

amend CoC No. 1026 to change the W-21 canister Technical Specifications (TS) and bases to provide an alternative to returning the canister to the spent fuel building by returning it to the transfer cask. Specifically, TS 3.3.2 and TS 3.3.3 propose returning the W-21 canister to the transfer cask while restoring normal storage conditions. The amendment also includes several editorial changes to TS 3.1.1, TS 3.3.2, and TS 3.3.3. No other changes to the FuelSolutions™ cask system design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there is still reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the FuelSolutions™ cask design listing in § 72.214 by adding Amendment No. 3 to CoC No. 1026. The amendment consists of changes to the TS to provide an alternative to returning the W-21 canister to the spent fuel building by returning it to the transfer casks. The amendment also includes several editorial changes. The particular Technical Specifications that are changed are identified in the NRC staff's SER for Amendment No. 3.

The amended FuelSolutions™ cask system, when used under the conditions specified in the CoC, the Technical Specifications, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured.

### Discussion of Amendments by Section

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

Certificate No. 1026 is revised by adding the effective date of Amendment Number 3.

### Procedural Background

This rule is limited to the changes contained in Amendment 3 to CoC No. 1026 and does not include other aspects of the FuelSolutions™ cask system design. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on May 7, 2003. However, if the NRC receives significant adverse comments by March 24, 2003,

then the NRC will publish a document that withdraws this action and will address the comments, received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**, in a subsequent rule. 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, in a substantive response:

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

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

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

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

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

### 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 would revise the FuelSolutions™ cask system design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

### 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 the 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 would amend the CoC for the FuelSolutions™ cask system within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. Amendment No. 3 will modify the present cask system design to change the W-21 canister Technical Specifications (TS) and bases to provide an alternative to returning the canister to the spent fuel building by returning it to the transfer cask. Specifically, TS 3.3.2 and TS 3.3.3 propose returning the W-21 canister to the transfer cask while restoring normal storage conditions. The amendment also includes several editorial changes to TS 3.1.1, TS 3.3.2, and TS 3.3.3.

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, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-