

# Rules and Regulations

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

RIN 3150-A103

#### List of Approved Spent Fuel Storage Casks: Standardized NUHOMS® System Revision 9

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Transnuclear, Inc., Standardized NUHOMS® System listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 9 to Certificate of Compliance (CoC) Number 1004. Amendment No. 9 will modify the CoC by revising Technical Specifications 1.2.1 and 1.2.14 to add the Framatome-ANP, Version 9x9-2 fuel assemblies as approved contents for storage in the NUHOMS®-61BT dry shielded canister, under the general license provisions of 10 CFR part 72.

**DATES:** The final rule is effective April 17, 2007, unless significant adverse comments are received by March 5, 2007. 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. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number (RIN 3150-A103) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comment will not be edited to remove

any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

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

*E-mail comments to:* [SECY@nrc.gov](mailto:SECY@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking Web site at <http://rulemaking.llnl.gov>. Address questions about our rulemaking Web site to Carol Gallagher (301) 415-5905; e-mail [cag@nrc.gov](mailto:cag@nrc.gov). Comments can also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>.

*Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays [telephone (301) 415-1966].

*Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers at the NRC's Public Document Room (PDR), O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/NRC/ADAMS/index.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov). An electronic copy of the CoC No. 1004, the proposed Technical Specifications (TS), and the preliminary safety evaluation report (SER) for Amendment 9 can be found under

ADAMS Accession Nos. ML062830065, ML062830067, and ML062830069.

CoC No. 1004, the proposed TS, the preliminary SER for Amendment No. 9, and the environmental assessment, are available for inspection at the NRC PDR, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6219, e-mail [jmm2@nrc.gov](mailto:jmm2@nrc.gov).

#### FOR FURTHER INFORMATION CONTACT:

Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6219, e-mail [jmm2@nrc.gov](mailto:jmm2@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPAA), requires that "[t]he Secretary [of the Department of Energy (DOE)] 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 NWPAA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72 entitled, "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR part 72, entitled "Approval of Spent Fuel Storage Casks" containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on

December 22, 1994 (59 FR 65898), that approved the Standardized NUHOMS® System (NUHOMS®-24P and -52B) cask designs and added them to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1004.

Amendments 3, 5, and 6, respectively, added the -61BT, -32PT, -24PHB designs to the Standardized NUHOMS® System.

### Discussion

On April 18, 2006, and as supplemented on June 21, 2006, the certificate holder (Transnuclear, Inc.) submitted an application to the NRC to amend CoC No. 1004 to permit a Part 72 licensee to store Framatome-ANP, Version 9x9-2 fuel assemblies (FANP9 9x9-2) in the NUHOMS®-61BT dry shielded canister. No other changes to the Standardized NUHOMS® 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 continues to be reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the Standardized NUHOMS® System cask design listing in 10 CFR 72.214 by adding Amendment No. 9 to CoC No. 1004. The amendment consists of changes to the TS that will allow for the addition of the FANP9 9x9-2 fuel assemblies as approved contents for storage in the NUHOMS®-61BT dry shielded canister. The particular TS which are changed are identified in the NRC staff's SER for Amendment No. 9.

The amended Standardized NUHOMS® System, when used under the conditions specified in the CoC, the TS, 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. 1004 is revised by adding the effective date of Amendment No. 9.

### Procedural Background

This rule is limited to the changes contained in Amendment 9 to CoC No. 1004 and does not include other aspects of the Standardized NUHOMS® 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 April 17, 2007. However, if the NRC receives significant adverse comments by March 5, 2007, 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 elsewhere in this **Federal Register**. 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 and Advancement Act of 1995 (Pub. L. 104-113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the Standardized NUHOMS® 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 contains 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 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, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible 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 NRC has prepared an environmental assessment and, on the basis of this environmental assessment, has made a finding of no significant impact. This rule will amend the CoC for the Standardized NUHOMS® 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. The amendment will modify the CoC by revising TS 1.2.1 and 1.2.14 to add the FANP9 9x9-2 fuel assemblies as approved contents for storage in the NUHOMS®-61BT dry shielded canister. 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 Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6219, e-mail [jmm2@nrc.gov](mailto:jmm2@nrc.gov).

#### Paperwork Reduction Act Statement

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

#### Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

#### 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, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214. On December 22, 1994 (59 FR 65898), the NRC issued an amendment to part 72 that approved the Standardized NUHOMS® System design by adding it to the list of NRC-approved cask designs in 10 CFR 72.214. On April 18, 2006, and as supplemented on June 21, 2006, the certificate holder, Transnuclear, Inc., submitted an application to the NRC to amend CoC No. 1004 to permit a part 72 licensee to use the FANP9 9x9-2 fuel assemblies in the NUHOMS®-61BT dry shielded canister.

The alternative to this action is to withhold approval of Amendment No. 9 and to require any part 72 licensee seeking to use Amendment No. 9 to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, each interested part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

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

#### Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and TN. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

#### Backfit Analysis

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

#### Congressional Review Act

Under the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

#### 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:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109-58, 119 Stat. 806-10 (42 U.S.C. 2014, 2021, 2021b, 2111).

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

■ 2. In § 72.214, Certificate of Compliance 1004 is revised to read as follows:

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

\* \* \* \* \*

*Certificate Number:* 1004.  
*Initial Certificate Effective Date:* January 23, 1995.  
*Amendment Number 1 Effective Date:* April 27, 2000.  
*Amendment Number 2 Effective Date:* September 5, 2000.  
*Amendment Number 3 Effective Date:* September 12, 2001.  
*Amendment Number 4 Effective Date:* February 12, 2002.  
*Amendment Number 5 Effective Date:* January 7, 2004.  
*Amendment Number 6 Effective Date:* December 22, 2003.  
*Amendment Number 7 Effective Date:* March 2, 2004.

*Amendment Number 8 Effective Date:* December 5, 2005.

*Amendment Number 9 Effective Date:* April 17, 2007.

*SAR Submitted by:* Transnuclear, Inc.  
*SAR Title:* Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

*Docket Number:* 72-1004.

*Certificate Expiration Date:* January 23, 2015.

*Model Number:* NUHOMS®-24P, -52B, -61BT, -32PT, -24PHB, and -24PTH.

\* \* \* \* \*

Dated at Rockville, Maryland, this 19th day of January, 2007.

For the Nuclear Regulatory Commission.

**Luis A. Reyes,**

*Executive Director for Operations.*

[FR Doc. E7-1644 Filed 1-31-07; 8:45 am]

BILLING CODE 7590-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 23

[Docket No. CE255; Special Conditions No. 23-195-SC]

#### Special Conditions: Aviation Technology Group (ATG), Inc., Javelin Model 100 Series Airplane; Flight Performance, Flight Characteristics, and Operating Limitations

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

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Aviation Technology Group (ATG), Inc., Javelin Model 100 Series airplane. This airplane will have a novel or unusual design feature(s) associated with engine location, certain performance, flight characteristics and operating limitations necessary for this type of airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to airworthiness standards applicable to these airplanes.

**DATES:** The effective date of these special conditions is January 24, 2007. Comments must be received on or before March 5, 2007.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration,

Regional Counsel, ACE-7, Attention: Rules Docket CE255, 901 Locust, Room 506, Kansas City, Missouri 64106; or delivered in duplicate to the Regional Counsel at the above address.

Comments must be marked: CE255.

Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** J. Lowell Foster, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE-111, 901 Locust, Room 301, Kansas City, Missouri, 816-329-4125, fax 816-329-4090.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

#### Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to CE255." The postcard will be date stamped and returned to the commenter.

#### Background

On February 15, 2005, Aviation Technology Group (ATG); 8001 South InterPort Boulevard, Suite 310; Englewood, Colorado 80112-5951, applied for a type certificate for their new Model 100 Javelin airplane in accordance with the airworthiness standards in 14 CFR, part 23. The Javelin is a two-place, twin engine,

turboprop-powered light jet airplane with a planned maximum operating altitude of 45,000 feet. Part 23 regulations in effect on the date of ATG's application do not contain adequate or appropriate safety standards for a small, high performance jet airplane such as the Javelin. In accordance with Small Airplane Directorate policy, the safety standards for flight performance, flight characteristics and operational limitations that the Federal Aviation Administration (FAA) finds necessary to establish an acceptable level of safety for this type of airplane are presented in this special condition.

#### Type Certification Basis

Under the provisions of 14 CFR, part 21, § 21.17, ATG must show that the Model 100 meets the applicable provisions of part 23, as amended by Amendment 23-1 through 23-55 thereto. If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 23) do not contain adequate or appropriate safety standards for the ATG Model 100 series because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

In addition to the applicable airworthiness regulations and special conditions, the Model 100 must comply with the part 23 fuel vent and exhaust emission requirements of 14 CFR, part 34 and the part 23 noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92-574, the "Noise Control Act of 1972."

#### Novel or Unusual Design Features

ATG intends to certificate the Javelin in both utility and acrobatic categories. The ATG Javelin Model 100 will incorporate the following novel or unusual design features:

- Two-place, tandem configuration.
- Maximum takeoff weight of approximately 6,900 pounds.
- Design cruise speed of 500 knots calibrated airspeed.