



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

AC56-2

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PDR

11/22/90

MEMORANDUM FOR: NUDOC5
FROM: Mark Haisfield
Waste Management Branch
Division of Engineering, RES
SUBJECT: REGULATORY HISTORY FOR RULEMAKING ON CUSTODY
AND LONG-TERM CARE OF URANIUM AND THORIUM MILL
TAILING DISPOSAL SITES

Please add to the existing files the following documents:

- AC56-1, PDR; 16 documents
- AC56-2, PDR; 8 documents
- AC56-1, CF; 32 documents
- AC56-2, CF; 13 documents

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Mark Haisfield

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Division of Engineering, RES

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Rules and Regulations

Federal Register

Vol. 55, No. 210

Tuesday, October 30, 1990

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

RIN 3150-AC56

Custody and Long-Term Care of Uranium and Thorium Mill Tailings Disposal Sites

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations by issuing general licenses that will permit NRC to license the custody and long-term care of reclaimed or closed uranium or thorium mill tailings sites after remedial action or closure under the Uranium Mill Tailings Radiation Control Act has been completed. The intended effect of this action is to provide a surveillance procedure to ensure continued protection of the public health and safety and the environment. This action is necessary to meet the requirements of Titles I and II of the Uranium Mill Tailings Radiation Control Act.

EFFECTIVE DATE: November 29, 1990.

FOR FURTHER INFORMATION CONTACT: Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Mail Stop NLS-260, Telephone (301) 492-3877.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Summary of Final Rule
- III. Uranium Mill Tailings Remedial Action Amendments Act of 1988
- IV. The Stabilization and Long-Term Care Program (Title I and Title II)
- V. The Long-Term Surveillance Plan (Title I and Title II)
- VI. Future Uses of the Disposal Site
- VII. Comments of the Proposed Rulemaking

- VIII. EPA Clean Air Act Activities
- IX. Finding of No Significant Environmental Impact: Availability
- X. Paperwork Reduction Act Statement
- XI. Regulatory Analysis
- XII. Regulatory Flexibility Certification Statement
- XIII. Backfit Analysis
- XIV. List of Subjects in 10 CFR Part 40

I. Background

In the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), the Congress recognized that uranium mill tailings may pose a potentially significant radiation health hazard to the public. One of the measures enacted by Congress to control this hazard is to place the long-term care of the uranium or thorium mill tailings disposal site, after completion of all remedial actions or closure, in the hands of State or Federal government.

Title I of UMTRCA defines the statutory authority and roles of the Department of Energy (DOE) and the NRC with regard to the remedial action program for inactive uranium mill tailings sites. Title I requires that, upon completion of the remedial action program by DOE, the permanent disposal sites be cared for by the DOE or other Federal agency designated by the President, under a license issued by the Commission. Title II of UMTRCA contains similar requirements for NRC licensing of presently active uranium or thorium mill tailings sites following their closure and license termination. These disposal sites would be licensed by the Commission upon their transfer to the Federal Government or the State in which they are located, at the option of the State. These regulations will complement other UMTRCA required regulations which have been completed and cover activities through closure.

An Advance Notice of Proposed Rulemaking was issued on August 25, 1988 (53 FR 32396). The proposed rule was issued on February 8, 1990 (55 FR 3970).

II. Summary of Final Rule

The regulatory additions to 10 CFR part 40 will provide for two new general licenses. The general licenses in § 40.27 and § 40.28 will correspond to Title I and Title II of UMTRCA, respectively. The provisions in § 40.27 would apply to inactive sites and the provisions in § 40.28 would apply to active sites.

Although the requirements in § 40.27 and § 40.28 will differ somewhat due to the differences in Title I and Title II of the Act, the goals to be achieved by the long-term care licensee are the same.

These regulations deal only with uranium or thorium mill tailings sites after remedial actions (for Title I) or closure activities (for Title II) have been completed to meet applicable closure standards. UMTRCA stipulates the Federal government (normally DOE) as the long-term care licensee, and thereby the owner, except in the case of a Title II disposal site where the State may elect to be the long-term care licensee. In lieu of any such State election, the Federal government will become the long-term care licensee. The NRC will receive a detailed Long-Term Surveillance Plan (LTSP) from DOE or an appropriate State which will discuss ownership (whether Federal or State), disposal site conditions, the surveillance program, required follow-up inspections, and how and when emergency repairs and, if necessary planned maintenance, will be accomplished. Unless the Commission is formally notified by the appropriate State, the DOE will submit the LTSP and will be the long-term care licensee. (See the section entitled "The Long-Term Surveillance Plan.") The general license will become effective for each individual Title I or Title II disposal site upon NRC receipt of an LTSP that meets the requirements of the general license and either NRC concurrence in completion of remedial actions (Title I site) or termination of the Title II site license.

For disposal sites governed by the provisions of § 40.27 (Title I sites), the general license applies only to the DOE or another Federal agency designated by the President. For disposal sites governed under the provisions of § 40.28 (Title II sites), DOE, or another Federal agency, will prepare and submit the LTSP, unless the State, at its option, decides to take custody of the site and be included in the general license. In the latter case the State would prepare and submit the LTSP. The authority to grant a long-term care license is reserved to the NRC. States may be the long-term care agency, but are not authorized to grant this type of license. (See section 83 b(1)(A) of the Atomic Energy Act of 1954, as amended, and 10 CFR 150.15a(b)(5)).

The general licensees for long-term care are exempted from 10 CFR parts 19, 20, and 21. These parts cover notices, instructions, notifications to workers, and inspection in part 19, standards for protection against radiation in part 20, and reporting of defects and noncompliance in part 21. These parts deal with operational activities. A general license for long-term care covers activities after the operation and clean-up of the site has been completed. Under normal circumstances the long-term care licensee will spend a day or two at each disposal site each year to confirm that the site's conditions are as expected. The disposal site will comply with 40 CFR part 192, subparts A, B, and C (for Title I sites) and 10 CFR part 40 Appendix A criteria (for Title II sites), which essentially eliminate direct radiation and air particulates and control radon releases within specified limits. Disposal site closure will, therefore, eliminate the need for specific radiation controls as specified in parts 19, 20, and 21 under normal conditions.

If damage to the disposal site requires significant repairs, then the long-term care licensee must notify NRC and describe the necessary repairs. Since worker radiation protection and occupational exposure reporting may be necessary during such repair efforts, the long-term care licensee will identify the appropriate requirements of 10 CFR parts 19, 20, and 21 to be applied. NRC may then impose appropriate portions of the above parts or regulations by order on a site specific basis depending upon the damage and the type of repairs necessary.

A minor administrative change is being made to 10 CFR part 40 appendix A Criterion 12 to allow for a more efficient reporting program. Criterion 12 states that inspection results must be reported to the Commission within 60 days following each inspection. Because each long-term care licensee, primarily the Department of Energy, will most likely have multiple disposal sites, this rule will allow annual reports that cover all of these sites under their jurisdiction. Any disposal site where unusual damage or disruption is discovered during the inspection, however, will require a preliminary inspection report to be submitted within 60 days. The timing for submittal of the annual report will be based on when the long-term care licensee will be doing the inspections and will be submitted within 90 days of the date of the annual inspection of the last site inspected.

Criterion 12 currently deals with Title II licensees. It is being amended to include Title I licensees. Provisions in

§ 40.27 (Title I disposal sites) will reference Criterion 12 so that the same reporting requirements for Title II licensees will apply for Title I licensees.

There are some differences in requirements for mill tailings located on Indian lands. Where the disposal site is on Indian tribal lands, the tribes retain ownership. An exception is provided in Section 105(b) of UMTRCA, which states that in those cases where the residual radioactive material from processing sites on Indian land is relocated to a permanent disposal area not on Indian land, the DOE shall acquire title to the residual radioactive material and the disposal site. The NRC and DOE have generally agreed that disposal sites on Indian lands should be handled in the same manner as other Title I disposal sites, including conduct of surveillance under proposed § 40.27. We also understand that DOE and the appropriate Indian tribes have agreed that DOE would provide for long-term care. Four of the 24 Title I processing sites are on Indian lands. Three of these sites will also serve as disposal sites (the residual radioactive material from two of these locations will be consolidated at one disposal site).

For Title II disposal sites on Indian lands it is not clear who will be responsible for monitoring, maintenance, and emergency measures at the site. Currently, the Western Nuclear Sherwood Uranium Mill located in the State of Washington is the only site that falls into this category. UMTRCA provides that long-term surveillance will be done by the Federal government and that the licensee will be required to enter into arrangements with the Commission to ensure this surveillance. However, UMTRCA was not explicit as to which Federal agency is responsible for the disposal site, and should this site ever require emergency measures, additional authorizations may be required. The basic obligations for this site have already been codified in 10 CFR part 40, Appendix A, Criterion 11F, and are not part of this rulemaking. NRC is providing flexibility in this area and will work out long-term care arrangements for these disposal sites on a case-by-case basis.

Both § 40.27 and § 40.28 allow for potential future uses of the disposal sites. As provided in UMTRCA, any future use would require a separate Commission license to assure that the site remains or is restored to a safe and environmentally sound condition. See the "Future Uses of the Disposal Site" section.

The rulemaking provides for a general license to governmental bodies for

custody and long-term care of uranium or thorium mill tailings sites after closure, pursuant to statute. Therefore, this rulemaking has no significant impact upon the private sector. However, the staff recognizes that there may be cases where communication and sharing of information between the current licensee and the future long-term care licensee may be appropriate. This communication will allow the long-term care licensee to better prepare the Long-Term Surveillance Plan by having more knowledge of how site closure was accomplished.

III. Uranium Mill Tailings Remedial Action Amendments Act of 1988 (Amendments Act)

The Amendments Act was signed by the President on November 5, 1988, and provides among other things an extension of the UMTRCA Title I program. It allows the Department of Energy until September 30, 1994 (previously 1990) to perform remedial actions at designated uranium mill tailings sites and vicinity properties. There is one major exception to the 1994 deadline. The authority to perform ground water restoration activities is extended without limitation. However, to meet the current proposed Environmental Protection Agency (EPA) ground water standard, compliance with the ground water protection provisions at the disposal site would still need to be accomplished by the 1994 date.

The reason for the extension to 1994 is to allow DOE enough time to complete remedial actions at all designated processing sites. The ground water restoration extension was provided due to the potential that it may take DOE decades to comply with EPA ground water standards for some processing sites. EPA is currently issuing new ground water standards in response to a September 3, 1985 decision by the 10th Circuit Court of Appeals in which the ground water provisions of the EPA uranium mill tailings standards (40 CFR 192.20(a)(2-3)) for Title I processing sites were set aside and remanded to EPA. Based on the proposed EPA standards (52 FR 36000; September 24, 1987), the DOE believes that ground water restoration activities will take significantly more time than originally planned. The new standards have not yet been made final. Until final ground water standards are promulgated, UMTRCA requires that implementing agencies use the available proposed standards.

As a result of the Amendments Act, the NRC is planning to allow licensing of Title I disposal sites, where the tailings

are not being moved, to occur in two steps, if needed. The first step would allow DOE, if necessary, to do all remedial actions, which include complying with the ground water protection standards addressing the design and performance at the disposal site for closure and licensing. The Amendments Act requires this to be completed prior to September 1994. The second step, which can go on for many more years, would deal with existing ground water restoration. When ground water restoration is completed, the Long-Term Surveillance Plan would be appropriately amended. Until the EPA standards are finalized, and DOE and NRC evaluate the sites based on these standards, we will not know how many sites would likely be involved in this two step licensing process.

The Amendments Act itself did not address the potential delay of licensing Title I disposal sites due to the ground water provisions in EPA's proposed standards requiring monitoring after NRC has concurred in completion of remedial action. NRC's options ranged from a case-by-case use of EPA's supplemental standards provision, to exempt such disposal sites entirely from performance monitoring to the inflexible consequence of delaying all such licensing until completion of the ground water performance monitoring program. Such a delay could extend for up to 30 years or more. Based on interaction with other Federal agencies and the Congressional legislative history, the NRC has selected the two step approach discussed above to optimize flexibility.

NRC comments to EPA on their proposed standards suggested ways to remedy the situation. The final EPA standards may resolve this issue, but could also introduce new uncertainties. Because the proposed EPA standards are legally binding until final rules are issued, this rule is designed to have flexibility to address various situations.

IV. The Stabilization and Long-Term Care Program (Title I and Title II)

Although the end result for long-term care licensing for Title I or Title II disposal sites is similar, the processes leading up to closure of Title I or Title II sites are different. The following provides background on these processes, as well as some of the differences between Title I and Title II licensing.

Title I (24 sites)

UMTRCA charged the EPA with the responsibility for promulgating remedial action standards for inactive uranium mill sites. The purpose of these standards is to protect the public health

and safety and the environment from radiological and non-radiological hazards associated with radioactive materials at the sites. The final standards were promulgated with an effective date of March 7, 1983 (48 FR 602; January 5, 1983). See 40 CFR part 192-Health and Environmental Protection for Uranium Mill Tailings, Subparts A, B, and C.

The Department of Energy will select and execute a plan of remedial action that will satisfy the EPA standards and other applicable laws and regulations. All remedial actions must be selected and performed with the concurrence of the NRC. The required NRC concurrence with the selection and performance of proposed remedial actions and the licensing of long-term care of disposal sites will be for the purpose of ensuring compliance with UMTRCA.

The portion of the EPA standards dealing with ground water requirements has been remanded by court action, and is currently being finalized by EPA (see the previous section for more details). DOE continues to perform remedial action at the inactive processing sites in accordance with NRC's concurrence with the remedial action approach. Delaying implementation of the remedial action program would be inconsistent with Congress' intent of timely completion of the program. Modifications of disposal sites after completion of the remedial action to comply with EPA's final ground water protection standards may be unnecessarily complicated and expensive and may not yield commensurate benefits in terms of human and environmental protection. Therefore, the Commission believes that sites where remedial action has been essentially completed prior to EPA's promulgation of final ground water standards will not be impacted by the final ground water standards. Although additional effort may be appropriate to assess and cleanup contaminated ground water at these sites, the existing designs of the disposal sites should be considered sufficient to provide long-term protection against future ground water contamination. NRC does not view UMTRCA as requiring the reopening of those sites that have been substantially completed when NRC concurred with the selection of remedial action in accordance with applicable EPA standards, proposed or otherwise in place at the time such NRC concurrence was given.

The stabilization and long-term care program for each site has four distinct phases. In the first phase DOE selects a disposal site and design. This phase includes preparation of an

Environmental Assessment or an Environmental Impact Statement, and a Remedial Action Plan. The Remedial Action Plan is structured to provide a comprehensive understanding of the remedial actions proposed at that site and contains specific design and construction requirements. NRC and State/Indian tribe concur in the Remedial Action Plan to complete the first phase.

The second phase is the performance phase. In this phase the actual remedial action (which includes decontamination, decommissioning, and reclamation) at the site is done in accordance with the Remedial Action Plan. The NRC and the State/Indian tribe, as applicable, must concur in any changes to this plan. At the completion of reclamation activities at the site, NRC concurs in DOE's determination that the activities at the site have been completed in accordance with the approved plan. Prior to licensing, the next phase, title to the disposed tailings and contaminated materials must be transferred to the United States and the land upon which they are disposed of must be in Federal custody to provide for long-term Federal control, at Federal expense. Disposal sites on Indian land will remain in the beneficial ownership of the Indian tribe.

NRC concurrence in the DOE determination that remedial action at the processing site has been accomplished in accordance with the approved plan may be accomplished in two steps where residual radioactive material is not being moved from the processing site to a different disposal site. The Uranium Mill Tailings Remedial Action Amendments Act of 1988 allows for a two step approach for Title I disposal sites. The Amendments Act will allow DOE to do all remedial actions, other than ground water restoration, for the first step of closure and licensing. The second step, which can go on for many years, will deal with existing ground water restoration. When ground water restoration is completed, the LTSP will be appropriately amended. For sites that are being moved, licensing will occur in one step. There is no ground water restoration at the disposal site and the processing site will not be licensed after completion of remedial action. See the earlier discussion on this law for more details.

The third phase is the licensing phase. The general license is effective following (1) NRC concurrence in the DOE determination that the disposal site has been properly reclaimed and (2) the formal receipt by NRC of an acceptable Long-Term Surveillance Plan. NRC concurrence with DOE's performance of

the remediation indicates that DOE has demonstrated that the remedial action complies with the provisions of the EPA standards in 40 CFR part 192, Subparts A, B, and C. This NRC concurrence may be completed in two steps as discussed above. There is no termination date for the general license.

Public involvement has been and will continue to be provided through DOE's overall remedial action program for Title I sites and NRC's licensing program for Title II sites. The local public will have an opportunity to comment on the remedial action or closure plans proposed and implemented by DOE or the Title II licensee and to raise concerns regarding final stabilization and the degree of protection achieved. NRC fully endorses State and public input in all stages of the program, especially in the planning stages of remedial action when such input can be most effective in identifying and resolving issues affecting long-term care. At the time the LTSP is submitted, the NRC will consider the need for a public meeting in response to requests and public concerns. Therefore, NRC encourages State and public participation early in the remedial action and closure process and will provide additional opportunities, as needed, later in the process.

The final phase of the program is surveillance and monitoring and begins after NRC accepts the LTSP. In this phase DOE and NRC periodically inspect the disposal site to ensure its integrity. The Long-Term Surveillance Plan will require the DOE to make repairs, if needed.

One of the requirements in the EPA standards is that control of the tailings should be designed to be effective for up to 1000 years without active maintenance. Although the design of the stabilized pile is such that reliance on active maintenance should be minimized or eliminated, the NRC license will require emergency repairs as necessary. In the event that significant repairs are necessary, a determination will be made on a site specific basis regarding the need for additional National Environmental Policy Act (NEPA) actions, and health and safety considerations from parts 19, 20, and 21.

Title II

UMTRCA also charged EPA with the responsibility for promulgating standards for active uranium or thorium mill tailings sites. EPA completed this in Subparts D and E of 40 CFR part 192 on October 7, 1983 (48 FR 45946).

Title II processing sites have active NRC or Agreement State licenses. Each

licensee is responsible for having a closure plan that is approved by the NRC or an Agreement State. This plan describes how the licensee will close the site to meet all applicable standards after completion of operations.

Before the NRC, or an Agreement State, terminates a license the site must be closed in a manner which meets applicable standards. These include the requirements contained within 10 CFR part 40 — Domestic Licensing of Source Material, or similar Agreement State requirements. In addition, 10 CFR 150.15a requires that prior to the termination of any Agreement State license for byproduct material, the Commission shall have made a determination that all applicable standards and requirements have been met. Once the future long-term care licensee has submitted a suitable LTSP, the general license takes effect when either NRC terminates the current specific license or when NRC concurs with an Agreement State's termination of the current specific license. This rulemaking provides the Commission with two options to maintain control over disposal sites in the unexpected situation when: (1) an acceptable LTSP has not been submitted; (2) the current specific license is ready to be terminated; (3) NRC had determined that the disposal site has been closed in accordance with applicable standards; and (4) disposal site custody has been transferred to the long-term care licensee. The Commission could delay termination of the specific license until an acceptable LTSP is submitted or issue an order requiring surveillance by the custodian of the disposal site, who will become the long-term care licensee under the general license. The Commission considers either of these actions to be sufficient to ensure that the disposal site will be under surveillance and control during the transition period from the specific to the general license. The Commission will not unnecessarily delay the termination of the specific license solely on the basis that an acceptable LTSP has not been received. In such cases, the prime option would be to issue appropriate orders. The Commission, however, does not want to preclude the option of not terminating the specific license if this were appropriate for a relatively short period.

The general license approach for Title II sites is similar to the process used for Title I sites. The most significant differences are:

1. A State, at its option, may take over long-term care of a Title II disposal site instead of the DOE.

2. In some rare cases, such as may occur with deep burial where no ongoing site surveillance will be required, surface land ownership transfer requirements may be waived for a Title II disposal site.

3. Potential future uses of a Title I disposal site are limited to subsurface rights, whereas, a Title II disposal site could also potentially allow the usage of surface rights. (See the section entitled "Future Uses of the Disposal Site").

4. Title II licensees are required to pay a minimum charge of \$250,000 (1978 dollars) to cover the costs of long-term surveillance. This charge must be paid to the general treasury of the United States or to an appropriate State agency prior to the termination of a uranium or thorium mill license. The minimum charge may be adjusted based on site specific requirements in excess of those specified in Criterion 12 of appendix A. (See the section entitled "The Long-Term Surveillance Plan", Title II, for additional details).

5. The determination that remedial action at Title I sites has been completed may be done in two steps, whereas the determination of acceptable closure for Title II sites will be done only once before license termination.

6. There is an additional Title II requirement when a license in an Agreement State is terminated and the disposal site transferred to the United States for long-term care. All funds collected by the State for long-term surveillance will be transferred to the United States. This requirement has already been codified in part 150 and is not part of this rulemaking.

7. Title I covers designated inactive uranium mill tailings sites. Title II covers sites licensed as of January 1, 1978 and new uranium and thorium mill tailings sites.

Twenty-seven of the 29 conventional mills licensed by NRC or Agreement States are not currently operating. Most of these have no plans to restart operations, and closure activities have either been started or are in planning.

V. The Long-Term Surveillance Plan (Title I and Title II)

DOE, or the appropriate State, will submit a disposal site Long-Term Surveillance Plan to the NRC to coincide with completion of remedial actions (Title I) or license termination (Title II). DOE, or the appropriate State, will be responsible for preparing the LTSP since this document will clearly define their responsibilities under the general license. As discussed previously, the LTSP for Title I disposal sites will allow a two step approach as provided in the

Uranium Mill Tailings Remedial Action Amendments Act of 1988. The Amendments Act will allow DOE to do all remedial actions, other than ground water restoration, for the first step of closure and licensing. The first step includes any performance or design features necessary to satisfy ground water protection standards, except for ground water restoration. The second step which can go on for many years, will deal with existing ground water restoration. When ground water restoration is completed, the LTSP will be appropriately modified.

Title I

The DOE has developed a "Guidance for UMTRA Project Surveillance and Maintenance" document issued in January 1988. Copies of this document are available from the U.S. Department of Energy, UMTRA Project Office, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, New Mexico, 87115. This document, which was developed with NRC staff coordination, provides detailed generic guidance for what information should be considered in designing an LTSP for Title I disposal sites.

The DOE guidance document addresses five primary activities. These activities, which are discussed in the following paragraphs, are:

1. Definition and characterization of final disposal site conditions.
2. Disposal site inspections.
3. Ground water monitoring, if necessary.
4. Aerial photography.
5. Contingency (or emergency) repair, and planned maintenance if necessary.

DOE indicated that final disposal site conditions should be defined and characterized prior to the completion of remedial actions at a site. As-built drawings should be compiled, a final topographic survey should be performed, a vicinity map should be prepared, and ground and aerial photographs should be taken. Survey monuments, site markers, and signs should be established. If the disposal site LTSP specifies that ground water monitoring is required, then a network of monitoring wells should be identified and new wells established if needed.

DOE describes three types of disposal site inspections: Phase I, Phase II and contingency inspections. Annually scheduled 1 to 2-day phase I inspections would be conducted by a small team to identify any changes in conditions that may affect design integrity. Phase II inspections would be unscheduled and dependent upon potential problems identified during a Phase I inspection. Team members of a Phase II inspection

should be specialists in the potential problem areas (e.g., geotechnical engineer for settlement). Contingency inspections would also be unscheduled and occur when information has been received that indicates that site integrity has been, or may be, threatened by natural events (e.g., severe earthquake) or other means.

The need to monitor ground water conditions should be determined on a site specific basis. If it is determined that ground water monitoring is required for the long-term care at the disposal site, then it should be conducted in two phases, screening monitoring and evaluative monitoring. Screening monitoring will be designed to detect changes in ground water quality attributable to the tailings. If a significant change is apparent, evaluative monitoring should be initiated. Evaluative monitoring will be more extensive and will quantify the rate and magnitude of the change of conditions. When EPA finalizes the ground water protection standards, modifications may be necessary. See the discussion on the Uranium Mill Tailings Remedial Action Amendments Act of 1988 for more details.

Aerial photographs of the Title I disposal sites should be taken immediately upon completion of the construction and after the permanent surveillance features have been installed. The photographs will be used to prepare the final topographic map and as-built drawings and will be kept in the permanent site file for future reference. Should a problem develop at the site, in the unlikely event that a problem (such as erosion) should occur, the photographs provide baseline information about site conditions. New aerial photographs would be taken if it becomes necessary to monitor a problem over a long period of time.

The LTSP should also describe the procedures the long-term licensee would follow if contingency or emergency repairs were needed at the disposal site due to extreme natural events or purposeful intrusion.

The conduct of custodial activities such as grass mowing or fence repair are not precluded. If the long-term care licensee desires to conduct this type of custodial activity (termed "planned maintenance" in the DOE guidance document), the activities should be described in the LTSP. However, it should be noted that planned maintenance of this type cannot be relied upon to ensure compliance with the EPA standards.

Title II

Much of the guidance described for Title I disposal sites can be applied to the Title II disposal sites. However, the DOE guidance document includes additional information and recommendations for which the applicability must be evaluated on a site specific basis for Title II disposal sites. Specific requirements for Title II sites are addressed in Appendix A of 10 CFR part 40. For Title II sites, criterion 10 of Appendix A requires the existing licensee to pay a minimum charge of \$250,000 (1978 dollars) to cover the costs of long-term surveillance. The minimum charge was based on an annual inspection by the governmental agency retaining custody of the site to confirm the integrity of the stabilized tailings and to determine the need, if any, for maintenance and/or monitoring. The actual amount of this charge will be set based on a site specific evaluation, which should be included as part of the existing licensee's reclamation plan for the site. This charge is not intended to cover the cost of contingency (emergency) repairs. Because the tailings and wastes should be disposed of without the need for any active maintenance, the annual inspection should be completed in 1 to 2 days per site. Post-closure maintenance activities that are relied upon to comply with Appendix A closure standards can only be authorized by considerations of alternatives under Section 84(c) of the Atomic Energy Act of 1954, as amended. In such cases, the minimum charge for long-term surveillance to the existing licensee will be increased accordingly to provide for this maintenance. The basis for the minimum charge and the annual inspection is discussed in detail in the Final Generic Environmental Impact Statement on uranium milling (NUREG-0708).

The custodial agency will prepare an LTSP for each disposal site using input from the existing licensee's reclamation plan, including the evaluation of long-term surveillance needs. Thus, important site information will be transferred from the existing licensee to the custodial agency. The existing licensee, however, will not be required to prepare the LTSP. In addition the LTSP will not affect the

¹Copies of NUREG-0708 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street NW (Lower Level) of the Gelman Building, Washington, DC.

long-term surveillance charge paid by the existing licensee (the LTSP may also reflect additional site-specific activities which are not to be reflected in the long-term care charge, but are voluntarily committed to by the custodial agency).

VI. Future Uses of the Disposal Site

UMTRCA provides for potential future uses of the disposal site. For a Title I disposal site, it provides that the Secretary of the Interior, with the concurrence of both the Secretary of Energy and the NRC, may dispose of any subsurface mineral rights. If this occurs, the NRC will issue a specific license to the Secretary of the Interior to assure that the tailings are not disturbed, or if disturbed are restored to a safe and environmentally sound condition. At a Title I processing site, when tailings are moved, once the surface remedial actions are completed, surface rights will be available as long as the use does not impede future ground water restoration activities.

For a Title II disposal site the same provisions as above apply with the following two differences. First, surface as well as subsurface estates may be available for use. Second, although the request to use these rights may be received from any person, if permission is granted, the person who transferred the land to the Federal or State Government shall receive the right of first refusal with respect to this use of the land.

Environmental impacts will be evaluated prior to any action granting the use of surface or subsurface estates.

VII. Comments on the Proposed Rulemaking

The Commission received six (6) letters commenting on the proposed rule. Copies of these letters and an analysis of the comments are available for public inspection and copying for a fee at the NRC Public Document Room at 2120 L Street, NW, (Lower Level), Washington, DC. Comments were received from two States, a company having uranium interests, and three Federal Agencies (the Department of Energy, the Environmental Protection Agency, and the Department of the Interior). The most significant comments are summarized below.

There was concern that a current licensee may be placed in a position of having to delay final closure and turnover of its disposal site to the Federal government if an acceptable Long-Term Surveillance Plan has not been submitted. This could cause increased costs to the licensee and thereby have a significant impact on the private sector.

The proposed rule package discussed two options available to the Commission to maintain regulatory control of the disposal site in the above situation. The NRC could delay termination of the license or could issue specific orders to the intended custodial agency. We agree with the commenter that an indefinite delay in terminating the license could increase the impacts to an existing licensee. Therefore, we have clarified the rule to acknowledge that if significant financial impacts are anticipated due to lack of action on the custodial agency's part, issuing an order would be our prime option. However, the Commission wants to retain the option of not terminating the existing license, if this might be appropriate for a relatively short period.

A State commenter was concerned that the rule does not provide for explicit State concurrence in an LTSP prepared by the Federal government.

The proposed rule did not provide for specific State concurrence in the NRC licensing actions, because the State has no regulatory authority under the Atomic Energy Act during the long-term care period. The State, as a member of the general public, may comment on any action to be taken by the NRC. We would like to note that, for the Title II sites, the State, at its option, can be the custodial governmental agent and, therefore, become the responsible party to prepare and implement the LTSP under the general license issued by the NRC.

If significant environmental consequences occur at either Title I or Title II disposal sites in the future, the failure will not likely be as a result of the LTSP, but will most likely be as a result of inadequate design or construction. The States have been and will continue to be integrally involved in the design and construction phase of remedial action or closure. The commenter appears to over estimate the purpose of the LTSP which is the surveillance of the reclaimed or closed site, not the performance of significant maintenance work. The performance of significant work at licensed disposal sites under this regulation requires specific authorization from the NRC.

The Department of Energy indicated that the proposed rule was not clear regarding how the two step licensing process (Title I only) works in relationship to processing sites that are stabilized in place versus those that are relocated.

There will be a difference in how the two-step licensing approach will be used depending upon whether the residual radioactive material has been stabilized in place or moved. The two-step

approach, as it will apply for this LTSP and licensing, will only be used for materials stabilized in place. For materials that are moved to a separate disposal site there will be no ground water restoration at the new site under normal, expected conditions and the old site will not have an LTSP or license associated with it. When DOE moves a site, the original processing site will be cleaned-up to meet EPA standards for unrestricted use. NRC will not license these processing sites.

For residual radioactive materials stabilized in place and requiring additional ground water restoration, the LTSP will cover all the elements identified in the rule, except for detailed ground water restoration actions. The LTSP may still require ground water monitoring to ensure that actions taken for ground water restoration are not affecting the integrity of the stabilized pile. For example, if ground water restoration activities are impacting leaching through the pile, monitoring under the LTSP should be able to identify this and trigger any necessary corrective actions.

In summary, regardless of whether residual radioactive material is relocated or not, the custodial agency will be an NRC general licensee at the disposal site only. If ground water restoration at the processing site is necessary when the material is relocated, this will have no impact on the general license for the disposal site. If ground water restoration is necessary for a site stabilized in place, then licensing will be done in two steps.

DOE requested that reporting requirements for Title I sites be comparable to those for Title II sites -- 10 CFR part 40 Appendix A, Criterion 12. The wording in the proposed rule provided DOE with flexibility in developing reporting requirements for Title I sites. However, since DOE requested this change and it would provide for reports at least as frequently as under the proposed rule, it has been added to the final rule.

In the Advance Notice of Proposed Rulemaking, the Commission indicated that before the general license could become effective at a disposal site the NRC must "receive" an LTSP. In the proposed rule, the wording was changed to show that the Commission must "accept" the LTSP. DOE did not support this change. NRC has made this change to provide a better level of control over the licensing process. If the NRC receives an acceptable LTSP, the long-term care licensee would not be impacted in any way. If an unacceptable LTSP is received, this provision provides

the NRC an opportunity to work with the long-term care licensee to correct the deficiencies prior to licensing.

NRC adopted a number of DOE recommendations that provide additional clarity in the notice and rule. These changes included, for example, clarifying when the word "site" specifically refers to a disposal or processing site, providing additional information for Title I sites on Indian lands, using the term "remedial action" for Title I sites, noting in the rule that there is no termination date to the general licenses, clarifying the use of aerial photographs, and other wording changes that provided more specific information.

VIII. EPA Clean Air Act Activities

EPA has published new air effluent regulations for radon and other radioactive effluents from uranium mill tailings as part of the voluntary remand of standards developed under section 112 of the Clean Air Act (CAA) (54 FR 51654, December 15, 1989). The EPA regulations include a radon emission standard that would apply to both Title I and Title II disposal sites after closure that must be confirmed by measurement. Other NRC and EPA regulations are design standards. Once measurements confirm that the site meets CAA standards and long-term stabilization has been completed, the tailings are no longer subject to EPA regulations under the CAA. Prior to closure, it is entirely possible that the CAA standards could result in EPA ordered modifications to sites that already meet current design standards. The potential for conflicting EPA and NRC/Agreement State regulatory programs prior to the long-term care period will require close coordination between the two agencies and with States, depending on CAA delegations.

IX. 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 is not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. The rule establishes general licenses for long-term care of uranium or thorium mill tailings disposal sites by another Federal agency or State. The licensing action will be done after remedial action or site closure is completed, and would ensure that disposal sites remain in good condition. If unexpected repairs are ever required,

the long-term care licensee will be responsible to make the necessary repairs. The Commission will evaluate at the time such action is deemed necessary whether there is a need to prepare a separate environmental assessment.

The 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 finding of no significant impact are available from Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Mail Stop NLS-260, Telephone (301) 492-3877.

X. Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget approval number 3150-0020.

XI. Regulatory Analysis

The Commission has prepared a regulatory analysis for this 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 Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Mail Stop NLS-260.

XII. Regulatory Flexibility Certification Statement

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 upon a substantial number of small entities. This rule will apply only to a Federal agency or an appropriate State. Although small entities may be requested to consult with government agencies in developing LTSPs, effort associated with such consultation is required under the criteria in Appendix A to 10 CFR part 40, which were previously promulgated by the Commission. Therefore, a Regulatory Flexibility Analysis is not required and has not been prepared.

XIII. Backfit Analysis

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

List of Subjects in 10 CFR Part 40

Criminal penalty, government contracts, Hazardous materials-transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, and Uranium.

Under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, 5 U.S.C. 552 and 553, and the Uranium Mill Tailings Radiation Control Act of 1978, as amended, the NRC is adopting the following amendments to 10 CFR part 40.

PART 40 - DOMESTIC LICENSING OF SOURCE MATERIAL

1. The authority citation for part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 85, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); secs. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846). Sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat. 2067 (42 U.S.C. 2022). Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 88 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)-(3), 40.35(a)-(d), 40.41(b) and (c), 40.46, 40.51(a) and (c), and 40.63 are issued under sec. 181b, 68 Stat. 946, as amended, (42 U.S.C. 2201(b)); and §§ 40.5, 40.9, 40.25(c) and (d)(3) and (4), 40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64, and 40.65 are issued under sec. 181c, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 40.1 is revised to read as follows:

§ 40.1 Purpose.

(a) The regulations in this part establish procedures and criteria for the issuance of licenses to receive title to, receive, possess, use, transfer, or deliver source and byproduct materials, as defined in this part, and establish and

provide for the terms and conditions upon which the Commission will issue these licenses. These regulations also provide for the disposal of byproduct material and for the long-term care and custody of byproduct material and residual radioactive material. The regulations in this part also establish certain requirements for the physical protection of import, export, and transient shipments of natural uranium. (Additional requirements applicable to the import and export of natural uranium are set forth in part 110 of this chapter.)

(b) The regulations contained in this part are issued under the Atomic Energy Act of 1954, as amended (68 Stat. 919), Title II of the Energy Reorganization Act of 1974, as amended (88 Stat. 1242), and Titles I and II of the Uranium Mill Tailings Radiation Control Act of 1978, as amended (42 U.S.C. 7901).

3. In § 40.2a, paragraph (a) is revised to read as follows:

§ 40.2a Coverage of inactive tailings sites.

(a) Prior to the completion of the remedial action, the Commission will not require a license pursuant to 10 CFR Chapter I for possession of residual radioactive materials as defined in this part that are located at a site where milling operations are no longer active, if the site is covered by the remedial action program of Title I of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. The Commission will exert its regulatory role in remedial actions primarily through concurrence and consultation in the execution of the remedial action pursuant to Title I of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. After remedial actions are completed, the Commission will license the long-term care of sites, where residual radioactive materials are disposed, under the requirements set out in § 40.27.

4. Section 40.3 is revised to read as follows:

§ 40.3 License requirements.

A person subject to the regulations in this part may not receive title to, own, receive, possess, use, transfer, provide for long-term care, deliver or dispose of byproduct material or residual radioactive material as defined in this part or any source material after removal from its place of deposit in nature, unless authorized in a specific or general license issued by the Commission under the regulations in this part.

5. In § 40.4, the definition *Residual radioactive material* is added in alphabetical order to read as follows:

§ 40.4 Definitions.

Residual radioactive material means:

(1) Waste (which the Secretary of Energy determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores; and (2) other waste (which the Secretary of Energy determines to be radioactive) at a processing site which relates to such processing, including any residual stock of unprocessed ores or low-grade materials. This term is used only with respect to materials at sites subject to remediation under Title I of the Uranium Mill Tailings Radiation Control Act of 1978, as amended.

6. In § 40.7, paragraph (f) is revised to read as follows:

§ 40.7 Employee protection.

(f) The general licenses provided in §§ 40.21, 40.22, 40.25, 40.27, and 40.28 are exempt from paragraph (e) of this section.

7. Section 40.20 is revised to read as follows:

§ 40.20 Types of licenses.

(a) Licenses for source material and byproduct material are of two types: general and specific. Licenses for long-term care and custody of residual radioactive material at disposal sites are general licenses. The general licenses provided in this part are effective without the filing of application, with the Commission or the issuance of licensing documents to particular persons. Specific licenses are issued to named persons upon applications filed pursuant to the regulations in this part.

(b) Section 40.27 contains a general license applicable for custody and long-term care of residual radioactive material at uranium mill tailings disposal sites remediated under Title I of the Uranium Mill Tailings Radiation Control Act of 1978, as amended.

(c) Section 40.28 contains a general license applicable for custody and long-term care of byproduct material at uranium or thorium mill tailings disposal sites under Title II of the Uranium Mill Tailings Radiation Control Act of 1978, as amended.

8. New §§ 40.27 and 40.28 are added to read as follows:

§ 40.27 General license for custody and long-term care of residual radioactive material disposal sites.

(a) A general license is issued for the custody of and long-term care, including monitoring, maintenance, and emergency measures necessary to protect public health and safety and

other actions necessary to comply with the standards promulgated under section 275(a) of the Atomic Energy Act of 1954, as amended, for disposal sites under Title I of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. The license is available only to the Department of Energy, or another Federal agency designated by the President to provide long-term care. The purpose of this general license is to ensure that uranium mill tailings disposal sites will be cared for in such a manner as to protect the public health, safety, and the environment after remedial action has been completed.

(b) The general license in paragraph (a) of this section becomes effective when the Commission accepts a site Long-Term Surveillance Plan (LTSP) that meets the requirements of this section, and when the Commission concurs with the Department of Energy's determination of completion of remedial action at each disposal site. There is no termination of this general license. The LTSP may incorporate by reference information contained in documents previously submitted to the Commission if the references to the individual incorporated documents are clear and specific. Each LTSP must include--

(1) A legal description of the disposal site to be licensed, including documentation on whether land and interests are owned by the United States or an Indian tribe. If the site is on Indian land, then, as specified in the Uranium Mill Tailings Radiation Control Act of 1978, as amended, the Indian tribe and any person holding any interest in the land shall execute a waiver releasing the United States of any liability or claim by the Tribe or person concerning or arising from the remedial action and holding the United States harmless against any claim arising out of the performance of the remedial action;

(2) A detailed description, which can be in the form of a reference, of the final disposal site conditions, including existing ground water characterization and any necessary ground water protection activities or strategies. This description must be detailed enough so that future inspectors will have a baseline to determine changes to the site and when these changes are serious enough to require maintenance or repairs. If the disposal site has continuing aquifer restoration requirements, then the licensing process will be completed in two steps. The first step includes all items other than ground water restoration. Ground water monitoring, which would be addressed in the LTSP, may still be required in this first step to assess performance of the

tailings disposal units. When the Commission concurs with the completion of ground water restoration, the licensee shall assess the need to modify the LTSP and report results to the Commission. If the proposed modifications meet the requirements of this section, the LTSP will be considered suitable to accommodate the second step.

(3) A description of the long-term surveillance program, including proposed inspection frequency and reporting to the Commission (as specified in Appendix A, criterion 12 of this part), frequency and extent of ground water monitoring if required, appropriate constituent concentration limits for ground water, inspection personnel qualifications, inspection procedures, recordkeeping and quality assurance procedures:

(4) The criteria for follow-up inspections in response to observations from routine inspections or extreme natural events; and

(5) The criteria for instituting maintenance or emergency measures.

(c) The long-term care agency under the general license established by paragraph (a) of this section shall --

(1) Implement the LTSP as described in paragraph (b) of this section;

(2) Care for the disposal site in accordance with the provisions of the LTSP;

(3) Notify the Commission of any changes to the LTSP; the changes may not conflict with the requirements of this section;

(4) Guarantee permanent right-of-entry to Commission representatives for the purpose of periodic site inspections; and

(5) Notify the Commission prior to undertaking any significant construction, actions, or repairs related to the disposal site, even if the action is required by a State or another Federal agency.

(d) As specified in the Uranium Mill Tailings Radiation Control Act of 1978, as amended, the Secretary of the Interior, with the concurrence of the Secretary of Energy and the Commission, may sell or lease any subsurface mineral rights associated with land on which residual radioactive materials are disposed. In such cases, the Commission shall grant a license permitting use of the land if it finds that the use will not disturb the residual radioactive materials or that the residual radioactive materials will be restored to a safe and environmentally sound condition if they are disturbed by the use.

(e) The general license in paragraph (a) of this section is exempt from parts

19, 20, and 21 of this chapter, unless significant construction, actions, or repairs are required. If these types of actions are to be undertaken, the licensee shall explain to the Commission which requirements from these parts apply for the actions and comply with the appropriate requirements.

§ 40.28 General license for custody and long-term care of uranium or thorium byproduct materials disposal sites.

(a) A general license is issued for the custody of and long-term care, including monitoring, maintenance, and emergency measures necessary to protect the public health and safety and other actions necessary to comply with the standards in this part for uranium or thorium mill tailings sites closed under Title II of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. The licensee will be the Department of Energy, another Federal agency designated by the President, or a State where the disposal site is located. The purpose of this general license is to ensure that uranium and thorium mill tailings disposal sites will be cared for in such a manner as to protect the public health, safety, and the environment after closure.

(b) The general license in paragraph (a) of this section becomes effective when the Commission terminates, or concurs in an Agreement State's termination of, the current specific license and a site Long-Term Surveillance Plan (LTSP) meeting the requirements of this section has been accepted by the Commission. There is no termination of this general license. If the LTSP has not been formally received by the NRC prior to termination of the current specific license, the Commission may issue a specific order to the intended custodial agency to ensure continued control and surveillance of the disposal site to protect the public health, safety, and the environment. The Commission will not unnecessarily delay the termination of the specific license solely on the basis that an acceptable LTSP has not been received. The LTSP may incorporate by reference information contained in documents previously submitted to the Commission if the references to the individual incorporated documents are clear and specific. Each LTSP must include--

(1) A legal description of the disposal site to be transferred (unless transfer is exempted under provisions of the Atomic Energy Act, § 83(b)(1)(A)) and licensed;

(2) A detailed description, which can be in the form of a reference of the final disposal site conditions, including existing ground water characterization.

This description must be detailed enough so that future inspectors will have a baseline to determine changes to the site and when these changes are serious enough to require maintenance or repairs:

(3) A description of the long-term surveillance program, including proposed inspection frequency and reporting to the Commission (as specified in appendix A, Criterion 12 of this part), frequency and extent of ground water monitoring if required, appropriate constituent concentration limits for ground water, inspection personnel qualifications, inspection procedures, recordkeeping and quality assurance procedures;

(4) The criteria for follow-up inspections in response to observations from routine inspections or extreme natural events; and

(5) The criteria for instituting maintenance or emergency measures.

(c) The long-term care agency who has a general license established by paragraph (a) of this section shall --

(1) Implement the LTSP as described in paragraph (b) of this section;

(2) Care for the disposal site in accordance with the provisions of the LTSP;

(3) Notify the Commission of any changes to the LTSP; the changes may not conflict with the requirements of this section;

(4) Guarantee permanent right-of-entry to Commission representatives for the purpose of periodic site inspections; and

(5) Notify the Commission prior to undertaking any significant construction, actions, or repairs related to the disposal site, even if the action is required by a State or another Federal agency.

(d) Upon application, the Commission may issue a specific license, as specified in the Uranium Mill Tailings Radiation Control Act of 1978, as amended, permitting the use of surface and/or subsurface estates transferred to the United States or a State. Although an application may be received from any person, if permission is granted, the person who transferred the land to DOE or the State shall receive the right of first refusal with respect to this use of the land. The application must demonstrate that--

(1) The proposed action does not endanger the public health, safety, welfare, or the environment;

(2) Whether the proposed action is of a temporary or permanent nature, the site would be maintained and/or restored to meet requirements in

Appendix A of this part for closed sites; and

(3) Adequate financial arrangements are in place to ensure that the byproduct materials will not be disturbed, or if disturbed that the applicant is able to restore the site to a safe and environmentally sound condition.

(e) The general license in paragraph (a) of this section is exempt from parts 19, 20, and 21 of this Chapter, unless significant construction, actions, or repairs are required. If these types of actions are to be undertaken, the licensee shall explain to the Commission which requirements from these parts apply for the actions and comply with the appropriate requirements.

(f) In cases where the Commission determines that transfer of title of land used for disposal of any byproduct materials to the United States or any appropriate State is not necessary to protect the public health, safety or welfare or to minimize or eliminate danger to life or property (Atomic Energy Act, § 83(b)(1)(A)), the Commission will consider specific modifications of the custodial agency's LTSP provisions on a case-by-case basis.

9. Appendix A, Criterion 12 is revised to read as follows:

Appendix A to part 40 - Criteria Relating to the Operation of Uranium Mills and the Disposition of Tailings or Wastes Produced by the Extraction or Concentration of Source Material From Ores Processed Primarily for Their Source Material Content

*Criterion 12--*The final disposition of tailings, residual radioactive material, or wastes at milling sites should be such that ongoing active maintenance is not necessary to preserve isolation. As a minimum, annual site inspections must be conducted by the government agency responsible for long-term care of the disposal site to confirm its integrity and to determine the need, if any, for maintenance and/or monitoring. Results of the inspections for all the sites under the licensee's jurisdiction will be reported to the Commission annually within 90 days of the last site inspection in that calendar year. Any site where unusual damage or disruption is discovered during the inspection, however, will require a preliminary site inspection report to be submitted within 60 days. On the basis of a site specific evaluation, the Commission may require more frequent site inspections if necessary due to the features of a particular disposal site. In this case, a preliminary inspection report is required to be submitted within 60 days following each inspection.

Dated at Rockville, Maryland this 24th day of October, 1990.

For the Nuclear Regulatory Commission,
Samuel J. Chilk,
Secretary of the Commission.
[FR Doc. 90-25612 Filed 10-29-90; 8:45 am]
BILLING CODE 7590-01-0

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-83-AD; Amdt. 39-6786]

Airworthiness Directives; British Aerospace Model BAe/DH/BH/HS 125 Series Airplanes, Post-Modification 255640

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe/DH/BH/HS 125 series airplanes, which requires replacement of all main landing gear (MLG) door aluminum forward hinge fittings every 6,000 landings. This amendment is prompted by reports of in-service failures of the hinge fitting door jack attachment lugs. This condition, if not corrected, could result in the main landing gear (MLG) door failing to close when retracting the landing gear and subsequently exceeding the landing gear door design loads.

EFFECTIVE DATE: December 4, 1990.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain British Aerospace Model BAe/DH/BH/HS 125 series airplanes, which requires replacement of all main landing gear (MLG) aluminum forward hinge fittings every 6,000 landings, was published in the *Federal Register* on June 1, 1990 (55 FR 22355).

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

The commenter supported the rule, but stated that the proposed 400-landing compliance time for replacement of aluminum forward hinge fittings that have exceeded 6,000 landings is not consistent with the compliance time specified in British Aerospace Service Bulletin 32-218, dated July 28, 1988. The FAA partially concurs. The service bulletin recommends that hinge fittings be replaced upon the accumulation of 6,000 landings, or within approximately one year for those that have exceeded 6,000 landings; and that repetitive visual inspections for cracks be conducted at 300-landing intervals until parts are available for replacement. British Aerospace had previously advised the FAA that the highest time Model BAe-125 in the United States has accumulated approximately 3,200 landings, and that these airplanes average approximately 400 landings per year. Therefore, the compliance time of 400 landings in this AD action was selected in order to be equivalent to the one-year compliance time recommended in the service bulletin for replacement of the hinge fittings that had exceeded 6,000 landings. The FAA determined that repetitive inspections to allow operation until parts are available need not be included in this AD, since U.S. operators will replace the fittings prior to accumulating 6,000 landings and there is no evidence at this time that there will be a parts availability problem. Should a parts availability problem arise in the future, the individual operator always has the option to request an alternate means of compliance in accordance with paragraph C. of this AD.

Paragraph C. of the final rule has been revised to specify the current procedure for submitting requests for approval of an alternate means of compliance.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above. The FAA has determined that this change will neither increase the economic burden on any operator, nor increase the scope of the rule.

It is estimated that 420 airplanes of U.S. registry will be affected by this AD, that it will take approximately 32 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. The estimated cost for required parts is \$7,280. Based on these figures, the total