

affirmance without opinion, the case will be assigned to a three-Member panel for review and decision. The panel to which the case is assigned also has the authority to determine that a case should be affirmed without opinion.

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(d) *Powers of the Board*—(1) * * *

(2) *Summary dismissal of appeals.* (i) *Standards.* * * *

(F) The appeal does not fall within the Board's jurisdiction, or lies with the Immigration Judge rather than the Board;

(G) The appeal is untimely, or it is clear on the record that the right of appeal was affirmatively waived; or

(H) * * *

(ii) *Action by the Board.* The Chairman may provide for the exercise of the appropriate authority of the Board to dismiss an appeal pursuant to paragraph (d)(2) of this section by a three-Member panel, or by a single Board Member or the Chief Attorney Examiner. The Chairman may determine who from among the Board Members or the Chief Attorney Examiner is authorized to exercise the authority under this paragraph and the designation may be changed by the Chairman as he deems appropriate. Except as provided in this part for review by the Board en banc or by the Attorney General, or for consideration of motions to reconsider or reopen, an order dismissing any appeal pursuant to paragraph (d)(2) shall constitute the final decision of the Board. If the single Board Member or the Chief Attorney Examiner to whom the case is assigned determines that the case is not appropriate for summary dismissal, the case will be assigned for review and decision pursuant to paragraph (a) of this section.

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3. Section 3.2 is amended by adding a new paragraph (b)(3) to read as follows:

§ 3.2 Reopening or reconsideration before the Board of Immigration Appeals

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(b) * * *

(3) A motion to reconsider based solely on the argument that the case should not have been affirmed without opinion by a single Board Member, or by a three-Member panel, is barred.

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Dated: September 8, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98-24571 Filed 9-11-98; 8:45 am]

BILLING CODE 4410-30-M

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: Proposed 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.

DATES: The comment period expires November 30, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (<http://www.nrc.gov>). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415-6215; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

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

Part 72 requires that the Safety Analysis Report (SAR) accompanying an application for a site-specific license (§ 72.24(g)) and the application for the approval of a spent fuel storage cask (§ 72.236(l)) contain information on 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 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).

10 CFR 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, but only a 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 hold point to allow NRC to review 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.

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 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 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 this 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 § 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 § 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 such 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 will 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 § 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 several requests for exemptions by licensees and the need for the NRC staff to expend time processing these requests. The elimination of this regulation would preclude the need for exemption requests and would enable the licensee to use the crew assembled for fuel transfer while the lessons of preoperational testing are fresh in their minds and will contribute to the efficiency of operations by avoiding unnecessary idle time. The NRC staff observers of spent fuel loading will similarly benefit.

Therefore, the Commission proposes to remove 10 CFR 72.82(e) from NRC's regulations because it believes neither the report nor the 30-day hold period are needed for regulatory purposes and taking this action will relieve licensees from an unnecessary regulatory burden. While elimination of this reporting requirement will also remove a piece of information which was available to the public, the alternative sources of information available to the public on preoperational test activities adequately recount the licensee's performance of preoperational testing.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed 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 proposed rule.

Paperwork Reduction Act Statement

This proposed rule decreases the burden on licensees by eliminating 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 receipt of spent fuel or high-level radioactive waste, 10 CFR 72.82(e). The public burden reduction for this information collection is estimated to average 40 hours per response. Because the burden for this information collection is insignificant, Office of Management and Budget clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150-0132.

Public Protection Notification

If 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 proposed amendment would 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 and will be in a position 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 proposed rule is that elimination of a report and 30-day hold period not needed by the NRC would 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 could impose a potentially significant financial burden on licensees. The rule would 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 § 72.82(e) and envisions that most future part 72 licensees would also apply for exemption from this regulation. An impact of the proposed rule would be that a report of the preoperational test criteria and test results will no longer be available. However, 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 will be 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 still retain a requirement not needed for regulatory purposes and thus, would still impose 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 proposed rule will not, if adopted, have a significant economic impact on a substantial number of small entities. This proposed 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 proposed rule.

Criminal Penalties

For the purpose of Section 223 of the Atomic Energy Act (AEA), the Commission is issuing the proposed rule to amend 10 CFR 72.82, under one or more of sections 161b, 161i, or 161o of the AEA. Willful violations of this rule would be subject to criminal enforcement.

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** (62 FR 46517, September 3, 1997), 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, via 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 proposing to adopt 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, MD, this 25th day of August, 1998.

For the Nuclear Regulatory Commission.

L. Joseph Callan,

Executive Director for Operations.

[FR Doc. 98-24567 Filed 9-11-98; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-CE-137-AD]

RIN 2120-AA64

Airworthiness Directives; Dornier-Werke G.m.b.H. Model Do 27 Q-6 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Dornier-Werke G.m.b.H. (Dornier) Model Do 27 Q-6 airplanes. The proposed AD would require repetitively inspecting the rivets that attach the forward stabilizer attach fitting to the airplane fuselage for looseness, and replacing any loose rivets. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent the stabilizer from detaching at the forward stabilizer attach flanges because of loose rivets, which could result in reduced or loss of control of the airplane.

DATES: Comments must be received on or before October 15, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-CE-137-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Daimler-Benz Aerospace, Dornier, Product Support, P.O. Box 1103, D-82230 Wessling, Federal Republic of Germany; telephone: (08153) 300; facsimile: (08153) 302985. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426-6934; facsimile: (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the