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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2023–0080]

RIN 3150–AK98

List of Approved Spent Fuel Storage Casks: NAC Multi-Purpose Canister (NAC–MPC) System, Certificate of Compliance No. 1025, Renewal of Initial Certificate and Amendment Numbers 1 Through 8

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 NAC Multi-Purpose Canister (NAC–MPC) System listing within the “List of approved spent fuel storage casks” to renew, for 40 years, the initial certificate and Amendment Nos. 1 through 8 of Certificate of Compliance No. 1025. The renewal of the initial certificate and Amendment Nos. 1 through 8 revises the certificate of compliance’s conditions and technical specifications to address aging management activities related to the structures, systems, and components important to safety of the dry storage system to ensure that these will maintain their intended functions during the period of extended storage operations.

DATES: This direct final rule is effective October 17, 2023, unless significant adverse comments are received by September 5, 2023. If this direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**.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–2023–0080, 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:

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0080 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–2023–0080. Address

questions about NRC dockets to Dawn Forder, telephone: 301–415–3407, email: 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. 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 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 or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

Please include Docket ID NRC–2023–0080 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 involves the renewal of Certificate of Compliance No. 1025, which includes the initial certificate and Amendment Nos. 1 through 8. The renewal only applies to the storage of spent fuel in an independent spent fuel storage installation at power reactor sites under a general license pursuant to the requirements of 10 CFR part 72, “Approval of Spent Fuel Storage Casks,” and does not address or apply to transportation of the NAC-MPC System. Transport of the NAC-MPC System would be subject to the separate requirements of 10 CFR part 71, “Packaging and Transportation of Radioactive Material.” As described in the Statement of Considerations to the final rule “License and Certificate of Compliance Terms” (76 FR 8872; February 16, 2011), a renewal reaffirms the original design basis, perhaps with some modifications, but does not involve reevaluating the original design basis in accordance with current review standards, which may be different from the standards in place when the cask design was initially certified. 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 October 17, 2023. However, if the NRC receives any significant adverse comment on this direct final rule by September 5, 2023, 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** or as otherwise appropriate. In general, 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 “Storage of Spent Fuel in NRC-Approved Storage Casks at Power Reactor Sites” (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on April 10, 2000, that approved the NAC Multi-Purpose Canister (NAC-MPC)

System design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1025. On August 28, 2007 (72 FR 49561), the NRC amended the scope of the general licenses issued under § 72.210 to include the storage of spent fuel in an independent spent fuel storage installation (ISFSI) at power reactor sites to persons authorized to possess or operate nuclear power reactors under 10 CFR part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants.” On February 16, 2011 (76 FR 8872), the NRC amended subparts K and L in 10 CFR part 72, to extend and clarify the term limits for certificates of compliance and revised the conditions for spent fuel storage casks renewals, including adding requirements for the safety analysis report to include time-limited aging analyses and a description of aging management programs. The NRC also clarified the terminology used in the regulations to use “renewal” rather than “reapproval” to better reflect that extending the term of a currently approved cask design is based on the cask design standards in effect at the time the certificate of compliance was approved rather than current standards.

IV. Discussion of Changes

The term certified by the initial Certificate of Compliance No. 1025 was 20 years. The period of extended operation for each cask begins 20 years after the cask is first used by the general licensee to store spent fuel. On December 18, 2019, as supplemented on August 10, 2021; March 18, 2022; and July 22, 2022, NAC International, Inc. submitted a request to renew Certificate of Compliance No. 1025 for the NAC-MPC System design for an additional 40 years beyond the initial certificate term (ADAMS Accession Nos. ML19357A178, ML21231A154, ML22077A831, and ML22203A127 respectively).

The NAC-MPC System is provided in three configurations for use at (1) Yankee Atomic Electric Company’s Yankee Rowe (YR) Nuclear Station (hereafter “YR-MPC”), (2) Connecticut Yankee (CY) Haddam Neck Nuclear Power Plant (hereafter “CY-MPC”), and (3) Dairyland Power Cooperative La Crosse Boiling Water Reactor (LACBWR) Nuclear Power Plant (hereafter “LACBWR-MPC”). Each NAC-MPC System includes a transportable storage canister (TSC) provided with a fuel basket designed to accommodate the allowable spent fuel contents, a vertical concrete cask (VCC), and a transfer cask (TFR) sized to accommodate the pertinent TSC. The YR-MPC, CY-MPC,

and LACBWR-MPC have similar components and operating features but different physical dimensions, weights, fuel contents, and storage capacities. All configurations are designed such that subsequent transport of the dry-stored spent fuel contents inside each TSC could, if approved, use the certified NAC International's storage transport cask package. This rulemaking does not authorize the transport, instead, the rulemaking authorizes the design of the system, which provides a design compatible with future transport.

The TSC provides the confinement pressure boundary, heat transfer, criticality control, and structural integrity for the safe dry storage of the spent fuel contents. The TSC is stored in the central cavity of the VCC. The VCC provides radiation shielding and structural protection for the TSC and contains internal air flow paths that allow the decay heat from the TSC contents to be removed by natural air circulation around the TSC shell. The principal components of the NAC MPC System include the following:

- TSC (YR-MPC, CY-MPC, and LACBWR-MPC) with pressurized-water reactor or boiling water reactor fuel basket (and damaged fuel cans)
- VCC (YR-MPC, CY-MPC, and LACBWR-MPC)
- TFR (YR-MPC as modified and transferred or sold to LACBWR-MPC, and CY-MPC) and transfer adapter
- spent fuel assemblies
- fuel transfer and auxiliary equipment (e.g., lift yoke, vertical cask transporter, air pads, heavy haul transfer trailer, vacuum drying and helium back-fill system with a helium mass spectrometer leak detector, welding equipment)
- VCC temperature monitoring system
- ISFSI storage pad
- ISFSI security equipment

The renewal of the initial certificate and Amendment Nos. 1 through 8 was conducted in accordance with the renewal provisions in § 72.240. The NRC's regulations require the safety analysis report for the renewal to include time-limited aging analyses that demonstrate that structures, systems, and components important to safety will continue to perform their intended function for the requested period of extended operation and a description of the aging management programs for the management of issues associated with aging that could adversely affect structures, systems, and components important to safety. The NRC spent fuel storage regulations in § 72.240 authorize the NRC to revise the certificate of compliance to include any additional

terms, conditions, and specifications it deems necessary to ensure the safe operation of the cask during the certificate of compliance's renewal term. Here, the NRC is adding four new conditions to the renewal of the certificate of compliance, which will ensure the safe operation of the cask during the certificate of compliance's renewal term and will allow the use of the NAC-MPC System during the approved period of extended operation. The NRC is amending the condition that describes the authorization for use of the NAC-MPC System design under the general license. Chapter 4 of the Preliminary Safety Evaluation Report, "Changes to Certificate of Compliance and Technical Specifications," (ML22297A270) provides a consolidated list of, and the basis for, the changes to the CoC conditions and technical specifications resulting from the staff's review of the renewal application.

The new conditions added to the renewal of the initial certificate of compliance and Amendment Nos. 1 through 8 are:

- A condition requiring the certificate of compliance holder to submit an updated final safety analysis report within 90 days after the effective date of the renewal. The updated final safety analysis report must reflect the changes resulting from the review and approval of the renewal of the certificate of compliance. This condition ensures that final safety analysis report 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 related to renewal and aging management activities. The certificate of compliance holder is required to continue to update the final safety analysis report pursuant to the requirements of § 72.248.

- A condition requiring each general licensee using the NAC-MPC System design to include, in the evaluations required by § 72.212(b)(5), evaluations related to the terms, conditions, and specifications of this certificate of compliance amendment as modified (i.e., changed or added) as a result of the renewal of the certificate of compliance and include, in the document review required by § 72.212(b)(6), a review of the final safety analysis report changes resulting from the renewal of the certificate of compliance and the NRC Safety Evaluation Report for the renewal of the certificate of compliance. The general licensee would also be required to ensure that the evaluations required by § 72.212(b)(7) in response to these changes are conducted and the determination required by § 72.212(b)(8)

is made. This condition also makes it clear that to meet the requirements in § 72.212(b)(11), general licensees that currently use a NAC-MPC System will need to update their § 72.212 reports, even if they do not put additional NAC-MPC Systems into service after the renewal's effective date. These evaluations, reviews, and determinations are to be completed before the dry storage system enters the period of extended operation (which begins 20 years after the first use of the NAC-MPC System) or no later than 365 days after the effective date of this rule, whichever is later. This will provide general licensees a minimum of 365 days to comply with the new terms, conditions, specifications, and other changes to the certificate of compliance and to make the necessary determinations required by § 72.212(b)(8) as to whether activities related to the storage of spent nuclear fuel using the renewed certificate of compliance involve a change in the facility Technical Specifications or requires a license amendment for the facility.

- A condition requiring all future amendments and revisions to the certificate of compliance (i.e., the initial certificate 1025 and Amendment Nos. 1 through 8) to include evaluations of the impacts to aging management activities (i.e., time-limited aging analyses and aging management programs) to ensure they remain adequate for any changes to structures, systems, and components important to safety within the scope of renewal. This condition ensures that future amendments to the certificate of compliance address the renewed design bases for the certificate of compliance, including aging management impacts that may arise from the changes to the system in proposed future amendments.

Additionally, the condition for the initial certificate and Amendment Nos. 1 through 8 would be amended to reflect changes to the scope of the general license granted by § 72.210 that were made after the approval of the initial certificate. The authorization is amended to allow persons authorized to possess or operate a nuclear power reactor under 10 CFR part 52 to use the NAC-MPC System under the general license issued under § 72.210.

The NRC made one corresponding change from the technical specifications for the initial certificate of compliance and Amendment Nos. 1 through 8 by adding a section addressing the aging management program. General licensees using the NAC-MPC System design during the period of extended operation will need to establish, implement, and maintain written procedures for each

applicable aging management program in the final safety analysis report to use the NAC-MPC System design during the approved period of extended operation. The procedures will need to include provisions for changing aging management program elements, as necessary, and within the limitations of the approved design bases to address new information on aging effects based on inspection findings and/or industry operating experience. General licensees will also be required to perform tollgate assessments on the state of knowledge of aging-related operational experience, research, monitoring, and inspections to ascertain the ability of in-scope NAC-MPC System to continue to perform their intended safety functions throughout the renewed period of extended operation.

General licensees will need to establish and implement these written procedures prior to entering the period of extended operation (which begins 20 years after the first use of the cask system) or no later than 365 days after the effective date of this rule, whichever is later. The general licensee is required to maintain these written procedures for as long as the general licensee continues to operate NAC-MPC System in service for longer than 20 years.

Under § 72.240(d), the design of a spent fuel storage cask will be renewed if (1) the quality assurance requirements in 10 CFR part 72, subpart G, “Quality Assurance,” are met, (2) the requirements of § 72.236(a) through (i) are met, and (3) the application includes a demonstration that the storage of spent fuel has not, in a significant manner, adversely affected the structures, systems, and components important to safety. Additionally, § 72.240(c) requires that the safety analysis report accompanying the application contain time-limited aging analyses that demonstrate that the structures, systems, and components important to safety will continue to perform their intended function for the requested period of extended operation and a description of the aging management program for management of aging issues that could adversely affect structures, systems, and components important to safety.

As documented in the preliminary safety evaluation report, the NRC reviewed the application for the renewal of the certificate of compliance and the conditions in the certificate of compliance and determined that the conditions in subpart G, § 72.236(a) through (i), and § 72.238 have been met and the application includes a demonstration that the storage of spent nuclear fuel has not, in a significant

manner, adversely affected structures, systems, and components important to safety. The NRC’s safety review determined that the NAC-MPC System, with the added terms, conditions, and specifications in the certificate of compliance and the technical specifications, will continue to meet the requirements of 10 CFR part 72 for an additional 40 years beyond the initial certificate term. Consistent with § 72.240, the NRC is renewing the NAC International Inc. NAC-MPC System initial certificate 1025 and Amendment Nos. 1 through 8.

Extending the expiration date of the approval for the initial certificate and Amendment Nos. 1 through 8 for 40 years and requiring the implementation of aging management activities during the period of extended operation does not impose any modification or addition to the design of a cask system’s structures, systems, and components important to safety, or to the procedures or organization required to operate the system during the initial 20-year storage term certified by the cask’s initial certificate of compliance. General licensees who have loaded these casks, or who load these casks in the future under the specifications of the applicable renewed certificate of compliance, may store spent fuel in these cask system designs for 20 years without implementing the aging management program. For any casks that have been in use for more than 20 years, the general licensee will have 365 days to complete the analyses required to use the cask system design pursuant to the terms and conditions in the renewed certificate of compliance. As explained in the 2011 final rule that amended 10 CFR part 72 (76 FR 8872), the general licensee’s authority to use a particular storage cask design under an approved certificate of compliance will be for at least the term certified by the cask’s certificate of compliance. For casks placed into service before the expiration date of the initial certificate, the general licensee’s authority to use the cask would be extended for an additional 40 years from the date the initial certificate expired. For casks placed into service after the expiration date of the initial certificate and before the effective date of this rule, the general licensee’s authority to use the cask would last the length of the term certified by the cask’s certificate of compliance (*i.e.*, 40 years after the cask is placed into service). For casks placed into service after this rule becomes effective, the general licensee’s authority to use the cask would expire

40 years after the cask is first placed into service.

This direct final rule revises the NAC-MPC System design listing in § 72.214 by renewing, for 40 more years, the initial certificate and Amendment Nos. 1 through 8 of Certificate of Compliance No. 1025. The renewed certificate of compliance includes the changes to the certificate of compliance and technical specifications previously described. The renewed certificate of compliance includes the terms, conditions, and specifications that will ensure the safe operation of the cask during the renewal term and the added conditions that will require the implementation of an aging management program. The preliminary safety evaluation report describes the new and revised conditions in the certificate of compliance, the changes to the technical specifications, and the NRC staff evaluation.

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 NAC-MPC System 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.

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 proposed action is to amend § 72.214 to revise the NAC–MPC System listing within the “List of approved spent fuel storage casks” to renew, for an additional 40 years, the initial certificate and Amendment Nos. 1 through 8 of Certificate of Compliance No. 1025.

B. The Need for the Action

This direct final rule renews the certificate of compliance for the NAC–MPC 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 the general license provisions in 10 CFR part 72. Specifically, this rule extends the expiration date for the NAC–MPC System certificate of compliance for an additional 40 years, allowing a power reactor licensee to continue using the cask design during a period of extended operation for a term certified by the cask’s renewed certificate of compliance. The renewal only applies to the storage of spent fuel in an independent spent fuel storage installation at power reactor sites under a general license pursuant to the requirements of 10 CFR part 72; it does not address or apply to transportation of the NAC–MPC System. Transport of the NAC–MPC System would be subject to the separate requirements of 10 CFR part 71.

This direct final rule would add conditions to the certificate of compliance and technical specifications necessary to have confidence that the structures, systems, and components important to safety will continue to perform their intended functions during the requested period of extended operation and that the design of the cask would continue to maintain

confinement, shielding, and criticality control in the event of an accident during the period of extended operation. These conditions are needed to provide reasonable assurance that adequate protection of public health and safety will continue during the period of extended operation. Chapter 4 of the Preliminary Safety Evaluation Report, “Changes to Certificate of Compliance and Technical Specifications,” (ML22297A270) provides a consolidated list of, and the basis for, the changes to the CoC conditions and technical specifications resulting from the staff’s review of the renewal application.

The new conditions added to the renewal of the initial certificate of compliance and Amendment Nos. 1 through 8 are:

- A condition requiring the certificate of compliance holder to submit an updated final safety analysis report within 90 days after the effective date of the renewal. The updated final safety analysis report must reflect the changes resulting from the review and approval of the renewal of the certificate of compliance. This condition ensures that final safety analysis report 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 related to renewal and aging management activities. The certificate of compliance holder is required to continue to update the final safety analysis report pursuant to the requirements of § 72.248.

- A condition requiring each general licensee using the NAC–MPC System design to include, in the evaluations required by § 72.212(b)(5), evaluations related to the terms, conditions, and specifications of this certificate of compliance amendment as modified (*i.e.*, changed or added) as a result of the renewal of the certificate of compliance and include, in the document review required by § 72.212(b)(6), a review of the final safety analysis report changes resulting from the renewal of the certificate of compliance and the NRC Safety Evaluation Report for the renewal of the certificate of compliance. The general licensee would also be required to ensure that the evaluations required by § 72.212(b)(7) in response to these changes are conducted and the determination required by § 72.212(b)(8) is made. This condition also makes it clear that to meet the requirements in § 72.212(b)(11), general licensees that currently use a NAC–MPC System will need to update their § 72.212 reports, even if they do not put additional NAC–MPC Systems into service after the renewal’s effective date. These

evaluations, reviews, and determinations are to be completed before the dry storage system enters the period of extended operation (which begins 20 years after the first use of the NAC–MPC System) or no later than 365 days after the effective date of this rule, whichever is later. This will provide general licensees a minimum of 365 days to comply with the new terms, conditions, specifications, and other changes to the certificate of compliance and to make the necessary determinations required by § 72.212(b)(8) as to whether activities related to the storage of spent nuclear fuel using the renewed certificate of compliance involve a change in the facility Technical Specifications or requires a license amendment for the facility.

- A condition requiring all future amendments and revisions to the certificate of compliance (*i.e.*, the initial certificate 1025 and Amendment Nos. 1 through 8) to include evaluations of the impacts to aging management activities (*i.e.*, time-limited aging analyses and aging management programs) to ensure they remain adequate for any changes to structures, systems, and components important to safety within the scope of renewal. This condition ensures that future amendments to the certificate of compliance address the renewed design bases for the certificate of compliance, including aging management impacts that may arise from the changes to the system in proposed future amendments.

Additionally, the condition for the initial certificate and Amendment Nos. 1 through 8 would be amended to reflect changes to the scope of the general license granted by § 72.210 that were made after the approval of the initial certificate. The authorization is amended to allow persons authorized to possess or operate a nuclear power reactor under 10 CFR part 52 to use the NAC–MPC System under the general license issued under § 72.210.

The NRC made one corresponding change from the technical specifications for the initial certificate of compliance and Amendment Nos. 1 through 8 by adding a section addressing the aging management program. General licensees using the NAC–MPC System design during the period of extended operation will need to establish, implement, and maintain written procedures for each applicable aging management program in the final safety analysis report to use the NAC–MPC System design during the approved period of extended operation. The procedures will need to include provisions for changing aging management program elements, as necessary, and within the limitations of

the approved design bases, to address new information on aging effects based on inspection findings and/or industry operating experience. General licensees will also be required to perform tollgate assessments on the state of knowledge of aging-related operational experience, research, monitoring, and inspections to ascertain the ability of in-scope NAC-MPC System to continue to perform their intended safety functions throughout the renewed period of extended operation.

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 impacts of using NRC-approved storage casks were analyzed in the environmental assessment for the 1990 final rule and are described in “Environmental Assessment for Proposed Rule Entitled, ‘Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear Power Reactor Sites.’” The potential environmental impacts for the longer-term use of dry cask designs and the renewal of certificates of compliance were analyzed in the environmental assessment for the 2011 final rule establishing the regulatory requirements for renewing certificates of compliance and are described in “Environmental Assessment and Finding of No Significant Impact for the Final Rule Amending 10 CFR part 72 License and Certificate of Compliance Terms” (ML100710441). The environmental impacts from continued storage were also considered in NUREG-2157, “Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel.” The environmental assessment for this renewal of the initial certificate and Amendment Nos. 1 through 8 tiers off of the environmental assessment for the February 16, 2011, final rule and NUREG-2157. Tiering from past environmental assessments is a standard process under the National Environmental Policy Act of 1969, as amended.

The NAC-MPC System design 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 flood, an accidental cask drop, lightning effects, fire, explosions, and other incidents.

A renewal reaffirms the original design basis, perhaps with some modifications. The renewal allows the cask to be used during a period of extended operation that corresponds to the term certified by the cask’s certificate of compliance in the renewal. As a condition of the renewal, the NRC requires an aging management program that will ensure that structures, systems, and components important to safety will perform as designers intended during the renewal period. The renewal does not reflect a change in design or fabrication of the cask system. Because the aging management program will ensure the structures, systems, and components important to safety for the cask will perform as designed for the renewal period, any resulting occupational exposure or offsite dose rates from the renewal of the initial certificate and Amendment Nos. 1 through 8 would remain well within the limits provided in 10 CFR part 20, “Standards for Protection Against Radiation.” The NRC has also determined that the design of the cask system would continue to maintain confinement, shielding, and criticality control in the event of an accident. The NRC determined that the structures, systems, and components important to safety will continue to perform their intended functions during the requested period of extended operation. The NRC determined that the renewed NAC-MPC System design, when used under the conditions specified in the renewed certificate of compliance, the technical specifications, 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 reasonably assured. The NRC documented its safety findings in the preliminary safety evaluation report.

D. Alternative to the Action

The alternative to this action is to deny renewing the NAC-MPC System design and to not issue the direct final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load spent nuclear fuel into the NAC-MPC System design after the expiration date of the certificate of compliance or that seeks to continue storing spent nuclear fuel in the NAC-MPC System design for longer than the term certified by the cask’s certificate of compliance for the initial certificate (*i.e.*, more than 20 years)

would have to request an exemption from the requirements of §§ 72.212 and 72.214 or would have to load the spent nuclear fuel into a different approved cask design. Under this alternative, those licensees interested in continuing to use the NAC-MPC System design 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. If the general licensee is granted an exemption, the environmental impacts would be the same as the proposed action. If the general licensee is not granted an exemption, the general licensee would need to unload the NAC-MPC system and load the fuel into another cask system design, which would result in environmental impacts that are greater than for the proposed action because activities associated with cask loading and decontamination may result in some small liquid and gaseous effluent.

E. Alternative Use of Resources

Renewal of the initial certificate and Amendment Nos. 1 through 8 to Certificate of Compliance No. 1025 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 proposed action is to amend § 72.214 to revise the NAC-MPC System listing within the “List of Approved Spent Fuel Storage Casks” to renew, for an additional 40 years, the initial certificate and Amendment Nos. 1 through 8 of Certificate of Compliance No. 1025. 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, and are described in the preceding environmental assessment in Section VIII of this notice.

The renewal does not reflect a change in design or fabrication of the cask system as approved for the initial certificate or Amendment Nos. 1 through 8. The NRC determined that the renewed NAC-MPC System design, when used under the conditions specified in the renewed certificate of compliance, the technical specifications, 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 reasonably assured.

Based on the foregoing environmental assessment, the NRC concludes that this direct final rule, “List of Approved Spent Fuel Storage Casks: NAC–MPC System, Certificate of Compliance No. 1025, Renewal of the initial certificate and Amendment Nos. 1 through 8,” will not have a significant effect on the quality of the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this direct final rule and the Commission has determined not to prepare an environmental impact statement for the proposed action.

The final finding of no significant impact and the other related environmental documents, including NUREG–2157, the “Environmental Assessment and Finding of No Significant Impact for the Final Rule Amending 10 CFR part 72 License and Certificate of Compliance Terms” (2010) are available for public inspection through the NRC public website using ADAMS as described in Section I, “Obtaining Information and Submitting Comments.”

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 NAC International, Inc. NAC International, Inc. is a diversified energy technology company that engages in manufacturing, has more than 500 employees, and does not qualify as a small entity based on the Regulatory Flexibility Act or the NRC size standards at § 2.810. Similarly, none of the existing nuclear power

plants storing spent nuclear fuel qualify as small entities under the Regulatory Flexibility Act or NRC size standards. Therefore, neither the current licensees affected by this rule, nor NAC International, Inc., 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. Therefore, pursuant to its delegated authority, the Executive Director for Operations certifies under section 605 of the Regulatory Flexibility Act “that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”

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 under a general license 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 10, 2000 (64 FR 12444), the NRC issued an amendment to 10 CFR part 72 that approved the NAC–MPC System design by adding it to the list of NRC-approved cask designs in § 72.214.

On December 18, 2019, as supplemented on August 10, 2021; March 18, 2022; and July 22, 2022, NAC International, Inc. submitted a request to renew Certificate of Compliance No. 1025 for the NAC–MPC System design for an additional 40 years beyond the initial certificate term (ML19357A178, ML21231A154, ML22077A831, and ML22203A127 respectively).

The alternative to this action is to withhold approval of the renewal of the initial certificate and Amendments Nos. 1 through 8 and to require any 10 CFR part 72 general licensee seeking to continue the storage of spent nuclear fuel in the NAC–MPC System design using the initial certificate or Amendments No. 1 through 8 beyond the initial 20-year storage term certified by the cask’s initial certificate of compliance to request an exemption from the requirements of §§ 72.212 and 72.214. The term for general licenses would not be extended from 20 years to 40 years. Under this alternative, each interested 10 CFR 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 this direct final rule is consistent with previous NRC actions. Further, as documented in the preliminary safety evaluation report 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 actions in this direct final rule do not require a backfit analysis because they do not fall within the definition of backfitting under § 72.62 or § 50.109(a)(1), they do not impact the issue finality provisions applicable to combined licenses under 10 CFR part 52, and they do not impact general licensees that are using these systems for the duration of their current general licenses.

Certificate of Compliance No. 1025 for the NAC–MPC System design, as currently listed in § 72.214, “List of Approved Spent Fuel Storage Casks,” was initially approved for a 20-year term. This direct final rule would renew the initial certificate and Amendment Nos. 1 through 8, extending their approval period by 40 years. The term certified by the cask’s certificate of compliance for a renewed certificate of compliance is the period of time commencing with the most recent certificate of compliance renewal date and ending with the certificate of compliance expiration date. With this renewal, the term certified by the cask’s certificate of compliance would change from 20 years to 40 years, with the period of extended operation beginning 20 years after the cask is placed into service. The revision to the certificate of compliance through the renewal consists of the changes in the renewed initial certificate and renewed Amendment Nos. 1 through 8 as previously described, and as set forth in the renewed certificates of compliance and technical specifications. These changes would not affect the use of the NAC–MPC System design for the initial 20-year term for previously loaded casks. The renewed certificates would require implementation of aging

management programs during the period of extended operation, which begins after the storage cask system's initial 20-year service period.

Because the term for the renewal would be longer than the initial term certified by the cask's certificate of compliance, the general licensee's authority to use the cask would be extended and would be no less than 40 years. This change would not add, eliminate, or modify (1) structures, systems, or components of an independent spent fuel storage installation or a monitored retrievable storage installation or (2) the procedures or organization required to operate an independent spent fuel storage installation or a monitored retrievable storage installation.

Renewing these certificates does not fall within the definition of backfit under § 72.62 or § 50.109, or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. General licensees who have loaded these casks, or who 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 authorized by the original certificate. Extending the certificates' expiration dates for 40 more years and requiring the implementation of aging management programs does not impose any modification or addition to the design of the structures, systems, and components important to safety of a cask system, or to the procedures or organization required to operate the

system during this initial 20-year term certified by the cask's certificate of compliance. The aging management programs required to be implemented by this renewal are only required to be implemented after the storage cask system's initial 20-year service period ends.

Because this rulemaking renews the certificates, and because renewal is a separate NRC licensing action voluntarily implemented by vendors or licensees, the renewal of these certificates is not an imposition of new or changed requirements from which these certificate of compliance holders or licensees would otherwise be protected by the backfitting provisions in § 72.62 or § 50.109. Even if renewal of this certificate of compliance cask system design could be considered a backfit, NAC International, Inc., as the certificate of compliance holder and vendor of the casks, is not protected by the backfitting provisions in § 72.62 in this capacity.

NAC International, Inc. is also a general licensee using the NAC-MPC System design under a general license. General licensees, including NAC International, Inc., using the existing systems subject to these renewals would be protected by the backfitting provisions in § 72.62 and § 50.109 if the renewals constituted new or changed requirements. But as previously explained, renewal of the certificates for these systems does not impose such requirements. The general licensees using these certificates of compliance may continue storing material in the NAC-MPC System design 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 NAC-MPC System design after the initial 20-year period, these general licensees will be required to implement the applicable aging management programs for any cask systems subject to a renewed certificate of compliance, but such continued use is voluntary.

Additionally, the actions in this direct final rule do not impact issue finality provisions applicable to combined licenses under 10 CFR part 52. Currently, there are no NAC-MPC system used at an independent fuel storage installation associated with a nuclear power reactor licensed pursuant to 10 CFR part 52 under the general license granted by § 72.210.

For these reasons, renewing the initial certificate and Amendment Nos. 1 through 8 of Certificate of Compliance No. 1025 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./ Federal Register citation
Preliminary Certificates of Compliance and Preliminary Conditions for Cask Use and Technical Specifications	
Preliminary Renewed Initial Certificate of Compliance No. 1025	ML22297A272.
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Initial Certificate	ML22297A281.
Preliminary Renewed Certificate of Compliance No. 1025, Renewed Amendment No. 1	ML22297A273.
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Amendment No. 1	ML22297A282.
Preliminary Renewed Certificate of Compliance No. 1025, Renewed Amendment No. 2	ML22297A274.
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Amendment No. 2	ML22297A283.
Preliminary Renewed Certificate of Compliance No. 1025, Renewed Amendment No. 3	ML22297A275.
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Amendment No. 3	ML22297A284.
Preliminary Renewed Certificate of Compliance No. 1025, Renewed Amendment No. 4	ML22297A276.
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Amendment No. 4	ML22297A285.
Preliminary Renewed Certificate of Compliance No. 1025, Renewed Amendment No. 5	ML22297A277.
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Amendment No. 5	ML22297A286.
Preliminary Renewed Certificate of Compliance No. 1025, Renewed Amendment No. 6	ML22297A278.
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Amendment No. 6	ML22297A287.
Preliminary Renewed Certificate of Compliance No. 1025, Renewed Amendment No. 7	ML22297A279.
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Amendment No. 7	ML22297A288.
Preliminary Renewed Certificate of Compliance No. 1025, Renewed Amendment No. 8	ML22297A280.
Preliminary Conditions for Cask Use and Technical Specifications, Renewed Amendment No. 8	ML22297A289.

Document	ADAMS accession No./ Federal Register citation
Preliminary Safety Evaluation Report	
Preliminary Final Safety Evaluation Report for Renewal of Initial Certificate and Amendments Nos. 1 through 8, of CoC No. 1025 for the NAC Multi-Purpose Canister.	ML22297A270.
Environmental Documents	
Environmental Assessment for Proposed Rule Entitled, "Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear Power Reactor Sites." (1989).	ML051230231.
"Environmental Assessment and Finding of No Significant Impact for the Final Rule Amending 10 CFR Part 72 License and Certificate of Compliance Terms" (2010).	ML100710441.
Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel: Final Report (NUREG–2157, Volumes 1 and 2) (2014).	ML14198A440 (package).
"Storage of Spent Fuel In NRC-Approved Storage Casks at Power Reactor Sites" Final Rule (July 18, 1990)	55 FR 29181.
NAC Multi-Purpose Canister (NAC–MPC) System, Certificate of Compliance No. 1025, Renewal Application Documents	
Preliminary Renewal Package for the NAC–MPC System, CoC 1025	ML22297A269 (package).
NAC International—Submission of a Request to Renew the U.S. Nuclear Regulatory Commission Certificate of Compliance No. 1025 for the NAC–MPC Cask System.	ML19357A178 (package).
NAC International, Inc.—Responses to the Nuclear Regulatory Commission's (NRC) Request for Additional Information for the Request to Renew the NRC Certificate of Compliance No. 1025 for the NAC–MPC Cask System.	ML21231A154 (package).
NAC, Submittal of Responses to the Nuclear Regulatory Commission's (NRC) Request for Additional Information for the Request to Renew the NRC Certificate of Compliance No. 1025 for the NAC–MPC Cask System.	ML22077A831 (package).
Supplement to the Submission of Responses to the Nuclear Regulatory Commission's (NRC) Request for Additional Information for the Request to Renew the NRC Certificate of Compliance No. 1025 for the NAC–MPC Cask System.	ML22203A127.
User Need For Rulemaking For Certificate Of Compliance Renewal, Initial Issue (Amendment Number 0), Amendment Numbers 1 Through 8 To The NAC Multipurpose Canister System.	ML22297A271.
Other Documents	
"Standard Review Plan for Renewal of Specific Licenses and Certificates of Compliance for Dry Storage of Spent Nuclear Fuel." NUREG–1927, Revision 1. Washington, DC. June 2016.	ML16179A148.
"Managing Aging Processes in Storage (MAPS) Report." Final Report. NUREG–2214. Washington, DC. July 2019	ML19214A111.
"Agreement State Program Policy Statement; Correction" (October 18, 2017)	82 FR 48535.
Regulatory Guide 3.76, Revision 0, "Implementation of Aging Management Requirements for Spent Fuel Storage Renewals." July 2021.	ML21098A022.

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–2023–0080.

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. 1025 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1025.
Initial Certificate Effective Date: April 10, 2000, superseded by Renewed Initial Certificate Effective Date: October 17, 2023.

Amendment Number 1 Effective Date: November 13, 2001, superseded by Renewed Amendment Number 1 Effective Date: October 17, 2023.

Amendment Number 2 Effective Date: May 29, 2002, superseded by Renewed Amendment Number 2 Effective Date: October 17, 2023.

Amendment Number 3 Effective Date: October 1, 2003, superseded by Renewed Amendment Number 3 Effective Date: October 17, 2023.

Amendment Number 4 Effective Date: October 27, 2004, superseded by Renewed Amendment Number 4 Effective Date: October 17, 2023.

Amendment Number 5 Effective Date: July 24, 2007, superseded by Renewed Amendment Number 5 Effective Date: October 17, 2023.

Amendment Number 6 Effective Date: October 4, 2010, superseded by

Renewed Amendment Number 6

Effective Date: October 17, 2023.

Amendment Number 7 Effective Date:

March 4, 2019, superseded by Renewed

Amendment Number 7 Effective Date:

October 17, 2023.

Amendment Number 8 Effective Date:

March 4, 2019, superseded by Renewed

Amendment Number 8 Effective Date:

October 17, 2023.

Safety Analysis Report (SAR)

Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis

Report for the NAC Multi-Purpose

Canister System (NAC-MPC System).

Docket Number: 72-1025.

Certificate Expiration Date: May 31,

2020.

Renewed Certificate Expiration Date:

April 10, 2060.

Model Number: NAC-MPC System.

* * * * *

Dated: July 18, 2023.

For the Nuclear Regulatory Commission.

Daniel H. Dorman,

Executive Director for Operations.

[FR Doc. 2023-16160 Filed 8-2-23; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2023-1646; Project Identifier MCAI-2023-00065-T; Amendment 39-22516; AD 2023-15-04]

RIN 2120-AA64

Airworthiness Directives; Embraer S.A. (Type Certificate Previously Held by Yaborá Indústria Aeronáutica S.A.; Embraer S.A.) 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 Embraer S.A. Model ERJ 190-300 and -400 airplanes. This AD was prompted by identification that, during simulations, analysis, and an in-service event of the airplane, a stall warning system activation (*i.e.*, stick shaker) and angle of attack (AOA) limiter engagement may occur in certain vertical gust conditions with specific intensity and frequency. This AD requires revising the Limitations section of the existing airplane flight manual (AFM) to incorporate minimum operating speeds during flight at moderate or severe turbulence

conditions, as specified in an Agência Nacional de Aviação Civil (ANAC) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 18, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 18, 2023.

The FAA must receive comments on this AD by September 18, 2023.

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 [regulations.gov](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.

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-1646; 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, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For ANAC material incorporated by reference in this AD, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246-190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203-6600; email pac@anac.gov.br; website anac.gov.br/en/. You may find this material on the ANAC website at sistemas.anac.gov.br/certificacao/DA/DAE.asp.

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-1646.

FOR FURTHER INFORMATION CONTACT: Joshua Bragg, Aviation Safety Engineer,

FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 817-222-5366; Joshua.K.Bragg@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA-2023-1646; Project Identifier MCAI-2023-00065-T” at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to [regulations.gov](https://www.regulations.gov), including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Joshua Bragg, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 817-222-5366; Joshua.K.Bragg@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

ANAC, which is the aviation authority for Brazil, has issued ANAC AD 2023-01-01, effective January 18, 2023 (ANAC AD 2023-01-01) (also referred to as the MCAI), to correct an