

# Rules and Regulations

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

RIN 3150-AG58

#### List of Approved Spent Fuel Storage Casks: HI-STAR 100 Revision

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations by revising the Holtec International HI-STAR 100 cask system listing within the "List of approved spent fuel storage casks" to include Amendment No. 1 to the Certificate of Compliance (CoC). Amendment No. 1 revises the HI-STAR 100 cask system in seven areas and includes changes to the CoC and Technical Specifications. The seven areas involve: revision of the existing fuel specification tables; addition of pressurized water reactor Burnable Poison Rod Assemblies and Thimble Plug Devices; addition of two new classes of fuel to the fuel specification tables; addition of a new damaged fuel container; addition of thorium rods in canisters; addition of antimony-beryllium neutron sources [*i.e.*, reactor startup sources]; and clarifications, editorial corrections, and other minor changes to cask design information and drawings. The CoC was revised to require users to prepare written acceptance tests and a maintenance program consistent with the technical basis described in the Safety Analysis Report (SAR). In addition, the amendment includes two minor changes to the HI-STAR 100 listing in the regulations. This amendment will allow the holders of power reactor operating licenses to store spent fuel in the HI-STAR 100 cask system, as amended, under a general license.

**DATES:** The final rule is effective December 26, 2000, unless significant adverse comments are received by November 13, 2000. If adverse comments are received, a timely notice of withdrawal will be published in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Attention: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (<http://ruleforum.llnl.gov>). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415-5905 (e-mail: [cag@nrc.gov](mailto:cag@nrc.gov)).

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Beginning September 26, 2000 the NRC Public Document Room will be located at 11555 Rockville Pike, Rockville, MD. These documents also may be viewed and downloaded electronically via the rulemaking website.

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/NRC/ADAMS/index.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found in ADAMS under Accession No. ML003726991. For more information, contact the NRC Public Document Room reference staff at 1-800-397-4209, 202-634-3273 or by email to [pdr@nrc.gov](mailto:pdr@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Gordon Gundersen, telephone (301) 415-6195, e-mail [GEG1@nrc.gov](mailto:GEG1@nrc.gov) of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory

Commission, Washington, DC 20555-0001.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies 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 "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license, publishing a final rule in 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," containing procedures and criteria for obtaining NRC approval of dry storage cask designs.

The NRC subsequently issued a final rule on September 3, 1999 (64 FR 48274), that approved the HI-STAR 100 cask design, added it to the list of NRC-approved cask designs in § 72.214, and issued Certificate of Compliance Number (CoC No.) 1008.

##### Discussion

On November 24, 1999, Holtec International (the certificate holder), submitted an application to the NRC to amend CoC No. 1008 and supplemented the application on February 4, 18, and 28, March 2, 16, and 31, and May 23, 2000. Amendment No. 1 revises the HI-STAR 100 cask system in seven areas and includes changes to the CoC and Technical Specifications. The seven areas involve: (1) Revision of the existing fuel specification tables; (2)

addition of pressurized water reactor (PWR) Burnable Poison Rod Assemblies (BPRAs) and Thimble Plug Devices (TPDs); (3) addition of two new classes of fuel to the fuel specification tables; (4) addition of a new damaged fuel container that can contain fuel assemblies with known or suspected defects, such as ruptured fuel rods, severed rods, loose pellets; (5) addition of thoria rods in canisters; (6) addition of antimony-beryllium neutron sources [*i.e.*, reactor startup sources]; and (7) clarifications, editorial corrections, and other minor changes to cask design information and drawings. The staff revised the CoC to include Condition 3 that requires users to prepare written acceptance tests and maintenance program consistent with the technical basis described in Chapter 9 of the SAR. This was done for consistency with other CoC's, in particular, the HI-STORM 100.

In addition, the amendment includes two minor changes to the HI-STAR 100 listing in § 72.214 of the regulations. First, the "Certification Expiration Date" is changed to "Certificate Expiration Date." Second, "Final" is added to the title of the SAR. This amendment will allow the holders of power reactor operating licenses to store spent fuel in the HI-STAR 100 cask system, as amended, under a general license. These changes are described in the Revision History for Amendment 1 (CoC, Appendices A and B). The NRC staff performed a safety evaluation of the amendment request and found that the changes provide reasonable assurance that the spent fuel can be stored safely and in compliance with 10 CFR Part 72. The NRC staff documented its review and evaluation in a Safety Evaluation Report. This direct final rule will revise the Holtec International HI-STAR 100 cask system listing within the list of NRC-approved casks for spent fuel storage in § 72.214 by adding Amendment No. 1 to CoC No. 1008. The amended HI-STAR 100 cask system, when used under the conditions specified in the CoC and NRC regulations, will meet the requirements of 10 CFR Part 72; thus, adequate protection of public health and safety will continue to be ensured. Amendment No. 1 applies to any HI-STAR 100 cask loaded after December 26, 2000.

Amendment No. 1 to CoC No. 1008 and the underlying SER, and the Environmental Assessment and Finding of No Significant Impact are available for inspection and comment through September 21, 2000, at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

Beginning September 26, 2000, the NRC Public Document Room will be located at 11555 Rockville Pike, Rockville, MD. Single copies of the CoC and SER may be obtained from Gordon Gundersen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-6195, email [GEG1@nrc.gov](mailto:GEG1@nrc.gov). An electronic copy of the proposed CoC and preliminary SER can be found in the NRC's Electronic Reading Room <http://www.nrc.gov/NRC/ADAMS/index.html> under Accession No. ML003726991.

### Discussion of Amendments by Section

#### § 72.214 *List of Approved Spent Fuel Storage Casks*

Certificate No. 1008 will be revised indicating the addition of Amendment No. 1 and its effective date. Also, the "Certification Expiration Date" is changed to "Certificate Expiration Date," and "Final" is added to the title of the safety analysis report.

### Procedural Background

This rule is limited to the changes contained in Amendment No. 1 to CoC No. 1008 and does not include other aspects of the HI-STAR 100 cask system design. Because NRC considers this amendment to its rules to be noncontroversial and routine, the NRC is using the direct final rule procedure for this rule. This amendment will become effective on December 26, 2000. However, if the NRC receives significant adverse comments by November 13, 2000, then the NRC will publish a document that withdraws this action and will address the comments received in response to the amendments. These comments will be addressed in a subsequent final rule. Absent significant modification to the revisions requiring republication, the NRC will not initiate a second comment period on this action.

### 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 (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program

elements reserved to 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.

### Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing," directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES**, above.

### Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, 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 rule will add Amendment No. 1 to the HI-STAR 100 cask system to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals by the NRC.

Amendment No. 1 revises the HI-STAR 100 cask system in seven areas and includes changes to the CoC and Technical Specifications. The seven areas involve: (1) Revision of the existing fuel specification tables; (2) addition of pressurized water reactor (PWR) Burnable Poison Rod Assemblies (BPRAs) and Thimble Plug Devices (TPDs); (3) addition of two new classes of fuel to the fuel specification tables; (4) addition of a new damaged fuel container; (5) addition of thoria rods in canisters; (6) addition of antimony-beryllium neutron sources [*i.e.*, reactor startup sources]; and (7) clarifications, editorial corrections, and other minor changes to cask design information and drawings. The staff revised the CoC to include Condition 3 that requires users to prepare written acceptance tests and maintenance program consistent with the technical basis described in Chapter 9 of the SAR. This was done for consistency with other CoCs, in particular the HI-STORM 100.

In addition, the amendment includes two minor changes to HI-STAR 100 listing in § 72.214 of the regulations. First, "Certification Expiration Date" is changed to "Certificate Expiration

Date.” Second, “Final” is added to the title of the safety analysis report. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC through September 21, 2000. Beginning September 26, 2000, the NRC Public Document Room will be located at 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Gordon Gundersen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415-6195, email [GEG1@nrc.gov](mailto:GEG1@nrc.gov). An electronic copy of the proposed environmental assessment and finding of no significant impact can be found in the NRC's Electronic Reading Room at <http://www.nrc.gov/NRC/ADAMS/index.html>.

#### **Paperwork Reduction Act Statement**

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150-0132.

#### **Public Protection Notification**

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

#### **Voluntary Consensus Standards**

The National Technology Transfer 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-STAR 100 cask system listing within the list of NRC approved casks for spent fuel storage in 10 CFR 72.214. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

#### **Regulatory Analysis**

On July 18, 1990 (55 FR 29181), the Nuclear Regulatory Commission (NRC) issued an amendment to 10 CFR Part 72 to provide for the storage of spent nuclear fuel under a general license in cask system designs approved by the

NRC. Any nuclear power reactor licensee can use NRC-approved casks to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's Certificate of Compliance, and the conditions of the general license are met.

A list of NRC-approved cask system designs is contained in § 72.214. On September 3, 1999 (64 FR 48274), the NRC issued an amendment to Part 72 that approved the HI-STAR 100 cask design, added it to the list of NRC-approved cask designs in § 72.214, and issued CoC No. 1008. On November 24, 1999, the certificate holder submitted an application to the NRC to amend the Technical Specifications and CoC No. 1008. Amendment No. 1 revises the HI-STAR 100 cask system in seven areas and includes changes to the CoC and Technical Specifications. The seven areas involve: (1) Revision of the existing fuel specification tables; (2) addition of pressurized water reactor (PWR) Burnable Poison Rod Assemblies (BPRAs) and Thimble Plug Devices (TPDs); (3) addition of two new classes of fuel to the fuel specification tables; (4) addition of a new damaged fuel container; (5) addition of thorium rods in canisters; (6) addition of antimony-beryllium neutron sources [*i.e.*, reactor startup sources]; and (7) clarifications, editorial corrections, and other minor changes to cask design information and drawings. In addition, the amendment includes two minor changes to HI-STAR 100 listing in § 72.214 of the regulations. First, the “Certification Expiration Date” is changed to “Certificate Expiration Date.” Second, “Final” is added to the title of the safety analysis report. This amendment will allow holders of power reactor operating licenses to store spent fuel in the HI-STAR 100 cask system.

This rule will permit manufacture of casks under the revisions in Amendment 1. The alternative to this action is to withhold approval of this amended cask system design and give a site-specific license to each utility that proposes to use the casks. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue a new site-specific license. Conducting site-specific reviews would be in conflict with the Nuclear Waste Policy Act of 1982, as amended (NWPA), which directed to the NRC 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-specific approvals by the NRC. This alternative does not foster

competition because it would tend to favor new vendors without cause and would arbitrarily limit the choice of cask system designs available to power reactor licensees.

Approval of the direct final rule would eliminate the problems described above and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on the above discussion of the benefits and impacts of the alternatives, 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 thus, this action is recommended.

#### **Small Business Regulatory Enforcement Fairness Act**

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

#### **Regulatory Flexibility Certification**

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and Holtec International. The companies that own these plants do not fall within the scope of the definition of “small entities” set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

#### **Backfit Analysis**

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

#### **List of Subjects in 10 CFR Part 72**

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping

requirements, Security measures, Spent fuel.

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. 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 AND HIGH-LEVEL RADIOACTIVE WASTE**

1. The authority citation for Part 72 continues to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In Section 72.214, Certificate of Compliance 1008 is revised to read as follows:

**§ 72.214 List of approved spent fuel storage casks.**

\* \* \* \* \*  
Certificate Number: 1008.  
Initial Certificate Effective Date:  
October 4, 1999.  
Amendment Number 1 Effective Date:  
December 26, 2000.  
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.  
\* \* \* \* \*

Dated at Rockville, Maryland, this 20th day  
of September, 2000.  
For the Nuclear Regulatory Commission.  
**Frank J. Miraglia, Jr.,**  
*Acting Executive Director for Operations.*  
[FR Doc. 00–25913 Filed 10–10–00; 8:45 am]  
**BILLING CODE 7590–01–U**

**SMALL BUSINESS ADMINISTRATION**

**13 CFR Part 121**

**Small Business Size Standards; Arrangement of Transportation of Freight and Cargo**

**AGENCY:** Small Business Administration.  
**ACTION:** Final rule; clarification.

**SUMMARY:** This document clarifies SBA’s final rule revising the small business size standard for Standard Industrial Classification (SIC) Code 4731, Arrangement of Transportation of Freight and Cargo. On May 15, 2000, SBA established a new table of size standards based on the North American Industry Classification System (NAICS) which replaces the SIC code table on October 1, 2000. Because SBA issued

the final rule concerning SIC 4731 after adopting the new NAICS table of size standards, this action updates the NAICS size standards table to reflect the changes for the Freight Transportation Arrangement industry. This action also inserts into the NAICS table a Subsector for Mining Support Activities which was inadvertently excluded from the May 15, 2000 publication.

**DATES:** This rule is effective on October 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Diane Heal, Office of Size Standards, (202) 205–6618.

**SUPPLEMENTARY INFORMATION:**  
**Freight Transportation Arrangements**

On August 9, 2000, SBA issued a final rule in the **Federal Register**, (65 FR 48601) that revised the small business size standard for SIC Code 4731, Arrangement of Transportation of Freight and Cargo. SBA revised the standard from \$18.5 million to \$5.0 million in average annual receipts effective September 8, 2000. However, SBA retained the \$18.5 million size standard for Non-Vessel Owning Common Carriers and Household Goods Forwarders. SBA, in that same rule, also changed how it calculates the average annual receipts of freight forwarders and custom brokers for purposes of determining eligibility for Federal small business programs.

In that final rule, SBA referred to the effect that changing the size standard for SIC 4731 would have on the NAICS codes. The industries covered under SIC Code 4731 relate to industries covered under NAICS Code 488510 (Freight Transportation Arrangement) and NAICS Code 541614 (Process, Physical Distribution, and Logistics Consulting Services). SBA detailed the change at 65 FR 48603, “Reclassification of Activities Under the North American Industry Classification System.” The table below summarizes how SIC 4731 corresponds to the NAICS.

SIC 4731	NAICS description	NAICS code	Size standard
Arrangement of Transportation of Freight and Cargo (Except Freight Rate Auditors and (Tariff Consultants).	Freight Arrangement Transportation.	488510	\$5.0 million* Except: Non-Vessel Owning Common Carriers and Household Goods Forwarders.....\$18.5 million
Freight Rate Auditors and Tariff Consultants .....	Process, Physical Distribution, and Logistics Consulting.	541614	\$5.0 million

\*As measured by total revenues, but excluding funds received in trust for an unaffiliated third party.

**Support Activities for Mining**

When SBA published the NAICS table in the May 15, 2000, **Federal Register**,

Subsector 213, Support Activities for Mining, was inadvertently left out of the published table. SBA is now correcting

this oversight by adding the Subsector to the NAICS table.