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Interim Storage of Spent Fuel in an Independent Spent Fuel Storage Installation at a Reactor Site; Site-Specific License to a Qualified Applicant

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its procedures to permit the Director of Nuclear Material Safety and Safeguards to issue a site-specific license to a qualified applicant for the interim storage of spent fuel in an independent spent fuel storage installation (ISFSI) at a reactor site following satisfactory completion of NRC safety and environmental reviews and after any public hearing on the application. The amendment eliminates the need for express Commission authorization for each ISFSI license, but does not affect the scope of NRC review of an ISFSI license application or change the present opportunity for public hearing provided for in the NRC rules of practice.

EFFECTIVE DATE: May 30, 1995.

ADDRESSES: The documents referenced in this final rule are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Copies of NUREG–0575 and NUREG–1092 may also be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC. 20013–7028. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

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SUPPLEMENTARY INFORMATION

I. Background

Under 10 CFR Part 72, the NRC will issue a specific license for the interim storage of nuclear power plant spent fuel in an independent spent fuel storage installation (ISFSI) if NRC determines the application meets the requirements of the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*) and the Commission's regulations. An ISFSI is a facility that is specifically designed and constructed for interim spent fuel storage, after use of the nuclear fuel as a source of energy in a nuclear power reactor, until its shipment to the U.S. Department of Energy's (DOE) planned geologic repository for disposal of radioactive waste. Part 72 applies to site-specific licenses for storage of spent fuel in an ISFSI (up to 20 years with renewal at the option of the NRC) or a monitored retrievable storage installation (MRS) (up to 40 years with renewal at the option of the NRC). Although Part 72 also applies to spent fuel storage in approved casks at an ISFSI at a reactor site pursuant to a general license (10 CFR part 72, subpart K), the general license is not covered or affected by this rulemaking.

On June 3, 1993 (58 FR 31478), the Commission proposed rulemaking to modify the Commission's procedures for the issuance of a specific ISFSI license to a qualified applicant. After considering the public comments received in response to the Commission's request, the Commission has decided to adopt the proposed rule as final with one clarification. Specifically, the final rule covers an ISFSI at a reactor site. (The proposed rule was not explicit on this point.)

II. Summary of Proposed Rule

As set forth in its notice of proposed rulemaking (58 FR 31478–81), the Commission proposed to amend the procedures that authorize the NRC Director of Nuclear Material Safety and Safeguards (or the Director's designee) to issue a site-specific license for the interim storage of spent fuel in an ISFSI under 10 CFR part 72. This type of license would be issued after the NRC completes a comprehensive, documented, public health and safety review; prepares an environmental assessment and determines that issuing the license would conform to all statutory and regulatory requirements; and after an opportunity for a public hearing has been offered and any requested hearing is complete. The amendment would end the current internal practice under which the Director obtained the Commission's express authorization for each ISFSI license, after the NRC review and determination that a license should be issued under 10 CFR part 72, but before the Director actually issued the license. However, the proposed rule would not affect, in any way, existing procedures for the NRC review or the opportunity for public hearing.

III. Public Comments and the Commission's Response

In response to publication of the proposed rule and request for public comments, including extension of the public comment period (58 FR 48004; September 14, 1993), NRC received 11 written comments. (Copies of the comment letters are available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC). In some instances, similar comments were offered by more than one commenter, and comments were therefore grouped into the categories that are set forth below, together with the Commission's response.

1. *Comment*: The proposed rule forecloses public participation in important reactor spent fuel storage decisions.

Several comments took issue with the Commission's statement in the notice of proposed rulemaking that the amendment would not affect the opportunity for a public hearing provided in NRC's rules of practice. One commenter argued the amendment

would exclude public participation given that the existing procedure (i.e., without the rule change) provides the public more opportunity for knowledge of an ISFSI license application because there is a second publication of notice and an open Commission meeting on the application. A second commenter expressed the view that the proposed rule should not be applied to its pending petition for hearings on the Calvert Cliffs ISFSI.

Another commenter criticized NRC for what the commenter called a refusal to open NRC doors to public participation on the spent fuel storage issue despite growing public opposition to spent fuel storage as a threat to the environment. That commenter cited public hearing requests from the Michigan Attorney General and citizens interested in the Palisades nuclear plant in a recent NRC storage cask approval rulemaking (58 FR 17948; April 7, 1993) and argued other facilities were also experiencing public opposition to spent fuel storage or transportation plans.

Response: Commission procedures provide a broad opportunity for public participation in ISFSI decisions. The Commission is not changing the public participation process in any manner in this rulemaking.

Rather, these rulemaking amendments mainly affect future NRC proceedings in which the public chooses not to participate. In this regard, we should highlight the limiting language in amended § 72.46(d) which begins with the words ''If no request for a hearing or petition to intervene is filed * * *.'' If, on the other hand, an interested member of the public does want to participate in a hearing on an ISFSI license, then these rulemaking amendments will in no way limit the opportunity to do so. In addition, the amendments will not change the right of hearing participants to request Commission review before any ISFSI license is issued.

The public participation opportunities in NRC site-specific licenses for ISFSIs were detailed in the Commission's notice of proposed rulemaking, as follows:

> Under the Commission's rules of practice, after receipt of an application for a specific license for interim spent fuel storage in an ISFSI, the NRC publishes a notice of proposed action and opportunity for hearing in the **Federal Register** to potentially interested entities and persons (10 CFR 2.105, 72.46(a)). Among other things, the notice indicates that any person whose interest may be affected may file a request for a hearing or a petition for leave to intervene. Potentially affected persons and entities have a right to obtain all relevant NRC staff safety documents, as well as all technical submissions of the license applicant. They may request a hearing or provide written comments before any final NRC action on an ISFSI license application (10 CFR 2.105). If a hearing on the application is held before an Atomic Safety and Licensing Board, issuance of a specific license for an ISFSI by NRC must await completion of the hearing and the initial decision by the Board, and must be appropriately conditioned in light of the Board's findings and conclusions on the matters determined in the hearing (10 CFR 2.760). Under NRC rules of practice, hearing participants have the right to request Commission review of the Board's decision, including the right to request that the effectiveness of the Board's decision be stayed, and that the Commission undertake review before license issuance if they believe the facts warrant such a review (10 CFR 2.786, 2.788). Of course, absent a stay request, under the general rule which the Commission is now proposing to restore, the Board's decision would be immediately effective, and the Director would issue the ISFSI license within 10 days after the decision, without being required to obtain additional, express Commission authorization to do so (See 10 CFR 2.764 (a) and (b)).

The opportunity for public hearing described above, including the opportunity to request Commission review before issuance of a site-specific license for an ISFSI, will continue even with adoption of these rulemaking amendments. Accordingly, because the amendments have no effect at all on public participation, they would also have no retroactive effect on any petition regarding Calvert Cliffs.

Therefore, regarding the comment that NRC doors are closed to public participation generally on spent fuel storage issues, the Commission believes the true facts are quite different. With respect to the commenter's criticism of an unrelated 1993 NRC cask-approval final rule (58 FR 17948; April 7, 1993), involving a storage cask (i.e., VSC–24) later used at the Palisades nuclear plant, which is not a relevant matter to be addressed in this rulemaking, the final rule and public participation procedures were recently upheld by the United States Court of Appeals for the Sixth Circuit. *Kelley* v. *Selin*, No. 93–3613 (6th Cir., Jan. 11, 1995) (''* * * [P]etitioners' assertion that the NRC attempted to shut them out of meaningful participation on the question of the use of the VSC–24 casks is meritless.''). The description of and rationale for that rulemaking process can be found in the 1993 final rule (e.g., 58 FR 17962–63; April 7, 1993).

The Commission has been entrusted with the responsibility to protect the public health and safety, and to provide adequate assurance for public confidence, in the safe storage of spent nuclear fuel from nuclear power plants in the United States. It is NRC's responsibility as a regulator to verify the adequate protection of the public health, safety, and the environment, and to conduct its processes in the open with opportunity for full public participation. In carrying out its responsibilities, NRC will continue to rely on, among other things, a careful, comprehensive public health and safety examination of each ISFSI application, addressing NRC requirements covering site-related parameters, facility design, systems for protection against potential accidents, quality assurance and quality control, worker training, emergency planning, and operating plans and programs to ensure protection of the public from radiation and radioactive materials. To provide further assurance, NRC will continue to rely on a broad, selectively applied program of nuclear plant inspections and compliance reviews, using resident inspectors stationed at each nuclear plant ISFSI site throughout the United States, supported by augmented, expert teams as may be necessary to judge the quality of licensee compliance with ISFSI requirements. NRC will also continue to conduct its ISFSI activities through an open regulatory process that demonstrates, at all stages, an objective and full consideration of public views and concerns.

2. *Comment:* There are growing technical problems which should lead NRC not to go forward with its ISFSI storage rulemaking proposal.

One commenter claimed that technical problems at existing ISFSIs show dry storage will not prove to be a satisfactory solution to utilities' need for additional spent fuel storage capacity. The commenter claimed that dry casks at the Surry ISFSI were operating beyond their designed thermal, radiation and pressure limits; it also claimed that casks systems at Palisades and systems proposed for use elsewhere have inadequate thermal safety margin. The commenter stated that internal NRC studies (CNWRA–93–0006, May 1993) raise other safety problems that will increase spent fuel management costs which the public ultimately must pay. The commenter argued that, given the problems, NRC should not amend its ISFSI licensing procedures as proposed.

Response: Although the comment principally relates to specific plants and therefore seeks to present broader issues independent of the narrow procedural subject matter of this rulemaking, the following information is offered to address the stated concerns.

Spent fuel has been safely stored in independent storage casks at the Surry nuclear plant site for nearly seven years

without, to date, serious incidents or reports of casks operating outside specified thermal, radiation, or pressure limits. Moreover, the cask limits at Surry, which were measured at cask loading and are expected not to change significantly during normal operations, will continue to be monitored on a periodic basis. In addition, dry storage at the Palisades plant commenced about one and one-half years ago after a 1993 NRC rulemaking to approve the VSC–24 storage cask (58 FR 17948; April 7, 1993). That rulemaking exhaustively covered a number of public comments relating to Palisades and, in particular, comments questioning thermal safety margins of the storage cask. NRC responses to those public comments, particularly the response to comment 26, detail the basis for NRC acceptance of the thermal margins for the VSC–24. As set forth in the response, the basis for NRC acceptance of the VSC–24 included assurance that cask thermal margins were calculated using conservative assumptions (e.g., sustained ambient temperatures of 100 °F over several days; little heat conduction through the ends of the canister; fuel clad temperatures based on a peak heat generation rate rather than an average rate; a fuel temperature criterion derived from long-term degradation mechanisms rather than short-term mechanisms that would have led to a much higher temperature standard). Moreover, as indicated in the response, the calculated margins for the VSC–24 were significantly larger when more realistic assumptions were used in the calculations.[1] Thermal analyses and calculations have also been satisfactorily resolved with respect to another cask system, the NUHOMS dry storage system. Rulemaking was completed in January 1995 for the NUHOMS system, and the applicant and NRC staff analyses and calculations are available in the docket of that rulemaking. See Docket No. PR–72 (59 FR 28496) (''List of Approved Spent Fuel Storage Casks: Addition'') (see also 59 FR 65898).

Turning to the internal NRC study referenced in the comment that is the subject of this response, it is important to fully identify that the report is actually directed not at spent fuel storage at reactors, but rather at long-term geologic disposal of high-level waste and spent fuel over thousands of years. Consequently, the report does not draw conclusions that would be directly relevant to decisions about interim storage of spent fuel in ISFSIs or, more significantly, that would be contrary to the NRC's experience with such storage to date. As discussed elsewhere (e.g., 58 FR 17948; April 7, 1993; 55 FR 29181; July 18, 1990; 54 FR 19379; May 5, 1989) and as summarized below, NRC experience to date is that spent fuel can be safely stored under dry conditions over the 20-year licensed term of an ISFSI without presenting significant public health and safety risks.

Irradiated reactor fuel has been handled under dry conditions since the mid-1940's when fuel examinations began in hot cells. Light water reactor fuel has been handled in dry cells since the early 1960's, and some fuels have been in storage under dry conditions for approximately 20 years. Experience with storage of spent fuel in dry casks is extensive, and it is growing. Six nuclear power plant sites are already using dry cask storage: Virginia Power's Surry Station (500 assembles); Carolina Power and Light's H.B. Robinson Station (60 assembles); Duke Power's Oconee Station (530 assemblies); Public Service of Colorado's Fort St. Vrain facility (1480 fuel elements); Consumers Power's Palisades plant (160 assemblies); and Baltimore Gas and Electric's Calvert Cliffs Station (190 assemblies). A seventh plant—Northern States Power's Prairie Island plant—will begin loading assemblies in March 1995. As a result of the growing use of dry storage technology experience, NRC has over 35 staff years of experience in licensing ISFSI storage, further supported by the knowledge and experience of an outside pool of recognized, expert scientists and engineers to perform independent safety analyses of ISFSI systems and components proposed by licensees and vendors in the field.

The successful experience to date in the dry storage of spent fuel storage and the licensing of ISFSIs in the United States, provides support for the Commission's belief there is reasonable assurance such storage and licensing can safely continue without the need for express Commission authorization of each ISFSI license at a reactor site. However, past successes provide no guarantee for the future, and the Commission therefore hastens to emphasize that the NRC staff—under the Commission's active supervision, as described in this document—will continue to bring to bear its full experience in the review, licensing, and inspection of ISFSIs.

3. *Comment:* The Commission proposal would unacceptably reduce Commission oversight of the siting of ISFSIs.

Several comments opposing the Commission proposal believe it will reduce NRC oversight of spent fuel storage, and they find that reduction unacceptable for several reasons. One comment reflecting this view stated that, because the Federal Government was unable satisfactorily to solve the high-level waste (HLW) management problem, and given the growing storage of spent fuel at reactor sites, there is increasing public concern over ISFSI storage and a consequent need for more, rather than less, Commission regulatory oversight of siting decisions. Another commenter stated that ISFSI licenses should have Commissioner review because Commission members have the responsibility to protect public health and safety and should not delegate it to the Director, NMSS, or to anyone else.

Other comments argued the rule change was inappropriate because of the likelihood that the number of ISFSI licenses will increase in the future and the Commission would therefore increasingly need to supervise the licensing process. One commenter, for example, observed that requiring the NRC staff to explain all aspects of a specific ISFSI license to the Commissioners would necessarily lead to a more careful review, and that this additional layer of review would become even more important as the number of ISFSIs grew.

Another commenter argued that the Commission seemed to view its license approval review as ''marginal to safety,'' and disagreed with this view on the ground that spent fuel storage in an ISFSI created a significant hazard to the public in the vicinity of the storage facility.

Response: While it is true the Commission believes its express authorization of each ISFSI license—the internal procedure that is the subject of these rulemaking amendments—is an unnecessary, additional layer of agency review, and, therefore, can be eliminated without reducing public health and safety protection, the Commission's belief is based on its years of experience in supervision of the entire NRC licensing review process for ISFSIs which the Commission will continue to oversee.

The anchor point of the NRC's internal review process to protect public health and safety from the potential risks of a proposed ISFSI is the NRC staff's technical review of the license

[1] On August 1, 1994, Consumers Power Company, the Palisades licensee, reported that two small crack-like indications and a slag-like indication had been discovered in review of radiographs of a weld in a component of a VSC–24 cask at the Palisades ISFSI. After additional analyses, the licensee concluded the cask met requirements and was capable of safely storing fuel for the 20-year license term. The licensee has nonetheless decided to remove from service and replace the cask.

application. As described in the notice of proposed rulemaking, that process is as follows:

> Upon receipt of an ISFSI license application, after publishing a notice of docketing in the **Federal Register,** the NRC staff reviews the license application and applicant's supporting safety analysis report (SAR) describing the proposed ISFSI. This comprehensive, technical review by the NRC staff addresses all relevant public health and safety matters including site characteristics affecting construction and operating requirements for the proposed ISFSI, criteria for and design of the proposed installation, operation systems of the facility, site-generated waste confinement and management systems, measures to ensure the protection of the public and occupational workers from radiation and radioactive materials, analyses of potential accidents that might occur at the facility, and the applicant's plans for the conduct of ISFSI operations. In its review, the NRC staff may require further submittals from the applicant as necessary to complete the ISFSI application, will thoroughly review all of the applicant's supporting technical information, and will independently verify the applicant's safety analyses and design calculations if necessary. To document its review and conclusions, the NRC staff will prepare a comprehensive safety evaluation report (SER) detailing its safety findings and conclusions, as well as an environmental assessment (EA) for the proposed specific license for interim storage of spent fuel in an ISFSI. As noted, interested members of the public may obtain copies of these documents from NRC. None of these NRC staff technical activities would, in any way, be modified by this proposed amendment. (58 FR 31479; June 3, 1993.)

After issuance of an ISFSI license, NRC regulatory responsibilities during the 20-year license term include an inspection and enforcement program, providing for an NRC resident inspector at every licensed reactor site of an ISFSI in the United States, supplemented as necessary by teams of engineers and technical specialists, performing inspections in a wide variety of engineering and scientific disciplines, and ranging from civil and structural engineering to health physics and quality assurance. By means of selective examinations, NRC's inspection program seeks to ensure that each ISFSI licensee is meeting its responsibility for safe maintenance and operation of the ISFSI, in accordance with NRC regulations. The program is preventive in nature, and is designed to anticipate and preclude potentially significant public health and safety events or problems by identifying underlying safety concerns or latent vulnerabilities for prompt licensee management attention and adequate corrective action. NRC inspections supplement, rather than supplant, the licensee's programs, so as to provide an independent check or verification of the effectiveness of those licensee programs and their strict conformance with NRC requirements.

The Commission, alone, is ultimately responsible and accountable for the successful regulation of spent fuel storage in licensed ISFSIs to protect the public health and safety. These rulemaking amendments do not change in any way the Commission's responsibility and accountability to the public and its elected representatives. Rather, in one respect, these amendments modify how the Commission will perform its responsibility (i.e., they eliminate a Commission vote before issuance of an ISFSI license at a reactor site). After the amendments become effective, however, the Commission will still have, and will still continue to fulfill, the responsibilities to supervise and direct the NRC staff's performance of the licensing, inspection, and enforcement activities described above. The NRC staff is required to keep the Commission fully and currently informed about significant proposed licensing actions. This means the Director, NMSS, must notify the Commission before issuance of any license for an ISFSI. The Director must also notify the Commission if the staff's inspection program reveals any significant public health and safety matter relating to ISFSI operations that are of regulatory concern. The NRC staff is also required to bring any significant policy issue regarding ISFSI activities to the Commission's attention for resolution. This means the Commission will continue to make any decision involving any significant new ISFSI issues that may arise in the future. In addition, any member of the public who has specific concerns about a proposed ISFSI license can bring them to the Commission for resolution in NRC's public hearing process, as described previously in this notice. In short, through these mechanisms, which are adequate and well-suited for the purpose, the Commission will continue to perform all of its health and safety responsibilities to the public, and will ensure that ISFSI regulation by NRC continues to takes place under the Commission's supervision and direction. If new information becomes available that casts doubt on the adequacy of the oversight mechanisms, the Commission can and will take action which could include reversal of these rulemaking amendments.

4. *Comment:* ISFSI licensing should be the same as licensing for new reactors, an MRS or for the disposal repository which the Commission would need to specifically approve.

Several comments, opposing the proposed rule, express the view that the Commission should apply to specific ISFSI licenses the same Commission approval process it would use to license nuclear reactors, a monitored retrievable storage installation (MRS), and HLW disposal facilities.

One commenter, for example, stated that, given that the cumulative load of discharged irradiated spent fuel in a spent fuel pool could contain more radioactivity than an operating nuclear reactor, greater care should therefore be given to ISFSI licensing than to the reactor itself because the potential for release is greater. Another comment, adopting the view that ISFSI licensing should be in the same category as licensing nuclear reactors or amending such licenses, stated the Commission should not characterize Commission approval of ISFSI licenses as a ''special exception.'' Other commenters stated that spent fuel is highly radioactive and its quantity increasing. Therefore, in their view, the requirement for Commission approval of ISFSI licensing, in addition to NRC staff review, as in the case of licenses to operate reactors, is consistent with the NRC's longstanding regulatory philosophy of redundancy of safeguards and defense-in-depth.

Several comments also opposed the proposed rule change on the ground that it would make ISFSI licensing less stringent than the licensing review afforded to disposal of spent fuel in a repository. One commenter, for example, stated that, in the absence of a viable disposal solution, storage of spent fuel in an ISFSI cannot be labeled ''temporary,'' and should therefore be done under procedures comparably stringent to those for ''permanent'' disposal facilities.

Another commenter viewed elimination of Commission review to be at odds with the history of the MRS which was authorized only through Congressional action in the Nuclear Waste Policy Act and which could be constructed in the future only after further Congressional action. In this commenter's view, the amount of spent fuel stored at the various ISFSIs under NRC license was approaching the amount that might be expected to be stored at the MRS. Another commenter, who also compared the quantity of spent fuel stored in ISFSIs to the capacity of an MRS, stated that NRC was not properly perceiving the inherent hazards in spent fuel storage operations.

Response: The Commission agrees in part with the thrust of the comments, that is, that NRC regulations as applied should achieve a comparable level of

protection for the public health and safety, whether the NRC-licensed activity is operation of a nuclear power reactor, storage of spent fuel in an ISFSI or an MRS, or disposal of high-level radioactive wastes in a geologic repository. Significantly, however, the goal of comparable protection does not mean ISFSI activities must be regulated by NRC's using the same NRC requirements as for reactors or geologic repositories.

Specifically, the public health and safety risks posed by ISFSI storage, described in various publicly available NRC documents identified below, are very different from the risks posed by the safe irradiation of the fuel assemblies in a commercial nuclear reactor, which requires the adequate protection of the public factor in the conditions of high temperatures and pressures under which the reactor operates. The risks of ISFSI storage are also very different from those posed by the safe disposal of the irradiated fuel in a geologic repository, which would require isolation of the wastes from the accessible environment for thousands of years.

Nuclear fuel irradiated in a power reactor is highly radioactive and produces considerable heat. However, after the minimum 1 year of cooling that precedes its storage in an ISFSI, cooling and some shielding requirements will decrease as a result of the natural decay process over time. See Generic Environmental Impact Statement on the Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG–0575–V–1, August 1979) at 2–2. A fuel assembly cooled for 10 years after discharge from the reactor (typically the age of spent fuel actually placed in dry storage) generates approximately 500 watts of heat, which is on the order of the amount of heat generated by the light bulb in a floodlamp. In addition, its radiation dose rate is approximately one-half the rate when it was discharged from the reactor. ISFSIs are therefore designed to adequately dissipate the remaining heat, provide sufficient shielding from the radioactivity, and safely confine any gaseous and particulate radioactive nuclides.

The potential ability of irradiated fuel to adversely affect public health and safety and the environment is largely determined by the presence of a driving force behind dispersion. Therefore, it is the absence of such a driving force, due to the absence of high temperature and pressure conditions in an ISFSI (unlike a nuclear reactor operating under such conditions that could provide a driving force), that substantially eliminates the likelihood of accidents involving a major release of radioactivity from spent fuel stored in an ISFSI.

> [D]uring normal [storage] operations the conditions required for the release and dispersal of significant quantities of radioactive materials are not present. There are no high temperatures or pressures present during normal operations of under design basis accident conditions to cause the release and dispersal of radioactive materials. This is primarily due to the low heat generation rate of spent fuel with more than the one year of decay before storage in an ISFSI required by the rule and with the low inventory of volatile radioactive materials readily available for release to the environs. (45 FR 74693; November 12, 1980.)

Further, since its radioactive content is in the form of solid ceramic material (except for some gaseous fission products) encapsulated in high-integrity metal cladding, spent fuel is relatively invulnerable to sabotage and natural disruptive forces. See Environmental Assessment for 10 CFR Part 72, ''Licensing Requirements for the Independent Storage of Spent Fuel and High-Level Radioactive Waste,'' at II–15 and –16 (NUREG–1092, August 1984); see also 45 FR 74693 (November 12, 1980).

Although the risks associated with ISFSIs described above differ from those of nuclear power plant operation or geologic disposal, the Commission's regulatory responsibility to ensure adequate protection remains the same. However, the manner in which it discharges those responsibilities will differ. Significantly, because of the very different risks, the Commission would not automatically apply all regulatory requirements to ISFSIs that it applies to other regulated activities. More particularly for this rulemaking, based on its experience to date, the Commission believes it can and should fulfill its public responsibilities, through the ISFSI licensing and inspection process described earlier in this notice, as supervised and directed by the Commission, but without the need for specific Commission authorization of every ISFSI license in the future.

However, as discussed in response to comment 8, the NRC licensing experience that support this rulemaking to eliminate specific Commission approval of ISFSI licenses is not sufficient to support a similar change for the MRS or for an ISFSI at other than a reactor site. Therefore, the Commission intends that NRC rules continue to require specific Commission authorization before issuance of a license for an MRS or a license for an ISFSI that is located at a site other than a reactor site.

5. *Comment:* The cost savings for the agency and utilities are not an appropriate basis for the rulemaking amendments.

Several commenters took issue with the Commission's statement in the proposed rule that the amendments could save money that would otherwise be spent on unnecessary agency reviews. One commenter characterized the prospect of financial savings for the agency and its licensees as ''offensive,'' because it was being used to justify elimination of a ''safety-related'' review of ISFSIs whose failure could lead to significant adverse consequences to the public health and safety. Another commenter similarly challenged the Commission's rationale for reducing the costs of duplicative Commission review on the ground that the Commission's responsibility is to protect the public health and safety, not the nuclear industry's financial well-being or its profitability for stockholders.

Response: As the foregoing responses to comments make clear, the Commission's experience to date leads it to believe it can fully perform its public protection responsibilities without specific authorization of every license for an ISFSI at a reactor site that is now required under the Commission's current process. The extra step of express Commission authorization for each specific license is a minor, ancillary matter in protecting public health and safety. If the Commission thought the additional step was needed for safety, then it would require the review step regardless of its cost.

Therefore, one consequence of the current process (i.e., the process that includes the extra step of specific Commission authorization) is that someone is paying the bill for agency review steps that are not really needed. Because Commission funding is recovered from the nuclear industry through license fees and the like, the people who are paying the bill are normally utility ratepayers. Significantly, however, the Commission would have proposed these rulemaking amendments even if its costs were not recoverable and, in that case, the people paying the bill were the U.S. taxpayers.

The Commission has the public interest responsibility to regulate effectively without imposing unnecessary or overly burdensome regulatory costs. Where, as here, the Commission can make rulemaking amendments that will allow it to perform its public health and safety responsibilities more efficiently, but do not diminish in any way the license applicant's obligation to demonstrate to NRC (and to any member of the public

who is interested) that a proposed ISFSI is safe, then the Commission believes it should make those rulemaking amendments.

6. *Comments:* The revision is a useful simplification of existing procedures that does not create any impacts adverse to safety. Given the proven safety and reliability of ISFSIs. NRC licensing procedures should not have layers of unnecessary reviews that are not used in other NRC licensing actions.

Several comments received on the notice of proposed rulemaking favor the NRC proposed rule change. One commenter stated the amendments do not change the fact that the license applicant must still undergo a comprehensive public health and safety review, environmental assessment and an opportunity for public hearing, in order to ensure the proposed ISFSI is safe and in compliance with NRC regulations. The commenter noted the only change would be elimination of Commissioner approval.

Another comment supporting the change stated it would make ISFSI procedures more like NRC licensing procedures for other types of facilities handling nuclear materials, and justified it on the basis of the safety and reliability of spent fuel dry storage in ISFSI. The commenter also noted the rule is consistent with Congress' intent in the Nuclear Waste Policy Act (Sec. 131(a)(2)) that directs the Federal government to expedite additional spent fuel storage capacity and encourage dry storage technologies which have been proven to be safe. It further argued the change was in keeping with NRC initiatives elsewhere to reduce unnecessary regulatory burdens without reducing public health and safety protection. It also noted the only practical effect of the change was to eliminate mandatory Commission review in uncontested licensing action.

Response: The Commission generally agrees with this comment. However, the Commission notes that substantial reliance is being placed in this rulemaking on the demonstrated safety and reliability of dry storage at reactors in ISFSIs to date. In this connection, although NRC has an important regulatory role outlined elsewhere in this notice, licenses have the primary responsibility for safe ISFSI operations, to protect the public health and safety, and to abide by NRC regulations. If circumstances warrant in a particular case, or if significant new information becomes available, the Commission could require specific Commission authorization before issuance of any ISFSI license in a future case.

7. *Comment:* The rule needs to reflect that DOE continues to pursue plans for interim storage.

The U.S. Department of Energy (DOE) submitted a comment expressing concern that the notice of proposed rulemaking printed in the **Federal Register** gave the erroneous impression that DOE is not pursuing plans respecting interim storage. In recounting the history of the MRS, the DOE states the Nuclear Waste Policy Act of 1982 (NWPA) adopted a policy of spent fuel disposal in repositories and did not authorize large-scale storage facilities. DOE goes on to state that Congress amended the NWPA in 1987 to authorize an MRS subject to specific conditions, after DOE recommended a mandated MRS site-specific proposal. The DOE comment also indicates that DOE plans continue to include interim storage. DOE requests the discussion accompanying the proposed rulemaking change should be revised to accurately reflect DOE's position.

Response: The rulemaking record should be corrected to reflect the facts set forth in DOE's letter. The Commission did not intend any of its statements in the notice of proposed rulemaking to imply circumstances contrary to those described by DOE.

8. *Comment:* The Commission's proposal not to extent the rule change to the MRS, thereby continuing the need for express Commission authorization before the Director could issue an MRS license, drew opposing views.

Several comments took opposing positions on the Commission's proposal not to eliminate Commissioner authorization for issuance of a license under Part 72 for the MRS. One commenter posited that an MRS might be simple in design and operation, much like an ISFSI, and therefore ought to be licensed by the Director, NMSS, without the need for specific authorization by the Commission. The comment recognized that the proposed MRS design might be more complex than an ISFSI, in which case the MRS license could be reviewed by Commission before issuance.

Another commenter, however, agreed with the Commission's proposal not to change the requirement for express Commission authorization of an MRS license, arguing the different procedure is justified by a fundamental difference between an ISFSI and an MRS, as those facilities are defined in Part 72.

Response: As the differing comments reflect, there is, at this time, no DOE license application or DOE-proposed design for an MRS that is before the Commission. In addition, the Commission has no basis to speculate on any interim storage design that DOE might proposal for licensing, including whether it would be similar to the ISFSI facilities licensed by NRC to date. Therefore, inasmuch as the Commission cannot now determine that NRC licensing experience with ISFSIs would be directly applicable to an MRS, it has decided not to eliminate the requirement for express Commission authorization before issuance by the Director, NMSS, of any initial license for the acquisition, receipt or possession of spent fuel, high-level waste and associated radioactive material, for the purpose of storage at an MRS by DOE. In this connection, the Commission notes that the DOE letter referred to in comment 7 does not disagree with this aspect of the NRC rulemaking amendments.

Similarly, various plans have received mention recently regarding possible private ISFSIs at non-DOE sites (e.g., a new off-site ISFSI for the Prairie Island plant located within Goodhue County, Minnesota at a site not on Prairie Island). However, the Commission has no basis to speculate on these possible facilities or their designs. Therefore, since the Commission cannot determine that its ISFSI licensing experience would be directly applicable to these possible facilities, it has decided not to eliminate the requirement for express Commission authorization before issuance by the Director, NMSS, of any initial license for the acquisition, receipt or possession of spent fuel, high-level waste and associated radioactive material, for the purpose of storage at an ISFSI that is not located at a reactor site.

9. *Comment:* The Commission should not make rule changes that would result in an ISFSI being licensed by Agreement States.

One comment questions the proposed rule change on the ground that it might open ISFSI siting to licensing by Agreement States which may not be technically prepared to handle the responsibility.

Response: The proposed rule does not open ISFSIs to licensing by Agreement States. As the comment correctly notes, a number of States have agreements with the Commission or its predecessor, the Atomic Energy Commission, pursuant to section 274 of the Atomic Energy Act of 1954. These agreements typically provide for the Commission to discontinue, and the State to assume, responsibility for regulating certain nuclear materials in order to protect the public health and safety. However, under section 274 of the Act, the Commission will not discontinue regulatory responsibility for special nuclear materials in quantities sufficient

to form a critical mass. Because spent nuclear fuel may contain special nuclear materials in such quantities, Agreements States therefore have no authority to license spent fuel storage in an ISFSI.

The Commission's exclusive authority to license ISFSIs is reflected in § 72.8 of NRC regulations which provides that ''Agreement States may not issue licenses covering the storage of spent fuel in an ISFSI * * *.'' The foregoing regulation would be unchanged by this rulemaking.

IV. Section-by-Section Analysis

This portion of the notice contains a section-by-section analysis of the rulemaking amendments. A comparable analysis was provided in the notice of proposed rulemaking for these amendments (58 FR 31478; June 3, 1993). The following analysis, among other things, clarifies that the rulemaking amendments apply only to an ISFSI located at a reactor site.

A. Rules of Practice (10 CFR 2.764)

The Commission is amending 10 CFR 2.764(c) to modify the references in the section to ''an independent spent fuel storage installation (ISFSI)'' by adding at the end of each of the references the words ''located at a site other than a reactor site.'' As amended, the provision continues to apply in the future to licensing of an independent spent fuel storage installation (ISFSI) located at a site other than a reactor site or licensing of a monitored retrievable storage installation (MRS) under 10 CFR part 72. The amendment eliminates the requirement of express Commission authorization before issuance by the Director of NMSS (or the Director's designee) of each initial license for interim storage of spent fuel in an ISFSI at a reactor site. The general rule applies under which the Director, NMSS, has delegated authority, when no public hearing on the application has been requested, to issue a license for an ISFSI at a reactor site under 10 CFR part 72 following satisfactory completion of NRC's environmental assessment and public health and safety review, without obtaining additional, express authorization from the Commission to do so. Further, under the amendment to 10 CFR 2.764, if the application is the subject of a public hearing, then the Director will issue the license for an ISFSI at a reactor site only after an initial decision of the Atomic Safety and Licensing Board directing issuance of the license, but without the Director being required to obtain the additional, express authorization of the Commission to do so. In this connection, 10 CFR 2.764 (a) and (b) are being clarified to explicitly incorporate ''a license under 10 CFR part 72 to store spent fuel in an independent spent fuel storage installation (ISFSI) at a reactor site'' to thereby cover any application for a specific ISFSI license at a reactor site that is the subject of a public hearing.

Under other provisions of the Commission's rules pertaining to the opportunity for public hearing that are not being changed, a party to the hearing could request Commission review and ask the Commission to stay the effectiveness of the Board's decision (including any direction for issuance of any ISFSI license at a reactor site) pending that review (10 CFR 2.786, 2.788). If the Commission granted a stay, then the Director would not issue the license until the terms of the stay, if any, were met or until further order of the Commission.

B. Licensing Requirements for ISFSIs (10 CFR 72.46)

The amendment of 10 CFR 72.46(d) modifies the reference to ''an ISFSI'' in the last sentence of paragraph (d) by adding at the end of the reference the words ''located at a site other than a reactor site.'' As amended, the sentence continues to apply to licensing of an ISFSI located at a site other than a reactor site or licensing of the MRS. Thus, under the amendment, the Director, NMSS, will have delegated authority to issue a specific license for interim storage of spent fuel in an ISFSI at a reactor site. He/she is not required to seek the express authorization of the Commission to do so. However, the Director's authority will continue to be subject to the limitation that the Commission will be fully and currently informed and will address any significant questions of policy relating to a specific license for interim storage of spent fuel in an ISFSI at a reactor site.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1) and (3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

VI. Paperwork Reduction Act Statement

This rule does not contain a new or amended information collection requirement subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0136 and –0132.

VII. Regulatory Analysis

The Nuclear Regulatory Commission is making changes to internal procedures that are administrative in nature. The changes will not have any significant impact on the public health and safety or the U.S. economy. The amendments create no new regulatory burdens, or result in the use of resources by NRC licensees or by the staff of the NRC or an Agreement State. The Commission's current procedures require the Director, NMSS, to obtain express authorization of the Commission before issuing a license to construct and operate an ISFSI. The amendments will authorize the Director to issue a license for interim storage of spent fuel in an ISFSI at a reactor site without seeking express authorization from the Commission to do so. The costs of the amendments, in this regard, are likely to be less than the costs of the current procedure since the amendments will reduce the layers of agency review. The foregoing discussion constitutes the regulatory analysis for this final rule.

VIII. Regulatory Flexibility Act Certification

The final rule does not have a significant economic impact on a substantial number of small entities. The rule sets forth internal procedures of an administrative nature for issuance of licenses for ISFSIs at reactor sites. Owners of nuclear power reactors do not fall within the scope of the definition of ''small entities'' set forth in section 601(3) of the Regulatory Flexibility Act (15 U.S.C. 632) or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121. Thus, in accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC hereby certifies that this final rule will not have a significant economic impact upon a substantial number of small entities.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 72.62, does not apply to this rule and that a backfit analysis is not required because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 72.62(a) (see also 10 CFR 50.109).

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 72

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. 552 and 553, the Nuclear Regulatory Commission is adopting the following amendments to 10 CFR parts 2 and 72.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Sec. 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K 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). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b *et seq.*).

2. In § 2.764, paragraphs (a), (b) and (c) are revised to read as follows:

§ 2.764 Immediate effectiveness of initial decision directing issuance or amendment of construction permit or operating license.

(a) Except as provided in paragraphs (c) through (f) of this section, or as otherwise ordered by the Commission in special circumstances, an initial decision directing the issuance or amendment of a construction permit, a construction authorization, an operating license, or a license under 10 CFR part 72 to store spent fuel in an independent spent fuel storage installation (ISFSI) at a reactor site shall be effective immediately upon issuance unless the presiding officer finds that good cause has been shown by a party why the initial decision should not become immediately effective, subject to review thereof and further decision by the Commission upon petition for review filed by any party pursuant to § 2.786 or upon its own motion.

(b) Except as provided in paragraphs (c) through (f) of this section, or as otherwise ordered by the Commission in special circumstances, the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, notwithstanding the filing or granting of a petition for review, shall issue a construction permit, a construction authorization, an operating license, or a license under 10 CFR part 72 to store spent fuel in an independent spent fuel storage installation (ISFSI) at a reactor site, or amendments thereto, authorized by an initial decision, within ten (10) days from the date of issuance of the decision.

(c) An initial decision directing the issuance of an initial license for the construction and operation of an independent spent fuel storage installation (ISFSI) located at a site other than a reactor site or a monitored retrievable storage installation (MRS) under 10 CFR part 72 shall become effective only upon order of the Commission. The Director of Nuclear Material Safety and Safeguards shall not issue an initial license for the construction and operation of an independent spent fuel storage installation (ISFSI) located at a site other than a reactor site or a monitored retrievable storage installation (MRS) under 10 CFR part 72 until expressly authorized to do so by the Commission.

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

3. 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 (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 (43 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); section 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), 96 Stat. 2252 (42 U.S.C. 10198).

4. In § 72.46, paragraph (d) is revised to read as follows:

§ 72.46 Public hearings.

* * * * *

(d) If no request for a hearing or petition for leave to intervene is filed within the time prescribed in the notice of proposed action and opportunity for hearing, the Director, Office of Nuclear Material Safety and Safeguards or the Director's designee may take the proposed action, and thereafter shall promptly inform the appropriate State and local officials and publish a notice in the **Federal Register** of the action taken. In accordance with § 2.764(c) of this chapter, the Director, Office of Nuclear Material Safety and Safeguards shall not issue an initial license for the construction and operation of an ISFSI located at a site other than a reactor site or an MRS until expressly authorized to do so by the Commission.

Dated at Rockville, Maryland, this 24th day of April, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–10478 Filed 4–27–95; 8:45 am]

BILLING CODE 7590–01–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1703

FOIA Fee Schedule

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Update of FOIA fee schedule.

SUMMARY: The Defense Nuclear Facilities Safety Board is publishing its annual update to the Freedom of Information Act (FOIA) Fee Schedule pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations.

EFFECTIVE DATE: May 1, 1995.

FOR FURTHER INFORMATION CONTACT:

Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004–2901, (202) 208–6447.

SUPPLEMENTARY INFORMATION: The FOIA requires each Federal agency covered by the Act to specify a schedule of fees applicable to processing of requests for agency records. 5 U.S.C. 552(a)(4)(i). On March 15, 1991 the Board published for comment in the **Federal Register** its proposed FOIA Fee Schedule. 56 FR 11114. No comments were received in response to that notice and the Board issued a final Fee Schedule on May 6, 1991.

Pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations, the Board's General Manager will update the FOIA Fee Schedule once every 12 months. Previous Fee Schedule updates were published in the **Federal Register** and went into effect, most recently, on May 1, 1994. 59 FR 21640.

Board Action

Accordingly, the Board issues the following schedule of updated fees for services performed in response to FOIA requests:

Defense Nuclear Facilities Safety Board Schedule of Fees for FOIA Service

[Implementing 10 CFR 1703.107(b)(6)]

Search or Review Charge.	$44 per hour.
Copy Charge (paper)	$.05 per page or generally available commercial rate (approximately $.10 per page).
Copy Charge (3.5″ diskette).	$5.00 per diskette.
Copy Charge (audio cassette).	$3.00 per cassette.
Duplication of Video	$25.00 per video; $16.50 for each additional video
Copy Charge for large documents (e.g., maps, diagrams).	Actual commercial rate.

Dated: April 25, 1995.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 95–10462 Filed 4–27–95; 8:45 am]

BILLING CODE 3670–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–69–AD; Amendment 39–9208; AD 95–09–05]

Airworthiness Directives; British Aerospace Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain British Aerospace Model Avro 146–RJ series airplanes. This action requires a revision to the FAA-approved Airplane Flight Manual (AFM) to alert the flightcrew of the potential for significant delays in the Honeywell Standard Windshear Detection and Recovery Guidance System (WSS) detecting windshear when the flaps of the airplane are in transition. This amendment is prompted by a report of an accident during which an airplane encountered severe windshear during a missed approach. The actions specified in this AD are intended to ensure that the flightcrew is aware that there may be significant delays in the WSS detecting windshear when the flaps of the airplane are in transition.

DATES: Effective on May 15, 1995.

Comments for inclusion in the Rules Docket must be received on or before June 27, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–69–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The information concerning this amendment may be obtained from or examined at FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Kirk Baker, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (310) 627–5345; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: Recently, the FAA received a report of an accident during which the flightcrew executed a missed approach following an instrument landing system (ILS) approach. A McDonnell Douglas Model DC–9–31 series airplane equipped with Honeywell Windshear Detection and Recovery Guidance System (WSS) was involved in this accident. Investigation into the cause of this accident revealed that the airplane encountered severe windshear during the missed approach. The FAA has determined that a design feature in the windshear computer delayed the detection of windshear when the airplane's flaps were in transition. This condition, if not corrected, could result in the flightcrew being unaware of the potential for significant delays in the WSS detecting windshear when the flaps of the airplane are in transition.

On February 14, 1995, the FAA issued AD 95–04–01, amendment 39–9153 (60 FR 9619, February 21, 1995), applicable to various transport category airplanes equipped with a Honeywell Standard Windshear Detection and Recovery Guidance System (WSS). That AD requires a revision to the FAA-approved Airplane Flight Manual (AFM) to alert the flightcrew of the potential for significant delays in the WSS detecting windshear when the flaps of the airplane are in transition. The actions required by that AD are intended to prevent the flightcrew from failing to realize that the WSS does not detect windshear in a timely manner when the flaps of the airplane are in transition,