

September 5, 2017

MEMORANDUM TO: John McKirgan, Chief
Spent Fuel Licensing Branch
Division of Spent Fuel Management
Office of Nuclear Material Safety and Safeguards

FROM: John Vera, Project Manager */ra/*
Spent Fuel Licensing Branch
Division of Spent Fuel Management
Office of Nuclear Material Safety and Safeguards

SUBJECT: RESPONSE TO PUBLIC COMMENTS ON DRAFT NRC
REGULATORY ISSUE SUMMARY 2016-XX ADMINISTRATION
OF 10 CFR PART 72 CERTIFICATE OF COMPLIANCE
CORRECTIONS AND REVISIONS

A notice of opportunity for public comment on the subject regulatory issue summary was published in the *Federal Register* (82 FR 5445) on January 18, 2017. Comments were received from Holtec International (Agencywide Documents Access and Management System (ADAMS) Accession No. ML17082A312) and the Nuclear Energy Institute (ADAMS No. ML17082A313). Enclosed are the staff responses to all public comments.

Enclosure:
As stated

CONTACT: John Vera, NMSS/DSFM/SFLB
301-415-5790

RESPONSE TO PUBLIC COMMENTS ON DRAFT NRC REGULATORY ISSUE SUMMARY
 2016-XX, "ADMINISTRATION OF 10 CFR PART 72 CERTIFICATE OF COMPLIANCE
 CORRECTIONS AND REVISIONS," Date: September 5, 2017

ADAMS Accession No.: ML17165A178

*concurring via e-mail

NRR-106

OFFICE	NMSS/DSFM/SFLB/TL*	NMSS/DSFM/SFLB/BC*	NRR/DPR/PGCG/LA*	NRR/DPR/PGCG/PM	NRR/DPR/PGCG/BC
NAME	JVera	JMcKirgan	ELee	NMartinez	AGarmoe
DATE	6/27/2017	6/29/2017	7/18/2017	8/24/2017	8/29/2017
OFFICE	OGC (NLO)*	NMSS/DSFM/SFLB/TL			
NAME	ACoggins	JVera			
DATE	08/17/2017	9/5/2017			

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**Analysis of Public Comments on
DRAFT NRC REGULATORY ISSUE SUMMARY 2016-XX
ADMINISTRATION OF 10 CFR PART 72 CERTIFICATE OF COMPLIANCE
CORRECTIONS AND REVISIONS**

Comments on the subject draft regulatory issue summary (RIS) are available electronically in the U.S. Nuclear Regulatory Commission's (NRC's) electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. Comments were received from the following individuals or groups:

Letter No.	ADAMS Accession No.	Commenter Affiliation	Commenter Name	Abbreviation
1	ML17082A312	Holtec International	Kimberly Manzione	Holtec
2	ML17082A313	Nuclear Energy Institute	Kristopher Cummings	NEI

This document places each public comment into one of the following categories:

- I. Comments on Implementation Period
- II. Other Comments

This document lists each public comment by letter number. For each comment, the NRC has repeated the comment as written by the commenter followed by the NRC's response. In some instances, the comment was broken down into segments for clarity. Each comment is referred to by letter number listed above and each comment from the corresponding letter which represent the sequential comment number from that commenter.

I. Comments on Implementation Period for Certificate of Compliance (CoC) Corrections or Revisions

Holtec Comment No. 1-2:

The RIS section on the "Revisions" process indicates that in some prior instances the NRC has provided an implementation period for users of the amendment. Holtec believes that this implementation period is essential to the revision process and should be implemented in all cases. The implementation period should be a minimum of 180 days.

NEI Comment No. 2-3:

As described in the draft RIS, the NRC has added, in some instances, a condition to the revised or corrected CoC providing general licensees an implementation period (e.g., 180 days). An implementation period is a vital component for CoC revisions and corrections because the 72.212 report update required for a general licensee to formally adopt the CoC revision or correction cannot be approved until the CoC revision or correction is effective (i.e., published in 10 CFR 72.214). General licensees must necessarily await the effective date of the CoC revision or correction before the 72.212 report update is approved to remain in full compliance with the conditions of the 10 CFR 72 general license. Therefore, the NRC should revise the RIS

to ensure that an implementation period is established for all CoC revisions and corrections to allow general licensees a sufficient period of time to complete the necessary paperwork to formally adopt the CoC revision or correction. The implementation period for any particular CoC revision or correction should be established based on the complexity of the changes, with a minimum implementation period of 180 days from the date the CoC revision or correction becomes effective. This will permit the general licensee(s) who needs the CoC revision or correction to adopt it quickly after the effective date, but allow other general licensees to schedule the adoption at an appropriate time within the implementation period based on resource availability.

NRC Response

NRC agrees in part with the comments. While the NRC may consider a 180-day period as a standard timeframe for implementation, the NRC will evaluate the implementation period to be provided on a case-by-case basis. The applicant may recommend an implementation period based on the complexity of the changes and any effects on existing licensees within the application. A statement to this effect has been added to the RIS.

II. Other Comments

Holtec Comment No. 1-1

The RIS section on the "Corrections" process describes the types of errors that can be fixed under the process. To help provide guidance on the typographical or editorial errors that can be fixed by a correction, Holtec suggests that this section include a statement that these corrections include changes that do not require a change to the NRC's SER. This type of statement would help clarify what changes can be submitted as corrections as opposed to those that should be revisions or amendments.

NRC Response

NRC agrees in part with the comment. Changes that can be fixed by corrections, such as typographical or editorial changes, should not affect the safety bases of the findings in the applicable NRC safety evaluation report. A statement that corrections should not change the safety bases of the findings in the applicable NRC safety evaluation report has been added to the RIS.

NEI Comment No. 2-1

Of specific concern to industry is that the revision process, by its inherent nature, requires every user of the amendment being revised to incorporate the new revision, regardless of whether they either need or benefit from the changes incorporated via revision. While there may be cases where all or the majority of the users of a storage system amendment will benefit from a specific revision, that has not been the case in the recent experience. Therefore, all users of that specific storage system amendment must update necessary paperwork, including, but not limited to, site procedures, the 72.212 report and hardware Certificates of Conformance [sic].

NRC Response

NRC agrees in part with the comment. The revision of a CoC or amended CoC supersedes in its entirety the previous version, requiring its adoption by every licensee using the CoC. However, for cases where only a specific subset of licensees wish to adopt certain changes, it is more appropriate for the certificate holder to submit an amendment request to the CoC, which can then be adopted by those licensees. The RIS has not been changed in response to this comment.

NEI Comment No. 2-2

...the NRC has previously requested that licensees transmit new cask registration letters as detailed in 10 CFR 72.212(b)(2). Resubmittal of cask registration letters for revisions is not a regulatory requirement in 10 CFR 72. Cask registration letters are only required by 10 CFR 72.212(b)(2) to record the CoC and amendment number when a cask is first loaded, or if the cask is recertified to meet the requirements of a later amendment. Therefore, the industry strongly believes that the resubmittal of cask registration letters for revisions is a purely administrative burden without any commensurate safety benefit. This provision should be removed from the draft RIS. Since a new CoC revision supersedes the previous version of the CoC by definition, the required update to the site's 72.212 report to adopt the revision is sufficient regulatory recordkeeping in this regard.

NRC Response

The NRC agrees with the comment. The regulations of 10 CFR 72.212(b)(2) and (b)(4) only require cask registrations 30 days after using the cask to store spent fuel and 30 days after applying the changes authorized by an amended CoC, and thus it is not necessary to re-register casks already in use because of a revision to the CoC. This statement has been removed from the final RIS.

NEI Comment No. 2-4

"...the NRC has accepted documentation provided by the CoC holders indicating that the general licensees who may be impacted by the revision voluntarily support the revision and will willingly comply with the revised CoC in determining that the revision is not a backfit."

The general licensee has historically been required to provide this support in conjunction with the submittal of the revision. During the review and approval process there is the potential for the proposed CoC to be modified and for the NRC to stipulate additional conditions and limitations in the CoC that were not originally envisioned at the time of submittal. Industry is concerned that general licensees that provide support for the revision at the time of submittal are agreeing to voluntarily adopt a CoC revision that may change during the review and approval process. Therefore, general licensees should have the opportunity to withdraw their support after the time at which the technical review is complete and the draft CoC has been finalized. If a general licensee were to withdraw their consent, the proposed revision would be modified to become an amendment, which would then be voluntarily adopted by those general licensees who need the modification (versus a mandatory adoption by all impacted general licensees).

NRC Response

NRC agrees in part with the comment. Regarding the statement “If a general licensee were to withdraw their consent, the proposed revision would be modified to become an amendment [...],” it is important to note that such a change would not occur automatically. Instead, it is the CoC holder’s responsibility to request such a change in the application request. The CoC holder may withdraw the revision request, modify it to make it an amendment request, and submit that amendment request to the NRC. The NRC expects the CoC holder to continue to coordinate support with general licensees throughout the review and approval process. Documentation showing continued support may be provided at the time of submittal of responses to a request for additional information, and also when the applicant has reviewed the final revised CoC for factual accuracy prior to rulemaking. A statement to this effect has been added to the RIS.