953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); 193, 104 Stat. 2835 as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In 10 CFR Part 40, Appendix A, Criterion 6(6), a second paragraph is added to read as follows:

Appendix A to Part 40

* * * * *

I. Technical Criteria

* * * * *

Criterion 6 * * *

(6) * * *

Byproduct material containing concentrations of radionuclides other than radium in soil, and surface activity on remaining structures, must not result in a total effective dose equivalent (TEDE) exceeding the dose from cleanup of radium contaminated soil to the above standard (benchmark dose), and must be at levels which are as low as is reasonably achievable. If more than one residual radionuclide is present in the same 100-square-meter area, the sum of the ratios for each radionuclide of concentration present to the concentration limit will not exceed ''1'' (unity). A calculation of the potential peak annual TEDE within 1000 years to the average member of the critical group that would result from applying the radium standard (not including radon) on the site must be submitted for approval. The use of decommissioning plans with benchmark doses which exceed 100 mrem/yr, before application of ALARA, requires the approval of the Commission after consideration of the recommendation of the NRC staff. This requirement for dose criteria does not apply to sites that have decommissioning plans for soil and structures approved before June 11, 1999.

* * * * *

Dated at Rockville, Maryland, this 6th day of April 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–9035 Filed 4–9–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG02

Elimination of Reporting Requirement and 30-Day Hold in Loading Spent Fuel After Preoperational Testing of Independent Spent Fuel Storage or Monitored Retrievable Storage Installations

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to eliminate the requirement that a report of the preoperational testing of an independent spent fuel storage installation or monitored retrievable storage installation be submitted to the NRC at least 30 days before the receipt of spent fuel or high-level radioactive waste. Experience has shown that the NRC staff does not need the report or the holding period because the NRC staff is on site and evaluates preoperational testing as it occurs. This amendment will eliminate an unnecessary regulatory impact on licensees.

EFFECTIVE DATE: May 12, 1999.

FOR FURTHER INFORMATION CONTACT: Gordon Gundersen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6195, e-mail geg1@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

On September 14, 1998 (63 FR 49046), the NRC published a proposed rule in the **Federal Register** that would amend NRC's regulations in 10 CFR part 72 to eliminate a preoperational testing reporting requirement and a 30-day hold in loading spent fuel. Part 72 requires that the conditions for a site-specific license (10 CFR 72.24(g)) and the conditions for a Certificate of Compliance (CoC) (10 CFR 72.236(l)) contain requirements for the performance of preoperational testing by the site-specific licensee or the general licensee, respectively. The licensee is required to complete the preoperational testing program described in the applicable Safety Analysis Report (SAR) before spent fuel is loaded into an independent spent fuel storage installation (ISFSI) or before spent fuel or high-level radioactive waste (HLW) is loaded into a monitored retrievable storage installation (MRS). Information on the preoperational test program, including the specific tests and their acceptance criteria, are contained in the SAR submitted by the site-specific licensee or by the certificate holder for the design of the spent fuel storage cask to be used by the general licensee.

Section 72.82(e) requires licensees to submit to the NRC a report of the preoperational test acceptance criteria and test results at least 30 days before the receipt of spent fuel or HLW for loading into an ISFSI or MRS. However, the licensee is not required to submit test procedures, only a summary report of the test results. A copy of this report is subsequently placed in the NRC Public Document Room (PDR). The purpose of the 30-day period is to establish a sufficient hold point to ensure that the NRC has sufficient time to inspect a new licensee's preparations and, if necessary, exercise its regulatory authority before spent fuel is received at an ISFSI or spent fuel and HLW at an MRS. The licensee is not required to obtain NRC approval of the report before commencing loading operations.

Comments on the Proposed Rule

The Commission received four letters commenting on the proposed rule. Copies of the letters are available for public inspection and copying for a fee at the Commission's Public Document Room, located at 2120 L Street, NW. (Lower Level), Washington, DC. One letter was from NEI, one letter from a CoC holder, and two letters were from utilities holding 10 CFR part 50 reactor licenses. All of the letters supported the proposed rule. One utility quantified the savings of eliminating the 30-day hold as more than $300,000.

Discussion

The requirement for a preoperational test report and 30-day hold period was added to the part 72 regulations governing licensing requirements for ISFSIs and an MRS at the time they became effective on November 28, 1980 (45 FR 74693), and before the NRC staff had any practical experience in licensing such facilities. However, in the intervening period, the Commission's practice has been for the NRC staff to maintain an extensive oversight presence during the preoperational testing phase of ISFSIs, reviewing the acceptance criteria, preoperational test, and test results as

they occur. Thus, NRC staff has had immediate access to the licensee's procedures and test results, and has not needed either a preoperational test report or a 30-day hold period in order to complete its inspection activities and determine whether any further regulatory action is needed before the licensee begins to load spent fuel or HLW.

The NRC inspection program now in place (i.e., Inspection Manual Chapter 2690 and Inspection Procedures 60854 and 60855) ensures that the NRC staff will review the licensee's normal, abnormal, and emergency operating procedures, (including loading and unloading procedures), as well as observe implementation of those procedures during preoperational testing. Consequently, NRC staff is in a position to ensure that the licensee has resolved any problems before loading spent fuel into the ISFSI. NRC staff documents the results of the inspection of the preoperational test program in a written inspection report, which is subsequently placed in the PDR. This report contains conclusions on whether the licensee has adequately completed the preoperational test program, an assessment of the licensee's performance in completing the preoperational test program, and an assessment of the licensee's readiness to begin loading spent fuel or HLW.

Notwithstanding that the current regulation ensures that the NRC will be notified by the licensee before it begins loading spent fuel, other regulations and processes provide adequate assurance that the NRC will be aware of a licensee's anticipated loading activities. For ISFSIs at operating reactor sites, the Commission expects that on-site NRC resident inspector staff would be aware of any potential fuel loading activities. Additionally, general licensees are required by 10 CFR 72.212(b)(1)(i) to notify the NRC at least 90 days before spent fuel loading begins. For site-specific licensees, the fact that a license has been issued serves as adequate notice to the NRC that spent fuel loading activities are planned. Further, site-specific licensees are also required by 10 CFR 72.70(a) to submit a final safety analysis report to the Commission at least 90 days before spent fuel loading begins.

The public will retain the ability to review a description of the preoperational tests and their acceptance criteria because this information is contained in the SAR, which is available for review in the NRC PDR. Relevant information on the preoperational test program and the results of the preoperational test program both remain available for public review in the SAR and the inspection report, respectively.

The NRC staff's experience has also been that the 30-day hold established by 10 CFR 72.82(e) creates a potentially significant financial burden for licensees because, during the 30-day period, the licensee can perform no loading activities even though the licensee is ready to load spent fuel or HLW. This has resulted in five requests for exemptions in the last 3 years (1995–1998) by licensees and the need for the NRC staff to expend time processing these requests. The elimination of this regulation will preclude the need for exemption requests, enable the licensee to use the crew assembled for fuel transfer while the lessons of preoperational testing are fresh in their minds, and contribute to the efficiency of operations by avoiding unnecessary idle time. The NRC on-site inspection staff observing the spent fuel loading will similarly benefit.

Therefore, the Commission is removing 10 CFR 72.82(e) from NRC's regulations because neither the report nor the 30-day hold period are needed for regulatory purposes and that taking this action will relieve licensees from an unnecessary regulatory burden. Although elimination of this reporting requirement will reduce the information which has been available to the public, the alternative sources of information available to the public on preoperational test activities are sufficient to allow for public review.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule decreases the burden on licensees by eliminating 10 CFR 72.82(e) and the associated reporting burden. The burden reduction for this information collection is estimated to average 40 hours per request. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150-0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The amendment will eliminate the requirement that 10 CFR part 72 licensees submit a report of the preoperational test acceptance criteria and test results at least 30 days before the receipt of spent fuel or HLW on the grounds that NRC's inspection program ensures that the NRC staff will be present for observance of preoperational testing to ensure that a licensee is prepared to safely load spent fuel or HLW. Thus, the report and the 30-day hold period are not needed for NRC's regulatory activities.

The benefit of the rule is that elimination of a report and 30-day hold period not needed by the NRC will reduce an unnecessary regulatory impact on licensees resulting from the 30-day waiting period following submittal of a report of the preoperational test criteria and test results to the NRC. During this period, the licensees can perform no loading activities even though the licensee is ready to load spent fuel or HLW. This imposes a potentially significant financial burden on licensees. The rule will also relieve both licensees and the NRC staff from the need to process exemption requests. The Commission has received and approved several requests for exemption from 10 CFR 72.82(e) and envisions that most future Part 72 licensees will also apply for exemption from this regulation.

An impact of the final rule will be that a report of the preoperational test criteria and test results will no longer be available. However, information on the preoperational test criteria is contained in the SAR, which is available for review in the NRC PDR. In addition, NRC inspection reports will contain NRC findings on the preoperational testing and assessments on the licensee's readiness to commence loading spent fuel. These inspection reports are available in the NRC Public Document Room system. The NRC also considered the alternative of shortening rather than eliminating the hold period but rejected this alternative because it would have retained a requirement not needed for regulatory purposes and thus would have imposed an unnecessary regulatory burden on licensees.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 as amended 5 U.S.C. 605(b), the Commission certifies that this final rule will not have a

significant economic impact on a substantial number of small entities. This final rule would affect only the operators of ISFSIs. These companies do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

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

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness 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.

Compatibility of Agreement State Regulations

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 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, by a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

List of Subjects in 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

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. 553; the NRC is adopting the following amendment to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE 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); secs. 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).

Section 72.44(g) also issued under sec. 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, 2224 (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), Stat. 2252 (42 U.S.C. 10198).

§ 72.82 [Amended]

2. Section 72.82 is amended by removing paragraph (e).

Dated at Rockville, Maryland, this 23rd day of March 1999.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 99–9041 Filed 4–9–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–157–AD; Amendment 39–11114; AD 99–08–08]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Dornier Model 328–100 series airplanes, that requires repetitive lubrication of the engine control push-pull cables, and installation of heating tubes on the control cables in the cockpit area and in the left-hand and right-hand engine balconies, which terminates the repetitive lubrication requirement. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent ice from building up on the engine control push-pull cables, which could result in friction or jamming of the engine controls, and consequent reduced controllability of the airplane.

DATES: Effective May 17, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of May 17, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Dornier Model 328–100 series airplanes was published