

UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
WASHINGTON, DC 20555-0001

September 13, 2017

**NRC REGULATORY ISSUE SUMMARY 2017-05
ADMINISTRATION OF 10 CFR PART 72 CERTIFICATE OF COMPLIANCE
CORRECTIONS AND REVISIONS**

ADDRESSEES

All holders of Certificates of Compliance (CoCs) and all general licensees under the provisions of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater than Class C Waste."

INTENT

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to inform addressees of the processes used to revise initial CoCs and subsequent amendments (hereafter referred to as CoCs, whether initial CoCs or subsequent amendments) to make administrative corrections and technical changes using the existing regulatory framework in 10 CFR Part 72. This RIS does not address or propose any changes to 10 CFR Part 72. This RIS requires no action or written response on the part of an addressee.

BACKGROUND

Pursuant to 10 CFR Part 72, Subpart L, spent fuel storage system vendors (hereafter referred to as cask vendors) apply to the NRC for a CoC. The NRC evaluates the application and, if it determines that the system meets the requirements in 10 CFR Part 72, the agency issues a CoC. All approved CoCs are listed in 10 CFR 72.214, "List of approved spent fuel storage casks," via the rulemaking process. Pursuant to 10 CFR 72, Subpart K, approved storage systems may be used at power reactor sites by persons authorized to possess or operate nuclear power reactors under 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," or 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants."

SUMMARY OF ISSUE

After the effective date of a CoC, the vendor may seek to make changes to that CoC. Some of these changes (technical changes) to the CoC are significant enough that the NRC requires that these changes be accomplished through a rulemaking process which revises the existing CoC using notice and comment procedures. Other changes to the CoC are less significant because they involve administrative or editorial corrections. These types of changes (administrative corrections) may be made by rulemaking without notice and comment.

This RIS describes the criteria and processes for making administrative corrections to an existing CoC and the criteria and processes for making technical changes through notice and comment rulemaking when revising an existing CoC.

Administrative Corrections

In accordance with the Administrative Procedure Act (APA) (5 U.S.C. § 553), the NRC has the authority to issue corrections to a rule without first seeking public comment. The NRC has used this authority to issue corrections to a CoC when the change being made to the CoC is administrative and editorial in nature such that the agency finds good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.

Administrative and editorial corrections have been made to address errors in CoCs such as the following:

- typographical errors, such as correction of an incorrect date in the storage term
- formatting errors
- errors associated with hidden text created during conversion from a Microsoft Word document to a portable document format (pdf)
- errors in page numbering

Cask vendors that have identified these types of administrative or editorial changes may apply to the NRC for a correction to the CoC. In applying for a correction, the cask vendor should provide a detailed justification explaining why it believes the information to be changed is an editorial or administrative error, along with the proposed correction. Corrections to a CoC should not change the safety bases of the findings in the applicable NRC Safety Evaluation report.

Administrative corrections do not fall within the definition of backfitting as defined in 10 CFR 72.62 or 10 CFR 50.109, nor do they represent violations of issue finality under 10 CFR Part 52. These corrections, which are of an administrative or editorial nature and do not change the substantive technical information of the CoC, are not the type of changes that were intended to be included in the definition of backfitting. In addition, the definition of backfitting under 10 CFR 72.62 does not refer to CoC holders (and even if it did, the administrative corrections would not be considered backfitting because they are voluntarily requested by the CoC holder rather than being imposed by the NRC).

Administrative corrections may affect general licensees who utilize (or have contracted to utilize) casks fabricated under the CoC, which is subject to the corrective rule. These general licensees are accorded backfitting protection under 10 CFR 72.62 and 10 CFR 50.109, as well as issue finality concerns in 10 CFR 52.63. Nonetheless, these effects are considered to be minor or insignificant, and not within the scope of substantive changes that are within the scope of the backfitting and issue finality.

For these reasons, administrative corrections are not within the scope of backfitting or issue finality, and the NRC would not address backfitting or issue finality in an administrative correction rulemaking for a CoC.

Technical Changes—Revisions

Cask vendors may seek to revise existing CoCs to include changes to applicable codes or standards, operational requirements, or to correct technical errors in calculations that underpin existing technical specifications. These changes would not necessarily qualify as administrative corrections under the APA guidelines. Such changes would not be applicable to an existing CoC or amendment if they were issued in a new CoC or amendment. Instead, a revision to a CoC allows for technical changes to an existing CoC without issuing a new CoC or amendment. The NRC will evaluate and process a revision to a CoC using the same rulemaking process used for an initial or amended CoC, namely, to include a notice and comment process.

Cask vendors can request revisions when they wish to apply technical changes to existing CoCs. The NRC may issue revisions to CoCs when all of the following criteria are met:

- The system sought to be revised has not been purchased by a general licensee; or general licensees that have purchased storage cask equipment for the specific CoC design being revised were made aware of the revision request by the vendor and support it.
- The revision to the CoC does not require a general licensee to change any existing storage cask structure, system, or component.
- The requested technical changes have only minor impacts on field and administrative implementation by the vendor and general licensees.

The NRC has already issued several revisions to CoCs. The NRC has revised CoCs to include the following technical changes:

- revision of a CoC condition to clarify a specific heat load measurement that first-time users of a specific storage cask must perform
- update to the American Society of Mechanical Engineers Boiler and Pressure Vessel Code specification in a CoC to a later code year for certain steels
- correction of the decay times in the technical specifications for minimum additional decay time required when the spent fuel contains nonfuel hardware

The revision of a CoC or amended CoC supersedes in its entirety the previous version, requiring its adoption by every licensee using the CoC. Unless the revised CoC indicates otherwise, general licensees using the specific CoC amendment that is being revised are required to meet the conditions of the revised CoC as of its effective date. In some instances, the NRC has added a condition to the revised CoC providing general licensees with a 180-day implementation period to do the following:

- make any changes required by the revision
- update the necessary site paperwork
- complete a report pursuant to 10 CFR 72.212(b)(5) as they would for applying the changes authorized by a newer amendment when upgrading to an amended certificate

The NRC expects that future revisions will include these and any other conditions necessary for implementation of the revision. 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 can recommend an implementation period based on the complexity of the changes and any effects on existing licensees within the application.

As to CoC holders, technical changes that are accomplished by revisions of a CoC usually would not fall within the definition of backfitting as defined in 10 CFR 72.62 or 10 CFR 50.109 and should not represent violations of issue finality under 10 CFR Part 52. The definition of backfitting under 10 CFR 72.62 does not refer to CoC holders (and even if it did, the technical changes would not be considered backfitting because they are voluntarily requested by the CoC holder rather than being imposed by the NRC).

Technical changes may affect general licensees who utilize (or have contracted to utilize) casks fabricated under the CoC that is the subject of the rulemaking revising the CoC. These general licensees are accorded backfitting protection under 10 CFR 72.62 and 10 CFR 50.109, as well as issue finality concerns in 10 CFR 52.63 to the extent that they have already contracted for, received, or put the CoC into use. If a general licensee has contracted for, received or put the CoC into use prior to the revision of the CoC, then the NRC will treat the technical change rulemaking as applied to those licensees as backfitting and/or a violation of issue finality and address the applicable backfitting and issue finality requirements. Historically, 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 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.

By contrast, if the CoC to be revised has not been purchased or put into use by any general or specific licensee, then there are no backfitting or issue finality concerns that may come into play. In such cases, the NRC would not address backfitting or issue finality requirements.

BACKFITTING AND ISSUE FINALITY DISCUSSION

This RIS informs cask vendors and general licensees of the processes currently used by the NRC for correcting and revising CoCs.

This RIS requires no action or written response beyond that already required by the NRC regulations. Therefore, this RIS does not represent backfitting as defined in 10 CFR 72.62(a) or 10 CFR 50.109(a)(1), nor is it otherwise inconsistent with any issue finality provision in 10 CFR Part 52. Consequently, for this RIS, the NRC staff did not perform a backfit analysis or further address the issue finality criteria.

FEDERAL REGISTER NOTIFICATION

A notice of opportunity for public comment on this RIS was published in the *Federal Register* (82 FR 5445) on January 18, 2017. Comments were received from two commenters. The evaluation of these comments, and the resulting changes to the RIS are discussed in a publicly available memorandum under Agencywide Documents Access and Management System (ADAMS) Accession No. ML17165A178.

CONGRESSIONAL REVIEW ACT

This RIS is not a rule as defined in the Congressional Review Act (5 U.S.C. §§ 801-808).

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 et seq.). Existing information collection 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, an information collection 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.

/ra/

Michael C. Layton, Director
Division of Spent Fuel Management
Office of Nuclear Material Safety
and Safeguards

Technical Contact: John Vera, NMSS/DSFM
301-415-5790
E-mail: John.Vera@nrc.gov

Note: NRC generic communications may be found on the NRC public Web site <http://www.nrc.gov> under NRC Library/Document Collections.

**NRC REGULATORY ISSUE SUMMARY 2017-05, "ADMINISTRATION OF 10 CFR PART 72
CERTIFICATE OF COMPLIANCE CORRECTIONS AND REVISIONS," Date: September 13,
2017**

ADAMS ACCESSION NUMBER: ML17165A183

***via email**

TAC No. MF9717

OFC	NMSS/DSFM/SFLB/PM*	QTE*	NRR: PMDA: MA	OCIO*
NAME	JVera	JDougherty	LHill	DCullison
DATE	6/27/2017	6/27/2017	7/13/2017	7/21/2017
OFC	OE*	NRR/DPR/PGCB/LA*	OGC*	NRR/DPR/PGCB/PM
NAME	JPeralta	ELee	ACoggins	NMartinez
DATE	7/14/2017	7/18/2017	8/17/2017	8/24/2017
OFC	NRR/DPR/PGCB/BC	NMSS/DSFM/SFLB/BC	NMSS/DSFM/D	
NAME	AGarmoe	JMcKirgan	MLayton	
DATE	8/29/2017	6/29/2017	9/13/2017	

OFFICIAL RECORD COPY