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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

RIN 3150-AG82

#### List of Approved Spent Fuel Storage Casks: Westinghouse MC-10 Termination

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Westinghouse MC-10 cask system listing within the "List of Approved Spent Fuel Storage Casks" terminating Certificate of Compliance Number 1001 as requested by the Westinghouse Government Environmental Services Company.

**DATES:** The final rule is effective November 5, 2001, unless significant adverse comments are received by September 20, 2001.

**ADDRESSES:** Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking website at <http://ruleforum.llnl.gov>. You may also provide comments via this website by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415-5905; e-mail [CAG@nrc.gov](mailto:CAG@nrc.gov).

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC

Public Document Room, 11555 Rockville Pike, Rockville, MD. Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/NRC/ADAMS/index.html>. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by email to [pdr@nrc.gov](mailto:pdr@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Jayne McCausland, telephone (301) 415-6219, e-mail [jmm2@nrc.gov](mailto:jmm2@nrc.gov), of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR Part 72 entitled, "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new Subpart K within 10 CFR Part 72, which contained a list of spent fuel

storage cask designs. Included in this list was Certificate of Compliance (CoC) No. 1001 for the Westinghouse MC-10 cask system.

#### Discussion

On February 19, 2001, the Westinghouse Government Environmental Services Company submitted a request (ADAMS ML010650146) to the NRC to terminate the § 72.214 listing of CoC No. 1001. Westinghouse indicated it does not desire to continue supporting the MC-10 cask design. Furthermore, no Part 72 general licensees currently use the MC-10 cask design. Therefore, the NRC has no objections to terminating CoC No. 1001 and is removing the CoC from the list of approved spent fuel storage cask designs contained in § 72.214.

The Westinghouse request (ADAMS ML010650146) is available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of this document may be obtained from Jayne McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6219, email [jmm2@nrc.gov](mailto:jmm2@nrc.gov).

#### Discussion of Amendments by Section

##### Section 72.214—List of Approved Spent Fuel Storage Casks

Certificate No. 1001 is terminated by removing the listing of the certificate.

#### Procedural Background

This rule is limited to the removal of CoC No. 1001 from § 72.214 and does not include other aspects of the Westinghouse MC-10 cask system design. The NRC is using the "direct final rule procedure" to promulgate this removal because it represents a change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on November 5, 2001. However, if the NRC receives significant adverse comments by September 20, 2001, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter

explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

#### Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104-113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC would terminate the Westinghouse MC-10 cask system design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

#### Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain

requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

#### Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing" directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

#### Finding of No Significant Environmental Impact: Environmental Assessment

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule will terminate the CoC for the Westinghouse MC-10 cask system from the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. This rulemaking is needed to remove the Westinghouse MC-10 listing from the "List of approved spent fuel storage casks" in § 72.214. Westinghouse Government Environmental Services Company indicated that it does not desire to continue supporting the MC-10 cask design. Furthermore, no Part 72 general licensees currently use the MC-10 cask design. Therefore, the NRC has no objections to terminating CoC No. 1001 and is removing the CoC from the list of approved spent fuel storage cask designs contained in § 72.214. The potential environmental impact of not using the Westinghouse MC-10 cask system will not compromise the public health and safety. The alternative to the proposed action would be to deny approval of the amendment. The proposed termination action now under consideration would not change the potential environmental effects because (1) There are other approved casks available for storage of spent nuclear fuel and (2) there currently is no spent nuclear fuel being stored under the general license provisions of Part 72 in this cask design. Therefore, the NRC staff has determined that there are no significant environmental impacts as a result of the termination. No agencies or persons outside the NRC were contacted

in connection with the preparation of this environmental assessment.

#### Paperwork Reduction Act Statement

This direct 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 3150-0132.

#### Public Protection Notification

If a means used to impose 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

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. Included in the list of approved cask designs was the Westinghouse MC-10 cask design under CoC No. 1001. On February 19, 2001, the certificate holder (Westinghouse Government Environmental Services Company) requested that NRC terminate the listing of CoC No. 1001 from § 72.214. Furthermore, no Part 72 general licensee currently uses the MC-10 cask design.

This rule will remove the above listing from § 72.214. The alternative to this action is to withhold approval of this request. This alternative would cost both the CoC holder and the NRC time and resources because the regulatory burden requiring the CoC holder to respond to certain NRC requests, including but not limited to Information Notices, and the NRC to review the responses, would remain.

Approval of the direct final rule will eliminate the above described burden. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public

health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

### Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the Westinghouse Government Environmental Services Company. This company does not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

### Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

### 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.

### List of Subjects in 10 CFR part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is adopting the following amendments to 10 CFR part 72.

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

1. The authority citation for Part 72 continues to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); 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 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under 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); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (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).

### § 72.214 [Amended]

2. In § 72.214, Certificate of Compliance 1001 is removed.

Dated at Rockville, Maryland, this 6th day of August, 2001.

For the Nuclear Regulatory Commission.

**William D. Travers,**

*Executive Director for Operations.*

[FR Doc. 01–20993 Filed 8–20–01; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2000–NM–401–AD; Amendment 39–12380; AD 2001–16–11]

**RIN 2120-AA64**

### Airworthiness Directives; Boeing Model 737–100, –200, and –200C Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) applicable to certain Boeing Model 737–100, –200, and –200C series airplanes; that requires a one-time inspection of the carriage spindles on the outboard

midflap for circumferential score marks; and rework of the carriage spindles or replacement with new or serviceable spindles, if necessary. This action is necessary to prevent severe flap asymmetry due to fractures of both carriage spindles at an outboard midflap, which could result in loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective September 25, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 25, 2001.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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:** James Blilie, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2131; 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 737–100, –200, and –200C series airplanes was published in the **Federal Register** on April 12, 2001 (66 FR 18878). That action proposed to require a one-time detailed visual inspection of the carriage spindles on the outboard midflap for circumferential score marks; and rework of the carriage spindles or replacement with new or serviceable spindles, if necessary.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

### Inspection Methods

All of the commenters expressed concern about the proposed inspection methods.

Regarding the detailed visual inspection that is included as one acceptable method of inspection in Boeing Alert Service Bulletin 737–57A1256, dated September 30, 1999,