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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG75

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS® –24P and –52B Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Standardized NUHOMS® –24P and –52B cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 3 to Certificate of Compliance (CoC) Number 1004. Amendment No. 3 will modify the present cask system design to add the –61BT dry storage canister (DSC), the storage portion of a dual purpose cask design intended to both store and transport spent fuel. The Technical Specifications are revised to add additional fuel parameters associated with use of the –61BT DSC. Additional administrative changes are made to the conditions of the CoC. However, the NRC is disapproving a portion of the applicant's request pertaining to storage of failed fuel.

DATES: The final rule is effective September 12, 2001, unless significant adverse comments are received by July 30, 2001. 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 If the rule is withdrawn, timely notice will be published in the **Federal Register**.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: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking website at *http://ruleforum.llnl.gov.* You may also provide comments via this website by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML010720508. 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.*

FOR FURTHER INFORMATION CONTACT: Gordon Gundersen, telephone (301) 415–6195, e-mail *GEG1@nrc.gov*, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), 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 NWPA 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 65920), that approved the Standardized NUHOMS® –24P and –52B cask design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance Number (CoC No.) 1004.

Discussion

On July 15, 2000, and as supplemented on September 1, 2000, the certificate holder Transnuclear West, Inc. submitted an application to the NRC to amend CoC No. 1004 to permit a Part 72 licensee to use the –61BT dry storage canister (DSC) to store spent fuel. The –61BT is intended to both store and transport spent fuel. Second, conforming changes would be made to current Technical Specifications (TS) 1.2.1, 1.2.3, and 1.2.4, and would add new TS 1.2.3a, 1.2.4a, and 1.2.17 to accommodate the –61BT DSC and the fuel types it will contain. Additionally, the NRC, on its own initiative, is removing CoC Conditions Nos. 9, 10, and 11. Conditions Nos. 9 and 11 have been superseded by a change to 10 CFR 72.48 (64 FR 53582; October 4, 1999) that permits certificate holders to make

certain changes to a cask design without prior NRC approval. Condition No. 10 has been superseded by the new 10 CFR 72.248 (64 FR 53617; October 4, 1999) that requires a certificate holder to periodically update the final safety analysis report (FSAR) associated with the cask design. This update must include any changes to the cask design made under the provisions of 10 CFR 72.48. The change to 10 CFR 72.48 became effective on April 5, 2001, and the addition of 10 CFR 72.248 became effective on February 1, 2000. Removal of Conditions Nos. 9, 10, and 11 will remove confusion for users of the Standardized NUHOMS® Storage System between compliance with the CoC and Part 72 regulations. Finally, existing Condition No. 12 is redesignated as Condition No. 6. The NRC notes that current Condition Nos. 6, 7, and 8 are unused. Additionally, a minor editorial change would be made to Condition No. 3.b. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that adding the –61BT DSC to store spent fuel in and making conforming changes to the TS to add additional fuel parameters associated with the use of the –61BT DSC does not reduce the safety margin. In addition, the NRC staff has determined that these changes do not pose an increased risk to public health and safety.

However, the NRC is disapproving a portion of the applicant's request pertaining to storage of failed fuel. The NRC staff concluded that the applicant's request did not provide acceptable assurance of retrievability of the failed fuel, absent the use of a separate failed-fuel can to store the failed fuel in the Standardized NUHOMS® cask design.

This direct final rule revises the Standardized NUHOMS® Storage System cask design listing in § 72.214 by adding Amendment No. 3 to CoC No. 1004. The particular TS that are changed are identified in the NRC Staff's Safety Evaluation Report for Amendment No. 3.

The amended Standardized NUHOMS® Storage System, when used in accordance with 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.

CoC No. 1004, the revised Technical Specifications, the underlying Safety Evaluation Report for Amendment No. 3, and the Environmental Assessment are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Gordon Gundersen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6195, email *GEG1@nrc.gov.*

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 Number 3 and adding Model Number NUHOMS® –61BT.

Procedural Background

This rule is limited to the changes contained in Amendment 3 to CoC No. 1004 and does not include other aspects of the Standardized NUHOMS® Storage System cask system design. The NRC is using the ''direct final rule procedure'' to promulgate 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. This amendment is not considered to be a significant amendment by the NRC staff. The amendment to the rule will become effective on September 12, 2001. However, if the NRC receives significant adverse comments by July 30, 2001, then the NRC will publish that document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. 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. These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC would revise the Standardized NUHOMS® Storage System cask system design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA) or the provisions of the Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule would amend the CoC for the Standardized NUHOMS® Storage System cask system within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. The amendment will modify the present cask system design by adding the –61BT DSC to store spent fuel in and making conforming changes to TS to add additional fuel parameters to support use of the –61BT DSC. Additional administrative changes are made to the conditions of the CoC. 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 Gordon Gundersen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6195, email *GEG1@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

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

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 § 72.214. On December 22, 1994 (59 FR 65920), the NRC issued an amendment to part 72 that approved the Standardized NUHOMS® Storage System cask design by adding it to the list of NRC-approved cask designs in § 72.214. On July 15, 2000, and as supplemented on September 1, 2000, the certificate holder, Transnuclear West, submitted an application to the NRC to amend CoC No. 1004 to permit a part 72 licensee to use the –61BT DSC to store spent fuel in and to make conforming changes to TS to support the use of the –61BT DSC.

This rule will permit general licensees to use the –61BT DSC to store spent fuel. The rule will remove CoC Conditions Nos. 9, 10, and 11; will redesignate Condition No. 12 as No. 6; and make an editorial change to Condition No. 3.b. The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to each general license. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption.

Approval of the direct final rule will eliminate the above described problem and 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 the above discussion of the benefits and impacts of the alternatives, 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

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, 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 Transnuclear West. 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 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 50.109 or 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. Therefore, a backfit analysis is not required.

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.

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 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); 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. 10d—48b, sec. 7902, 10b Stat. 31b3 (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 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 (CoC) 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.

SAR Submitted by: Transnuclear West, 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: Standardized NUHOMS® –24P, NUHOMS® –52B, and NUHOMS® –61BT.

* * * * *

Dated at Rockville, Maryland, this 15th day of June , 2001.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 01–16390 Filed 6–28–01; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–313–AD; Amendment 39–12292; AD 2001–13–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes. This AD requires repetitive inspections to detect cracks and corrosion around the lower bearing of the actuator attach fittings of the inboard and outboard flaps. This AD also requires repetitive overhauls for certain actuator attach fittings or repetitive replacement of the fittings with new fittings, as applicable, which terminates the repetitive inspections. This AD also provides for replacement of actuator attach fittings with improved fittings, which terminates all requirements of this AD. This amendment is prompted by reports of cracks on the lower bearing journal of the inboard actuator attach fittings of the outboard trailing edge flaps due to stress corrosion. The actions specified by this AD are intended to detect and correct cracking on the actuator attach fittings of the trailing edge flaps, which could result in abnormal operation or retraction of a trailing edge flap, and consequent reduced controllability of the airplane.

DATES: Effective August 3, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 3, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

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 Boeing Model 747–100, –200, –300, –400, and 747SR series airplanes was published in the **Federal Register** on April 24, 2000 (65 FR 21675). That action proposed to require repetitive inspections to detect cracks and corrosion around the lower bearing of the actuator attach fittings of the inboard and outboard flaps. That action also proposed to require repetitive overhauls for certain attach fittings or repetitive replacement of the attach fittings with new attach fittings, as applicable, which would constitute terminating action for certain repetitive actions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Limit Applicability of AD

One commenter, the airplane manufacturer, requests that the FAA limit the applicability of the proposed rule to airplanes having line numbers up to and including 1265. The commenter states that new, improved actuator attach fittings will be installed during production on airplanes starting at line number 1266. The commenter explains that the new, improved actuator attach fittings in certain positions (i.e., actuator attach fittings number 2 and 7) have an increased cross-sectional area that reduces stress levels and, consequently, the possibility of stress corrosion cracking. Attach fittings in all other locations will have increased bushing interference, and BMS 5–26 sealant will be applied to the new fittings to prevent general corrosion.

The FAA concurs with the intent of the commenter's request to limit the applicability of this AD. However, since they submitted their comment, the airplane manufacturer has advised the FAA that new fittings have been incorporated on airplanes starting with line number 1264. This coincides with the effectivity listing of a new service bulletin related to this AD, Boeing Service Bulletin 747–57A2310, Revision 2, dated February 22, 2001 (which is described in the next section of this final rule). Therefore, the FAA has revised and clarified the applicability of this AD to apply only to Model 747 series airplanes listed in Boeing Service Bulletin 747–57A2310, Revision 2. (Operators may note that, while the applicability of this AD has been reduced, the estimated number of affected airplanes has been increased in the ''Cost Impact'' section of the preamble. The new estimate includes airplanes delivered after the preparation of the proposed rule.)

Reference New Terminating Action

One commenter notes that, in the preamble of the proposed AD, the FAA identifies the proposed AD as interim action, and states that, once a modification is developed, approved, and available, the FAA may consider additional rulemaking. The commenter states that it is very interested in this terminating modification. The commenter requests that, if release of the modification is imminent, the FAA delay release of this AD until the airplane manufacturer has developed the terminating modification. If the release is not imminent, the commenter requests that the FAA make the modification available as an alternative method of compliance (AMOC) to this AD or issue a superseding AD to include the terminating action as soon as possible.

The FAA partially concurs with the commenter's request. The FAA does not agree that issuance of the final rule should intentionally be delayed pending development of a terminating modification. The commenter provides no technical justification for such a delay.

However, since the issuance of the proposed AD, the FAA has reviewed and approved Boeing Service Bulletin 747–57A2310, Revision 2. (The proposed AD references Boeing Service Bulletin 747–57A2310, Revision 1, dated November 23, 1999, as an appropriate source of service