

basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process. When an investigation has been completed, information on disclosures made may continue to be exempted if the fact that an investigation occurred remains sensitive after completion.

(b) From subsection (d) (Access and Amendment to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities. Further, permitting amendment to law enforcement records after an investigation has been completed would impose an unmanageable administrative burden. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities

of witnesses, and potential witnesses, and confidential informants.

**Lynn Parker Dupree,**

*Chief Privacy Officer, U.S. Department of Homeland Security.*

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

[NRC-2021-0161]

RIN 3150-AK69

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

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

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

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

**ADDRESSES:** Submit your comments, identified by Docket ID NRC-2021-0161, at <https://www.regulations.gov>. If your material cannot be submitted using

<https://www.regulations.gov>, call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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

#### FOR FURTHER INFORMATION CONTACT:

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

#### SUPPLEMENTARY INFORMATION:

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#### I. Obtaining Information and Submitting Comments

##### A. Obtaining Information

Please refer to Docket ID NRC-2021-0161 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2021-0161. Address questions about NRC dockets to Dawn Forder, telephone: 301-415-3407, email: [Dawn.Forder@nrc.gov](mailto:Dawn.Forder@nrc.gov). For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC’s Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact

the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [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, by appointment, at the NRC's Public Document Room (PDR), Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov) or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

### B. Submitting Comments

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

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Rulemaking Procedure

This rule is limited to the renewal of the initial certificate and Amendment No. 1 of Certificate of Compliance No. 1027 and does not include other aspects of the TN Americas LLC, TN-68 Dry Storage Cask system design. The NRC is using the "direct final rule procedure" to issue this renewal because it represents a limited and routine change to an existing certificate of compliance that is expected to be non-controversial.

Adequate protection of public health and safety continues to be reasonably assured. The amendment to the rule will become effective on February 22, 2022. However, if the NRC receives any significant adverse comments on this direct final rule by January 10, 2022, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

- (1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

- (a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

- (b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

- (c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

- (2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

- (3) The comment causes the NRC to make a change (other than editorial) to the rule, certificate of compliance, or technical specifications.

## III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, requires that "[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the Nuclear Waste Policy Act states, in part,

that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor."

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule that added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled "Approval of Spent Fuel Storage Casks," which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on April 28, 2000 (65 FR 24855), that approved the TN-68 Dry Storage Cask system design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1027. The NRC issued a direct final rule on August 16, 2007 (72 FR 45880), that approved Amendment No. 1 to Certificate of Compliance No. 1027 for the TN-68 Dry Storage Cask system design and added it to the list of NRC approved cask designs in § 72.214.

## IV. Discussion of Changes

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

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

- The submittal of an updated final safety analysis report (UFSAR) to address aging management activities resulting from the renewal of the certificate of compliance. This condition ensures that the UFSAR changes are made in a timely fashion to enable general licensees using the storage system during the period of extended

operation to develop and implement necessary procedures.

- The requirement that general licensees initiating or using spent fuel dry storage operations with the TN–68 Dry Storage Cask system ensure that their evaluations are included in the reports required by § 72.212, “Conditions of general license issued under § 72.210.” These reports will include appropriate considerations for the period of extended operation, a review of the UFSAR changes resulting from the certificate of compliance renewal, and a review of the NRC safety evaluation report (SER) related to the certificate of compliance renewal.

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

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

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

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

## **V. Voluntary Consensus Standards**

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC revises the TN Americas LLC, TN–68 Dry Storage Cask design listed in § 72.214, “List of approved spent fuel storage casks.” This action does not constitute the establishment of a standard that contains generally applicable requirements.

## **VI. Agreement State Compatibility**

Under the “Agreement State Program Policy Statement” approved by the Commission on October 2, 2017, and published in the **Federal Register** on October 18, 2017 (82 FR 48535), this rule is classified as Compatibility Category NRC—Areas of Exclusive NRC Regulatory Authority. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR chapter I. Therefore, compatibility is not required for program elements in this category. Although an Agreement State may not adopt program elements reserved to the NRC, and the Category “NRC” does not confer regulatory authority on the State, the State may wish to inform its licensees of certain requirements by means consistent with the particular State’s administrative procedure laws.

## **VII. Plain Writing**

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

## **VIII. Environmental Assessment and Finding of No Significant Impact**

Under the National Environmental Policy Act of 1969, as amended, and the NRC’s regulations in 10 CFR part 51, “Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,” the NRC has determined that this direct final rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has made a finding of no significant impact on the basis of this environmental assessment.

### *A. The Action*

The action is to amend § 72.214 to revise the TN–68 Dry Storage Cask listing within the “List of approved spent fuel storage casks” to renew, for an additional 40 years, the initial certificate and Amendment No. 1 of Certificate of Compliance No. 1027.

### *B. The Need for the Action*

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

### *C. Environmental Impacts of the Action*

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

storage certificate of compliance design are required to demonstrate that SSCs important to safety will continue to perform their intended function for the requested renewal term. As discussed in the NRC's SER for the renewal of the initial certificate and Amendment No. 1, the NRC has approved conditions in the renewed initial certificate and Amendment No. 1 requiring the general licensee to implement the aging management activities described in the renewal application and incorporated into the UFSAR. These conditions ensure that the TN Americas LLC, TN-68 Dry Storage Cask system will continue to perform its intended safety functions and provide reasonable assurance of adequate protection of public health and safety throughout the renewal period.

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

The TN-68 Dry Storage Cask system is designed to mitigate the effects of design-basis accidents that could occur during storage. Design-basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an independent spent fuel storage installation, the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, can include tornado winds and tornado-generated missiles, a design-basis

earthquake, a design-basis flood, an accidental cask drop, lightning effects, fire, explosions, and other incidents.

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

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

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

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

In summary, the proposed changes will not result in any radiological or nonradiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting

the July 18, 1990, final rule. Compliance with the requirements of 10 CFR parts 20 and 72 would provide reasonable assurance that adequate protection of public health and safety will continue. The NRC, in its SER for the renewal of the TN-68 Dry Storage Cask system, has determined if the conditions specified in the certificate of compliance to implement these regulations are met, adequate protection of public health and safety will continue to be reasonably assured.

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

#### *D. Alternative to the Action*

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

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

Alternatively, users of the dry cask storage system would need to apply for a site-specific license. Under this option for implementing the no-action

alternative, interested licensees would have to prepare, and the NRC would have to review, each separate license application, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

In summary, the no-action alternative would entail either (1) more environmental impacts than the preferred action from transferring the spent fuel now in the TN-68 Dry Storage Cask; or (2) cost and administrative impacts from multiple licensing actions that, in aggregate, are likely to be the same as, or more likely greater than, the preferred action.

#### *E. Alternative Use of Resources*

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

#### *F. Agencies and Persons Contacted*

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

#### *G. Finding of No Significant Impact*

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

### **IX. Paperwork Reduction Act Statement**

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

### **Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document

displays a currently valid Office of Management and Budget control number.

### **X. Regulatory Flexibility Certification**

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this direct final rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and TN Americas LLC. These entities do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810).

### **XI. Regulatory Analysis**

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if (1) it notifies the NRC in advance; (2) the spent fuel is stored under the conditions specified in the cask's certificate of compliance; and (3) the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On April 28, 2000 (65 FR 24855), the NRC issued an amendment to 10 CFR part 72 that approved the TN Americas LLC, TN-68 Dry Storage Cask by adding it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1027.

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

The alternative to this action is to deny approval of the renewal of the initial certificate and Amendment No. 1 of Certificate of Compliance No. 1027 and end this direct final rule. Under this alternative, the NRC would either (1) require general licensees using the TN-68 Dry Storage Cask system to unload

spent fuel from these systems and return it to a spent fuel pool or re-load it into a different dry storage cask system listed in § 72.214, or (2) require that users of the existing TN-68 Dry Storage Cask system request site-specific licensing proceedings to continue storage in these systems. Therefore, the no-action alternative would result in a significant burden on licensees and an additional inspection or licensing caseload on the NRC. In addition, the no action alternative would entail either (1) more environmental impacts than the preferred action from transferring the spent fuel now in the TN-68 Dry Storage Cask system, or (2) cost and administrative impacts from multiple licensing actions that, in aggregate, are likely to be the same as, or more likely greater than, the preferred action.

Approval of this direct final rule is consistent with previous NRC actions. Further, as documented in the preliminary SER and environmental assessment, this direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of this direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory; therefore, this action is recommended.

### **XII. Backfitting and Issue Finality**

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

Extending the effective date of the initial certificate and Amendment No. 1 for 40 more years and requiring the implementation of aging management activities does not impose any modification or addition to the design of a cask system's SSCs, or to the procedures or organization required to operate the system during the initial 20-year storage period of the system, as authorized by the current certificate. General licensees that have loaded these

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

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

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

the initial 20-year period, these general licensees will be required to implement aging management activities for any cask systems subject to a renewed certificate of compliance, but such continued use is voluntary.

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

### XIII. Congressional Review Act

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

### XIV. Availability of Documents

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

Document	ADAMS accession No.
TN Americas LLC Renewal Application for the TN-68 Dry Storage Cask Certificate of Compliance No. 1027, dated April 9, 2020.	ML20100F295
Supplemental Response to Request for Additional Information for the TN Americas LLC Application for Renewal of the TN-68 Dry Storage Cask, Certificate of Compliance No. 1027, dated July 29, 2020.	ML20211L707
Supplemental Response to Request for Additional Information for the TN Americas LLC Application for Renewal of the TN-68 Dry Storage Cask, Certificate of Compliance No. 1027, dated February 9, 2021.	ML21040A406
Supplemental Response to Request for Additional Information for the TN Americas LLC Application for Renewal of the TN-68 Dry Storage Cask, Certificate of Compliance No. 1027, dated March 24, 2021.	ML21083A029
User Need Memorandum for Rulemaking for Certificate of Compliance Renewal, Initial Issue (Amendment Number 0), Amendment Number 1 to TN-68 Dry Storage Cask, dated September 20, 2021.	ML21174A125
Preliminary Safety Evaluation Report for the TN-32 Dry Storage Cask Certificate of Compliance Renewal .....	ML21174A128
Proposed Certificate of Compliance No. 1027, Renewed Initial Certificate .....	ML21174A126
Proposed Technical Specifications, Appendix A, Certificate of Compliance No. 1027, Renewed Initial Certificate .....	ML21174A129
Proposed Certificate of Compliance No. 1027, Renewed Amendment No. 1 .....	ML21174A127
Proposed Technical Specifications, Appendix A, Certificate of Compliance No. 1027, Renewed Amendment No. 1 .....	ML21174A131

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

### List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C.

552 and 553, the NRC is adopting the following amendments to 10 CFR part 72:

### PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

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

**Authority:** Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202,

206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

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

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

\* \* \* \* \*

*Certificate Number:* 1027.

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

*Amendment Number 1 Effective Date:* October 30, 2007, superseded by

Renewed Amendment Number 1 on February 22, 2022.

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

*Renewal SAR Submitted by:* TN Americas LLC.

*SAR Title:* Final Safety Analysis Report for the TN-68 Dry Storage Cask. *Docket Number:* 72-1027.

*Certificate Expiration Date:* May 28, 2020.

*Renewed Certificate Expiration Date:* May 28, 2060.

*Model Number:* TN-68.

\* \* \* \* \*

Dated: November 29, 2021.

For the Nuclear Regulatory Commission.

**Daniel H. Dorman,**

*Executive Director for Operations.*

[FR Doc. 2021-26628 Filed 12-8-21; 8:45 am]

BILLING CODE 7590-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2021-0953; Project Identifier AD-2021-01169-T; Amendment 39-21810; AD 2021-23-12]

RIN 2120-AA64

#### Airworthiness Directives; Transport and Commuter Category Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all transport and commuter category airplanes equipped with a radio (also known as radar) altimeter. This AD was prompted by a determination that radio altimeters cannot be relied upon to perform their intended function if they experience interference from wireless broadband operations in the 3.7–3.98 GHz frequency band (5G C-Band). This AD requires revising the limitations section of the existing airplane/aircraft flight manual (AFM) to incorporate limitations prohibiting certain operations requiring radio altimeter data when in the presence of 5G C-Band interference as identified by Notices to Air Missions (NOTAMs). The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective December 9, 2021.

The FAA must receive comments on this AD by January 24, 2022.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR

11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

#### Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0953; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for the Docket Operations is listed above.

#### FOR FURTHER INFORMATION CONTACT:

Brett Portwood, Continued Operational Safety Technical Advisor, COS Program Management Section, Operational Safety Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712-4137; phone: 817-222-5390; email: [operational\\_safety@faa.gov](mailto:operational_safety@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

In March 2020, the United States Federal Communications Commission (FCC) adopted final rules authorizing flexible use of the 3.7–3.98 GHz band for next generation services, including 5G and other advanced spectrum-based services.<sup>1</sup> Pursuant to these rules, C-Band wireless broadband deployment is permitted to occur in phases with the opportunity for operations in the lower 100 megahertz of the band (3.7–3.8 GHz) in 46 markets beginning as soon as December 5, 2021; however, the FAA does not expect actual deployment to commence until January 5, 2022. This AD refers to “5G C-Band” interference, but wireless broadband technologies, other than 5G, may use the same frequency band.<sup>2</sup> These other uses of the same frequency band are within the scope of this AD since they would introduce the same risk of radio altimeter interference as 5G C-Band.

<sup>1</sup> The FCC’s rules did not make C-Band wireless broadband available in Alaska, Hawaii, and the U.S. Territories.

<sup>2</sup> The regulatory text of the AD uses the term “5G C-Band” which, for purposes of this AD, has the same meaning as “5G”, “C-Band” and “3.7–3.98 GHz”.

In April 2020, RTCA formed a 5G Task Force, including members from RTCA, the FAA, aircraft and radio altimeter manufacturers, European Organisation for Civil Aviation Equipment (EUROCAE), industry organizations, and operators, to perform “a quantitative evaluation of radar altimeter performance regarding RF interference from expected 5G emissions in the 3.7–3.98 GHz band, as well as a detailed assessment of the risk of such interference occurring and impacting aviation safety.”<sup>3</sup> Based on the work of the task force, RTCA published a report which concludes that there is “a major risk that 5G telecommunications systems in the 3.7–3.98 GHz band will cause harmful interference to radar altimeters on all types of civil aircraft—including commercial transport airplanes; business, regional, and general aviation airplanes; and both transport and general aviation helicopters.”<sup>4</sup>

The report further concludes that the likelihood and severity of radio frequency interference increases for operations at lower altitudes. That interference could cause the radio altimeter to either become inoperable or present misleading information, and/or also affect associated systems on civil aircraft. The RTCA report refers to FCC Report and Order (R&O) FCC 20-22,<sup>5</sup> which identifies radio frequencies and power level conditions for the new C-Band services. The RTCA report identified the possibility of interference from both wireless emitters (on base stations, for example) as well as onboard user handsets. The RTCA report and conclusions remain under review, including by federal spectrum regulators. The FAA risk assessment included consideration of the RTCA report, public comments to the RTCA report, and analyses from radio altimeter manufacturers and aircraft manufacturers in support of the safety risk determination. The analyses FAA considered were consistent with RTCA’s conclusions pertaining to radio altimeter interference from C-Band

<sup>3</sup> RTCA Paper No. 274-20/PMC-2073, Assessment of C-Band Mobile Telecommunications Interference Impact on Low Range Radar Altimeter Options, dated October 7, 2020 (RTCA Paper No. 274-20/PMC-2073), page i. This document is available in Docket No. FAA-2021-0953, and at [https://www.rtca.org/wp-content/uploads/2020/10/SC-239-5G-Interference-Assessment-Report\\_274-20-PMC-2073\\_accepted\\_changes.pdf](https://www.rtca.org/wp-content/uploads/2020/10/SC-239-5G-Interference-Assessment-Report_274-20-PMC-2073_accepted_changes.pdf).

<sup>4</sup> RTCA Paper No. 274-20/PMC-2073, page i.

<sup>5</sup> FCC Report and Order (R&O) FCC 20-22 in the Matter of Expanding Flexible Use of the 3.7–4.2 GHz Band, adopted February 28, 2020, and released March 3, 2020. This document is available in Docket No. FAA-2021-0953, and at <https://www.fcc.gov/document/fcc-expands-flexible-use-c-band-5g-0>.