**[7590-01-P]**

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 72**

**[NRC-2013-0271]**

**RIN 3150-AJ31**

# List of Approved Spent Fuel Storage Casks: Transnuclear, Inc. Standardized Advanced NUHOMS® Horizontal Modular Storage System; Certificate of Compliance No. 1029, Amendment No. 3

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the Transnuclear, Inc. (TN) Standardized Advanced NUHOMS® Horizontal Modular Storage System (NUHOMS® Storage System) listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 3 to Certificate of Compliance (CoC) No. 1029. The NRC published a direct final rule on this amendment in the *Federal Register* on April 15, 2014. The NRC also concurrently published an identical proposed rule on April 15, 2014. The NRC received significant adverse comments on the direct final rule; therefore, the NRC withdrew the direct final rule on June 25, 2014, and is proceeding, in this *Federal Register* notice, to address the comments on the companion proposed rule.

**DATES:** This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION].**

**ADDRESSES:** Please refer to Docket ID NRC-2013-0271 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-2013-0271. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; e-mail: 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 e-mail to 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 of this document.
- **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, e-mail: 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), "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste," 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 subsequently issued a final rule (68 FR 463; January 6, 2003) that approved the Standardized Advanced NUHOMS® Cask System design and added it to the list of NRC-approved cask designs in 10 CFR 72.214, "List of approved spent fuel storage casks," as CoC No.1029.

## II. Discussion of Changes.

On December 15, 2011, Transnuclear, Inc. submitted an application to amend the NUHOMS® Storage System. Amendment No. 3 adds a new transportable dry shielded canister (DSC), the 32PTH2, to the NUHOMS® Storage System; and makes editorial corrections. The NUHOMS® 32PTH2 system is designed to accommodate up to 32 intact (or up to 16 damaged and the balance intact) pressurized water reactor (PWR), Combustion Engineering (CE), 16 x 16 class spent fuel assemblies, with or without control components. The NUHOMS® 32PTH2

system also consists of a modified version of the Standardized NUHOMS® Advanced Horizontal Storage Module (AHSM), designated the AHSM-HS (high burnup and high seismic).

Numerous sections of the Technical Specifications (TSs) were revised to add and update characteristics, specifications, and requirements related to the 32PTH2 DSC and the AHSM-HS storage module. Additional changes were made to definitions and other sections to improve completeness, consistency, and clarity. Revised sections are indicated by side bars in the TSs.

As documented in the Safety Evaluation Report (SER) (ADAMS Accession No. ML14317A616), the NRC staff performed a detailed safety evaluation of the proposed CoC amendment request. There are no significant changes to cask design requirements in the proposed CoC amendment. Considering the specific design requirements for each accident condition, the design of the cask 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. This amendment does not reflect a significant change in design or fabrication of the cask. In addition, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 3 would remain well within the limits of 10 CFR part 20, “Standards for Protection Against Radiation.” Therefore, the 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 (55 FR 29181) that amended 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. 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 from those analyzed in that environmental assessment.

This final rule revises the NUHOMS® Storage System listing in 10 CFR 72.214 by adding Amendment No. 3 to CoC No. 1029. 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 NUHOMS® 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 final rule becomes effective, persons who hold a general license under 10 CFR 72.210, "General license issued," may load spent nuclear fuel into NUHOMS® Storage Systems that meet the criteria of Amendment No. 3 to CoC No. 1029 under 10 CFR 72.212, "Conditions of general license issued under § 72.210."

## III. Public Comment Analysis.

The NRC received 17 comments from private citizens, and 1 comment from 2 attorneys representing 20 environmental organizations and individuals. The NRC received two comments from private citizens after the public comment period ended.

The NRC has not made any changes to the Proposed rule as a result of the public comments NRC has received. The following is a summary of the comments and the NRC responses.

**Comment:**

Several commenters stated that the NRC should not lower safety standards by approving this new canister. No specifics were provided.

**Response:**

The NRC is not lowering its safety standards. The staff performed an independent

safety evaluation of Amendment No. 3 to the Standardized Advanced NUHOMS® System to ensure that it meets the regulations in 10 CFR part 72. The results of the staff's independent safety evaluation are described in the SER (ADAMS Accession No. ML14317A616).

The comment is not substantive enough to aid the NRC in understanding any impact upon the NRC's safety review, the technical specifications, or the NRC's conclusions on this particular amendment. Additionally, the NRC staff concluded that there would be no significant environmental impacts as confirmed in the direct final rule, Section VII, ''Finding of No Significant Environmental Impact: Availability.'' This comment does not challenge that finding because, as the environmental assessment explained, this amendment to the rule will not result in any 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. This amendment continues to ensure that the Commission's regulations regarding dose rates, found in 10 CFR part 20, are maintained.

**Comment:**

Two commenters demanded that the NRC should "get rid" of stored spent fuel. No specifics were provided.

**Response:**

The NRC staff reviewed the comments, and concluded that they are not significant and adverse as defined in NUREG/BR-0053, Revision 6, "United States Nuclear Regulatory Commission Regulations Handbook" (hereinafter "Regulations Handbook") (ADAMS Accession No. ML052720461), as they are beyond the scope of this rulemaking. Instead, these comments raise generic concerns regarding the use of any spent fuel storage casks and are not specific to any issue or concern with the amendment to the cask certificate that is the subject of this rulemaking effort.

**Comment:**

One commenter stated that under no circumstances should nuclear regulations be lowered for the sake of increasing the density of stored high spent fuel and saving money.

**Response:**

The NRC is not lowering its nuclear regulations. The staff performed an independent safety evaluation of Amendment No. 3 to the Standardized Advanced NUHOMS® System to ensure that it meets the regulations in 10 CFR part 72. The results of the staff's independent safety evaluation are described in the SER (ADAMS Accession No. ML14317A616).
The comment is not substantive enough to aid the NRC in understanding any impact upon the NRC's safety review, the technical specifications, or the NRC's conclusions on this particular amendment. Additionally, the NRC staff concluded that there would be no significant environmental impacts as confirmed in the direct final rule, Section VII, ''Finding of No Significant Environmental Impact: Availability.'' This comment does not challenge that finding because, as the environmental assessment explained, this amendment to the rule will not result in any 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. This amendment continues to ensure that the Commission's regulations regarding dose rates, found in 10 CFR part 20, are maintained.

**Comment:**

One commenter stated the high burn up fuel is an extremely "hot" type of spent fuel, would require re-casking, which has never been attempted, and that approval should be given only after re-casking is achieved.

**Response:**

The NRC staff reviewed this comment and concluded it is not a significant adverse comment as defined in the Regulations Handbook, as it is beyond the scope of this rulemaking. Instead, this comment raises a generic concern regarding the safety of high burnup fuel and its storage in spent fuel storage casks, and is not specific to any issue or concern with the amendment to the cask certificate that is the subject of this rulemaking. Although the ability of the Standardized Advanced NUHOMS® storage system to store high burnup fuel has not been previously authorized (it is now being authorized in the 32PTH2 DSC), the ability of a similar TN system, the Standardized NUHOMS® system (CoC No. 1004), to store high burnup fuel for 20 years was authorized in Amendment No. 6. The final rule approving that amendment was published in the *Federal Register* on December 17, 2003 (68 FR 70121).

**Comment:**

Several commenters stated that the NRC should not approve storing 32 fuel assemblies in a space originally designed for 24 fuel assemblies, with some of the comments raising concerns about a potential increased risk associated with the increased number of fuel assemblies.

**Response:**

The 32PTH2 is a new design, specifically intended to store 32 fuel assemblies. It is not a modification to the 24PT1or 24PT4 for storage of 32 spent fuel assemblies in a 24 assembly cask. Although the ability of the Standardized Advanced NUHOMS® storage system to store 32 PWR assemblies has not been previously authorized (it is now being authorized in the 32PTH2 DSC), the ability of a similar TN system, the Standardized NUHOMS® system (CoC No. 1004), to store 32 PWR assemblies in the 32PT DSC for 20 years was authorized in Amendment No. 5. The final rule approving that amendment was published in the *Federal Register* on January 7, 2004 (69 FR 849). A similar DSC, the 32PTH1, was also approved under CoC

No. 1004, and authorized in Amendment No. 10. The final rule approving that amendment was published in the *Federal Register* on June 10, 2009 (74 FR 24769). In addition, the ability of another similar TN system, the NUHOMS® HD Horizontal Modular System is authorized to store 32 PWR assemblies in the 32PTH DSC for 20 years. The final rule approving the initial certificate was published in the *Federal Register* on December 11, 2006 (71 FR 71463). For every system authorized, whether it is for storage of 24 PWR assemblies, 32 PWR assemblies, or 37 PWR assemblies (for example), staff performs a comprehensive review to ensure that the system maintains sub-criticality, provides adequate radiation shielding and confinement, provides adequate heat removal, and can store the spent fuel safely during the approved storage term; in accordance with the requirements of 10 CFR part 72.

**Comment:**

One commenter noted that the definition of damaged fuel has been changed for the 32PTH2.

**Response:**

With the addition of the 32PTH2 DSC, a definition for a damaged fuel assembly specific to the 32PTH2 was added. The new definition is the same as the existing definition, for the 24PT1 and the 24PT4, except that it adds a requirement that the damaged fuel assembly must be able to be handled by normal means. According to the TS, all damaged fuel assemblies loaded in 24PT1 or 24PT4 DSCs are required to be encapsulated in failed fuel cans, and are limited to specific loading zones. In contrast, the damaged fuel assemblies loaded in the 32PTH2 must be able to be handled by normal means because they are not required to be encapsulated in failed fuel cans. Instead, the DSC fuel compartments that can store damaged fuel assemblies in the 32PTH2 are provided with top and bottom end caps, and the damaged fuel assemblies are limited to specific fuel compartments. Note that in both cases, fuel assemblies with damage greater than the definition are not authorized for storage.

**Comment:**

One commenter stated that storage ought to be above ground, so that we all remember to keep replacing the encasements.

**Response:**

The Advanced Standardized NUHOMS® Dry Storage System is an above ground system. Note also that all approved dry storage systems are required to be monitored, and that any system that is renewed is also subject to aging management programs which monitor and control age related degradation to the structures, systems and components important to safety.

**Comment:**

Two attorneys stated, on behalf of 20 environmental organizations and individuals, that in publishing this direct final rule, the NRC violated the requirements of the Atomic Energy Act and the Administrative Procedures Act for public participation in the NRC decisions affecting public safety and the environment. They also stated that the direct final rule *Federal Register* notice is grossly misleading, and appears designed to lull the public into a false sense of confidence.

**Response:**

The NRC has not violated the requirements of the Atomic Energy Act and the Administrative Procedures Act for public participation. As explained in the Regulations Handbook, the direct final rule process may be used where the agency believes a rule is noncontroversial and significant adverse comments will not be received. This process allows the agency to issue the rule without having to go through the review process twice, at the proposed and final rule stages, while at the same time offering the public the opportunity to challenge the agency's view that the rule is noncontroversial. The NRC published, on the same day as the direct final rule, a *Federal Register* notice for a proposed rule on the CoC amendment in the event the NRC did receive significant adverse comments on the rule. The

NRC has, for many years, adhered to this procedure in all its CoC direct final rules, and as demonstrated in this instance, this process does provide the ability of the public to participate in this process.

**Comment:**

The same commenters also stated that contrary to the NRC assurances that the rule is limited, routine, noncontroversial, and protects the public and the environment from radiological accidents, the rule approves a significant and unprecedented change in the permissible use of 32PTH2 DSC: the transportation of high burnup fuel.

**Response:**

The rule does not approve the 32PTH2 DSC for transportation of high burnup fuel. The direct final rule is for approval of the 32PTH2 DSC for storage only. While TN's naming convention of including a "T" in the DSC type designator indicates its intention that the 32PTH2 could eventually be authorized for transport, it in no way indicates that the 32PTH2 has been approved for transport. In order for the 32PTH2 DSC to be approved for transportation of high burnup fuel, or any other spent fuel, TN would have to submit an application to the NRC under 10 CFR part 71, which would need to be reviewed and approved in a new and entirely separate process from the current subject approval for the storage of spent nuclear fuel. The 32PTH2 DSC has not been reviewed and approved for spent fuel transportation under 10 CFR part 71. Transnuclear, Inc., does have approved transportation certificates that authorize transportation for some of its DSCs (not including the 32PTH2) under this storage CoC (No. 1029) and others, and some of those DSCs are approved for transportation of high burnup fuel (CoCs 71-9255 and 71-9302). However, this is a completely separate review and approval process.

The SER has been revised to explicitly state that the 32PTH2 DSC has not been certified under 10 CFR part 71 for use in transportation.

**Comment:**

Many of the comments were related to the potential use of the new 32PTH2 DSC at the San Onofre Nuclear Generating Station (SONGS). The commenters were generally opposed to storage of spent nuclear fuel in the 32PTH2 DSC at SONGS, some because of the higher number of fuel assemblies that could be stored in this DSC; SONGS is currently using the 24PT1 and 24PT4 DSCs (already approved under CoC No. 1029), which hold 24 fuel assemblies each. Other commenters in this group prefer that the spent fuel not be stored onsite at all; they recommend instead that the spent fuel be transported off site immediately. One commenter in this group expressed concerns about accident analyses used for review and approval of spent fuel storage systems in relation to conditions at SONGS, and recommended leaving the spent fuel in spent fuel pools, rather than moving it to dry storage. A supplement to this comment also considered storing the spent fuel in the reactor containment building. Several of the commenters also expressed concerns about the wild fires in California in relation to SONGS spent fuel storage, and one commenter requested that the approval of the 32PTH2 DSC for storage be amended to specifically preclude its use at SONGS.

**Response:**

The NRC staff reviewed the comments in this group, and concluded that they are not significant and adverse comments as defined in the Regulations Handbook, as they are beyond the scope of this rulemaking. Instead, these comments raise a generic concern regarding potential use of the 32PTH2 DSC at a single, particular site SONGS, and do not raise any specific issue or concern with the amendment to the cask certificate that is the subject of this rulemaking. The NRC staff is aware that SONGS has expressed interest in storing spent nuclear fuel in the 32PTH2 DSC, once it is approved. The regulations for the general license in 10 CFR part 72 allow the use of any approved canisters under 10 CFR 72.214 by any general licensee, however, the cask used by the general licensee must conform to the terms, conditions,

and specifications of a CoC or an amended CoC listed in § 72.214. Additionally, under 10 CFR 72.212, a general licensee is required to perform evaluations that document that the chosen cask, once loaded, will meet the requirements of the CoC and TS, and that the reactor site parameters (including analyses of earthquake intensity and tornado missiles) are enveloped by the cask design bases as described in the applicant's safety analysis report and the staff's SER. Further, the cask storage areas must be designed to adequately support the static and dynamic loads of the stored casks, considering possible earthquake effects, and the general licensee must protect the stored spent fuel against the design basis threat of radiological sabotage.

## 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 revises the NUHOMS® Storage System design listed 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, 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, well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has attempted to use plain language in promulgating this rule consistent with the Federal Plain Writing Act guidelines.

## VII. Finding of No Significant Environmental Impact: Availability.

A. The Action.

The action is to amend 10 CFR 72.214 to revise the Transnuclear, Inc. NUHOMS® Storage System listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 3 to CoC No. 1029. 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 amends the CoC for the Transnuclear, Inc. NUHOMS® 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. 3 adds a new transportable DSC, 32PTH2, to the NUHOMS® Storage System; and makes editorial corrections.

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. 3 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.

NUHOMS® 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 each accident condition, the design of the cask 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. 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. 3 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 an SER which is available in ADAMS under Accession No. ML14317A616.

D. Alternative to the Action.

The alternative to this action is to deny approval of Amendment No. 3 and end the final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load spent nuclear fuel into NUHOMS® Storage Systems in accordance with the changes described in proposed Amendment No. 3 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 would be the same or less than the action.

E. Alternative Use of Resources.

Approval of Amendment No. 3 to CoC No. 1029 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: Standardized Advanced NUHOMS® Horizontal Modular Storage System, Amendment No. 3," will not have a significant effect on quality of the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this final rule.

## VIII. Paperwork Reduction Act.

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 Office of Management and Budget (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. The NRC issued a final rule (68 FR 463; January 6, 2003) that approved the Standardized Advanced NUHOMS® Cask System design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 "List of approved spent fuel storage casks," as CoC No. 1029.

On December 15, 2011 (ADAMS Accession No. ML120040478), Transnuclear, Inc. submitted an application to amend the NUHOMS® Storage System.

The alternative to this action is to withhold approval of Amendment No. 3 and to require any 10 CFR part 72 general licensee seeking to load spent nuclear fuel into the NUHOMS® Storage Systems under the changes described in Amendment No. 3 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 separate exemption requests, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

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 Transnuclear, Inc. 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 revises the CoC No. 1029 for the Transnuclear, Inc. NUHOMS® Storage System, as currently listed in 10 CFR 72.214, "List of Approved Spent Fuel Storage Casks." The revision consists of Amendment No. 3 which adds a new transportable DSC, 32PTH2, to the NUHOMS® Storage System; and makes editorial corrections.

Amendment No. 3 to CoC No. 1029 for the Transnuclear, Inc. NUHOMS® Storage System was initiated by Transnuclear, Inc. and was not submitted in response to new NRC requirements, or an NRC request for amendment. Amendment No. 3 applies only to new casks fabricated and used under Amendment No. 3. These changes do not affect existing users of the NUHOMS® Storage System, and the current Amendments continue to be effective for existing users. While current CoC users may comply with the new requirements in Amendment

No. 3, this would be a voluntary decision on the part of current users. For these reasons, Amendment No. 3 to CoC No. 1029 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. / *FEDERAL REGISTER* CITATION |
|---|---|
| Application from Transnuclear Inc. for the Advanced Standardized NUHOMS® Dry Storage System Amendment No. 3, December 15, 2011. | ML120040478 |
| Safety Evaluation Report for the Transnuclear Inc. Advanced Standardized NUHOMS® Dry Storage System, Amendment No. 3. | ML14317A616 |
| The Transnuclear Inc. Advanced Standardized NUHOMS® Dry Storage System CoC No. 1029, Amendment No. 3. | ML13290A176 |
| The Transnuclear Inc. Advanced Standardized NUHOMS® Dry Storage System Technical Specifications, Amendment No.3. | ML13290A182 |

**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. No. 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.1029 is revised to read as follows:

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

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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: **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**.

SAR Submitted by: Transnuclear, Inc.

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

Docket Number: 72-1029.

Certificate Expiration Date: February 5, 2023.

Model Number: Standardized Advanced NUHOMS® -24PT1, -24PT4, and -32PTH2.

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Dated at Rockville, Maryland, this ____8th___ day of _January, 2015.

For the U.S. Nuclear Regulatory Commission.

Mark A. Satorius,
Executive Director
for Operations.

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