

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC-2021-0161]

RIN 3150-AK69

**List of Approved Spent Fuel Storage Casks: TN Americas LLC,
TN-68 Dry Storage Cask, Certificate of Compliance No. 1027,
Renewal of Initial Certificate and Amendment No. 1**

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the TN Americas LLC, TN-68 Dry Storage Cask listing within the “List of approved spent fuel storage casks” to renew, for an additional 40 years, the initial certificate and Amendment No. 1 of Certificate of Compliance No. 1027. The renewal of the initial certificate and Amendment No. 1 revises the certificate of compliance’s conditions and technical specifications to address aging management activities related to the structures, systems, and components (SSCs) of the dry storage system to ensure that the SSCs will maintain their intended functions during the period of extended storage operations.

DATES: This direct final rule is effective February 22, 2022, unless significant adverse comments are received by January 10, 2022. If this direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the *Federal Register*.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 ensure consideration only for comments received on or before this date. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the *Federal Register*.

ADDRESSES: Submit your comments, identified by Docket ID NRC-2021-0161, at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

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

FOR FURTHER INFORMATION CONTACT: Christian Jacobs, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-6825, email: Christian.Jacobs@nrc.gov and Solomon Sahle, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-3781, email: Solomon.Sahle@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

TABLE OF CONTENTS:

- I. Obtaining Information and Submitting Comments
- II. Rulemaking Procedure
- III. Background
- IV. Discussion of Changes
- V. Voluntary Consensus Standards
- VI. Agreement State Compatibility
- VII. Plain Writing
- VIII. Environmental Assessment and Finding of No Significant Impact
- IX. Paperwork Reduction Act Statement
- X. Regulatory Flexibility Certification
- XI. Regulatory Analysis
- XII. Backfitting and Issue Finality

- XIII. Congressional Review Act
- XIV. Availability of Documents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2021-0161 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-2021-0161. Address questions about NRC dockets to Dawn Forder, telephone: 301-415-3407, email: Dawn.Forder@nrc.gov. For technical questions, contact the individuals 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 email to pdresource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the "Availability of Documents" section.

- **NRC's PDR:** You may examine and purchase copies of public documents, by appointment, at the NRC's Public Document Room (PDR), Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call

1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

Please include Docket ID NRC-2021-0161 in your comment submission. The NRC requests that you submit comments through the Federal rulemaking website at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

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 <https://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 into ADAMS.

II. Rulemaking Procedure

This rule is limited to the renewal of the initial certificate and Amendment No. 1 of Certificate of Compliance No. 1027 and does not include other aspects of the TN Americas LLC, TN-68 Dry Storage Cask system design. The NRC is using the “direct final rule procedure” to issue this renewal because it represents a limited and routine

change to an existing certificate of compliance that is expected to be non-controversial. Adequate protection of public health and safety continues to be reasonably assured. The amendment to the rule will become effective on February 22, 2022. However, if the NRC receives any significant adverse comments on this direct final rule by January 10, 2022, 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 in the Proposed Rules section of 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 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.

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 to make a change (other than editorial) to the rule, certificate of compliance, or technical specifications.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, requires that “[t]he 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 Nuclear Waste Policy Act 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 that added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) 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 in 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 April 28, 2000 (65 FR 24855), that approved the TN-68 Dry Storage Cask system design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1027. The NRC issued a direct final rule on August 16, 2007 (72 FR 45880), that approved

Amendment No. 1 to Certificate of Compliance No. 1027 for the TN-68 Dry Storage Cask system design and added it to the list of NRC approved cask designs in § 72.214.

IV. Discussion of Changes

On April 9, 2020, TN Americas LLC submitted a request to the NRC to renew, for an additional 40 years, the initial certificate and Amendment No. 1 of Certificate of Compliance No. 1027 for the TN-68 Dry Storage Cask system. TN Americas LLC supplemented its request on July 29, 2020; February 9, 2021; and March 24, 2021.

The renewal of the initial certificate and Amendment No. 1 was conducted in accordance with the renewal provisions in § 72.240. This section of the NRC spent fuel storage regulations authorizes the NRC to include any additional certificate conditions it deems necessary to ensure the safe operation of the cask during the certificate's renewal period. The NRC included three additional conditions to the renewal of the initial certificate of compliance and Amendment No. 1:

- The submittal of an updated final safety analysis report (UFSAR) to address aging management activities resulting from the renewal of the certificate of compliance. This condition ensures that the UFSAR changes are made in a timely fashion to enable general licensees using the storage system during the period of extended operation to develop and implement necessary procedures.
- The requirement that general licensees initiating or using spent fuel dry storage operations with the TN-68 Dry Storage Cask system ensure that their evaluations are included in the reports required by § 72.212, "Conditions of general license issued under § 72.210." These reports will include appropriate considerations for the period of extended operation, a review of

the UFSAR changes resulting from the certificate of compliance renewal, and a review of the NRC safety evaluation report (SER) related to the certificate of compliance renewal.

- The requirement that future amendments and revisions to this certificate of compliance include evaluations of the impacts to aging management activities to ensure that they remain adequate for any changes to the structures, systems, and components (SSCs).

The NRC made one corresponding change to the technical specifications for the initial certificate of compliance and Amendment No. 1. The change added a new section, which ensures that general licensees using the storage system develop procedures to address aging management activities required in the period of extended operation.

As documented in the preliminary SER, the NRC performed a safety evaluation of the proposed certificate of compliance renewal request. The NRC determined that this renewal does not change the cask design or fabrication requirements in the proposed certificate of compliance renewal request. The NRC determined that the design of the cask would continue to maintain confinement, shielding, and criticality control in the event of each evaluated accident condition. In addition, any resulting occupational exposure or offsite dose rates from the renewal of the initial certificate of compliance and Amendment No. 1 would remain well within the limits specified by 10 CFR part 20, "Standards for Protection Against Radiation." Thus, the NRC found there will be no significant change in the types or amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents. In its SER for the renewal of the TN-68 Dry Storage Cask system, the NRC staff has determined that if

the conditions specified in the certificate of compliance to implement these regulations are met, adequate protection of public health and safety will continue to be reasonably assured.

This direct final rule revises the TN-68 Dry Storage Cask listing in § 72.214 by renewing for 40 more years, the initial certificate and Amendment No. 1 of Certificate of Compliance No. 1027. The renewal consists of the changes previously described, as set forth in the renewed initial certificate and amendment and their revised technical specifications. The revised technical specifications are identified in the SER.

V. 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 revises the TN Americas LLC, TN-68 Dry Storage 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.

VI. Agreement State Compatibility

Under the “Agreement State Program Policy Statement” approved by the Commission on October 2, 2017, and published in the *Federal Register* on October 18, 2017 (82 FR 48535), this rule is classified as Compatibility Category NRC – Areas of Exclusive NRC Regulatory Authority. 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 chapter I. Therefore, compatibility is not required for program elements in this category. Although an

Agreement State may not adopt program elements reserved to the NRC, and the Category “NRC” does not confer regulatory authority on the State, the State may wish to inform its licensees of certain requirements by means consistent with the particular State’s administrative procedure laws.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31885).

VIII. Environmental Assessment and Finding of No Significant Impact

Under the National Environmental Policy Act of 1969, as amended, and the NRC’s regulations in 10 CFR part 51, “Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,” the NRC has determined that this direct final 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 made a finding of no significant impact on the basis of this environmental assessment.

A. The Action

The action is to amend § 72.214 to revise the TN-68 Dry Storage Cask listing within the “List of approved spent fuel storage casks” to renew, for an additional

40 years, the initial certificate and Amendment No. 1 of Certificate of Compliance No. 1027.

B. The Need for the Action

This direct final rule renews the initial certificate and Amendment No. 1 of Certificate of Compliance No. 1027 for the TN Americas LLC, TN-68 Dry Storage Cask system design within the list of approved spent fuel storage casks to allow power reactor licensees to store spent fuel at reactor sites in casks with the approved modifications under a general license. Specifically, this rule extends the expiration date for the TN Americas LLC, TN-68 Dry Storage Cask certificate for an additional 40 years, allowing a reactor licensee to continue using it under general license provisions in an independent spent fuel storage installation to store spent fuel in dry casks in accordance with 10 CFR part 72.

C. Environmental Impacts of the Action

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for this renewal of the initial certificate and Amendment No. 1 of Certificate of Compliance No. 1027 tiers off of the environmental assessment for the July 18, 1990, final rule. Tiering on past environmental assessments is a standard process under the National Environmental Policy Act of 1969, as amended. As required by § 72.240, applications for renewal of a spent fuel storage certificate of compliance design are required to demonstrate that SSCs important to safety will continue to perform their intended function for the requested renewal term. As discussed in the NRC's SER for the renewal of the initial

certificate and Amendment No. 1, the NRC has approved conditions in the renewed initial certificate and Amendment No. 1 requiring the general licensee to implement the aging management activities described in the renewal application and incorporated into the UFSAR. These conditions ensure that the TN Americas LLC, TN-68 Dry Storage Cask system will continue to perform its intended safety functions and provide reasonable assurance of adequate protection of public health and safety throughout the renewal period.

Incremental impacts from continued use of the TN-68 Dry Storage Cask system under a general license for an additional 40 years are not considered significant. When the general licensee follows all procedures and administrative controls, including the conditions established because of this renewal, no effluents are expected from the sealed dry cask systems. Activities associated with cask loading and decontamination may result in some small incremental liquid and gaseous effluents, but these activities will be conducted under 10 CFR parts 50 and 52 reactor operating licenses, and effluents will be controlled within existing reactor site technical specifications. Because reactor sites are relatively large, any incremental offsite doses due to direct radiation exposure from the spent fuel storage casks are expected to be small, and when combined with the contribution from reactor operations, well within the annual dose equivalent of 0.25 mSv (25 mrem) limit to the whole body specified in § 72.104. Incremental impacts on collective occupational exposures due to dry cask spent fuel storage are expected to be only a small fraction of the exposures from operation of the nuclear power station.

The TN-68 Dry Storage Cask system is designed to mitigate the effects of design-basis accidents that could occur during storage. Design-basis accidents account for human-induced events and the most severe natural phenomena reported for the site

and surrounding area. Postulated accidents analyzed for an independent spent fuel storage installation, the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, can include tornado winds and tornado-generated missiles, a design-basis earthquake, a design-basis flood, an accidental cask drop, lightning effects, fire, explosions, and other incidents.

During the promulgation of the amendments that added subpart K to 10 CFR part 72 (55 FR 29181; July 18, 1990), the NRC staff assessed the public health consequences of dry cask storage accidents and sabotage events. In the supporting analyses for these amendments, the NRC determined that a release from a dry cask storage system would be comparable in magnitude to a release from the same quantity of fuel in a spent fuel storage pool. As a result of these evaluations, the NRC determined that, because of the physical characteristics of the storage casks and conditions of storage that include specific security provisions, the potential risk to public health and safety due to accidents or sabotage is very small.

Considering the specific design requirements for each accident or sabotage condition, the design of the cask would maintain confinement, shielding, and criticality control. If confinement, shielding, or criticality control are maintained, the environmental impacts from an accident would be insignificant.

There are no changes to cask design or fabrication requirements in the renewed initial certificate or Amendment No. 1. Because there are no significant design or process changes, any resulting occupational exposure or offsite dose rates from the implementation of the renewal of the initial certificate and Amendment No. 1 would remain well within the 10 CFR part 20 limits.

Decommissioning of dry cask spent fuel storage systems under a general license would be carried out as part of a power reactor's site decommissioning plan. In general, decommissioning would consist of removing the spent fuel from the site, decontaminating cask surfaces, and decontaminating and dismantling the independent spent fuel storage installation where the casks were deployed. Under normal and off-normal operating conditions, no residual contamination is expected to be left behind on supporting structures. The incremental impacts associated with decommissioning dry cask storage installations are expected to represent a small fraction of the impacts of decommissioning an entire nuclear power station.

In summary, the proposed changes will not result in any radiological or nonradiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. Compliance with the requirements of 10 CFR parts 20 and 72 would provide reasonable assurance that adequate protection of public health and safety will continue. The NRC, in its SER for the renewal of the TN-68 Dry Storage Cask system, has determined if the conditions specified in the certificate of compliance to implement these regulations are met, adequate protection of public health and safety will continue to be reasonably assured.

Based on the previously stated assessments and its SER for the requested renewal of the TN-68 Dry Storage Cask certificates, the NRC has determined that the expiration date of this system in 10 CFR 72.214 can be safely extended for an additional 40 years, and that commercial nuclear power reactor licensees can continue using the system during this period under a general license without significant impacts on the human environment.

D. Alternative to the Action

The alternative to this action is to deny approval of the renewal and not issue the direct final rule. Under this alternative, the NRC would either 1) require general licensees using the TN-68 Dry Storage Cask to unload the spent fuel from these systems and either return it to a spent fuel pool or re-load it into a different dry storage cask system listed in § 72.214; or 2) require that users of the existing TN-68 Dry Storage Cask request site-specific licensing proceedings to continue storage in these systems.

The environmental impacts of requiring the licensee to unload the spent fuel and either return it to the spent fuel pool or re-load it into another NRC-approved cask system would result in increased radiological doses to workers. These increased doses would be due primarily to direct radiation from the casks while the workers unloaded, transferred, and re-loaded the spent fuel. These activities would consist of transferring the dry storage canisters to a cask-handling building, opening the canister lid welds, returning the canister to a spent fuel pool or dry transfer facility, removing the fuel assemblies, and re-loading them, either into a spent fuel pool storage rack or another NRC-approved dry storage system. In addition to the increased occupational doses to workers, these activities may also result in additional liquid or gaseous effluents.

Alternatively, users of the dry cask storage system would need to apply for a site-specific license. Under this option for implementing the no-action alternative, interested licensees would have to prepare, and the NRC would have to review, each separate license application, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

In summary, the no-action alternative would entail either 1) more environmental impacts than the preferred action from transferring the spent fuel now in the TN-68 Dry Storage Cask; or 2) cost and administrative impacts from multiple licensing actions that,

in aggregate, are likely to be the same as, or more likely greater than, the preferred action.

E. Alternative Use of Resources

Renewal of the initial certificate and Amendment No. 1 to Certificate of Compliance No. 1027 would result in no irreversible commitment of resources.

F. Agencies and Persons Contacted

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

G. Finding of No Significant Impact

The environmental impacts of the action have been reviewed under the requirements in the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions." Based on the foregoing environmental assessment, the NRC concludes that this direct final rule, "List of Approved Spent Fuel Storage Casks: TN Americas LLC, TN-68 Dry Storage Cask, Certificate of Compliance No. 1027, Renewal of Initial Certificate and Amendment No. 1," will not have a significant effect on the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this direct final rule.

IX. Paperwork Reduction Act Statement

This direct final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Existing collections of information were approved by the Office of Management and Budget, 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 Office of Management and Budget control number.

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this direct final 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 TN Americas LLC. 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 (§ 2.810).

XI. 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 1) it notifies the NRC in advance; 2) the spent fuel is stored under the conditions specified in the cask's certificate of compliance; and 3) the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On April 28, 2000 (65 FR 24855),

the NRC issued an amendment to 10 CFR part 72 that approved the TN Americas LLC, TN-68 Dry Storage Cask by adding it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1027.

On April 9, 2020, and as supplemented on July 29, 2020; February 9, 2021; and March 24, 2021, TN Americas LLC requested a renewal of the initial certificate and Amendment No. 1 of the TN-68 Dry Storage Cask system for an additional 40 years beyond the initial certificate term as discussed in Section IV, "Discussion of Changes," of this document. Because TN Americas LLC filed its renewal application at least 30 days before the certificate expiration date of May 20, 2020, pursuant to the timely renewal provisions in § 72.240(b), the initial issuance of the certificate and Amendment No. 1 of Certificate of Compliance No. 1027 did not expire during the pendency of the NRC's review.

The alternative to this action is to deny approval of the renewal of the initial certificate and Amendment No. 1 of Certificate of Compliance No. 1027 and end this direct final rule. Under this alternative, the NRC would either 1) require general licensees using the TN-68 Dry Storage Cask system to unload spent fuel from these systems and return it to a spent fuel pool or re-load it into a different dry storage cask system listed in § 72.214, or 2) require that users of the existing TN-68 Dry Storage Cask system request site-specific licensing proceedings to continue storage in these systems. Therefore, the no-action alternative would result in a significant burden on licensees and an additional inspection or licensing caseload on the NRC. In addition, the no action alternative would entail either 1) more environmental impacts than the preferred action from transferring the spent fuel now in the TN-68 Dry Storage Cask system, or 2) cost and administrative impacts from multiple licensing actions that, in aggregate, are likely to be the same as, or more likely greater than, the preferred action.

Approval of this direct final rule is consistent with previous NRC actions. Further, as documented in the preliminary SER and environmental assessment, this 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 this 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; therefore, this action is recommended.

XII. Backfitting and Issue Finality

The NRC has determined that the backfit rule (§ 72.62) does not apply to this direct final rule. Therefore, a backfit analysis is not required. This direct final rule renews Certificate of Compliance No. 1027 for the TN Americas LLC, TN-68 Dry Storage Cask system, as currently listed in § 72.214, to extend the expiration date of the initial certificate and Amendment No. 1 by 40 years. The renewed initial certificate and Amendment No. 1 consist of the changes previously described, as set forth in the revised certificate of compliance and technical specifications.

Extending the effective date of the initial certificate and Amendment No. 1 for 40 more years and requiring the implementation of aging management activities does not impose any modification or addition to the design of a cask system's SSCs, or to the procedures or organization required to operate the system during the initial 20-year storage period of the system, as authorized by the current certificate. General licensees that have loaded these casks, or that load these casks in the future under the specifications of the applicable certificate, may continue to store spent fuel in these systems for the initial 20-year storage period consistent with the original certificate. The

aging management activities required to be implemented by this renewal are only required after the storage cask system's initial 20-year service period ends. As explained in the 2011 final rule that amended 10 CFR part 72 (76 FR 8872, Question I), the general licensee's authority to use a particular storage cask design under an approved certificate of compliance terminates 20 years after the date that the general licensee first loads the particular cask with spent fuel, unless the cask's certificate of compliance is renewed. Because this rulemaking renews the initial certificate and Amendment No. 1, and renewal is a separate licensing action voluntarily implemented by vendors, the renewal of the initial certificate and Amendment No. 1 is not an imposition of new or changed requirements from which these licensees would otherwise be protected by the backfitting provisions in § 72.62.

Even if renewal of the initial certificate and Amendment No. 1 of Certificate of Compliance No. 1027 could be considered a backfit, TN Americas LLC, as the holder of the certificate of compliance and vendor of the casks, is not protected by the backfitting provisions in § 72.62.

Unlike a vendor, general licensees using the existing systems subject to this renewal would be protected by the backfitting provisions in § 72.62 if the renewal constituted new or changed requirements applicable during the initial 20-year storage period. But, as previously explained, renewal of the initial certificate and Amendment No. 1 of Certificate of Compliance No. 1027 does not impose such requirements. The general licensee using the initial certificate or Amendment No. 1 of Certificate of Compliance No. 1027 may continue storing material in its respective cask systems for the initial 20-year storage period identified in the applicable certificate or amendment with no changes. If general licensees choose to continue to store spent fuel in the TN-68 Dry Storage Cask system after the initial 20-year period, these general licensees

will be required to implement aging management activities for any cask systems subject to a renewed certificate of compliance, but such continued use is voluntary.

For these reasons, renewing the initial certificate and Amendment No. 1 of Certificate of Compliance No. 1027, and imposing the additional conditions previously discussed, does not constitute backfitting under § 72.62 or § 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. Accordingly, the NRC has not prepared a backfit analysis for this rulemaking.

XIII. Congressional Review Act

This direct final rule is not a rule as defined in the Congressional Review Act.

XIV. Availability of Documents

The documents identified in the following table are available to interested persons, as indicated.

DOCUMENT	ADAMS ACCESSION NO.
TN Americas LLC Renewal Application for the TN-68 Dry Storage Cask Certificate of Compliance No. 1027, dated April 9, 2020	ML20100F295
Supplemental Response to Request for Additional Information for the TN Americas LLC Application for Renewal of the TN-68 Dry Storage Cask, Certificate of Compliance No. 1027, dated July 29, 2020	ML20211L707
Supplemental Response to Request for Additional Information for the TN Americas LLC Application for Renewal of the TN-68 Dry Storage Cask, Certificate of Compliance No. 1027, dated February 9, 2021	ML21040A406

DOCUMENT	ADAMS ACCESSION NO.
Supplemental Response to Request for Additional Information for the TN Americas LLC Application for Renewal of the TN-68 Dry Storage Cask, Certificate of Compliance No. 1027, dated March 24, 2021	ML21083A029
User Need Memorandum for Rulemaking for Certificate of Compliance Renewal, Initial Issue (Amendment Number 0), Amendment Number 1 to TN-68 Dry Storage Cask, dated September 20, 2021	ML21174A125
Preliminary Safety Evaluation Report for the TN-32 Dry Storage Cask Certificate of Compliance Renewal	ML21174A128
Proposed Certificate of Compliance No. 1027, Renewed Initial Certificate	ML21174A126
Proposed Technical Specifications, Appendix A, Certificate of Compliance No. 1027, Renewed Initial Certificate	ML21174A129
Proposed Certificate of Compliance No. 1027, Renewed Amendment No. 1	ML21174A127
Proposed Technical Specifications, Appendix A, Certificate of Compliance No. 1027, Renewed Amendment No. 1	ML21174A131

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at <https://www.regulations.gov> under Docket ID NRC-2021-0161.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, 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: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

2. In § 72.214, Certificate of Compliance No. 1027 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

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Certificate Number: 1027.

Initial Certificate Effective Date: May 30, 2000, superseded by Renewed Initial Certificate on February 22, 2022.

Amendment Number 1 Effective Date: October 30, 2007, superseded by Renewed Amendment Number 1 on February 22, 2022.

SAR Submitted by: Transnuclear, Inc., now TN Americas LLC.

Renewal SAR Submitted by: TN Americas LLC.

SAR Title: Final Safety Analysis Report for the TN-68 Dry Storage Cask.

Docket Number: 72-1027.

Certificate Expiration Date: May 28, 2020.

Renewed Certificate Expiration Date: May 28, 2060.

Model Number: TN-68.

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Dated: November 29, 2021.

For the Nuclear Regulatory Commission.

/RA/

Daniel H. Dorman,
Executive Director for Operations.