

# Proposed Rules

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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 170

[Docket No. PRM-170-6; NRC-2008-0496]

#### Technical Specifications Task Force; Denial of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; Denial.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM-170-6) submitted by the Technical Specifications Task Force (TSTF), which is a jointly sponsored activity of the Pressurized Water Reactor Owners Group and the Boiling Water Reactor Owners' Group. The petition requests that the NRC amend its regulations to provide an explicit exemption from NRC review fees for activities associated with generic improvements to the Improved Standard Technical Specifications (ISTS). The NRC is denying the petition because the petition presents issues that the NRC has already carefully considered and addressed. Also, the petition fails to present any significant new information or arguments that would warrant the requested amendment.

**ADDRESSES:** You can access publicly available documents related to this petition for rulemaking using the following methods:

*Federal e-Rulemaking Portal:* Go to <http://www.regulations.gov> and search for documents filed under Docket ID [NRC-2008-0496]. Address questions about NRC dockets to Carol Gallagher 301-492-3668; e-mail [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

*NRC's Public Document room (PDR):* The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

*NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into 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 PDR reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Rebecca I. Erickson, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone 301-415-7126; e-mail [Rebecca.Erickson@nrc.gov](mailto:Rebecca.Erickson@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Nuclear Regulatory Commission (NRC) is required each year, under the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, (42 U.S.C. 2214) to recover approximately 90 percent of its budget authority, less the amounts appropriated from the Nuclear Waste Fund (NWF), amounts appropriated for Waste Incidental to Reprocessing (WIR) activities, and amounts appropriated for generic homeland security activities, through fees to NRC licensees and applicants.

The NRC assesses two types of fees to meet the requirements of OBRA-90, as amended. First, license and inspection fees, established in 10 CFR part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701), recover the NRC's costs of providing special benefits to identifiable applicants and licensees. Second, annual fees established in 10 CFR part 171 under the authority of OBRA-90, as amended, recover generic and other regulatory costs not otherwise recovered through 10 CFR part 170 fees.

There are fee exemption provisions under both 10 CFR part 170 and 171. At the time the NRC became a separate regulatory agency on January 19, 1975, there were nine exemptions in effect in § 170.11(a). Changes have been made to the original nine exemptions.

Before the fiscal year (FY) 2002 final fee rule became effective, an exemption

for Part 170 fees was part of footnote 4 to § 170.21 and footnote 5 to § 170.31. The NRC continued to receive requests for fee exemptions that did not meet the intent of the waiver provisions. The NRC determined that footnote 4 to § 170.21, footnote 5 to § 170.31, and material in the definition of "Special Projects" in § 170.3 concerning these types of requests and reports provided information that was more suitable for inclusion in § 170.11, "Exemptions." As a result, in the FY 2002 fee rule (67 FR 42629; June 24, 2002), the NRC removed the language relating to certain reports and requests submitted to the NRC for review from the definition of "Special Projects" in § 170.3, removed footnote 4 to § 170.21, and removed footnote 5 to § 170.31. The NRC also added paragraph (a)(1) to § 170.11.

The NRC revised the fee waiver provision to specifically state that the fee waiver criteria would apply only when it was demonstrated that the report or request had been submitted to the NRC for the specific purpose of supporting the generic regulatory improvements or efforts of the NRC, rather than the industry, and that the NRC, at the time of the submission, planned to use the submission for that purpose. The amendment also clarified that the waiver provisions would not apply to reports or documents submitted for the NRC's review that the NRC, at the time of the submission, did not plan to use to improve its regulatory program. Therefore, since these reviews would primarily provide a special benefit to identifiable recipients, such as individual members of the public, industry entities, vendors, or specific licensees, a fee waiver would not be available. This clarification is stated in § 170.11(a)(1)(iii):

(C) Fees will not be waived for reports/requests that are not submitted specifically for the purpose of supporting the NRC's generic regulatory improvements or efforts, because the primary beneficiary of the NRC's review and approval of such documents is the requesting organization. In this case, the waiver provision does not apply even though the NRC may realize some benefits from its review and approval of the document.

(D) An example of the type of document that does not meet the fee waiver criteria is a topical report submitted for the purpose of obtaining NRC approval so that the report can be used by the industry in the future to address licensing or safety issues.

The fee waiver provisions in § 170.11(a)(1) have not changed after FY 2002, with the exception of § 170.11(a)(1)(iii)(A)(3), which was added by the FY 2005 fee rule amendment (70 FR 30543; May 26, 2005). This provision specifies that a fee exemption request must be made in writing to the NRC's Chief Financial Officer who must address the request in writing.

### The Petition

The petitioner requests that NRC amend 10 CFR 170.11, "Exemptions" to provide an exemption for activities associated with generic improvements to the ISTS to make the regulations consistent with the Commission's Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors (signed on July 16, 1993, and published on July 22, 1993; 58 FR 39132). The Policy Statement states that ISTS have been developed and will be maintained. It also states that the NRC will, consistent with its mission, allocate resources as necessary to implement the Policy Statement. The petitioner states that, contrary to the Policy Statement, in 2003, the NRC began assessing fees for the review of industry actions to maintain the ISTS, known as "Travelers." According to the petitioner, this placed the entire burden of maintaining the ISTS on the industry, which has subsequently paid over \$750,000 in fees.

The petitioner states that it has repeatedly requested fee exemptions from the NRC for the review of Travelers and has almost always been rejected on the basis that § 170.11 does not contain a provision for exempting the activity. Therefore the petitioner requests that the NRC amend § 170.11 to provide an exemption for activities associated with generic improvements to the ISTS to make the regulations consistent with the Policy Statement. Specifically, the petitioner requests that a new paragraph be added as § 170.11(a)(1)(iii)(A)(4) to provide an exemption for activities associated with generic improvements to the ISTS.

The petitioner states that the imposition of review fees for the review of generic improvements to the ISTS is unduly burdensome. According to the petitioner, a direct result of the inconsistency between the Commission's Policy Statement and the provisions of 10 CFR 170.11 is that the industry owner's groups have paid over \$750,000 in NRC review fees after 2003 for maintenance of the ISTS when the NRC's policy was that the NRC would allocate the resources for that activity.

The petitioner states that the current provisions of 10 CFR 170.11 are deficient in that the imposition of review fees for the review of generic improvements to the ISTS is inconsistent with NRC policy. The petitioner also states that the Consolidated Line Item Improvement Process (CLIIP) described in NRC Regulatory Information Summary 2000-06 contains a streamlined regulatory process describing how licensees can request license amendments based on NRC-approved Travelers. The petitioner believes the CLIIP process saves significant NRC resources by requiring an average of one-tenth of the hours for NRC review compared to a similar non-CLIIP amendment.

The petitioner estimates that after the initiation of the CLIIP process, over 500 license amendments have been approved that have saved the NRC more than 40 work-years of effort after FY 2001. The petitioner states that submittal of new Travelers by the nuclear industry has dropped from an average of 56 per year during 1995-2002 to an average of nine per year after the imposition of fees for Travelers reviews. The petitioner suggests that it is in the NRC's interest to support the CLIIP by encouraging the submittal of Travelers through the elimination of review fees.

To implement the NRC's policy properly, remove an undue burden on licensees, and improve the NRC's efficiency, the petitioner requests that § 170.11 be amended as suggested in its petition for rulemaking to provide an exemption from review fees for generic improvements to standard technical specifications. The petitioner believes there is adequate justification and precedent for the NRC to implement the provisions presented in this petition for rulemaking and requests that the NRC issue a proposed rule and direct final rule concurrently.

### Reasons for Denial

The petition presents issues that have been carefully considered and addressed in earlier correspondence. The NRC informed the TSTF of the change in the fee exemption status for Travelers in a January 10, 2003, letter to the TSTF from W. D. Beckner, NRC Program Director (ADAMS Accession Number ML030100090). Mr. Beckner explained that the industry had not been assessed Part 170 fees for review of proposals to revise standard technical specifications (STS) because those proposals were used by the NRC to make generic regulatory improvements. Mr. Beckner also explained that for the most part those regulatory improvements had been achieved, and

the review of the proposed STS changes being submitted to the NRC would primarily benefit specific licensees rather than enhancing the NRC regulatory process. Thus, future submissions would be subject to fees unless a fee exemption was allowed under 10 CFR 170.11(a)(1).

Further, the NRC received an April 28, 2006, letter from the TSTF on this same subject (ADAMS Accession Number ML061210034). NRC's Chief Financial Officer, J.L. Funches, explained in his June 14, 2006, response to the TSTF that the NRC's budgeted costs must be recovered, by law, through fees assessed to licensees and applicants (ADAMS Accession Number ML061650078). Mr. Funches also explained that the NRC's commitment to allocate budget resources to implement the Policy Statement is not related to the assessment of fees. Therefore, the NRC did not believe that its assessment of fees for review work of a Traveler was a contradiction to the Policy Statement.

The NRC continues to believe it is fair and appropriate to apply the fee exemption criteria in § 170.11 to all *Special projects* as defined under § 170.3, "Definitions." The NRC is unable to determine in advance whether all Travelers will meet the fee exemption criteria; thus, the NRC must separately review each fee exemption request to determine whether the fee exemption criteria apply.

With regard to the use of the CLIIP process in saving significant NRC resources, although the NRC is committed to actions which promote the efficient use of NRC resources, providing a fee exemption based on a cost savings to the NRC is contrary to the IOAA. Under the authority of the IOAA, the NRC recovers the costs of providing special benefits to identifiable applicants and licensees. In response to the petition comment that the imposition of review fees is unduly burdensome on the industry, with extremely limited exceptions, the NRC does not base its fees on the economic circumstances of particular licensees or classes of licensees. If the NRC were to grant the petition, other licensees would be required to subsidize the Travelers through increased fees in order for the NRC to meet the requirements of OBRA-90.

The petitioner offers no new arguments for the NRC's consideration. Therefore, the NRC has determined that it would be an unwise expenditure of resources to conduct a rulemaking on this matter.

For these reasons, the Commission denies PRM-170-6.

Dated at Rockville, Maryland, this 5th day of February, 2009.

For the Nuclear Regulatory Commission.

**J.E. Dyer,**

*Chief Financial Officer.*

[FR Doc. E9-3144 Filed 2-13-09; 8:45 am]

BILLING CODE 7590-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2009-0035; Directorate Identifier 2008-NM-096-AD]

RIN 2120-AA64

#### Airworthiness Directives; Saab Model 340A (SAAB/SF340A) and SAAB 340B Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Field experiences have revealed cracks in the frames and closing angle on the forward engine cowl door \* \* \*.

In case of a damaged frame and/or closing angle, the forward engine cowl door can loosen during flight and depart from the aircraft.

\* \* \* \* \*

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by March 19, 2009.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Saab Aircraft AB, SAAB Aerosystems, SE-581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; e-mail [saab2000.techsupport@saabgroup.com](mailto:saab2000.techsupport@saabgroup.com); Internet <http://www.saabgroup.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221 or 425-227-1152.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1112; fax (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2009-0035; Directorate Identifier 2008-NM-096-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

##### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008-0069, dated April 11, 2008 (referred to after

this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Field experiences have revealed cracks in the frames and closing angle on the forward engine cowl door NS STA [nacelle station] 203 and 250.

In case of a damaged frame and/or closing angle, the forward engine cowl door can loosen during flight and depart from the aircraft.

This AD is issued to require a detailed inspection to find out if there are any cracks [or deformations or wear damage] in the frames and/or the closing angles. The inspection is on four points on each of the forward engine cowl doors.

The corrective action depends on if the crack, deformation, or wear damage is within or outside certain defined limits, and includes doing a repair either in accordance with the specified service information, or contacting Saab for repair instructions and doing the repair. You may obtain further information by examining the MCAI in the AD docket.

#### Relevant Service Information

Saab has issued Service Bulletin 340-71-060, dated February 8, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

#### FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

#### Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

#### Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect 141 products of U.S. registry. We also estimate that it would take 2 work-