

# Rules and Regulations

Federal Register

Vol. 63, No. 179

Wednesday, September 16, 1998

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 73

RIN 3150-AG00

### Physical Protection for Spent Nuclear Fuel and High-Level Radioactive Waste: Technical Amendment

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The Nuclear Regulatory Commission is amending its regulations concerning the physical protection of spent nuclear fuel and high-level radioactive waste stored at independent spent fuel storage installations, monitored-retrievable storage installations, and geologic repository operations areas. This action is necessary to correct the inappropriate inclusion of surveillance/assessment and illumination systems within the requirement for tamper indication and line supervision.

**DATES:** The final rule is effective November 12, 1998, unless significant adverse comment is received by October 16, 1998. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

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

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (<http://www.nrc.gov>). From the home page, select "Rulemaking" from the tool bar. The interactive rulemaking website can then be accessed by selecting "New Rulemaking Website." This site provides the ability to upload comments

as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415-5905, e-mail [cag@nrc.gov](mailto:cag@nrc.gov).

Copies of any comments received may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Barry Mendelsohn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-7262.

**SUPPLEMENTARY INFORMATION:** Because NRC considers this action noncontroversial, the NRC is publishing it in final form. This action will become effective on November 12, 1998. However, if the NRC receives significant adverse comment by October 16, 1998, the NRC will publish a document that withdraws this action. In the proposed rules section of this issue of the **Federal Register**, NRC is publishing a separate document that will serve as the proposal to approve the rule should adverse comment be received. Any significant adverse comment will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

### Background

The purpose of this amendment to 10 CFR 73.51, "Physical Protection for Spent Fuel and High-Level Radioactive Waste" and, specifically, paragraph (d)(11), is to delete surveillance/assessment and illumination systems from the requirement for tamper indication and line supervision. These types of systems were added to this particular portion of the regulation in error and it is not the intent of the NRC that affected licensees provide tamper indication or line supervision for required surveillance/assessment and illumination systems. This protection is not needed because these systems are considered "self-protecting," i.e., tampering produces an obvious loss of function rather than an unobvious degradation. The requirement for surveillance/assessment and illumination systems to be maintained in operable condition remains unchanged. This rulemaking also supersedes guidance found in the Statement of Consideration of the

**Federal Register** Notice for the Physical Protection for Spent Fuel and High-Level Radioactive Waste (May 15, 1998, 63 FR 26955). On page 26960, under the section-by-section comparison of the proposed versus final rule, the discussion regarding proposed section 73.51(d)(13), revised as section (d)(11), is amended to be consistent with the corrective text of this rulemaking.

### Environmental Impact: Categorical Exclusion

The Commission has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

### 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 3150-0002.

### Public Protection Notification

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

### Regulatory Analysis

A regulatory analysis has not been prepared for this Direct Final Rule because this rule is corrective in nature and is considered a minor, nonsubstantive amendment; it has no economic impact on NRC licensees or the public.

### Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1989, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant impact upon a substantial number of small entities. The regulation affects entities licensed to operate independent spent fuel storage installations, monitored-retrievable storage installations, and geologic repository operations areas. These entities do not fall within the definition of small entities.

**Backfit Analysis**

The NRC has determined that the backfit rule 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 Chapter I.

**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 of OMB.

**List of Subjects in 10 CFR Part 73**

Criminal penalties, Hazardous materials transportation, Exports, Imports, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

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 final amendment to 10 CFR Part 73.

**PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

2. Section 73.51(d)(11) is revised to read as follows:

**§ 73.51 Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste.**

\* \* \* \* \*

(d) \* \* \*

(11) All detection systems and supporting subsystems must be tamper indicating with line supervision. These systems, as well as surveillance/assessment and illumination systems, must be maintained in operable condition. Timely compensatory measures must be taken after discovery of inoperability, to assure that the

effectiveness of the of the security system is not reduced.

\* \* \* \* \*

Dated at Rockville, Maryland, this 26th day of August, 1998.

For the Nuclear Regulatory Commission.

**L. Joseph Callan,**

*Executive Director for Operations.*

[FR Doc. 98–24715 Filed 9–15–98; 8:45 am]

BILLING CODE 7590–01–P

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 96–NM–31–AD; Amendment 39–10736; AD 98–18–20]

RIN 2120–AA64

**Airworthiness Directives; Boeing Model 727 and Model 737 Series Airplanes Equipped with J.C. Carter Company Fuel Valve Actuators**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727 and Model 737 series airplanes, that requires replacement of the actuator of the engine fuel shutoff valve and the fuel system crossfeed valve with an improved actuator. This amendment is prompted by a report indicating that, during laboratory tests, the actuator clutch on the engine fuel shutoff and crossfeed valves failed to function properly. The actions specified by this AD are intended to prevent improper functioning of these actuators, which could result in a fuel imbalance due to the inability of the flightcrew to crossfeed fuel; improperly functioning actuators also could prevent the pilot from shutting off the fuel to the engine following an engine failure and/or fire.

**DATES:** Effective October 21, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 21, 1998.

**ADDRESSES:** The service information referenced in this AD may be obtained from J.C. Carter Company Inc., Aerospace Components and Repair Service, 673 W. 17th Street, Costa Mesa, California 92627–3605. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of

the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

Sulmo Mariano, Aerospace Engineer; Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2175; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION: A**

proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 727 and 737 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on March 26, 1997 (62 FR 14373). That action proposed to require replacement of the actuator of the engine fuel shutoff valve and the fuel system crossfeed valve with an improved actuator. That action also proposed to expand the applicability of the proposed rule by including an additional Kearfott actuator that is subject to the addressed unsafe condition.

**Explanation of New Service Information**

The FAA has reviewed and approved J.C. Carter Company Service Bulletin 61163–28–09, dated May 1, 1996. Although no service bulletin revision level was designated, this new service bulletin was issued as an updated revision of the original version, dated September 28, 1995, which was referenced in the supplemental NPRM as the appropriate source of service information for accomplishment of the proposed replacement. The procedures described in these two service bulletins are essentially the same. However, the new revision includes the following additional clarifying information:

1. In Section II, Accomplishment Instructions, an additional reference to 737 Maintenance Manual (MM) 28–22–11/400 was added to the first paragraph.

2. In Section III, Materials, only two relevant changes were made. First, a new optional actuator part number, 40574–1, was added to the itemized list of part numbers. Second, information regarding the model number and nameplate of the new actuator was added to the second Note following the list of part numbers. In addition, information regarding the nameplates for Kearfott actuator models 3715–7 and 3715–8 was added to the first two headings following the Note paragraphs.