Proposed Rules

Federal Register
Vol. 65, No. 201
Tuesday, October 17, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 140

[Docket No. PRM–140–1]

RIN 3150–AB01

Criteria for an Extraordinary Nuclear Occurrence; Withdrawal of Proposed Rule and Denial of Petition for Rulemaking Submitted by the Public Citizen Litigation Group and Critical Mass Energy Project

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of a proposed rule and denial of a petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing a proposed rule that would have amended regulations concerning the criteria for an extraordinary nuclear occurrence (ENO) and is denying a petition for rulemaking (PRM–140–1) submitted by the Public Citizen Litigation Group and the Critical Mass Energy Project on this matter. This action is taken because the Commission has determined that the current criteria for determining that an ENO has occurred are adequate and are consistent with the intent of Congress, and that none of the options in the proposed rule is acceptable.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letters to the petitioners are available for public inspection or copying for a fee in the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. These documents are also available at the NRC's rulemaking website at *http://www.ruleform.llnl.gov.*

FOR FURTHER INFORMATION CONTACT: Harry S. Tovmassian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; 301–415–3092 (email HST@NRC.GOV).

SUPPLEMENTARY INFORMATION:

The Petition

By letter dated July 24, 1979, the Public Citizen Litigation Group and the Critical Mass Energy Project petitioned the NRC to take two actions pertaining to a determination whether events at nuclear reactors are ENOs within the meaning of 10 CFR 140.81. The petition was submitted on behalf of five individuals who were residents of Middletown, Pennsylvania, at the time of the March 28, 1979, accident at the Three Mile Island, Unit 2, nuclear reactor (TMI–2), and who claimed that they were harmed by that accident.

The petitioners' first request was that the NRC make a determination that the March 28, 1979, accident at TMI–2 was an ENO, within the meaning of 10 CFR 140.81. The NRC treated this portion of the petition as a response to its request for public comment on its July 23, 1979, **Federal Register** notice (44 FR 50419) of its decision to initiate ''the making of a determination as to whether the recent accident at TMI–2 constitutes an extraordinary nuclear occurrence.'' On April 23, 1980 (45 FR 27593), the NRC published its finding that the accident at TMI–2 was not an ENO. That action constituted the Commission's denial of the petitioners' request for NRC to determine that the TMI–2 accident was an ENO.

The petitioners further requested that, regardless of its finding on the TMI–2 accident, the Commission alter or amend the criteria it uses for making a determination that an event is an ENO.

Basis for Request

If the Commission determines that a particular accident is an ENO, persons indemnified under the Price-Anderson Act (Section 170.n.1.) of the Atomic Energy Act of 1954, as amended (AEA), (42 U.S.C. 2210n(1)) waive certain legal defenses. Current NRC requirements in 10 CFR 140.81(b)(3) establish a two-part test for making a determination that an accident at a nuclear reactor or at a plutonium processing or fuel fabrication plant constitutes an ENO. This two-part test is specifically contemplated by Section 11.j. of the AEA. Section 11.j. defines an ENO as an event: (1) Causing an offsite discharge of certain radioactive material or offsite radiation levels that are deemed to be substantial; and (2) that has resulted in, or probably will result in, substantial damages to persons or property offsite. Thus, applying the criteria specified in 10 CFR 140.84, the NRC first must find that a substantial offsite discharge of radioactive material has occurred or a substantial offsite radiation level has resulted. Second, the NRC must make a finding that substantial damages to persons or property offsite have been or probably will be incurred. If both findings are made, the Commission then must find that the event is an ENO.

With respect to their first request, the petitioners cite certain occurrences as the basis for their belief that the TMI–2 accident should be deemed an ENO: the evacuation of area residents with the concomitant harm to area businesses, large initial payments to victims, lawsuits filed, and radiological releases.

In support of their second request that the Commission change the criteria for making a determination that an event is an ENO, the petitioners state that the Joint Committee on Atomic Energy (JCAE) ''established that the purpose of designating certain accidents as extraordinary nuclear occurrences is to distinguish a serious accident from an event in which nothing untoward or unusual occurred in the conduct of nuclear activities.[1] The petitioners assert that the NRC has the power and discretion to make the definition of an ENO responsive to the circumstances and needs of the public. Also, according to the petitioners, accidents of far less consequence than the one at TMI–2 could be designated as ENOs in conformity with the legislative intent of the Price-Anderson Act, as amended. The petitioners believe that it is appropriate and necessary that the criteria for the determination of an ENO be revised, altered, or amended to respond effectively to those circumstances and demonstrated needs.

Commission Response to Petition

On July 23, 1979 (44 FR 43128), the NRC published a notice in the **Federal Register** of its intent to make a determination as to whether the TMI–2 accident was an ENO. A notice of the filing of the petition from the Public Citizen Litigation Group and the Critical Mass Energy Project was published in the **Federal Register** on August 28, 1979 (44 FR 50419). The notice stated that the NRC intended to treat the petitioners'

[1] William B. Schultz, et al., Public Citizen Litigation Group and Critical Mass Energy Project, Petition for Rulemaking, July 24, 1979, p. 10.

first request (to find the TMI–2 accident an ENO) as a response to its request for public comment on its July 1979 notice. The notice further stated that the petitioners' second request (to change the criteria for an ENO finding) would be treated as a petition for rulemaking. Both the July 1979 and the August 1979 notices invited interested persons to submit written comments or suggestions.

Petitioners' First Request

The NRC considered comments on the petitioner's first request and in response to its July 1979 notice. For the reasons stated in its of April 23, 1980, **Federal Register** notice (45 FR 27590), the Commission determined that the March 28, 1979, accident at TMI–2 was not an ENO. Therefore, the petitioners' first request was denied.

Petitioners' Second Request

One comment was received on the second request, from an official of a nuclear utility. The commenter stated that the current criteria for determining that an accident was an ENO were consistent with the intent of Congress that the waiver of certain legal defenses triggered by an ENO determination be limited to incidents resulting in significant injury or loss. The commenter also stated that lowering the threshold for an ENO would lead to higher premiums for insurance coverage and could at some point endanger the availability of this coverage.

Although the Commission agreed with the commenter that the existing ENO criteria are consistent with the intent of Congress, it decided that these criteria should be reexamined because of difficulties in applying them after the TMI–2 accident. The primary difficulties cited stemmed from the fact that: (1) One criterion is based on ''objective clinical evidence of radiation injury''; however, tests for evidence of such injury are not conclusive; and (2) monetary damages were difficult, if not impossible, to evaluate accurately in a timely manner (e.g., lower property values, business losses, evacuation costs). The Commission also cited a third difficulty with the existing ENO determination criteria that did not relate to problems encountered in the TMI–2 determination (i.e., the existing criteria are numerically inconsistent with the Environmental Protection Agencies (EPA) Protective Action Guidelines (PAG)).

Another factor that influenced the Commission's decision to reevaluate the ENO determination criteria was that when Congress first enacted the waiver of defenses provisions of the Price-Anderson Act, as amended, the conventional belief was that an accident at a nuclear facility would be catastrophic with large releases of radioactive material in a short time. The accident at TMI–2 suggested that a more slowly developing accident could be catastrophic enough to be considered an ENO. Thus, the Commission decided that it would be worthwhile to examine whether the criteria it uses to determine whether an accident is an ENO adequately address a broad range of accident scenarios.

Proposed Rule

On April 9, 1985 (50 FR 13978), the Commission published proposed amendments to 10 CFR Part 140 that posed three options that were under consideration for revised criteria for making an ENO determination, and solicited public comment on these options. These options used estimates of offsite doses and ground contamination as indicators of ''substantial releases.'' As to ''substantial damages,'' the options avoided the measurement problems encountered in applying the present criteria by focusing on costs, which can be readily counted or estimated. The dose limits for ''substantial releases'' were set at values in the range of occupational dose limits but substantially above the doses to the general public expected from the normal operation of NRC-licensed facilities. Like the existing criteria, Options 1 and 2 had separate criteria for substantial discharges of radioactive material or substantial radiation levels offsite.

Option 1 would modify § 140.84(a) to provide that a finding of a substantial discharge of radioactive material or substantial radiation level offsite should be based on a determination ''that one or more persons offsite have been or probably will be exposed to radiation or radioactive materials that would result in estimated doses'' in excess of certain specified limits. Option 2 had the same dose limits of Option 1 but specified that the finding must be that any of the doses ''were or could have been received by a person or persons located on or near any site boundary throughout the duration of the accident.''

Options 1 and 2 also differed with respect to the threshold for ''substantial damage'' to persons or property offsite. One of the thresholds in Option 1 replaced the existing ''substantial damage'' threshold of ''objective clinical evidence of physical injury from exposure'' with a dose-equivalent in the range that would produce symptoms of radiation sickness (i.e., 100 rads) in five or more exposed persons. Option 2 had neither the current ''objective clinical evidence of physical injury'' threshold nor the Option 1 threshold of a high dose to a few people. The Option 2 threshold was that a ''calculated collective dose'' (i.e., 100,000 person-rem) has been delivered within a 50-mile radius during the course of an accident. Both options replaced the present reference to the monetary value of property damage in Criterion II of the existing rule with effects that could be readily assessed within a relatively short period of time after an accident. Such effects include tax assessments, the number of people unemployed, and the number of people evacuated.

Option 3 departs from the two-part test required in the current criteria and the other options. Rather than requiring a Commission finding that the event resulted or probably would result in monetary damages exceeding certain thresholds, this option called for identifying conditions which had led or could lead to injury or damages. This option specified one set of criteria for substantial releases and levels of radiation offsite such that substantial injuries or substantial damages have resulted or will probably result. These criteria were expressed in terms of an integrated air dose that could be received by an individual over a 24-hour period in excess of 10 rads, or radioactive contamination levels offsite at which real and personal property are rendered unfit for normal use.

Public Comments on the Proposed Rule

The Commission received 27 letters commenting on the proposed rule. Although some commenters expressed their views about the merits of the various options proposed, there was no preponderance of support by the commenters for any of the options.

Ten commenters expressed an opinion on whether the criteria for making a determination that an ENO had occurred should be changed. Two commenters recommended changing the criteria. The Illinois Department of Nuclear Safety said that it did not believe that the two-pronged process of declaring a significant release and then determining that substantial damages were sustained was necessary and agreed with then-NRC Commissioner Bernthal's recommendation to use a single-criterion method. The commenter further stated that the existing process was complicated and time consuming and had inherent problems regarding accuracy and subjectivity but gave no rationale for these views. The Mississippi State Department of Health said that it favored Option 3 and that any of the options were more acceptable

than the existing rule but did not give a basis for this view.

Eight commenters, representing approximately 21 separate entities,[2] recommended not changing the criteria. (Some commenters submitted the consolidated comments from other entities; other commenters endorsed these consolidated comments and submitted additional comments of their own.) The eight commenters stated that the existing ENO criteria were adequate and that no changes were required. Some commenters pointed out that the NRC's difficulties in applying the ENO criteria to the TMI–2 accident arose not from the criteria, but from the fact that the accident was not serious enough to meet the statutory requirements of substantial offsite releases and substantial offsite damages. Some commenters also pointed out that no change in the regulatory criteria would relieve the Commission of the statutory obligation to determine whether both the offsite release and the offsite damages were substantial, even if such a determination proves to be difficult on occasion.

Several commenters who opposed changing the criteria stated that the NRC had not adequately justified reducing the threshold for a substantial release finding from 20 rem to 5 rem. They asserted that this reduction would increase the likelihood that an event would be declared an ENO.

Some commenters also questioned the NRC rationale for changing the criteria to be consistent with the EPA PAGs. According to the commenters, these guidelines are intended for emergency planning purposes and to protect the population at risk from the onset of release of radioactivity; they were not intended as baseline criteria for ENO determinations.

Some commenters who opposed changing the criteria stated that the reduction of the dose level to sustain a finding of a substantial offsite release of radioactivity to 5 rem was inconsistent with the intent of Congress, and that the proposed rule would permit the Commission to define as an ENO an event near the range of radiological exposures from anticipated occurrences and involving doses within or near permissible limits. One commenter quoted the authors of the ''Joint Committee on Atomic Energy's Report (JAEC) Accompanying Bills to Amend Price-Anderson Act to Provide Immediate Financial Assistance to Claimants and to Require Waiver of Defenses:'' ''[T]here is no pressing need to invoke the mechanisms and procedures in situations which are not exceptional and which can well be taken care of by the traditional system of tort law.''[3]

Another commenter gave the following opinion:

> These proposed reductions would lower the existing dose levels to values not much different from the current 10 CFR 20 limits. We believe that these level reductions seriously lower the threshold of an ENO and that the original purpose may be somewhat diminished by the adoption of these reduced limits. In the original conception of 10 CFR 140, ''Congress intended that the waiver of defenses be limited to incidents resulting in significant injury or loss'' and that current ENO criteria should be consistent with this. It is possible that the seriousness or significance of an ENO may be lessened somewhat by these lower criteria.[4]

Another commenter expressed the same view:

> The legislative history is clear that Congress, in amending the Atomic Energy Act to incorporate the ENO concept, wished to establish a threshold to prevent the waiver of defenses provision from applying in cases ''where nothing untoward or unusual has occurred in the conduct of nuclear activities.''[5]

Discussion

The Commission finds that the arguments for retaining the existing criteria are persuasive. The Commission intended to simplify the application of the ENO criteria, but is now convinced by arguments of the public commenters that none of these options would accomplish this intent without undermining the purposes for which the ENO criteria were established.

In addition, section 11.j. of the AEA indicates that the dual criteria for findings of substantial releases and findings of substantial damages are to be used. Section 11.j. of the AEA has the following passage:

> The term extraordinary nuclear occurrence means any event causing a discharge or dispersal of source, special nuclear, or byproduct material from its intended place of confinement in amounts off-site, or causing radiation levels off-site, which the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, determines to be substantial, *and* which the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, determines has resulted or will probably result in substantial damages to persons off-site or property off-site. [emphasis added].

The Commission interprets this provision to mean that the determination that an ENO has occurred requires findings of substantial releases and of substantial damages.

Conclusions on Problems Cited in 1985 Federal Register Notice

With respect to the difficulties with the ENO determination criteria cited in the 1985 **Federal Register** notice (discussed earlier), the Commission now believes that these are not as serious as were once thought:

(1) Experience gained as a result of the TMI–2 accident suggests that the Criterion II threshold, requiring objective clinical evidence of radiation injury (10 CFR 140.85(a)(1)) to five or more individuals offsite, may not be as important to an ENO determination as the other findings in Criterion II. A second threshold in this criterion, a finding that $5 million or more in damage offsite has been or probably will be sustained (10 CFR 140.85(a)(2)), would appear to trigger an ENO determination before the radiation injury finding would. After the TMI–2 accident, no deaths or injury due to the accident were reported. However, to date, more than $70 million has been paid out in damages and expenses (mostly attributable to evacuation costs). If an accident occurred, the monetary damage estimate would apparently trigger the ENO determination before the death or injury threshold did. Thus the likelihood that the Commission would ever need to rely solely on 10 CFR 140.85(a)(1) to make a ''substantial damages'' to persons or property offsite finding is very small.

(2) The difficulty in estimating monetary damages does not seem to be as great as previously believed. The Commission now believes that timely and accurate estimates of monetary damages is possible. There exists a body of literature in which models for estimating such parameters and performing relevant studies are described. One study conducted by Mountain West Research, Inc., investigated the social and economic effects of the TMI–2 accident on the surrounding community.[6] The Commission is confident that, should an event meriting an ENO determination occur again, experts from the relevant disciplines can be assembled to estimate

[2] For example, the Law Offices of Bishop, Lieberman, Cook, Purcell & Reynolds made comments on behalf of Boston Edison Co., Carolina Power & Light Co., Commonwealth Edison Co, Florida Power Corp., Middle South Services Inc., Ohio Edison Company, Pennsylvania Power & Light Co., Southern California Edison Co., and Virginia Electric & Power Co.

[3] Peter F. Riehm, KMC, Inc., September 6, 1985, p. 2.

[4] Joseph F. Tiernan, Baltimore Gas and Electric, July 22, 1985, p. 2.

[5] Bishop *et al.*, August 7, 1985, p. 2.

[6] C.B. Flynn, J.A. Chalmers, ''The Social and Economic Effects of the Accident at Three Mile Island,'' NUREG–CR–1215, January 1980.

monetary damages. Furthermore, the legislative history of the modifications to the ''waiver of defenses'' provisions of the Price-Anderson Act (where the ENO concept was introduced) indicates that Congress was mindful that criteria to implement such an approach would be difficult to apply. In its September 14, 1966, report accompanying House of Representatives Bill No. 17685,[7] the former JCAE stated: ''[T]he committee recognizes that inclusion of the 'extraordinary nuclear occurrence concept' in this bill adds very considerably to the complexity of implementing the proposed legislation.'' [8] Thus, the difficulty of applying the criteria does not justify changing them.

(3) The fact that existing ENO determination criteria are not numerically consistent with PAGs, which was cited in the **Federal Register** notice for the 1985 proposed rule, was not seen so much as a difficulty with applying ENO criteria to TMI–2, but, rather was seen as a perceived inadequacy of the ENO criteria. But the PAGs were established with different objectives than the ENO criteria. The purpose of the PAGs is to reduce the radiation exposure of the public by setting predetermined action levels for implementing planned protective actions, such as evacuations. These action levels are established with public health and safety as the main objective. ''The concept of PAGs was introduced to radiological emergency response planning to assist public health and other governmental authorities in deciding how much of a radiation hazard in the environment constitutes a basis for initiating emergency protective actions.'' [9] In contrast, as stated in 10 CFR 140.81(b), the ENO regulations set forth the criteria which the Commission will follow to determine whether there has been an ENO. The Commission has taken the position that health and safety regulations have been conservatively determined and for a different purpose and are not appropriate for use as ENO thresholds. Section 140.81(b)(1) sets forth the scope of the ENO criteria as follows:

> The various limits in present NRC regulations are not appropriate for direct application in the determination of an ''extraordinary nuclear occurrence'' for they were arrived at with other purposes in mind, and those limits have been set at a level which is conservatively arrived at by incorporating a significant safety factor. Thus, a discharge or dispersal which exceeds the limits in NRC regulations, or in license conditions, although possible cause for concern, is not one which would be expected to cause substantial injury or damage unless it exceeds by some significant multiple the appropriate regulatory limit. Accordingly, in arriving at the values in the criteria to be deemed ''substantial'' it is more appropriate to adopt values separate from NRC health and safety regulations, and of course, the selection of these values will not in any way affect such regulations.

Thus, for the reasons stated, the Commission believes that lowering the thresholds for ENO determinations is not appropriate.

Summary of Commission Findings

The Commission has considered the comments in favor of modifying the criteria for determining that an ENO has occurred along the lines of the options presented in the proposed rule and those comments in favor of retaining the existing criteria. The Commission finds the latter more persuasive. Specifically, the Commission finds that:

(1) Although the existing criteria for determining that an ENO has occurred may be difficult to apply, they are consistent with the intent of Congress and need not be modified. The Commission believes that, contrary to the **Federal Register** notice for the proposed rule, the derivation of timely and accurate estimates of monetary damages is possible. The Commission is confident that, should an event meriting an ENO determination occur again, individuals and consulting firms with experience in estimating evacuation costs, changes in property values, loss of time from work, and other parameters can be assembled to make estimates of monetary damages. Moreover, as previously noted, the legislative history of the amendments to the ''waiver of defenses'' provisions of the Price-Anderson Act (where the ENO concept was introduced) indicates that Congress was mindful that criteria to implement such an approach would be difficult to apply. The difficulty of applying the criteria does not justify changing them.

(2) None of the options offered by the Commission in the 1985 proposed rule satisfies the legislative intent of Congress in defining an ENO. Under Option 1, a ''substantial release'' is an exposure to one or more persons offsite. Option 2 specifies a ''substantial release'' as an exposure to one or more persons located on or near any site boundary during the accident. However, both options would lower the ''substantial release thresholds'' from a whole body dose of 20 rem to 5 rem and similarly lower individual organ thresholds. At that level, individuals would not normally experience symptoms of radiation sickness. Thus, if Option 1 or Option 2 were adopted, a ''substantial release'' determination could be made for releases unlikely to produce detectable radiation injuries offsite. The rationale for lowering of the dose limits from 20 rem to 5 rem (i.e., numerical consistency with EPA's PAGs) failed to consider the fact that the PAGs are for initiating emergency response actions. The PAGs have no bearing on the dose levels at which the ''waiver of defenses'' provisions should be invoked. Therefore, the Commission finds that lowering ''substantial releases'' thresholds for ENO determinations is not warranted.

(3) As noted previously, Option 3 differs from the existing criteria and the other two options. Option 3 relies upon the probability that substantial injury or damages will be the consequence of some threshold dose exposure rate or contamination level and eliminates the need to estimate actual or probable damages and injuries. For example, one of the thresholds in Option 3 is that if the integrated air dose to an individual over any 24-hour period exceeds 10 rads, the Commission would find that ''substantial releases'' and ''substantial injuries'' have probably resulted and declare the event an ENO, even if no injuries or damages are sustained or projected. In effect, this option uses a single criterion for ''substantial release'' and ''substantial damage'' and thus is inconsistent with the two-part test for ENO determinations defined in Section 11.j. of the AEA. Therefore, the Commission finds that Option 3 of the proposed rule is also not appropriate.

Commission Action

Several factors contributed to the delay in completing the resolution of this petition until this time. The Commission dealt with the central request of the petitioners (i.e., to declare the TMI–2 accident an ENO) in a timely fashion. The petition was received on July 25, 1979, and the NRC published its finding that the accident was not an ENO in the **Federal Register** on April 23, 1980. In announcing its finding, the Commission did not specifically deny the petitioners' request to declare the TMI–2 accident an ENO.

The other request of the petitioners, to modify the ENO determination criteria, was considered to be of secondary importance. The Commission decided to consider this proposal but accorded it a low priority because of resource considerations and the existence of

[7] The Senate version of the bill, S–3830, was identical.

[8] House Report No. 2043, supra, n.1, p. 11.

[9] ''Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants,'' NUREG–0396 (EPA 520/1–78–016), December 1978, p. 3.

higher priority rulemaking actions. In the meantime, in light of the public comments received, the Commission has reexamined its reasoning for the need for modification of the ENO criteria and the options that it proposed in the **Federal Register** notice for the proposed rule (50 FR 13978). The Commission also considered the legislative history of the Price-Anderson Act in arriving at its finding in this matter.

Because the current criteria for determining that an ENO has occurred are consistent with the intent of Congress and none of the options proposed in the 1985 rulemaking are deemed acceptable, the Commission now finds that revision of these criteria is not warranted. For these reasons, the second request in the petition for rulemaking (PRM–140–1) from the Public Citizen Litigation Group and the Critical Mass Energy Project is denied and the April 9, 1985, proposed rule is withdrawn.

Dated at Rockville, Maryland, this 11th day of October 2000.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–26642 Filed 10–16–00; 8:45 am]

BILLING CODE 7590–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–201–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Dornier Model 328–100 series airplanes. This proposal would require revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate life limits for certain items and inspections to detect fatigue cracking in certain structures. This proposal is prompted by issuance of new revisions to the Dornier 328 Airworthiness Limitations Document. The actions specified by the proposed AD are intended to ensure that fatigue cracking of certain structural elements is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

DATES: Comments must be received by November 16, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–201–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 97–NM–201–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–201–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–201–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, has notified the FAA that a new Revision 13 of the Dornier 328 Airworthiness Limitations Document (ALD), and new Temporary Revisions (TR's) to the ALD have been issued. [The FAA refers to the information included in Revision 13 of the ALD and in the new TR documents as the Airworthiness Limitations Section (ALS).] These new revisions to the ALD and TR documents affect all Dornier Model 328–100 series airplanes. These new revisions provide mandatory replacement times and structural inspection intervals approved under section 25.571 of the Joint Aviation Requirements and the Federal Aviation Regulations (14 CFR 25.571). As airplanes gain service experience, or as results of post-certification testing and evaluation are obtained, it may become necessary to add additional life limits or structural inspections in order to ensure the continued structural integrity of the airplane.

The LBA advises that compliance with the tasks, intervals, and life limits specified in Revision 13 of the ALD and in the TR documents is required to ensure continuing compliance with the airworthiness standards of the type