

relatively insignificant impact on the Idaho-Eastern Oregon onion industry.

This action decreases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the order. In addition, the Committee's meeting was widely publicized throughout the Idaho-Eastern Oregon onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the April 2, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on May 15, 1998 (63 FR 26999). A copy of the proposed rule was also sent via facsimile transmission to the administrative office of the Committee, which in turn notified Committee members and industry members. The proposal was also made available through the Internet by the Government Printing Office.

A 15-day comment period ending June 1, 1998, was provided to allow interested persons the opportunity to respond to the request for information and comments. No comments were received in response to the proposal.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1998-99 fiscal period begins on July 1, 1998, and the order

requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period; (3) handlers are aware of this action which was recommended by the Committee at a public meeting; and (4) a 15-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 958 is amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 958.240 is revised to read as follows:

§ 958.240 Assessment rate.

On and after July 1, 1998, an assessment rate of \$0.09 per hundredweight is established for Idaho-Eastern Oregon onions.

Dated: June 10, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

RIN 3150-AF59

Requirements for Shipping Packages Used To Transport Vitrified High-Level Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to add vitrified high-level waste (HLW) contained in a sealed canister designed to maintain waste containment during handling activities associated with transport to the forms of plutonium which are exempt from the double-containment packaging requirements for transportation of plutonium. This amendment responds to a petition for rulemaking submitted

by the Department of Energy, Office of Civilian Radioactive Waste Management (DOE/OCRWM). This final rule grants the petition for rulemaking, with modifications, and completes NRC action on the petition. This final rule also will make a minor correction regarding the usage of metric and English units, to be consistent with existing NRC policy on such use.

DATES: The effective date is July 15, 1998. The incorporation by reference of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section VIII, editions through the 1995 Edition, is approved by the Director of the Federal Register as of July 15, 1998.

FOR FURTHER INFORMATION CONTACT: Earl Easton [telephone (301) 415-8520, e-mail EXE@nrc.gov] or Mark Haisfield [telephone (301) 415-6196, e-mail MFH@nrc.gov] of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

Background

In 1974, the Atomic Energy Commission (AEC) adopted the special requirements in 10 CFR 71.63 that regulate the shipment of plutonium in excess of 0.74 terabecquerels (TBq) [20 Curies] per package. These requirements specify that plutonium must be in solid form and that packages used to transport plutonium must provide a separate inner containment (the "double-containment" requirement). In adopting these requirements, the AEC specifically excluded from the double-containment requirement plutonium in the form of reactor fuel elements, metal or metal alloys, and, on a case-by-case basis, other plutonium-bearing solids that the agency determines do not require double containment. The Statement of Consideration for the original rule (39 FR 20960; June 17, 1974), specifies that " * * * solid forms of plutonium that are essentially nonrespirable should be exempted from the double-containment requirement."

On November 30, 1993, DOE/OCRWM petitioned the NRC to amend § 71.63(b) to add vitrified HLW contained in a sealed canister to the forms of plutonium which are exempt from the double-containment packaging requirements of Part 71. The NRC published a notice of receipt for the petition, docketed as PRM-71-11, in the **Federal Register** on February 18, 1994 (59 FR 8143). Three comments were received on the petition.

Pursuant to the Nuclear Waste Policy Act of 1982, as amended (NWPAA), DOE

is the Federal agency responsible for developing and administering a geologic repository for the deep disposal of HLW and spent nuclear fuel. DOE plans to ship the vitrified HLW in sealed canisters from four storage locations: Aiken, South Carolina; Hanford, Washington; West Valley, New York and Idaho Falls, Idaho; directly to the geologic repository in transportation packages certified by the NRC.

Currently, this HLW exists mostly in the form of liquid and sludge resulting from the reprocessing of defense reactor fuels. DOE proposes to encapsulate the HLW in a borosilicate glass matrix. The HLW is added to molten glass and the mixture is then poured into a stainless steel canister and allowed to solidify (i.e., vitrify). The canister is then seal-welded shut. The canisters will eventually be placed inside Type B transportation packages for transport to the geologic repository or an interim storage facility.

The beneficial aspect of this amendment would be the elimination of an unnecessary requirement that DOE transport vitrified HLW in a separate inner container (i.e., a second barrier which is subject to the leak testing requirements of § 71.63(b)). The Commission believes that the vitrified HLW form in its sealed canister provides sufficient defense-in-depth for protection of public health and safety and the environment, when transported inside an NRC-certified Type B transportation package. The Commission agrees with DOE's assertion that shipments of this form of plutonium are comparable to shipments of (irradiated) reactor fuel elements which are exempt from the double-containment requirement. Therefore, the Commission agrees that the double-containment requirement is unnecessary. Additional beneficial aspects of this amendment would be a reduction in DOE's costs associated with the transportation of HLW from production sites to the geologic repository or an interim storage facility; and the simplification of the NRC staff's review of DOE's application for certification of a transportation package.

Although, in most other types of shipments, DOE is not subject to the requirements of Part 71, the NWPA requires that DOE's transport of spent nuclear fuel or HLW to a geologic repository or a monitored retrievable storage facility be in packages certified by the NRC. The packages used to transport vitrified HLW contained in sealed canisters will be certified by the NRC as Type B packages. Type B packages are designed to withstand the normal and hypothetical accident conditions specified in Part 71. The

canistered vitrified HLW also will be subject to the special transport controls for a "Highway Route Controlled Quantity" pursuant to U.S. Department of Transportation regulations contained in 49 CFR Part 397. In addition, the NWPA requires DOE to provide technical assistance and funds to train emergency responders along the planned routes.

DOE asserted that shipments of vitrified HLW contained in a sealed canister will not adversely affect public health and safety and the environment if shipped without double containment. DOE stated that a separate inner container is unnecessary because of the high degree of confinement provided by the stainless steel waste canister and the essential nonrespirability of the solid, plutonium-bearing waste form. In addition, DOE argued that vitrified HLW in sealed canisters provides a comparable level of protection to that of irradiated reactor fuel elements, which the Commission previously determined should be exempt from the double-containment requirement (39 FR 20960).

On June 1, 1995, the NRC staff met with DOE in a public meeting to discuss the petitioner's request and the possible alternative of requesting an NRC determination under § 71.63(b)(3) to exempt vitrified HLW contained in a sealed canister from the double-containment requirement. DOE informed the NRC in a letter dated January 25, 1996, of its intent to seek an exemption under § 71.63(b)(3). The NRC received DOE's exemption request on July 16, 1996, in which DOE also requested that the original petition for rulemaking be held in abeyance until a decision was reached on the exemption request. In response to DOE's request, the NRC staff prepared a Commission paper (SECY-96-215, dated October 8, 1996) outlining and requesting Commission approval of the NRC staff's proposed approach for making an exemption under § 71.63(b)(3). However, in a staff requirements memorandum (SRM) dated October 31, 1996, the Commission disapproved the NRC staff's plan and directed that this policy issue be addressed by rulemaking rather than by exemption.

The NRC published a proposed rule in the **Federal Register** on May 8, 1997 (62 FR 25146) in response to DOE's petition. The Statement of Considerations for the proposed rule contains a complete discussion of DOE's petition, comments received on the petition, and the NRC's analysis of those comments.

Discussion

The NRC is amending 10 CFR 71.63 based on its evaluation of the petition submitted by the DOE; the attachment to the petition, "Technical Justification to Support the PRM by the DOE to Exempt HLW Canisters from 10 CFR 71.63(b)" (Technical Justification); the three public comments received on the petition after its publication in the **Federal Register**; and the seven comments on the proposed rule. In amending § 71.63, the NRC is accepting, with modifications, the petition submitted by DOE, for the reasons set forth in the following paragraphs.

In the early 1970's, the AEC anticipated that a large number of shipments of plutonium nitrate liquids could result from the spent fuel reprocessing anticipated at that time. This raised a concern about leakage of liquids because of the potential for a large number of packages (probably of more complex design) to be shipped due to reprocessing and the increased possibility of human error resulting from handling this expanded shipping load.

In 1973, the AEC proposed a rule which would deal with this problem by (a) requiring that shipments of plutonium containing greater than 20 curies be shipped in solid form, and (b) requiring that the solid plutonium be shipped in an inner container which would meet "special form" requirements as they then existed; i.e., not only would the whole package have to meet Part 71 requirements but the inner container would separately have to meet stringent requirements. One alternative to the proposed rule the AEC considered was to require that shipments of plutonium be in nonrespirable form, either in a single or double containment. This alternative was rejected, apparently because fuel fabricators did not have the technology to use plutonium in a nonrespirable form.

In 1974, the AEC published a final rule which contained two significant changes from the proposed rule:

(1) The AEC abandoned the "special form" requirement and instead simply required "double containment"; i.e., the inner container was required not to release plutonium when the whole package was subjected to the normal and hypothetical accident tests of Part 71, but no separate tests were required for the inner container. Double containment was required to take account of the fact that the AEC had decided not to require that the plutonium be in a nonrespirable form; and

(2) The AEC exempted two forms of plutonium altogether—reactor fuel elements and metal or metal alloy—on the basis that

these forms were "essentially nonrespirable" and therefore did not require double containment. The exemption provision placed in the regulation also indicates that the AEC saw the possibility that other forms of plutonium would be similar enough to these two forms to also qualify for exemption from the double-containment requirement because they were also essentially nonrespirable. In the statement of considerations accompanying the final rule, the AEC stated that "* * * solid forms of plutonium that are essentially nonrespirable should be exempt from the double containment requirements" (39 FR 20960).

DOE's petition argues that a particular form of plutonium-vitrified high-level waste contained in a sealed canister—is similar enough to irradiated reactor fuel elements to qualify for its own exemption from the double-containment requirement. This is because of (1) the material properties of the vitrified HLW, (2) the high degree of confinement provided by the stainless steel waste canister, and (3) the NRC-approved quality assurance program implemented by DOE makes it highly unlikely that any plutonium would be released from an NRC-certified transportation package under the normal or hypothetical accident conditions of part 71. The NRC is required to certify the transportation packages used for vitrified HLW pursuant to Section 180 of the NWSA and every transportation package for vitrified HLW will be required to meet the standards for accident-resistant packages (i.e., Type B packages) set forth in part 71.

The tests described in DOE's Technical Justification demonstrate that the canisters containing the vitrified HLW provide an additional barrier to the release of radionuclides and compare favorably to the cladding surrounding spent fuel pellets in reactor fuel elements. The comparison is based upon physical drop tests, upon the material properties and dimensions of the sealed canisters, and the effects of radiation damage to materials.

DOE's analysis demonstrates much lower concentrations of plutonium in the HLW canisters than in irradiated reactor fuel elements. However, the DOE has not established an upper limit on plutonium concentration for these vitrified HLW canisters, and the NRC is not basing its decision to remove these canisters from the double-containment requirement based on the plutonium's concentration.

In its Technical Justification, DOE described the physical characteristics and acceptance standards of the canisters of vitrified HLW, including that the canistered waste form be capable of withstanding a 7-meter drop onto a flat, essentially unyielding

surface, without breaching or dispersing radionuclides. This requirement is imposed by the DOE's "Waste Acceptance System Requirements Document (WASRD)," Rev. 0, which is referenced in the Technical Justification. This test should not be confused with the 9-meter drop test, onto an essentially unyielding surface, which is required by the hypothetical accident conditions of § 71.73. The 9-meter drop test is performed on the entire transportation package under the Part 71 certification process. The 7-meter drop test standard only applies to the canistered HLW.

The NRC agrees that the 7-meter drop test requirement is relevant to the demonstration that the canistered HLW represents an essentially nonrespirable form for shipping plutonium. The NRC believes that the 7-meter canister drop test is a more severe challenge than the 9-meter drop test for an NRC-approved Type B package. This is because the Type B package and the impact limiters will absorb much of the energy which would otherwise be expended against the canister.

In some of DOE's tests, the HLW canisters were dropped from 9 meters—2 meters above DOE's 7-meter design standard—and portions of the testing included deliberately introducing flaws (0.95 cm holes) in the canisters' walls. For those HLW canisters tested with the 0.95 cm holes, the quantity of respirable plutonium released through these holes was less than 0.74 TBq (20 curies). This review of DOE's Technical Justification has provided the NRC staff confidence that DOE's petition is supportable and that vitrified HLW in a sealed canister is essentially nonrespirable.

The NRC does not control the requirements in, or changes to, DOE's WASRD. Because of concerns that DOE's WASRD could be changed in the future, the NRC added the requirement in the proposed rule that vitrified HLW contained in a sealed canister meet the design criteria of § 60.135 (b) and (c). However, in response to comments received on the proposed rulemaking, the Commission has reconsidered its proposed imposition of referencing Part 60 design criteria. The final rule, instead, incorporates one of the design requirements from Part 60 into this rule. The other Part 60 design requirements are satisfied by other existing Part 71 requirements and other language in the final rule. Additionally, the Commission has included one acceptable method for meeting these design requirements for handling by referencing appropriate American Society of Mechanical Engineers Boiler and Pressure Vessel Code criteria. The explanation for this

change is discussed below. Further, the NRC staff does perform technical reviews to certify package designs. For a HLW package, the review would include the sealed canister as well as the radioactive contents in the form of vitrified HLW. It is expected that an application for approval of a HLW package design would include a canister design and vitrified HLW contents with characteristics and attributes comparable to those described in the Technical Justification.

Comments on the Proposed Rule

This section presents a summary of the principal comments received on the proposed rule, the NRC's response to the comments, and changes made to the final rule as a result of these comments. The Commission received seven comment letters from six commenters on the proposed rule. One was from a member of the public, two were from national laboratories, one was from a transportation cask designer, one was from a consulting company, and one was from DOE. In addition, DOE submitted a subsequent letter commenting on one of the other comments. Overall, five of the six commenters supported the proposed rule and the remaining commenter, while not specifically opposing the rule, proposed changes regarding the performance of the canister and limiting its contents. Copies of these letters are available for public inspection and copying for a fee at the Commission's Public Document Room, located at 2120 L Street, NW (Lower Level), Washington, DC.

Comment. DOE and another commenter objected to the proposed rule's use of design criteria from Part 60. DOE noted that basing canistered waste approved for transport under § 71.63 upon the rules for disposal of HLW under § 60.135(b) and (c) assumes that certification approval for transport packages will not take place until a repository or interim storage facility becomes available; and that this may not be the case. The commenters are concerned that if certification for transport packages under the proposed rule is sought before a license application for a repository or interim storage facility is submitted, this situation could complicate and impede progress on the HLW cask certification process. One commenter supported the use of Part 60 criteria.

Response. The Commission has reconsidered the need to reference Part 60 criteria for canistered vitrified HLW in the amended regulation. The Commission agrees that it is best to avoid incorporating into Part 71—which

contains standards for the packaging and transportation of radioactive materials—requirements referenced from Part 60 which are intended for the permanent disposal of HLW in a geologic repository. The NRC staff has analyzed the requirements contained in § 60.135(b) and (c) and has determined that the intended requirement—that the canistered vitrified HLW maintain its integrity—can be achieved by reliance on existing Part 71 requirements and language from the proposed rule for all of the Part 60 requirements, but one. That one requirement is to design the canister to maintain waste containment during handling activities associated with transport. This has been added to the final rule. Additionally, the Commission has included one acceptable method for meeting these design requirements by referencing appropriate American Society of Mechanical Engineers Boiler and Pressure Vessel Code criteria.

The design criteria in § 60.135(b) require that the waste package shall not contain explosive, pyrophoric, or chemically reactive materials or free liquids in amounts that could cause harm; that waste packages shall be designed to maintain waste containment during handling; and that waste packages have unique identification numbers. The design criteria in § 60.135(c) require that the waste be in solid form and placed in a sealed container; that any particulate waste forms be consolidated into an encapsulating matrix; and that any combustible radioactive waste be reduced to noncombustible form. As noted, the Commission believed that by referencing these criteria in the proposed rule, it could assure the integrity of the canistered vitrified HLW.

The Commission now believes that the integrity objective can be achieved by relying on requirements in the final rule and other requirements in Part 71. First, as stated above, the final rule has added language that the canister be designed to maintain waste containment during handling activities associated with transport. Second the rule requires that the HLW be vitrified, and thus be in a solid form for encapsulation. Vitrification of HLW uses molten glass and this high temperature process will reduce any combustible radioactive waste into a noncombustible form. Finally, the Part 60 requirement that a unique identification number be attached to the HLW canister is not relevant for transportation.

Third, the Commission believes the integrity objective can be achieved by relying on other requirements in Part 71. Part 71 already requires that the transportation packages must not

contain explosive, pyrophoric, or chemically reactive materials or free liquids. Section 71.43(d) requires that:

A package must be made of materials and construction that assure that there will be no significant chemical, galvanic, or other reaction among the packaging components, among package contents, or between the packaging components and the package contents, including possible reaction resulting from inleakage of water, to the maximum credible extent. Account must be taken of the behavior of materials under irradiation.

The existing requirement in § 71.63(a) that the plutonium be in a solid form also will assure that the waste will be in solid form and that the waste package will be free of liquids.

Additionally, the Commission has included one acceptable method for meeting the canister design requirements for handling by referencing appropriate American Society of Mechanical Engineers Boiler and Pressure Vessel Code criteria. Use of the ASME Boiler and Pressure Vessel Code would ensure that the canister would be designed to maintain waste containment during handling, including normal loading and unloading activities. Certain criteria of the ASME Boiler and Pressure Vessel Code, Section VIII, are excluded because they are not appropriate for a sealed canister containing vitrified HLW. For example, the criteria to include a pressure relief device and openings to inspect the interior are unnecessary and could compromise the long term integrity of the canister. Specific alternatives to the ASME Boiler and Pressure Vessel Code criteria may be considered and approved without resorting to exemptions from the regulation.

Final Rule. The final rule has been revised to read as follows: Vitrified high-level waste contained in a sealed canister designed to maintain waste containment during handling activities associated with transport. As one method of meeting these design requirements, the NRC will consider acceptable a canister which is designed in accordance with the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section VIII, editions through the 1995 Edition. However, this canister need not be designed in accordance with the requirements of Section VIII, Parts UG-46, UG-115 through UG-120, UG-125 through UG-136, UW-60, UW-65, UHA-60, and UHA-65 and the canister's final closure weld need not be designed in accordance with the requirements of Section VIII, Parts UG-99 and UW-11. Necessary language to incorporate by reference the ASME Boiler and Pressure Vessel Code has also been added.

Comment. Four of the six commenters stated that the NRC should evaluate the technical bases for § 71.63, or referred to a Commission SRM to SECY-96-215, dated October 31, 1996, which directed the NRC staff to "address whether the technical basis for 10 CFR 71.63 remains valid, or whether a revision or elimination of portions of 10 CFR 71.63 is needed to provide flexibility for current and future technologies." One of the commenters noted that the International Atomic Energy Agency standards do not impose a double-containment requirement. Four of the commenters recommended that if the NRC retained the double containment provision, that the rule use performance-based criteria for dispersibility and respirability as a basis for exemption, or that double containment only be required for "highly dispersible materials." One of the commenters recommended that § 71.63 be eliminated entirely. One commenter expressed an interest in any Commission action on § 71.63, and recommended that the evaluation of § 71.63 take the form of an Advanced Notice of Proposed Rulemaking.

Response. The Commission believes that those comments to evaluate the technical basis for § 71.63, to revise § 71.63 (other than for vitrified HLW in canisters), or to eliminate the rule, are beyond the scope of this rulemaking. The NRC staff recently reviewed the technical bases for § 71.63, as directed in the SRM to SECY-96-215. The NRC staff concluded, in SECY-97-218, dated September 29, 1997, that the technical bases remain valid, and that the provisions provide adequate flexibility for current and future technologies. Except for the changes made in this rulemaking for vitrified HLW in canisters, the NRC staff concluded that the provisions in § 71.63 should remain unchanged. The NRC staff will further consider potential modifications to § 71.63 in its response to a petition for rulemaking, dated September 25, 1997, (Docket No. PRM-71-12). The NRC published a notice of receipt for the petition in the **Federal Register** (63 FR 8362, dated February 19, 1998).

Comment. One commenter suggested that the proposed rule be changed to require that HLW canister design, fabrication, test, and fill be conducted under a quality assurance program that meets, to the satisfaction of the NRC, the requirements of Part 71, Subpart H.

This commenter also suggested that the proposed rule be changed to require that the exemption will only apply to canisters of HLW in shipping packages which have been demonstrated by analysis or test to adequately contain the HLW canisters without allowing canister failure under the hypothetical

accident conditions of Part 71, Subpart F, when considered as a transportation system.

Response. The technical basis given in the DOE petition for an exemption is that a separate inner container is unnecessary because of the high degree of confinement provided by the stainless steel waste canister and the non-respirability of the solid, plutonium-bearing waste form. In support of its petition, DOE submitted a Technical Justification which included a description of a representative HLW canister together with the results of 7-meter and 9-meter drop testing of the canisters and a description of the standards used for canister fabrication and filling.

The technical review performed by the NRC staff to certify a HLW package would include the sealed canister as well as the radioactive contents in the form of vitrified HLW. It is expected that an application for approval of a HLW package design would include a canister design and vitrified HLW contents with characteristics and integrity comparable to those described in the DOE petition. The DOE HLW canisters will be subject to an NRC approved quality assurance plan.

The final rule has been revised to specify that the vitrified high-level waste be contained in a sealed canister designed to maintain waste containment during handling activities associated with transport. These standards would apply to all canisters containing vitrified HLW transported under this provision and will provide reasonable assurance that the package design adequately protects public health and safety.

Comment. One commenter suggested that the proposed rule be changed to require that the exemption will only apply to vitrified HLW from which plutonium has been removed prior to transfer to HLW storage tanks. The commenter suggested the vitrified HLW be restricted to no more than 3.7 TBq (100 Ci) of plutonium.

Response. The Statement of Considerations for the original rule (39 FR 20960) did not discuss activity limits (quantity limits); nor did the Commission adopt activity limits on the other forms of plutonium that are exempt from § 71.63(b). Rather, any limitations on the quantity of plutonium that can be shipped in a transportation package—for any exempt form of plutonium—are due to the inherent design features of the specific transportation package being used. These design features are reviewed by the NRC as part of the package certification process. The commenter

has not provided any technical basis for requiring activity limits on this form of plutonium. The final rule does not specify a quantity limit for this exemption.

Regulatory Action

The NRC is amending 10 CFR 71.63 based on its evaluation of the petition submitted by DOE; the attachment to the petition, "Technical Justification to Support the PRM by the DOE to Exempt HLW Canisters from 10 CFR 71.63(b)," the three comments received on the petition; and the seven comments received on the proposed rule. Section 71.63(b) specifies special provisions for shipping plutonium in excess of 0.74 TBq (20 curies) per package, including a separate inner containment system, except when plutonium is in solid form of reactor fuel elements, metal, or metal alloys. In amending § 71.63(b), the NRC is granting, with modification, the petition submitted by DOE to eliminate these special provisions when transporting vitrified HLW contained in a sealed canister designed to maintain waste containment during handling activities associated with transport. The final rule completes NRC action on PRM-71-11. In the proposed rule, the NRC would have required that the HLW canister meet design criteria contained in § 60.135(b) and (c). The final rule, instead, incorporates these requirements into Part 71.

In addition, the NRC has corrected the usage of units in § 71.63. The metric units are used first with the English units in parenthesis.

Criminal Penalties

For the purposes of Section 223 of the Atomic Energy Act (AEA), the Commission is issuing the final rule under one or more of sections 161b, 161i, or 161o of the AEA. Willful violations of the rule will 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 (62 FR 46517), this rule is classified as compatibility category "NRC." This regulation addresses areas of exclusive NRC authority. However, a State may adopt these provisions for the purposes of clarity and communication, as long as the State does not adopt regulations or program elements that would cause the State to regulate these areas.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule will not be a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement is not required. The final rule change exempts shipments of vitrified HLW contained in a sealed canister designed to maintain waste containment during handling activities associated with transport. The purpose of the double containment rule is to ensure safety by requiring plutonium to be shipped as a solid, under double containment, thereby minimizing the likelihood of leakage during transport as a result of possible packaging errors. The Commission believes that the plutonium within vitrified HLW contained in a sealed canister is essentially nonrespirable and this form of plutonium provides a level of protection comparable to irradiated reactor fuel elements—which are exempt from the double-containment requirement. Therefore, double containment is unnecessary for vitrified HLW contained in a sealed canister designed to maintain waste containment during handling activities associated with transport.

The final environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from Mark Haisfield, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6196.

Paperwork Reduction Act Statement

This 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 3150-0008.

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 Commission has prepared a final regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Mark Haisfield, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6196.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. DOE is the only transporter of vitrified HLW. No other entities are involved. DOE is not a small entity as defined in 10 CFR 2.810.

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.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, and therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Incorporation by reference, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

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 71.

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

1. The authority citation for Part 71 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2297f); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 71.97 also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789-790.

2. Section 71.63 is revised to read as follows:

§ 71.63 Special requirements for plutonium shipments.

(a) Plutonium in excess of 0.74 TBq (20 Ci) per package must be shipped as a solid.

(b) Plutonium in excess of 0.74 TBq (20 Ci) per package must be packaged in a separate inner container placed within outer packaging that meets the requirements of Subparts E and F of this part for packaging of material in normal form. If the entire package is subjected to the tests specified in § 71.71 ("Normal conditions of transport"), the separate inner container must not release plutonium as demonstrated to a sensitivity of 10^{-6} A₂/h. If the entire package is subjected to the tests specified in § 71.73 ("Hypothetical accident conditions"), the separate inner container must restrict the loss of plutonium to not more than A₂ in 1 week. Solid plutonium in the following forms is exempt from the requirements of this paragraph:

- (1) Reactor fuel elements;
- (2) Metal or metal alloy;
- (3) Vitrified high-level waste

contained in a sealed canister designed to maintain waste containment during handling activities associated with transport. As one method of meeting these design requirements, the NRC will consider acceptable a canister which is designed in accordance with the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section VIII, 1995 Edition (earlier editions may be used in lieu of the 1995 Edition). However, this canister need not be designed in accordance with the requirements of Section VIII, Parts UG-46, UG-115 through UG-120, UG-125 through UG-136, UW-60, UW-65, UHA-60, and UHA-65 and the canister's final closure weld need not be designed in accordance with the requirements of Section VIII, Parts UG-99 and UW-11. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the ASME Boiler and Pressure Vessel Code, Section VIII, 1995 Edition, may be purchased from the American Society of

Mechanical Engineers, Service Center, 22 Law Drive, P.O. Box 2900, Fairfield, NJ 07007. It is also available for inspection at the NRC Library, 11545 Rockville Pike, Rockville, MD 20852-2738 or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.; and

(4) Other plutonium bearing solids that the Commission determines should be exempt from the requirements of this section.

Dated at Rockville, Maryland, this 20th day of May, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-85-AD; Amendment 39-10587; AD 98-12-34]

RIN 2120-AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN-235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain CASA Model CN-235 series airplanes, that requires modification of the forward beam of the vertical stabilizer by the installation of a structural reinforcement plate. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent in-flight structural deformation or failure of the vertical stabilizer, resulting in reduced controllability of the airplane.

DATES: Effective July 20, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 20, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the Federal Aviation Administration (FAA),