

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 72**

**[Docket Nos. PRM-72-7; NRC-2012-0266; NRC-2014-0067]**

**Spent Fuel Cask Certificate of Compliance Format and Content**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Withdrawal of petition for rulemaking; discontinuation of rulemaking activity.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is announcing the withdrawal of Petition for Rulemaking PRM-72-7 (PRM; petition), and discontinuation of the associated rulemaking activity, “Spent Fuel Cask Certificate of Compliance Format and Content.” The NRC will no longer track this rulemaking activity or PRM.

**DATES:** The docket for the rulemaking is closed on October 19, 2020. The petition was withdrawn on February 25, 2020.

**ADDRESSES:** Please refer to Docket IDs NRC-2012-0266 or NRC-2014-0067 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2012-0266 or NRC-2014-0067. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail:

[Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System**

**(ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, 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](mailto:pdr.resource@nrc.gov). Instructions about obtaining materials referenced in this document are provided in the Availability of Documents section of this document.

- **Attention:** The Public Document Room (PDR), where you may examine and order copies of public documents is currently closed. You may submit your request to the PDR via e-mail at [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov) or call 1-800-397-4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mary Anderson, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-7126; e-mail: [Mary.Anderson@nrc.gov](mailto:Mary.Anderson@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

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## I. Discussion

On October 3, 2012, the NRC received PRM-72-7 from the Nuclear Energy Institute (NEI; petitioner). The petition requested that the NRC revise part 72 of title 10 of the *Code of Federal Regulations* (10 CFR), “Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste,” to add a new rule governing spent fuel storage cask certificate of compliance format and content and make other changes to NRC oversight of dry cask storage activities.

The petition was noticed in the *Federal Register* for public comment on February 5, 2013. The NRC received five comment letters, all supporting the petition. On July 18, 2014, the NRC announced that the six issues raised in the petition were appropriate for consideration in the rulemaking process. The petition issues were identified as follows:

Issue No. 1: The petition requested an amendment to 10 CFR part 72, subpart L, “Approval of Spent Fuel Storage Casks,” to provide specific criteria for the format and content of the certificate of compliance for a spent fuel storage cask.

Issue No. 2: The petition requested an amendment to § 72.62 to provide backfit protection to certificate of compliance holders in addition to licensees.

Issue No. 3: The petition requested an amendment to 10 CFR part 72, subpart K, “General License for Storage of Spent Fuel at Power Reactor Sites,” to

remove the requirement in § 72.212(b)(6) for general licensees to perform a review of the NRC's safety evaluation report for the certificate of compliance or amended certificate of compliance prior to use by a general licensee.

Issue No. 4: The petition requested an amendment to 10 CFR part 72, subpart K, to clarify the requirement to review various plans and programs that are governed by other NRC regulations.

Issue No. 5: The petition requested an amendment to 10 CFR part 72, subpart L, to remove the requirement in § 72.236(k)(3) to mark the empty weight on each storage cask.

Issue No. 6: The petition requested an amendment to § 72.124(c) to expand the scope of activities for which criticality monitoring is not required.

NRC's review of these six issues showed that they did not address safety, environmental, or security concerns. Accordingly, the rulemaking was assigned a medium priority.

## **II. NRC Analysis**

NRC staff evaluated the issues raised by the petitioner in accordance with its rulemaking process. The staff's early assessment of the petition issues determined that Issue No. 1 pertaining to the certificate of compliance format and content was the most consequential for improving the efficiency of the licensing process.

In 2016 and 2017, the NRC staff engaged with external stakeholders through a series of public workshops to explore options for achieving the efficiency improvements raised by Issue No. 1. The information obtained from those workshops supported development of qualitative risk-informed graded approach criteria that could be used to streamline the format and content of certificates of compliance and focus the certificate of compliance content on the most risk significant aspects. The graded approach criteria help determine the level of detail and location of information that should be included in a certificate of compliance for a spent fuel dry storage cask design. This graded approach is described in Regulatory Issue Resolution Protocol I-16-01.

On June 29, 2017, TN Americas LLC (formerly AREVA) submitted an application for Renewed Amendment 16<sup>1</sup> to the Standardized NUHOMS® Horizontal Modular Storage System (NUHOMS®) Certificate of Compliance No. 1004 to pilot the application of the graded approach criteria. Chapter 2 of the preliminary safety evaluation report for the amendment discusses the development of the graded approach criteria in more detail, including information on the public meetings that were held and how the criteria were applied in review of the amendment request. After completing a safety review of the application, the staff, by letter dated January 8, 2020, endorsed the use of the pilot study's graded approach criteria by other cask vendors. This letter noted that NRC will continue to explore the use of risk information and enhancements to the dry storage licensing process. On June 30, 2020 (85 FR 39049), the NRC published the rulemaking

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<sup>1</sup> On December 3, 2017, the NRC issued the renewals of initial certificate; Amendment Nos. 1 through 11 and 13, Revision 1; and Amendment No. 14 of Certificate of Compliance No. 1004 for the Standardized NUHOMS® System. Subsequently, Renewed Amendment No. 15 was issued on December 14, 2018. The certificates were renewed for an additional 40-year period. The TN Americas LLC Certificate of Compliance No. 1004, its amendments, and all future amendments to the certificate are referred to as Renewed Amendments.

for this pilot amendment with a direct final rule and companion proposed rule in the *Federal Register*, as corrected on July 17, 2020 (85 FR 43419).

While the TN Americas LLC renewed amendment was under development, the staff, in the summer of 2019, identified potential rulemaking alternatives for the petition items and performed a preliminary cost-benefit analysis in support of the rulemaking plan. These assessments determined that resolution of Issue No. 1 could result in substantial averted costs (benefits) to the NRC, certificate of compliance holders, and licensees and could be achieved without rulemaking. The remaining Issues 2-6 were estimated to produce negligible net benefits that, without the benefits of Issue No. 1, would not justify the costs of rulemaking. Furthermore, other staff assessments indicated that, in addition to Issue No. 1, some of the other issues raised by the petition could be satisfactorily addressed outside of the rulemaking process using non-rulemaking approaches.

On November 18, 2019, the NRC staff held a public meeting on the status of the rulemaking associated with PRM-72-7. At the meeting, the petitioner, NEI, supported non-rulemaking alternatives to gain certificate of compliance efficiencies as soon as possible. The transcript and public meeting summary from this meeting are listed in Section III, Availability of Documents, of this notice.

Subsequently, in a letter dated February 25, 2020, NEI withdrew the petition. In this letter, NEI stated that Issue No. 1 was “the central purpose of PRM 72-7,” and that this issue was addressed through the NRC’s endorsement of the graded approach criteria. In addition, NEI indicated that, with this central purpose addressed, “none of the other issues raised in the petition, on their own merits, warrant the dedication of specific [NRC] resources to a rulemaking.”

With the development and endorsement of the graded approach criteria, the NRC finds that the primary intent of the petition has been satisfied. Additionally, a preliminary cost-benefit analysis demonstrates that rulemaking is not cost-justified for the remaining issues. Accordingly, the NRC is taking no further action on the petition and is discontinuing the rulemaking effort.

### III. Availability of Documents

The documents identified in the following table are related to this action and are available to interested persons through one or more of the following methods, as indicated.

| DOCUMENT   | ADAMS ACCESSION NO./FEDERAL REGISTER CITATION |
|--|---|
| Petition for rulemaking from the Nuclear Energy Institute, October 3, 2012.  | ML12299A380                                   |
| <i>Federal Register</i> notice for receipt and request for comment, "Spent Fuel Cask Certificate of Compliance Format and Content," February 5, 2013.                            | 78 FR 8050                                    |
| Letters, Public Comments on PRM-72-7, May 15, 2014.  | ML14134A072 (package)                         |
| <i>Federal Register</i> notice for consideration in rulemaking process, "Spent Fuel Cask Certificate of Compliance Format and Content," July 18, 2014.                           | 79 FR 41935                                   |
| Letter, "Proposed RIRP Issue Screening Form and Resolution Plan for Improving the Efficiency of the Regulatory Framework for Dry Storage of Spent Nuclear Fuel," April 12, 2016. | ML16158A048                                   |
| Letter, "Regulatory Issue Resolution Protocol Screening Form and Resolution Plan for Improving the Part 72 Regulatory Framework (RIRP-I-16-01)," May 12, 2017.                   | ML17138A119                                   |

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| Letter, "Response to Nuclear Energy Institute's Letter Regarding Regulatory Issue Resolution Protocol Screening Form and Resolution Plan for Improving the Part 72 Regulatory Framework (RIRP-I-16-01)," June 5, 2017. | ML17150A458           |
| Letter, "Application for Amendment 16 to Standardized NUHOMS® Certificate of Compliance No. 1004 for Spent Fuel Storage Casks, Revision 0 (Docket No. 72-1004)," June 29, 2017.  | ML17191A235           |
| Letter, "Application for Amendment No. 16 to Standardized NUHOMS® Certificate of Compliance No. 1004 – Accepted for Review," July 21, 2017.  | ML17206A045           |
| Preliminary Safety Evaluation Report, "TN Americas LLC Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel Docket No. 72-1004 NUHOMS® System Amendment No. 16," September 18, 2019.     | ML19262E161           |
| Letter, "Industry White Paper – Defining Spent Fuel Performance Margins," November 8, 2019.  | ML19318D970           |
| Public Meeting Documentation, November 18, 2019.   | ML19324C657 (package) |
| Summary, November 18, 2019 Public Meeting, December 18, 2019.  | ML19340A414           |
| Transcript, "Public Meeting to Discuss the Issues Contained in PRM-72-7 and Additional Staff-Identified Changes to 10 CFR Part 72," November 18, 2019.   | ML20079H441           |
| Letter, Endorsement of Graded Approach, January 8, 2020.   | ML19353D337 (package) |
| Letter, Request to Withdraw PRM-72-7, February 25, 2020.   | ML20058B100           |
| <i>Federal Register</i> notice for direct final rule, "TN Americas LLC, Standardized NUHOMS® Horizontal Modular Storage System, Certificate of Compliance No. 1004, Renewed Amendment No. 16," June 30, 2020.          | 85 FR 39049           |
| <i>Federal Register</i> notice correction, "TN Americas LLC, Standardized NUHOMS® Horizontal Modular Storage System, Certificate of Compliance No. 1004, Renewed Amendment No. 16," July 17, 2020.                     | 85 FR 43419           |

#### IV. Conclusion

The NRC is withdrawing PRM-72-7 and is no longer pursuing the Spent Fuel Cask Certificate of Compliance Format and Content rulemaking for the reasons

discussed in this document. If the NRC decides to pursue a similar or related rulemaking in the future, it will inform the public through a new rulemaking entry in the Unified Agenda of Regulatory and Deregulatory Activities.

Dated: October 2, 2020.

For the Nuclear Regulatory Commission.

**/RA/**

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