

No. 19-56531

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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IN RE PUBLIC WATCHDOGS,  
*Plaintiff-Appellant,*

v.

SOUTHERN CALIFORNIA EDISON  
COMPANY, et al.,  
*Defendant-Appellee.*

On Appeal from the United States District Court  
for the Southern District of California  
No. 19-cv-1635- JLS (MSB)  
Hon. Janis L. Sammartino

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**ANSWERING BRIEF OF APPELLEES  
SOUTHERN CALIFORNIA EDISON COMPANY,  
SAN DIEGO GAS & ELECTRIC COMPANY, HOLTEC  
INTERNATIONAL, AND SEMPRA ENERGY**

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**HOLTEC INTERNATIONAL INC's CORPORATE DISCLOSURE  
STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 Holtec International, Inc. states that are no parent corporations of Holtec and no publicly traded companies that own 10% or more of Holtec International's stock.<sup>1</sup>

Dated: March 31, 2020

Respectfully submitted,  
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<sup>1</sup> Appellees SCE, Sempra and SDG&E made their 26.1 disclosures in their Opposition to appellants' motion to expedite the briefing schedule. Dkt. 9 at ii.

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## INTRODUCTION

This case is one of several administrative petitions and civil actions filed by appellant challenging the decisions, certifications and enforcement by the Nuclear Regulatory Commission (“NRC”) concerning the storage of spent nuclear fuel at the San Onofre Nuclear Generating Station (“SONGS”). Here, appellant sued the NRC under the Administrative Procedures Act (“APA”) asserting that its final orders and decisions, some of which date back to 2015, are unlawful. Appellant also sued private parties asserting claims under the Price-Anderson Act (42 U.S.C. §2210(n)(2)) (the “PAA”) (indemnity after release of radiation), for public nuisance and products liability based upon the same NRC orders.

In dismissing the action, the District Court correctly determined that it lacked jurisdiction over appellant’s challenges to the NRC’s actions. Under the Hobbs Act, *courts of appeals* have initial subject matter jurisdiction over petitions for review of “all final orders” of the NRC “made reviewable by” 42 U.S.C. §2239.

Section 2239(b) governs review of “[a]ny final order entered in any proceeding of the kind specified in subsection (a) of this section,” including orders “granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees.”

Based upon its thorough assessment of the First Amended Complaint (“FAC”), the District Court concluded that this lawsuit challenges final licenses and certifications of the NRC authorizing the storage of spent nuclear fuel at SONGS. The FAC amply supports this conclusion:

- “[t]he NRC’s grant of the SONG Defendants’ application for a License Amendment [in July 2015] was in violation of the Administrative Procedures Act.” ER-245 (FAC ¶101.)
- “Since the [July 2015] License Amendment, Defendant NRC has periodically taken *final action* on various requests by the SONGS Defendants to continue the removal of SNF [spent nuclear fuel] from wet storage and burial in defective canisters, including by *accepting amendments to certificates of compliance and granting exemptions from other statutory and regulatory requirements* (. . . “Other Agency Actions”). *Id.* at ¶102. (emphasis added)
- [The NRC] “failed to fulfill the procedural and adjudicative rule-making requirements” with respect to the License Amendment and Other Agency Actions. *Id.* at ¶104.
- “The License Amendment and Other Agency Actions...were arbitrary, capricious, an abuse of discretion, and otherwise [not lawful]...” ER-247 (FAC at ¶105).

- Consequently, “[t]he NRC . . . has acted...in excess of its authority.”  
(*Id.* ¶106).

Because the FAC attacks final orders and other actions of the NRC, the court below correctly determined that it lacked jurisdiction over the claim against the NRC. Appellant’s own actions acknowledge as much.

When confronted with the motion to dismiss, appellant commenced an original action in the Ninth Circuit *seeking the very same relief sought here*. And when faced with the argument that appellant failed to exhaust its administrative remedies before the NRC, appellant filed a petition before the NRC *seeking that same relief*. Even more recently, appellant filed another petition before the NRC.

Recognizing the potential for conflicting and inconsistent decisions created by appellant’s multiple filings before different tribunals, the District Court observed:

“The Court is troubled by Plaintiff’s decision to seek the same relief—a temporary cessation of the decommissioning efforts at SONGS—simultaneously before this Court, the NRC, and the Ninth Circuit. Plaintiff’s scattershot approach has resulted in duplicative review of issues that may be rendered moot by the NRC’s action on Plaintiff’s 2.206 petition.” ER-21.

The District Court also properly dismissed the claims against Southern California Edison, San Diego Gas & Electric, Sempra Energy, and Holtec International (collectively referred to herein as the “Private Appellees”). As with the claim against the NRC, the District Court found that the public nuisance and

PAA claims arise out of the licensing, regulation and enforcement decisions of the NRC.

“Ultimately, these causes of action [against the “private defendants”] all trace back to actions that were taken pursuant to or that were incidental to the NRC’s issuance of the July 2015 License Amendment or the certificate of compliance for the Holtec canisters, actions that must be challenged before the Ninth Circuit pursuant to the Hobbs Act.” ER-24-25.

Appellant’s opening brief misrepresents the record below, and conspicuously avoids any discussion of the Ninth Circuit cases followed by the court below. First, as to the public nuisance claim, appellant argues that the District Court wrongly found preemption under Price-Anderson Act. The District Court’s order made no finding of preemption under the PAA. Instead, the trial court found that appellant’s state law claims are preempted by the Atomic Energy Act. ER-31.

Second, appellant argues that the sole basis for the court’s rejection of the Price Anderson Act claim was the absence of bodily injury. In fact, the District Court dismissed appellant’s PAA claim because Plaintiff failed to allege *exposure to radiation in excess of the federal limits caused by defendants* or that Plaintiff or any of its members have suffered physical harm. ER-30 (emphasis added). Without an actual injury or a release of radiation in excess of the federal limits, controlling case law provides that there are no claims under the Price Anderson Act or for public nuisance.

The District Court correctly dismissed the action, and this Court should affirm the judgment.

### **JURISDICTIONAL STATEMENT**

Private Appellees agree that this Court has jurisdiction to review the matters decided by the District Court pursuant to 28 U.S.C. §1291. Appellees disagree, however, with the balance of the lengthy jurisdictional statement in appellant's opening brief.

Appellant incorrectly that this Court has appellate jurisdiction here because “the claims raised below did not challenge a final order of the U.S. Nuclear Regulatory Commission that granted, suspended, revoked, or amended a license” and therefore “the District Court was not deprived of jurisdiction by the Hobbs Act.” Opening Brief at 1. As discussed below, the District Court correctly held that it did not have jurisdiction over this dispute under the Hobbs Act because appellant challenges NRC orders, licenses, certifications, and enforcement actions, including the 2015 License Amendments and Certification of the Holtec System, and Appellees' conduct undertaken with the permission and authority of the NRC.

Under the Hobbs Act, such challenges must first be brought to the NRC. The Courts of Appeal have original jurisdiction to hear any direct or indirect challenges to NRC orders. *Gen. Atomics v. United States Nuclear Regulatory Comm'n*, 75 F.3d 536, 539 (9th Cir. 1996). The Hobbs Act is broad and



encompasses conduct “preliminary or incidental to licensing” as “Congress intended to provide for initial court of appeals review of all final orders in licensing procedures, regardless of whether a formal hearing was ever initiated.” *Id.* It is indisputable that this action should have been commenced initially in the Ninth Circuit—not the District Court. *Nat. Res. Def. Council v. United States Nuclear Regulatory Com.*, 196 U.S. App. D.C. 354, 606 F.2d 1261, 1265 (1979) (“Exclusive jurisdiction in the courts of appeals over such orders will eliminate unnecessary duplicative review and the delay and expense incidental thereto.”).

### **STATUTORY AND REGULATORY AUTHORITIES**

Except for the following submitted in Appellees’ Addendum, all applicable statutes, etc., are contained in the addendum of appellant.

### **ISSUES PRESENTED**

1. Whether the District Court correctly found that it lacked jurisdiction over appellant’s claims that challenge the final orders and discretionary enforcement decisions of the NRC given that the Hobbs Act vests initial subject matter jurisdiction over such matters in the circuit courts?
2. Whether the District Court correctly dismissed appellant’s Price Anderson Act claim where, appellant failed to allege that it suffered “physical harm to persons or property” or was exposed to radiation in excess of federal dose limits as required by statute and controlling Ninth Circuit case law?

3. Whether the District Court correctly ruled that, under the Atomic Energy Act, the federal government occupies the fields of nuclear safety and the storage and disposal of nuclear materials such that the AEA preempts appellant's claim for public nuisance under California law?
4. Whether the District Court correctly dismissed the public nuisance claim because appellant failed to allege a special injury as required by Cal.Civil Code §3493?
5. Whether the District Court correctly dismissed the public nuisance claim because the claim challenges actions taken pursuant to licenses and certificates issued by the NRC?

## **STATEMENT OF THE CASE**

### **I. FACTUAL BACKGROUND**

#### **A. Regulation under the AEA**

The Atomic Energy Act (“AEA”) comprehensively regulates the field of nuclear energy, including the safe storage of radioactive materials like spent fuel. The AEA regulates three different kinds of radioactive materials: “source” material, “special nuclear material”, and “byproduct material.” 42 U.S.C. §§ 2014(e), (z), and (aa), and 2091. The spent nuclear fuel at issue here is made of both “special nuclear material” and “byproduct material.”

The NRC is an independent regulatory agency established by Congress in 1974 and has exclusive jurisdiction to license and regulate civilian use and storage of radioactive materials to protect the environment, public health and safety, and the exclusive responsibility for setting and enforcing radiological health and safety requirements for nuclear power plants. The Energy Reorganization Act of 1974, 42 U.S.C. §5841; 42 U.S.C. §2201(b) and (i)(3); 10 CFR §1.11(b); *see also* Supplemental Excerpts of Record (“SER”) 717 (The 2019-2020 U.S. Nuclear Regulatory Commission Information Digest (“NRC Info. Digest”), NUREG-1350, Vol. 31). The NRC is the sole administrative agency responsible for licensing and regulating the storage of civilian spent fuel in the United States. *See* AEA §§101-103, 161, 182, 186, 42 U.S.C. §§2131-2133, 2201, 2232, 2236.

The NRC has established regulatory requirements and procedures governing the storage of spent nuclear fuel. *See* 10 CFR Parts 50 and 72 *et seq*; SER-351-53 at (NRC, “Safety of Spent Fuel Storage” (“Spent Fuel Storage”), NUREG/BR-0528). The NRC has concluded that storing spent fuel in (1) spent fuel pools (wet storage), and (2) dry cask or canister storage (like the Holtec System in issue here) are both safe and acceptable methods for storing spent fuel. SER-783-788 (NRC Info. Digest at 68-73). Dry storage systems are “typically made of leak-tight, welded, and bolted steel and concrete surrounded by another layer of steel or concrete.” SER-783. The canisters are an integral component of Independent

Spent Fuel Storage Installations (“ISFSI”). *Ibid.*

Under 10 C.F.R. §72.210, the NRC issues a general license for the storage of spent fuel in an ISFSI to licensees already authorized to possess or operate a nuclear power reactor under either Part 50 or 52. A general license is subject to the conditions listed in 10 C.F.R. §72.212. The licensee is required to conform to the terms, conditions, and specifications of any dry storage system being used which are contained within the Certificate of Compliance (“CoC”) for those systems. *See* 10 CFR §72.214 (listing approved spent fuel storage systems); 10 CFR §72.210 (granting a general license); 10 CFR §72.212 (providing conditions for use of the general license); *see also* SER-783-788 (NRC Info. Digest at 68-73.)

The NRC licenses dry storage systems and regulates where and how that system may be used. *See e.g.* 10 CFR §72.214. NRC staff with relevant scientific and engineering expertise review each application. The NRC regulates the vendors who design, fabricate and build spent fuel storage facilities to ensure that the storage systems meet NRC regulations. SER-353 (Spent Nuclear Fuel Storage, at 3). By NRC regulation, storage canisters must: (1) maintain confinement of the spent fuel; (2) prevent nuclear fission (the chain reaction that causes a reactor to produce heat); (3) shield people and the environment from radiation; (4) allow for the retrieval of the spent fuel, if necessary (for later transfer to a different storage facility); and (5) resist natural threats such as earthquakes, tornadoes, floods, and

temperature extremes. SER-352 (*Id.* at 2.)

In reviewing applications for CoCs, the NRC conducts technical evaluations in several areas, including: (1) canister materials (the mechanical and physical properties of the canisters, including consideration of how materials degrade over time); (2) the structural design in order to confirm the canisters will be durable and stable enough to perform safety functions under credible loads for normal conditions as well as during accidents, natural events, and abnormal conditions that might occur; (3) confinement (e.g., design must prevent release of radioactive material and keep fuel in a protected environment); and (4) radiation shielding (e.g., designs must meet regulatory limits on radiation doses at site boundaries under normal and accident conditions). SER-354-361 (*id.* at 4-11). The NRC will approve only those systems that meet its stringent requirements. SER-353 (*Id.* at 3); *see also* 10 CFR §72.236.

In sum, pursuant to licenses issued under 10 CFR Part 50, nuclear power reactor licensees are authorized to store spent fuel onsite in dry storage systems certified by the NRC in accordance with the conditions set forth in the applicable CoC. *See* 10 CFR §72.212 (Part 50 licensees must “[e]nsure that each cask used by the general licensee conforms to the terms, conditions, and specifications of a CoC or an amended CoC listed in §72.214.”). The NRC also inspects and oversees the activities of its licensees to ensure compliance with safety requirements and

NRC regulations. *See e.g.* SER-718, 741-53 (NRC Info. Digest at 3, 26-38); *see also* ER-246, (FAC at ¶103) (NRC responsible for “administrative oversight and management of nuclear facilities.”).

#### **B. Storage Of Spent Nuclear Fuel At SONGS Under NRC Licenses**

Three nuclear power reactors (Units 1, 2 and 3) were constructed and operated at SONGS pursuant to permits and licenses issued by the NRC in accordance with 10 CFR Part 50. SER-151-322. The NRC issued three separate Facility Operating Licenses—one for each unit. *Ibid.* Each Part 50 Facility Operating License grants SCE the right to possess and store spent fuel at SONGS. Because SCE opted to discontinue all power generation at SONGS, the NRC approved changes to the Part 50 licenses for Units 2 and 3 via license amendments in 2015. The amended licenses continue to allow for the possession and storage of spent fuel at SONGS. *See, e.g.* SER-15, 22 (Complaint at Ex. 22, at 15 (condition 2.B.(3) of Amendment 230) and 22 (condition 2.B.(3) of Amendment 223) (allowing “SCE, pursuant to the Act and 10 CFR Part 70, to possess at any time special nuclear material that was used as reactor fuel....”).

The NRC review that resulted in the 2015 License Amendment was open to public comment and intervention under federal regulations. *See* 10 CFR §50.91. In accordance with 42 U.S.C. §2239(a)(2), on 9/14/14, the NRC published notice that members of the public had the right to challenge the proposed license

amendments for Units 2 and 3 and request a hearing before the NRC. SER-324-25, 330 (79 Federal Register (“FR”) 55,507, 55,508, 55,513 (Sept. 16, 2014)); *see also* SER-335, 345 (80 FR 46,345, 46,355 (Aug. 30, 2015)). Requesting a hearing on the amendments was a matter of right. SER-344 (*id.* at 46354 (no comments related to “significant hazards” were received.)).

### **C. The Holtec System Certified For Use At SONGS**

Here, appellant challenges the use of the Holtec System at SONGS. ER-250, 253, 255-56 (FAC at ¶¶116, 121, 128-135). The NRC approved the Holtec System used at SONGS by granting a CoC after review and consideration. SER-396-501 (CoC No. 72-1040 Amendment 2); *see also* SER-371-77 (80 FR 12,073) (codified at 10 CFR §72.214); SER-378-87 (CoC No. 1040, Amendment No. 1, 80 FR. 35,829 (direct final rule confirming enhanced seismic analysis.)); SER-388-395 (CoC No. 1040, Amendment No. 2) 81 Fed. Reg. 73,335 (October 25, 2016) (direct final rule adding new fuel types to the HI-STORM UMAX Canister Storage System)). Appellant had the right to provide comments concerning the NRC’s evaluation of the Holtec System before the CoC’s were issued. SER-371 (80 FR 12,073). Appellant failed to do so.

The Holtec System stores a “hermetically sealed canister containing [spent fuel] in an in-ground vertical ventilated module.” SER-512, (“Safety Evaluation Report” (“Safety Report”), issued with CoC No. 1040 at 2). The NRC’s Safety

Report documented the NRC's review and evaluation of whether the Holtec System meets the applicable requirements of 10 CFR Part 72 for storage of spent fuel and 10 CFR Part 20 for radiation protection. *Ibid.* As documented in the report, the NRC expressly analyzed (among many factors) the radiation protection, susceptibility to corrosion, and how the system would perform in an accident. SER-535-539, 547, 550 (*id.* at 25-29, 37, 40).

The NRC determined that the Holtec system “design is robust, and contains a number of layers of acceptable confinement systems in compliance with 10 CFR part 72 requirements.” SER-372-73 (80 FR 12074-75). In evaluating the “susceptibility to and effects of stress corrosion cracking and other corrosion mechanisms on safety significant systems,” the NRC concluded that the system “will safely store spent fuel and prevent radiation releases and exposure consistent with regulatory requirements.” SER-373 (*id.* at 12075). With respect to shielding and radiation protection, the NRC found that the “radiation shielding features are sufficient to meet the radiation protection requirements” of applicable regulations. SER-539 (Safety Report at 29). Ultimately, the NRC concluded that the Holtec System could be operated “without endangering the health and safety of the public.” SER-551 (*id.* at 41); *see also* SER-374 (80 FR 12074 (Holtec System meets NRC requirements and “therefore, adequate protection of public health and safety will continue to be ensured”)).



## II. PROCEDURAL HISTORY

### A. The Operative Complaint

On August 29, 2019, appellant filed this lawsuit, one of several proceedings brought by appellant to stop the decommissioning of SONGS and the transfer and storage of spent fuel at the site.<sup>2</sup> In the First Amended Complaint (“FAC”), appellant alleged that the transfer of spent fuel at SONGS from wet storage pools into the Holtec System is “risking the lives of millions of California residents” and creating “the prospect for irreparable harm to the environment.” ER-206 (FAC at ¶1). Appellant alleges “[s]evere problems with [the SONG] decommissioning plan” undertaken under NRC license. ER-228 (FAC at ¶54).

The gravamen of the FAC centers on Amendment Nos. 230 and 223 to the Operating Licenses for SONGS issued in 2015 (which appellant refers to as the “License Amendment”) ( SER-2-143), and the Holtec System used to store spent fuel at SONGS. The FAC alleges that “[w]ithout meaningful public participation or an independent assessment, on July 17, 2015, the NRC granted the SONGS Defendants’ request for a license amendment,” permitting them to “decommission the SONGS facility” ER-223 (FAC at ¶43). The FAC further alleges that the “selection of Holtec as the supplier of the spent fuel containment system (i.e.,

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<sup>2</sup> Appellant initially challenged the decommissioning plan by filing a 2017 lawsuit in based upon the same nucleus of facts alleged here. Public Watchdogs I at Dkt. 1. Faced with a motion to dismiss, Appellant voluntarily dismissed its amended

ISFSI and dry storage canisters) was done either recklessly or in conscious disregard for the integrity, safety, and competence issues” and that “[a]s a result, NRC’s decision to grant a License Amendment cannot be described as anything other than arbitrary, capricious, or otherwise contrary to law.” ER-227 (FAC at ¶52). Based on these allegations, appellant sued the NRC under the Administrative Procedures Act.

Based on the same facts, appellant asserted a PAA claim against the Private Appellees, claiming that “burying SNF in defective [Holtec] canisters that are destined to fail” constitutes a nuclear incident. ER-250 (FAC at ¶116). In addition, appellant asserted a claim for public nuisance under Cal.Civ.Code §§3479-3480, alleging that the Private Appellees are maintaining a public nuisance by “failing to investigate and replace the substandard [Holtec] canisters, which are currently used to store spent fuel” and that “[d]efendants intend to store additional spent fuel in these substandard canisters, despite the well-known defects that render these canisters insufficient for the task.” ER-253-54 (FAC at ¶121.)<sup>3</sup>

Appellant sought an injunction from the District Court to suspend the decommissioning of SONGS and any further transfer of spent fuel from wet storage into dry storage. ER-1186. The NRC and the Private Appellees opposed

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complaint. *Id.* at Dkt. 50.

<sup>3</sup> The District Court also dismissed a products liability claim against Holtec.

the motion for injunctive relief and moved to dismiss the FAC. *Public Watchdogs II* at Dkts. 36, 37, 41, 42, 47.

**B. Faced With A Motion to Dismiss, Appellant Filed A Petition With The NRC And Sought A Writ Of Mandamus From The Ninth Circuit**

On September 24, 2019, in apparent response to the motion to dismiss, appellant filed an NRC petition challenging its certification of the Holtec System under 10 CFR Section 2.206, and the NRC decisions allowing the transfer of spent fuel from wet storage into dry storage. SER-960-961 (September 2.206 Petition at ¶¶1 and 3); Opening Brief at 18-19.

On October 21, 2019, while the motions to dismiss in this case and the NRC petition were still pending, appellant then filed an original petition for writ of mandamus with this Court. That petition challenged (and sought to enjoin) the decommissioning of SONGS and the transfer of spent fuel into dry storage. SER-985-1028 (*Public Watchdogs v. NRC*, Dkt. 1-3). This Court denied appellant's writ petition thereby allowing the fuel transfer to continue while the NRC reviewed the petition. *Public Watchdogs v. NRC*, Dkt. 19.

**C. The District Court Correctly Dismissed The FAC With Prejudice**

On December 3, 2019, the District Court dismissed the FAC, and denied the

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Appellant is not challenging that dismissal. Opening Brief at 22.

motion for preliminary injunction finding that:

- The Court lacks subject matter jurisdiction because “the causes of action Plaintiff... alleges...are premised on conduct that falls under the Hobbs Act, thereby depriving this Court of jurisdiction” as “these causes of action all trace back to actions that were taken pursuant to or that were incidental to the NRC's issuance of the July 2015 License Amendment or the certificate of compliance for the Holtec canisters” and that the proper venue to initially bring such challenges is with the NRC in an administrative proceeding, with jurisdiction to review any reviewable subsequent NRC order vested exclusively in the Circuit Courts of Appeals pursuant to the Hobbs Act. ER-23-25.
- The PAA claim is fatally defective because appellant failed to allege that it suffered physical harm to persons or property as a result of an exposure to radiation in excess of federal dose limits. ER-29-30.
- Appellant’s public nuisance claim is preempted by the AEA because “Congress explicitly reserved to the NRC the responsibility to regulate ‘the disposal of . . . nuclear material as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission, and ‘activities for . . . protection against radiation hazards’” and

appellant’s “state law causes of action are predicated on potential radiation hazards that may result from the disposal of nuclear material.”

ER-31-33.

- Appellant cannot state a claim for public nuisance because appellant failed to allege that it suffered a special injury. The court below ruled that appellant’s “organization[al] mission... to ensure that government agencies and special interests comply with all applicable laws, including public safety and environmental-protection laws, especially in the public-utilities industry” is not a cognizable special injury under California public nuisance law. ER-34-35. The trial court also found that because the NRC expressly authorized the conduct of the Private Appellees, appellant has no claim for public nuisance. ER-36-37.<sup>4</sup>

#### **D. The NRC Preliminarily Denies Appellant’s First NRC Petition**

On December 18, 2019, the NRC preliminarily denied appellant’s 2.206 petition, but gave it the opportunity to supplement its petition before the Petition Review Board made a final recommendation to the NRC. *Public Watchdogs v.*

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<sup>4</sup> The District Court also granted Sempra’s motion to dismiss because of the “absence of any allegations concerning Sempra’s direct involvement in the actions underlying [Appellant’s] second and third causes of action or any allegations supporting the piercing of the corporate veil such that Sempra may be held liable for the actions of SDG&E [its subsidiary]”. ER-27-28. Appellant did **not** challenge this ruling in its opening brief, thereby waiving this issue. *Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999).

NRC, Dkt. 18-1 at 1-2. The NRC conducted a public meeting on January 21, 2020 to give appellant that opportunity.

**E. Appellant Files *Another* 2.206 Petition**

While its first 2.206 petition was pending, appellant filed yet another 2.206 petition “to immediately suspend decommissioning operations” based on a purported threat of flooding. Request for Judicial Notice (“RJN”) Ex. 1.<sup>5</sup> That petition is still pending.

**F. The NRC Denies Appellant’s First Petition**

On February 26, 2020, the NRC rejected appellant’s first petition. In explaining its ruling, the NRC stated that it “has continued to carefully regulate the licensee’s decommissioning activities at SONGS” and further confirmed that it reviewed and investigated the issues at the heart of appellant’s claims here. Further, the NRC found that:

- It previously “[p]erformed a thorough review” of the “[Holtec] UMAX Independent Spent Fuel Storage Installation (ISFSI) design used at SONGS, a design the NRC approved in 2017 through a public rulemaking” and found the Holtec System well-designed and safe. RJN Ex. 2 at 2 (Citing ADAMS Accession No. ML16341B061(attached to the

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<sup>5</sup> Private Appellees concurrently filed a Motion for Judicial Notice in support of

- RJN as Ex. 3)).
- After reviewing “the SONGS Post Shutdown Decommissioning Activities Report (ADAMS Accession No. ML15204A383),” the NRC found that the decommissioning activities are within the bounds of the “the previously issued NUREG-0586, ‘Final Generic Environmental Impact Statement [GEIS] on Decommissioning of Nuclear Facilities,’ and its supplements” and declared that it “did not find any deviations from the previously issued Environmental Statement for SONGS (ADAMS Accession No. ML18239A414).” RJN Ex. 2 at 3; RJN Exs. 5 and 6.
  - The NRC “is confident that the environment can be adequately protected, and all impacts bounded, during decommissioning activities at SONGS.” RJN Ex. 2 at 3.
  - The NRC previously considered, investigated and took enforcement action related to the summer 2018 incidents alleged in this case. *Id.* at 2; RJN Ex. 4 (November 2019 Report) and SER-643-93 (July 2019 Report).
  - The NRC’s “review and oversight actions included a detailed assessment of the significance of the events, specific enforcement actions, and subsequent consideration of the licensee’s corrective actions.” *Ibid.*

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this brief.

- The NRC had previously “verified...flood evaluation in the SONGS 10 CFR 72.212 report to qualify the use of the [Holtec System] at SONGS, and the NRC documented this in an inspection report (ADAMS Accession No. ML18200A400) and did not identify any issues as a result of its review of the flood evaluation for SONGS.” RJN Ex. 2 at 3.
- With regard to the scratches on and alleged damage to the Holtec canisters ER-235-236 (FAC at ¶¶66-68) the “NRC inspectors concluded that localized scratches (peak stresses) on the canisters are not a safety concern” and “evaluations were adequate to demonstrate that canister scratches from incidental contact for previous and future canisters, will continue to meet the confinement design functions as specified in the UMAX Final Safety Analysis Report and ASME Code Section III canister wall thickness tolerances.” *Id.* at 2
- The NRC found that SCE had demonstrated to the satisfaction of the NRC that the spent fuel stored at the Holtec System is retrievable. *Id.* at 3; RJN Ex. 7.

In short, the NRC reaffirmed its prior decisions and orders and declared that it “remains confident that reasonable assurance of adequate protection of the public health and safety can be maintained for as long as fuel is stored in accordance with the requirements of the SONGS license, the certificate of compliance for the



UMAX system (and any other licensed systems that may be implemented in the future at the SONGS site), and other applicable requirements.” *Id.* at 2.

### **SUMMARY OF THE ARGUMENT**

This Court should affirm the District Court’s order dismissing the action, and denying the motion for preliminary injunction. First, the District Court correctly held that it lacked subject matter jurisdiction over the Administrative Procedures Act claim against the NRC, and over the Price Anderson Act and public nuisance claims against the Private Appellees. 42 U.S.C. §2239. The District Court correctly ruled that the APA claim is subject to the original subject matter jurisdiction of the circuit courts under the Hobbs Act.

Second, the District Court correctly found that, although styled as claims under the PAA and for public nuisance, appellant’s claims against the Private Appellees are challenges to the final decisions and orders of the NRC. As such, the District Court properly ruled that original jurisdiction over these claims lies in the circuit courts.

Third, the District Court correctly ruled that the Appellant’s PAA claim failed to allege facts sufficient to state a claim. Appellant did not, and cannot, allege that it (or anybody else) has suffered any “bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of

source, special nuclear, or byproduct material” as a result of any exposure to radiation in excess of federal limits.

Fourth, the District Court correctly ruled that the public nuisance claim is preempted by the AEA which preempts all state laws affecting the regulation of the possession and storage of spent nuclear fuel at SONGS. Because appellant’s opening brief fails altogether to address this issue, it is waived on appeal.

Fifth, the District Court correctly ruled that the public nuisance claim fails to state a claim because appellant did not (and cannot) allege that it suffered a special injury to its person or property—an express requirement of California Civil Code §3493. Instead, appellant alleged a purported injury to its “organization[al] mission” that relevant parties follow the law. ER-254-55 (FAC at ¶124). The District Court correctly ruled that this type of injury is neither the kind of injury to property or persons cognizable under California law, nor different in kind from the kind of concerns Southern Californians have in general.

Finally, the District Court properly found that the public nuisance is barred by California Civil Code §3482 because the conduct challenged by appellant has been undertaken pursuant to NRC licenses and regulation—an express exception to California’s public nuisance law.

## ARGUMENT

### **I. THE DISTRICT COURT CORRECTLY FOUND THAT IT DID NOT HAVE SUBJECT MATTER JURISDICTION OVER APPELLANT'S CLAIMS**

#### **A. Standard Of Review**

This Court reviews *de novo* the District Court's dismissal for lack of subject matter jurisdiction under Rule 12(b)(1). *Bishop Paiute Tribe v. Inyo Cty.*, 863 F.3d 1144, 1151 (9th Cir. 2017). Arguments not raised before the District Court are waived as are issues and arguments not raised in the opening appellate brief. *O'Guinn v. Lovelock Corr. Ctr.*, 502 F.3d 1056, 1063 n.1 (9th Cir. 2007); *Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999). This Court may affirm the District Court's decision on any grounds even if not the basis of the trial court ruling. *Cigna Property and Cas. Ins. Co. v. Polaris Pictures Corp.*, 159 F.3d 412, 418 (9th Cir. 1998).

Appellant "bears the burden of establishing subject matter jurisdiction on a motion to dismiss for lack of subject matter jurisdiction." *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 546 F.3d 981, 984 (9th Cir. 2008) Motions to dismiss may challenge jurisdiction facially or factually. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). Where the defendant challenges the jurisdiction factually, the court need not accept the allegations as

true and may instead make factual determinations. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). “In ruling on a challenge to subject matter jurisdiction, the district court is ordinarily free to hear evidence regarding jurisdiction and to rule on that issue prior to trial, resolving factual disputes where necessary.” *Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir. 1983). The District Court’s findings of fact relevant to its determination of subject matter jurisdiction are reviewed for clear error. *See Prather v. AT&T*, 847 F.3d 1097, 1102 (9th Cir.).

**B. The District Court Properly Found That It Lacks Jurisdiction  
Over The Claims Against The Private Appellees**

In dismissing the APA claim brought against the NRC, the District Court correctly found that it “lacks jurisdiction over Plaintiff’s challenges related to the July 2015 License Amendment and the Certificate of Compliance for the Holtec system both of which are final orders of the NRC relating to the grant or amendment of a license for purposes of the Hobbs Act.” ER-20. The Court found that “the causes of action [plaintiff] alleges [against the Private Defendants]... are premised on conduct that falls under the Hobbs Act, thereby depriving this Court of jurisdiction” because “these causes of action all trace back to actions that were taken pursuant to or that were incidental to the NRC’s issuance of the July 2015 License Amendment or the certificate of compliance for the Holtec canisters.” ER-22, 24-25.

On appeal, appellant contends that the District Court erred in reaching its conclusion because appellant is not directly challenging any NRC final orders via the PAA or nuisance claims. Opening Brief at 23, 27-30, 34-37. Appellant's FAC discloses otherwise.

The "court of appeals has exclusive jurisdiction to enjoin, set aside, suspend (in whole or part), or to determine the validity of orders of the NRC made reviewable by 42 U.S.C. §2239." *Honicker v. Hendrie*, 465 F.Supp. 414, 418 (M.D. Tenn. 1979) (suit seeking an injunction ordering NRC to revoke the licenses of all nuclear fuel cycle facilities falls within the jurisdiction of the Hobbs Act); 28 U.S.C. 2342(4). The Price Anderson Act and public nuisance claims fall squarely within the jurisdictional mandate of the Hobbs Act:

- [T]he selection of Holtec as the supplier of the SNF containment system (i.e. ISFSI and SNF canisters) was done either recklessly or in conscious disregard for the integrity, safety, and competence issues that have swirled around Holtec for many years... As a result, NRC's decision to grant a License Amendment cannot be described as anything other than arbitrary, capricious, or otherwise contrary to law." ER-227 (FAC ¶52).

- “[T]he design of the Holtec canisters the SONGS Defendants are using to store the spent nuclear fuel deviates from the acceptable minimum safety thresholds[.]” ER-229 (FAC ¶56).

Based upon these factual allegations, appellant alleges:

- By “burying of SNF in defective [NRC-Certified Holtec] canisters that are destined to fail” Private Appellees “have caused an ‘occurrence’ and thereby created a ‘nuclear incident’ ER-250 (FAC at ¶116) (PAA Claim); and
- The decommissioning plan and SONGS Defendants “inten[tion] to store additional SNF [pursuant to the 2015 License Amendment] in these substandard canisters, despite the well-known defects that render these canisters insufficient for the task” constitute a nuisance. ER-253-54 (FAC at. ¶121).

In an effort to avoid the circuit court’s exclusive jurisdiction over these allegations, appellant asserts that “the Hobbs Act [is] a jurisdiction-splitting statute that [only] applies to a narrow category of actions taken by the NRC.” Opening Brief at 35. The U.S. Supreme Court has made clear, however, that “[i]n the absence of specific evidence of contrary congressional intent . . . review of orders resolving *issues preliminary or ancillary* to the core issue in a proceeding should be reviewed in the same forum as the final order resolving the core issue.” *Fla.*

*Power & Light Co. v. Lorion*, 470 U.S. 729, 743 (1985) (denial of a 2.206 petition within the scope of the Hobbs Act.) The Ninth Circuit has ruled that *Lorion* is “to be read broadly to encompass all final NRC decisions that ***are preliminary or incidental to licensing***. Congress intended to provide for initial court of appeals review of all final orders in licensing procedures, regardless of whether a formal hearing was ever initiated.” *Gen. Atomics*, 75 F.3d at 539 (emphasis added). In *General Atomics*, this Circuit held that claims challenging NRC orders concerning decommissioning costs of a nuclear facility were subject to the Hobbs Act because they were related to the NRC’s licensing authority and subject to an ongoing NRC proceeding. *Id.*

Under applicable case law, the District Court properly found that appellant’s claims constitute challenges to orders of the NRC and subject to the Hobbs Act. Appellant’s claims take issue with the licensing, certifications, supervision and enforcement decisions of the NRC. In this action (as in its NRC petitions), Appellant attacks the use of the Holtec System certified for use at SONGS, the transfer and storage of spent fuel licensed by the NRC, and the SONGS decommissioning plan carried out under NRC regulations and oversight.

Appellant offers **no** Ninth Circuit or relevant Supreme Court authority that would change the District Court’s application of *Lorion* or *General Atomics*. Strangely, appellant points only to the concurring opinion in *PDR Network, LLC v.*

*Carlton & Harris Chiropractic*, 139 S. Ct. 2051, 2059 (2019). Concurring opinions have no binding precedential value. *Maryland v. Wilson*, 519 U.S. 408, 413 (1997). Even if they did, the issue addressed in that concurring opinion has nothing to do with the facts here.

The question presented in *PDR Network* was whether the Hobbs Act strips district courts of jurisdiction to reconsider the validity of an agency's legal interpretation of certain statutes. The Supreme Court did not decide this issue, but instead remanded the case to the Fourth Circuit to make two preliminary determinations (whether the FCC's 2006 order is a legislative or interpretive rule under the Administrative Procedure Act, and whether PDR Network had a "prior" and "adequate" opportunity to seek judicial review of the FCC's 2006 order, as required by Section 703 of the APA). The concurring opinion of Justices Gorsuch and Thomas addressed the question of whether "Congress can constitutionally require federal courts to treat agency orders as controlling law without regard to the text of the governing statute." *PDR Network*, 139 S. Ct. at 2056-67. The concurrence did not address whether a District Court has original jurisdiction to hear a challenge to an NRC order which is one of the issues at bar. *Id.* at 2056-67.

Next, appellant argues that challenges to NRC orders brought against *private* defendants fall outside of the Hobbs Act. As an initial matter, appellant did not oppose dismissal for lack of subject matter jurisdiction on this basis. ER-154-155



(Oppo. at 8:6-9:15). Because appellant did not raise this issue in the court below, this argument has been waived on appeal. *O’Guinn* 502 F.3d at 1063.

For purposes of jurisdiction under the Hobbs Act, it makes no difference that appellant sued the Private Appellees. *See e.g. City of West Chicago, Illinois v. United States Nuclear Regulatory Comm’n*, 542 F.Supp. 13, 15 (N.D. Ill. 1982) (no jurisdiction to hear a challenge to Kerr-McGee Chemical Corporation’s NRC licensed decommissioning of a nuclear site and dismissing claims against *Kerr-McGee*)<sup>6</sup>; *Simmons v. Ark. Power & Light Co.*, 655 F.2d 131, 134 (8th Cir. 1981) (District Court without jurisdiction to hear claims against private defendant because “exclusive jurisdiction was with the United States Courts of Appeals.”); *Liesen v. La. Power & Light Co.*, 636 F.2d 94, 95 (5th Cir. 1981) (district court without jurisdiction to hear challenge to a private defendant’s construction of a nuclear generator); *Nader v. Ray*, 363 F.Supp. 946, 953 (D.D.C. 1973) (dismissing claims against private defendants because the “case involves highly complex matters of nuclear reactor technology which, under the doctrine of primary jurisdiction, should be resolved in the first instance by the [NRC]”).

Appellant cannot avoid through artful pleading the judicial review provided by the Hobbs Act. *Am. Bird Conservancy v. FCC*, 545 F.3d 1190, 1194 (9th Cir.

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<sup>6</sup>Affirmed by *W. Chi. v. United States Nuclear Regulatory Com.*, 701 F.2d 632, 652 n.21 (7th Cir. 1983) (“where final agency action brings an order within the ambit of 28 U.S.C. §2342(4), the district court has no concurrent jurisdiction.”))

2008) (plaintiff could not escape Hobbs Act by disguising a challenge as a claim under Endangered Species Act). In *Am. Bird Conservancy*, the Ninth Circuit decide the narrow question of whether the district court had subject matter jurisdiction under the citizen-suit provision of the Endangered Species Act. *Ibid.* In affirming the District Court’s dismissal, this Court observed that “[i]n analogous contexts, we have concluded that a plaintiff may not escape an exclusive avenue of judicial review through artful pleading.” *Id.* (citing *Cal. Save Our Streams Council v. Yeutter*, 887 F.2d 908, 911 (9th Cir. 1989)).

The holding in *Yeutter* is instructive. In *Yeutter*, the Federal Energy Regulatory Commission (“FERC”) granted Alternative Energy Resources (“AER”) a license to construct and operate a hydroelectric power facility. *Yeutter*, 887 F.2d at 908-09. Like appellant here, plaintiff Save Our Streams Council challenged the license through a complaint filed in district court seeking injunctive and declaratory relief to stop conduct authorized under the license. *Id.* The district court found that it lacked subject matter jurisdiction because original jurisdiction rested with the circuit courts under the operative statute, even though plaintiff alleged claims against parties other than the permitting agency:

[I]t is clear that the suit is an attempt to restrain the licensing procedures authorized by FERC...and we do not believe that the jurisdictional remedy prescribed by Congress hangs on the ingenuity of the complaint. ... The point of creating a special review procedure in the first place is to avoid duplication and inconsistency. It

provides a single and expeditious procedure for resolving licensing disputes. Appellants' theory would resurrect the very problems that Congress sought to eliminate.

*Id.* at 912; *see also Pac. Power & Light Co. v. Bonneville Power Admin.*, 795 F.2d 810, 816 (9th Cir. 1986) (citing *Cf. FCC v. ITT World Communications*, 466 U.S. 463, 468-469 & n.5 (1984) (litigants may not evade judicial review scheme by attacking the results of statutorily authorized actions instead of attacking agency action directly)); *see also Skull Valley Band of Goshute Indians v. Leavitt*, 215 F.Supp. 2d 1232, 1252 (D. Utah 2002) (“Pursuant to [Hobbs Act], the proper forum for the review of issues concerning the NRC’s authority to license the proposed PFS facility *or* the propriety of such a license is the federal courts of appeals...”); *Macias v. Kerr-McGee Corp.*, 1993 U.S. Dist. LEXIS 14319, at \*13 (N.D. Ill. Oct. 8, 1993) (“Any attempt by Kerr-McGee to alter the state's decision not to allow removal and storage is an attack upon the outcome of an NRC decision related to licensing and exclusive jurisdiction over the challenge is in the court of appeals.”); *cf. Sunflower Coal. v. Nuclear Regulatory Com.*, 534 F.Supp. 446, 448 (D. Colo. 1982).

Appellant’s claims challenge licenses and certifications of the NRC, and conduct expressly licensed and certified pursuant to final orders of the NRC. These include (1) the 2015 License Amendment (which continues to allow storage of spent fuel at SONGS in dry storage systems certified by the NRC) ER-247 (FAC

¶105); (2) the Holtec CoCs codified in 10 CFR §72.214 (which allow the use of the Holtec System to store spent fuel at SONGS) ER-228-232, 250, 253-54 (FAC ¶¶55-59, 116, 121); (3) NRC discretionary enforcement decisions and actions ER-240-43, 251-52) (FAC ¶85-94, 120); and (4) conduct under the NRC’s direct oversight over the transfer of spent fuel into the Holtec System for storage ER-254 (FAC ¶122-23). The District Court does not have jurisdiction to hear the challenges to the actions of the NRC, and it correctly dismissed the action.

**C. The Denial Of Appellant’s NRC Petition Is Subject To Initial Subject Matter Jurisdiction In The Circuit Courts Of Appeal**

As the District Court observed, appellant tacitly acknowledged that jurisdiction in the District Court was improper when they filed an original petition before the Ninth Circuit and a petition before the NRC—both of which sought the same relief as that sought in this case. ER-21. The 2.206 petition sought to halt the decommissioning of SONGS and the transfer of spent fuel into the Holtec System certified by the NRC. The petition for writ of mandamus (denied by this Court) sought an injunction to the decommissioning of SONGS and the transfer of spent fuel while the NRC considered the 2.206 petition.

After the District Court’s dismissal of this action, the NRC denied appellant’s first 2.206 petition. *Supra* at p. 22-24. This Court has initial subject matter jurisdiction to review the denial of that petition—not the District Court.

*Lorion*, 470 U.S. at 746 (1985) (“We therefore hold that 42 U.S.C. §2239 vests in the courts of appeals initial subject-matter jurisdiction over Commission orders denying §2.206 citizen petitions.”). Appellant again conceded that jurisdiction by filing a Petition for Review of the NRC’s denial of the 2.206 petition with this Court on March 30, 2020. RJN Ex. 8.

## **II. THE DISTRICT COURT CORRECTLY DISMISSED THE CLAIMS AGAINST THE PRIVATE APPELLANTS**

### **A. Standard Of Review**

This Court reviews *de novo* the dismissal of a complaint under Rule 12(b)(6) for failure to state a claim. “A complaint must contain sufficient factual matter, accepted as true, to ‘state a claim for relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 (2009). A claim is only facially plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. Plausibility requires pleading facts which rise above the mere conceivability or possibility of unlawful conduct. *Iqbal*, 556 U.S. at 678-79.

In deciding a motion to dismiss “a court may consider evidence on which the complaint ‘necessarily relies’ if the document is central to the plaintiff’s claim.” *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006). Accordingly, a court may take judicial notice of “matters of public record.” *See United States v. 14.02 Acres*,

547 F.3d 943, 955 (9th Cir. 2008) (Judicial notice appropriate for records and reports of administrative bodies).

**B. The District Court Correctly Dismissed The Price-Anderson Act Claim**

In order to state a PAA claim, appellant was required to allege (among other things); “Physical harm to persons or property” (*Berg v. E.I. DuPont de Nemours Co. (In re Berg Litig.)*, 293 F.3d 1127, 1131 (9th Cir. 2002)) arising from a “breach of federally-imposed dose limits” (*In re Hanford Nuclear Reservation Litig.*, 534 F.3d 986, 1004 (9th Cir. 2008)). See *O’Connor v. Boeing N. Am.*, 2005 U.S. Dist. LEXIS 46226, at \*129-30 (C.D. Cal. Aug. 18, 2005) (collecting cases). Appellant failed to meet these pleading requirements and the District Court properly dismissed the claim.

**1. Appellant Failed To Allege Injury To Persons Or Property—a Jurisdictional Prerequisite**

The District Court followed Ninth Circuit precedent when it held that ‘[p]hysical harm to persons or property is . . . a jurisdictional prerequisite’ to a [42 U.S.C. §2210 (n)] cause of action under the Price-Anderson Act” and that appellant did not meet this prerequisite. ER-30 (quoting *In re Berg Litig.*, 293 F.3d at 1131); see also *In re Hanford Nuclear Reservation Litig.*, 534 F.3d at 1009 (PAA prohibits recovery when plaintiffs have not suffered injury). Appellant did not

allege that it suffered injury to person or property. Nor can it.

In the FAC, appellant alleged a *risk* of future harm based on conclusory assertions that the Holtec System is “destined to fail.” *See e.g.* ER-206, 250 (FAC at ¶¶2, 116). Appellant argues on appeal that it is not required to allege an actual injury in order to bring a PAA claim. Opening Brief at 44-56. Notably, (despite voluminous citations to hearing transcripts), appellant fails to offer a single case where a court allowed a PAA cause of action to proceed where the plaintiff did not allege injury to person or property. *Id.*

Appellant instead argues “that—by its plain statutory language—the Price Anderson Act does not require a completed nuclear catastrophe before public intervention becomes appropriate.” This argument is flatly contradicted by the plain text of the PAA. The private cause of action created by §2210(n) of the PAA holds that “[w]ith respect to any public liability action arising out of or resulting **from a nuclear incident**, the United States district court in the district where the nuclear incident takes place . . . shall have original jurisdiction[.]” 2 U.S.C. §2210(n)(2) (emphasis added). In turn, “**nuclear incident**” is defined by the PAA as “any occurrence, including an extraordinary nuclear occurrence, within the United States **causing...bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property**, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special

nuclear, or byproduct material.” 42 U.S.C. §2014(q) (emphasis added). The Ninth Circuit has held that “physical harm to persons or property is thus a jurisdictional prerequisite” to a §2210(n)(2) action. *In re Berg Litig.* 293 F.3d at 1131; *Dumontier*, 543 F.3d at 570-7; *see also Ware v. Hosp. of the Univ. of Pa.*, 871 F.3d 273, 280 (3d Cir. 2017); *June v. Union Carbide Corp.*, 577 F.3d 1234, 1249 (10th Cir. 2009).

The District Court correctly ruled that appellant’s “attempt to dispense with this requirement under the anticipatory nuisance doctrine” is foreclosed because doing so would be inconsistent with §2210(n)(2). ER-30; *see also* Opening Brief at 55-56. The Ninth Circuit has considered and rejected the argument that the elements of a state law claim can override and expand the limited jurisdictional grant under the PAA. The law of this Circuit is that a PAA claim requires that appellant suffer physical harm to person or property “**even when the state[d] cause of action doesn't have that limitation.**” *Dumontier*, 543 F.3d at 569-70 (“[W]e have never relied on state law to interpret bodily injury...Nor would doing so be faithful to the statutory scheme... The Act was designed to safeguard the nuclear industry from expansive liability under state law... plaintiffs' interpretation would permit an end run.”) (emphasis added); *In re Berg Litig.*, 293 F.3d at 1131 (in accord); *see also* 42 U.S.C. §2014(hh) (“A public liability action shall be deemed to be an action arising under section 170 [42 USCS §2210], and the



substantive rules for decision in such action shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of such section.”).

A potential future “risk” of injury is likewise insufficient to state a claim under the PAA. *Dumontier*, 543 F.3d at 570-71 (“The Act, however, permits recovery for disease—not simply a risk of disease. We have previously held that such a risk isn't compensable.”); *In re Berg*, 293 F.3d at 1133 (“We agree with defendants that a cause of action for medical monitoring because of a future risk of disease, and absent a present physical injury, also fails to meet the jurisdictional requirements of the Price-Anderson Act.”); *O'Connor v. Boeing N. Am.*, 2003 U.S. Dist. LEXIS 27661, at \*32 (C.D. Cal. Nov. 3, 2003) (plaintiffs “cannot save their claim because they have set forth no evidence of existing property damage.”); *accord, June*, 577 F.3d at 1249.

In an effort to circumvent the actual injury requirement, appellant points to the PAA’s definition of “precautionary evacuation” as the basis for its claim. Opening Brief at 49. That definition is of no moment here. Appellant did not allege that there was an actionable “precautionary evacuation” ordered by the government.<sup>7</sup> See ER-205-258 (FAC). Nor did appellant argue below that its

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<sup>7</sup> A “‘precautionary evacuation’ is defined as “an evacuation of the public within a specified area near a nuclear facility...initiated by an official of a State or a political subdivision of a State, who is authorized by State law to initiate such an

claim was based upon a precautionary evacuation. ER-142-169. Accordingly, that argument has been waived. *O'Guinn*, 502 F.3d at 1063.

Even if appellant had alleged that the basis for its claim is a precautionary evacuation, that allegation would be insufficient to survive a motion to dismiss. While a “public liability” is defined as “any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation” [42 U.S.C. §2014(w)], a PAA action under 42 U.S.C. §2210(n) is a narrow action, congressionally authorized in a specific circumstance—when a “public liability action” “aris[es] out of or result[s] from a **nuclear incident.**” (Emphasis added.)

In an attempt to satisfy this pleading requirement, appellant initially contended that use of the Holtec System to store spent fuel constitutes a “nuclear incident.” ER-250 (FAC at ¶116). On appeal, appellant argues that the facts alleged are somehow “analogous” to public evacuations. Occurrences that do not cause injury to persons or property can never be considered nuclear incidents under 42 U.S.C. §2210(n)(2) as a “nuclear incident is defined in the Act as ‘any occurrence . . . causing . . . bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material.’” *Dumontier*, 543 F.3d at 569. To allow a PAA

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evacuation.” 42 U.S.C. §2014(gg). Appellant has never argued that a

claim without an injury would run contrary to the purpose of the PAA. *Id.* at 571 (if the actual injury requirement is eliminated “[t]he Act would cease to be a liability limit and become an unlocked cash register.”). There was no public evacuation here, there has been no “nuclear incident,” and no damage to persons or property. The District Court properly dismissed appellant’s Price Anderson Act claim.

**2. Appellant’s PAA Claim Fails Because It Did Not Allege A Release Of Radiation Above Federal Dose Limits**

Appellant asserts that “because the District Court’s sole basis for rejecting the Price Anderson Act claim was the perceived requirement of ‘bodily injury,’ [ER 1118—19], the decision below should be reversed.” This statement misrepresents the record below. In addition to dismissing the PAA claim because appellant could not allege that it suffered an injury to person or property, the District Court correctly dismissed the PAA claim because appellant failed to “allege[] that Defendants have caused exposure to radiation in excess of the federal limits.” ER-30. Ninth Circuit precedent is clear that in order bring a claim under 42 U.S.C. §2210(n), a plaintiff must allege a violation of a federal standard of care which here requires an allegation of a wrongful release of and exposure to radiation in excess of federal limits. *See In re Hanford Nuclear Reservation*

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“precautionary evacuation” was ordered.

*Litig.*), 534 F.3d at 1003 (“Every federal circuit that has considered the appropriate standard of care under the PAA has concluded that nuclear operators are not liable unless they breach federally-imposed dose limits.”).<sup>8</sup>

The federal duty of care arises from relevant NRC regulations and guidelines. *O’Connor*, 2005 U.S. Dist. LEXIS 46226, at \*130-33; *In re Hanford Nuclear Reservation Litig.*, 534 F.3d at 1003 (“...federal law preempts states from imposing a more stringent standard of care than federal safety standards.”). *O’Connor*, 2005 U.S. Dist. LEXIS 46226, at 129-30; *see also O’Connor*, 748 F.Supp. at 678.

Appellant cannot refute the many cases holding that exposure to radiation in excess of federal limits is a required element of a PAA claim.<sup>9</sup> Further, appellant did not allege and does not argue that it or any of its members, any other person or their property were exposed to a dose of radiation in excess of federal limits. Appellant only alleged that there is a purported “imminent risk that deadly nuclear

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<sup>8</sup> “Imposing a standard of care based on the federal regulations achieves coherence and consistency between the Atomic Energy Act, the Price-Anderson Act, and the federal preemption of nuclear safety effectuated through the federal regulations...Imposing a standard of care other than the federal regulations would disturb the carefully crafted balance between private involvement and safety that Congress has achieved.” *O’Conner v. Commonwealth Edison Co.*, 13 F.3d 1090, 1105 (7th Cir. 1994). “Every [other] Court of Appeals that has decided the duty or standard of care issue has held that the plaintiff must prove a dose in excess of the federal permissible dose limits in order to show a breach of duty in a Price-Anderson Act PLA.” *O’Connor*, 2005 U.S. Dist. LEXIS 46226, at \*131-33 (citations omitted).

<sup>9</sup> Any such argument is waived. *Smith*, 194 F.3d at 1052.

waste will be released[.]” ER-206 (FAC at ¶2). These allegations are insufficient as a matter of law.

Appellant asserts that “[f]or present purposes, the most important amendment is the above-noted provision permitting pecuniary recovery for a ‘precautionary evacuation,’ even if there is no radiation release at all.” Opening Brief at 49. Appellant overlooks the obvious—it did not allege a “precautionary evacuation.” Even if it had, a precautionary evacuation without injury does not itself give rise to a 42 U.S.C. §2210(n) claim, and nothing in the definition of such an evacuation dispenses with the requirement of a breach of a federal duty. 42 U.S.C. §2214(gg); 42 U.S.C. §2210(q) (“No court may award costs of a precautionary evacuation unless such costs constitute a public liability.”). The District Court properly dismissed the PAA action because appellant did not allege it suffered an injury to persons or property caused by any dose or release above any federal limits.<sup>10</sup>

### **3. Injunctive Relief Is Not Available Under The PAA**

Appellant claims that because it is seeking injunctive relief, it has adequately stated a claim under the PAA. Put another way, appellant argues that it should be

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<sup>10</sup> The gravamen of appellant’s PAA action is the allegation that Private Appellees breached a duty by storing spent fuel in the Holtec System licensed by the NRC. *See*, ER-242-43, 249-50 (FAC at ¶¶93, 109, and ¶116). Compliance with NRC regulations cannot be a breach of a federal duty. *In re Hanford Nuclear Reservation Litig.*, 534 F.3d at 1003.

excused from pleading the elements of a PAA claim because it is seeking injunctive relief to change nuclear storage practices. Opening Brief at 44-56. There is no right to injunctive relief under the PAA.

“Congress enacted the PAA with twin goals in mind: to provide an incentive to contractors to participate in the nuclear industry by limiting their liability, and to compensate victims of nuclear accidents.” *In re Hanford Nuclear Reservation Litig.*, 534 F.3d at 1002. The PAA is a comprehensive *compensation scheme*, amended in 1988 to create a private cause of action designed to compensate for actual injury sustained in a nuclear accident that causes the release of radiation in excess of federal limits. *Rainer v. Union Carbide Corp.*, 402 F.3d 608, 623-24 (6th Cir. 2005) (citing and quoting S. Rep. 100-70(1988) (“the Price-Anderson system is a comprehensive, compensation-oriented system of liability insurance...”).

Nowhere in its text does the PAA provide a remedy of injunctive relief. This title of the statute – “Indemnification and limitation of liability” – and its text establishes a framework for “Compensation Plans” (42 U.S.C. §2210(i)) and a “Plan or distribution of funds” (42 U.S.C. §2210(o)) in the case of nuclear incidents.). Appellant admits that the “Price Anderson Act is silent with respect to equitable remedies” but contends that the law implies that such remedies may be available because “it facially allows recovery for precautionary evacuation claims.”

Opening Brief at 45. However, no “precautionary evacuation” is alleged to have occurred (because it did not), and the PAA provides only for damages. *See* 42 U.S.C. §2210(q). There is no provision for injunctive or other equitable relief.

Appellant can point to no case in which a court acknowledged the right to an injunction or other equitable relief under the PAA.<sup>11</sup> Equitable claims, like medical monitoring, are not available in an action under §2210(n). *In re Berg Litig.* 293 F.3d at 1133. The entire statutory scheme of the PAA is one directed to compensation for damages and limitations of liability to protect operators of nuclear facilities. The proper means of addressing concerns with, or challenges to, nuclear safety practices is a petition to the NRC. *See, e.g. Paskavitch v. United States Nuclear Regulatory Com.*, 458 F.Supp. 216, 217 (D. Conn. 1978) (“The Nuclear Regulatory Commission, on the other hand, has the facilities, the expertise, and the responsibility to investigate the health and safety issues raised here” and “has provided a procedure, through administrative order, by which any person may seek the relief before it which the plaintiff is asking for here. 10 C.F.R.

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<sup>11</sup> The cases cited in footnote 15 of appellant’s Opening Brief did not award injunctive relief under the PAA. In *Dailey v. Bridgeton Landfill, LLC*, 299 F.Supp. 3d 1090, 1102–03 (E.D. Mo. 2017), the Court dismissed state law claims as preempted by the PAA and dismissed the PAA claim because Plaintiffs had not suffered injury: “to the extent that the Daileys seek medical monitoring, i.e. medical testing, in regards to their claim for property damage under the PAA, this claim is dismissed because there are no allegations of bodily injury.”). With respect to *Cook v. Rockwell Int’l Corp.*, 273 F.Supp. 2d 1175, 1208 (D. Colo. 2003), the Court did not hold that injunctive relief is available under the PAA, but held (in contrast to the Ninth Circuit) that injunctive relief may be permitted under Colorado state law for an incident that falls short of a “nuclear incident.”

§2.206.”). The fact that Appellant sought injunctive relief does not salvage its fatally defective PAA claim.

**C. The District Court Properly Dismissed Appellant’s Public Nuisance Claim**

**1. Appellant Has Waived Any Argument That The AEA Does Not Preempt The Public Nuisance Claim**

In accord with uniform precedent, the District Court correctly found that “[Appellant’s] state law claims are preempted by the AEA, which occupies the field for protection against hazards of radiation and the disposal of radioactive materials.” ER-31-32 (citing *United States v. Manning*, 527 F.3d 828 (9th Cir. 2008) (finding state law dealing with storage and disposal of nuclear waste preempted); *In re Hanford Nuclear Reservation Litig.*, 534 F.3d 986, 1003 (9th Cir. 2008) (finding that only federal law can create legal duties related to the handling of nuclear materials because the federal government “has occupied the entire field of nuclear safety concerns.”); *Laine v. Weinberger*, 541 F.Supp. 599, 604 (C.D. Cal. 1982) (rejecting attempt to use California nuisance law to regulate the storage of nuclear weapons); *Brown v. Kerr-McGee Chem. Corp.*, 767 F.2d 1234, 1242 (7th Cir. 1985) (finding state nuisance claim preempted); *Pennsylvania v. Gen. Pub. Utils. Corp.*, 710 F.2d 117, 120 (3d Cir. 1983) (finding state nuisance claim preempted); 42 U.S.C. §2021(c)(4) (NRC is charged with regulating the



disposal of nuclear material); 42 U.S.C. §2021(k) (NRC is charged with “protection against radiation hazards”).

Appellant fails to address the actual basis for the District Court’s preemption ruling in its Opening Brief, or any of the authorities relied upon by the District Court in reaching its preemption conclusion. Instead, appellant asserts that the issue is whether *the PAA* “preempts the entire field of nuclear radiation[.]” Opening Brief at 6. That was not the issue decided by the District Court. By failing to raise the AEA preemption issue on appeal, appellant has waived any right to challenge the District Court’s ruling on that basis. *Smith*, 194 F.3d at 1052.

Appellant’s Opening Brief avoids any discussion of the Ninth Circuit cases that discuss PAA preemption. *See* Opening Brief at 57-63. That case law is fatal to Appellant’s claim. The Ninth Circuit has consistently ruled that the PAA preempts state law causes of action. *See, e.g., Dumontier*, 543 F.3d at 571 [“Plaintiffs argue that if the harm they suffered isn’t on the section 2014(q) list, the Act simply doesn’t apply, and their state claims aren’t preempted... *any suit* seeking compensation for a nuclear incident is preempted by the Act.” *In re Hanford Nuclear Reservation Litig.* 521 F.3d at 1054 (“This result is consistent with Congress’s explicit intent in enacting the 1988 Amendments and avoiding piecemeal litigation arising from nuclear incidents.”); *O’Connor* 2005 U.S. Dist. LEXIS 46226, at \*32 (“unique and complete preemption... exists regarding any

radiation injury lawsuit after the 1998 Price Anderson Act Amendments.”).

Instead of addressing controlling Ninth Circuit case law,<sup>12</sup> appellant points to *Cook v. Rockwell Int'l Corp.*, 790 F.3d 1082 (10th Cir. 2015). In *Cook*, the Tenth Circuit did not consider the issue of whether the AEA preempted appellant’s state law claims. Instead, that court held that “the only preemption argument at issue before us is the suggestion that the Price-Anderson Act expressly preempts and precludes relief for the field of claims that assert but fail to prove a nuclear incident.” *Cook*, 790 F.3d at 1092. Even on this (irrelevant) point, appellant’s reliance on *Cook* is misplaced because it is directly contrary to controlling Ninth Circuit case law. 790 F.3d at 1095, 1098.<sup>13</sup> Here, even if PAA preemption was relevant, Ninth Circuit authority such as *Dumontier* (finding that the PAA preempts state law claims where a nuclear incident is alleged) is binding. *Murray v. Cable NBC*, 86 F.3d 858, 860 (9th Cir. 1996).

## **2. The AEA Preempts Appellant’s Public Nuisance Claim**

The District Court properly ruled that appellant’s public nuisance claim is preempted by the AEA. That ruling follows binding Supreme Court and Ninth

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<sup>12</sup> An attorney’s failure to acknowledge controlling precedent is “a dereliction of [its] duty to the court ...” See, *Southern Pacific Transp. Co. v. Public Utilities Comm’n. of State of Cal.*, 716 F.2d 1285, 1291 (9th Cir.1983).

<sup>13</sup> *Cook* is an outlier. Appellant’s *own authority* disregards *Cook* and instead chooses to follow every other Circuit Court in finding the PAA preempts state causes of action. *Dailey*, 299 F.Supp. 3d at 1098 (“I agree with the many appellate courts that have examined the text, structure, history, and purpose of the PAA and found that it preempts state-law claims when a nuclear incident is alleged... [Plaintiff’s]

Circuit precedent.

a) The AEA Occupies The Field Of Nuclear Safety

Any application of state law to regulate issues relating to nuclear safety is preempted by the AEA. “When the Federal Government completely occupies a given field or an identifiable portion of it, as it has done here, the test of preemption is whether the matter on which the State asserts the right to act is in any way regulated by the Federal Act.” *Pacific Gas & Electric Company v. Energy Resources & Development Commission*, 461 U.S. 190, 212 (1983) (“Federal Government maintains complete control of the safety and ‘nuclear’ aspects of energy generation”).

It is indisputable that “the [Atomic Energy Act, (“AEA”), 42 U.S.C. established a comprehensive regulatory scheme for military and domestic nuclear energy.” *NRDC v. Abraham*, 388 F.3d 701, 704 (9th Cir. 2004). By its plain text, the AEA instituted “a program for Government control of the possession, use, and production of atomic energy and special nuclear material.” 42 U.S.C. §2013(c). Within this framework, the AEA explicitly reserves to the NRC the responsibility to regulate “the disposal of . . . nuclear material as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission,” (42 U.S.C. cannot have their cake and eat it too.”)

§2021(c)(4)), and “activities for . . . protection against radiation hazards.” (42 U.S.C. §2021(k).) The Supreme Court recognized that “the [NRC] was more qualified to determine to determine what type of safety standard should be enacted in this complex area.” *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 250 (1984). Foreclosing the intrusion of state law into this field, Congress “provided for continued federal control over the more hazardous materials [used in nuclear technology] because ‘the technical safety considerations are of such complexity that it is not likely that any State would be prepared to deal with them.’” *Id.*

In *Manning*, this Court recognized that the NRC “retain[s] exclusive regulatory authority over ‘the disposal of such . . . byproduct, source, or special nuclear material as the Commission determines.’” *Manning*, 527 F.3d at 832-33 (9th Cir. 2008). “Except for limited powers ceded to the states...the federal government has occupied the entire field of nuclear safety concerns.” *Id.* at 839. When a state seeks to “impose conditions *on the disposal of AEA materials* out of concern for the health and environmental risks that increased contamination will cause. . . *this type of regulation falls squarely within the field preempted by the AEA.*” *Id.* at 838 (emphasis added); *see also Wash. State Bldg. & Constr. Trades Council v. Spellman*, 684 F.2d 627, 630 (9th Cir. 1982) (finding the AEA preempted state law because “the regulation of the disposal of low-level radioactive waste is a legitimate federal activity, and Congress has not waived or

delegated its authority over the subject.”); *Nevada v. Watkins*, 914 F.2d 1545, 1560 (9th Cir. 1990) (“In its decisions considering the preemptive effect of the Atomic Energy Act, ... the Supreme Court has concluded that “the Federal Government has occupied the entire field of nuclear safety concerns, except the limited powers expressly ceded to the States.”). The District Court’s correctly ruled that the AEA preempts Appellant’s state law claims to the extent that those claims are inconsistent with the AEA.

b) Since The NRC Regulates The Storage Of Spent Fuel At SONGS, The District Court Correctly Found Appellant’s Attempt To Usurp The NRC’s Authority Is Preempted

As discussed above, the possession, transfer, and storage of spent fuel at SONGS, and related conduct undertaken pursuant to NRC’s licenses and certifications, falls squarely within the NRC’s exclusive regulatory mandate. The NRC has reviewed and investigated the issues at the heart of the public nuisance claim. The NRC performed a thorough review of the design of the Holtec System and certified it for the storage of spent fuel (10 CFR §72.214). The NRC found that the decommissioning activities comply with its safety requirements. RJN Ex. 2 at 1-3 (NRC Rejection of 2.206 Petition). The NRC thoroughly “review[ed]” and undertook “oversight actions included a detailed assessment of the significance of the events, specific enforcement actions, and subsequent consideration of the licensee’s corrective actions” related to the Summer 2018 incidents appellant

references. *Id.* at 2. The NRC considered appellant’s concerns with scratches to the dry storage canisters, and concluded that “localized scratches (peak stresses) on the canisters are not a safety concern” and that “canister scratches from incidental contact for previous and future canisters, will continue to meet the confinement design functions as specified in the UMAX Final Safety Analysis Report and ASME Code Section III canister wall thickness tolerances.” *Ibid.* The NRC also found that SCE adequately demonstrated that the spent fuel stored at the Holtec System at SONGS was retrievable (a requirement of the CoC). *Id.* at 3. Finally, the NRC declared that it “remains confident that reasonable assurance of adequate protection of the public health and safety can be maintained for as long as fuel is stored in accordance with the requirements of the SONGS license, the certificate of compliance for the UMAX system (and any other licensed systems that may be implemented in the future at the SONGS site), and other applicable requirements.” *Id.* at 2.

As the District Court recognized, appellant’s public nuisance claim is “predicated on potential radiation hazards that may result from the disposal of nuclear material.” ER-32. Appellant alleges that the use of the Holtec System to store spent fuel is a dangerous nuisance. ER-253, 255 (FAC ¶¶121; 125). Appellant brings its nuisance claim as a means to “temporarily halt the transfer of deadly spent nuclear fuel at SONGS” and to “devise a realistic plan for the spent

fuel's safe transfer and storage.” ER-149 (Oppo. at 3:8-12); *see also* ER-257 (FAC at Prayer). Appellant's lawsuit challenges the NRC's certification of the Holtec System and its regulatory discretion allowing fuel movement and decommissioning activities to continue. Appellant is attempting improperly to use California nuisance law to supplant the NRC's exclusive decision-making and regulation over nuclear safety at SONGS.

In rejecting appellant's claim for public nuisance, the District Court is one of many courts that have disallowed attempts to use state law to regulate matters of nuclear safety. ER-31 (holding that a state public nuisance cause of action is preempted when it is “predicated on potential radiation hazards that may result from the disposal of nuclear material.”) (citing *Brown* 767 F.2d at 1242 (“[P]laintiffs’ request for an injunction ordering the [nuclear] wastes moved elsewhere is preempted because, if granted, the injunction would stand 'as an obstacle to the accomplishment of the full purposes and objectives' of federal regulation of radiation hazards.”) (quoting *Silkwood*, 464 U.S. at 248); *Gen. Pub. Utils. Corp.*, 710 F.2d at 120 (“Private litigants therefore may not obtain by way of injunctive relief pursuant to state law an order abating as a public nuisance, because of public safety hazards, activity of a duly licensed nuclear energy electric generating plant.”); *Osarczuk v. Associated Univs.*, 36 A.D.3d 872, 830 N.Y.S.2d 711, 714 (N.Y. App. Div. 2007) (“[T]he Act and Act Amendments preempt all

state common-law causes of action and theories of relief which might otherwise address radiological exposure from nuclear facilities, including negligence, strict liability based on engagement in an ultrahazardous activity[.]”)

California’s public nuisance laws cannot be used to challenge the nuclear safety of spent fuel storage at SONGS; those laws are preempted by NRC regulation, licensing, and enforcement decisions under the AEA. *Manning*, 527 F.3d at 838; *Watkins*, 914 F.2d at 1560; *Boeing Co. v. Robinson*, 2011 U.S. Dist. LEXIS 52507, at \*35-36 (C.D. Cal. Apr. 26, 2011) (the “[state law] is an attempt to regulate squarely within the federally occupied field of nuclear health and safety and, therefore, it is preempted by the AEA.”); *see also O’Connor*, 2005 U.S. Dist. LEXIS 46226, at \*127-29; *see also Laine v. Weinberger*, 541 F.Supp. 599, 601 (C.D. Cal. 1982) (California is “powerless to condition the means by which the Federal Government carries out its activities” and finding the use of California public nuisance laws to enjoin the handling of nuclear weapons constitute an “ill-conceived and baseless request.”) (citing *United States v. Georgia Public Service Com.*, 371 U.S. 285 (1963)).

The overwhelming weight of authority holds that a public nuisance cause of action cannot be used to challenge or supplant the regulatory authority granted to the NRC. Instead of addressing these authorities, Appellant relies on *Cook*. *Cook* did not consider the issue of whether the AEA preempted a plaintiff’s state law



claim, but instead narrowly considered the issue of preemption under the PAA. *Cook*, 790 F.3d at 1092. That is not the issue at bar.

Appellant claims that it will have no recourse if its nuisance claim is preempted and its PAA claim dismissed. Opening Brief at 61. Appellant's own conduct in filing a petition before the NRC, and seriatim petitions before this Court demonstrates that appellant has remedies available to it. *See e.g. Paskavitch*, 458 F.Supp. at 217-18 (dismissing plaintiffs' attempt to challenge operating license for nuclear power plant in part because plaintiff had alternative recourse, specifically 10 C.F.R. §2.206—" [the] administrative and statutory scheme for consideration of plaintiff's claim strengthens my conclusion that 'the matter therefore is within the exclusive preliminary jurisdiction . . .' of the Nuclear Regulatory Commission.")

In summary, the District Court's ruling on AEA preemption is consistent with applicable and controlling case law, and the regulatory framework of the AEA.

**3. Appellant's Public Nuisance Claim Fails Because Appellant Did Not Suffer Or Plead A Special Injury**

Appellant failed to plead a special injury thereby supporting the District Court's dismissal of the public nuisance claim. Appellant's alleged that the injury was to Appellant's "organization[al] mission... to ensure that government agencies and special interests comply with all applicable laws, including public safety and

environmental-protection laws, especially in the public-utilities industry.” That is not a cognizable special injury under California law.

California law provides that “[a] private person may maintain an action for a public nuisance, if it is specially injurious to himself, but not otherwise.” Cal.Civ. Code §3493. “The [special] injury which may entitle [appellant] to maintain an action to abate a public nuisance must be an injury to [its] private property, or to a private right incidental to such private property.” *Venuto v. Owens-Corning Fiberglas Corp.*, 22 Cal.App.3d 116, 125 (1971). The rule cited in *Venuto* is long standing. *City Store v. San Jose LGIR Co.*, 150 Cal. 277, 279 (1907); *see also Spring Valley Waterworks v. Fifield*, 136 Cal. 14, 16 (1902). The District Court correctly stated that “a private individual . . . does not have a cause of action on account of a public nuisance unless he alleges facts showing special injury to himself in person or property of a character different in kind from that suffered by the general public.” ER-34. “Under this rule[,] the requirement is that the plaintiff’s damage be different in kind, rather than in degree, from that shared by the general public.” *Brown*, 102 Cal.App.3d at 725 (collecting cases); *see also Institoris v. City of Los Angeles*, 210 Cal.App.3d 10, 20 (1989).

Appellant did not and cannot allege property damage or injury to itself or any of its members. Instead, appellant claims injury to its “organization[al] mission... to ensure...compl[iance] with all applicable laws, including public

safety and environmental-protection laws.” This is not a cognizable injury. Appellant does not offer a single case in support of its assertion that such an injury to an “organization[al] mission” is a cognizable injury to “private property, or to a private right incidental to such private property.” By appellant’s argument, any organization (or individual for that matter) concerned with enforcement of the laws would incur “special injury” if its “organizational mission” (or individual mission) was somehow adversely impacted. No case supports that argument.

Even if injury to an “organizational mission” was cognizable, the purported injury would not be different *in kind* to the one suffered by the general public—a fundamental prerequisite for asserting a public nuisance claim. As the District Court found, “the entire community of the Southern District of California” shares an interest “that government agencies and special interests follow all applicable laws.” *See, e.g., Koll-Irvine Ctr. Prop. Owners Ass’n v. Cnty. of Orange*, 24 Cal.App.4th 1036, 1040-41, (1994) (affirming dismissal of action for public nuisance because “proximity arguably exposes it to a higher degree of these damages, but not to a different kind altogether”); *Brown*, 102 Cal.App.3d 726 (dismissing claim because plaintiff’s “fear” of a gas facility to the extent it “reasonably exists” must be shared by the general community).

Appellant failed to allege a “special injury” to itself because its purported injury is not different than that of the general community. Appellant’s claim of

“special injury” to its organizational mission is insufficient to survive a motion to dismiss. *Iqbal*, 556 U.S. at 678.

Appellant contends that the requirement that the special injury be different in kind has been called into “question.” Opening Brief at 65. Appellant did not challenge the “different in-kind” requirement in the District Court. Instead, it embraced it: “Furthermore, the parties agree that said harm must be different in kind, not simply different in amount, than the harm suffered by the public.” ER-167 (Opposition, 21:2-5). Any challenge to the “different in kind” requirement has been waived. *O’Guinn*, 502 F.3d at 1063.

The case law relied upon by Appellant does not support its assertion that the “different in kind” requirement has been overturned. Court that have discussed *Birke v. Oakwood Worldwide*, 169 Cal.App.4th 1540 (2009) have limited its holding to its facts and harmonized its ruling with the “different in kind” requirement. See *Guttmann v. Nissin Foods (U.S.A.) Company*, 2015 U.S. Dist. LEXIS 92756, 2015 WL 4309427, at \*5 (N.D. Cal. July 15, 2015); *Labowitz v. Bird Rides*, No. CV 18-9329-MWF (SK), 2019 U.S. Dist. LEXIS 195982, at \*40 (C.D. Cal. Oct. 29, 2019). Other cases relied upon by appellant have *not* dispensed with the different in kind requirement. *Greenfield MHP Assocs., Ltd. P’ship v. Ametek*, 145 F.Supp. 3d 1000, 1016 (S.D. Cal. 2015) (“Plaintiffs’ claim that they have been specially injured by the contamination since their groundwater and soil

has been contaminated by the waste plume is a harm too similar to that suffered by the general public, since such a claim would be available to anyone whose property was above the 1.3 mile waste plume Plaintiffs are alleging.”); *Trujillo v. Ametek*, No. 3:15-cv-1394-GPC-BGS, 2015 U.S. Dist. LEXIS 156803, at \*25 (S.D. Cal. Nov. 18, 2015).

Finally, this Court has explicitly held that the “different in kind” requirement applies to California public nuisance claims. *Oppen v. Aetna Ins. Co.*, 485 F.2d 252, 260 (9th Cir. 1973) (dismissing nuisance claim because “the damage suffered on account of their loss of navigation rights in the Santa Barbara Channel and harbor is no different in kind from that suffered by the public generally.”). Because appellant cannot plead a special injury to persons or property arising out of a nuclear incident, or injury that is different in kind than that allegedly suffered by the public at large, its claim for public nuisance must fail.

**4. Appellant’s Public Nuisance Claim Fails Because The  
Actions of Private Appellees Were Taken Pursuant To  
Statutory Authority Of The NRC**

The conduct alleged against the Private Appellees was undertaken pursuant to licenses and certificates issued by the NRC and conducted under the NRC’s regulatory oversight. Under Cal.Civil Code §3482, “nothing which is done or maintained under the express authority of a statute can be deemed a nuisance.”

*Friends of H Street v. City of Sacramento*, 20 Cal.App.4th 152, 160 (1993) (finding that acts “authorized by the express terms of the statute under which the justification is made” cannot be a public nuisance.). The District Court correctly found that appellant cannot state a claim for public nuisance because of California Civil Code §3482.

The activities and conduct challenged by Appellant have been undertaken pursuant to licenses and certifications under the express statutory authority of the NRC. Under these facts, the District Court was correct in holding that appellant’s nuisance claim is barred because the conduct upon which the claims are based has been undertaken pursuant to the express authority of the NRC under the AEA. ER-35-37 (citing *Carson Harbor Vill., Ltd. v. Unocal Corp.*, 270 F.3d 863, 888 (9th Cir. 2001); *SF Chapter of A. Philip Randolph Inst. v. U.S. E.P.A.*, No. C 07-04936 CRB, 2008 U.S. Dist. LEXIS 27794, 2008 WL 859985, at \*5 (N.D. Cal. Mar. 28, 2008) (“Case law interpreting §3482 suggests that a nuisance claim cannot lie against a state agency that issues permits allowing the discharge of pollutants so long as the permits are issued pursuant to statutory authority.”); *Union City v. S. Pac. Co.*, 261 Cal.App.2d 277 (1968) (“What is required by a statute, including what is required by an authorized commission acting under authority of statute, cannot be a nuisance.”)).

Appellant's contention that the NRC did not authorize SONGS Defendants to "defectively design canisters and negligently install them" or "failure to comply" with NRC regulations by "negligently burying" the canisters is of no moment. The District Court rightly recognized that these arguments are challenges to the "the NRC's authorization of the Utility Defendants' and Holtec's alleged safety violations under [NRC] licenses and certificates" and that appellant's "recourse lies under 10 C.F.R. §2.206(a)." ER-37. Appellant sought that recourse when it filed its section 2.206 petition. In rejecting that petition, the NRC confirmed that "the NRC's regulatory review and oversight actions included a detailed assessment of the significance of the events, specific enforcement actions, and subsequent consideration of the licensee's corrective actions." The NRC further stated that in assessing the current state of SONGS it "remains confident that reasonable assurance of adequate protection of the public health and safety can be maintained[.]" RJN Ex. 2 at 2 (NRC Rejection of 2.206 Petition). Put another way, the challenged conduct did not create a nuisance.

## CONCLUSION

For the foregoing reasons, the District Court's judgment should be affirmed.

Dated: March 31, 2020

Respectfully submitted,  
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### **STATEMENT OF RELATED CASE**

Pursuant to Circuit Rule 28-2.6, *Public Watchdogs v. United States Nuclear Regulatory Commission*, No. 19-72670, (9th Cir. 2019) (“*Public Watchdogs v. NRC*”) is a related case because it raised the same issues and involved the same events. In *Public Watchdogs v. NRC* appellant filed a petition for writ of mandamus with this Court which challenged as unsafe (and sought to enjoin) the decommissioning of SONGS and the transfer of spent fuel into dry storage in the NRC-Certified Holtec System. Appellant’s writ arose from appellant’s then pending 10 CFR Section 2.206 Petition (subsequently rejected by the NRC on February 26, 2020). As discussed in this Brief, appellant by in large brought the same challenges to the SONGS decommissioning, the 2015 License Amendments, and the storage of spent fuel in the Holtec System in an ISFSI at SONGS in the 2.206 Petition that it brings here. On the same general grounds, appellant sought a writ to enjoin the SONGS decommissioning while the NRC considered the 2.206 Petition. This Court denied appellant’s writ thereby allowing the fuel transfer to continue while the NRC reviewed the 2.206 Petition.

Likewise, the recently filed *Public Watchdogs v. USNRC*, No. 19-70899, (9th Cir. 2020) is related for the same reasons. *Public Watchdogs v. USNRC* is an appeal from the February 26, 2020 rejection of the 10 CFR Section 2.206 Petition at issue in *Public Watchdogs v. NRC*. *Public Watchdogs v. NRC* is identified as a

“Prior Case” on the docket.

Dated: March 31, 2020

Respectfully submitted,  
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**TAB 1**

## 28 USCS § 1291, Part 1 of 3

Current through Public Law 116-108, approved January 24, 2020, with a gap of Public Law 116-94.

**United States Code Service > TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE (§§ 1 — 5001)  
> Part IV. Jurisdiction and Venue (Chs. 81 — 99) > CHAPTER 83. Courts of Appeals (§§ 1291 — 1296)**

### **§ 1291. Final decisions of district courts**

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The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title [[28 USCS §§ 1292\(c\)](#) and (d) and 1295].

### **History**

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#### **HISTORY:**

Act June 25, 1948, ch 646, [62 Stat. 929](#); Oct. 31, 1951, ch 655, § 48, [65 Stat. 726](#); July 7, 1958, P. L. 85-508, § 12(e), [72 Stat. 348](#); April 2, 1982, [P. L. 97-164](#), Title I, Part A, § 124, [96 Stat. 36](#).

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## 28 USCS § 1291, Part 2 of 3

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**United States Code Service > TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE (§§ 1 — 5001)  
> Part IV. Jurisdiction and Venue (Chs. 81 — 99) > CHAPTER 83. Courts of Appeals (§§ 1291 — 1296)**

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## 28 USCS § 1291, Part 3 of 3

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**United States Code Service > TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE (§§ 1 — 5001)  
> Part IV. Jurisdiction and Venue (Chs. 81 — 99) > CHAPTER 83. Courts of Appeals (§§ 1291 — 1296)**

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**TAB 2**

## 42 USCS § 2011

Current through Public Law 116-108, approved January 24, 2020.

**United States Code Service > TITLE 42. THE PUBLIC HEALTH AND WELFARE (Chs. 1 — 161) > CHAPTER 23. DEVELOPMENT AND CONTROL OF ATOMIC ENERGY (§§ 2011 — 2297h-13) > ATOMIC ENERGY (§§ 2011 — 2296b-7) > GENERAL PROVISIONS (§§ 2011 — 2023)**

### § 2011. Congressional declaration of policy

Atomic energy is capable of application for peaceful as well as military purposes. It is therefore declared to be the policy of the United States that—

(a) the development, use, and control of atomic energy shall be directed so as to make the maximum contribution to the general welfare, subject at all times to the paramount objective of making the maximum contribution to the common defense and security; and

(b) the development, use, and control of atomic energy shall be directed so as to promote world peace, improve the general welfare, increase the standard of living, and strengthen free competition in private enterprise.

### History

#### **HISTORY:**

Act Aug. 1, 1946, ch 724, Title I, Ch. 1, § 1, as added *Aug. 30, 1954, ch 1073, § 1, 68 Stat. 921*; Oct. 24, 1992, *P. L. 102-486*, Title IX, § 902(a)(8), *106 Stat. 2944*.

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**TAB 3**

## 42 USCS § 2013

Current through Public Law 116-108, approved January 24, 2020, with a gap of Public Law 116-94.

**United States Code Service > TITLE 42. THE PUBLIC HEALTH AND WELFARE (Chs. 1 — 161) > CHAPTER 23. DEVELOPMENT AND CONTROL OF ATOMIC ENERGY (§§ 2011 — 2297h-13) > ATOMIC ENERGY (§§ 2011 — 2296b-7) > GENERAL PROVISIONS (§§ 2011 — 2023)**

### § 2013. Purpose of chapter

---

It is the purpose of this Act [[42 USCS §§ 2011](#) et seq.] to effectuate the policies set forth above by providing for—

**(a)**a program of conducting, assisting, and fostering research and development in order to encourage maximum scientific and industrial progress;

**(b)**a program for the dissemination of unclassified scientific and technical information and for the control, dissemination, and declassification of Restricted Data, subject to appropriate safeguards, so as to encourage scientific and industrial progress;

**(c)**a program for Government control of the possession, use, and production of atomic energy and special nuclear material, whether owned by the Government or others, so directed as to make the maximum contribution to the common defense and security and the national welfare, and to provide continued assurance of the Government's ability to enter into and enforce agreements with nations or groups of nations for the control of special nuclear materials and atomic weapons.

**(d)**a program to encourage widespread participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent consistent with the common defense and security and with the health and safety of the public;

**(e)**a program of international cooperation to promote the common defense and security and to make available to cooperating nations the benefits of peaceful applications of atomic energy as widely as expanding technology and considerations of the common defense and security will permit; and

**(f)**a program of administration which will be consistent with the foregoing policies and programs, with international arrangements, and with agreements for cooperation, which will enable the Congress to be currently informed so as to take further legislative action as may be appropriate.

### History

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#### **HISTORY:**

Act Aug. 1, 1946, ch 724, Title I, Ch. 1, § 3, as added *Aug. 30, 1954, ch 1073, § 1, [68 Stat. 922](#)*; Aug. 26, 1964, *P. L. [88-489](#)*, § 3, *78 Stat. 602*; Oct. 24, 1992, *P. L. 102-486*, Title IX, § 902(a)(8), *106 Stat. 2944*.

42 USCS § 2013

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**TAB 4**

## 42 USCS § 2021

Current through Public Law 116-108, approved January 24, 2020, with a gap of Public Law 116-94.

**United States Code Service > TITLE 42. THE PUBLIC HEALTH AND WELFARE (Chs. 1 — 161) > CHAPTER 23. DEVELOPMENT AND CONTROL OF ATOMIC ENERGY (§§ 2011 — 2297h-13) > ATOMIC ENERGY (§§ 2011 — 2296b-7) > GENERAL PROVISIONS (§§ 2011 — 2023)**

### § 2021. Cooperation with States

---

**(a) Purpose.** It is the purpose of this section—

(1) to recognize the interests of the States in the peaceful uses of atomic energy, and to clarify the respective responsibilities under this Act [[42 USCS §§ 2011](#) et seq.] of the States and the Commission with respect to the regulation of byproduct, source, and special nuclear materials;

(2) to recognize the need, and establish programs for, cooperation between the States and the Commission with respect to control of radiation hazards associated with use of such materials;

(3) to promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials;

(4) to establish procedures and criteria for discontinuance of certain of the Commission's regulatory responsibilities with respect to byproduct, source, and special nuclear materials, and the assumption thereof by the States;

(5) to provide for coordination of the development of radiation standards for the guidance of Federal agencies and cooperation with the States; and

(6) to recognize that, as the States improve their capabilities to regulate effectively such materials, additional legislation may be desirable.

**(b) Agreements with States.** Except as provided in subsection (c), the Commission is authorized to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission under chapters 6, 7, and 8, and section 161 of this Act [[42 USCS §§ 2071](#) et seq., [2091](#) et seq., and [2111](#) et seq., and [§ 2201](#)], with respect to any one or more of the following materials within the State:

(1) Byproduct materials (as defined in section 11(e) [[42 USCS § 2014\(e\)](#)]).

(2) Source materials.

(3) Special nuclear materials in quantities not sufficient to form a critical mass.

During the duration of such an agreement it is recognized that the State shall have authority to regulate the materials covered by the agreement for the protection of the public health and safety from radiation hazards.

**(c) Commission regulation of certain activities.** No agreement entered into pursuant to subsection (b) shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of—

(1) the construction and operation of any production or utilization facility or any uranium enrichment facility;

(2) the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;



## 42 USCS § 2021

(3)the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

(4)the disposal of such other byproduct, source, or special nuclear material as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.

The Commission shall also retain authority under any such agreement to make a determination that all applicable standards and requirements have been met prior to termination of a license for byproduct material, as defined in section 11(e) (2) [[42 USCS § 2014\(e\)\(2\)](#)]. Notwithstanding any agreement between the Commission and any State pursuant to subsection (b), the Commission is authorized by rule, regulation, or order to require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license issued by the Commission.

**(d) Conditions.** The Commission shall enter into an agreement under subsection (b) of this section with any State if—

(1)[the] The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

(2)the Commission finds that the State program is in accordance with the requirements of subsection (b) and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

**(e) Publication in Federal Register; comment of interested persons.**

(1)Before any agreement under subsection (b) is signed by the Commission, the terms of the proposed agreement and of proposed exemptions pursuant to subsection (f) shall be published once each week for four consecutive weeks in the Federal Register; and such opportunity for comment by interested persons on the proposed agreement and exemptions shall be allowed as the Commission determines by regulation or order to be appropriate.

(2)Each proposed agreement shall include the proposed effective date of such proposed agreement or exemptions. The agreement and exemptions shall be published in the Federal Register within thirty days after signature by the Commission and the Governor.

**(f) Exemptions.** The Commission is authorized and directed, by regulation or order, to grant such exemptions from the licensing requirements contained in chapters 6, 7, and 8 [[42 USCS §§ 2071](#) et seq. [2091](#) et seq., and [2111](#) et seq.], and from its regulations applicable to licensees as the Commission finds necessary or appropriate to carry out any agreement entered into pursuant to subsection (b) of this section.

**(g) Compatible radiation standards.** The Commission is authorized and directed to cooperate with the States in the formulation of standards for protection against hazards of radiation to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible.

**(h) Consultative, advisory, and miscellaneous functions of Administrator of Environmental Protection Agency.** [There is hereby established a Federal Radiation Council, consisting of the Secretary of Health, Education, and Welfare, the Chairman of the Atomic Energy Commission, the Secretary of Defense, the Secretary of Commerce, the Secretary of Labor, or their designees, and such other members as shall be appointed by the President.] The Council [Administrator of the Environmental Protection Agency] shall consult qualified scientists and experts in radiation matters, including the President of the National Academy of Sciences, the Chairman of the National Committee on Radiation Protection and Measurement, and qualified experts in the field of biology and medicine and in the field of health physics. The Special Assistant to the President for Science and Technology, or his designee, is authorized to attend meetings, participate in the deliberations of, and to advise the Council [Administrator]. The Chairman of the Council [Administrator] shall be

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designated by the President, from time to time, from among the members of the Council [Administrator]. The Council [Administrator] shall advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance for all Federal agencies in the formulation of radiation standards and in the establishment and execution of programs of cooperation with States. The Council [Administrator] shall also perform such other functions as the President may assign to it by Executive order.

**(i) Inspections and other functions; training and other assistance.** The Commission in carrying out its licensing and regulatory responsibilities under this Act [[42 USCS §§ 2011](#) et seq.] is authorized to enter into agreements with any State, or group of States, to perform inspections or other functions on a cooperative basis as the Commission deems appropriate. The Commission is also authorized to provide training, with or without charge, to employees of, and such other assistance to, any State or political subdivision thereof or group of States as the Commission deems appropriate. Any such provision or assistance by the Commission shall take into account the additional expenses that may be incurred by a State as a consequence of the State's entering into an agreement with the Commission pursuant to subsection (b).

**(j) Reserve power to terminate or suspend agreements; emergency situations; State nonaction on causes of danger; authority exercisable only during emergency and commensurate with danger.**

**(1)**The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State with which an agreement under subsection (b) has become effective, or upon request of the Governor of such State, may terminate or suspend all or part of its agreement with the State and reassert the licensing and regulatory authority vested in it under this Act [[42 USCS §§ 2011](#) et seq.], if the Commission finds that (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of this section. The Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

**(2)**The Commission, upon its own motion or upon request of the Governor of any State, may, after notifying the Governor, temporarily suspend all or part of its agreement with the State without notice or hearing if, in the judgment of the Commission:

**(A)**an emergency situation exists with respect to any material covered by such an agreement creating danger which requires immediate action to protect the health or safety of persons either within or outside the State, and

**(B)**the State has failed to take steps necessary to contain or eliminate the cause of the danger within a reasonable time after the situation arose.

A temporary suspension under this paragraph shall remain in effect only for such time as the emergency situation exists and shall authorize the Commission to exercise its authority only to the extent necessary to contain or eliminate the danger.

**(k) State regulation of activities for certain purposes.** Nothing in this section shall be construed to affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards.

**(l) Commission regulated activities; notice of filing; hearing.** With respect to each application for Commission license authorizing an activity as to which the Commission's authority is continued pursuant to subsection (c), the Commission shall give prompt notice to the State or States in which the activity will be conducted of the filing of the license application; and shall afford reasonable opportunity for State representatives to offer evidence, interrogate witnesses, and advise the Commission as to the application without requiring such representatives to take a position for or against the granting of the application.

**(m) Limitation of agreements and exemptions.** No agreement entered into under subsection (b), and no exemption granted pursuant to subsection (f), shall affect the authority of the Commission under subsection 161(b) or (i) [[42 USCS § 2201\(b\)](#)] or (i) [[42 USCS § 2201\(i\)](#)] to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material. For purposes of subsection 161(i) [[42 USCS § 2201\(i\)](#)], activities covered by exemptions granted pursuant to

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subsection (f) shall be deemed to constitute activities authorized pursuant to this Act [[42 USCS §§ 2011](#) et seq.]; and special nuclear material acquired by any person pursuant to such an exemption shall be deemed to have been acquired pursuant to section 53 [[42 USCS § 2073](#)].

**(n) “State” and “agreement” defined.** As used in this section, the term “State” means any State, Territory, or possession of the United States, the Canal Zone, Puerto Rico, and the District of Columbia. As used in this section, the term “agreement” includes any amendment to any agreement.

**(o) State compliance requirements: compliance with section 2113(b) of this title and health and environmental protection standards; procedures for licenses, rulemaking, and license impact analysis; amendment of agreements for transfer of State collected funds; proceedings duplication restriction; alternative requirements.** In the licensing and regulation of byproduct material, as defined in section 11(e)(2) of this Act [[42 USCS § 2014\(e\)\(2\)](#)], or of any activity which results in the production of byproduct material as so defined under an agreement entered into pursuant to subsection b., a State shall require—

**(1)**compliance with the requirements of subsection (b) of section 83 [[42 USCS § 2113](#)] (respecting ownership of byproduct material and land), and

**(2)**compliance with standards which shall be adopted by the State for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose, including requirements and standards promulgated by the Commission and the Administrator of the Environmental Protection Agency pursuant to sections 83, 84, and 275, [[42 USCS §§ 2022, 2113, 2114](#)] and

**(3)**procedures which—

**(A)**in the case of licenses, provide procedures under State law which include—

**(i)**an opportunity, after public notice, for written comments and a public hearing, with a transcript,

**(ii)**an opportunity for cross examination, and

**(iii)**a written determination which is based upon findings included in such determination and upon the evidence presented during the public comment period and which is subject to judicial review;

**(B)**in the case of rulemaking, provide an opportunity for public participation through written comments or a public hearing and provide for judicial review of the rule;

**(C)**require for each license which has a significant impact on the human environment a written analysis (which shall be available to the public before the commencement of any such proceedings) of the impact of such license, including any activities conducted pursuant thereto, on the environment, which analysis shall include—

**(i)**an assessment of the radiological and nonradiological impacts to the public health of the activities to be conducted pursuant to such license;

**(ii)**an assessment of any impact on any waterway and groundwater resulting from such activities;

**(iii)**consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted pursuant to such license; and

**(iv)**consideration of the long-term impacts, including decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted pursuant to such license, including the management of any byproduct material, as defined by section 11(e)(2) [[42 USCS § 2014\(e\)\(2\)](#)]; and

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(D) prohibit any major construction activity with respect to such material prior to complying with the provisions of subparagraph (C).

If any State under such agreement imposes upon any licensee any requirement for the payment of funds to such State for the reclamation or long-term maintenance and monitoring of such material, and if transfer to the United States of such material is required in accordance with section 83(b) of this Act [[42 USCS § 2113\(b\)](#)], such agreement shall be amended by the Commission to provide that such State shall transfer to the United States upon termination of the license issued to such licensee the total amount collected by such State from such licensee for such purpose. If such payments are required, they must be sufficient to ensure compliance with the standards established by the Commission pursuant to section 161(x) of this Act [[42 USCS § 2201\(x\)](#)]. No State shall be required under paragraph (3) to conduct proceedings concerning any license or regulation which would duplicate proceedings conducted by the Commission. In adopting requirements pursuant to paragraph (2) of this subsection with respect to sites at which ores are processed primarily for their source material content or which are used for the disposal of byproduct material as defined in section 11(e)(2) [[42 USCS § 2014\(e\)\(2\)](#)], the State may adopt alternatives (including, where appropriate, site-specific alternatives) to the requirements adopted and enforced by the Commission for the same purpose if, after notice and opportunity for public hearing, the Commission determines that such alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the Environmental Protection Agency in accordance with section 275 [[42 USCS § 2022](#)]. Such alternative State requirements may take into account local or regional conditions, including geology, topography, hydrology and meteorology.

## History

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### HISTORY:

Act Aug. 1, 1946, ch 724, Title I, Ch. 19, § 274, as added Sept. 23, 1959, [P. L. 86-373](#), § 1, [73 Stat. 688](#); Nov. 8, 1978, [P. L. 95-604](#), Title II, § 204(a)–(f), [92 Stat. 3036](#); June 30, 1980, [P.L. 96-295](#), Title II, § 205, [94 Stat. 787](#); Jan. 4, 1983, [P.L. 97-415](#), § 19(a), [96 Stat. 2079](#); Oct. 24, 1992, [P. L. 102-486](#), Title IX, § 902(a)(6), (8), [106 Stat. 2944](#); Aug. 8, 2005, [P. L. 109-58](#), Title VI, Subtitle D, § 651(e)(2), [119 Stat. 807](#).

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**TAB 5**

## 42 USCS § 2091

Current through Public Law 116-108, approved January 24, 2020, with a gap of Public Law 116-94.

**United States Code Service > TITLE 42. THE PUBLIC HEALTH AND WELFARE (Chs. 1 — 161) > CHAPTER 23. DEVELOPMENT AND CONTROL OF ATOMIC ENERGY (§§ 2011 — 2297h-13) > ATOMIC ENERGY (§§ 2011 — 2296b-7) > SOURCE MATERIAL (§§ 2091 — 2099)**

### § 2091. Determination of source material

The Commission may determine from time to time that other material is source material in addition to those specified in the definition of source material. Before making such determination, the Commission must find that such material is essential to the production of special nuclear material and must find that the determination that such material is source material is in the interest of the common defense and security, and the President must have expressly assented in writing to the determination. The Commission's determination, together with the assent of the President, shall be submitted to the Energy Committees and a period of thirty days shall elapse while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days) before the determination of the Commission may become effective: *Provided, however,* That the Energy Committees, after having received such determination, may by resolution in writing waive the conditions of or all or any portion of such thirty-day period.

### History

#### **HISTORY:**

Act Aug. 1, 1946, ch 724, Title I, Ch. 7, § 61, as added *Aug. 30, 1954, ch 1073, § 1, 68 Stat. 932*; Oct. 24, 1992, *P. L. 102-486*, Title IX, § 902(a)(8), *106 Stat. 2944*; Nov. 2, 1994, *P. L. 103-437, § 15(f)(4), 108 Stat. 4592*.

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**TAB 6**

## 42 USCS § 2131

Current through Public Law 116-108, approved January 24, 2020, with a gap of Public Law 116-94.

**United States Code Service > TITLE 42. THE PUBLIC HEALTH AND WELFARE (Chs. 1 — 161) > CHAPTER 23. DEVELOPMENT AND CONTROL OF ATOMIC ENERGY (§§ 2011 — 2297h-13) > ATOMIC ENERGY (§§ 2011 — 2296b-7) > ATOMIC ENERGY LICENSES (§§ 2131 — 2142)**

### § 2131. License required

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It shall be unlawful, except as provided in section 91 [[42 USCS § 2121](#)], for any person within the United States to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export any utilization or production facility except under and in accordance with a license issued by the Commission pursuant to section 103 or 104 [[42 USCS § 2133](#) or [2134](#)].

### History

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#### **HISTORY:**

Act Aug. 1, 1946, ch 724, Title I, Ch. 10, § 101, as added Aug. 30, 1954, ch 1073, § 1, [68 Stat. 936](#); Aug. 6, 1956, ch 1015, § 11, [70 Stat. 1071](#); Oct. 24, 1992, P. L. 102-486, Title IX, § 902(a)(8), [106 Stat. 2944](#).

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**TAB 7**

## 42 USCS § 2132

Current through Public Law 116-108, approved January 24, 2020, with a gap of Public Law 116-94.

**United States Code Service > TITLE 42. THE PUBLIC HEALTH AND WELFARE (Chs. 1 — 161) > CHAPTER 23. DEVELOPMENT AND CONTROL OF ATOMIC ENERGY (§§ 2011 — 2297h-13) > ATOMIC ENERGY (§§ 2011 — 2296b-7) > ATOMIC ENERGY LICENSES (§§ 2131 — 2142)**

### **§ 2132. Utilization and production facilities for industrial or commercial purposes**

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**(a) Issuance of licenses.** Except as provided in subsections (b) and (c), or otherwise specifically authorized by law, any license hereafter issued for a utilization or production facility for industrial or commercial purposes shall be issued pursuant to section 103 [[42 USCS § 2133](#)].

**(b) Facilities constructed or operated under [42 USCS § 2134\(b\)](#).** Any license hereafter issued for a utilization or production facility for industrial or commercial purposes, the construction or operation of which was licensed pursuant to subsection 104(b) [[42 USCS § 2134\(b\)](#)] prior to enactment into law of this subsection, shall be issued under subsection 104(b) [[42 USCS § 2134\(b\)](#)].

**(c) Cooperative Power Reactor Demonstration facilities.** Any license for a utilization or production facility for industrial or commercial purposes constructed or operated under an arrangement with the Commission entered into under the Cooperative Power Reactor Demonstration Program shall, except as otherwise specifically required by applicable law, be issued under subsection 104(b) [[42 USCS § 2134\(b\)](#)].

### **History**

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#### **HISTORY:**

Act Aug. 1, 1946, ch 724, Title I, Ch. 10, § 102, as added Aug. 30, 1954, ch 1073, § 1, [68 Stat. 936](#); Dec. 19, 1970, [P. L. 91-560](#), § 3, [84 Stat. 1472](#); Oct. 24, 1992, [P. L. 102-486](#), Title IX, § 902(a)(8), [106 Stat. 2944](#).

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**TAB 8**

## 42 USCS § 2133

Current through Public Law 116-108, approved January 24, 2020, with a gap of Public Law 116-94.

**United States Code Service > TITLE 42. THE PUBLIC HEALTH AND WELFARE (Chs. 1 — 161) > CHAPTER 23. DEVELOPMENT AND CONTROL OF ATOMIC ENERGY (§§ 2011 — 2297h-13) > ATOMIC ENERGY (§§ 2011 — 2296b-7) > ATOMIC ENERGY LICENSES (§§ 2131 — 2142)**

### § 2133. Commercial licenses

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**(a) Conditions.** The Commission is authorized to issue licenses to persons applying therefor to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export under the terms of an agreement for cooperation arranged pursuant to section 123 [42 USCS § 2153], utilization or production facilities for industrial or commercial purposes. Such licenses shall be issued in accordance with the provisions of chapter 16 [42 USCS §§ 2231 et seq.] and subject to such conditions as the Commission may by rule or regulation establish to effectuate the purposes and provisions of this Act [42 USCS §§ 2011 et seq.].

**(b) Nonexclusive basis.** The Commission shall issue such licenses on a nonexclusive basis to persons applying therefor (1) whose proposed activities will serve a useful purpose proportionate to the quantities of special nuclear material or source material to be utilized; (2) who are equipped to observe and who agree to observe such safety standards to protect health and to minimize danger to life or property as the Commission may by rule establish; and (3) who agree to make available to the Commission such technical information and data concerning activities under such licenses as the Commission may determine necessary to promote the common defense and security and to protect the health and safety of the public. All such information may be used by the Commission only for the purposes of the common defense and security and to protect the health and safety of the public.

**(c) License period.** Each such license shall be issued for a specified period, as determined by the Commission, depending on the type of activity to be licensed, but not exceeding forty years from the authorization to commence operations, and may be renewed upon the expiration of such period.

**(d) Limitations.** No license under this section may be given to any person for activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities under terms of an agreement for cooperation arranged pursuant to section 123 [42 USCS § 2153], or except under the provisions of section 109 [42 USCS § 2139]. No license may be issued to an alien or any [any] corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

**(e) [Not enacted]**

**(f) Accident notification condition; license revocation; license amendment to include condition.** Each license issued for a utilization facility under this section or section 104(b) [42 USCS § 2134(b)] shall require as a condition thereof that in case of any accident which could result in an unplanned release of quantities of fission products in excess of allowable limits for normal operation established by the Commission, the licensee shall immediately so notify the Commission. Violation of the condition prescribed by this subsection may, in the Commission's discretion, constitute grounds for license revocation. In accordance with section 187 of this Act [42 USCS § 2237], the Commission shall promptly amend each license for a utilization facility issued under this section or section 104(b) [42 USCS § 2134(b)] which is in effect on the date of enactment of this subsection [enacted June 30, 1980] to include the provisions required under this subsection.

42 USCS § 2133

## History

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### HISTORY:

Act Aug. 1, 1946, ch 724, Title I, Ch. 10, § 103, as added *Aug. 30, 1954, ch 1073, § 1, [68 Stat. 936](#)*; Aug. 6, 1956, ch 1015, §§ 12, 13, [70 Stat. 1071](#); Dec. 19, 1970, *P. L. 91-560, § 4, [84 Stat. 1472](#)*; June 30, 1980, *P. L. 96-295, Title II, § 201, [94 Stat. 786](#)*; Oct. 24, 1992, *P. L. 102-486, Title IX, § 902(a)(8), 106 Stat. 2944*; Aug. 8, 2005, *P. L. 109-58, Title VI, Subtitle B, § 621, 119 Stat. 782*.

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**TAB 9**

## 42 USCS § 2201

Current through Public Law 116-108, approved January 24, 2020, with a gap of Public Law 116-94.

**United States Code Service > TITLE 42. THE PUBLIC HEALTH AND WELFARE (Chs. 1 — 161) > CHAPTER 23. DEVELOPMENT AND CONTROL OF ATOMIC ENERGY (§§ 2011 — 2297h-13) > ATOMIC ENERGY (§§ 2011 — 2296b-7) > GENERAL AUTHORITY OF COMMISSION (§§ 2201 — 2215)**

### § 2201. General duties of Commission

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In the performance of its functions the Commission is authorized to—

**(a) Establishment of advisory boards.** establish advisory boards to advise with and make recommendations to the Commission on legislation, policies, administration, research, and other matters, provided that the Commission issues regulations setting forth the scope, procedure, and limitations of the authority of each such board;

**(b) Standards governing use and possession of material.** establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property; in addition, the Commission shall prescribe such regulations or orders as may be necessary or desirable to promote the Nation's common defense and security with regard to control, ownership, or possession of any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235;

**(c) Studies and investigations.** make such studies and investigations, obtain such information, and hold such meetings or hearings as the Commission may deem necessary or proper to assist it in exercising any authority provided in this Act [[42 USCS §§ 2011](#) et seq.], or in the administration or enforcement of this Act [[42 USCS §§ 2011](#) et seq.], or any regulations or orders issued thereunder. For such purposes the Commission is authorized to administer oaths and affirmations, and by subpoena to require any person to appear and testify, or to appear and produce documents, or both, at any designated place. Witnesses subpoenaed under this subsection shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States;

**(d) Employment of personnel.** appoint and fix the compensation of such officers and employees as may be necessary to carry out the functions of the Commission. Such officers and employees shall be appointed in accordance with the civil-service laws and their compensation fixed in accordance with the Classification Act of 1949, as amended [[5 USCS §§ 5101](#) et seq. and [5331](#) et seq.], except that, to the extent the Commission deems such action necessary to the discharge of its responsibilities, personnel may be employed and their compensation fixed without regard to such laws: *Provided, however,* That no officer or employee (except such officers and employees whose compensation is fixed by law, and scientific and technical personnel up to a limit of the highest rate of grade 18 of the General Schedule of the Classification Act of 1949, as amended [[5 USCS §§ 5101](#) et seq. and [5331](#) et seq.]) whose position would be subject to the Classification Act of 1949, as amended [[5 USCS §§ 5101](#) et seq. and [5331](#) et seq.], if such Act were applicable to such position, shall be paid a salary at a rate in excess of the rate payable under such Act for positions of equivalent difficulty or responsibility. Such rates of compensation may be adopted by the Commission as may be authorized by the Classification Act of 1949, as amended [[5 USCS §§ 5101](#) et seq. and [5331](#) et seq.], as of the same date such rates are authorized for positions subject to such Act. The Commission shall make adequate provision for administrative review of any determination to dismiss any employee;

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**(e) Acquisition of material, property, etc.; negotiation of commercial leases.** acquire such material, property, equipment, and facilities, establish or construct such buildings and facilities, and modify such buildings and facilities from time to time, as it may deem necessary, and construct, acquire, provide, or arrange for such facilities and services (at project sites where such facilities and services are not available) for the housing, health, safety, welfare, and recreation of personnel employed by the Commission as it may deem necessary, subject to the provisions of section 174 [[42 USCS § 2224](#)]: *Provided, however,* That in the communities owned by the Commission, the Commission is authorized to grant privileges, leases and permits upon adjusted terms which (at the time of the initial grant of any privilege grant, lease, or permit, or renewal thereof, or in order to avoid inequities or undue hardship prior to the sale by the United States of property affected by such grant) are fair and reasonable to responsible persons to operate commercial businesses without advertising [and without advertising] and without securing competitive bids, but taking into consideration, in addition to the price, and among other things (1) the quality and type of services required by the residents of the community, (2) the experience of each concession applicant in the community and its surrounding area, (3) the ability of the concession applicant to meet the needs of the community, and (4) the contribution the concession applicant has made or will make to the other activities and general welfare of the community;

**(f) Utilization of other Federal agencies.** with the consent of the agency concerned, utilize or employ the services or personnel of any Government agency or any State or local government, or voluntary or uncompensated personnel, to perform such functions on its behalf as may appear desirable;

**(g) Acquisition of real and personal property.** acquire, purchase, lease, and hold real and personal property, including patents, as agent of and on behalf of the United States, subject to the provisions of section 174 [[42 USCS § 2224](#)], and to sell, lease, grant, and dispose of such real and personal property as provided in this Act [[42 USCS §§ 2011](#) et seq.];

**(h) Consideration of license applications.** consider in a single application one or more of the activities for which a license is required by this Act [[42 USCS §§ 2011](#) et seq.], combine in a single license one or more of such activities, and permit the applicant or licensee to incorporate by reference pertinent information already filed with the Commission;

**(i) Regulations governing Restricted Data.** prescribe such regulations or orders as it may deem necessary (1) to protect Restricted Data received by any person in connection with any activity authorized pursuant to this Act [[42 USCS §§ 2011](#) et seq.], (2) to guard against the loss or diversion of any special nuclear material acquired by any person pursuant to section 53 [[42 USCS § 2073](#)] or produced by any person in connection with any activity authorized pursuant to this Act [[42 USCS §§ 2011](#) et seq.], to prevent any use or disposition thereof which the Commission may determine to be inimical to the common defense and security, including regulations or orders designating activities, involving quantities of special nuclear material which in the opinion of the Commission are important to the common defense and security, that may be conducted only by persons whose character, associations, and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to conduct the activity will not be inimical to the common defense and security, (3) to govern any activity authorized pursuant to this Act [[42 USCS §§ 2011](#) et seq.], including standards and restrictions governing the design, location, and operation of facilities used in the conduct of such activity, in order to protect health and to minimize danger to life or property, and (4) to ensure that sufficient funds will be available for the decommissioning of any production or utilization facility licensed under section 103 or 104 b. [[42 USCS § 2133](#) or [2134\(b\)](#)], including standards and restrictions governing the control, maintenance, use, and disbursement by any former licensee under this Act that has control over any fund for the decommissioning of the facility;

**(j) Disposition of surplus materials.** without regard to the provisions of the Federal Property and Administrative Services Act of 1949, as amended, except section 207 of that Act [[40 USCS § 559](#)], or any other law, make such disposition as it may deem desirable of (1) radioactive materials, and (2) any other property, the special disposition of which is, in the opinion of the Commission, in the interest of the national security: *Provided, however,* That the property furnished to licensees in accordance with the provisions of subsection



## 42 USCS § 2201

161(m) [subsec. (m) of this section] shall not be deemed to be property disposed of by the Commission pursuant to this subsection;

**(k) Carrying of firearms; authority to make arrests without warrant.** authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties. The Commission may also authorize such of those employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States located at facilities owned by or contracted to the United States or being transported to or from such facilities as it deems necessary in the interests of the common defense and security to carry firearms while in the discharge of their official duties. A person authorized to carry firearms under this subsection may, while in the performance of, and in connection with, official duties, make arrests without warrant for any offense against the United States committed in that person's presence or for any felony cognizable under the laws of the United States if that person has reasonable grounds to believe that the individual to be arrested has committed or is committing such felony. An employee of a contractor or subcontractor authorized to carry firearms under this subsection may make such arrests only when the individual to be arrested is within, or in direct flight from, the area of such offense. A person granted authority to make arrests by this subsection may exercise that authority only in the enforcement of (1) laws regarding the property of the United States in the custody of the Department of Energy, the Nuclear Regulatory Commission, or a contractor of the Department of Energy or Nuclear Regulatory Commission, or (2) any provision of this Act [[42 USCS §§ 2011](#) et seq.] that may subject an offender to a fine, imprisonment, or both. The arrest authority conferred by this subsection is in addition to any arrest authority under other laws. The Secretary, with the approval of the Attorney General, shall issue guidelines to implement this subsection;

**(l) [Repealed]**

**(m) Agreements regarding production.** enter into agreements with persons licensed under section 103, 104, 53(a)(4), or 63(a)(4) [[42 USCS § 2133](#), [2134](#), [2073\(a\)\(4\)](#), or [2093\(a\)\(4\)](#)] for such periods of time as the Commission may deem necessary or desirable (1) to provide for the processing, fabricating, separating, or refining in facilities owned by the Commission of source, byproduct, or other material or special nuclear material owned by or made available to such licensees and which is utilized or produced in the conduct of the licensed activity, and (2) to sell, lease, or otherwise make available to such licensees such quantities of source or byproduct material, and other material not defined as special nuclear material pursuant to this Act [[42 USCS §§ 2011](#) et seq.], as may be necessary for the conduct of the licensed activity: *Provided, however,* That any such agreement may be canceled by the licensee at any time upon payment of such reasonable cancellation charges as may be agreed upon by the licensee and the Commission: *And provided further,* That the Commission shall establish prices to be paid by licensees for material or services to be furnished by the Commission pursuant to this subsection, which prices shall be established on such a nondiscriminatory basis as, in the opinion of the Commission, will provide reasonable compensation to the Government for such material or services and will not discourage the development of sources of supply independent of the Commission;

**(n) Delegation of functions.** delegate to the General Manager or other officers of the Commission any of those functions assigned to it under this Act [[42 USCS §§ 2011](#) et seq.] except those specified in section 51, 57 b. (with respect to enrichment and reprocessing of special nuclear material or with respect to transfers to any covered foreign country (as defined in section 3136(i) of the National Defense Authorization Act for Fiscal Year 2016 ([42 U.S.C. 2077a\(j\)](#))), 61, 108, 123, 145(b) [[42 USCS § 2071](#), [2077\(b\)](#), [2091](#), [2138](#), [2153](#), [2165\(b\)](#)] (with respect to the determination of those persons to whom the Commission may reveal Restricted Data in the national interest), 145(f) [[42 USCS § 2165\(f\)](#)], and 161(a) [subsec. (a) of this section].

**(o) Reports.** Require by rule, regulation, or order, such reports, and the keeping of such records with respect to, and to provide for such inspections of, activities and studies of types specified in section 31 [[42 USCS § 2051](#)] and of activities under licenses issued pursuant to sections 53, 63, 81, 103, and 104 [[42 USCS §§ 2073](#), [2093](#), [2111](#), [2133](#), and [2134](#)], as may be necessary to effectuate the purposes of this Act [[42 USCS §§ 2011](#) et seq.], including section 105 [[42 USCS § 2135](#)]; and

## 42 USCS § 2201

**(p) Rules and regulations.** make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of this Act [[42 USCS §§ 2011](#) et seq.].

**(q) Easements for rights-of-way.** The Commission is authorized and empowered, under such terms and conditions as are deemed advisable by it, to grant easements for rights-of-way over, across, in, and upon acquired lands under its jurisdiction and control, and public lands permanently withdrawn or reserved for the use of the Commission, to any State, political subdivision thereof, or municipality, or to any individual, partnership, or corporation of any State, Territory, or possession of the United States, for (a) railroad tracks; (b) oil pipe lines; (c) substations for electric power transmission lines, telephone lines, and telegraph lines, and pumping stations for gas, water, sewer, and oil pipe lines; (d) canals; (e) ditches; (f) flumes; (g) tunnels; (h) dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other fish-cultural improvements; (i) roads and streets; and (j) for any other purpose or purposes deemed advisable by the Commission: *Provided*, That such rights-of-way shall be granted only upon a finding by the Commission that the same will not be incompatible with the public interest: *Provided further*, That such rights-of-way shall not include any more land than is reasonably necessary for the purpose for which granted: *And provided further*, That all or any part of such rights-of-way may be annulled and forfeited by the Commission for failure to comply with the terms and conditions of any grant hereunder or for nonuse for a period of two consecutive years or abandonment of rights granted under authority hereof. Copies of all instruments granting easements over public lands pursuant to this section shall be furnished to the Secretary of the Interior.

**(r) Sale of utilities and related services.** Under such regulations and for such periods and at such prices [as] the Commission may prescribe, the Commission may sell or contract to sell to purchasers within Commission-owned communities or in the immediate vicinity of the Commission community, as the case may be, any of the following utilities and related services, if it is determined that they are not available from another local source and that the sale is in the interest of the national defense or in the public interest:

- (1) Electric power.
- (2) Steam.
- (3) Compressed air.
- (4) Water.
- (5) Sewage and garbage disposal.
- (6) Natural, manufactured, or mixed gas.
- (7) Ice.
- (8) Mechanical refrigeration.
- (9) Telephone service.

Proceeds of sales under this subsection shall be credited to the appropriation currently available for the supply of that utility or service. To meet local needs the Commission may make minor expansions and extensions of any distributing system or facility within or in the immediate vicinity of a Commission-owned community through which a utility or service is furnished under this subsection.

**(s) Succession of authority.** establish a plan for a succession of authority which will assure the continuity of direction of the Commission's operations in the event of a national disaster due to enemy activity. Notwithstanding any other provision of this Act [[42 USCS §§ 2011](#) et seq.], the person or persons succeeding to command in the event of disaster in accordance with the plan established pursuant to this subsection shall be vested with all of the authority of the Commission: *Provided*, That any such succession to authority, and vesting of authority shall be effective only in the event and as long as a quorum of three or more members of the Commission is unable to convene and exercise direction during the disaster period: *Provided further*, That the disaster period includes the period when attack on the United States is imminent and the post-attack period necessary to reestablish normal lines of command;

## 42 USCS § 2201

**(t) Contracts.** enter into contracts for the processing, fabricating, separating, or refining in facilities owned by the Commission of source, byproduct or other material, or special nuclear material, in accordance with and within the period of an agreement for cooperation while comparable services are available to persons licensed under section 103 or 104 [[42 USCS § 2133](#) or [2134](#)]: *Provided*, That the prices for services under such contracts shall be no less than the prices currently charged by the Commission pursuant to section 161(m) [subsec. (m) of this section];

**(u) Additional contracts; guiding principles; appropriations.**

**(1)**enter into contracts for such periods of time as the Commission may deem necessary or desirable, but not to exceed five years from the date of execution of the contract, for the purchase or acquisition of reactor services or services related to or required by the operation of reactors;

**(2)**

**(A)**enter into contracts for such periods of time as the Commission may deem necessary or desirable for the purchase or acquisition of any supplies, equipment, materials, or services required by the Commission whenever the Commission determines that: (i) it is advantageous to the Government to make such purchase or acquisition from commercial sources; (ii) the furnishing of such supplies, equipment, materials, or services will require the construction or acquisition of special facilities by the vendors or suppliers thereof; (iii) the amortization chargeable to the Commission constitutes an appreciable portion of the cost of contract performance, excluding cost of materials; and (iv) the contract for such period is more advantageous to the Government than a similar contract not executed under the authority of this subsection. Such contracts shall be entered into for periods not to exceed five years each from the date of initial delivery of such supplies, equipment, materials, or services or ten years from the date of execution of the contracts excluding periods of renewal under option.

**(B)**In entering into such contracts the Commission shall be guided by the following principles: (i) the percentage of the total cost of special facilities devoted to contract performance and chargeable to the Commission should not exceed the ratio between the period of contract deliveries and the anticipated useful life of such special facilities; (ii) the desirability of obtaining options to renew the contract for reasonable periods at prices not to include charges for special facilities already amortized; and (iii) the desirability of reserving in the Commission the right to take title to the special facilities under appropriate circumstances; and

**(3)**include in contracts made under this subsection provisions which limit the obligation of funds to estimated annual deliveries and services and the unamortized balance of such amounts due for special facilities as the parties shall agree is chargeable to the performance of the contract. Any appropriation available at the time of termination or thereafter made available to the Commission for operating expenses shall be available for payment of such costs which may arise from termination as the contract may provide. The term "special facilities" as used in this subsection means any land and any depreciable buildings, structures, utilities, machinery, equipment, and fixtures necessary for the production or furnishing of such supplies, equipment, materials, or services and not available to the vendors or suppliers for the performance of the contract.

**(v) Support of United States Enrichment Corporation.** Provide services in support of the United States Enrichment Corporation, except that the Secretary of Energy shall annually collect payments and other charges from the Corporation sufficient to ensure recovery of the costs (excluding depreciation and imputed interest on original plant investments in the Department's gaseous diffusion plants and costs under section 1403(d)) incurred by the Department of Energy after the date of the enactment of the Energy Policy Act of 1992 [enacted Oct. 24, 1992] in performing such services;

**(w) License fees for nuclear power reactors.** prescribe and collect from any other Government agency, which applies to the Commission for, or is issued by the Commission, a license or certificate, any fee, charge, or price which it may require, in accordance with the provisions of [section 9701 of title 31 of the United States Code](#) or any other law.

## 42 USCS § 2201

**(x) Standards and instructions for bonding, surety, or other financial arrangements, including performance bonds.** Establish by rule, regulation, or order, after public notice, and in accordance with the requirements of section 181 of this Act [[42 USCS § 2231](#)], such standards and instructions as the Commission may deem necessary or desirable to ensure—

**(1)**that an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided, before termination of any license for byproduct material as defined in section 11(e)(2) [[42 USCS § 2014\(e\)\(2\)](#)], by a licensee to permit the completion of all requirements established by the Commission for the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with byproduct material as so defined, and

**(2)**that—

**(A)**in the case of any such license issued or renewed after the date of the enactment of this subsection [enacted Nov. 8, 1978], the need for long term maintenance and monitoring of such sites, structures and equipment after termination of such license will be minimized and, to the maximum extent practicable, eliminated; and

**(B)**in the case of each license for such material (whether in effect on the date of the enactment of this section [enacted Nov. 8, 1978] or issued or renewed thereafter), if the Commission determines that any such long-term maintenance and monitoring is necessary, the licensee, before termination of any license for byproduct material as defined in section 11(e)(2) [[42 USCS § 2014\(e\)\(2\)](#)], will make available such bonding, surety, or other financial arrangements as may be necessary to assure such long-term maintenance and monitoring.

Such standards and instructions promulgated by the Commission pursuant to this subsection shall take into account, as determined by the Commission, so as to avoid unnecessary duplication and expense, performance bonds or other financial arrangements which are required by other Federal agencies or State agencies and/or other local governing bodies for such decommissioning, decontamination, and reclamation and long-term maintenance and monitoring except that nothing in this paragraph shall be construed to require that the Commission accept such bonds or arrangements if the Commission determines that such bonds or arrangements are not adequate to carry out subparagraphs (1) and (2) of this subsection.

## History

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### HISTORY:

Act Aug. 1, 1946, ch 724, Title I, Ch. 14, § 161, as added *Aug. 30, 1954, ch 1073, § 1, 68 Stat. 948*; July 14, 1956, ch 608, *70 Stat. 553*; Aug. 6, 1956, ch 1015, § 4, *70 Stat. 1069*; Aug. 21, 1957, *P. L. 85-162*, §§ 201, 204, *71 Stat. 410*; Sept. 4, 1957, *P. L. 85-287*, § 4, *71 Stat. 613*; July 7, 1958, *P. L. 85-507*, § 21(b)(1), *72 Stat. 337*; Aug. 19, 1958, *P. L. 85-861*, §§ 6, 7, *72 Stat. 633*; Sept. 21, 1959, *P. L. 86-300*, § 1, *73 Stat. 574*; Sept. 6, 1961, *P. L. 87-206*, § 13, *75 Stat. 478*; May 24, 1962, *P. L. 87-456*, Title III, § 303(c), *76 Stat. 78*; Aug. 29, 1962, *P. L. 87-615*, § 12, *76 Stat. 411*; Oct. 11, 1962, *P. L. 87-793*, Part II, Title VI, § 1001(g), *76 Stat. 864*; Aug. 26, 1964, *P. L. 88-489*, § 16, *78 Stat. 606*; Dec. 14, 1967, *P. L. 90-190*, § 11, *81 Stat. 578*; Oct. 15, 1970, *P. L. 91-452*, Title II, § 237, *84 Stat. 930*; Dec. 19, 1970, *P. L. 91-560*, §§ 7, 8, *84 Stat. 1474*; June 16, 1972, *P. L. 92-314*, Title III, § 301, *86 Stat. 227*; August 17, 1974, *P. L. 93-377*, § 7, *88 Stat. 475*; Nov. 8, 1978, *P. L. 95-604*, Title II, § 203, *92 Stat. 3036*; Dec. 4, 1981, *P. L. 97-90*, Title II, § 211, *95 Stat. 1170*; Nov. 14, 1986, *P. L. 99-661*, Div C, Title I, Part C, § 3134, *100 Stat. 4064*; Sept. 28, 1988, *P. L. 100-449*, Title III, § 305(b), *102 Stat. 1876*; Nov. 15, 1990, *P. L. 101-575*, § 5(b), *104 Stat. 2835*; Oct. 24, 1992, *P. L. 102-486*, Title IX, § 902(a)(4), (5), (8), *106 Stat. 2944*; Aug. 8, 2005, *P. L. 109-58*, Title VI, Subtitle B, §§ 623, 626, *119 Stat. 783, 784*; Aug. 13, 2018, *P. L. 115-232*, Div C, Title XXXI, Subtitle B, § 3116(a), *132 Stat. 2291*.

42 USCS § 2201

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**TAB 10**

## 42 USCS § 2232

Current through Public Law 116-108, approved January 24, 2020, with a gap of Public Law 116-94.

**United States Code Service > TITLE 42. THE PUBLIC HEALTH AND WELFARE (Chs. 1 — 161) > CHAPTER 23. DEVELOPMENT AND CONTROL OF ATOMIC ENERGY (§§ 2011 — 2297h-13) > ATOMIC ENERGY (§§ 2011 — 2296b-7) > JUDICIAL REVIEW AND ADMINISTRATIVE PROCEDURE (§§ 2231 — 2243)**

### § 2232. License applications

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**(a) Contents and form.** Each application for a license hereunder shall be in writing and shall specifically state such information as the Commission, by rule or regulation, may determine to be necessary to decide such of the technical and financial qualifications of the applicant, the character of the applicant, the citizenship of the applicant, or any other qualifications of the applicant as the Commission may deem appropriate for the license. In connection with applications for licenses to operate production or utilization facilities, the applicant shall state such technical specifications, including information of the amount, kind, and source of special nuclear material required, the place of the use, the specific characteristics of the facility, and such other information as the Commission may, by rule or regulation, deem necessary in order to enable it to find that the utilization or production of special nuclear material will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public. Such technical specifications shall be a part of any license issued. The Commission may at any time after the filing of the original application, and before the expiration of the license, require further written statements in order to enable the Commission to determine whether the application should be granted or denied or whether a license should be modified or revoked. All applications and statements shall be signed by the applicant or licensee. Applications for, and statements made in connection with, licenses under sections 103 and 104 [[42 USCS §§ 2133](#) and [2134](#)] shall be made under oath or affirmation. The Commission may require any other applications or statements to be made under oath or affirmation.

**(b) Review of applications by Advisory Committees on Reactor Safeguards; report.** The Advisory Committee on Reactor Safeguards shall review each application under section 103 or section 104(b) [[42 USCS § 2133](#) or [2134\(b\)](#)] for a construction permit or an operating license for a facility, any application under section 104(c) [[42 USCS § 2134\(c\)](#)] for a construction permit or an operating license for a testing facility, any application under section 104(a) or (c) [[42 USCS § 2134\(a\)](#) or (c)] specifically referred to it by the Commission, and any application for an amendment to a construction permit or an amendment to an operating license under section 103 or 104(a), (b), or (c) [[42 USCS § 2133](#) or [2134\(a\)](#), (b), or (c)] specifically referred to it by the Commission, and shall submit a report thereon which shall be made part of the record of the application and available to the public except to the extent that security classification prevents disclosure.

**(c) Commercial power; publication.** The Commission shall not issue any license under section 103 [[42 USCS § 2133](#)] for a utilization or production facility for the generation of commercial power until it has given notice in writing to such regulatory agency as may have jurisdiction over the rates and services incident to the proposed activity; until it has published notice of the application in such trade or news publications as the Commission deems appropriate to give reasonable notice to municipalities, private utilities, public bodies, and cooperatives which might have a potential interest in such utilization or production facility; and until it has published notice of such application once each week for four consecutive weeks in the Federal Register, and until four weeks after the last notice.

**(d) Preferred consideration.** The Commission, in issuing any license for a utilization or production facility for the generation of commercial power under section 103 [[42 USCS § 2133](#)], shall give preferred consideration to applications for such facilities which will be located in high cost power areas in the United States if there are

42 USCS § 2232

conflicting applications for a limited opportunity for such license. Where such conflicting applications resulting from limited opportunity for such license include those submitted by public or cooperative bodies such applications shall be given preferred consideration.

## History

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### HISTORY:

Act Aug. 1, 1946, ch 724, Title I, Ch. 16, § 182, as added *Aug. 30, 1954, ch 1073, § 1, [68 Stat. 953](#)*; Aug. 6, 1956, ch 1015, § 5, [70 Stat. 1069](#); Sept. 2, 1957, [P. L. 85-256](#), § 6, *71 Stat. 579*; Aug. 29, 1962, [P. L. 87-615](#), § 3, [76 Stat. 409](#); Dec. 19, 1970, [P. L. 91-560](#), § 9, [84 Stat. 1474](#); Oct. 24, 1992, *P. L. 102-486*, Title IX, § 902(a)(8), *106 Stat. 2944*.

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## 42 USCS § 2236

Current through Public Law 116-108, approved January 24, 2020, with a gap of Public Law 116-94.

**United States Code Service > TITLE 42. THE PUBLIC HEALTH AND WELFARE (Chs. 1 — 161) > CHAPTER 23. DEVELOPMENT AND CONTROL OF ATOMIC ENERGY (§§ 2011 — 2297h-13) > ATOMIC ENERGY (§§ 2011 — 2296b-7) > JUDICIAL REVIEW AND ADMINISTRATIVE PROCEDURE (§§ 2231 — 2243)**

### § 2236. Revocation of licenses

---

**(a) False applications; failure of performance.** Any license may be revoked for any material false statement in the application or any statement of fact required under section 182 [[42 USCS § 2232](#)], or because of conditions revealed by such application or statement of fact or any report, record, or inspection or other means which would warrant the Commission to refuse to grant a license on an original application, or for failure to construct or operate a facility in accordance with the terms of the construction permit or license or the technical specifications in the application, or for violation of, or failure to observe any of the terms and provisions of this Act [[42 USCS §§ 2011](#) et seq.] or of any regulation of the Commission.

**(b) Procedure.** The Commission shall follow the provisions of section 9(b) of the Administrative Procedure Act [[5 USCS § 558\(c\)](#)] in revoking any license.

**(c) Repossession of material.** Upon revocation of the license, the Commission may immediately retake possession of all special nuclear material held by the licensee. In cases found by the Commission to be of extreme importance to the national defense and security or to the health and safety of the public, the Commission may recapture any special nuclear material held by the licensee or may enter upon and operate the facility prior to any of the procedures provided under the Administrative Procedure Act [[5 USCS §§ 551](#) et seq. and [701](#) et seq.]. Just compensation shall be paid for the use of the facility.

### History

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#### **HISTORY:**

Act Aug. 1, 1946, ch 724, Title I, Ch. 16, § 186, as added Aug. 30, 1954, ch 1073, § 1, [68 Stat. 955](#); Oct. 24, 1992, P. L. 102-486, Title IX, § 902(a)(8), [106 Stat. 2944](#).

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**TAB 12**

## 42 USCS § 5841

Current through Public Law 116-108, approved January 24, 2020, with a gap of Public Law 116-94.

**United States Code Service > TITLE 42. THE PUBLIC HEALTH AND WELFARE (Chs. 1 — 161) > CHAPTER 73. DEVELOPMENT OF ENERGY SOURCES (§§ 5801 — 5891) > NUCLEAR REGULATORY COMMISSION; NUCLEAR WHISTLEBLOWER PROTECTION (§§ 5841 — 5854)**

### **§ 5841. Establishment and transfers**

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#### **(a) Composition; Chairman; Acting Chairman; quorum; official spokesman; seal; functions of Chairman and Commission.**

(1) There is established an independent regulatory commission to be known as the Nuclear Regulatory Commission which shall be composed of five members, each of whom shall be a citizen of the United States. The President shall designate one member of the Commission as Chairman thereof to serve as such during the pleasure of the President. The Chairman may from time to time designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his absence. The Chairman (or the Acting Chairman in the absence of the Chairman) shall preside at all meetings of the Commission and a quorum for the transaction of business shall consist of at least three members present. Each member of the Commission, including the Chairman, shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to all information relating to the performance of his duties or responsibilities, and shall have one vote. Action of the Commission shall be determined by a majority vote of the members present. The Chairman (or Acting Chairman in the absence of the Chairman) shall be the official spokesman of the Commission in its relations with the Congress, Government agencies, persons, or the public, and, on behalf of the Commission, shall see to the faithful execution of the policies and decisions of the Commission, and shall report thereon to the Commission from time to time or as the Commission may direct. The Commission shall have an official seal which shall be judicially noticed.

(2) The Chairman of the Commission shall be the principal executive officer of the Commission, and he shall exercise all of the executive and administrative functions of the Commission, including functions of the Commission with respect to (a) the appointment and supervision of personnel employed under the Commission (other than personnel employed regularly and full time in the immediate offices of commissioners other than the Chairman, and except as otherwise provided in the Energy Reorganization Act of 1974, (b) the distribution of business among such personnel and among administrative units of the Commission, and (c) the use and expenditure of funds.

(3) In carrying out any of his functions under the provisions of this section the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(4) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

(5) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining upon the distribution of appropriated funds according to major programs and purposes.

#### **(b) Appointment of members.**

(1) Members of the Commission shall be appointed by the President, by and with the advice and consent of the Senate.

## 42 USCS § 5841

(2) Appointments of members pursuant to this subsection shall be made in such a manner that not more than three members of the Commission shall be members of the same political party.

**(c) Term of office.** Each member shall serve for a term of five years, each such term to commence on July 1, except that of the five members first appointed to the Commission, one shall serve for one year, one for two years, one for three years, one for four years, and one for five years, to be designated by the President at the time of appointment; and except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term. For the purpose of determining the expiration date of the terms of office of the five members first appointed to the Nuclear Regulatory Commission, each such term shall be deemed to have begun July 1, 1975.

**(d) Submission of appointments to Senate.** Such initial appointments shall be submitted to the Senate within sixty days of the signing of this Act [Oct. 11, 1974]. Any individual who is serving as a member of the Atomic Energy Commission at the time of the enactment of this Act [Oct. 11, 1974], and who may be appointed by the President to the Commission, shall be appointed for a term designated by the President, but which term shall terminate not later than the end of his present term as a member of the Atomic Energy Commission, without regard to the requirements of subsection (b)(2) of this section. Any subsequent appointment of such individuals shall be subject to the provisions of this section.

**(e) Removal of members; prohibition against engagement in business or other employment.** Any member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. No member of the Commission shall engage in any business, vocation, or employment other than that of serving as a member of the Commission.

**(f) Transfer of licensing and regulatory functions of the Atomic Energy Commission.** There are hereby transferred to the Commission all the licensing and related regulatory functions of the Atomic Energy Commission, the Chairman and members of the Commission, the General Counsel, and other officers and components of the Commission—which functions officers, components, and personnel are excepted from the transfer to the Administrator by section 104(c) of this Act [[42 USCS § 5814\(c\)](#)].

**(g) Additional transfers.** In addition to other functions and personnel transferred to the Commission, there are also transferred to the Commission—

(1) the functions of the Atomic Safety and Licensing Board Panel and the Atomic Safety and Licensing Appeal Board;

(2) such personnel as the Director of the Office of Management and Budget determines are necessary for exercising responsibilities under section 205 [[42 USCS § 5845](#)], relating to, research, for the purpose of confirmatory assessment relating to licensing and other regulation under the provisions of the Atomic Energy Act of 1954, as amended, and of this Act.

**(h) [Repealed]**

## History

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### HISTORY:

Act Oct. 11, 1974, [P. L. 93-438](#), Title II, § 201, [88 Stat. 1242](#); Aug. 9, 1975, [P. L. 94-79](#), Title II, §§ 201(1), (2), 202, 203, [89 Stat. 413](#), 414; Dec. 13, 1977, [P. L. 95-209](#), § 2, [91 Stat. 1482](#); Aug. 22, 1986, [P. L. 99-386](#), Title I, § 109, [100 Stat. 822](#).

42 USCS § 5841

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**TAB 13**

## Cal Civ Code § 3480

Deering's California Codes are current through Chapter 3 of the 2020 Regular Session.

***Deering's California Codes Annotated > CIVIL CODE (§§ 1 — 7021) > Division 4 General Provisions (Pts. 1 — 8) > Part 3 Nuisance (Titles 1 — 4) > Title 1 General Principles (§§ 3479 — 3486.5)***

### **§ 3480. Public nuisance**

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A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

### **History**

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Enacted Stats 1872. Amended Code Amdts 1873–74 ch 612 § 285 p 268.

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**TAB 14**

## Cal Civ Code § 3482

Deering's California Codes are current through Chapter 3 of the 2020 Regular Session.

***Deering's California Codes Annotated > CIVIL CODE (§§ 1 — 7021) > Division 4 General Provisions (Pts. 1 — 8) > Part 3 Nuisance (Titles 1 — 4) > Title 1 General Principles (§§ 3479 — 3486.5)***

### **§ 3482. What is not deemed a nuisance**

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Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance.

### **History**

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Enacted Stats 1872.

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## Cal Civ Code § 3493

Deering's California Codes are current through Chapter 3 of the 2020 Regular Session.

***Deering's California Codes Annotated > CIVIL CODE (§§ 1 — 7021) > Division 4 General Provisions (Pts. 1 — 8) > Part 3 Nuisance (Titles 1 — 4) > Title 2 Public Nuisances (§§ 3490 — 3496)***

### **§ 3493. Private actions**

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A private person may maintain an action for a public nuisance, if it is specially injurious to himself, but not otherwise.

### **History**

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Enacted Stats 1872.

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**TAB 16**

## 10 CFR 1.11

This document is current through the March 23, 2020 issue of the Federal Register. Title 3 is current through March 6, 2020.

**Code of Federal Regulations > TITLE 10 -- ENERGY > CHAPTER I -- NUCLEAR REGULATORY COMMISSION > PART 1 -- STATEMENT OF ORGANIZATION AND GENERAL INFORMATION > SUBPART B -- HEADQUARTERS**

### **§ 1.11 The Commission.**

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(a) The Nuclear Regulatory Commission, composed of five members, one of whom is designated by the President as Chairman, is established pursuant to section 201 of the Energy Reorganization Act of 1974, as amended. The Chairman is the principal executive officer of the Commission, and is responsible for the executive and administrative functions with respect to appointment and supervision of personnel, except as otherwise provided by the Energy Reorganization Act of 1974, as amended, and Reorganization Plan No. 1 of 1980 ([45 FR 40561](#)); distribution of business; use and expenditures of funds (except that the function of revising budget estimates and purposes is reserved to the Commission); and appointment, subject to approval of the Commission, of heads of major administrative units under the Commission. The Chairman is the official spokesman, as mandated by the Reorganization Plan No. 1 of 1980. The Chairman has ultimate authority for all NRC functions pertaining to an emergency involving an NRC Licensee. The Chairman's actions are governed by the general policies of the Commission.

(b) The Commission is responsible for licensing and regulating nuclear facilities and materials and for conducting research in support of the licensing and regulatory process, as mandated by the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and the Nuclear Nonproliferation Act of 1978; and in accordance with the National Environmental Policy Act of 1969, as amended, and other applicable statutes. These responsibilities include protecting public health and safety, protecting the environment, protecting and safeguarding nuclear materials and nuclear power plants in the interest of national security, and assuring conformity with antitrust laws. Agency functions are performed through standards setting and rulemaking; technical reviews and studies; conduct of public hearings; issuance of authorizations, permits, and licenses; inspection, investigation, and enforcement; evaluation of operating experience; and confirmatory research. The Commission is composed of five members, appointed by the President and confirmed by the Senate.

(c) The following staff units and officials report directly to the Commission: Atomic Safety and Licensing Board Panel, Office of the General Counsel, Office of the Secretary, Office of Commission Appellate Adjudication, Office of International Programs, and other committees and boards that are authorized or established specifically by the Act. The Advisory Committee on Reactor Safeguards and the Advisory Committee on Nuclear Waste also report directly to the Commission.

(d) The Offices of Congressional Affairs and Public Affairs report directly to the Chairman.

### **Statutory Authority**

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#### **AUTHORITY NOTE APPLICABLE TO ENTIRE PART:**

Atomic Energy Act of 1954, secs. 23, 25, 29, 161, 191 ([42 U.S.C. 2033](#), 2035, 2039, 2201, 2241); Energy Reorganization Act of 1974, secs. 201, 203, 204, 205, 209 ([42 U.S.C. 5841](#), 5843, 5844, 5845, 5849);

## 10 CFR 1.11

Administrative Procedure Act ([5 U.S.C. 552](#), 553); Reorganization Plan No. 1 of 1980, 5 U.S.C. Appendix (Reorganization Plans).

## History

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[[52 FR 31602](#), Aug. 21, 1987, as amended at [57 FR 1639](#), Jan. 15, 1992; [59 FR 63882](#), Dec. 12, 1994]

Annotations

## Case Notes

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### LexisNexis® Notes

Administrative Law : Separation of Powers : Legislative Controls : General Overview  
Energy & Utilities Law : Administrative Proceedings : General Overview  
Energy & Utilities Law : Nuclear Power Industry : Atomic Energy Act  
Energy & Utilities Law : Nuclear Power Industry : Energy Reorganization Act  
Energy & Utilities Law : Nuclear Power Industry : U.S. Nuclear Regulatory Commission  
Environmental Law : Hazardous Wastes & Toxic Substances : Radioactive Substances :  
Torts : Procedure : Preemption : General Overview

### Administrative Law : Separation of Powers : Legislative Controls : General Overview

[Tns, Inc. v. NLRB, 296 F.3d 384, 2002 U.S. App. LEXIS 13815](#) (6th Cir July 10, 2002).

**Overview:** *NLRB order finding that employer breached its obligations under National Labor Relations Act was vacated pursuant to the employer's inexcusable delay argument where the case was filed in 1982 but the NLRB's final order was not issued until 1999.*

- As part of the complete federal preemption of nuclear safety, Congress delegated exclusive licensing and regulatory authority to the Atomic Energy Commission, which was replaced by the Nuclear Regulatory Commission (NRC) in 1974. Specifically, Congress gave the NRC authority to regulate nuclear materials to protect "public health and safety." [10 C.F.R. § 1.11\(b\)](#). In turn, pursuant to [42 U.S.C.S. § 2021](#), Congress provided that the NRC may delegate certain aspects of nuclear regulation to states. [42 U.S.C.S. § 2021](#) (2002). Under this provision, state regulatory agencies may assume regulatory authority for low-level radiation, subject to NRC regulations. Tennessee became such an "agreement state" in 1965 and, as a result, the Tennessee Division of Public Health, Division of Radiological Health (TDRH) regulates nuclear energy facilities, although it utilizes NRC guidelines to accomplish the regulation. The TDRH conducts periodic inspections of the nuclear facilities it regulates to ensure that they are in compliance with regulations. The TDRH has the legal authority to close a facility by suspending or revoking its license to operate in the state. [Go To Headnote](#)

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**Energy & Utilities Law : Administrative Proceedings : General Overview**

[Tns, Inc. v. NLRB, 296 F.3d 384, 2002 U.S. App. LEXIS 13815](#) (6th Cir July 10, 2002).

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**Energy & Utilities Law : Nuclear Power Industry : Atomic Energy Act**

[O'connor v. Boeing N. Am., 2005 U.S. Dist. LEXIS 46226](#) (CD Cal Aug. 18, 2005).

**Overview:** *In action against corporations that manufactured rocket engines, personal injury claimants established standard of care governing use of trichloroethylene in manufacturing and testing process but failed to establish standard with respect to engine flushing. Standard for claim under [42 U.S.C.S. § 2210](#) was based on federal permissible radiation dose.*

- As part of the federal preemption of nuclear safety and the extensive federal regulation over the nuclear industry, Congress delegated licensing and strict regulatory supervision of nuclear matter to the Atomic Energy Commission (AEC), which was replaced by the Nuclear Regulatory Commission (NRC) in 1974. Congress gave the NRC authority to regulate nuclear materials to protect public health and safety. [10 C.F.R. § 1.11\(b\)](#). The United States Supreme Court recognized that the AEC was more qualified to determine what type of safety standard should be enacted in this complex area. Congress provided for continued federal control over radiation because the technical safety considerations are of such complexity that it is not likely that any state would be prepared to deal with them. Through this federal regulatory scheme, the federal government maintains complete control of the safety and "nuclear" aspects of energy generation. Thus, starting in 1957, the AEC (and later, the NRC) promulgated radiation safety standards to protect both nuclear workers (all adults) and members of the public (which included pregnant women and children) from the potentially harmful effects of high levels of radiation and to establish permissible radiation doses that can be received by certain category of persons. 10 C.F.R. §§ 20.101, 20.102. [Go To Headnote](#)

[Tns, Inc. v. NLRB, 296 F.3d 384, 2002 U.S. App. LEXIS 13815](#) (6th Cir July 10, 2002).

**Overview:** *NLRB order finding that employer breached its obligations under National Labor Relations Act was vacated pursuant to the employer's inexcusable delay argument where the case was filed in 1982 but the NLRB's final order was not issued until 1999.*

- As part of the complete federal preemption of nuclear safety, Congress delegated exclusive licensing and regulatory authority to the Atomic Energy Commission, which was replaced by the Nuclear Regulatory



## 10 CFR 1.11

Commission (NRC) in 1974. Specifically, Congress gave the NRC authority to regulate nuclear materials to protect "public health and safety." [10 C.F.R. § 1.11\(b\)](#). In turn, pursuant to [42 U.S.C.S. § 2021](#), Congress provided that the NRC may delegate certain aspects of nuclear regulation to states. [42 U.S.C.S. § 2021](#) (2002). Under this provision, state regulatory agencies may assume regulatory authority for low-level radiation, subject to NRC regulations. Tennessee became such an "agreement state" in 1965 and, as a result, the Tennessee Division of Public Health, Division of Radiological Health (TDRH) regulates nuclear energy facilities, although it utilizes NRC guidelines to accomplish the regulation. The TDRH conducts periodic inspections of the nuclear facilities it regulates to ensure that they are in compliance with regulations. The TDRH has the legal authority to close a facility by suspending or revoking its license to operate in the state. [Go To Headnote](#)

[United States v. Construction Prods. Research, 73 F.3d 464, 1996 U.S. App. LEXIS 202](#) (2d Cir Jan. 2, 1996).

**Overview:** *Order enforcing subpoena affirmed as Nuclear Regulatory Commission had authority to investigate whether respondents' past treatment of whistleblowers posed threat to public health and safety, and the claim of privilege was rejected.*

- Although an agency investigation must be conducted for a legitimate purpose, [42 U.S.C.S. § 2201\(c\)](#) does not require that the precise nature and extent of a Nuclear Regulatory Commission (NRC) investigation be articulated in a specific provision of the Atomic Energy Act of 1954, [42 U.S.C.S. §§ 2011](#) et seq., or the Energy Reorganization Act of 1974, [42 U.S.C.S. §§ 5801](#) et seq. Rather, [42 U.S.C.S. § 2201\(c\)](#) makes clear that an NRC investigation is proper if it assists the NRC in exercising any authority provided in this chapter, or any regulations or orders issued thereunder. And, pursuant to NRC regulations, the NRC may exercise its authority through standards-setting and rulemaking; technical reviews and studies; public hearings; issuance of authorizations, permits, and licenses; inspection, investigation, and enforcement; evaluation of operating experience; and confirmatory research. [10 C.F.R. § 1.11\(b\)](#). [Go To Headnote](#)

### Energy & Utilities Law : Nuclear Power Industry : Energy Reorganization Act

[United States v. Construction Prods. Research, 73 F.3d 464, 1996 U.S. App. LEXIS 202](#) (2d Cir Jan. 2, 1996).

**Overview:** *Order enforcing subpoena affirmed as Nuclear Regulatory Commission had authority to investigate whether respondents' past treatment of whistleblowers posed threat to public health and safety, and the claim of privilege was rejected.*

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### Energy & Utilities Law : Nuclear Power Industry : U.S. Nuclear Regulatory Commission

[United States v. Construction Prods. Research, 73 F.3d 464, 1996 U.S. App. LEXIS 202](#) (2d Cir Jan. 2, 1996).

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**Environmental Law : Hazardous Wastes & Toxic Substances : Radioactive Substances :**

[O'connor v. Boeing N. Am., 2005 U.S. Dist. LEXIS 46226](#) (CD Cal Aug. 18, 2005).

**Overview:** *In action against corporations that manufactured rocket engines, personal injury claimants established standard of care governing use of trichloroethylene in manufacturing and testing process but failed to establish standard with respect to engine flushing. Standard for claim under [42 U.S.C.S. § 2210](#) was based on federal permissible radiation dose.*

- As part of the federal preemption of nuclear safety and the extensive federal regulation over the nuclear industry, Congress delegated licensing and strict regulatory supervision of nuclear matter to the Atomic Energy Commission (AEC), which was replaced by the Nuclear Regulatory Commission (NRC) in 1974. Congress gave the NRC authority to regulate nuclear materials to protect public health and safety. [10 C.F.R. § 1.11\(b\)](#). The United States Supreme Court recognized that the AEC was more qualified to determine to determine what type of safety standard should be enacted in this complex area. Congress provided for continued federal control over radiation because the technical safety considerations are of such complexity that it is not likely that any state would be prepared to deal with them. Through this federal regulatory scheme, the federal government maintains compete control of the safety and "nuclear" aspects of energy generation. Thus, starting in 1957, the AEC (and later, the NRC) promulgated radiation safety standards to protect both nuclear workers (all adults) and members of the public (which included pregnant women and children) from the potentially harmful effects of high levels of radiation and to establish permissible radiation doses that can be received by certain category of persons. 10 C.F.R. §§ 20.101, 20.102. [Go To Headnote](#)

**Torts : Procedure : Preemption : General Overview**

[O'connor v. Boeing N. Am., 2005 U.S. Dist. LEXIS 46226](#) (CD Cal Aug. 18, 2005).

**Overview:** *In action against corporations that manufactured rocket engines, personal injury claimants established standard of care governing use of trichloroethylene in manufacturing and testing process but failed to establish standard with respect to engine flushing. Standard for claim under [42 U.S.C.S. § 2210](#) was based on federal permissible radiation dose.*

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## 10 CFR 1.11

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## Research References & Practice Aids

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### NOTES APPLICABLE TO ENTIRE CHAPTER:

[PUBLISHER'S NOTE: For Federal Register citations concerning Nuclear Regulatory Commission (NRC) Policy Statements, see: *51 FR 29211*, (1986); *52 FR 20592*, (1987); [60 FR 4071](#), Jan. 20, 1995; [65 FR 47654](#), Aug. 3, 2000]

[PUBLISHER'S NOTE: For Federal Register citations concerning the issuance of a Report on the Nuclear Regulatory Commission regulatory agenda, see: [59 FR 48558](#), Sept. 22, 1994; *60 FR 49327*, Sept. 25, 1995; [61 FR 46537](#), Sept. 4, 1996.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Nuclear Regulatory Commission regulatory analysis guidelines, see: [69 FR 29187](#), May 21, 2004.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Nuclear Regulatory Commission Waivers, see: [70 FR 51581](#), Aug. 31, 2005; *72 FR 68043*, Dec. 4, 2007; [73 FR 14376](#), Mar. 18, 2008; *74 FR 5797*, Feb. 2, 2009.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Notice of publication of transition plan, see: [72 FR 59157](#), Oct. 19, 2007.]

[PUBLISHER'S NOTE: Nomenclature changes affecting Chapter I appear at [70 FR 69421](#), Nov. 16, 2005; *72 FR 33386*, June 18, 2007.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Policy revision, see: *81 FR 47689*, July 22, 2016; [81 FR 78022](#), Nov. 7, 2016; [84 FR 24363](#), May 28, 2019.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Regulatory summary, see: [83 FR 29437](#), June 25, 2018; *83 FR 65283*, Dec. 20, 2018.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Regulatory issue summary, see: *84 FR 12483*, Apr. 2, 2019.]

### NOTES APPLICABLE TO ENTIRE PART:

[PUBLISHER'S NOTE: For nomenclature changes affecting Part 1, see: [78 FR 34245](#), [34247](#), June 7, 2013.]

**TAB 17**

## 10 CFR 50.91

This document is current through the March 23, 2020 issue of the Federal Register. Title 3 is current through March 6, 2020.

### **Code of Federal Regulations > TITLE 10 -- ENERGY > CHAPTER I -- NUCLEAR REGULATORY COMMISSION > PART 50 -- DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES > AMENDMENT OF LICENSE OR CONSTRUCTION PERMIT AT REQUEST OF HOLDER**

## **§ 50.91 Notice for public comment; State consultation.**

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The Commission will use the following procedures for an application requesting an amendment to an operating license under this part or a combined license under part 52 of this chapter for a facility licensed under §§ 50.21(b) or 50.22, or for a testing facility, except for amendments subject to hearings governed by [10 CFR part 2](#), subpart L. For amendments subject to [10 CFR part 2](#), subpart L, the following procedures will apply only to the extent specifically referenced in § 2.309(b) of this chapter, except that notice of opportunity for hearing must be published in the Federal Register at least 30 days before the requested amendment is issued by the Commission:

#### **(a) Notice for public comment.**

(1) At the time a licensee requests an amendment, it must provide to the Commission, in accordance with the distribution requirements specified in § 50.4, its analysis about the issue of no significant hazards consideration using the standards in § 50.92.

#### **(2)**

(i) The Commission may publish in the FEDERAL REGISTER under § 2.105 an individual notice of proposed action for an amendment for which it makes a proposed determination that no significant hazards consideration is involved, or, at least once every 30 days, publish a periodic FEDERAL REGISTER notice of proposed actions which identifies each amendment issued and each amendment proposed to be issued since the last such periodic notice, or it may publish both such notices.

(ii) For each amendment proposed to be issued, the notice will (A) contain the staff's proposed determination, under the standards in § 50.92, (B) provide a brief description of the amendment and of the facility involved, (C) solicit public comments on the proposed determination, and (D) provide for a 30-day comment period.

(iii) The comment period will begin on the day after the date of the publication of the first notice, and, normally, the amendment will not be granted until after this comment period expires.

(3) The Commission may inform the public about the final disposition of an amendment request for which it has made a proposed determination of no significant hazards consideration either by issuing an individual notice of issuance under § 2.106 of this chapter or by publishing such a notice in its periodic system of FEDERAL REGISTER notices. In either event, it will not make and will not publish a final determination on no significant hazards consideration, unless it receives a request for a hearing on that amendment request.

(4) Where the Commission makes a final determination that no significant hazards consideration is involved and that the amendment should be issued, the amendment will be effective on issuance, even if adverse public comments have been received and even if an interested person meeting the

## 10 CFR 50.91

provisions for intervention called for in § 2.309 of this chapter has filed a request for a hearing. The Commission need hold any required hearing only after it issues an amendment, unless it determines that a significant hazards consideration is involved, in which case the Commission will provide an opportunity for a prior hearing.

**(5)**Where the Commission finds that an emergency situation exists, in that failure to act in a timely way would result in derating or shutdown of a nuclear power plant, or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, it may issue a license amendment involving no significant hazards consideration without prior notice and opportunity for a hearing or for public comment. In such a situation, the Commission will not publish a notice of proposed determination on no significant hazards consideration, but will publish a notice of issuance under § 2.106 of this chapter, providing for opportunity for a hearing and for public comment after issuance. The Commission expects its licensees to apply for license amendments in timely fashion. It will decline to dispense with notice and comment on the determination of no significant hazards consideration if it determines that the licensee has abused the emergency provision by failing to make timely application for the amendment and thus itself creating the emergency. Whenever an emergency situation exists, a licensee requesting an amendment must explain why this emergency situation occurred and why it could not avoid this situation, and the Commission will assess the licensee's reasons for failing to file an application sufficiently in advance of that event.

**(6)**Where the Commission finds that exigent circumstances exist, in that a licensee and the Commission must act quickly and that time does not permit the Commission to publish a FEDERAL REGISTER notice allowing 30 days for prior public comment, and it also determines that the amendment involves no significant hazards considerations, it:

**(i)**

**(A)**Will either issue a FEDERAL REGISTER notice providing notice of an opportunity for hearing and allowing at least two weeks from the date of the notice for prior public comment; or

**(B)**Will use local media to provide reasonable notice to the public in the area surrounding a licensee's facility of the licensee's amendment and of its proposed determination as described in paragraph (a)(2) of this section, consulting with the licensee on the proposed media release and on the geographical area of its coverage;

**(ii)**Will provide for a reasonable opportunity for the public to comment, using its best efforts to make available to the public whatever means of communication it can for the public to respond quickly, and, in the case of telephone comments, have these comments recorded or transcribed, as necessary and appropriate;

**(iii)**When it has issued a local media release, may inform the licensee of the public's comments, as necessary and appropriate;

**(iv)**Will publish a notice of issuance under § 2.106;

**(v)**Will provide a hearing after issuance, if one has been requested by a person who satisfies the provisions for intervention specified in § 2.309 of this chapter;

**(vi)**Will require the licensee to explain the exigency and why the licensee cannot avoid it, and use its normal public notice and comment procedures in paragraph (a)(2) of this section if it determines that the licensee has failed to use its best efforts to make a timely application for the amendment in order to create the exigency and to take advantage of this procedure.

**(7)**Where the Commission finds that significant hazards considerations are involved, it will issue a FEDERAL REGISTER notice providing an opportunity for a prior hearing even in an emergency situation, unless it finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under [10 CFR Part 2](#).

**(b) State consultation.**

## 10 CFR 50.91

(1) At the time a licensee requests an amendment, it must notify the State in which its facility is located of its request by providing that State with a copy of its application and its reasoned analysis about no significant hazards considerations and indicate on the application that it has done so. (The Commission will make available to the licensee the name of the appropriate State official designated to receive such amendments.)

(2) The Commission will advise the State of its proposed determination about no significant hazards consideration normally by sending it a copy of the FEDERAL REGISTER notice.

(3) The Commission will make available to the State official designated to consult with it about its proposed determination the names of the Project Manager or other NRC personnel it designated to consult with the State. The Commission will consider any comments of that State official. If it does not hear from the State in a timely manner, it will consider that the State has no interest in its determination; nonetheless, to ensure that the State is aware of the application, before it issues the amendment, it will make a good faith effort to telephone that official. (Inability to consult with a responsible State official following good faith attempts will not prevent the Commission from making effective a license amendment involving no significant hazards consideration.)

(4) The Commission will make a good faith attempt to consult with the State before it issues a license amendment involving no significant hazards consideration. If, however, it does not have time to use its normal consultation procedures because of an emergency situation, it will attempt to telephone the appropriate State official. (Inability to consult with a responsible State official following good faith attempts will not prevent the Commission from making effective a license amendment involving no significant hazards consideration, if the Commission deems it necessary in an emergency situation.)

(5) After the Commission issues the requested amendment, it will send a copy of its determination to the State.

(c) Caveats about State consultation. (1) The State consultation procedures in paragraph (b) of this section do not give the State a right:

(i) To veto the Commission's proposed or final determination;

(ii) To a hearing on the determination before the amendment becomes effective; or

(iii) To insist upon a postponement of the determination or upon issuance of the amendment.

(2) These procedures do not alter present provisions of law that reserve to the Commission exclusive responsibility for setting and enforcing radiological health and safety requirements for nuclear power plants.

## Statutory Authority

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### AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

Atomic Energy Act of 1954, secs. 11, 101, 102, 103, 104, 105, 108, 122, 147, 149, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234 ([42 U.S.C. 2014](#), [2131](#), [2132](#), [2133](#), [2134](#), [2135](#), [2138](#), [2152](#), [2167](#), [2169](#), [2201](#), [2231](#), [2232](#), [2233](#), [2234](#), [2235](#), [2236](#), [2237](#), [2239](#), [2273](#), [2282](#)); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 ([42 U.S.C. 5841](#), [5842](#), [5846](#), [5851](#)); Nuclear Waste Policy Act of 1982, sec. 306 ([42 U.S.C. 10226](#)); National Environmental Policy Act of 1969 ([42 U.S.C. 4332](#)); [44 U.S.C. 3504](#) note; Sec. 109, [Pub. L. 96-295](#), [94 Stat. 783](#).

## History

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[51 FR 7765, Mar. 6, 1986, as amended at [51 FR 40310](#), Nov. 6, 1986; [61 FR 39278](#), [39303](#), July 29, 1996; [69 FR 2182](#), 2276, Jan. 14, 2004; [72 FR 49352](#), [49504](#), Aug. 28, 2007]

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## 10 CFR 50.91

Annotations

## Notes

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**[EFFECTIVE DATE NOTE:**

[72 FR 49352, 49504](#), Aug. 28, 2007, amended this section, effective Sept. 27, 2007.]

## Research References & Practice Aids

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**NOTES APPLICABLE TO ENTIRE CHAPTER:**

[PUBLISHER'S NOTE: For Federal Register citations concerning Nuclear Regulatory Commission (NRC) Policy Statements, see: [51 FR 29211](#), (1986); [52 FR 20592](#), (1987); 60 FR 4071, Jan. 20, 1995; [65 FR 47654](#), Aug. 3, 2000]

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[PUBLISHER'S NOTE: For Federal Register citations concerning Notice of publication of transition plan, see: [72 FR 59157](#), Oct. 19, 2007.]

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[PUBLISHER'S NOTE: For Federal Register citations concerning Policy revision, see: [81 FR 47689](#), July 22, 2016; [81 FR 78022](#), Nov. 7, 2016; [84 FR 24363, May 28, 2019](#).]

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[PUBLISHER'S NOTE: For Federal Register citations concerning Regulatory issue summary, see: [84 FR 12483](#), Apr. 2, 2019.]

**NOTES APPLICABLE TO ENTIRE PART:**



10 CFR 50.91

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 50 Policy Statements, see: [51 FR 24643](#), [28044](#), [30028](#) (1986); [52 FR 3788](#), [34884](#), [38077](#) (1987); [53 FR 9430](#), [21981](#) (1988); [54 FR 3424](#), [7530](#), [50611](#) (1989); [57 FR 6262](#), [35455](#), [43886](#) (1992); [58 FR 39132](#) (1993); [59 FR 35461](#) (1994); [62 FR 44071](#), Aug. 19, 1997; [73 FR 60612](#), Oct. 14, 2008; [76 FR 40777](#), [July 12, 2011](#).]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 50 Denial of Petition for Rulemaking, see: [70 FR 52893](#), Sept. 6, 2005; [81 FR 29761](#), [May 13, 2016](#).]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 50 Regulatory Guides, see: [76 FR 63541](#), Oct. 13, 2011; [76 FR 74630](#), Dec. 1, 2011; [78 FR 663](#), Jan. 4, 2013; [81 FR 88615](#), Dec. 8, 2016.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 50 Staff Guidance, see: [76 FR 75771](#), Dec. 5, 2011.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 50 Final regulatory basis; availability of rulemaking documents, see: [77 FR 60039](#), Oct. 2, 2012.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 50 Rulemaking activities, see: [81 FR 49863](#), [July 29, 2016](#); [81 FR 95410](#), Dec. 28, 2016.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 50 Regulatory basis, see: [84 FR 12876](#), Apr. 3, 2019; [84 FR 14845](#), Apr. 12, 2019.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 50 Discontinuation of rulemaking activity, see: [84 FR 43667](#), Aug. 22, 2019.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 50 Final guidance, see: [84 FR 70399](#), Dec. 23, 2019.]

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End of Document

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## 10 CFR 72.210

This document is current through the March 23, 2020 issue of the Federal Register. Title 3 is current through March 6, 2020.

**Code of Federal Regulations > TITLE 10 -- ENERGY > CHAPTER I -- NUCLEAR REGULATORY COMMISSION > PART 72 -- LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE > SUBPART K -- GENERAL LICENSE FOR STORAGE OF SPENT FUEL AT POWER REACTOR SITES**

### § 72.210 General license issued.

A general license is hereby issued for the storage of spent fuel in an independent spent fuel storage installation at power reactor sites to persons authorized to possess or operate nuclear power reactors under [10 CFR part 50](#) or [10 CFR part 52](#).

### Statutory Authority

#### **AUTHORITY NOTE APPLICABLE TO ENTIRE PART:**

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.

### History

[[55 FR 29191](#), July 18, 1990; [72 FR 49352](#), [49561](#), Aug. 28, 2007]

Annotations

### Notes

#### **[EFFECTIVE DATE NOTE:**

[72 FR 49352](#), [49561](#), Aug. 28, 2007, revised this section, effective Sept. 27, 2007.]

## 10 CFR 72.210

**LexisNexis® Notes**

Constitutional Law : Supremacy Clause : Federal Preemption  
Energy & Utilities Law : Nuclear Power Industry : Atomic Energy Act  
Energy & Utilities Law : Nuclear Power Industry : Disposal, Storage & Transport  
Energy & Utilities Law : Nuclear Power Industry : Licenses & Permits  
Energy & Utilities Law : Nuclear Power Industry : U.S. Nuclear Regulatory Commission

**Constitutional Law : Supremacy Clause : Federal Preemption**

[Conn. Coalition Against Millstone v. Conn. Siting Council, 286 Conn. 57, 942 A.2d 345, 2008 Conn. LEXIS 91 \(Conn Mar. 18, 2008\)](#)

[Conn. Coalition Against Millstone v. Conn. Siting Council, 286 Conn. 57, 942 A.2d 345, 2008 Conn. LEXIS 91 \(Conn Mar. 18, 2008\)](#).

**Overview:** Judgment was affirmed as Atomic Energy Act of 1954 and Nuclear Regulatory Commission's regulations preempted field of radiological risks and environmentally related effects of spent nuclear fuel storage. Connecticut Siting Council could only consider nonnuclear environmental effects in ruling on Conn. Gen. Stat. § 16-50k(a) application.

- Congress impliedly intends to occupy the field of radiological risks and environmentally related effects of the storage of spent nuclear fuel, including the radiological effects of a potential terrorist attack on a storage facility authorized by the Nuclear Regulatory Commission (NRC). The conclusion is based on the broad mandate in the Atomic Energy Act of 1954, [42 U.S.C.S. § 2011](#) et seq., for the NRC to have complete control of the safety and "nuclear" aspects of energy generation, and the regulations that specifically authorize spent storage facilities, [10 C.F.R. § 72.210 \(2007\)](#), for privately owned and operated plants. That authority and the regulations promulgated thereunder approving the use of spent storage facilities make clear that Congress does not intend for the States to have regulatory or decision-making power in this field.  
[Go To Headnote](#)

**Energy & Utilities Law : Nuclear Power Industry : Atomic Energy Act**

[Conn. Coalition Against Millstone v. Conn. Siting Council, 286 Conn. 57, 942 A.2d 345, 2008 Conn. LEXIS 91 \(Conn Mar. 18, 2008\)](#)

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Act authority, the NRC has promulgated regulations for licensing onsite and away-from-reactor spent nuclear fuel storage facilities for private nuclear generators. [10 C.F.R. pt. 72](#). NRC regulations specifically authorize privately owned and operated plants to use spent storage facilities to store spent nuclear fuel. Those regulations provide that a general license is issued for the storage of spent fuel in a spent storage facility at power reactor sites to persons authorized to possess or operate nuclear power reactors under [10 C.F.R. pt. 50](#). [10 C.F.R. § 72.210 \(2007\)](#). The NRC also has issued a list of casks specifically approved for the storage of spent fuel, under conditions specified in applicable federally issued certificates of compliance. [10 C.F.R. § 72.214 \(2007\)](#). Under [10 C.F.R. § 72.212 \(2007\)](#), the NRC has established conditions on the general licenses issued for spent storage facilities, such as the adoption of security measures. [Go To Headnote](#)

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### Energy & Utilities Law : Nuclear Power Industry : Disposal, Storage & Transport

[Conn. Coalition Against Millstone v. Conn. Siting Council, 286 Conn. 57, 942 A.2d 345, 2008 Conn. LEXIS 91 \(Conn Mar. 18, 2008\)](#)

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**Energy & Utilities Law : Nuclear Power Industry : Licenses & Permits**

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**Energy & Utilities Law : Nuclear Power Industry : U.S. Nuclear Regulatory Commission**

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## Research References & Practice Aids

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### NOTES APPLICABLE TO ENTIRE CHAPTER:

[PUBLISHER'S NOTE: For Federal Register citations concerning Nuclear Regulatory Commission (NRC) Policy Statements, see: [51 FR 29211](#), (1986); [52 FR 20592](#), (1987); [60 FR 4071](#), Jan. 20, 1995; [65 FR 47654](#), Aug. 3, 2000]

[PUBLISHER'S NOTE: For Federal Register citations concerning the issuance of a Report on the Nuclear Regulatory Commission regulatory agenda, see: [59 FR 48558](#), Sept. 22, 1994; [60 FR 49327](#), Sept. 25, 1995; [61 FR 46537](#), Sept. 4, 1996.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Nuclear Regulatory Commission regulatory analysis guidelines, see: [69 FR 29187](#), [May 21, 2004](#).]

[PUBLISHER'S NOTE: For Federal Register citations concerning Nuclear Regulatory Commission Waivers, see: [70 FR 51581](#), Aug. 31, 2005; [72 FR 68043](#), Dec. 4, 2007; [73 FR 14376](#), Mar. 18, 2008; [74 FR 5797](#), Feb. 2, 2009.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Notice of publication of transition plan, see: [72 FR 59157](#), Oct. 19, 2007.]

[PUBLISHER'S NOTE: Nomenclature changes affecting Chapter I appear at [70 FR 69421](#), Nov. 16, 2005; [72 FR 33386](#), [June 18, 2007](#).]

[PUBLISHER'S NOTE: For Federal Register citations concerning Policy revision, see: [81 FR 47689](#), [July 22, 2016](#); [81 FR 78022](#), Nov. 7, 2016; [84 FR 24363](#), [May 28, 2019](#).]

[PUBLISHER'S NOTE: For Federal Register citations concerning Regulatory summary, see: [83 FR 29437](#), [June 25, 2018](#); [83 FR 65283](#), Dec. 20, 2018.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Regulatory issue summary, see: [84 FR 12483](#), Apr. 2, 2019.]

### NOTES APPLICABLE TO ENTIRE PART:

[PUBLISHER'S NOTE: Nomenclature changes affecting Part 72 appear at [79 FR 75735](#), Dec. 19, 2014; [81 FR 86906](#), [86910](#), Dec. 2, 2016.]

10 CFR 72.210

[PUBLISHER'S NOTE: Direct final rule Part 72 appear at [81 FR 70004](#), Oct. 11, 2016.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 72 Regulatory issue summary, see: *82 FR 44299*, Sept. 22, 2017; *85 FR 3229*, Jan. 21, 2020.]

LEXISNEXIS' CODE OF FEDERAL REGULATIONS

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End of Document



**TAB 19**

## 10 CFR 72.212

This document is current through the March 23, 2020 issue of the Federal Register. Title 3 is current through March 6, 2020.

**Code of Federal Regulations > TITLE 10 -- ENERGY > CHAPTER I -- NUCLEAR REGULATORY COMMISSION > PART 72 -- LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE > SUBPART K -- GENERAL LICENSE FOR STORAGE OF SPENT FUEL AT POWER REACTOR SITES**

### § 72.212 Conditions of general license issued under § 72.210.

(a)

(1)The general license is limited to that spent fuel which the general licensee is authorized to possess at the site under the specific license for the site.

(2)This general license is limited to storage of spent fuel in casks approved under the provisions of this part.

(3)The general license for the storage of spent fuel in each cask fabricated under a Certificate of Compliance shall commence upon the date that the particular cask is first used by the general licensee to store spent fuel, shall continue through any renewals of the Certificate of Compliance, unless otherwise specified in the Certificate of Compliance, and shall terminate when the cask's Certificate of Compliance expires. For any cask placed into service during the final renewal term of a Certificate of Compliance, or during the term of a Certificate of Compliance that was not renewed, the general license for that cask shall terminate after a storage period not to exceed the length of the term certified by the cask's Certificate of Compliance. Upon expiration of the general license, all casks subject to that general license must be removed from service.

(b)The general licensee must:

(1)Notify the Nuclear Regulatory Commission using instructions in § 72.4 at least 90 days before first storage of spent fuel under this general license. The notice may be in the form of a letter, but must contain the licensee's name, address, reactor license and docket numbers, and the name and means of contacting a person responsible for providing additional information concerning spent fuel under this general license. A copy of the submittal must be sent to the administrator of the appropriate Nuclear Regulatory Commission regional office listed in appendix D to part 20 of this chapter.

(2)Register use of each cask with the Nuclear Regulatory Commission no later than 30 days after using that cask to store spent fuel. This registration may be accomplished by submitting a letter using instructions in § 72.4 containing the following information: the licensee's name and address, the licensee's reactor license and docket numbers, the name and title of a person responsible for providing additional information concerning spent fuel storage under this general license, the cask certificate number, the CoC amendment number to which the cask conforms, unless loaded under the initial certificate, cask model number, and the cask identification number. A copy of each submittal must be sent to the administrator of the appropriate Nuclear Regulatory Commission regional office listed in appendix D to part 20 of this chapter.

(3)Ensure that each cask used by the general licensee conforms to the terms, conditions, and specifications of a CoC or an amended CoC listed in § 72.214.

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**(4)**In applying the changes authorized by an amended CoC to a cask loaded under the initial CoC or an earlier amended CoC, register each such cask with the Nuclear Regulatory Commission no later than 30 days after applying the changes authorized by the amended CoC. This registration may be accomplished by submitting a letter using instructions in § 72.4 containing the following information: the licensee's name and address, the licensee's reactor license and docket numbers, the name and title of a person responsible for providing additional information concerning spent fuel storage under this general license, the cask certificate number, the CoC amendment number to which the cask conforms, cask model number, and the cask identification number. A copy of each submittal must be sent to the administrator of the appropriate Nuclear Regulatory Commission regional office listed in appendix D to part 20 of this chapter.

**(5)**Perform written evaluations, before use and before applying the changes authorized by an amended CoC to a cask loaded under the initial CoC or an earlier amended CoC, which establish that:

**(i)**The cask, once loaded with spent fuel or once the changes authorized by an amended CoC have been applied, will conform to the terms, conditions, and specifications of a CoC or an amended CoC listed in § 72.214;

**(ii)**Cask storage pads and areas have been designed to adequately support the static and dynamic loads of the stored casks, considering potential amplification of earthquakes through soil-structure interaction, and soil liquefaction potential or other soil instability due to vibratory ground motion; and

**(iii)**The requirements of § 72.104 have been met. A copy of this record shall be retained until spent fuel is no longer stored under the general license issued under § 72.210.

**(6)**Review the Safety Analysis Report referenced in the CoC or amended CoC and the related NRC Safety Evaluation Report, prior to use of the general license, to determine whether or not the reactor site parameters, including analyses of earthquake intensity and tornado missiles, are enveloped by the cask design bases considered in these reports. The results of this review must be documented in the evaluation made in paragraph (b)(5) of this section.

**(7)**Evaluate any changes to the written evaluations required by paragraphs (b)(5) and (b)(6) of this section using the requirements of § 72.48(c). A copy of this record shall be retained until spent fuel is no longer stored under the general license issued under § 72.210.

**(8)**Before use of the general license, determine whether activities related to storage of spent fuel under this general license involve a change in the facility Technical Specifications or require a license amendment for the facility pursuant to § 50.59(c) of this chapter. Results of this determination must be documented in the evaluations made in paragraph (b)(5) of this section.

**(9)**Protect the spent fuel against the design basis threat of radiological sabotage in accordance with the same provisions and requirements as are set forth in the licensee's physical security plan pursuant to § 73.55 of this chapter with the following additional conditions and exceptions:

**(i)**The physical security organization and program for the facility must be modified as necessary to assure that activities conducted under this general license do not decrease the effectiveness of the protection of vital equipment in accordance with § 73.55 of this chapter;

**(ii)**Storage of spent fuel must be within a protected area, in accordance with § 73.55(e) of this chapter, but need not be within a separate vital area. Existing protected areas may be expanded or new protected areas added for the purpose of storage of spent fuel in accordance with this general license;

**(iii)**For the purpose of this general license, personnel searches required by § 73.55(h) of this chapter before admission to a new protected area may be performed by physical pat-down searches of persons in lieu of firearms and explosives detection equipment;

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- (iv) The observational capability required by § 73.55(i)(3) of this chapter as applied to a new protected area may be provided by a guard or watchman on patrol in lieu of video surveillance technology;
- (v) For the purpose of this general license, the licensee is exempt from requirements to interdict and neutralize threats in § 73.55 of this chapter; and
- (vi) Each general licensee that receives and possesses power reactor spent fuel and other radioactive materials associated with spent fuel storage shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements of § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.
- (10) Review the reactor emergency plan, quality assurance program, training program, and radiation protection program to determine if their effectiveness is decreased and, if so, prepare the necessary changes and seek and obtain the necessary approvals.
- (11) Maintain a copy of the CoC and, for those casks to which the licensee has applied the changes of an amended CoC, the amended CoC, and the documents referenced in such Certificates, for each cask model used for storage of spent fuel, until use of the cask model is discontinued. The licensee shall comply with the terms, conditions, and specifications of the CoC and, for those casks to which the licensee has applied the changes of an amended CoC, the terms, conditions, and specifications of the amended CoC, including but not limited to, the requirements of any AMP put into effect as a condition of the NRC approval of a CoC renewal application in accordance with § 72.240.
- (12) Accurately maintain the record provided by the CoC holder for each cask that shows, in addition to the information provided by the CoC holder, the following:
- (i) The name and address of the CoC holder or lessor;
  - (ii) The listing of spent fuel stored in the cask; and
  - (iii) Any maintenance performed on the cask.
- (13) Conduct activities related to storage of spent fuel under this general license only in accordance with written procedures.
- (14) Make records and casks available to the Commission for inspection.
- (c) The record described in paragraph (b)(12) of this section must include sufficient information to furnish documentary evidence that any testing and maintenance of the cask has been conducted under an NRC-approved quality assurance program.
- (d) In the event that a cask is sold, leased, loaned, or otherwise transferred to another registered user, the record described in paragraph (b)(12) of this section must also be transferred to and must be accurately maintained by the new registered user. This record must be maintained by the current cask user during the period that the cask is used for storage of spent fuel and retained by the last user until decommissioning of the cask is complete.
- (e) Fees for inspections related to spent fuel storage under this general license are those shown in § 170.31 of this chapter.

## Statutory Authority

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### AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

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](#),

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[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.

## History

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[[55 FR 29191](#), July 18, 1990; [64 FR 53582](#), [53616](#), Oct. 4, 1999; [68 FR 54143](#), [54160](#), Sept. 16, 2003; [73 FR 63546](#), [63573](#), Oct. 24, 2008; [74 FR 13926](#), [13970](#), Mar. 27, 2009; [76 FR 8872](#), 8890, Feb. 16, 2011]

Annotations

## Notes

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### [EFFECTIVE DATE NOTE:

[74 FR 13926](#), [13970](#), Mar. 27, 2009, amended paragraph (b)(5), effective May 26, 2009. "Compliance Date: Compliance with this final rule is required by March 31, 2010, for licensees currently licensed to operate under [10 CFR Part 50](#)."; [76 FR 8872](#), 8890, Feb. 16, 2011, amended this section, effective May 17, 2011.]

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[Conn. Coalition Against Millstone v. Conn. Siting Council, 286 Conn. 57, 942 A.2d 345, 2008 Conn. LEXIS 91 \(Conn Mar. 18, 2008\)](#)

[Conn. Coalition Against Millstone v. Conn. Siting Council, 286 Conn. 57, 942 A.2d 345, 2008 Conn. LEXIS 91 \(Conn Mar. 18, 2008\)](#).

**Overview:** *Judgment was affirmed as Atomic Energy Act of 1954 and Nuclear Regulatory Commission's regulations preempted field of radiological risks and environmentally related effects of spent nuclear fuel storage. Connecticut Siting Council could only consider nonnuclear environmental effects in ruling on Conn. Gen. Stat. § 16-50k(a) application.*

- While the Atomic Energy Act of 1954, [42 U.S.C.S. § 2011](#) et seq., does not specifically refer to the storage or disposal of spent nuclear fuel, it has long been recognized that that Act confers on the Nuclear Regulatory Commission (NRC) authority to license and regulate the storage and disposal of such fuel. Pursuant to its Act authority, the NRC has promulgated regulations for licensing onsite and away-from-reactor spent nuclear fuel storage facilities for private nuclear generators. [10 C.F.R. pt. 72](#). NRC regulations specifically authorize privately owned and operated plants to use spent storage facilities to store spent nuclear fuel. Those regulations provide that a general license is issued for the storage of spent fuel in a spent storage facility at power reactor sites to persons authorized to possess or operate nuclear power reactors under [10 C.F.R. pt. 50](#). [10 C.F.R. § 72.210 \(2007\)](#). The NRC also has issued a list of casks specifically approved for the storage of spent fuel, under conditions specified in applicable federally issued certificates of compliance. [10 C.F.R. § 72.214 \(2007\)](#). Under [10 C.F.R. § 72.212 \(2007\)](#), the NRC has established conditions on the general licenses issued for spent storage facilities, such as the adoption of security measures. [Go To Headnote](#)

**Research References & Practice Aids**

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NOTES APPLICABLE TO ENTIRE CHAPTER:

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[PUBLISHER'S NOTE: For Federal Register citations concerning Nuclear Regulatory Commission (NRC) Policy Statements, see: *51 FR 29211*, (1986); *52 FR 20592*, (1987); *60 FR 4071*, Jan. 20, 1995; [65 FR 47654](#), Aug. 3, 2000]

[PUBLISHER'S NOTE: For Federal Register citations concerning the issuance of a Report on the Nuclear Regulatory Commission regulatory agenda, see: [59 FR 48558](#), Sept. 22, 1994; *60 FR 49327*, Sept. 25, 1995; [61 FR 46537](#), Sept. 4, 1996.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Nuclear Regulatory Commission regulatory analysis guidelines, see: [69 FR 29187](#), [May 21, 2004](#).]

[PUBLISHER'S NOTE: For Federal Register citations concerning Nuclear Regulatory Commission Waivers, see: [70 FR 51581](#), Aug. 31, 2005; *72 FR 68043*, Dec. 4, 2007; [73 FR 14376](#), Mar. 18, 2008; *74 FR 5797*, Feb. 2, 2009.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Notice of publication of transition plan, see: [72 FR 59157](#), Oct. 19, 2007.]

[PUBLISHER'S NOTE: Nomenclature changes affecting Chapter I appear at [70 FR 69421](#), Nov. 16, 2005; *72 FR 33386*, *June 18, 2007*.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Policy revision, see: *81 FR 47689*, *July 22, 2016*; [81 FR 78022](#), Nov. 7, 2016; [84 FR 24363](#), [May 28, 2019](#).]

[PUBLISHER'S NOTE: For Federal Register citations concerning Regulatory summary, see: [83 FR 29437](#), [June 25, 2018](#); *83 FR 65283*, Dec. 20, 2018.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Regulatory issue summary, see: *84 FR 12483*, Apr. 2, 2019.]

**NOTES APPLICABLE TO ENTIRE PART:**

[PUBLISHER'S NOTE: Nomenclature changes affecting Part 72 appear at [79 FR 75735](#), Dec. 19, 2014; [81 FR 86906](#), [86910](#), Dec. 2, 2016.]

[PUBLISHER'S NOTE: Direct final rule Part 72 appear at [81 FR 70004](#), Oct. 11, 2016.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 72 Regulatory issue summary, see: *82 FR 44299*, Sept. 22, 2017; *85 FR 3229*, Jan. 21, 2020.]

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**TAB 20**


## 10 CFR 72.214

This document is current through the March 23, 2020 issue of the Federal Register. Title 3 is current through March 6, 2020.

**Code of Federal Regulations > TITLE 10 -- ENERGY > CHAPTER I -- NUCLEAR REGULATORY COMMISSION > PART 72 -- LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE > SUBPART K -- GENERAL LICENSE FOR STORAGE OF SPENT FUEL AT POWER REACTOR SITES**

### Notice

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 There are multiple versions of this document. To view a complete list of the versions of this section see Table of Contents.

### § 72.214 List of approved spent fuel storage casks. [Effective Mar. 24, 2020.]

[PUBLISHER'S NOTE: This section was amended at [85 FR 1096](#), 1100, Jan. 9, 2020, effective Mar. 24, 2020. For the convenience of the user, the section has been set out twice. The version effective Mar. 24, 2020, immediately follows this note. For the version effective until Mar. 24, 2020, see the version preceding this section, also numbered § 72.214.]

The following casks are approved for storage of spent fuel under the conditions specified in their Certificates of Compliance.

Certificate Number: 1004.

Initial Certificate Effective Date: January 23, 1995, superseded by Initial Certificate, Revision 1, on April 25, 2017, superseded by Renewed Initial Certificate, Revision 1, on December 11, 2017.

Renewed Initial Certificate, Revision 1, Effective Date: December 11, 2017.

Amendment Number 1 Effective Date: April 27, 2000, superseded by Amendment Number 1, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 1, Revision 1, on December 11, 2017.

Renewed Amendment Number 1, Revision 1, Effective Date: December 11, 2017.

Amendment Number 2 Effective Date: September 5, 2000, superseded by Amendment Number 2, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 2, Revision 1, on December 11, 2017.

Renewed Amendment Number 2, Revision 1, Effective Date: December 11, 2017.

Amendment Number 3 Effective Date: September 12, 2001, superseded by Amendment Number 3, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 3, Revision 1, on December 11, 2017.

Renewed Amendment Number 3, Revision 1, Effective Date: December 11, 2017.

Amendment Number 4 Effective Date: February 12, 2002, superseded by Amendment Number 4, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 4, Revision 1, on December 11, 2017.

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Renewed Amendment Number 4, Revision 1, Effective Date: December 11, 2017.

Amendment Number 5 Effective Date: January 7, 2004, superseded by Amendment Number 5, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 5, Revision 1, on December 11, 2017.

Renewed Amendment Number 5, Revision 1, Effective Date: December 11, 2017.

Amendment Number 6 Effective Date: December 22, 2003, superseded by Amendment Number 6, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 6, Revision 1, on December 11, 2017.

Renewed Amendment Number 6, Revision 1, Effective Date: December 11, 2017.

Amendment Number 7 Effective Date: March 2, 2004, superseded by Amendment Number 7, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 7, Revision 1, on December 11, 2017.

Renewed Amendment Number 7, Revision 1, Effective Date: December 11, 2017.

Amendment Number 8 Effective Date: December 5, 2005, superseded by Amendment Number 8, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 8, Revision 1, on December 11, 2017.

Renewed Amendment Number 8, Revision 1, Effective Date: December 11, 2017.

Amendment Number 9 Effective Date: April 17, 2007, superseded by Amendment Number 9, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 9, Revision 1, on December 11, 2017.

Renewed Amendment Number 9, Revision 1, Effective Date: December 11, 2017.

Amendment Number 10 Effective Date: August 24, 2009, superseded by Amendment Number 10, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 10, Revision 1, on December 11, 2017.

Renewed Amendment Number 10, Revision 1, Effective Date: December 11, 2017.

Amendment Number 11 Effective Date: January 7, 2014, superseded by Amendment Number 11, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 11, Revision 1, on December 11, 2017.

Renewed Amendment Number 11, Revision 1, Effective Date: December 11, 2017, as corrected (ADAMS Accession No. ML18018A043).

Amendment Number 12 Effective Date: Amendment not issued by the NRC.

Amendment Number 13 Effective Date: May 24, 2014, superseded by Amendment Number 13, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 13, Revision 1, on December 11, 2017.

Renewed Amendment Number 13, Revision 1, Effective Date: December 11, 2017, as corrected (ADAMS Accession No. ML18018A100).

Amendment Number 14 Effective Date: April 25, 2017, superseded by Renewed Amendment Number 14, on December 11, 2017.

Renewed Amendment Number 14 Effective Date: December 11, 2017.

Renewed Amendment Number 15 Effective Date: January 22, 2019.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized NUHOMS(R) Horizontal Modular Storage System for Irradiated Nuclear Fuel.

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Docket Number: 72-1004.

Certificate Expiration Date: January 23, 2015.

Renewed Certificate Expiration Date: January 23, 2055.

Model Number: NUHOMS(R)-24P, -24PHB, -24PTH, -32PT, -32PTH1, -37PTH, -52B, -61BT, -61BTH, and -69BTH.

Certificate Number: 1007.

Initial Certificate Effective Date: May 7, 1993, superseded by Renewed Initial Certificate, on September 20, 2017.

Renewed Initial Certificate Effective Date: September 20, 2017.

Amendment Number 1 Effective Date: May 30, 2000, superseded by Renewed Amendment Number 1, on September 20, 2017.

Renewed Amendment Number 1 Effective Date: September 20, 2017.

Amendment Number 2 Effective Date: September 5, 2000, superseded by Renewed Amendment Number 2, on September 20, 2017.

Renewed Amendment Number 2 Effective Date: September 20, 2017.

Amendment Number 3 Effective Date: May 21, 2001, superseded by Renewed Amendment Number 3, on September 20, 2017.

Renewed Amendment Number 3 Effective Date: September 20, 2017.

Amendment Number 4 Effective Date: February 3, 2003, superseded by Renewed Amendment Number 4, on September 20, 2017.

Renewed Amendment Number 4 Effective Date: September 20, 2017.

Amendment Number 5 Effective Date: September 13, 2005, superseded by Renewed Amendment Number 5, on September 20, 2017.

Renewed Amendment Number 5 Effective Date: September 20, 2017.

Amendment Number 6 Effective Date: June 5, 2006, superseded by Renewed Amendment Number 6, on September 20, 2017.

Renewed Amendment Number 6 Effective Date: September 20, 2017.

SAR Submitted by:

EnergySolutions™ Corporation.

SAR Title: Final Safety Analysis Report for the VSC-24 Ventilated Storage Cask System.

Docket Number: 72-1007.

Renewed Certificate Expiration Date: May 7, 2053.

Model Number: VSC-24.

Certificate Number: 1008.

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Initial Certificate Effective Date: October 4, 1999.

Amendment Number 1 Effective Date: December 26, 2000.

Amendment Number 2 Effective Date: May 29, 2001.

Amendment Number 3 Effective Date: November 5, 2019.

SAR Submitted by: Holtec International.

SAR Title: Final Safety Analysis Report for the HI-STAR 100 Cask System.

Docket Number: 72-1008.

Certificate Expiration Date: October 4, 2019.

Model Number: HI-STAR 100 (MPC-24, MPC-32, MPC-68, MPC-68F).

Certificate Number: 1014.

Initial Certificate Effective Date: May 31, 2000.

Amendment Number 1 Effective Date: July 15, 2002.

Amendment Number 2 Effective Date: June 7, 2005.

Amendment Number 3 Effective Date: May 29, 2007.

Amendment Number 4 Effective Date: January 8, 2008.

Amendment Number 5 Effective Date: July 14, 2008.

Amendment Number 6 Effective Date: August 17, 2009.

Amendment Number 7 Effective Date: December 28, 2009.

Amendment Number 8 Effective Date: May 2, 2012, as corrected on November 16, 2012 (ADAMS Accession No. ML12213A170); superseded by Amendment 8, Revision 1 Effective Date: February 16, 2016.

Amendment Number 8, Revision 1 Effective Date: February 16, 2016.

Amendment Number 9 Effective Date: March 11, 2014, superseded by Amendment Number 9, Revision 1, on March 21, 2016.

Amendment Number 9, Revision 1, Effective Date: March 21, 2016, as corrected (ADAMS Accession No. ML17236A451).

Amendment Number 10 Effective Date: May 31, 2016, as corrected (ADAMS Accession No. ML17236A452).

Amendment Number 11 Effective Date: February 25, 2019, as corrected (ADAMS Accession No. ML19343B024).

Amendment Number 12 Effective Date: February 25, 2019, as corrected on May 30, 2019 (ADAMS Accession No. ML19109A111); further corrected December 23, 2019 (ADAMS Accession No. ML19343A908).

Amendment Number 13 Effective Date: May 13, 2019, as corrected on May 30, 2019 (ADAMS Accession No. ML19109A122); further corrected December 23, 2019 (ADAMS Accession No. ML19343B156).

Amendment Number 14 Effective Date: December 17, 2019, as corrected (ADAMS Accession No. ML19343B287).

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Safety Analysis Report (SAR) Submitted by: Holtec International.

SAR Title: Final Safety Analysis Report for the HI-STORM 100 Cask System.

Docket Number: 72-1014.

Certificate Expiration Date: May 31, 2020.

Model Number: HI-STORM 100.

Certificate Number: 1015.

Initial Certificate Effective Date: November 20, 2000.

Amendment Number 1 Effective Date: February 20, 2001.

Amendment Number 2 Effective Date: December 31, 2001.

Amendment Number 3 Effective Date: March 31, 2004.

Amendment Number 4 Effective Date: October 11, 2005.

Amendment Number 5 Effective Date: January 12, 2009.

Amendment Number 6 Effective Date: January 7, 2019.

Amendment Number 7 Effective Date: July 29, 2019.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the NAC-UMS Universal Storage System.

Docket Number: 72-1015.

Certificate Expiration Date: November 20, 2020.

Model Number: NAC-UMS.

Certificate Number: 1021

Initial Certificate Effective Date: April 19, 2000.

Amendment Number 1 Effective Date: February 20, 2001.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the TN-32 Dry Storage Cask.

Docket Number: 72-1021.

Certificate Expiration Date: April 19, 2020.

Model Number: TN-32, TN-32A, TN-32B.

Certificate Number: 1025.

Initial Certificate Effective Date: April 10, 2000.

Amendment Number 1 Effective Date: November 13, 2001.

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Amendment Number 2 Effective Date: May 29, 2002.

Amendment Number 3 Effective Date: October 1, 2003.

Amendment Number 4 Effective Date: October 27, 2004.

Amendment Number 5 Effective Date: July 24, 2007.

Amendment Number 6 Effective Date: October 4, 2010.

Amendment Number 7 Effective Date: March 4, 2019.

Amendment Number 8 Effective Date: March 4, 2019.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the NAC Multi-Purpose Canister System (NAC-MPC System).

Docket Number: 72-1025.

Certificate Expiration Date: April 10, 2020.

Model Number: NAC-MPC.

Certificate Number: 1026.

Initial Certificate Effective Date: February 15, 2001.

Amendment Number 1 Effective Date: May 14, 2001.

Amendment Number 2 Effective Date: January 28, 2002.

Amendment Number 3 Effective Date: May 7, 2003.

Amendment Number 4 Effective Date: July 3, 2006.

SAR Submitted by: BNG Fuel Solutions Corporation.

SAR Title: Final Safety Analysis Report for the FuelSolutions<TM> Spent Fuel Management System.

Docket Number: 72-1026.

Certificate Expiration Date: February 15, 2021.

Model Number: WSNF-220, WSNF-221, and WSNF-223 systems; W-150 storage cask; W-100 transfer cask; and the W-21 and W-74 canisters.

Certificate Number: 1027.

Initial Certificate Effective Date: May 30, 2000.

Amendment Number 1 Effective Date: October 30, 2007.

SAR Submitted by: Transnuclear, Inc.

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

Docket Number: 72-1027.

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Certificate Expiration Date: May 28, 2020.

Model Number: TN-68.

Certificate Number: 1029.

Initial Certificate Effective Date: February 5, 2003.

Amendment Number 1 Effective Date: May 16, 2005.

Amendment Number 2 Effective Date: Amendment not issued by the NRC.

Amendment Number 3 Effective Date: February 23, 2015.

Amendment Number 4 Effective Date: March 12, 2019.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized Advanced NUHOMS(R) Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72-1029.

Certificate Expiration Date: February 5, 2023.

Model Number: Standardized Advanced NUHOMS(R) -24PT1, -24PT4, and -32PTH2.

Certificate Number: 1030.

Initial Certificate Effective Date: January 10, 2007.

Amendment Number 1 Effective Date: March 29, 2011.

Amendment Number 2 Effective Date: October 14, 2014.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the NUHOMS(R) HD Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72-1030.

Certificate Expiration Date: January 10, 2027.

Model Number: NUHOMS(R) HD-32PTH.

Certificate Number: 1031.

Initial Certificate Effective Date: February 4, 2009, superseded by Initial Certificate, Revision 1, on February 1, 2016.

Initial Certificate, Revision 1, Effective Date: February 1, 2016.

Amendment Number 1 Effective Date: August 30, 2010, superseded by Amendment Number 1, Revision 1, on February 1, 2016.

Amendment Number 1, Revision 1, Effective Date: February 1, 2016.



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Amendment Number 2 Effective Date: January 30, 2012, superseded by Amendment Number 2, Revision 1, on February 1, 2016.

Amendment Number 2, Revision 1, Effective Date: February 1, 2016.

Amendment Number 3 Effective Date: July 25, 2013, superseded by Amendment Number 3, Revision 1, on February 1, 2016.

Amendment Number 3, Revision 1, Effective Date: February 1, 2016.

Amendment Number 4 Effective Date: April 14, 2015.

Amendment Number 5 Effective Date: June 29, 2015.

Amendment Number 6 Effective Date: December 21, 2016.

Amendment Number 7 Effective Date: August 21, 2017, as corrected (ADAMS Accession No. ML19045A346).

Amendment Number 8 Effective Date: March 24, 2020.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the MAGNASTOR(R) System.

Docket Number: 72-1031.

Certificate Expiration Date: February 4, 2029.

Model Number: MAGNASTOR(R).

Certificate Number: 1032.

Initial Certificate Effective Date: June 13, 2011, superseded by Amendment Number 0, Revision 1, on April 25, 2016.

Amendment Number 0, Revision 1, Effective Date: April 25, 2016.

Amendment Number 1 Effective Date: December 17, 2014, superseded by Amendment Number 1, Revision 1, on June 2, 2015.

Amendment Number 1, Revision 1, Effective Date: June 2, 2015.

Amendment Number 2 Effective Date: November 7, 2016.

Amendment Number 3 Effective Date: September 11, 2017.

SAR Submitted by: Holtec International, Inc.

SAR Title: Final Safety Analysis Report for the Holtec International HI-STORM FW System.

Docket Number: 72-1032.

Certificate Expiration Date: June 12, 2031.

Model Number: HI-STORM FW MPC-37, MPC-89.

Certificate Number: 1040.

Initial Certificate Effective Date: April 6, 2015.

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Amendment Number 1 Effective Date: September 8, 2015.

Amendment Number 2, Effective Date: January 9, 2017.

SAR Submitted by: Holtec International, Inc.

SAR Title: Final Safety Analysis Report for the Holtec International HI-STORM UMAX Canister Storage System.

Docket Number: 72-1040.

Certificate Expiration Date: April 6, 2035.

Model Number: MPC-37, MPC-89.

Certificate Number: 1042.

Initial Certificate Effective Date: June 7, 2017.

SAR Submitted by: TN Americas LLC.

SAR Title: Final Safety Analysis Report for the NUHOMS(R) EOS Dry Spent Fuel Storage System.

Docket Number: 72-1042.

Certificate Expiration Date: June 7, 2037.

Model Number: EOS-37PTH, EOS-89BTH.

## Statutory Authority

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### AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

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.

## History

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[[70 FR 9501](#), 9504, Feb. 28, 2005, as confirmed at [70 FR 22781](#), May 3, 2005; [70 FR 9504](#), 9507, Feb. 28, 2005, withdrawn at [70 FR 24936](#), May 12, 2005; [70 FR 29931](#), [29934](#), May 25, 2005, withdrawn at [70 FR 40879](#), July 15, 2005; [70 FR 32977](#), [32982](#), June 7, 2005; [70 FR 37647](#), [37649](#), June 30, 2005, as confirmed at [70 FR 50957](#), Aug. 29, 2005; [70 FR 42485](#), 42488, July 25, 2005, as confirmed at [70 FR 55513](#), Sept. 22, 2005; [70 FR 55023](#), [55026](#), Sept. 20, 2005, as confirmed at [70 FR 71381](#), Nov. 29, 2005; [71 FR 14089](#), [14092](#), Mar. 21, 2006, as confirmed at [71 FR 30576](#), May 30, 2006; [71 FR 19806](#), [19810](#), Apr. 18, 2006, as confirmed at [71 FR 35147](#), June 19, 2006; [71 FR 25740](#), [25743](#), May 2, 2006, withdrawn at [71 FR 39520](#), July 13, 2006; [71 FR 60659](#), [60661](#), Oct. 16, 2006, withdrawn at [71 FR 77586](#), Dec. 27, 2006; [71 FR 71463](#), [71472](#), Dec. 11, 2006; [72 FR 4615](#), 4617, Feb. 1, 2007, as confirmed at [72 FR 19109](#), Apr. 17, 2007; [72 FR 5595](#), Feb. 7, 2007; [72 FR 20712](#), [20716](#), Apr. 26, 2007; [72 FR 26535](#), [26538](#), May 10, 2007, as confirmed at [72 FR 38468](#), July 13, 2007; [72 FR 45880](#), [45883](#), Aug. 16, 2007, as confirmed at [72 FR 60760](#), Oct. 26, 2007; [72 FR 60543](#), [60546](#), Oct. 25, 2007, as confirmed at [73 FR 17](#), Jan. 2, 2008; [72 FR 74162](#), [74166](#), Dec. 31, 2007, withdrawn at [73 FR 13071](#), Mar. 12, 2008; [73 FR 33291](#), [33294](#), June

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[12, 2008](#); [73 FR 63621, 63624](#), Oct. 27, 2008, as confirmed at [74 FR 1143](#), Jan. 12, 2009; [73 FR 70587, 70590](#), Nov. 21, 2008, as confirmed at [74 FR 5983](#), Feb. 4, 2009; [74 FR 26285, 26287, June 2, 2009](#), as confirmed at [74 FR 40060](#), Aug. 11, 2009; [74 FR 27423, 27426, June 10, 2009](#), as confirmed at [74 FR 40060](#), Aug. 11, 2009; [74 FR 52387, 52391](#), Oct. 13, 2009, as confirmed at [74 FR 65679](#), Dec. 11, 2009; [75 FR 24786, 24788, May 6, 2010](#), as corrected at [75 FR 27401, May 17, 2010](#), and withdrawn at [75 FR 41369, July 16, 2010](#); [75 FR 33678, 33681, June 15, 2010](#), as confirmed at [75 FR 49813](#), Aug. 16, 2010; [75 FR 42292, 42295, July 21, 2010](#), as confirmed at [75 FR 57841](#), Sept. 23, 2010; [76 FR 2243, 2246, Jan. 13, 2011](#), as confirmed at [76 FR 12825](#), Mar. 9, 2011; [76 FR 17019, 17022](#), Mar. 28, 2011, as confirmed at [76 FR 33121, June 8, 2011](#); [76 FR 70331, 70334](#), Nov. 14, 2011, as confirmed at [77 FR 4203](#), Jan. 27, 2012; [77 FR 9515, 9518, Feb. 17, 2012](#), as confirmed at [77 FR 24585](#), Apr. 25, 2012; [78 FR 16601, 16604](#), Mar. 18, 2013, withdrawn at [78 FR 32077, May 29, 2013](#); [78 FR 22411](#), Apr. 16, 2013; [78 FR 37927, 37930, June 25, 2013](#); [78 FR 63375, 63379](#), Oct. 24, 2013, as confirmed at [78 FR 78693](#), Dec. 27, 2013; [78 FR 73379, 73382](#), Dec. 6, 2013, as confirmed at [79 FR 12362](#), Mar. 5, 2014; [78 FR 78165](#), Dec. 26, 2013; [79 FR 13192, 13196](#), Mar. 10, 2014, as confirmed at [79 FR 28393, May 16, 2014](#); [79 FR 20753, 20754](#), Apr. 14, 2014; [79 FR 21121, 21125](#), Apr. 15, 2014, withdrawn at [79 FR 35911, June 25, 2014](#); [79 FR 44264, 44267, July 31, 2014](#), as confirmed at [79 FR 58672](#), Sept. 30, 2014; [79 FR 53281, 53284](#), Sept. 9, 2014, withdrawn at [79 FR 68763](#), Nov. 19, 2014; [79 FR 59623, 59626](#), Oct. 3, 2014, as confirmed at [79 FR 74594](#), Dec. 16, 2014; [79 FR 66598, 66606](#), Nov. 10, 2014; [80 FR 3147, 3152, Jan. 22, 2015](#); [80 FR 4757, 4761, Jan. 29, 2015](#), as confirmed at [80 FR 16251](#), Mar. 27, 2015; [80 FR 6430, 6435, Feb. 5, 2015](#), withdrawn at [80 FR 21639](#), Apr. 20, 2015; [80 FR 12073](#), Mar. 6, 2015, as corrected at [80 FR 15679](#), Mar. 25, 2015; [80 FR 14291, 14295](#), Mar. 19, 2015, as confirmed at [80 FR 30924, June 1, 2015](#); [80 FR 20149, 20153](#), Apr. 15, 2015, as confirmed at [80 FR 36467, June 25, 2015](#); [80 FR 35829, 35833, June 23, 2015](#), as confirmed at [80 FR 53691](#), Sept. 8, 2015; [80 FR 49887, 49891](#), Aug. 18, 2015; [80 FR 58195, 58199](#), Sept. 28, 2015, as confirmed at [81 FR 1116](#), Jan. 11, 2016; [80 FR 71929, 71934](#), Nov. 18, 2015, as confirmed at [81 FR 4574](#), Jan. 27, 2016; [81 FR 371, 377, Jan. 6, 2016](#); [81 FR 13265, 13271](#), Mar. 14, 2016, as confirmed at [81 FR 15153](#), Mar. 22, 2016; [81 FR 13265, 13271](#), Mar. 14, 2016, as confirmed and revised at [81 FR 34241, May 31, 2016](#); [81 FR 19021, 19022](#), Apr. 4, 2016; [81 FR 57442, 57446](#), Aug. 23, 2016, as confirmed at [81 FR 78021](#), Nov. 7, 2016; [81 FR 69659, 69663](#), Oct. 7, 2016, as confirmed at [81 FR 88097](#), Dec. 7, 2016; [81 FR 73335, 73339](#), Oct. 25, 2016, as confirmed at [82 FR 8805](#), Jan. 31, 2017; [82 FR 8353, 8359](#), Jan. 25, 2017, as confirmed at [82 FR 17749](#), Apr. 13, 2017; [82 FR 14987, 14991](#), Mar. 24, 2017, as confirmed at [82 FR 24457, May 30, 2017](#); [82 FR 25931, 25935, June 6, 2017](#), as confirmed at [82 FR 37511](#), Aug. 11, 2017; [82 FR 29225, 29229, June 28, 2017](#), as confirmed at [82 FR 41873](#), Sept. 5, 2017; [82 FR 31433, 31439, July 7, 2017](#), as confirmed at [82 FR 44053](#), Sept. 21, 2017; [82 FR 34387, July 25, 2017](#); [82 FR 41321, 41322](#), Aug. 31, 2017; [82 FR 44879, 44885](#), Sept. 27, 2017, as confirmed at [82 FR 57819](#), Dec. 8, 2017; [83 FR 3261, 3262](#), Jan. 24, 2018; [83 FR 53159, 53163](#), Oct. 22, 2018, as confirmed at [83 FR 65077](#), Dec. 19, 2018; [83 FR 55601, 55605](#), Nov. 7, 2018, as confirmed at [83 FR 66079](#), Dec. 26, 2018; [83 FR 63794, 63799](#), Dec. 12, 2018; [83 FR 64729, 64734](#), Dec. 18, 2018, as confirmed at [84 FR 4683](#), Feb. 19, 2019; [83 FR 63794, 63799](#), Dec. 12, 2018, as confirmed at [84 FR 4309](#), Feb. 15, 2019, and [84 FR 4684](#), Feb. 19, 2019; [84 FR 6055, 6059](#), Feb. 26, 2019, as confirmed at [84 FR 16201](#), Apr. 18, 2019; [84 FR 10257, 10258](#), Mar. 20, 2019; [84 FR 21687, 21691, May 15, 2019](#), as confirmed at [84 FR 34769](#); [84 FR 24979, 24980, May 30, 2019](#); [84 FR 43669, 43673](#), Aug. 22, 2019, as confirmed at [84 FR 54465](#), Oct. 10, 2019; [84 FR 52747, 52751](#), Oct. 3, 2019, as confirmed at [84 FR 67827](#), Dec. 12, 2019; [84 FR 70400, 70401](#), Dec. 23, 2019; [85 FR 1096](#), 1100, Jan. 9, 2020, as confirmed at [85 FR 12861, 12862](#), Mar. 5, 2020.]

Annotations

## Notes

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[EFFECTIVE DATE NOTE:

## 10 CFR 72.214

[80 FR 3147](#), 3152, Jan. 22, 2015, revised "Certificate of Compliance 1029," effective Feb. 23, 2015; [80 FR 4757](#), 4761, Jan. 29, 2015, revised "Certificate of Compliance 1031," effective Apr. 14, 2015; [80 FR 12073](#), Mar. 6, 2015, added "Certificate of Compliance 1040," effective Apr. 6, 2015; [80 FR 14291](#), [14295](#), Mar. 19, 2015, revised "Certificate of Compliance 1032," effective June 2, 2015; [80 FR 20149](#), [20153](#), Apr. 15, 2015, revised "Certificate of Compliance 1031," effective June 29, 2015; [80 FR 35829](#), [35833](#), [June 23, 2015](#), revised "Certificate of Compliance 1040," effective Sept. 8, 2015; [80 FR 49887](#), [49891](#), Aug. 18, 2015, revised "Certificate of Compliance No. 1014", effective Feb. 16, 2016; [80 FR 58195](#), [58199](#), Sept. 28, 2015, revised "Compliance No. 1032", effective Apr. 25, 2016; [80 FR 71929](#), [71934](#), Nov. 18, 2015, revised "Certificate of Compliance No. 1031", effective Feb. 1, 2016; [81 FR 371](#), 377, Jan. 6, 2016, revised "Certificate of Compliance No. 1014", effective Mar. 21, 2016; [81 FR 13265](#), [13271](#), Mar. 14, 2016, revised "Certificate of Compliance No. 1014", effective May 31, 2016; [81 FR 19021](#), [19022](#), Apr. 4, 2016, revised "Certificate of Compliance No. 1014," effective Apr. 4, 2016; [81 FR 34241](#), [May 31, 2016](#), revised "Certificate of Compliance No. 1014", effective May 31, 2016; [81 FR 57442](#), [57446](#), Aug. 23, 2016, amended this section, effective Nov. 7, 2016; [81 FR 69659](#), [69663](#), Oct. 7, 2016, revised "Certificate of Compliance No. 1031," effective Dec. 21, 2016; [81 FR 73335](#), [73339](#), Oct. 25, 2016, revised "Certificate of Compliance No. 1040, effective, Jan. 9, 2017; [82 FR 8353](#), [8359](#), Jan. 25, 2017, revised "Certificate of Compliance No. 1004," effective Apr. 25, 2017; [82 FR 14987](#), [14991](#), Mar. 24, 2017, added "Certificate Number: 1042," effective June 7, 2017; [82 FR 25931](#), [25935](#), [June 6, 2017](#), revised "Certificate Number: 1031," effective Aug. 31, 2017; [82 FR 29225](#), [29229](#), [June 28, 2017](#), revised "Certificate Number: 1032," effective Sept. 11, 2017; [82 FR 31433](#), [31439](#), [July 7, 2017](#), revised "Certificate Number: 1007," effective Sept. 20, 2017; [82 FR 34387](#), [July 25, 2017](#), revised "Certificate Number: 1042," effective July 25, 2017; [82 FR 41321](#), [41322](#), Aug. 31, 2017, revised "Certificate Number: 1014," effective Aug. 31, 2017; [82 FR 44879](#), [44885](#), Sept. 27, 2017, revised "Certificate Number: 1004," effective Dec. 11, 2017; [83 FR 3261](#), 3262, Jan. 24, 2018, revised "Certificate Number: 1004," effective Jan. 24, 2018; [83 FR 53159](#), [53163](#), Oct. 22, 2018, revised "Certificate Number: 1015", effective Jan. 7, 2019; [83 FR 55601](#), [55605](#), Nov. 7, 2018, revised "Certificate Number: 1004", effective Jan. 22, 2019; [83 FR 63794](#), [63799](#), Dec. 12, 2018, revised "Certificate Number: 1014", effective Feb. 25, 2019; [83 FR 64729](#), [64734](#), Dec. 18, 2018, revised "Certificate Number: 1025", effective Mar. 4, 2019; [83 FR 63794](#), [63799](#), Dec. 12, 2018, revised "Certificate Number: 1029", effective Feb. 25, 2019; [84 FR 6055](#), 6059, Feb. 26, 2019, revised "Certificate Number: 1014", effective May 13, 2019; [84 FR 10257](#), [10258](#), Mar. 20, 2019, revised "Certificate Number: 1031", effective Mar. 20, 2019; [84 FR 21687](#), [21691](#), [May 15, 2019](#), revised "Certificate Number: 1015", effective July 29, 2019; [84 FR 24979](#), [24980](#), [May 30, 2019](#), revised "Certificate Number: 1014", effective May 30, 2019; [84 FR 43669](#), [43673](#), Aug. 22, 2019, revised "Certificate Number: 1008", effective Nov. 5, 2019; [84 FR 52747](#), [52751](#), Oct. 3, 2019, revised "Certificate Number: 1014", effective Dec. 17, 2019; [84 FR 70400](#), [70401](#), Dec. 23, 2019, revised "Certificate Number: 1014", effective Dec. 23, 2019; [85 FR 1096](#), 1100, Jan. 9, 2020, amended this section, effective Mar. 24, 2020.]

## Research References & Practice Aids

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### NOTES APPLICABLE TO ENTIRE CHAPTER:

[PUBLISHER'S NOTE: For Federal Register citations concerning Nuclear Regulatory Commission (NRC) Policy Statements, see: [51 FR 29211](#), (1986); [52 FR 20592](#), (1987); 60 FR 4071, Jan. 20, 1995; [65 FR 47654](#), Aug. 3, 2000]

[PUBLISHER'S NOTE: For Federal Register citations concerning the issuance of a Report on the Nuclear Regulatory Commission regulatory agenda, see: [59 FR 48558](#), Sept. 22, 1994; [60 FR 49327](#), Sept. 25, 1995; [61 FR 46537](#), Sept. 4, 1996.]

10 CFR 72.214

[PUBLISHER'S NOTE: For Federal Register citations concerning Nuclear Regulatory Commission regulatory analysis guidelines, see: [69 FR 29187, May 21, 2004](#).]

[PUBLISHER'S NOTE: For Federal Register citations concerning Nuclear Regulatory Commission Waivers, see: [70 FR 51581](#), Aug. 31, 2005; [72 FR 68043](#), Dec. 4, 2007; [73 FR 14376](#), Mar. 18, 2008; [74 FR 5797](#), Feb. 2, 2009.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Notice of publication of transition plan, see: [72 FR 59157](#), Oct. 19, 2007.]

[PUBLISHER'S NOTE: Nomenclature changes affecting Chapter I appear at [70 FR 69421](#), Nov. 16, 2005; [72 FR 33386](#), *June 18, 2007*.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Policy revision, see: [81 FR 47689](#), *July 22, 2016*; [81 FR 78022](#), Nov. 7, 2016; [84 FR 24363, May 28, 2019](#).]

[PUBLISHER'S NOTE: For Federal Register citations concerning Regulatory summary, see: [83 FR 29437, June 25, 2018](#); [83 FR 65283](#), Dec. 20, 2018.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Regulatory issue summary, see: [84 FR 12483](#), Apr. 2, 2019.]

**NOTES APPLICABLE TO ENTIRE PART:**

[PUBLISHER'S NOTE: Nomenclature changes affecting Part 72 appear at [79 FR 75735](#), Dec. 19, 2014; [81 FR 86906, 86910](#), Dec. 2, 2016.]

[PUBLISHER'S NOTE: Direct final rule Part 72 appear at [81 FR 70004](#), Oct. 11, 2016.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 72 Regulatory issue summary, see: [82 FR 44299](#), Sept. 22, 2017; [85 FR 3229](#), Jan. 21, 2020.]

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**TAB 21**

## 10 CFR 72.236

This document is current through the March 23, 2020 issue of the Federal Register. Title 3 is current through March 6, 2020.

**Code of Federal Regulations > TITLE 10 -- ENERGY > CHAPTER I -- NUCLEAR REGULATORY COMMISSION > PART 72 -- LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE > SUBPART L -- APPROVAL OF SPENT FUEL STORAGE CASKS**

### **§ 72.236 Specific requirements for spent fuel storage cask approval and fabrication.**

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The certificate holder and applicant for a CoC shall ensure that the requirements of this section are met.

**(a)** Specifications must be provided for the spent fuel to be stored in the spent fuel storage cask, such as, but not limited to, type of spent fuel (i.e., BWR, PWR, both), maximum allowable enrichment of the fuel prior to any irradiation, burn-up (i.e., megawatt-days/MTU), minimum acceptable cooling time of the spent fuel prior to storage in the spent fuel storage cask, maximum heat designed to be dissipated, maximum spent fuel loading limit, condition of the spent fuel (i.e., intact assembly or consolidated fuel rods), the inerting atmosphere requirements.

**(b)** Design bases and design criteria must be provided for structures, systems, and components important to safety.

**(c)** The spent fuel storage cask must be designed and fabricated so that the spent fuel is maintained in a subcritical condition under credible conditions.

**(d)** Radiation shielding and confinement features must be provided sufficient to meet the requirements in §§ 72.104 and 72.106.

**(e)** The spent fuel storage cask must be designed to provide redundant sealing of confinement systems.

**(f)** The spent fuel storage cask must be designed to provide adequate heat removal capacity without active cooling systems.

**(g)** The spent fuel storage cask must be designed to store the spent fuel safely for the term proposed in the application, and permit maintenance as required.

**(h)** The spent fuel storage cask must be compatible with wet or dry spent fuel loading and unloading facilities.

**(i)** The spent fuel storage cask must be designed to facilitate decontamination to the extent practicable.

**(j)** The spent fuel storage cask must be inspected to ascertain that there are no cracks, pinholes, uncontrolled voids, or other defects that could significantly reduce its confinement effectiveness.

**(k)** The spent fuel storage cask must be conspicuously and durably marked with --

**(1)** A model number;

**(2)** A unique identification number; and

**(3)** An empty weight.

## 10 CFR 72.236

(l) The spent fuel storage cask and its systems important to safety must be evaluated, by appropriate tests or by other means acceptable to the NRC, to demonstrate that they will reasonably maintain confinement of radioactive material under normal, off-normal, and credible accident conditions.

(m) To the extent practicable in the design of spent fuel storage casks, consideration should be given to compatibility with removal of the stored spent fuel from a reactor site, transportation, and ultimate disposition by the Department of Energy.

(n) Safeguards Information shall be protected against unauthorized disclosure in accordance with the requirements of § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.

## Statutory Authority

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### AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

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.

## History

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[[55 FR 29193](#), July 18, 1990; [64 FR 56114](#), [56126](#), Oct. 15, 1999; [65 FR 50606](#), [50617](#), Aug. 21, 2000; [73 FR 63546](#), [63573](#), Oct. 24, 2008; [76 FR 8872](#), 8891, Feb. 16, 2011]

Annotations

## Notes

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### [EFFECTIVE DATE NOTE:

[76 FR 8872](#), 8891, Feb. 16, 2011, revised paragraph (g), effective May 17, 2011.]

## Research References & Practice Aids

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### NOTES APPLICABLE TO ENTIRE CHAPTER:

[PUBLISHER'S NOTE: For Federal Register citations concerning Nuclear Regulatory Commission (NRC) Policy Statements, see: [51 FR 29211](#), (1986); [52 FR 20592](#), (1987); [60 FR 4071](#), Jan. 20, 1995; [65 FR 47654](#), Aug. 3, 2000]



10 CFR 72.236

[PUBLISHER'S NOTE: For Federal Register citations concerning the issuance of a Report on the Nuclear Regulatory Commission regulatory agenda, see: [59 FR 48558](#), Sept. 22, 1994; [60 FR 49327](#), Sept. 25, 1995; [61 FR 46537](#), Sept. 4, 1996.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Nuclear Regulatory Commission regulatory analysis guidelines, see: [69 FR 29187](#), [May 21, 2004](#).]

[PUBLISHER'S NOTE: For Federal Register citations concerning Nuclear Regulatory Commission Waivers, see: [70 FR 51581](#), Aug. 31, 2005; [72 FR 68043](#), Dec. 4, 2007; [73 FR 14376](#), Mar. 18, 2008; [74 FR 5797](#), Feb. 2, 2009.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Notice of publication of transition plan, see: [72 FR 59157](#), Oct. 19, 2007.]

[PUBLISHER'S NOTE: Nomenclature changes affecting Chapter I appear at [70 FR 69421](#), Nov. 16, 2005; [72 FR 33386](#), [June 18, 2007](#).]

[PUBLISHER'S NOTE: For Federal Register citations concerning Policy revision, see: [81 FR 47689](#), [July 22, 2016](#); [81 FR 78022](#), Nov. 7, 2016; [84 FR 24363](#), [May 28, 2019](#).]

[PUBLISHER'S NOTE: For Federal Register citations concerning Regulatory summary, see: [83 FR 29437](#), [June 25, 2018](#); [83 FR 65283](#), Dec. 20, 2018.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Regulatory issue summary, see: [84 FR 12483](#), Apr. 2, 2019.]

**NOTES APPLICABLE TO ENTIRE PART:**

[PUBLISHER'S NOTE: Nomenclature changes affecting Part 72 appear at [79 FR 75735](#), Dec. 19, 2014; [81 FR 86906](#), [86910](#), Dec. 2, 2016.]

[PUBLISHER'S NOTE: Direct final rule Part 72 appear at [81 FR 70004](#), Oct. 11, 2016.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 72 Regulatory issue summary, see: [82 FR 44299](#), Sept. 22, 2017; [85 FR 3229](#), Jan. 21, 2020.]

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**OFFICE OF MANAGEMENT AND BUDGET****Department Of Defense****Report on Alternative Measures of Allowable Reimbursement for Compensation of Contractor Employees**

**AGENCY:** Office of Federal Procurement Policy, Office of Management and Budget, and Department of Defense (DOD)

**ACTION:** Notice of request for public comment.

**SUMMARY:** The Office of Federal Procurement Policy (OFPP), in the Office of Management and Budget (OMB), and the Department of Defense (DOD) seek public input for consideration in the development of a report to Congress on alternative measures of allowable reimbursement for the compensation of contractor employees. The report is required by section 702(e) of the Bipartisan Budget Act of 2013 (Pub. L. 113–67; enacted Dec 26, 2013).

**DATES:** Interested parties should submit comments in writing to an address below on or before October 16, 2014.

**ADDRESSES:** All comments to this notice must be in writing, and may be submitted to any of the following methods:

*Email:* [compcap@omb.eop.gov](mailto:compcap@omb.eop.gov).

*Facsimile:* 202–395–5105.

*Mail:* Office of Federal Procurement Policy, ATTN: Raymond Wong, New Executive Office Building, Room 9013, 725 17th St. NW., Washington, DC 20503.

*Instructions:* Please submit comments only and cite “Report on Benchmark Alternatives” in all correspondence. Comments received will be posted without change to [http://www.whitehouse.gov/omb/procurement/ccp\\_reports](http://www.whitehouse.gov/omb/procurement/ccp_reports), including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Raymond Wong, OFPP, 202–395–6805 or [rwong@omb.eop.gov](mailto:rwong@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:** Section 702 of the Bipartisan Budget Act of 2013 (Pub. L. 113–67; enacted Dec 26, 2013) establishes a cap of \$487,000 per year on the amount the Federal Government will reimburse for contractor-paid employee compensation on contracts with defense and civilian agencies. By law, this amount must be adjusted annually to reflect the change in the Employment Cost Index for all workers, as calculated by the Bureau of Labor Statistics. Pursuant to section 702(c), the

new cap applies to costs of compensation incurred under contracts entered into on or after the date that is 180 days after the enactment of the Bipartisan Budget Act of FY 2013, (June 24, 2014). The Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council published an interim rule via separate notice on June 24, 2014 to revise the Federal Acquisition Regulation to implement section 702 and seek public comment.

Section 702(e) directs OMB and DOD to report to Congress on alternative benchmarks and industry standards for compensation, including whether any such benchmarks or standards would provide a more appropriate measure of allowable compensation for the purposes of section 2324(e)(1)(P) of title 10, United States Code, and section 4304(a)(16) of title 41, United States Code.” These statutory provisions set forth the caps on contractor employee compensation that may be reimbursed by the government.

OMB’s OFPP and DoD seek public input on alternative benchmarks that would provide a more appropriate measure of allowable compensation for the purposes of section 2324(e)(1)(P) of title 10, and section 4304(a)(16) of title 41, United States Code, as amended by section 702, including appropriate inflators (i.e., alternatives in lieu of the Employment Cost Index for all workers, as calculated by the Bureau of Labor Statistics). Feedback will be considered in preparation of the report to Congress and should both describe the alternative(s) and explain why such might be more suitable than the benchmark and inflators set forth in statute.

**Lesley A. Field,**

*Administrator (Acting), Office of Federal Procurement Policy.*

**Richard Ginman,**

*Director, Defense Procurement and Acquisition Policy.*

[FR Doc. 2014–22005 Filed 9–15–14; 8:45 am]

**BILLING CODE 3110–01–P**

**NATIONAL CREDIT UNION ADMINISTRATION****Sunshine Act Meetings**

**TIME AND DATE:** 10:00 a.m., Thursday, September 18, 2014.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. NCUA’s Rules and Regulations, Technical Amendments.

2. First Service Federal Credit Union (Groveport, Ohio), Request to Expand Community Charter.

3. Corporate Stabilization Fund Quarterly Report.

**RECESS:** 11:00 a.m.

**TIME AND DATE:** 11:15 a.m., Thursday, September 18, 2014.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Consideration of Supervisory Activities. Closed pursuant to Exemption (8).

2. Share Insurance Appeal. Closed pursuant to Exemption (6).

3. Personnel. Closed pursuant to Exemption (2).

**FOR FURTHER INFORMATION CONTACT:**

Gerard Poliquin, Secretary of the Board, Telephone: 703–518–6304.

**Gerard Poliquin,**

*Secretary of the Board.*

[FR Doc. 2014–22161 Filed 9–12–14; 4:15 pm]

**BILLING CODE 7535–01–P**

**NUCLEAR REGULATORY COMMISSION**

**[NRC–2014–0917]**

**Biweekly Notice, Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Biweekly notice.

**SUMMARY:** Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 21, 2014 to September 3, 2014. The last

biweekly notice was published on September 2, 2014.

**DATES:** Comments must be filed by October 16, 2014. A request for a hearing must be filed by November 17, 2014.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2014-0917. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: 3WFN-06-A44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

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:**

Beverly A. Clayton, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-3475, email: [Beverly.Clayton@nrc.gov](mailto:Beverly.Clayton@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Obtaining Information and Submitting Comments**

*A. Obtaining Information*

Please refer to Docket ID NRC-2014-0917 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 Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2014-0917.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then 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 [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

*B. Submitting Comments*

Please include Docket ID NRC-2014-0917 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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 posts all comment submissions at <http://www.regulations.gov> as well as entering 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 submissions into ADAMS.

**II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination**

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of Title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be

considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

*A. Opportunity To Request a Hearing and Petition for Leave To Intervene*

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1-F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards

consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

#### *B. Electronic Submissions (E-Filing)*

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at 301-415-1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/getting-started.html>. System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at [\[submittals.html\]\(http://www.nrc.gov/site-help/e-submittals.html\). Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.](http://www.nrc.gov/site-help/e-</a></p></div><div data-bbox=)

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by email to [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-

free call at 1-866-672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <http://ehd1.nrc.gov/ehd/>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice.

Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)-(iii).

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the "Obtaining Information and Submitting Comments" section of this document.

*Duke Energy Carolinas, LLC, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina*

*Date of amendment request:* June 30, 2014. A publicly-available version is in ADAMS under Accession No. ML14184B384.

*Description of amendment request:* The amendment would revise the Technical Specifications (TS) by reducing the allowed maximum rated thermal power (RTP) at which the unit can operate when select High Pressure Injection (HPI) System equipment is inoperable.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed TS changes do not modify the reactor coolant system pressure boundary, nor make any physical changes to the facility design, material, or construction standards. The probability of any design basis accident (DBA) is not affected by this change, nor are the consequences of any DBA affected by this change. The new small break loss-of-coolant accident (SBLOCA) partial-power analysis demonstrates that all 10 CFR 50.46 acceptance criteria are satisfied. Radiological consequences for loss-of-coolant accident (LOCA) events are evaluated in ONS Updated Final Safety Analysis Report Section 15.15 for the Maximum Hypothetical Accident. The proposed changes will not impact assumptions and conditions previously used in the radiological consequence evaluations for the Maximum Hypothetical Accident. The proposed changes do not involve changes to any structures, systems, or components (SSCs) that can alter the probability for initiating a LOCA event.

Therefore, the proposed TS changes do not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS changes reduce the allowed power level that the unit may be operated at with select HPI equipment out-of-service. The changes do not alter the plant configuration (no new or different type of equipment will be installed) or make changes in methods governing normal plant operation. No new failure modes are identified, nor are any SSCs required to be operated outside the design bases.

Therefore, the possibility of a new or different kind of accident from any kind of accident previously evaluated is not created.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed TS changes are supported by SBLOCA analyses which demonstrate that the acceptance criteria of 10 CFR 50.46 are satisfied. These analyses were performed in accordance with the Evaluation Model described in AREVA Topical Report BAW-10192P-A. The new SBLOCA analysis assumes a lower initial core power level (50% of rated thermal power (RTP)) than what was previously analyzed in support of TS 3.5.2 (i.e., 75% of RTP). The resulting peak cladding temperature results for the new SBLOCA analysis are lower than the existing analysis. In addition, a supplemental evaluation demonstrated that failure to perform a desired operator action of maintaining secondary-side pressure at 300 psig by throttling the atmospheric dump valve during a SBLOCA did not result in adverse affects to the new SBLOCA analysis results. Therefore, it is concluded that the proposed amendment request will not result in a significant decrease in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lara S. Nichols, Deputy General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202-1802.

*NRC Branch Chief:* Robert J. Pascarelli.

*Duke Energy Progress Inc., Docket No. 50-261, H.B. Robinson Steam Electric Plant, Unit 2 (HBRSEP2), Darlington County, South Carolina*

*Date of amendment request:* June 20, 2014. A publicly-available version is in ADAMS under Accession No. ML14188B015.

*Description of amendment request:* The amendment would revise Technical

Specification (TS) 5.5.9.b.2 for the Steam Generator (SG) Program accident-induced leakage performance criterion to correct an editorial error in the accident-induced leakage rate value for any design-basis accident other than a SG tube rupture.

*Basis for proposed no significant hazards consideration determination:*

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change is a correction to an editorial error in the specified accident induced leakage performance criterion of TS 5.5.9.b.2. The error in TS 5.5.9.b.2 being addressed by this proposed change was introduced at the time of the HBRSEP2 submittal of the NRC-approved Technical Specification Task Force (TSTF) traveler 449, Rev. 4, *Steam Generator Tube Integrity*. The accident-induced leakage performance criterion will continue to be within the limit assumed in the accident analysis. As a result, neither the probability nor the consequences of any accident previously evaluated will be affected.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new or different accidents result from the proposed changes. The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis, it only corrects an editorial error in the accident-induced leakage performance criterion specified in the SG Program. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change will have no effect on the margin of safety. This proposed change corrects an editorial error in the accident-induced leakage performance criterion specified in the SG Program.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lara S. Nichols, Deputy General Counsel, Duke Energy

Corporation, 550 South Tyron Street, Mail Code DEC45A, Charlotte, NC 28202.

*Acting NRC Branch Chief:* Lisa M. Regner.

*Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont*

*Date of amendment request:*

November 14, 2013. A publicly-available version is in ADAMS under Accession No. ML13323A516.

*Description of amendment request:*

The proposed amendment would eliminate operability requirements for secondary containment when handling sufficiently decayed irradiated fuel or a fuel cask following a minimum of 13 days after the permanent cessation of reactor operation.

*Basis for proposed no significant hazards consideration determination:*

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not modify the design or operation of equipment used to move spent fuel or to perform core alterations. The proposed changes cannot increase the probability of any previously analyzed accident because they are based on changes in Source Term, atmospheric dispersion and dose consequence analysis methodology, not in procedures or equipment used for fuel handling.

The conservative re-analysis of the FHA [fuel-handling accident] concludes that the radiological consequences are within the regulatory limits established 10 CFR 50.67. This conclusion is based on the Alternate Source Term and guidance provided in Appendix B of Regulatory Guide 1.183 and analyses of fission product release and transport path that does not take credit for dose mitigation provided by engineered safeguards including secondary containment and the SGT system. The results of the core alteration events, other than the FHA, remain unchanged from the original design-basis that showed these events do not result in fuel cladding damage or radioactive release.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not introduce any new modes of plant operation and do not involve physical modifications to the plant.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety? Response: No.

Regulation in 10 CFR 50.67 permits licensees to voluntarily revise the accident source term used in design-basis radiological consequence analyses. This license amendment application evaluates the consequences of a design-basis fuel handling accident in accordance with this regulation and Regulatory Guide 1.183. The revised analysis concludes that the radiological consequences of the fuel handling accident are less than the regulatory allowable limits. Safety margins and analytical conservatism are retained to ensure the analysis adequately bounds all postulated event scenarios. The selected assumptions and release models provide an appropriate and prudent safety margin against unpredicted events in the course of an accident and compensates for large uncertainties in facility parameters, accident progression, radioactive material transport and atmospheric dispersion. The proposed TS applicability statements continue to ensure that the total effective dose equivalent (TEDE) at the boundaries of the control room, the exclusion area, and low population zone boundaries are below the corresponding regulatory allowable limits in 10 CFR 50.67(b)(2).

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Ms. Jeanne Cho, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601.

*NRC Branch Chief:* Douglas A. Broaddus.

*Exelon Generation Company, LLC, Docket Nos. STN 50-456, STN 50-457 and 72-73, Braidwood Station, Units 1 and 2, Will County, Illinois*  
*Exelon Generation Company, LLC, Docket Nos. STN 50-454, STN 50-455 and 72-68, Byron Station, Units 1 and 2, Ogle County, Illinois*  
*Exelon Generation Company, LLC, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois*  
*Exelon Generation Company, LLC, Docket Nos. 50-10, 50-237, 50-249 and 72-37, Dresden Nuclear Power Station, Units 1, 2 and 3, Grundy County, Illinois*  
*Exelon Generation Company, LLC, Docket Nos. 50-373, 50-374 and 72-70, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois*

*Exelon Generation Company, LLC,  
Docket Nos. 50-352, 50-353 and 72-  
65, Limerick Generating Station, Units  
1 and 2, Montgomery County,  
Pennsylvania*

*Exelon Generation Company, LLC, et al.,  
Docket No. 50-219 and 72-15, Oyster  
Creek Nuclear Generating Station,  
Ocean County, New Jersey*

*Exelon Generation Company, LLC, and  
PSEG Nuclear LLC, Docket Nos. 50-  
171, 50-277, 50-278 and 72-29,  
Peach Bottom Atomic Power Station,  
Units 1, 2 and 3, York and Lancaster  
Counties, Pennsylvania*

*Exelon Generation Company, LLC,  
Docket Nos. 50-254, 50-265 and 70-  
53, Quad Cities Nuclear Power  
Station, Units 1 and 2, Rock Island  
County, Illinois*

*Exelon Generation Company, LLC,  
Docket No. 50-289, Three Mile  
Island Nuclear Station, Unit 1,  
Dauphin County, Pennsylvania*

*Exelon Generation Company, LLC,  
Docket No. 50-320, Three Mile  
Island Nuclear Station, Unit 2,  
Dauphin County, Pennsylvania*

*Date of amendment request:* May 30,  
2014. A publicly-available version is in  
ADAMS under Accession No.  
ML14164A054.

*Description of amendment request:*  
The proposed changes revise the  
Emergency Plans for the affected  
facilities to adopt the Nuclear Energy  
Institute's (NEI's) revised Emergency  
Action Level (EAL) schemes described  
in NEI 99-01, Revision 6, "Development  
of Emergency Action Levels for Non-  
Passive Reactors," which has been  
endorsed by the NRC in a letter dated  
March 28, 2013. A publicly-available  
version can be found in ADAMS under  
Accession No. ML12346A463.

*Basis for proposed no significant  
hazards consideration determination:*  
As required by 10 CFR 50.91(a), the  
licensee has provided its analysis of the  
issue of no significant hazards  
consideration, which is presented  
below:

The proposed changes have been reviewed  
considering the applicable requirements of  
10 CFR 50.47, 10 CFR 50, Appendix E, and  
other applicable NRC documents. Exelon has  
evaluated the proposed changes to the  
affected sites' Emergency Plans and  
determined that the changes do not involve  
a Significant Hazards Consideration. In  
support of this determination, an evaluation  
of each of the three (3) standards, set forth  
in 10 CFR 50.92, "Issuance of amendment,"  
is provided below.

1. Does the proposed amendment involve  
a significant increase in the probability or  
consequences of an accident previously  
evaluated?

Response: No.

The proposed changes to Exelon's EAL  
schemes to adopt the NRC-endorsed  
guidance in NEI 99-01, Revision 6,  
"Development of Emergency Action Levels  
for Non-Passive Reactors," do not reduce the  
capability to meet the emergency planning  
requirements established in 10 CFR 50.47  
and 10 CFR Part 50, Appendix E. The  
proposed changes do not reduce the  
functionality, performance, or capability of  
Exelon's ERO [Emergency Response  
Organization] to respond in mitigating the  
consequences of any design basis accident.

The probability of a reactor accident  
requiring implementation of Emergency Plan  
EALs has no relevance in determining  
whether the proposed changes to the EALs  
reduce the effectiveness of the Emergency  
Plans. As discussed in Section D, "Planning  
Basis," of NUREG-0654, Revision 1, "Criteria  
for Preparation and Evaluation of  
Radiological Emergency Response Plans and  
Preparedness in Support of Nuclear Power  
Plants";

" . . . The overall objective of emergency  
response plans is to provide dose savings  
(and in some cases immediate life saving)  
for a spectrum of accidents that could produce  
offsite doses in excess of Protective Action  
Guides (PAGs). No single specific accident  
sequence should be isolated as the one for  
which to plan because each accident could  
have different consequences, both in nature  
and degree. Further, the range of possible  
selection for a planning basis is very large,  
starting with a zero point of requiring no  
planning at all because significant offsite  
radiological accident consequences are  
unlikely to occur, to planning for the worst  
possible accident, regardless of its extremely  
low likelihood . . . ."

Therefore, Exelon did not consider the risk  
insights regarding any specific accident  
initiation or progression in evaluating the  
proposed changes.

The proposed changes do not involve any  
physical changes to plant equipment or  
systems, nor do they alter the assumptions of  
any accident analyses. The proposed changes  
do not adversely affect accident initiators or  
precursors nor do they alter the design  
assumptions, conditions, and configuration  
or the manner in which the plants are  
operated and maintained. The proposed  
changes do not adversely affect the ability of  
Structures, Systems, or Components (SSCs)  
to perform their intended safety functions in  
mitigating the consequences of an initiating  
event within the assumed acceptance limits.

Therefore, the proposed changes do not  
involve a significant increase in the  
probability or consequences of an accident  
previously evaluated.

2. Does the proposed amendment create  
the possibility of a new or different kind of  
accident from any accident previously  
evaluated?

Response: No.

The proposed changes to Exelon's EAL  
schemes to adopt the NRC-endorsed  
guidance in NEI 99-01, Revision 6, do not  
involve any physical changes to plant  
systems or equipment. The proposed changes  
do not involve the addition of any new plant  
equipment. The proposed changes will not  
alter the design configuration, or method of

operation of plant equipment beyond its  
normal functional capabilities. All Exelon  
ERO functions will continue to be performed  
as required. The proposed changes do not  
create any new credible failure mechanisms,  
malfunctions, or accident initiators.

Therefore, the proposed changes do not  
create the possibility of a new or different  
kind of accident from those that have been  
previously evaluated.

3. Does the proposed amendment involve  
a significant reduction in a margin of safety?  
Response: No.

The proposed changes to Exelon's EAL  
schemes to adopt the NRC-endorsed  
guidance in NEI 99-01, Revision 6, do not  
alter or exceed a design basis or safety limit.  
There is no change being made to safety  
analysis assumptions, safety limits, or  
limiting safety system settings that would  
adversely affect plant safety as a result of the  
proposed changes. There are no changes to  
setpoints or environmental conditions of any  
SSC or the manner in which any SSC is  
operated. Margins of safety are unaffected by  
the proposed changes to adopt the NEI 99-  
01, Revision 6 EAL scheme guidance. The  
applicable requirements of 10 CFR 50.47 and  
10 CFR 50, Appendix E will continue to be  
met.

Therefore, the proposed changes do not  
involve any reduction in a margin of safety.

In conclusion, and based on the  
considerations discussed above:

(1) There is reasonable assurance that the  
health and safety of the public will not be  
endangered by the proposed changes to adopt  
the EAL schemes established in NEI 99-01,  
Revision 6, as endorsed by the U.S. Nuclear  
Regulatory Commission (NRC); (2) the  
changes will be in compliance with the  
NRC's regulations; and (3) the issuance of the  
amendments will not be inimical to the  
common defense and security or to the health  
and safety of the public.

The NRC staff has reviewed the  
licensee's analysis and, based on this  
review, it appears that the three  
standards of 10 CFR 50.92(c) are  
satisfied. Therefore, the NRC staff  
proposes to determine that the  
amendment request involves no  
significant hazards consideration.

*Attorney for licensee:* Bradley Fewell,  
Associate General Counsel, Exelon  
Generation Company, LLC, 4300  
Winfield Road, Warrenville, IL 60555.  
*NRC Branch Chief:* Travis L. Tate.

*FirstEnergy Nuclear Operating  
Company (FENOC), Docket No. 50-440,  
Perry Nuclear Power Plant, Unit 1,  
Perry, OH*

*Date of amendment request:* March  
25, 2014. A publicly-available version is  
in ADAMS under Accession No.  
ML14084A165.

*Description of amendment request:*  
The proposed changes are consistent  
with the NRC-approved Industry/  
Technical Specifications Task Force  
(TSTF) Traveler, TSTF-425, Revision 3,  
"Relocate Surveillance Frequencies to



Licensee Control—RITSTF Initiative 5b.” The proposed change relocates surveillance frequencies to a licensee controlled program, the Surveillance Frequency Control Program. This change is applicable to licensees using probabilistic risk guidelines contained in NRC-approved Nuclear Energy Institute (NEI) 04–10, “Risk-Informed Technical Specifications Initiative 5b, Risk-Informed Method for Control of Surveillance Frequencies.”

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed change relocates the specified frequencies for periodic surveillance requirements to licensee control under a new Surveillance Frequency Control Program. Surveillance frequencies are not an initiator to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the technical specifications for which the surveillance frequencies are relocated are still required to be operable, meet the acceptance criteria for the surveillance requirements, and be capable of performing any mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed change. The changes do not involve a physical alteration of the plant (that is, no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The design, operation, testing methods, and acceptance criteria for systems, structures, and components (SSCs), specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the final safety analysis report and bases to the TS [technical specification]), since these are not affected by changes to the surveillance frequencies. Similarly, there is no impact to safety analysis acceptance criteria as described in the plant licensing basis. To evaluate a change in the relocated surveillance frequency, FENOC will perform a probabilistic risk evaluation using the guidance contained in NRC approved Nuclear Energy Institute (NEI) 04–10, Revision 1, in accordance with the TS Surveillance Frequency Control Program. NEI 04–10, Revision 1, methodology provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies consistent with Regulatory Guide 1.177, “An Approach for Plant-Specific, Risk-Informed Decision-making: Technical Specifications.”

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above, FENOC concludes that the requested change does not involve a significant hazards consideration as set forth in 10 CFR 50.92(c), Issuance of Amendment.

The NRC staff has reviewed the licensee’s analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* David W. Jenkins, Attorney, FirstEnergy Corporation, Mail Stop A–GO–15, 76 South Main Street, Akron, OH 44308.  
*NRC Branch Chief:* Travis L. Tate.

*Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station (SONGS), Units 2 and 3, San Diego County, California*

*Date of amendment request:* March 21, 2014. A publicly-available version is in ADAMS under Accession No. ML14085A141.

*Description of amendment request:* The proposed amendment would revise the Operating License and associated Technical Specifications (TS) to reflect the permanent cessation of power operation. Because the licenses for SONGS, Units 2 and 3 no longer authorize emplacement or retention of fuel in the reactor vessel, the limiting conditions for operation and associated surveillance requirements that do not apply in the defueled condition are being proposed for deletion. The

remaining portions of the TS are being proposed for revision and incorporation as the permanently defueled TS to provide a continuing acceptable level of safety, which addresses the reduced scope of postulated design basis accidents associated with a defueled plant, as described in the SONGS, Units 2 and 3 safety analyses.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

SONGS Units 2 and 3 have permanently ceased operation. The proposed amendment would modify the SONGS Units 2 and 3 facility operating licenses and TS by deleting the portions of the licenses and TS that are no longer applicable to a permanently defueled facility, while modifying the remaining portions to correspond to the permanently shutdown condition. This change is consistent with the criteria set forth in 10 CFR 50.36 for the contents of TS.

Section 15 of the SONGS Updated Final Safety Analysis Report (UFSAR) described the design basis accident (DBA) and transient scenarios applicable to SONGS Units 2 and 3 during power operations. With the reactors in a permanently defueled condition, the fuel storage pools and their systems have been isolated and are dedicated only to spent fuel storage. In this condition, the spectrum of credible accidents is much smaller than for an operational plant. As a result of the certifications submitted by SCE [Southern California Edison] in accordance with 10 CFR 50.82(a)(1), and the consequent removal of authorization to operate the reactors or to place or retain fuel in the reactors in accordance with 10 CFR 50.82(a)(2), most of the accident scenarios postulated in the UFSAR are no longer possible.

The definition of safety-related structures, systems, and components (SSCs) in 10 CFR 50.2 states that safety-related SSCs are those relied on to remain functional during and following design basis events to assure:

1. The integrity of the reactor coolant boundary;
2. The capability to shut down the reactor and maintain it in a safe shutdown condition; or
3. The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to the applicable guideline exposures set forth in 10 CFR 50.43(a)(1) or 100.11.

The first two criteria (integrity of the reactor coolant pressure boundary and safe shut down of the reactor) are not applicable to a plant in a permanently defueled condition. The third criterion is related to preventing or mitigating the consequences of accidents that could result in potential offsite

exposures exceeding limits. However, after the termination of reactor operations at SONGS Units 2 and 3 and the permanent removal of the fuel from the reactor vessels (following 17 months of decay time after shut down) and purging of the contents of the waste gas decay tanks, none of the SSCs at SONGS Units 2 and 3 are required to be relied on for accident mitigation. Therefore, none of the SSCs at SONGS Units 2 and 3 meet the definition of a safety-related SSC stated in 10 CFR 50.2 (with the exception of the passive fuel storage pool structure).

The deletion of TS definitions and rules of usage and application, that are currently not applicable in a defueled condition, has no impact on facility SSCs or the methods of operation of such SSCs. The deletion of design features and safety limits not applicable to the permanently shut down and defueled status of SONGS Units 2 and 3 has no impact on the remaining DBA. The removal of limiting conditions for operation (LCOs) or surveillance requirements (SRs) that are related only to the operation of the nuclear reactors or only to the prevention, diagnosis, or mitigation of reactor-related transients or accidents do not affect the applicable DBAs previously evaluated since these DBAs are no longer applicable in the defueled mode. The safety functions involving core reactivity control, reactor heat removal, reactor coolant system inventory control, and containment integrity are no longer applicable at SONGS Units 2 and 3 as a permanently defueled plant. The analyzed accidents involving damage to the reactor coolant system, main steam lines, reactor core, and the subsequent release of radioactive material are no longer possible at SONGS Units 2 and 3.

Since SONGS Units 2 and 3 has permanently ceased operation, the future generation of fission products has ceased and the remaining source term will decay. The radioactive decay of the irradiated fuel since shut down of the reactor will have reduced the consequences of the FHA [fuel handling accident] to levels well below those previously analyzed. The relevant parameter (water level) associated with the fuel pool provides an initial condition for the FHA analysis and is included in the permanently defueled TS.

The fuel storage pool water level, fuel storage pool boron concentration, and spent fuel assembly storage TS are retained to preserve the current requirements for safe storage of irradiated fuel.

Fuel pool cooling and makeup related equipment and support equipment (e.g., electrical power systems) are not required to be continuously available since there is sufficient time to effect repairs, establish alternate sources of makeup flow, or establish alternate sources of cooling in the event of a loss of cooling and makeup flow to the fuel storage pool.

The deletion and modification of provisions of the administrative controls does not directly affect the design of SSCs necessary for safe storage of irradiated fuel or the methods used for handling and storage of such fuel in the fuel pool. The changes to the administrative controls are administrative in nature and do not affect any accidents

applicable to the safe management of irradiated fuel or the permanently shut down and defueled condition of the reactors.

The probability of occurrence of previously evaluated accidents is not increased, since extended operation in a defueled condition is the only operation currently allowed, and therefore bounded by the existing analyses. Additionally, the occurrence of postulated accidents associated with reactor operation is no longer credible in a permanently defueled reactor. This significantly reduces the scope of applicable accidents.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes have no impact on facility SSCs affecting the safe storage of irradiated fuel, or on the methods of operation of such SSCs, or on the handling and storage of irradiated fuel itself. The removal of TS that are related only to the operation of the nuclear reactor or only to the prevention, diagnosis, or mitigation of reactor-related transients or accidents cannot result in different or more adverse failure MODES or accidents than previously evaluated because the reactor is permanently shut down and defueled and SCE is no longer authorized to operate the reactors.

The proposed deletion of requirements of the SONGS Unit 2 and Unit 3 TS do not affect systems credited in the accident analysis. The proposed permanently defueled TS (PDTS) continue to require proper control and monitoring of safety significant parameters and activities.

The proposed restriction on the fuel pool level is fulfilled by normal operating conditions and preserves initial conditions assumed in the analyses of the postulated DBA. The fuel storage pool water level, fuel storage pool boron concentration, and spent fuel assembly storage TS are retained to preserve the current requirements for safe storage of irradiated fuel.

The proposed amendment does not result in any new mechanisms that could initiate damage to the remaining relevant safety barriers for defueled plants (i.e., fuel cladding and spent fuel cooling). Since extended operation in a defueled condition is the only operation currently allowed, and therefore bounded by the existing analyses, such a condition does not create the possibility of a new or different kind of accident.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Because the 10 CFR Part 50 licenses for SONGS Units 2 and 3 no longer authorize operation of the reactors or emplacement or retention of fuel into the reactor vessels, as specified in 10 CFR 50.82(a)(2), the occurrence of postulated accidents associated

with reactor operation is no longer credible. The remaining credible accidents do not credit SSCs for mitigation. The proposed amendment does not adversely affect the inputs or assumptions of any of the design basis analyses that impact an accident.

The proposed changes are limited to those portions of TS and license that are not related to the safe storage of irradiated fuel. The requirements for SSCs that have been deleted from the SONGS TS Units 2 and 3 are not credited in the existing accident analysis for the remaining applicable postulated accident; and as such, do not contribute to the margin of safety associated with the accident analysis. Postulated DBAs involving the reactors are no longer possible because the reactors are permanently shut down and defueled and SCE is no longer authorized to operate the reactors.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety because the current design limits continue to be met for the accidents of concern.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Attorney for licensee:* Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.  
*NRC Branch Chief:* Douglas A. Broaddus.

*Southern Nuclear Operating Company Docket Nos. 52-025 and 52-026, Vogtle Electric Generating Plant (VEGP) Units 3 and 4, Burke County, Georgia*

*Date of amendment request:* June 4, 2014. A publicly-available version is in ADAMS under Accession No. ML14156A477.

*Description of amendment request:* The purpose of the proposed license amendment request is to address proposed changes related to departure from the plant-specific Design Control Document (DCD) Tier 1 (and corresponding Combined License Appendix C information) and Tier 2 material to reconcile differences in the various valve table entries.

Because this proposed change requires a departure from Tier 1 information in the Westinghouse Advanced Passive 1000 DCD, the licensee also requested an exemption from the requirements of the Generic DCD Tier 1 in accordance with 10 CFR 52.63(b)(1).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

1. Does the requested amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not result in any physical changes to the plant, and therefore do not change any safety-related design requirement, qualification requirement or function. The proposed changes do not involve any accident initiating event or component failure, thus, the probabilities of the accidents previously evaluated are not affected. The proposed changes do not affect the radioactive material releases used in the accident analyses, thus, the radiological releases in the accident analyses are not affected. The proposed changes do not affect any postulated non-radioactive accident scenario as evaluated in UFSAR [Updated Final Safety Analysis Report] Chapter 15.

Therefore, the requested amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the requested amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not result in any physical changes to the plant, and therefore do not adversely affect any structure, system or component. No safety-related equipment qualification or design function is affected. The proposed changes do not introduce a new failure mode or create a new fault or sequence of events that could result in a radioactive material release.

Therefore, the requested amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not result in any physical changes to the plant, and therefore do not change valve performance, including containment isolation. No safety acceptance criterion would be exceeded or challenged. No safety related function would be affected. Valve qualification would not be affected.

The proposed changes do not affect compliance with existing design codes and regulatory criteria and do not affect any safety analysis.

Therefore, the requested amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. M. Stanford Blanton, Blach & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203-2015.

*NRC Branch Chief:* Lawrence Burkhart.

### III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the "Obtaining Information and Submitting Comments" section of this document.

*Duke Energy Carolinas, LLC, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina*

*Date of application for amendments:* September 12, 2013, as supplemented by letters dated May 20 and July 22, 2014.

*Brief description of amendments:* The amendments modify Technical Specification (TS) 3.3.2. Specifically, the change modifies setpoints associated with the auxiliary feedwater pump

suction transfer on low suction pressure.

*Date of issuance:* August 27, 2014.

*Effective date:* This license amendment is effective as of its date of issuance and shall be implemented within 60 days of issuance.

*Amendment Nos.:* 273 and 253. A publicly-available version is in ADAMS under Accession No. ML14211A403; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Renewed Facility Operating License Nos. NPF-9 and NPF-17:* Amendments revised the licenses and technical specifications.

*Date of initial notice in Federal Register:* December 10, 2013 (78 FR 74179). The supplemental letters dated May 20 and July 22, 2014, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 27, 2014.

*No significant hazards consideration comments received:* No

*Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, York and Lancaster Counties, Pennsylvania*

*Date of application for amendments:* September 28, 2012, as supplemented by letters dated February 15, 2013, May 7, 2013, May 24, 2013, June 4, 2013, June 27, 2013, July 30, 2013, July 31, 2013, August 5, 2013, August 22, 2013, August 29, 2013, September 13, 2013, October 11, 2013, October 15, 2013, October 31, 2013, December 6, 2013, December 20, 2013, January 17, 2014, January 31, 2014 (2 letters), February 20, 2014, February 28, 2014, March 10, 2014, March 17, 2014, April 11, 2014, April 18, 2014, May 6, 2014, June 5, 2014, and June 20, 2014.

*Brief description of amendments:* The amendments authorize an increase in the maximum licensed thermal power level for PBAPS, Units 2 and 3, from 3514 megawatts thermal (MWt) to 3951 MWt, which is an increase of approximately 12.4 percent.

*Date of issuance:* August 25, 2014.

*Effective date:* For PBAPS, Unit 2, the amendment is effective as of its date of issuance and shall be implemented prior to startup from refueling outage P2R20. For PBAPS, Unit 3, the

amendment is effective as of its date of issuance and shall be implemented prior to startup from refueling outage P3R20.

*Amendments Nos.:* 293 and 296. A publicly-available version is in ADAMS under Accession No. ML14133A046; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Renewed Facility Operating License Nos. DPR-44 and DPR-56:* The amendments revised the Facility Operating Licenses and the Technical Specifications.

*Date of initial notice in Federal Register:* April 9, 2013 (78 FR 21168). The letters dated February 15, 2013, May 7, 2013, May 24, 2013, June 4, 2013, June 27, 2013, July 30, 2013, July 31, 2013, August 5, 2013, August 22, 2013, August 29, 2013, September 13, 2013, October 11, 2013, October 15, 2013, October 31, 2013, December 6, 2013, December 20, 2013, January 17, 2014, January 31, 2014 (2 letters), February 20, 2014, February 28, 2014, March 10, 2014, March 17, 2014, April 11, 2014, April 18, 2014, May 6, 2014, June 5, 2014, and June 20, 2014, provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 25, 2014.

*No significant hazards consideration comments received:* No.

*Exelon Generation Company, LLC, Docket No. 50-244, R.E. Ginna Nuclear Power Plant, Wayne County, New York*

*Date of amendment request:* February 28, 2013, as supplemented by letters dated June 19, and November 11, 2013 and January 22, March 14, March 26, and June 6, 2014.

*Brief description of amendment:* The amendment revised the Ginna Nuclear Power Plant Technical Specifications (TSs) to revise the allowable containment average air temperature from " $\leq 120$  °F" to " $\leq 125$  °F" for TS 3.6.5 "Containment Air Temperature."

*Date of issuance:* August 12, 2014.

*Effective date:* As of the date of issuance to be implemented within 45 days.

*Amendment No.:* 116. A publicly-available version is in ADAMS under Accession No. ML14232A125; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

*Renewed Facility Operating License No. DPR-18:* Amendment revised the Renewed Facility Operating License and Technical Specifications.

*Date of initial notice in Federal Register:* November 26, 2013 (78 FR 70594). The supplemental letters dated June 19, and November 11, 2013, and January 22, March 14, March 26, and June 6, 2014, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 2014.

*No significant hazards consideration comments received:* No.

*Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia*  
*Date of application for amendments:* July 23, 2013, as supplemented August 5, 2014.

*Brief description of amendments:* The amendments revise the Technical Specification (TS) requirements and add license conditions related to control room envelope habitability in accordance with the Nuclear Regulatory Commission approved Revision 3 of Technical Specification Task Force (TSTF) Standard Technical Specifications Change Traveler TSTF-448, "Control Room Habitability."

*Date of issuance:* August 29, 2014.

*Effective date:* As of the date of issuance and shall be implemented within 60 days from the date of issuance.

*Amendment Nos.:* Unit 1-268 and Unit 2-212. A publicly-available version is in ADAMS under Accession No. ML14147A410; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

*Renewed Facility Operating License Nos. DPR-57 and NPF-5:* Amendments revised the Renewed Facility Operating Licenses and the Technical Specifications.

*Date of initial notice in Federal Register:* September 3, 2013 (78 FR 54290). The supplement dated August 5, 2014, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change

the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 29, 2014.

No significant hazards consideration comments received: No.

*Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units 1 and 2, Louisa County*

*Date of application for amendment:* February 22, 2013.

*Brief description of amendment:* The amendment revised Technical Specification 3.1.6, "Control Bank Insertion Limits," to include text, in Condition A, stating, "for reasons other than Condition C." This text addition modifies Condition A, for control bank sequence or overlap limits, to include language currently in Condition B, for control bank insertion limits, this change would point to Condition C, which, if applicable, would allow the specified completion time to restore the control bank to within the insertion limit to be increased from 2 hours to 72 hours. This would align the description of the sequence and overlap limit of Condition A with the description of control bank insertion limit Condition B.

*Date of issuance:* August 27, 2014.

*Effective date:* As of the date of issuance and shall be implemented within 60 days from the date of issuance.

*Amendment Nos.:* 272 and 254. A publicly-available version is in ADAMS under Accession No. ML14188C453; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Renewed Facility Operating License Nos. NPF-4 and NPF-7:* Amendments revised the Facility Operating License and Technical Specifications.

*Date of initial notice in Federal Register:* April 30, 2013 (78 FR 25317).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 27, 2014.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 5th day of September 2014.

For the Nuclear Regulatory Commission.

**A. Louise Lund,**

*Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2014-21833 Filed 9-15-14; 8:45 am]

**BILLING CODE 7590-01-P**



# Rules and Regulations

Federal Register

Vol. 80, No. 44

Friday, March 6, 2015

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

[NRC–2014–0120]

RIN 3150–AJ42

#### List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM Underground Maximum Capacity Canister Storage System, Certificate of Compliance No. 1040

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by adding the Holtec International HI–STORM Underground Maximum Capacity (UMAX) Canister Storage System, Certificate of Compliance (CoC) No. 1040, to the “List of approved spent fuel storage casks.” Holtec International’s intent with this design is to provide an underground storage option compatible with the Holtec International HI–STORM FLOOD/WIND (FW) System (CoC No. 1032).

**DATES:** This final rule is effective on April 6, 2015.

**ADDRESSES:** Please refer to Docket ID NRC–2014–0120 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 Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2014–0120. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: [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 <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then 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 [pdr.resource@nrc.gov](mailto:pdr.resource@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 at the NRC’s PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:**

Gregory R. Trussell, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6445, email: [Gregory.Trussell@nrc.gov](mailto:Gregory.Trussell@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

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**I. Background**

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that “the 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 NWPA states, in part, that “[the 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 in part 72 of Title 10 of the *Code of Federal Regulations* (10 CFR), which added a new subpart K within 10 CFR part 72 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 within 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 published a direct final rule on this amendment in the **Federal Register** on September 9, 2014 (79 FR 53281). The NRC also concurrently published an identical proposed rule on September 9, 2014 (79 FR 53352). The NRC received at least one comment that is treated as a significant adverse comment on the proposed rule; therefore, the NRC withdrew the direct final rule on November 19, 2014 (79 FR 68763), and is proceeding, in this document, to address the comments on the proposed rule (see Section III, Public Comment Analysis, of this document).

**II. Discussion of Changes**

By letter dated June 29, 2012, and as supplemented on July 16 and November 20, 2012; January 30, April 2, April 19, June 21, August 28, December 6, and December 31, 2013; and January 13, and January 28, 2014, Holtec International submitted an application to add the HI–STORM UMAX Canister Storage System to the list of approved spent fuel storage casks in 10 CFR part 72. The HI–STORM UMAX Canister Storage System is a spent fuel storage system designed to be in full compliance with the requirements of 10 CFR part 72. Holtec International’s intent with this design is to provide an underground storage option compatible with the Holtec International HI–STORM FW System as described in the Final Safety Analysis Report (FSAR) for the HI–STORM FW

System. The underground structure system is described in the FSAR for the HI-STORM UMAX Canister Storage System. The HI-STORM UMAX Canister Storage System stores a hermetically sealed canister containing spent nuclear fuel (SNF) in an in-ground vertical ventilated module (VVM). The HI-STORM UMAX Canister Storage System is designed to provide long-term underground storage of loaded multi-purpose canisters (MPC) previously certified for storage in CoC No. 1032. The HI-STORM UMAX VVM is the underground equivalent of the HI-STORM FW storage module. Although the storage cavity dimensions and the air ventilation system in the HI-STORM UMAX VVM have been selected to enable it to also store all MPCs certified for storage in the HI-STORM 100 storage module, CoC No. 1040 does not approve the storage of all MPCs certified for storage in the HI-STORM 100 storage module in the HI-STORM UMAX VVM at this time. The HI-STORM UMAX Canister Storage System can store either Pressurized Water Reactor or Boiling Water Reactor fuel assemblies in the MPC-37 or MPC-89 models, respectively. The number associated with the MPC is the maximum number of fuel assemblies the MPC can contain in the fuel basket. The external diameters of the MPC-37 and MPC-89 are identical to allow the use of a single storage module design, however the height of the MPC, as well as the storage module and transfer cask, are variable based on the SNF to be loaded.

As documented in the safety evaluation report (SER), the NRC staff performed a detailed safety evaluation of the proposed CoC request submitted by Holtec International.

The HI-STORM UMAX Canister Storage System, when used under the conditions specified in the CoC, the Technical Specifications (TSs), and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be ensured. When this final rule becomes effective, persons who hold a general license under 10 CFR 72.210 may load spent nuclear fuel into HI-STORM UMAX Canister Storage Systems that meet the criteria of CoC No. 1040 under 10 CFR 72.212.

### III. Public Comment Analysis

The NRC received multiple comments from private citizens on the companion proposed rule to the direct final rule published on September 9, 2014. The NRC has not made any changes to the

proposed rule as a result of the public comments the NRC has received.

#### *Summary of Comments*

The NRC received almost a dozen comments on the proposed rule, many raising multiple and overlapping issues. Because the NRC received at least one comment that it is treating as a significant adverse comment on the proposed rule (raising issues the NRC deemed serious enough to warrant a substantive response to clarify the record), the NRC withdrew the direct final rule and is responding to the comments here. Other comments were not treated as significant adverse comments because, in most instances, they were beyond the scope of this rulemaking. Nonetheless, in addition to responding to the issues raised in the comments treated as significant adverse comments, the NRC is also taking this opportunity to respond to some of the issues raised in the comments that are beyond this scope of this rulemaking in order to clarify information about the CoC rulemaking process related to the comments received.

#### *Aging Management Programs*

Many of the comments the NRC received questioned the fact that aging management programs (AMPs) were not being established for this CoC system. Commenters noted that the NRC has not yet issued the revision to NUREG-1927 ("Standard Review Plan for Renewal of Spent Fuel Dry Cask Storage System Licenses and Certificates of Compliance"), which is currently being updated to include information regarding AMPs, among other things. The comments stated that the approval of this CoC system, "should be put on hold until after the revised NUREG-1927 is final and any appropriate aging management issues are addressed in this CoC."

The comments questioned some specific example AMPs discussed at public meetings, including questions regarding an example AMP for Chloride-Induced Stress Corrosion Cracking Tests (seismic concerns and sampling size), as well as the absence of an AMP given issues with damaged fuels and the "unknowns of extended storage with high burnup fuel." In sum, these commenters felt that approval of CoCs, such as this one, should await the formulation and approval of aging management programs.

#### *Response*

These comments are outside the scope of this rulemaking which is limited to amending the spent fuel storage regulations by adding the UMAX

Canister Storage System, CoC No. 1040, to the "List of approved spent fuel storage casks" in 10 CFR 72.214. This rulemaking is not making any changes to the regulations governing the standards for approval of a CoC.

The CoC for the HI-STORM UMAX is being issued for 20 years in accordance with 10 CFR part 72. According to the NRC staff's SER published in the **Federal Register** under Docket ID NRC-2014-0120, the staff has determined that the use of the HI-STORM UMAX Canister Storage System will be conducted in compliance with the applicable regulations of 10 CFR part 72, and the CoC should be approved for the initial 20-year term. There are currently no technical or regulatory requirements for the inclusion of AMPs for the initial 20-year CoC term. AMPs are required for spent fuel storage cask renewal which allows storage beyond 20 years, as provided in 10 CFR 72.240. The current regulatory requirements provide the necessary defense in depth for safe storage of spent nuclear fuel for at least 20 years.

Based on the regulations in 10 CFR part 72, an AMP will be required to be included in any renewal application for the HI-STORM UMAX Canister Storage System, for a duration beyond the initial 20-year term. The renewal application, if filed, will be required to comply with the applicable regulations, and consider applicable NRC aging management guidance available at the time of submittal. While NUREG-1927 may prove useful to applicants seeking to renew a CoC, because it does not provide guidance regarding applications seeking initial approval of certificates, there is no reason to await the guidance before proceeding with the addition of this system to the 10 CFR part 72 regulations.

#### *Inspection Access*

Several comments also questioned the ability of the underground storage system to be adequately inspected and potentially repaired if necessary during the initial certification period of 20 years, especially if the system was being used in a coastal environment where stress corrosion cracking could be an issue.

#### *Response*

The NRC is treating this comment as a significant adverse comment warranting clarification of the record. The NRC has evaluated the design of the HI-STORM UMAX Canister Storage System and has determined that the design is robust, and contains numbers of layers of acceptable confinement systems in compliance with 10 CFR part

72 requirements. In addition, the staff is not aware of empirical evidence that supports a finding that surveillance would be required in the initial certification period of the proposed CoC. This evaluation is documented in the NRC staff's SER under Docket ID NRC-2014-0120.

Furthermore, the NRC has evaluated the susceptibility to and effects of stress corrosion cracking and other corrosion mechanisms on safety significant systems for SNF dry cask storage (DCS) systems during an initial certification period. The staff has determined that the HI-STORM UMAX Canister Storage System, when used within the requirements of the proposed CoC, will safely store SNF and prevent radiation releases and exposure consistent with regulatory requirements.

#### *Seismic Protection*

Several comments also raised concerns regarding the ability of this CoC system to withstand seismic events, particularly if the system were to be used at specific sites with known seismic activity, such as San Onofre Nuclear Generating Station (SONGS).

#### *Response*

The NRC is treating this comment as a significant adverse comment warranting clarification of the record. This rulemaking would add a CoC system to the list of approved spent fuel storage casks in 10 CFR 72.214. The certification provided by this approval does not, in and of itself, authorize use of this system at any specific site. Instead, general licensees (a power reactor that stores spent fuel under a general Part 72 license) that wish to use this system must first ensure that other applicable requirements are met. (See 10 CFR 72.212).

The seismic design levels of the HI-STORM UMAX Canister Storage System as provided in this CoC are acceptable for most areas in the continental U.S. For locations that have potential seismic activity beyond those analyzed for this system, additional evaluations and certifications may be required before the system may be used in those locations. The NRC is currently evaluating an amendment request to the HI-STORM UMAX Canister Storage System that provides additional analysis intended to ensure the system's integrity during an earthquake with higher seismic demands, including the seismic demands at the location of SONGS. If the NRC approves that amendment request, the amended system could be selected for use at SONGS, provided regulatory requirements are met.

#### *Bankruptcy*

A comment also raised questions about the implications of the potential bankruptcy of corporations that seek CoC approvals.

#### *Response*

This comment is outside the scope of this rulemaking. This rulemaking would add a certified system to the list of spent fuel systems in 10 CFR 72.214 and does not seek to alter the standards for approval of a CoC system. In any event, NRC regulations in 10 CFR part 72 address the financial viability of licensees to ensure spent fuel management and decommissioning are funded. Pursuant to NRC requirements, once a general licensee accepts delivery of a storage system authorized by a CoC, the financial responsibility for maintaining and decommissioning the system become the responsibility of the general licensee (see 10 CFR 72.30(b), (c), (d), (e), and (f)).

#### *Flood Protection*

One comment stated that the design basis of the Watts Bar 2 reactor (not yet licensed for operation) intends that safe shut down could occur if there were a flood event that delivered 13½ feet of water at the reactor buildings. This comment raised the concern that the cask waste storage in an adjacent area would have equal or greater flooding.

#### *Response*

This rulemaking is limited to the approval of a CoC system to be added to the list of spent fuel storage casks in 10 CFR 72.214. This rulemaking does not propose any change to the standards for approval of a CoC, or the requirements that govern the use of this CoC by a general licensee. Therefore, this comment is outside the scope of this rulemaking.

The NRC's regulations at 10 CFR 72.212, "Conditions of a general license issued under 10 CFR 72.210," require that a general licensee (a power reactor that stores spent fuel under a general part 72 license) perform written evaluations to ensure that the DCS systems used at the location meet the technical requirements of the CoC. The NRC inspects these evaluations prior to the first use of the DCS system and every three years after first use to ensure compliance with the terms of the CoC. If the CoC does not allow for water intrusion, then the general licensee is required to provide engineered measures to ensure that this condition does not occur.

#### *High Burnup Fuel*

Several comments also raised questions regarding the long-term acceptability of the extended storage of high burnup fuel (HBF).

#### *Response*

Most of the comments raising HBF as an issue did so in the context of the need for AMPs for approval of the CoC for the first 20 years, and that is beyond the scope of this rulemaking, as explained above.

To the extent commenters raised issues about the storage of HBF in the CoC for the first 20 years, the NRC is treating this portion of the comment as a significant adverse comment warranting clarification of the record. The NRC has evaluated the acceptability of storage of HBF for the initial 20-year certification term for the HI-STORM UMAX Canister Storage System. As documented in the NRC staff's SER under Docket ID NRC-2014-0120, the staff has determined that the use of the HI-STORM UMAX Canister Storage System, including storage of HBF, will be conducted in compliance with the applicable regulations of 10 CFR part 72, and the CoC should be approved for the initial 20-year term.

Storage beyond the initial term of 20 years will require the applicant to submit a license renewal application with the inclusion of AMPs addressing HBF. In that regard, a demonstration project is being planned by the U.S. Department of Energy to provide confirmatory data on the performance of HBF in DCS. The NRC plans to evaluate the data obtained from the project to confirm the accuracy of current models that are relied upon for authorizing the storage of HBF for extended storage periods beyond the initial 20-year certification term.

#### *Duration of Certificate*

Some comments also raised issues with the limited duration of this initial CoC for a term of only 20 years and stated that the systems should have to demonstrate safe storage of nuclear fuel for a much longer storage period.

#### *Response*

The issues of long-term storage and disposal of SNF are outside the scope of this CoC rulemaking. This rule is limited to the addition of this storage system to the list of approved designs in 10 CFR 72.214. The regulations governing the length of the CoC term are not within the changes proposed by this rule.



*Inspector General's Report*

One comment highlighted issues addressed in the 2014 NRC Inspector General's report of the SONGS steam generator replacement, entitled, "NRC Oversight of Licensee's Use of 10 CFR 50.59 Process to Replace SONGS Steam Generators (Case No. 13-006)."

*Response*

The issues raised by the NRC's IG report of the SONGS steam generator replacement are outside the scope of this rulemaking. This report is applicable only to that proposed steam generator replacement effort, and does not apply to nor is it related to this specific CoC rulemaking. Approval of this CoC is based upon a safety and environmental review of this specific CoC design as submitted by the vendor. If power reactor licensees wish to use this system at their specific sites, they must first ensure other applicable regulatory requirements are met (see 10 CFR 72.212).

**IV. 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 final rule, the NRC will add the Holtec International HI-STORM UMAX Canister Storage System design to the listing in 10 CFR 72.214. This action does not constitute the establishment of a standard that contains generally applicable requirements.

**V. Agreement State Compatibility**

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this final rule is classified as Compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. 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. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

**VI. 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 31883).

**VII. Environmental Assessment and Finding of No Significant Environmental Impact***A. The Action*

The action is to amend 10 CFR 72.214 to add the Holtec International HI-STORM UMAX Canister Storage System to the listing within the "List of approved spent fuel storage casks" as CoC No. 1040. Under 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," the NRC has determined that this 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.

*B. The Need for the Action*

This final rule adds CoC No. 1040 for the Holtec International HI-STORM UMAX Canister Storage System design within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. Specifically, Holtec International's intent with this design is to provide an underground storage option compatible with the Holtec International HI-STORM FW System.

*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 initially analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for this CoC addition 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.

Holtec International HI-STORM UMAX Canister Storage Systems are 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 ISFSI, 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, 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.

Considering the specific design requirements for each accident condition, the design of the HI-STORM UMAX Canister Storage System would prevent loss of containment, shielding, and criticality control. If there is no loss of containment, shielding, or criticality control, the environmental impacts would be insignificant. In addition, any resulting occupational exposure or offsite dose rates from the use of the HI-STORM UMAX Canister Storage System would remain well within the 10 CFR part 20 limits. Therefore, the proposed addition of CoC No. 1040 will not result in radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or significant revisions in the amounts of 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. The staff documented its safety findings for this review in the SER.

*D. Alternative to the Action*

The alternative to this action is to withhold approval of this new design and issue a site-specific license to each utility that proposes to use the casks. This alternative would cost both the NRC and utilities more time and money for each site-specific license. Conducting site-specific reviews would ignore the procedures and criteria currently in place for the addition of new cask designs that can be used under a general license, and would be in conflict with NWSA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site reviews. This alternative also would

tend to exclude new vendors from the business market without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees. This final rule will eliminate the above problems and is consistent with previous Commission actions. Further, the rule will have no adverse effect on public health and safety. Therefore, the environmental impacts would be the same or less than the action.

#### E. Alternative Use of Resources

Approval of the addition of CoC No. 1040 would result in no irreversible commitments 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 10 CFR part 51. Based on the foregoing environmental assessment, the NRC concludes that this final rule entitled, "List of Approved Spent Fuel Storage Casks: Holtec International HI-STORM UMAX Canister Storage System, Certificate of Compliance No. 1040," 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 final rule.

#### VIII. Paperwork Reduction Act Statement

This rule does not contain any information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### 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 current valid OMB control number.

#### IX. 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 it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214.

By letter dated June 29, 2012, and as supplemented on July 16 and November 20, 2012; January 30, April 2, April 19, June 21, August 28, December 6, and December 31, 2013; and January 13, and January 28, 2014, Holtec International submitted an application to add the HI-STORM UMAX Canister Storage System.

The alternative to this action is to withhold approval of this new design and issue a site-specific license to each utility that proposes to use the casks. This alternative would cost both the NRC and utilities more time and money for each site-specific license. Conducting site-specific reviews would ignore the procedures and criteria currently in place for the addition of new cask designs that can be used under a general license, and would be in conflict with NWSA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site reviews. This alternative also would tend to exclude new vendors from the business market without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees. This final rule will eliminate the above problems and is consistent with previous Commission actions. Further, the rule will have no adverse effect on public health and safety.

Approval of this final rule is consistent with previous NRC actions. Further, as documented in the SER and the environmental assessment, the final rule will have no adverse effect on public health and safety or the environment. This 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 the 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, and therefore, this action is recommended.

#### X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This final rule affects only nuclear power plant licensees and Holtec International. 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 (10 CFR 2.810).

#### XI. Backfitting and Issue Finality

The NRC has determined that the backfit rule (10 CFR 72.62) does not apply to this final rule. Therefore, a backfit analysis is not required. This final rule adds CoC No. 1040 for the Holtec International HI-STORM UMAX Canister Storage System to the "List of approved spent fuel storage casks."

The addition of CoC No. 1040 for the Holtec International HI-STORM UMAX Canister Storage System was initiated by Holtec International and was not submitted in response to new NRC requirements, or in response to an NRC request. The addition of CoC No. 1040 does not constitute backfitting under 10 CFR 72.62, 10 CFR 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. Accordingly, no backfit analysis or additional documentation addressing the issue finality criteria in 10 CFR part 52 has been prepared by the staff.

#### XII. Congressional Review Act

In accordance with the Congressional Review Act of 1996 (5 U.S.C. 801–808), the NRC has determined that this action is not a rule as defined in the Congressional Review Act.

#### XIII. Availability of Documents

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

Document	ADAMS Accession No.
CoC No. 1040 .....	ML14122A443
Safety Evaluation Report .....	ML14122A441
Technical Specifications, Appendix A .....	ML14122A444
Technical Specifications, Appendix B .....	ML14122A442

Document	ADAMS Accession No.
Application .....	ML121880102
Application supplemental July 16, 2012 .....	ML12205A134
Application supplemental November 20, 2012 .....	ML12348A483
Application supplemental January 30, 2013 .....	ML13032A008
Application supplemental April 2, 2013 .....	ML13107B249
Application supplemental April 19, 2013 .....	ML13114A191
Application supplemental June 21, 2013 .....	ML13175A363
Application supplemental August 28, 2013 .....	ML13261A062
Application supplemental December 6, 2013 .....	ML13343A169
Application supplemental December 31, 2013 .....	ML14002A402
Application supplemental January 13, 2014 .....	ML14015A145
Application supplemental January 28, 2014 .....	ML14030A055
HI-STORM FW System FSAR .....	ML12363A284
HI-STORM UMAX Canister Storage System FSAR .....	ML12363A282

The NRC may post materials related to this document, including public comments, on the Federal rulemaking Web site at <http://www.regulations.gov> under Docket ID NRC-2014-0120. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC-2014-0120); (2) click the "Sign up for Email Alerts" link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

#### List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, 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; 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 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, 2232, 2233, 2234, 2236, 2237, 2239, 2273, 2282, 2021); Energy Reorganization Act secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Nuclear Waste Policy Act secs. 131, 132, 133, 135, 137, 141,

148 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); Government Paperwork Elimination Act sec. 1704, (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 788 (2005).

Section 72.44(g) also issued under Nuclear Waste Policy Act secs. 142(b) and 148(c), (d) (42 U.S.C. 10162(b), 10168(c), (d)).

Section 72.46 also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154).

Section 72.96(d) also issued under Nuclear Waste Policy Act sec. 145(g) (42 U.S.C. 10165(g)).

Subpart J also issued under Nuclear Waste Policy Act secs. 117(a), 141(h) (42 U.S.C. 10137(a), 10161(h)).

Subpart K also issued under Nuclear Waste Policy Act sec. 218(a) (42 U.S.C. 10198).

■ 2. Section 72.214 is amended by adding Certificate of Compliance 1040 to read as follows:

#### § 72.214 List of approved spent fuel storage casks.

\* \* \* \* \*

Certificate Number: 1040.

Initial Certificate Effective Date: April 6, 2015.

SAR Submitted by: Holtec International, Inc.

SAR Title: Final Safety Analysis Report for the Holtec International HI-STORM UMAX Canister Storage System.

Docket Number: 72-1040.

Certificate Expiration Date: March 6, 2035.

Model Number: MPC-37, MPC-89.

Dated at Rockville, Maryland, this 24th day of February 2015.

For the Nuclear Regulatory Commission.

**Mark A. Satorius,**

*Executive Director for Operations.*

[FR Doc. 2015-05238 Filed 3-5-15; 8:45 am]

**BILLING CODE 7590-01-P**

#### DEPARTMENT OF ENERGY

##### 10 CFR Part 431

[Docket Number EERE-2008-BT-STD-0015]

RIN 1904-AB86

#### Energy Conservation Program: Energy Conservation Standards for Walk-In Coolers and Freezers; Correction

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Final rule; correction.

**SUMMARY:** On June 3, 2014, the U.S. Department of Energy (DOE) issued a final rule adopting conservation standards for some classes of walk-in cooler and walk-in freezer components. The final rule was published with typographical errors to some of the reported values. DOE is providing corrections to address these errors. Neither the errors nor the corrections in this document affect the substance of the rulemaking or any of the conclusions reached in support of the final rule.

**DATES:** This correction is effective March 6, 2015.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-5B, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 287-1692. Email: [walk-in\\_coolers\\_and\\_walk-in\\_freezers@EE.Doe.Gov](mailto:walk-in_coolers_and_walk-in_freezers@EE.Doe.Gov).

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-8145. Email: [Michael.Kido@hq.doe.gov](mailto:Michael.Kido@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** The Department of Energy ("DOE") is

**TAB 24**

**NUCLEAR REGULATORY COMMISSION**

[NRC-2015-0181]

**Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations****AGENCY:** Nuclear Regulatory Commission.**ACTION:** Biweekly notice.

**SUMMARY:** Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 9, 2015, to July 22, 2015. The last biweekly notice was published on July 21, 2015.

**DATES:** Comments must be filed by September 30, 2015. A request for a hearing must be filed by October 5, 2015.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2015-0181. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [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.

- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN-12-H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

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:**

Lynn Ronewicz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; telephone: 301-415-1927 email: [Lynn.Ronewicz@nrc.gov](mailto:Lynn.Ronewicz@nrc.gov).

**SUPPLEMENTARY INFORMATION:****I. Obtaining Information and Submitting Comments***A. Obtaining Information*

Please refer to Docket ID NRC-2015-0181 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 Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2015-0181.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then 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 [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

*B. Submitting Comments*

Please include Docket ID NRC-2015-0181, facility name, unit number(s), application date, and subject in your comment submission.

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 <http://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 submissions into ADAMS.

**II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination**

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in section 50.92 of Title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

### A. Opportunity To Request a Hearing and Petition for Leave to Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1-F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise

statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

### B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory

documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at [hearing.docket@nr.gov](mailto:hearing.docket@nr.gov), or by telephone at 301-415-1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/getting-started.html>. System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then

submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by email to [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at 1-866-672-7640. The NRC Meta System Help Desk is available between 8:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on

all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <http://ehd1.nrc.gov/ehd/>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)-(iii).

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the "Obtaining Information and Submitting Comments" section of this document.

Duke Energy Carolinas, LLC, Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina; Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

*Date of amendment request:* June 23, 2015. A publicly-available version is in ADAMS under Accession No. ML15190A381.

*Description of amendment request:* The amendments would delete text from the Technical Specifications that was included to facilitate a phased implementation of new nuclear instrumentation systems.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1:

Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This LAR [license amendment request] proposes administrative non-technical changes only. These proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configurations of the facility. The proposed changes do not alter or prevent the ability of structures, systems[,] and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits.

Given the above discussion, it is concluded the proposed amendment does not significantly increase the probability or consequences of an accident previously evaluated.

Criterion 2:

Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The LAR proposes administrative non-technical changes only. The proposed changes will not alter the design requirements of any [SSC] or its function during accident conditions. No new or different accidents result from the changes proposed. The changes do not involve a physical alteration of the plant or any changes in methods governing normal plant operation. The changes do not alter assumptions made in the safety analysis.

Given the above discussion, it is concluded the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

## Criterion 3:

Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

This LAR proposes administrative non-technical changes only. The proposed changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by these changes. The proposed changes will not result in plant operation in a configuration outside the design basis. The proposed changes do not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition.

Given the above discussion, it is concluded [that] the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

*NRC Branch Chief:* Robert J. Pascarelli.

Duke Energy Progress, Inc., Docket No. 50–261, H.B. Robinson Steam Electric Plant Unit No. 2, Darlington County, South Carolina

*Date of amendment request:* May 13, 2015. A publicly-available version is in ADAMS under Accession No. ML15133A452.

*Description of amendment request:* The amendment would revise the emergency plan by changing the emergency action levels from a scheme based upon Revision 4 of Nuclear Energy Institute (NEI) 99–01, “Methodology for Development of Emergency Action Levels,” to one based upon Revision 6 of NEI 99–01, “Development of Emergency Action Levels for Non-Passive Reactors.” The NRC formally endorsed NEI 99–01, Revision 6, in a letter dated March 28, 2013 (ADAMS Accession No. ML12346A463).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

These changes affect the HBRSEP2 [H. B. Robinson Steam Electric Plant Unit No. 2] Emergency Plan and do not alter any of the requirements of the Operating License or the Technical Specifications. The proposed changes do not modify any plant equipment and do not impact any failure modes that could lead to an accident. Additionally, the proposed changes do not impact the consequence of any analyzed accident since the changes do not affect any equipment related to accident mitigation.

Based on this discussion, the proposed amendment does not increase the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

These changes affect the HBRSEP2 Emergency Plan and do not alter any of the requirements of the Operating License or the Technical Specifications. They do not modify any plant equipment and there is no impact on the capability of the existing equipment to perform their intended functions. No system setpoints are being modified and no changes are being made to the method in which plant operations are conducted. No new failure modes are introduced by the proposed changes. The proposed amendment does not introduce an accident initiator or malfunctions that would cause a new or different kind of accident.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

These changes affect the HBRSEP2 Emergency Plan and do not alter any of the requirements of the Operating License or the Technical Specifications. The proposed changes do not affect any of the assumptions used in the accident analysis, nor do they affect any operability requirements for equipment important to plant safety.

Therefore, the proposed changes will not result in a significant reduction in the margin of safety as defined in the bases for technical specifications covered in this license amendment request.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lara S. Nichols, Deputy General Counsel, Duke Energy Corporation, 550 South Tyron Street, Mail Code DEC45A, Charlotte, NC 28202.

*NRC Branch Chief:* Shana R. Helton.

Entergy Nuclear Operations, Inc., Docket Nos. 50–003, 50–247, and 50–286, Indian Point Nuclear Generating, Unit Nos. 1, 2, and 3, Westchester County, New York

*Date of amendment request:* June 16, 2015. A publicly available version is in ADAMS under Accession No. ML15173A070.

*Description of amendment request:* The amendments would change the Indian Point Nuclear Generating, Unit Nos. 1, 2, and 3 Cyber Security Plan (CSP) Milestone 8 full implementation date from June 30, 2016, to December 31, 2017.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the CSP Implementation Schedule is administrative in nature. This change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the CSP Implementation Schedule is administrative in nature. This proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?



Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change to the CSP Implementation Schedule is administrative in nature. In addition, the milestone date delay for full implementation of the CSP has no substantive impact because other measures have been taken which provide adequate protection during this period of time. Because there is no change to established safety margins as a result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Ms. Jeanne Cho, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

*Acting NRC Branch Chief:* Michael I. Dudek.

Entergy Nuclear Operations, Inc., Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

*Date of amendment request:* June 22, 2015. A publicly available version is in ADAMS under Accession No. ML15173A380.

*Description of amendment request:* The amendment would change the James A. FitzPatrick Nuclear Power Plant Cyber Security Plan (CSP) Milestone 8 full implementation date from June 30, 2016, to December 15, 2017.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the CSP Implementation Schedule is administrative in nature. This change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the

performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the CSP Implementation Schedule is administrative in nature. This proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change to the CSP Implementation Schedule is administrative in nature. In addition, the milestone date delay for full implementation of the CSP has no substantive impact because other measures have been taken which provide adequate protection during this period of time. Because there is no change to established safety margins as a result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Ms. Jeanne Cho, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

*Acting NRC Branch Chief:* Michael I. Dudek.

Entergy Nuclear Operations, Inc., Docket No. 50-255, Palisades Nuclear Plant (PNP), Van Buren County, Michigan

*Date of amendment request:* June 11, 2015. A publicly-available version is in ADAMS under Accession No. ML15162A736.

*Description of amendment request:* The amendment would change the PNP Cyber Security Plan (CSP) Milestone 8 full implementation date from the previously approved date of June 30, 2016, to December 15, 2017.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the CSP implementation schedule is administrative in nature. This change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents, and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the CSP implementation schedule is administrative in nature. This proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation,

limiting safety system settings, and safety limits specified in the technical specifications. The proposed change to the CSP implementation schedule is administrative in nature. In addition, the milestone date delay for full implementation of the CSP has no substantive impact because other measures have been taken which provide adequate protection during this period of time. Because there is no change to established safety margins as a result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Ms. Jeanne Cho, Senior Counsel, Entergy Services, Inc., 440 Hamilton Ave., White Plains, NY 10601.

*NRC Branch Chief:* David L. Pelton.

NextEra Energy Seabrook LLC, et al., Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

*Date of amendment request:* July 13, 2015. A publicly-available version is in ADAMS under Accession No. ML15198A027.

*Description of amendment request:* The amendment would change the Technical Specifications (TSs). The proposed change would add a note to TS Surveillance Requirement (SR) 4.4.1.3.4, which requires verification that residual heat removal loop operations susceptible to gas accumulation are sufficiently filled with water in accordance with the Surveillance Frequency Control Program.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, along with NRC edits in square brackets, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

SR 4.4.1.3.4 verifies RHR [residual heat removal] loop locations susceptible to gas accumulation are sufficiently filled with water in accordance with the Surveillance Frequency Control Program. The proposed change adds a note to allow SR 4.4.1.3.4 to be performed 12 hours after entering the

Mode of Applicability. Gas accumulation in the subject system is not an initiator of any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The proposed note does not change SR 4.4.1.3.4 which ensures that the subject system continues to be capable of performing its assumed safety function and is not rendered inoperable due to gas accumulation.

Thus, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant (*i.e.*, no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the proposed change does not impose any new or different requirements that could initiate an accident. The proposed change does not alter assumptions made in the safety analysis and is consistent with the safety analysis assumptions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The proposed change does not adversely affect any current plant safety margins or the reliability of the equipment assumed in the safety analysis. Therefore, there are no changes being made to any safety analysis assumptions, safety limits, or limiting safety system settings that would adversely affect plant safety as a result of the proposed change.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* William Blair, Managing Attorney—Nuclear, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

*NRC Branch Chief:* Douglas A. Broaddus.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

*Date of amendment request:* April 3, 2015, as supplemented by letter dated June 2, 2015. Publicly-available versions are in ADAMS under Accession Nos. ML15093A291 and ML15153A193, respectively.

*Description of amendment request:*

The amendments would revise Technical Specification (TS) 3/4.3.1, “Reactor Trip System Instrumentation,” to support planned plant modifications to replace the existing source range (SR) and intermediate range (IR) nuclear instrumentation with a Thermo Scientific Neutron Flux Monitoring Systems. Specifically, the changes would modify the SR and IR neutron flux reactor trip Allowable Values and the permissive P–6 reset value, and would add two new footnotes to the Channel Functional Test and Channel Calibration in TS 3/4.3.1, Table 4.3–1.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Nuclear Instrumentation System (NIS) provides indication and plant protection through the reactor trip function; it is not an accident initiator or precursor. The reactor trip is part of the plant's accident mitigation response. Thus, the probability of an accident previously evaluated is not significantly increased.

The performance of the replacement SR and IR detectors and associated equipment will equal or exceed that of the existing Westinghouse instrumentation. The proposed changes are based on accepted industry standards and will preserve assumptions in the applicable accident analyses. The proposed changes do not affect the integrity of the fission product barriers utilized for the mitigation of radiological dose consequences as a result of an accident. The proposed changes do not alter any assumptions previously made in the radiological consequences evaluations, nor do they affect mitigation of the radiological consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The manner in which the Reactor Trip System (RTS) provides plant protection is not changed. The replacement SR and IR detectors and associated equipment do not affect accident initiation sequences or response scenarios as modeled in the safety analyses. The SR and IR detectors and associated equipment are not accident initiators or precursors. The only physical changes to the plant involve the replacement detectors and associated equipment. The replacement SR and IR detectors and

associated equipment have been designed to applicable regulatory and industry standards.

No changes to the overall manner in which the plant is operated are being proposed. Existing accident scenarios remain unchanged and new or different accident scenarios are not created. The types of accident defined in the Updated Final Safety Analysis Report (UFSAR) continue to represent the credible spectrum of events analyzed to determine safe plant operation.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?  
Response: No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their intended functions. These barriers include the fuel cladding, the reactor coolant system pressure boundary, and the containment. Neither the modification to replace the SR and IR detectors and associated equipment, nor the proposed Technical Specification changes will impact these barriers. Accident mitigating equipment will not be adversely impacted as a result of the modification. The safety systems credited in the safety analyses continue to remain available to perform their required mitigation functions. The proposed changes do not affect any safety analysis conclusions because the SR and IR neutron flux reactor trips are not explicitly credited in any accident analyses. Their functional capability enhances the overall reliability of the Reactor Protection System.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Jeffrie J. Keenan, PSEG Nuclear LLC—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

*NRC Branch Chief:* Douglas A. Broaddus.

### III. Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments

issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Exelon Generation Company, LLC and PSEG Nuclear LLC, Docket No. 50–278, Peach Bottom Atomic Power Station (PBAPS), Unit 3, York and Lancaster Counties, Pennsylvania

*Date of amendment request:* May 29, 2015. A publicly-available version is in ADAMS under Accession No. ML15149A473.

*Description of amendment request:* The amendment would change a license condition pertaining to the PBAPS, Unit 3, replacement steam dryer (RSD). Currently, the license condition requires that a revised analysis for the RSD be submitted to the NRC, as a report, at least 90 days prior to the start of the Unit 3 extended power uprate (EPU) outage. The proposed amendment would reduce the period before the outage by which the analysis is to be submitted from 90 days to 30 days. The licensee indicated that the EPU outage is scheduled to start on September 14, 2015.

*Date of publication of individual notice in Federal Register:* June 10, 2015 (80 FR 32991).

*Expiration date of individual notice:* July 10, 2015 (public comments); August 10, 2015 (hearing requests).

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee

*Date of amendment request:* June 17, 2015. A publicly-available version is in ADAMS under Accession No. ML15170A474.

*Description of amendment request:* The amendment would modify the technical specifications to define support systems needed in the first 48 hours after a unit shutdown when steam generators are not available for heat removal. The proposed change is required to support dual unit operation of WBN (a licensing decision for WBN, Unit 2, is currently expected to be made in the fall of 2015). The proposed amendment also requests changes consistent with Technical Specification Task Force-273–A, Revision 2, “SFDP [Safety Function Determination Program] Clarifications,” to provide clarification related to the requirements of the SFDP.

*Date of publication of individual notice in Federal Register:* July 17, 2015 (80 FR 42554).

*Expiration date of individual notice:* August 16, 2015 (public comments); September 15, 2015 (hearing requests).

### IV. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing. (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the “Obtaining Information and Submitting Comments” section of this document.

DTE Electric Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

*Date of amendment request:* September 16, 2014, as supplemented by letter dated April 17, 2015.

*Brief description of amendment:* The amendment revised the Technical Specifications (TSs) by relocating

specific surveillance frequencies to a licensee-controlled program. The changes are based on NRC-approved TS Task Force (TSTF) Change Traveler TSTF-425, Revision 3, "Relocate Surveillance Frequencies to Licensee Control—RITSTF [Risk-Informed TSTF] Initiative 5b."

*Date of issuance:* July 14, 2015.

*Effective date:* As of the date of issuance and shall be implemented within 120 days of issuance.

*Amendment No.:* 201. A publicly-available version is in ADAMS under Accession No. ML15155B416; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

*Facility Operating License No. NPF-43:* Amendment revised the Facility Operating License and TSs.

*Date of initial notice in Federal Register:* November 12, 2014 (79 FR 67199). The supplemental letter dated April 17, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 14, 2015.

*No significant hazards consideration comments received:* None.

Exelon Generation Company, LLC and PSEG Nuclear LLC, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

*Date of amendment request:* July 25, 2014, as supplemented by letters dated January 13, 2015, and May 26, 2015.

*Brief description of amendments:* The amendments changed the definition in the Technical Specifications (TSs) for RECENTLY IRRADIATED FUEL. Specifically, the amendments revised requirements pertaining to secondary containment hatches in order to facilitate activities performed during refueling outages.

*Date of issuance:* July 17, 2015.

*Effective date:* As of the date of issuance and shall be implemented within 60 days of issuance.

*Amendment Nos.:* 298 and 301. A publicly-available version is in ADAMS under Accession No. ML15162A139; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Renewed Facility Operating License Nos. DPR-44 and DPR-56:* The amendments revised the Facility Operating Licenses and the TSs.

*Date of initial notice in Federal Register:* September 30, 2014 (79 FR 58816). The supplemental letters dated January 13, 2015, and May 26, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 17, 2015.

*No significant hazards consideration comments received:* No.

Exelon Generation Company, LLC, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant (CCNPP), Unit Nos. 1 and 2, Calvert County, Maryland

*Date of amendment request:* September 18, 2014, as supplemented by letters dated February 17, 2015, and April 2, 2015.

*Brief description of amendments:* The amendments revised Technical Specification (TS) 5.5.16, "Containment Leakage Rate Testing Program," by replacing the reference to Regulatory Guide 1.163 (September 1995) with a reference to Topical Report (TR) Nuclear Energy Institute (NEI) 94-01, Revision 3-A, and Section 4.1, "Limitations and Conditions for NEI TR 94-01, Revision 2," of the NRC Safety Evaluation in NEI 94-01, Revision 2-A, dated October 2008. This reference is the implementation document to develop 10 CFR part 50, appendix J, Option B, performance-based primary containment leakage testing program for CCNPP, Unit Nos. 1 and 2. The changes allow an increase in the Type A test interval from the current 10 years to a maximum of 15 years, and allow an increase in the Type C test interval from the current 60 months to 75 months. The change also deletes the one-time exceptions granted to the Type A test interval and exceptions from the post-modification Type A test when the steam generators at CCNPP are replaced.

*Date of issuance:* July 16, 2015.

*Effective date:* As of the date of issuance and shall be implemented within 75 days of issuance.

*Amendment Nos.:* 310 and 288. A publicly-available version is in ADAMS under Accession No. ML15154A661; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Renewed Facility Operating License Nos. DPR-53 and DPR-69:* Amendments revised the Renewed Facility Operating Licenses and TSs.

*Date of initial notice in Federal Register:* November 25, 2014 (79 FR 70214). The supplemental letters dated February 17, 2015, and April 2, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 16, 2015.

*No significant hazards consideration comments received:* No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS-1 and 2), Beaver County, Pennsylvania

*Date of amendment request:* September 4, 2014, as supplemented by letter dated December 1, 2014.

*Brief description of amendments:* The amendments revised the BVPS Emergency Planning Zone boundary to align it with the boundary that is currently in use by the emergency management agencies of the three counties that implement public protective actions around BVPS.

*Date of issuance:* July 9, 2015.

*Effective date:* As of the date of issuance and shall be implemented within 90 days of issuance.

*Amendment Nos.:* 294 and 181. A publicly-available version is in ADAMS under Accession No. ML15131A006; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Facility Operating License Nos. DPR-66 and NPF-73:* Amendments revised the Facility Operating License.

*Date of initial notice in Federal Register:* October 28, 2014 (79 FR 64224). The supplemental letter dated December 1, 2014, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 9, 2015.

*No significant hazards consideration comments received:* No.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

*Date of amendment request:* July 14, 2014, as supplemented by letter dated June 30, 2015.

*Brief description of amendments:* The amendments revised the Technical Specifications (TSs) by modifying or adding surveillance requirements to verify that system locations susceptible to gas accumulation are sufficiently filled with water and to provide allowances that permit performance of the verification. The changes address NRC Generic Letter 2008–01, “Managing Gas Accumulation in Emergency Core Cooling, Decay Heat Removal, and Containment Spray Systems” (ADAMS Accession No. ML072910759), as described in Revision 2 of Technical Specification Task Force–523, “Generic Letter 2008–01, Managing Gas Accumulation” (ADAMS Accession No. ML13053A075).

*Date of issuance:* July 20, 2015.

*Effective date:* As of the date of issuance and shall be implemented within 120 days of issuance.

*Amendment Nos.:* 224 and 174. The amendments are in ADAMS under Accession No. ML15182A160; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Renewed Facility Operating License Nos. DPR–67 and NPF–16:* Amendments revised the TSs.

*Date of initial notice in Federal Register:* October 28, 2014 (79 FR 64225). The licensee’s supplement dated June 30, 2015, did not expand the scope of the request and did not change the staff’s original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission’s related evaluation of the amendments is contained in a Safety Evaluation dated July 20, 2015.

*No significant hazards consideration comments received:* No.

Florida Power & Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Nuclear Generating, Unit Nos. 3 and 4, Miami-Dade County, Florida

*Date of amendment request:* April 9 2014, as supplemented by letters dated August 29, 2014, and February 20, April 3, and July 7, 2015.

*Brief description of amendments:* The amendments revised the Technical Specifications (TSs) by relocating specific surveillance frequency requirements to a licensee-controlled program with implementation of

Nuclear Energy Institute (NEI) 04–10, “Risk Informed Technical Specification Initiative 5b, Risk Informed Method for Control of Surveillance Frequencies” (ADAMS Accession No. ML071360456). The NEI 04–10 methodology provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies, consistent with Regulatory Guide 1.177, “An Approach for Plant-Specific Risk-Informed Decisionmaking: Technical Specifications” (ADAMS Accession No. ML003740176). The changes are consistent with NRC-approved Technical Specification Task Force (TSTF) Standard Technical Specifications Change TSTF–425, “Relocate Surveillance Frequencies to Licensee Control—RITSTF [Risk Informed Technical Specifications Task Force] Initiative 5b,” Revision 3 (ADAMS Accession No. ML090850642). The **Federal Register** notice published on July 6, 2009 (74 FR 31996), announced the availability of TSTF–425, Revision 3. The amendments also include editorial changes to the TSs, administrative deviations from TSTF–425, and other changes resulting from differences between the licensee’s TSs and the TSs on which TSTF–425 was based.

*Date of issuance:* July 16, 2015.

*Effective date:* As of the date of issuance and shall be implemented within 90 days of issuance.

*Amendment Nos.:* 263 and 258. The amendments are in ADAMS under Accession No. ML15166A320; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Renewed Facility Operating License Nos. DPR–31 and DPR–41:* Amendments revised the Facility Operating License and TSs.

*Date of initial notice in Federal Register:* The NRC staff initially made a proposed determination that the amendment request dated April 9, 2014, involved no significant hazards consideration (NSHC) (July 22, 2014, 79 FR 44551). By letters dated August 29, 2014, and February 20, 2015, the licensee provided clarifying information that did not expand the scope of the application and did not change the NRC staff’s original proposed NSHC determination, as published in the **Federal Register** on July 22, 2014 (79 FR 44551). Subsequently, by letter dated April 3, 2015, the licensee supplemented its amendment request with a proposed change that expanded the scope of the request. Therefore, the NRC published a second proposed NSHC determination in the **Federal Register** on May 12, 2015 (80 FR 27199),

which superseded the notice dated July 22, 2014 (79 FR 44551). The licensee’s supplement dated July 7, 2015, did not expand the scope of the request and did not change the staff’s proposed NSHC determination that was published in the **Federal Register** on May 12, 2015 (80 FR 27199).

The Commission’s related evaluation of the amendment is contained in a Safety Evaluation dated July 16, 2015.

*No significant hazards consideration comments received:* No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

*Date of amendment request:* July 17, 2014, as supplemented by letter dated February 19, 2015.

*Brief description of amendment:* The amendment moved the Linear Heat Generation Rate (LHGR) and Single Loop Operation LHGR limits from the Technical Requirements Manual to the Technical Specifications (TSs). Accordingly, the amendment added TS 3.2.3, “Linear Heat Generation Rate (LHGR),” and modified TS 1.1, “Definitions”; TS 3.4.1, “Recirculation Loops Operating”; TS 3.7.7, “The Main Turbine Bypass System”; and TS 5.6.5, “Core Operating Limits Report (COLR).”

*Date of issuance:* July 14, 2015.

*Effective date:* As of the date of issuance and shall be implemented within 60 days of issuance.

*Amendment No.:* 251. A publicly-available version is in ADAMS under Accession No. ML15168A171; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

*Renewed Facility Operating License No. DPR–46:* Amendment revised the Facility Operating License and TSs.

*Date of initial notice in Federal Register:* September 30, 2014 (79 FR 58820). The supplemental letter dated February 19, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff’s original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission’s related evaluation of the amendment is contained in a Safety Evaluation dated July 14, 2015.

*No significant hazards consideration comments received:* No.

NextEra Energy, Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

*Date of amendment request:* July 18, 2014, as supplemented by letter dated November 7, 2015.

*Brief description of amendment:* The amendment changed the Cyber Security Plan for Point Beach Nuclear Plants, Units 1 and 2, by revising the completion date of Milestone 8 of the Cyber Security Plan Implementation schedule.

*Date of issuance:* July 14, 2015.

*Effective date:* These amendments will be effective as of their date of issuance.

*Amendment Nos.:* 252 and 256. A publicly-available version is in ADAMS under Accession No. ML15155A539; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Renewed Facility Operating License Nos. DPR–24 and DPR–27:* Amendments revised the Facility Operating License and Technical Specifications.

*Date of initial notice in Federal Register:* January 6, 2015 (80 FR 536). The supplemental letter dated November 7, 2014, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 14, 2015.

*No significant hazards consideration comments received:* No.

NextEra Energy Seabrook, LLC., Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

*Date of amendment request:* July 24, 2014, as supplemented by two letters dated December 11, 2014, and a letter dated June 30, 2015.

*Brief description of amendment:* The amendment revised Seabrook Station Technical Specification (TS) 3.3.3.1, "Radiation Monitoring for Plant Operations," to eliminate duplicate requirements, resolve an inconsistency, and correct a deficiency.

*Date of issuance:* July 17, 2015.

*Effective date:* As of the date of issuance and shall be implemented within 60 days of issuance.

*Amendment No.:* 149. A publicly-available version is in ADAMS under Accession No. ML15096A131; documents related to this amendment

are listed in the Safety Evaluation enclosed with the amendment.

*Facility Operating License No. NPF–86:* Amendment revised the Facility Operating License and Technical Specifications.

*Date of initial notice in Federal Register:* September 30, 2014 (79 FR 58821). The supplemental letters dated December 11, 2014, and June 29, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 17, 2015.

*No significant hazards consideration comments received:* No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station (SONGS), Units 2 and 3, San Diego County, California

*Date of amendment request:* March 21, 2014, as supplemented by letters dated October 1, 2014; and February 23, February 25, and March 18, 2015.

*Brief description of amendment:* The amendments revised the SONGS, Units 2 and 3, Facility Operating Licenses and associated Technical Specifications (TSs) to conform to the permanent shutdown and defueled status of these facilities.

*Date of issuance:* July 17, 2015.

*Effective date:* As of the date of issuance and shall be implemented within 60 days of issuance.

*Amendment Nos.:* 230 and 223. A publicly-available version is in ADAMS under Accession No. ML15139A390; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Facility Operating License Nos. NPF–10 and NPF–15:* The amendments revised the Facility Operating Licenses and TSs.

*Date of initial notice in Federal Register:* September 16, 2014 (79 FR 55513). The supplemental letters dated October 1, 2014; and February 23, February 25, 2015, and March 18, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 17, 2015.

*No significant hazards consideration comments received:* No.

#### V. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing. (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual notice of consideration of issuance of amendment, proposed no significant hazards consideration determination, and opportunity for a hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for

comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License or Combined License, as applicable, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items can be accessed as described in the "Obtaining Information and Submitting Comments" section of this document.

#### *A. Opportunity To Request a Hearing and Petition for Leave to Intervene*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's

"Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1-F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, and electronically on the Internet at the NRC's Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If there are problems in accessing the document, contact the PDR's Reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient

information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

#### *B. Electronic Submissions (E-Filing)*

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at [hearing.docket@nr.gov](mailto:hearing.docket@nr.gov), or by telephone at 301-415-1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the

hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/getting-started.html>. System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must

apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by email to [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at 1-866-672-7640. The NRC Meta System Help Desk is available between 8:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <http://ehd1.nrc.gov/ehd/>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will

require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)-(iii).

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the "Obtaining Information and Submitting Comments" section of this document.

Indiana Michigan Power Company, Docket No. 50-315, Donald C. Cook Nuclear Plant, Unit 1, Berrien County, Michigan

*Date of amendment request:* June 29, 2015, as supplemented by letter dated July 2, 2015.

*Brief description of amendment:* The amendment revised Technical Specification (TS) 3.3.2, "Engineered Safety Feature Actuation System (ESFAS) Instrumentation," by adding a new condition for one or more inoperable required channels for main feedwater pump trips, changing Table 3.3.2-1 to add a footnote to the Applicable Mode Column for Mode 2 and to reflect the new Condition, and renumbering existing Conditions.

*Date of issuance:* July 10, 2015.

*Effective date:* As of the date of issuance and shall be implemented within 30 days of issuance.

*Amendment No.:* 328. A publicly-available version is in ADAMS under Accession No. ML15187A002; documents related to the amendment are listed in the Safety Evaluation enclosed with the amendment.

*Renewed Facility Operating License No. DPR-58:* Amendment revised the Renewed Facility Operating License and TSs.

*Public comments requested as to proposed no significant hazards consideration (NSHC):* Yes. Public



notice of the proposed amendment was published in *The Herald-Palladium*, located in the City of St. Joseph, Berrien County, Michigan, on July 3 and July 4, 2015. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments were received.

The Commission's related evaluation of the amendment, finding of exigent circumstances, State consultation, public comments, and final NSHC determination are contained in a Safety Evaluation dated July 10, 2015.

*Attorney for licensee:* Robert B. Haemer, Senior Nuclear Counsel, One Cook Place, Bridgman, MI 49106.

*NRC Branch Chief:* David L. Pelton.

Dated at Rockville, Maryland, this 27th day of July, 2015.

For the Nuclear Regulatory Commission.

**George A. Wilson, Jr.,**

*Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2015-18896 Filed 8-3-15; 8:45 am]

**BILLING CODE 7590-01-P**

## POSTAL REGULATORY COMMISSION

[Docket No. CP2015-116; Order No. 2625]

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning an additional Global Expedited Package Services 3 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* August 6, 2015.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

### SUPPLEMENTARY INFORMATION:

#### Table of Contents

- I. Introduction
- II. Notice of Commission Action
- III. Ordering Paragraphs

## I. Introduction

On July 29, 2015, the Postal Service filed notice that it has entered into an additional Global Expedited Package Services 3 (GEPS 3) negotiated service agreement (Agreement).<sup>1</sup>

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

## II. Notice of Commission Action

The Commission establishes Docket No. CP2015-116 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than August 6, 2015. The public portions of the filing can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Lyudmila Y. Bzhilyanskaya to serve as Public Representative in this docket.

## III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. CP2015-116 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Lyudmila Y. Bzhilyanskaya is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than August 6, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2015-19085 Filed 8-3-15; 8:45 am]

**BILLING CODE 7710-FW-P**

<sup>1</sup> Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, July 29, 2015 (Notice).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75548; File No. SR-CBOE-2015-070]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amending Its Simple Auction Liaison ("SAL") Rule

July 29, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 24, 2015, Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its SAL rule to make it explicit that 6.13A(d) applies to Hybrid 3.0 classes.

The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### 1. Purpose

The Exchange is proposing to amend language to clarify that certain

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

**TAB 25**

# Rules and Regulations

Federal Register

Vol. 80, No. 120

Tuesday, June 23, 2015

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

[NRC-2015-0067]

RIN 3150-AJ58

#### List of Approved Spent Fuel Storage Casks: Holtec International HI-STORM UMAX Canister Storage System, Certificate of Compliance No. 1040, 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 Holtec International, Inc. (Holtec), HI-STORM (Holtec International Storage Module) Underground Maximum Capacity (UMAX) Canister Storage System listing within the "List of approved spent fuel storage casks" to add Amendment No. 1 to Certificate of Compliance (CoC) No. 1040. Amendment No. 1 provides a seismically enhanced version of the HI-STORM UMAX Canister Storage System, identified as the "Most Severe Earthquake (MSE)" version, that could be used in areas with higher seismic demands than those analyzed previously. Amendment No. 1 also includes minor physical design changes to help ensure structural integrity of the amended system. These are the addition of a hold-down system to the closure lid; replacing the fill material in the interstitial spaces between the cavity enclosure containers (CECs) surrounding the casks with 3000 psi concrete; strengthening the multi-purpose canister (MPC) guides; and engineering the guides' nominal gap with the MPC to be tighter than the original HI-STORM UMAX Canister Storage System design.

**DATES:** The direct final rule is effective September 8, 2015, unless significant adverse comments are received by July 23, 2015. If the 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 Commission 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:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2015-0067. Address questions about NRC dockets to Carol Gallagher, telephone: (301) 415-3463; email: [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.

- *Email comments to:* [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive an automatic email reply confirming receipt, then contact us at (301) 415-1677.

- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: (301) 415-1677.

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:** Solomon Sahle, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone:

(301) 415-3781; email: [Solomon.Sahle@nrc.gov](mailto:Solomon.Sahle@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

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- I. Obtaining Information and Submitting Comments.
- II. Procedural Background.
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- IX. Paperwork Reduction Act Statement.
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- 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-2015-0067 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 Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2015-0067.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then 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 [pdr.resource@nrc.gov](mailto:pdr.resource@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 at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

##### B. Submitting Comments

Please include Docket ID NRC-2015-0067 in the subject line of your comment submission.

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 <http://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. Procedural Background

This rule is limited to the changes contained in Amendment No. 1 to CoC No. 1040 and does not include other aspects of the HI-STORM UMAX Canister Storage System. The NRC is using the “direct final rule” procedure to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. The amendment to the rule will become effective on September 8, 2015. However, if the NRC receives significant adverse comments on this direct final rule by July 23, 2015, 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 Rule 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 staff 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 staff.

(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 staff to make a change (other than editorial) to the rule, CoC, or Technical Specifications (TSs).

For detailed instructions on submitting comments, please see the **ADDRESSES** section of this document.

## III. Background

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that “the Secretary [of the U.S. 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 [U.S. 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 “[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 which 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 within 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 March 6, 2015 (80 FR 12073), as corrected on March 25, 2015 (80 FR 15679), that approved the HI-STORM UMAX Canister Storage System design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1040.

## IV. Discussion of Changes

By letter dated July 11, 2014, and as supplemented on October 31, 2014, Holtec submitted an application to the NRC to amend the HI-STORM UMAX Canister Storage System, CoC No. 1040, under subpart K of 10 CFR part 72. Amendment No. 1 to CoC No. 1040 provides a seismically enhanced version of the HI-STORM UMAX Canister Storage System, identified as the “Most Severe Earthquake (MSE)” version, that could be used in areas with higher seismic demands than those analyzed previously. Amendment No. 1 also includes minor physical design changes to help ensure structural integrity of the amended system. These are the addition of a hold-down system to the closure lid; replacing the fill material in the interstitial spaces between the CECs surrounding the casks with 3000 psi concrete; strengthening the MPC guides; and engineering the guides’ nominal gap with the MPC to be tighter than the original HI-STORM UMAX Canister Storage System design.

As documented in the NRC staff’s Safety Evaluation Report (SER) (ML15070A149), the NRC staff performed a detailed safety evaluation of the proposed CoC amendment request. This amendment does not reflect a significant change in design or fabrication of the HI-STORM UMAX Canister Storage System cask design previously approved by the NRC (see 80 FR 12073, as corrected 80 FR 15679). Considering the specific design requirements for accident conditions, the NRC staff determined that the design of the cask would continue to prevent loss of confinement, shielding, and criticality control.

This direct final rule revises the Holtec HI-STORM UMAX Canister Storage System listing in 10 CFR 72.214 by adding Amendment No. 1 to CoC No. 1040. The amendment consists of the changes previously described, as set forth in the revised CoC and TSs. The revised TSs are identified in the SER.

The amended Holtec HI-STORM UMAX Canister Storage System, when used under the conditions specified in the CoC, the TSs, and the NRC’s regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be ensured. When this direct final rule becomes effective, persons who hold a general license under 10 CFR 72.210 may load spent nuclear fuel into Holtec HI-STORM UMAX Canister Storage Systems that meet the criteria of Amendment No. 1 to CoC No. 1040 under 10 CFR 72.212.

## 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 will amend the Holtec HI–STORM UMAX Canister Storage System design listed in 10 CFR 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 “Policy Statement on Adequacy and Compatibility of Agreement State Programs” approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this direct final rule is classified as Compatibility Category “NRC.” Compatibility is not required for Category “NRC” regulations. 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. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State’s administrative procedure laws, but does not confer regulatory authority on the State.

## VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, 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 31883).

## VIII. Environmental Assessment and Finding of No Significant Environmental Impact

### A. The Action

The action is to amend 10 CFR 72.214 to amend the Holtec HI–STORM UMAX Canister Storage System listing within the “List of approved spent fuel storage casks” to include Amendment No. 1 to CoC No. 1040. Under 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,” the NRC has determined that this 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.

### B. The Need for the Action

This direct final rule amends the CoC for the Holtec HI–STORM UMAX Canister Storage System design within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. Specifically, Amendment No. 1 to CoC No. 1040 provides a seismically enhanced version of the HI–STORM UMAX Canister Storage System, identified as the “Most Severe Earthquake (MSE)” version that could be used in areas with higher seismic demands than those analyzed previously. Amendment No. 1 also includes minor physical design changes to help ensure the structural integrity of the amended system. These are the addition of a hold-down system to the closure lid; replacing the fill material in the interstitial spaces between the CECs surrounding the casks with 3000 psi concrete; strengthening MPC guides; and engineering the guides’ nominal gap with the MPC to be tighter than the original HI–STORM UMAX Canister Storage System.

### 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 initially analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for this amendment 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.

Holtec HI–STORM UMAX Canister Storage Systems are 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, 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.

Considering the specific design requirements for accident conditions, the design of the storage system would prevent loss of containment, shielding, and criticality control. If there is no loss of containment, shielding, or criticality control, the environmental impacts would be insignificant. There are no significant changes to cask design requirements in the proposed CoC amendment. In addition, because there are no significant design or process changes, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 1 would remain well within the 10 CFR part 20 limits. Therefore, the proposed CoC amendment will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or significant revisions in the 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. The NRC staff documented its safety findings in the SER for this amendment.

### D. Alternative to the Action

The alternative to this action is to deny approval of Amendment No. 1 and terminate the direct final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load spent nuclear fuel into Holtec HI–STORM UMAX Canister Storage Systems in accordance with the changes described in proposed Amendment No. 1 would have to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, interested licensees would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee. Therefore, the environmental impacts of the alternative to the action would be the same or more than the impacts of the action.

### E. Alternative Use of Resources

Approval of Amendment No. 1 to CoC No. 1040 would result in no irreversible commitments 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 10 CFR part 51. Based on the foregoing environmental assessment, the NRC concludes that this direct final rule entitled, "List of Approved Spent Fuel Storage Casks: Holtec International HI-STORM UMAX Canister Storage System, Certificate of Compliance No. 1040, 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 information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). 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 OMB control number.

**X. Regulatory Flexibility Certification**

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this 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 Holtec. 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 (10 CFR 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 it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214.

On March 6, 2015 (80 FR 12073), as corrected on March 25, 2015 (80 FR 15679), the NRC issued an amendment to 10 CFR part 72 that approved the Holtec HI-STORM UMAX Canister Storage System design by adding it to the list of NRC-approved cask designs in 10 CFR 72.214. On July 11, 2014, and as supplemented on October 31, 2014, Holtec submitted an application to amend the HI-STORM UMAX Canister Storage System as described in Section IV, "Discussion of Changes," of this document.

The alternative to this action is to withhold approval of Amendment No. 1 and to require any 10 CFR part 72 general licensees seeking to load spent nuclear fuel into the Holtec HI-STORM UMAX Canister Storage System under the changes described in Amendment No. 1 to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

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

**XII. Backfitting and Issue Finality**

The NRC has determined that the backfit rule (10 CFR 72.62) does not

apply to this direct final rule. Therefore, a backfit analysis is not required. This direct final rule amends CoC No. 1040 for the Holtec HI-STORM UMAX Canister Storage System, as currently listed in 10 CFR 72.214, "List of approved spent fuel storage casks." Amendment No. 1 provides a seismically enhanced version of the HI-STORM UMAX Canister Storage System, identified as the "Most Severe Earthquake (MSE)" version that could be used in areas with higher seismic demands than those analyzed previously. It also includes minor physical design changes to help ensure structural integrity of the amended system.

Amendment No. 1 of CoC No. 1040 for the Holtec HI-STORM UMAX Canister Storage System was initiated by Holtec and was not submitted in response to new NRC requirements, or an NRC request for amendment. Holtec, as the CoC holder, is not protected by the backfitting provisions under 10 CFR 72.62.

In addition, the changes in Amendment No. 1 do not apply to casks which were manufactured to the initial CoC 1040. Amendment No. 1 applies only to new casks fabricated and used under Amendment No. 1. Therefore, these changes do not affect existing users of the Holtec UMAX Canister Storage System. For these reasons, Amendment No. 1 to CoC No. 1040 does not constitute backfitting under 10 CFR 72.62, 10 CFR 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. Accordingly, no backfit analysis or additional documentation addressing the issue finality criteria in 10 CFR part 52 has been prepared by the staff.

**XIII. Congressional Review Act**

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

**XIV. Availability of Documents**

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

Document	ADAMS Accession No./ Web link/ Federal Register citation
Proposed CoC No. 1040, Amendment No. 1 .....	ML15070A151
Appendix A of Proposed TSs .....	ML15070A153
Appendix B of Proposed TS .....	ML15070A152

Document	ADAMS Accession No./ Web link/ Federal Register citation
Preliminary SER .....	ML15070A149
Request for Amendment Application dated July 11, 2014 .....	ML14202A029
Supplemental Information for Proposed Action, dated October 31, 2014 .....	ML14308A164

The NRC may post materials related to this document, including public comments, on the Federal Rulemaking Web site at <http://www.regulations.gov> under Docket ID NRC-2015-0067. The Federal Rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC-2015-0067); (2) click the "Sign up for Email Alerts" link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

#### List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, 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 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, 2232, 2233, 2234, 2236, 2237, 2239, 2273, 2282, 2021); Energy Reorganization Act secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Nuclear Waste Policy Act secs. 131, 132, 133, 135, 137, 141, 148 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 788 (2005).

Section 72.44(g) also issued under Nuclear Waste Policy Act secs. 142(b) and 148(c), (d) (42 U.S.C. 10162(b), 10168(c), (d)).

Section 72.46 also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154).

Section 72.96(d) also issued under Nuclear Waste Policy Act sec. 145(g) (42 U.S.C. 10165(g)).

Subpart J also issued under Nuclear Waste Policy Act secs. 117(a), 141(h) (42 U.S.C. 10137(a), 10161(h)).

Subpart K also issued under Nuclear Waste Policy Act sec. 218(a) (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance No. 1040 is revised to read as follows:

#### § 72.214 List of approved spent fuel storage casks.

\* \* \* \* \*

Certificate Number: 1040.  
Initial Certificate Effective Date: April 6, 2015.  
Amendment No. 1 Effective Date: September 8, 2015.

SAR Submitted by: Holtec International, Inc.

SAR Title: Final Safety Analysis Report for the Holtec International HI-STORM UMAX Canister Storage System.

Docket Number: 72-1040.  
Certificate Expiration Date: April 6, 2035.

Model Number: MPC-37, MPC-89.

Dated at Rockville, Maryland, this 11th day of June, 2015.

For the Nuclear Regulatory Commission.

**Mark A. Satorius,**

*Executive Director for Operations.*

[FR Doc. 2015-15476 Filed 6-22-15; 8:45 am]

BILLING CODE 7590-01-P

#### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2014-0457; Airspace Docket No. 14-AWP-4]

#### Establishment of Class E Airspace; Cloverdale, CA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at Cloverdale Municipal Airport, Cloverdale CA. to accommodate Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Cloverdale Municipal Airport. This action enhances the safety and management of IFR operations at the airport.

**DATES:** Effective 0901 UTC, August 20, 2015. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**ADDRESSES:** FAA Order 7400.9Y, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at <http://www.faa.gov/airtraffic/publications/>. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to [http://www.archives.gov/federal-register/code-of-federal-regulations/ibr\\_locations.html](http://www.archives.gov/federal-register/code-of-federal-regulations/ibr_locations.html).

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15. For further information, you can contact the Airspace Policy and ATC Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 29591; telephone: 202-267-8783.

**FOR FURTHER INFORMATION CONTACT:** Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203-4517.

#### SUPPLEMENTARY INFORMATION:

#### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the

# Rules and Regulations

Federal Register

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Tuesday, September 8, 2015

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

[NRC–2015–0067]

RIN 3150–AJ58

#### List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM UMAX Canister Storage System, Certificate of Compliance No. 1040, Amendment No. 1

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of September 8, 2015, for the direct final rule that was published in the **Federal Register** on June 23, 2015. This direct final rule amended the NRC's spent fuel storage regulations by revising the Holtec International, Inc. (Holtec), HI–STORM (Holtec International Storage Module) Underground Maximum Capacity (UMAX) Canister Storage System listing within the “List of approved spent fuel storage casks” to add Amendment No. 1 to Certificate of Compliance (CoC) No. 1040. Amendment No. 1 provides a seismically enhanced version of the HI–STORM UMAX Canister Storage System, identified as the “Most Severe Earthquake (MSE)” version that could be used in areas with higher seismic demands than those analyzed previously. Amendment No. 1 also includes minor physical design changes to help ensure structural integrity of the amended system. These are the addition of a hold-down system to the closure lid; replacing the fill material in the interstitial spaces between the cavity enclosure containers (CECs) surrounding the casks with 3000 psi concrete; strengthening the multi-

purpose canister (MPC) guides, and engineering the guides' nominal gap with the MPC to be tighter than the original HI–STORM UMAX Canister Storage System design.

**DATES:** *Effective date:* The effective date of September 8, 2015, for the direct final rule published June 23, 2015 (80 FR 35829), is confirmed.

**ADDRESSES:** Please refer to Docket ID NRC–2015–0067 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 Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2015–0067. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: [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 <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then 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 [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Solomon Sahle, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3781; email: [Solomon.Sahle@nrc.gov](mailto:Solomon.Sahle@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Discussion

On June 23, 2015 (80 FR 35829), the NRC published a direct final rule amending its regulations in § 72.214 of Title 10 of the *Code of Federal Regulations* (10 CFR) by revising the Holtec HI–STORM UMAX Canister Storage System listing within the “List

of approved spent fuel storage casks” to add Amendment No. 1 to CoC No. 1040. Amendment No. 1 provides a seismically enhanced version of the HI–STORM UMAX Canister Storage System, identified as the “Most Severe Earthquake (MSE)” version that could be used in areas with higher seismic demands than those analyzed previously. Amendment No. 1 also includes minor physical design changes to help ensure structural integrity of the amended system. These are the addition of a hold-down system to the closure lid; replacing the fill material in the interstitial spaces between the CECs surrounding the casks with 3000 psi concrete; strengthening the MPC guides, and engineering the guides' nominal gap with the MPC to be tighter than the original HI–STORM UMAX Canister Storage System design.

##### II. Public Comments on the Companion Proposed Rule

In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on September 8, 2015. The NRC received 10 comment submittals on the companion proposed rule (80 FR 35872). Electronic copies of these comments can be obtained from the Federal Rulemaking Web site, <http://www.regulations.gov>, by searching for Docket ID NRC–2015–0067. The comments are also available in ADAMS under Accession Nos. ML15210A145, ML15210A150, ML15210A151, ML15210A155, ML15210A169, ML15210A164, ML15210A166, ML15210A177, ML15210A181, and ML15210A184. For the reasons discussed in more detail in Section III, “Public Comment Analysis,” of this document, none of the comments received are considered significant adverse comments as defined in NUREG/BR–0053, Revision 6, “United States Nuclear Regulatory Commission Regulations Handbook” (ADAMS Accession No. ML052720461).

##### III. Public Comment Analysis

The NRC received 10 comment submittals on the proposed rule, many raising multiple and overlapping issues. As explained in the June 23, 2015, direct final rule (80 FR 35829), the NRC would withdraw the direct final rule only if it received a “significant adverse comment.” This 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 staff 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 staff.

(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 staff to make a change (other than editorial) to the rule, CoC, or Technical Specifications (TSs).

The NRC determined that none of the comments submitted on this direct final rule met any of these criteria. The comments either were already addressed by the NRC staff's safety evaluation report (SER) (ADAMS Accession No. ML15070A149), or were beyond the scope of this rulemaking. The NRC has not made any changes to the direct final rule as a result of the public comments. However, the NRC is taking this opportunity to respond to some of the comments in an effort to clarify information about the 10 CFR part 72 CoC rulemaking process.

For rulemakings amending or revising a CoC, the scope of the rulemaking is limited to the specific changes requested by the applicant in the request for the amendment or amendment revision. Therefore, comments about the system or spent fuel storage in general that are not applicable to the changes requested by the applicant are outside the scope of this rulemaking. Comments about details of the particular system that is the subject of the rulemaking, but that are not being addressed by the specific changes requested, have already been resolved in prior rulemakings. Persons who have questions or concerns about prior rulemakings and the resulting final rules may consider the NRC's process for petitions for rulemaking under 10 CFR 2.802. Additionally, safety concerns about any NRC-regulated activity may be reported to the NRC in accordance with the guidance posted on

the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/allegations/safety-concern.html>. This Web page provides information on how to notify the NRC of emergency or non-emergency issues.

The NRC identified the following issues raised in the comments, and the NRC's responses to these issues follow.

### (1) Potential Supersonic Shear Earthquakes and Site Specific Seismic Standards

Several commenters raised concerns regarding the ability of this CoC system to withstand seismic events, particularly if the system were to be used at specific sites with known seismic activity, such as San Onofre Nuclear Generating Station (SONGS). These commenters stated that Holtec casks have not been tested for newly discovered potential Supersonic Shear Earthquakes, which might result in a rupture after Supersonic Shear Earthquake Events. According to the comments, cask venting can be blocked after a tsunami leading to cask failure.

#### *NRC Response*

These comments are outside the scope of this rulemaking because they are not specific to the amendment at issue in the rule, but instead raise concerns with the general 10 CFR part 72 requirements and process for certification of the CoC systems. This rule adds Amendment No. 1 to the HI-STORM UMAX Canister Storage System, CoC No. 1040. Applicants submitting CoC's for approval are required to document a design bases for their CoC or amendment CoC, which includes seismic parameters. Under 10 CFR 72.212(b)(6), general licensees (power reactors seeking to use those CoC systems at their specific sites) are required to conduct a review of the CoC's Final Safety Analysis Report (FSAR) and the related NRC SER prior to use of the general license to ensure that the reactor site parameters, including analyses of earthquake intensity, are enveloped by the cask design bases considered in these reports. This rulemaking makes no determination regarding the acceptability of this amended system for use at any specific site. Nor does this rule seek to change the existing generic nature of CoC approvals or the technical qualifications outlined for CoC approval, as currently envisioned in 10 CFR part 72. Commenters with concerns regarding the existing 10 CFR part 72 regulations for technical review and approval of CoC systems could consider filing a petition for rulemaking under 10 CFR 2.802.

### (2) Wind Effect on Underground Cask Maximum Heat Load

Commenters stated that according to NUREG-2174 "Impact of Variation in Environmental Conditions on the Thermal Performance of Dry Storage Casks" (ADAMS Accession No. ML15054A207), low-speed wind conditions increased the peak cladding temperature on underground systems, and asked whether this was considered in the development of the heat load limits of the HI-STORM UMAX Canister Storage System.

#### *NRC Response*

The comment is outside the scope of this rulemaking because it is not specific to the amendment at issue in the rule. The NRC evaluated and approved the HI-STORM UMAX Canister Storage System heat loads in the initial CoC certification, and this is provided in its SER (ADAMS Accession No. ML15093A510). The Amendment No. 1 application requested no thermal changes that required NRC evaluation.

### (3) MPC Seismic Evaluation

A commenter stated that the thin stainless steel MPC canisters are subject to pitting and corrosion (particularly from marine environments like chloride-induced stress corrosion cracking). According to the comment, since cracks may initiate during the initial licensing period in these canisters, cracking canisters should be included in the seismic analysis for MPC's stored while in the HI-STORM UMAX Canister Storage System since it would be of more concern in high risk seismic areas as proposed for this UMAX Amendment.

#### *NRC Response*

The comment is outside the scope of this rulemaking because it is not specific to the amendment at issue in the rule. The NRC has evaluated the design of the HI-STORM UMAX Canister Storage System and has determined that the design is robust, and contains a number of layers of acceptable confinement systems in compliance with 10 CFR part 72 requirements. Furthermore, the NRC has evaluated the susceptibility to and effects of stress corrosion cracking and other corrosion mechanisms on safety significant systems for spent nuclear fuel (SNF) dry cask storage (DCS) systems during an initial certification period. The NRC staff has determined that the HI-STORM UMAX Canister Storage System, when used within the requirements of the proposed CoC, will safely store SNF and prevent radiation releases and exposure consistent with

regulatory requirements, including seismic requirements. This evaluation is documented in the NRC staff's SERs (ADAMS Accession Nos. ML15070A149 and ML14202A031).

#### (4) Transfer Cask

Commenters ask if the transfer casks were approved for storage of an MPC in case of a failed MPC.

##### *NRC Response*

To the extent that this comment raises a concern with the availability of a transfer cask, it raises an issue that was addressed in the NRC's evaluation of this amendment and fails to cite any specific information that would alter the NRC's conclusions. In this case, the transfer cask utilized in the HI-STORM UMAX Canister Storage System is described in the HI-STORM Flood/Wind (F/W) Multipurpose Canister (MPC) Storage System FSAR (ADAMS Accession No. ML15177A336). The HI-STORM UMAX transfer cask is authorized to transfer intact MPC's in accordance with the CoC No. 1040 TSs.

#### (5) Failed Canister Remediation

A commenter asked if there is a plan to remediate a failed canister.

##### *NRC Response*

The comment is outside the scope of this rulemaking because it is not specific to the amendment at issue in the rule, but instead raises a concern with the general 10 CFR part 72 requirement and process for certification of the CoC systems. Implementing corrective actions in the event of a failed MPC is the responsibility of the general licensee and those corrective actions are not incorporated into CoC No. 1040.

#### (6) MPC Thickness

Commenters questioned the maximum MPC thickness allowed in this amendment, noting that although the FSAR indicated 0.5" as the maximum thickness, Holtec has proposed using a thickness of 0.625 at San Onofre (SONGS). The commenters raised concerns regarding the implications of such a change outside of a license amendment where it could be properly evaluated to determine if the change in limiting parameters will affect seismic, thermal, weight, dimensions and other critical analyses.

##### *NRC Response*

The comment is outside the scope of this rulemaking because it is not specific to the amendment at issue in the rule, but instead raises concerns with the general 10 CFR part 72

requirements and process for certification of the CoC systems. The nominal MPC thickness for the canisters certified under CoC No. 1040, Amendment No. 1 is 0.5". The NRC has no knowledge of a Holtec proposal to increase the thickness of an MPC to 0.625". If presented with an amendment request to do so, the NRC will evaluate it in accordance with 10 CFR part 72 requirements.

#### (7) Definition of "Long-term"

Commenters requested the NRC require a definition of "long-term" in the FSAR.

##### *NRC Response*

The comment is outside the scope of this rulemaking because it is not specific to the amendment at issue in the rule, but instead raises general concerns regarding terminology. The definitions required by the NRC to support the evaluation and approval of CoC No. 1040, Amendment No. 1, are provided in Appendix A of the CoC. Technical Specifications for the HI-STORM UMAX Canister Storage System. "Long-term" is a general descriptive term that is not required to support any regulatory or technical evaluation, and thus is not required to be more formally defined.

#### (8) Definition of Underground

Commenters requested the NRC define the term "underground" as used in this system. The comments raised concerns that a structure that is only partially underground, but covered on the side with an "earthen berm," could still be considered "underground" for compliance with this CoC.

##### *NRC Response*

The comments regarding the need to define the term "underground" as used in the HI-STORM UMAX Canister Storage System are outside the scope of this rulemaking because they are not specific to the amendment at issue in the rule, but instead raise concerns with the general 10 CFR part 72 requirements and process for certification of CoC systems. In this instance, Holtec has provided and analyzed specific structure placement parameters, and the NRC has evaluated these parameters that bound the placement of such a system in the ground. Pursuant to the regulatory requirements in 10 CFR 72.212(b), any general licensee that seeks to use this system must determine that the design and construction of the system, structures, and components are bounded by the conditions of the CoC by analyzing the generic parameters provided and analyzed in the FSAR and

SER to ensure that its site specific parameters are enveloped by the cask design bases established in these reports. The NRC is aware of the SONGS proposed configuration submitted to the California Coastal Commission and is closely monitoring this issue. The NRC will continue to ensure that the facility constructed at SONGS meets the requirements of the CoC and TS of the specific DCS system selected by Southern California Edison.

#### (9) Heat Load Charts

One commenter stated that the FSAR indicates that changes to storage cell kW heat loads were made and requested that the NRC determine if this was evaluated in the amendment request. The comment also requested clarification on the placement configuration of SNF assemblies in the MPC, as well as the rationale for the heat load configuration.

##### *NRC Response*

This comment is outside the scope of this rulemaking because it is not specific to the amendment at issue in the rule, but instead raises concerns with the general 10 CFR part 72 requirements and process for certification of CoC systems. The comment is addressing revision bars that are incorporated into the HI-STORM UMAX Canister Storage System FSAR, Revision 2 (ADAMS Accession No. ML14202A031). The tables referenced in the comment were revised due to changes made during the original HI-STORM UMAX Canister Storage System evaluation; 10 CFR 72.248(a)(1) requires that an updated FSAR reflecting any changes made during the NRC review process be submitted within 90 days after an approval of the cask design. The loading patterns were evaluated and approved by the NRC staff in its initial SER (ADAMS Accession No. ML15093A510). The Amendment No. 1 application required no further changes to these tables requiring NRC evaluation.

#### (10) MPC Inspection

A commenter requested that the NRC clarify that the MPC leak test inspection, that is used to verify the integrity of the confinement boundary, is performed before the MPC is loaded with fuel.

##### *NRC Response*

This comment is outside the scope of this rulemaking because it is not specific to the amendment at issue in the rule, but instead raises concerns with the general 10 CFR part 72 requirements and process for certification of CoC systems. The HI-

STORM F/W MPC Canister System FSAR clearly identifies the purpose of the MPC leak detection requirement as a post fabrication certification test that is only required to be performed one time.

**(11) Assumption of No Fuel Cladding Degradation After Dry Storage Is Not Substantiated**

Some commenters raised an issue with Holtec's claim that there is no credible mechanism for gross fuel cladding degradation of fuel classified as undamaged during storage in the HI-STORM UMAX Canister Storage System.

*NRC Response*

These comments are outside the scope of this rulemaking because they are not specific to the amendment at issue in the rule. Instead, these comments raise issues that would be addressed during any renewal application review. The NRC has determined that fuel cladding degradation is not an issue during the initial 20-year certification period, but instead, is an issue that would have to be addressed if a CoC holder requested renewal of the CoC for a period beyond the initial 20 years. If a renewal application is filed, NRC regulations require that the application include programs to manage the effects of aging, including necessary monitoring and inspection programs. Those programs would have to be reviewed and determined acceptable by the NRC before any CoC renewal is approved.

**(12) Vertical Ventilated Module Needs Substantiation for Expected Lifespan**

Commenters questioned Holtec's claims of a design life of 60 years, a service life of 100 years and a licensed life of 40 years. Since no substantiation was provided for these claims, the commenters requested the claims be removed from the FSAR.

*NRC Response*

This issue is outside of the scope of this rulemaking because the term of a certificate is determined in the original certification, not in amendments to that certification. This rulemaking seeks to add Amendment No. 1 to CoC No. 1040. In this case, the UMAX CoC was approved on March 6, 2015 (80 FR 12073), for an initial 20-year term. This 20-year term will also apply to Amendment No. 1. Use of this system beyond the expiration date of 20 years would require an evaluation of a renewal application for this CoC which would be addressed in a subsequent rulemaking process.

**(13) Concrete Inspection and Inspection Limitations**

Some commenters questioned whether the HI-STORM UMAX Canister Storage System design provided a safe and accessible method to perform inspections within the license period given that high seismic risk areas are more likely to cause cracking or other structural changes, and indicated that such an evaluation should be part of the NRC's review process.

*NRC Response*

This comment is outside the scope of this rulemaking because it is not specific to the amendment at issue in the rule, but instead raises concerns with the general 10 CFR part 72 requirements and process for certification of CoC systems. The NRC has determined that concrete degradation is not an issue requiring inspection during the initial 20-year certification period, but instead, is an issue that would have to be addressed if a CoC holder requested renewal of the CoC for a period beyond the initial 20 years. If a renewal application is filed, NRC regulations require that the application include programs to manage the effects of aging, including necessary monitoring and inspection programs. Those programs would have to be reviewed and determined acceptable by the NRC before any CoC renewal is approved.

**(14) High Burnup Fuel**

Commenters also raised questions regarding the long-term acceptability of the extended storage of high burnup fuel (HBF).

*NRC Response*

To the extent these comments raise issues about the storage of HBF in the CoC for the first 20 years, these comments are outside the scope of this rulemaking. The NRC has evaluated the acceptability of storage of HBF for the initial 20-year certification term for the HI-STORM UMAX Canister Storage System during its review of the initial certificate. As documented in the NRC staff's SER under Docket ID NRC-2014-0120, the NRC staff has determined that the use of the HI-STORM UMAX Canister Storage System, including storage of HBF, will be conducted in compliance with the applicable regulations of 10 CFR part 72, and the CoC should be approved for the initial 20-year term. This amendment does not impact the analysis conducted by the NRC staff during the initial certification of this system.

Additionally, to the extent these comments raise concerns regarding the

storage of HBF beyond the initial term of 20 years, the comments are also outside the scope of this rulemaking. A request to store HBF beyond the initial 20 years provided in the certification of this system will require the applicant to submit a license renewal application with the inclusion of Aging Management Programs addressing HBF. In that regard, a demonstration project is being planned by the U.S. Department of Energy to provide confirmatory data on the performance of HBF in DCS. The NRC plans to evaluate the data obtained from the project to confirm the accuracy of current models that are relied upon for authorizing the storage of HBF for extended storage periods beyond the initial 20-year certification term.

The NRC staff has concluded that the comments received on the companion proposed rule for the Holtec HI-STORM UMAX Canister Storage System, CoC No. 1040, Amendment No. 1, are not significant adverse comments as defined in NUREG/BR-0053, Revision 6, "United States Nuclear Regulatory Commission Regulations Handbook." Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 1st day of September, 2015.

For the Nuclear Regulatory Commission.

**Cindy Bladley,**

*Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.*

[FR Doc. 2015-22053 Filed 9-4-15; 8:45 am]

**BILLING CODE 7590-01-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 97**

[Docket No. 31033; Amdt. No. 3657]

**Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the

**TAB 26**

industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on August 17, 2016 (81 FR 54748). Copies of the proposed rule were also mailed or sent via facsimile to all Texas orange and grapefruit handlers. Finally, the proposal was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending September 16, 2016, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2016–17 fiscal period began on August 1, 2016, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Texas oranges and grapefruit handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting. Also, a 30-day comment period was provided for in the proposed rule.

#### List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

#### PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

■ 1. The authority citation for 7 CFR part 906 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 906.235 is revised to read as follows:

##### § 906.235 Assessment rate.

On and after August 1, 2016, an assessment rate of \$0.09 per 7/10-bushel carton or equivalent is established for oranges and grapefruit grown in the Lower Rio Grande Valley in Texas.

Dated: October 19, 2016.

**Elanor Starmer,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2016–25681 Filed 10–24–16; 8:45 am]

**BILLING CODE 3410–02–P**

#### NUCLEAR REGULATORY COMMISSION

##### 10 CFR Part 72

[NRC–2016–0155]

RIN 3150–AJ80

#### List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM UMAX Canister Storage System; Certificate of Compliance No. 1040, Amendment No. 2

**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 Holtec International HI–STORM Underground Maximum Capacity (UMAX) Canister Storage System listing within the “List of approved spent fuel storage casks” to include Amendment No. 2 to Certificate of Compliance (CoC) No. 1040. Amendment No. 2 adds new fuel types to the HI–STORM UMAX Canister Storage System and updates an existing fuel type description. Additionally, Amendment No. 2 updates Table 3–4 of Appendix B of the CoC to reflect correct terminology and makes editorial changes to Appendix B of the CoC to clarify the description of the top surface pad. Each of these changes is described in Section IV, “Discussion of Changes,” in the **SUPPLEMENTARY INFORMATION** section of this document.

**DATES:** The direct final rule is effective January 9, 2017, unless significant adverse comments are received by November 25, 2016. If the 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 Commission 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:** You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2016–0155. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: [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.

- *Email comments to:* [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.

- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

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:** Gregory R. Trussell, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6445, or email: [Gregory.Trussell@nrc.gov](mailto:Gregory.Trussell@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Obtaining Information and Submitting Comments
- II. Procedural Background
- 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 Environmental 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–2016–0155 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 Web site*: Go to <http://www.regulations.gov> and search for Docket ID NRC–2016–0155.

- *NRC's Agencywide Documents Access and Management System (ADAMS)*: You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then 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 [pdr.resource@nrc.gov](mailto:pdr.resource@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 at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

### B. Submitting Comments

Please include Docket ID NRC–2016–0155 in your comment submission.

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 <http://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. Procedural Background

This rule is limited to the changes contained in Amendment No. 2 to CoC No. 1040 and does not include other aspects of the Holtec International HI–STORM UMAX Canister Storage System design. The NRC is using the “direct final rule procedure” to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on January 9, 2017. However, if the NRC receives significant adverse comments on this direct final rule by November 25, 2016, 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 Rule 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 staff 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 staff.

(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 staff to make a change (other than editorial) to the rule, CoC, or Technical Specifications (TSs).

For detailed instructions on filing comments, please see the companion proposed rule published in the

Proposed Rule section of this issue of the **Federal Register**.

## III. Background

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that “the 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 NWPA states, in part, that “[the 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 which 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 (80 FR 12073; March 6, 2015), as corrected (80 FR 15679; March 25, 2015), that approved the Holtec International HI–STORM UMAX Canister Storage System design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1040.

## IV. Discussion of Changes

By letter dated March 31, 2015, as supplemented June 19 and November 30, 2015, Holtec International submitted a request to the NRC to amend CoC No. 1040. Amendment No. 2 adds new fuel types to the HI–STORM UMAX Canister Storage System and updates an existing fuel type description. Additionally, Amendment No. 2 updates Table 3–4 of Appendix B of the CoC to reflect correct terminology and makes editorial changes to Appendix B of the CoC to clarify the description of the top surface pad.

Specifically, Amendment No. 2 adds new 16X16 fuel types to approved

contents, in CoC No. 1040, named 16X16B and 16X16C and updates 15X15I fuel types to include those with guide tubes. Amendment No. 2 revises Table 2.1–1 to allow up to 37 undamaged 16X16A fuel assemblies in damaged fuel containers (DFCs) for the multipurpose canister—37 permitted for storage in the HI–STORM UMAX Canister Storage System. An updated heat load pattern is also included for loading up to 37 intact 16X16A fuel assemblies in DFCs. Also, Appendix B, Table 3–4 was revised to clarify the “Top Surface Pad” term.

As documented in the Preliminary Safety Evaluation Report (PSER), the NRC staff performed a detailed safety evaluation of the proposed CoC amendment request. There are no significant changes to cask fabrication or design requirements in the proposed CoC amendment. There will be no significant change in the types or significant revisions in the 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 addition, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 2 would remain within the 10 CFR part 20 limits. Thus, as discussed in the PSER, staff has determined that there is reasonable assurance that: (i) The activities authorized by the amended certificate can be conducted without endangering the health and safety of the public, and (ii) these activities will be conducted in compliance with the applicable regulations of 10 CFR part 72.

This direct final rule revises the Holtec International HI–STORM UMAX Canister Storage System listing in 10 CFR 72.214 by adding Amendment No. 2 to CoC No. 1040. The amendment consists of the changes previously described, as set forth in the revised CoC and TSs. The revised TSs are identified in the PSER.

The amended Holtec International HI–STORM UMAX Canister Storage System design, when used under the conditions specified in the CoC, the TSs, and the NRC’s regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be ensured. When this direct final rule becomes effective, persons who hold a general license under 10 CFR 72.210 may load spent nuclear fuel into Holtec International HI–STORM UMAX Canister Storage System casks that meet the criteria of Amendment No. 2 to CoC No. 1040 under 10 CFR 72.212.

## 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 will revise the Holtec International HI–STORM UMAX Canister Storage System design listed in 10 CFR 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 “Policy Statement on Adequacy and Compatibility of Agreement State Programs” approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category “NRC.” Compatibility is not required for Category “NRC” regulations. 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. Although an Agreement State may not adopt program elements reserved to the NRC, and a 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 31883).

## VIII. Environmental Assessment and Finding of No Significant Environmental Impact

### A. The Action

The action is to amend 10 CFR 72.214 to revise the Holtec International HI–STORM UMAX Canister Storage System listing within the “List of approved spent fuel storage casks” to include Amendment No. 2 to CoC No. 1040. Under 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,” the NRC has determined that this 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.

### B. The Need for the Action

This direct final rule amends the CoC for the Holtec International HI–STORM UMAX Canister Storage System design within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. Amendment No. 2 adds new fuel types to the HI–STORM UMAX Canister Storage System and updates an existing fuel type description. Additionally, Amendment No. 2 updates Table 3–4 of Appendix B of the CoC to reflect correct terminology and makes editorial changes to Appendix B of the CoC to clarify the description of the top surface pad.

Specifically, Amendment No. 2 adds new 16X16 fuel types to approved contents, in CoC No. 1040, named 16X16B and 16X16C and updates 15X15I fuel types to include those with guide tubes. Amendment No. 2 revises Table 2.1–1 to allow up to 37 undamaged 16X16A fuel assemblies in DFCs for the multipurpose canister—37 permitted for storage in the HI–STORM UMAX Canister Storage System. An updated heat load pattern is also included for loading up to 37 intact 16X16A fuel assemblies in DFCs. Also, Appendix B, Table 3–4 was revised to clarify the “Top Surface Pad” term.

### 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 initially analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for this Amendment No. 2 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.

The Holtec International HI–STORM UMAX Canister Storage 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, 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.

Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of confinement, shielding, and criticality control. If there is no loss of confinement, shielding, or criticality control, the environmental impacts would be insignificant. This amendment does not reflect a significant change in design or fabrication of the cask. There are no significant changes to cask design requirements in the proposed CoC amendment. In addition, because there are no significant design or process changes, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 2 would remain well within the 10 CFR part 20 limits. Therefore, the proposed CoC changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or significant revisions in the 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. The staff documented its safety findings in a PSER.

#### *D. Alternative to the Action*

The alternative to this action is to deny approval of Amendment No. 2 and discontinue the direct final rule process. Consequently, any 10 CFR part 72 general licensee that seeks to load spent nuclear fuel into the Holtec International HI-STORM UMAX Canister Storage System in accordance with the changes described in proposed Amendment No. 2 would have to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, an interested licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative

burden upon the NRC and the costs to each licensee. Therefore, the environmental impacts would be the same or less than the proposed action.

#### *E. Alternative Use of Resources*

Approval of Amendment No. 2 to CoC No. 1040 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 10 CFR part 51. Based on the foregoing environmental assessment, the NRC concludes that this direct final rule entitled, "List of Approved Spent Fuel Storage Casks: Holtec International HI-STORM UMAX Canister Storage System, Amendment No. 2" 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 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 (OMB), approval number 3150-0132.

#### *Public Protection Notification*

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information collection unless the document requesting or requiring the collection displays a currently valid OMB control number.

#### **X. Regulatory Flexibility Certification**

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this 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 Holtec International. 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 (10 CFR 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 it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214. On March 6, 2015 (80 FR 12073), as corrected on March 25, 2015 (80 FR 15679), the NRC issued an amendment to 10 CFR part 72 that approved the Holtec International HI-STORM UMAX Canister Storage System design by adding it to the list of NRC-approved cask designs in 10 CFR 72.214. By letter dated March 31, 2015, as supplemented June 19 and November 30, 2015, Holtec submitted an application to amend the Holtec International HI-STORM UMAX Canister Storage System as described in Section IV, "Discussion of Changes," of this document.

The alternative to this action is to withhold approval of Amendment No. 2 and to require any 10 CFR part 72 general licensee seeking to load spent nuclear fuel into the Holtec International HI-STORM UMAX Canister Storage System under the changes described in Amendment No. 2 to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

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

#### **XII. Backfitting and Issue Finality**

The NRC has determined that the backfit rule (10 CFR 72.62) does not apply to this direct final rule. Therefore, a backfit analysis is not required. This direct final rule revises CoC No. 1040



for the Holtec International HI-STORM UMAX Canister Storage System, as currently listed in 10 CFR 72.214, "List of approved spent fuel storage casks." Amendment No. 2 adds new fuel types to the HI-STORM UMAX Canister Storage System and updates an existing fuel type description. Additionally Amendment No. 2 updates Table 3-4 of Appendix B of the CoC to reflect correct terminology and makes editorial changes to Appendix B of the CoC to clarify the description of the top surface pad.

Amendment No. 2 to CoC No. 1040 for the Holtec International HI-STORM UMAX Canister Storage System was initiated by Holtec and was not

submitted in response to new NRC requirements, or an NRC request for amendment. Amendment No. 2 applies only to new casks fabricated and used under Amendment No. 2. These changes do not affect existing users of the Holtec International HI-STORM UMAX Canister Storage System, and the current Amendment No. 1 continues to be effective for existing users. While current CoC users may comply with the new requirements in Amendment No. 2, this would be a voluntary decision on the part of current users. For these reasons, Amendment No. 2 to CoC No. 1040 does not constitute backfitting under 10 CFR 72.62, 10 CFR 50.109(a)(1), or otherwise represent an

inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. Accordingly, no backfit analysis or additional documentation addressing the issue finality criteria in 10 CFR part 52 has been prepared by the staff.

**XIII. Congressional Review Act**

The Office of Management and Budget has not found this to be a major 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.
Holtec License Amendment Request; Letter Dated March 31, 2015 .....	ML15092A783
Supplemental Letter Dated June 19, 2015 .....	ML15170A434
Supplemental Letter Dated November 30, 2015 .....	ML15334A496
Proposed CoC No. 1040, Amendment No. 2 .....	ML16035A416
Proposed CoC No. 1040, Amendment No. 2—Technical Specifications, Appendix A .....	ML16039A113
Proposed CoC No. 1040, Amendment No. 2—Technical Specifications, Appendix B .....	ML16039A115
CoC No. 1040, Amendment No. 2—Preliminary Safety Evaluation Report .....	ML16039A156

The NRC may post materials related to this document, including public comments, on the Federal rulemaking Web site at <http://www.regulations.gov> under Docket ID NRC-2016-0155. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC-2016-0155); (2) click the "Sign up for Email Alerts" link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

**List of Subjects in 10 CFR Part 72**

Administrative practice and procedure, Criminal penalties, Hazardous waste, Indians, Intergovernmental relations, Manpower training programs, Nuclear energy, Nuclear materials, Occupational safety and health, 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 1040 is revised to read as follows:

**§ 72.214 List of approved spent fuel storage casks.**

\* \* \* \* \*  
*Certificate Number:* 1040.  
*Initial Certificate Effective Date:* April 6, 2015.  
*Amendment Number 1 Effective Date:* September 8, 2015.  
*Amendment Number 2, Effective Date:* January 9, 2017.  
*SAR Submitted by:* Holtec International, Inc.

*SAR Title:* Final Safety Analysis Report for the Holtec International HI-STORM UMAX Canister Storage System.

*Docket Number:* 72-1040.  
*Certificate Expiration Date:* April 6, 2035.

*Model Number:* MPC-37, MPC-89.

Dated at Rockville, Maryland, this 4th day of October, 2016.

For the Nuclear Regulatory Commission.

**Michael R. Johnson,**  
*Acting Executive Director for Operations.*  
 [FR Doc. 2016-25408 Filed 10-24-16; 8:45 am]  
**BILLING CODE 7590-01-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

[Docket No. FAA-2016-5444; Airspace Docket No. 16-ANE-1]

**Amendment of Class D and Class E Airspace; Falmouth, MA**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule, correction.

**SUMMARY:** This action corrects a final rule published in the **Federal Register** of September 23, 2016, amending Class D and E airspace. Class E airspace designated as an extension at Cape Cod Coast Guard Air Station, (formerly Otis ANGB), Falmouth, MA is corrected by

# Rules and Regulations

Federal Register

Vol. 82, No. 19

Tuesday, January 31, 2017

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

[NRC-2016-0155]

RIN 3150-AJ80

#### List of Approved Spent Fuel Storage Casks: Holtec International HI-STORM UMAX Canister Storage System; Certificate of Compliance No. 1040, Amendment No. 2

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of January 9, 2017, for the direct final rule that was published in the *Federal Register* on October 25, 2016. The direct final rule amended the NRC's spent fuel storage regulations by revising the "List of approved spent fuel storage casks" to include Amendment No. 2 to Certificate of Compliance (CoC) No. 1040 for the Holtec International HI-STORM UMAX Canister Storage System.

**DATES: Effective Date:** The effective date of January 9, 2017, for the direct final rule published October 25, 2016 (81 FR 73335), is confirmed.

**ADDRESSES:** Please refer to Docket ID NRC-2016-0155 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 Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2016-0155. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [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 <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then 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 [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Gregory Trussell, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-6445; email: [Gregory.Trussell@nrc.gov](mailto:Gregory.Trussell@nrc.gov).

**SUPPLEMENTARY INFORMATION:** On October 25, 2016 (81 FR 73335), the NRC published a direct final rule amending its regulations in § 72.214 of title 10 of the *Code of Federal Regulations* by revising the "List of approved spent fuel storage casks" to include Amendment No. 2 to CoC No. 1040 for the Holtec International HI-STORM UMAX Canister Storage System. Amendment No. 2 adds new fuel types to the HI-STORM UMAX Canister Storage System and updates an existing fuel type description. Additionally, Amendment No. 2 updates Table 3-4 of Appendix B of the CoC to reflect correct terminology and makes editorial changes to Appendix B of the CoC to clarify the description of the top surface pad.

In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on January 9, 2017. As described more fully in the direct final rule, 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.

The NRC received one comment on the direct final rule (ADAMS Accession No. ML16305A134). The NRC determined that this comment is not within the scope of the direct final rule, which is limited to the specific changes contained in Amendment No. 2 to CoC No. 1040. The NRC also determined that this was not a significant adverse comment and did not make any changes to the direct final rule as a result of the public comment.

Therefore, because no significant adverse comments were received, the direct final rule will become effective as scheduled. The final CoC, Technical Specifications, and Safety Evaluation Report can be viewed in ADAMS under Accession No. ML16341B061.

Dated at Rockville, Maryland, this 12th day of January 2017.

For the Nuclear Regulatory Commission.

**Cindy Bladey,**

*Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.*

[FR Doc. 2017-01178 Filed 1-30-17; 8:45 am]

**BILLING CODE 7590-01-P**

## DEPARTMENT OF ENERGY

### 10 CFR Parts 429 and 431

[Docket No. EERE-2016-BT-TP-0030]

RIN 1904-AD72

#### Energy Conservation Program: Test Procedure for Walk-in Coolers and Walk-in Freezers

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** This document delays the effective date of a recently published final rule amending the test procedure for certain walk-in cooler and freezer components.

**DATES:** Effective January 26, 2017 the effective date of the rule amending 10 CFR parts 429 and 431 published in the *Federal Register* at 81 FR 95758 on December 28, 2016, is delayed until March 21, 2017.

**FOR FURTHER INFORMATION CONTACT:**

**TAB 27**

## USCS Fed Rules Civ Proc R 12, Part 1 of 5

Current through changes received March 16, 2020.

**USCS Federal Rules Annotated > Federal Rules of Civil Procedure > Title III. Pleadings and Motions**

### **Rule 12. Defenses and Objections: when and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing**

---

#### **(a) Time to Serve a Responsive Pleading.**

**(1)***In General.* Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows:

**(A)** A defendant must serve an answer:

**(i)** within 21 days after being served with the summons and complaint; or

**(ii)** if it has timely waived service under Rule 4(d), within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States.

**(B)** A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

**(C)** A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

**(2)***United States and Its Agencies, Officers, or Employees Sued in an Official Capacity.* The United States, a United States agency, or a United States officer or employee sued only in an official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the United States attorney.

**(3)***United States Officers or Employees Sued in an Individual Capacity.* A United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the officer or employee or service on the United States attorney, whichever is later.

**(4)***Effect of a Motion.* Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

**(A)** if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or

**(B)** if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

**(b) How to Present Defenses.** Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

**(1)** lack of subject-matter jurisdiction;

**(2)** lack of personal jurisdiction;

## USCS Fed Rules Civ Proc R 12, Part 1 of 5

- (3) improper venue;
- (4) insufficient process;
- (5) insufficient service of process;
- (6) failure to state a claim upon which relief can be granted; and
- (7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

**(c) Motion for Judgment on the Pleadings.** After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.

**(d) Result of Presenting Matters Outside the Pleadings.** If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

**(e) Motion for a More Definite Statement.** A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

**(f) Motion to Strike.** The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

- (1) on its own; or
- (2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

**(g) Joining Motions.**

(1) *Right to Join.* A motion under this rule may be joined with any other motion allowed by this rule.

(2) *Limitation on Further Motions.* Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

**(h) Waiving and Preserving Certain Defenses.**

(1) *When Some Are Waived.* A party waives any defense listed in Rule 12(b)(2)–(5) by:

- (A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or
- (B) failing to either:
  - (i) make it by motion under this rule; or
  - (ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) *When to Raise Others.* Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

- (A) in any pleading allowed or ordered under Rule 7(a);
- (B) by a motion under Rule 12(c); or

USCS Fed Rules Civ Proc R 12, Part 1 of 5

**(C)**at trial.

**(3) Lack of Subject-Matter Jurisdiction.** If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

**(i) Hearing Before Trial.** If a party so moves, any defense listed in Rule 12(b)(1)–(7)—whether made in a pleading or by motion—and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

## History

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Amended March 19, 1948; July 1, 1963; July 1, 1966; Aug. 1, 1987; Dec. 1, 1993; Dec. 1, 2000; Dec. 1, 2007; Dec. 1, 2009.

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## USCS Fed Rules Civ Proc R 12, Part 2 of 5

Current through changes received March 16, 2020.

**USCS Federal Rules Annotated > Federal Rules of Civil Procedure > Title III. Pleadings and Motions**

### **Rule 12. Defenses and Objections: when and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing**

---

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**(3)***United States Officers or Employees Sued in an Individual Capacity.* A United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the officer or employee or service on the United States attorney, whichever is later.

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**(B)**if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

**(b) How to Present Defenses.** Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

**(1)**lack of subject-matter jurisdiction;

**(2)**lack of personal jurisdiction;

## USCS Fed Rules Civ Proc R 12, Part 2 of 5

- (3) improper venue;
- (4) insufficient process;
- (5) insufficient service of process;
- (6) failure to state a claim upon which relief can be granted; and
- (7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

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(B) failing to either:

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(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) *When to Raise Others.* Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or



USCS Fed Rules Civ Proc R 12, Part 2 of 5

**(C)**at trial.

**(3) Lack of Subject-Matter Jurisdiction.** If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

**(i) Hearing Before Trial.** If a party so moves, any defense listed in Rule 12(b)(1)–(7)—whether made in a pleading or by motion—and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

## History

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Amended March 19, 1948; July 1, 1963; July 1, 1966; Aug. 1, 1987; Dec. 1, 1993; Dec. 1, 2000; Dec. 1, 2007; Dec. 1, 2009.

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## USCS Fed Rules Civ Proc R 12, Part 3 of 5

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**USCS Federal Rules Annotated > Federal Rules of Civil Procedure > Title III. Pleadings and Motions**

### **Rule 12. Defenses and Objections: when and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing**

---

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**(3)***United States Officers or Employees Sued in an Individual Capacity.* A United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the officer or employee or service on the United States attorney, whichever is later.

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**(B)** if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

**(b) How to Present Defenses.** Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

**(1)** lack of subject-matter jurisdiction;

**(2)** lack of personal jurisdiction;

## USCS Fed Rules Civ Proc R 12, Part 3 of 5

- (3) improper venue;
- (4) insufficient process;
- (5) insufficient service of process;
- (6) failure to state a claim upon which relief can be granted; and
- (7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

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(B) by a motion under Rule 12(c); or

USCS Fed Rules Civ Proc R 12, Part 3 of 5

**(C)**at trial.

**(3) Lack of Subject-Matter Jurisdiction.** If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

**(i) Hearing Before Trial.** If a party so moves, any defense listed in Rule 12(b)(1)–(7)—whether made in a pleading or by motion—and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

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Amended March 19, 1948; July 1, 1963; July 1, 1966; Aug. 1, 1987; Dec. 1, 1993; Dec. 1, 2000; Dec. 1, 2007; Dec. 1, 2009.

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## USCS Fed Rules Civ Proc R 12, Part 4 of 5

Current through changes received March 16, 2020.

**USCS Federal Rules Annotated > Federal Rules of Civil Procedure > Title III. Pleadings and Motions**

### **Rule 12. Defenses and Objections: when and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing**

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**(B)** if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

**(b) How to Present Defenses.** Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

**(1)** lack of subject-matter jurisdiction;

**(2)** lack of personal jurisdiction;

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- (3) improper venue;
- (4) insufficient process;
- (5) insufficient service of process;
- (6) failure to state a claim upon which relief can be granted; and
- (7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

**(c) Motion for Judgment on the Pleadings.** After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.

**(d) Result of Presenting Matters Outside the Pleadings.** If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

**(e) Motion for a More Definite Statement.** A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

**(f) Motion to Strike.** The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

- (1) on its own; or
- (2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

**(g) Joining Motions.**

(1) *Right to Join.* A motion under this rule may be joined with any other motion allowed by this rule.

(2) *Limitation on Further Motions.* Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

**(h) Waiving and Preserving Certain Defenses.**

(1) *When Some Are Waived.* A party waives any defense listed in Rule 12(b)(2)–(5) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) *When to Raise Others.* Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or

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**(C)**at trial.

**(3) Lack of Subject-Matter Jurisdiction.** If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

**(i) Hearing Before Trial.** If a party so moves, any defense listed in Rule 12(b)(1)–(7)—whether made in a pleading or by motion—and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

## History

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Amended March 19, 1948; July 1, 1963; July 1, 1966; Aug. 1, 1987; Dec. 1, 1993; Dec. 1, 2000; Dec. 1, 2007; Dec. 1, 2009.

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Current through changes received March 16, 2020.

**USCS Federal Rules Annotated > Federal Rules of Civil Procedure > Title III. Pleadings and Motions**

### **Rule 12. Defenses and Objections: when and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing**

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#### **(a) Time to Serve a Responsive Pleading.**

**(1)***In General.* Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows:

**(A)** A defendant must serve an answer:

**(i)** within 21 days after being served with the summons and complaint; or

**(ii)** if it has timely waived service under Rule 4(d), within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States.

**(B)** A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

**(C)** A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

**(2)***United States and Its Agencies, Officers, or Employees Sued in an Official Capacity.* The United States, a United States agency, or a United States officer or employee sued only in an official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the United States attorney.

**(3)***United States Officers or Employees Sued in an Individual Capacity.* A United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the officer or employee or service on the United States attorney, whichever is later.

**(4)***Effect of a Motion.* Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

**(A)** if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or

**(B)** if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

**(b) How to Present Defenses.** Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

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## CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: March 31, 2020

Respectfully submitted,  
ALSTON & BIRD LLP

*/s/ Edward J. Casey*

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