.236(k) stipulates that spent fuel storage casks be marked with the model number, a unique identification number, and empty weight. The petitioner believes that the model number and unique identification number are necessary and “ensure that the cask can be properly identified, and traced back to its QA [Quality Assurance] records, which include information on the design

and contents.” However, the petitioner states that it is important to minimize the number of markings on a container, which will reduce the chances that changes will have to be made to the permanent markings on a cask. The petitioner also states, “[c]hanging permanent markings on the cask are problematic since this would require significant repair work, evaluation to verify the cask maintains conformance with the CoC, and worker dose if the cask contains used fuel.” The petitioner maintains that since this information is contained in the QA controlled records, requiring that the empty weight be permanently marked on the cask does not “provide any increase to the protection of public health and safety” and “serves no useful purpose.”

6. Amend 10 CFR 72.124 to Clarify the Applicability of the Criticality Monitoring Exemptions

The petitioner requests that 10 CFR part 72, subpart F, be amended “to specify that criticality monitoring does not apply to special nuclear material in a dry storage cask being managed under a license granted pursuant to part 72, with ‘managed’ defined as cask loading, preparation, onsite transport and storage operation.” The petitioner states that “no criticality monitoring should be required as long as the cask/canister is being managed in accordance with its approved licensing and design basis as described in the Cask CoC or ISFSI license and their respective FSARs [Final Safety Analysis Reports].” In addition, the petitioner asserts that “the proposed rule change to modify 10 CFR 72.124(c), would clarify the regulations without modifying the intent” and “is consistent with NRC guidance, and other parts of the regulations.”

B. Additional Regulatory Framework Improvements (not requested as part of this petition for rulemaking)

Separate from these rulemaking changes, the petitioner recommends eight other regulatory framework improvements. The petitioner states that these improvements are not requested as part of the petition, but believes that these other changes would provide “synergies with the improvements” requested in the petition. These recommendations include:

1. Streamlining the cask certification process.
2. Clarifying “the implementation of the general license process and activities at the interface of Part 50 and Part 72 requirements.”
3. Updating guidance for implementing 10 CFR 72.48.
4. Examining the role of cladding integrity in the regulatory framework.
5. Discussing “the potential to reinitiate a rulemaking for moderator exclusion.”
6. Discussing the “potential options for harmonization of Part 71 and Part 72 for spent fuel.”
7. Making further improvements to the inspection program.
8. Streamlining the process for “establishing and maintaining the relevant NRC guidance” and “achieving a more straight-forward regulatory framework by implementing improvements to the organization of the network of guidance documents” that exists.

IV. Conclusion

The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802, “Petition for rulemaking,” and the petition has been docketed as PRM-72-7. The NRC is requesting public comment on the petition for rulemaking.

Dated at Rockville, Maryland, this 30th day of January 2013.

For the Nuclear Regulatory Commission.

/RA/

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

