



Administration of 10 CFR Part 72 Certificates of Compliance (CoC) and Amendments

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Meeting to Obtain Stakeholder Feedback
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Nuclear Safety Culture

- Nuclear safety culture is the core values and behaviors resulting from a collective commitment by leaders and individuals to emphasize safety over competing goals to ensure protection of people and the environment.

Traits of a Positive Nuclear Safety Culture

- **Leadership Safety Values and Actions—Leaders demonstrate a commitment to safety in their decisions and behaviors.**
- **Problem Identification and Resolution—Issues potentially impacting safety are promptly identified, fully evaluated, and promptly addressed and corrected commensurate with their significance.**
- **Personal Accountability—All individuals take personal responsibility for safety.**

Continued

- **Work Processes**—The process of planning and controlling work activities is implemented so that safety is maintained.
- **Continuous Learning**—Opportunities to learn about ways to ensure safety are sought out and implemented.
- **Environment for Raising Concerns**—A safety-conscious work environment is maintained where personnel feel free to raise safety concerns without fear of retaliation, intimidation, harassment, or discrimination.

Continued

- **Effective Safety Communication—Communications maintain a focus on safety.**
- **Respectful Work Environment—Trust and respect permeate the organization.**
- **Questioning Attitude—Individuals avoid complacency and continuously challenge existing conditions and activities in order to identify discrepancies that might result in error or inappropriate action.**



ADMINISTRATION OF STORAGE COCs AND AMENDMENTS TO COCs

Issue Description

- The NRC staff is conducting a review of the regulatory framework for spent fuel storage under 10 CFR Part 72, Subparts K and L, to identify potential enhancements to efficiency and effectiveness.
- As the use of CoCs, in lieu of site specific ISFSI licenses, has become more prevalent and frequent, implementation issues have been identified with the process.

Background

As identified in Licensing Program Improvement Issue 3, there formerly existed no process to make either substantive or non-substantive changes to approved Certificates of Compliances (CoC) or their amendments identified in 10 CFR 72.214. The framework for requesting new CoCs and amending CoCs is provided in 10 CFR Part 72, Appendix L. The processes recommended for administering substantive and non - substantive changes do not require amending 10 CFR Part 72 via rulemaking and can be incorporated within the existing 10 CFR Part 72 regulatory framework.

Background- Types of Changes

- Substantive – Relating to, containing, or being essential element of a thing having independent function, resources, or existence of substantial quantity; involving matters of major or practical importance to all concerned.
- Non – substantive - The opposite of substantive. Editorial and administrative changes. Minor technical or regulatory corrections to a CoC that do not change the basis of a previously approved NRC evaluation, but cannot be made within the framework of 10 CFR 72.48.

Background- Continued

- Proposed Rule- 54FR19379 –Storage of Spent Nuclear Fuel in NRC Approved Storage; Casks at Nuclear Power Reactor Sites
- The basis of the 10 CFR Part 72, Appendix K, “General License for Storage of Spent Fuel at Power Reactor Sites,” lies in section 218(a) of the Nuclear Waste Policy Act of 1982.

"The Secretary [of DOE] 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 NWPA states, in part, that "the Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 218(a) for use at the site of any civilian nuclear power reactor."

Proposed Rule - Under the statements of consideration – Cask Certification

“A spent fuel storage cask will be relied on to provide safe confinement of radioactive material independent of a nuclear power reactor's site, so long as conditions of the Certificate of Compliance are met. The storage cask approval program, in many respects, will be analogous to that now conducted for spent fuel casks approved for transportation under 10 CFR Part 71. A cask vendor will submit a safety analysis report showing how the cask design, fabrication, and testing will ensure adequate protection of public health and safety. Certificates of Compliance will be exhibited in a NUREG report [NUREG 1419], which will be made available to the public.”

The only difference between the Part 71 and Part 72 programs is identified better in 55 FR 19181, July 18, 1990:

Specifically, the comment and response no. 1 on page 29182 states "... hearing processes do not apply when issues are resolved generically by rulemaking. Under this rule, casks will be approved by rulemaking and any safety issues that are connected with the casks are properly addressed in that rulemaking rather than in a hearing procedure."

Additionally, on pg. 29184, comment and response No. 6:

“The initial step would be taken by a cask vendor submitting an application for NRC approval of a cask design. The NRC would review the cask safety analysis report (SAR) and other relevant documents. If the cask design is approved, the NRC would initiate a rulemaking to amend 10CFR 72.214 to add certification to the cask design. The NRC would also revise the NUREG containing the Certificates of Compliance for all approved storage casks to add the new cask’s Certificate of Compliance.”

It appears that although the definition of *Cask* in 10 CFR Part 72 includes cask systems, a CoC was intended to be Cask based similarly to 10 CFR Part 71. In other words, a CoC is intended to be cask based, and not system based. It appears the intent was that if a new cask (even for a similar system) is proposed, a new CoC should have been required. This does not imply that a separate SAR would have to be created to support a separate CoC. It seems that any non design (non-substantive) changes were to be accomplished through a revision process similar to the 10 CFR Part 71 without going through rulemaking.

Maintaining a comprehensive NUREG-1419 was an essential part of this strategy.

NUREG - 1419 to contain

- (1) CoCs for all approved dry spent fuel storage casks.
- (2) Summary reports of each approved cask model.
- (3) A list of cask users, and
- (4) A list of cask locations.

Concerns with Current Implementation

- Amendment conditions do not apply to previously approved CoCs or amendments.
- Resource implications associated with rulemaking for non-substantive issues.
- Increased use of exemptions by general licensees waiting for new amendments.

Proposed Correction Process

- Process for making non-substantive changes to CoC's and existing amendments.
- The Administrative Procedures Act does allow for these types of [technical] changes to rules within the Code of Federal Regulations to be made without a comment process. A notice still has to be provided in the *Federal Register* identifying the changes to the rule.

Process Details

- SFST develops the CoC or amendment non-substantive corrections and submits to Rulemaking.
- SFST issues corrected package to CoC holder and requests acknowledgement of incorporation from the CoC holder back to the NRC within 90 days.
- Rulemaking processes the FRN to revise 10 CFR 72.214 by adding the phrase “as corrected on [Date issued to CoC holder]”
- ADM processes the FRN through publishing.
- The corrected CoC information is incorporated into NUREG -1419.

Proposed Revision Process

Used for making substantive changes to CoCs or amendments.

Similar to the current rulemaking process for CoC amendments (i.e.- does go through a comment process).

Process Details

- (a) Direct and Final Rule FRN is published to revise 10 CFR 72.214 by adding the phrase “as revised on [Date the rule change is effective]” after the CoC number or amendment. The CoC or amendment number will not be changed.
- (b) Rule change becomes final after 75 days if no comments are received.
- (c) SFST issues the revised package to CoC holders and requests acknowledgement of distribution and incorporation action from the CoC holders back to the NRC within 90 days.
- (d) The corrected CoC information is incorporated into NUREG-1419.

Additional Administrative Actions

- Develop and issue generic guidance.
- Update and issue NUREG-1419 with information current to 12/31/2012.
- NRC to revise SFST, FSME, OGC, and ADM Office Instructions.
- Implement training for internal and external stakeholders.
- Enlist stakeholders to review and comment on further administrative process changes.

Stakeholders

- NRC - Spent Fuel Storage and Transportation
- NRC - Office of Administration
- NRC - Office of Federal and State Materials and Environmental Management Programs
- NRC - Office of General Counsel
- Nuclear Energy Institute
- CoC Holders
- CoC users group

Comments

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