

budgeted at about last year's amounts except for staff travel expenses which have been decreased from \$11,000 to \$5,000. The administrative budget includes a reserve for contingencies amounting to \$5,279.

The recommended administrative assessment rate for the 1989-90 crop year is \$0.50 per ton of assessable peanuts. Last year the assessment rate was \$2.48 per ton (\$0.48 for administrative expenses and \$2.00 for indemnification expenses). The 1989-90 assessable tonnage was estimated at 1.7 million tons, the same as last year. Application of the assessment rate to this estimate will result in \$850,000 for administrative expenses.

Approximately \$8.4 million will be carried forward into the 1989-90 crop year as a reserve under the agreement to meet 1989-90 indemnification expenses. This reserve is deemed adequate to cover indemnification expenses for the 1989-90 crop year. Therefore, the Committee did not recommend an assessment to make monetary additions to the indemnification reserve. The reserve is well within the limits authorized by the agreement. Funding for the indemnification account will also be generated from interest on time deposits.

While this action may impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers signatory to the agreement. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing agreement.

Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the Committee, it is found that this final rule will tend to effectuate the declared policy of the Act.

This final rule should be expedited because the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* (5 U.S.C. 553).

#### List of Subjects in 7 CFR Part 998

Marketing agreement, Peanuts.

For the reasons set forth in the preamble, 7 CFR Part 998 is amended as follows:

### PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR Part 998 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. New § 998.402 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

#### § 998.402 Expenses, assessment rate, and indemnification reserve.

(a) *Administrative expenses.* The budget of expenses for the Peanut Administrative Committee for the crop year beginning July 1, 1989, shall be in the amount of \$850,000, such amount being reasonable and likely to be incurred for the maintenance and functioning of the Committee and for such purposes as the Secretary may, pursuant to the provisions of the marketing agreement, determine to be appropriate.

(b) *Indemnification expenses.* Expenses of the Committee for indemnification payments, pursuant to the terms and conditions of indemnification applicable to the 1989 crop, effective July 1, 1989, are not expected to exceed the balance of the indemnification reserve (approximately \$8.4 million), such amount being reasonable and likely to be incurred.

(c) *Rate of assessment.* Each handler shall pay to the Committee, in accordance with § 998.48 of the marketing agreement, an assessment at the rate of \$0.50 per net ton of farmers' stock peanuts received or acquired other than from those described in § 998.31 (c) and (d). All funds generated from this assessment shall be for administrative expenses.

(d) *Indemnification reserve.* Monetary additions to the indemnification reserve, established in the 1965 crop year pursuant to § 998.48 of the agreement, shall continue. That portion of the total assessment funds accrued from previous crop years and not expended in providing indemnification on the 1989 crop peanuts shall be kept in such reserve and shall be available to pay indemnification expenses on subsequent crops.

Dated: May 19, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

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BILLING CODE 3410-02-M

### NUCLEAR REGULATORY COMMISSION

#### 10 CFR Part 61

RIN 3150-AB89

#### Disposal of Radioactive Wastes

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

**SUMMARY:** The NRC is amending its regulations to require disposal of greater-than-Class-C (GTCC) low-level radioactive wastes in a deep geologic repository unless disposal elsewhere has been approved by the Commission. The amendments are necessary to ensure that GTCC wastes are disposed of in a manner that would protect the public health and safety and therefore obviate the need for altering existing classifications of radioactive wastes as high-level or low-level.

**EFFECTIVE DATE:** The rule will become effective on June 26, 1989.

**FOR FURTHER INFORMATION CONTACT:** W. Clark Prichard, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3884.

#### SUPPLEMENTARY INFORMATION:

##### Background

On May 18, 1988, the Nuclear Regulatory Commission published in the *Federal Register* (53 FR 17709) proposed amendments to Part 61 to require geologic repository disposal of greater-than-Class-C (GTCC) low level radioactive waste (LLW) unless an alternative means of disposal was approved by the Commission. The proposed amendments requiring geologic repository disposal, or an approved alternative, were aimed at insuring that GTCC waste would be disposed of in a manner consistent with the protection of public health and safety. This action was taken in lieu of a revision of the definition of high level radioactive waste (HLW). In proposing the amendments, the Commission outlined its rationale for not proceeding with a revision of the definition of HLW along the lines proposed in the advance notice of proposed rulemaking (ANPRM) published in February 27, 1987 (51 FR 5992).

It is the Commission's view that intermediate disposal facilities may never be available. In this event, a repository would be the only type of facility generally capable of providing safe disposal for GTCC wastes. At the

same time, the Commission wishes to avoid foreclosing possible use of intermediate disposal facilities by the Department of Energy (DOE). If DOE chooses to develop one or more intermediate disposal facilities, the Commission anticipates that the acceptability of the facilities would be evaluated in the light of the particular circumstances, considering for example the existing performance objectives of 10 CFR Part 61 and any generally applicable environmental radiation protection standards that might have been established by the U.S. Environmental Protection Agency. Technical criteria to implement the performance objectives and environmental standards would be developed by the Commission after DOE had selected a specific disposal technology and decided to pursue development of an intermediate facility.

The Commission considers that the Part 61 amendments would obviate any need to reclassify certain GTCC wastes as HLW. Many comments on the ANPRM advocated classification of all GTCC wastes as HLW in order to ensure availability of a safe disposal "home" for those wastes. These amendments achieve the same purpose while leaving open the prospect that an intermediate disposal facility may prove attractive at some time in the future.

#### Office of Technology Assessment Report

Following publication of the proposed amendments, the Congressional Office of Technology Assessment published a report on management of GTCC LLW.<sup>1</sup> Its recommendations on disposal of GTCC waste generally support the stance taken by the Commission in the proposed amendments.

The OTA report states that "If a decision about the disposal of GTCC wastes were required today, a conservative approach would be to permanently isolate the waste in a deep geologic repository, as has been proposed for commercial spent fuel and defense HLW."<sup>2</sup> The report goes on to acknowledge that further research and development could demonstrate the acceptability of intermediate disposal methods, such as deep-augured holes or an intermediate-depth repository.

The Commission emphasizes that these amendments preserve DOE's flexibility to pursue either one of these alternatives. The OTA report agrees

with the Commission that the volume of GTCC waste is probably not great enough to justify a separate facility for this waste; costs of geologic repository disposal of GTCC waste would be comparable to, or lower than, developing a special disposal facility solely for GTCC waste.

The overall recommendations of the OTA report are that a Federal off-site interim storage facility for GTCC waste be established, as no permanent disposal facility could be available for at least 15 to 20 years. Until these interim storage facilities become operational, the Federal government could provide limited access to an existing DOE storage facility. Within the next year or so, DOE should begin to evaluate the impacts on repository operations and performance of emplacing GTCC waste in the repository. If DOE determines that such impacts are unacceptable, it could then begin to develop an alternative disposal facility.

#### Public Comments

The Commission received 35 comment letters in response to its request for public comment. Among the responses were comments from the Department of Energy (DOE), the Environmental Protection Agency (EPA), the States of Indiana, New York, Pennsylvania, South Carolina, Vermont, Michigan, Washington, Tennessee, and the Midwest Interstate Low Level Radioactive Waste Commission. Remaining comments came from industry, professional, and environmental groups, as well as private citizens. The following is a summary of major comments and Commission responses. A detailed analysis of public comments is available at the Commission's Public Document Room, 2120 L Street NW., Washington, DC.

#### (a) Restricting Alternatives

Many comments, including some by States and a regional state LLW compact, argued for restricting the alternatives to geologic repository disposal. These comments were concerned that GTCC waste would be disposed of in State or State compact operated facilities. NRC was urged to "eliminate the option" of disposal in State or State compact facilities, by limiting alternative disposal methods to Federal facilities.

This concern must be examined in the light of the Low Level Radioactive Waste Policy Amendments Act of 1985, Pub. L. 99-240, 42 U.S.C. 2021b *et seq.* (LLWPAA) which clarified Federal and State responsibilities for radioactive waste disposal. States are responsible

only for commercial LLW defined as "A", "B", or "C" waste by Part 61. All HLW, and all GTCC LLW is a Federal responsibility. The concerns expressed by commenters on this point have therefore been addressed, to a large extent, by legislation. No health and safety concerns have been presented that would persuade the Commission to require the use of Federal facilities, to the exclusion of other facilities licensed under the Atomic Energy Act, for the disposal of all GTCC. Indeed, the LLWPAA appears to recognize the continued authority of a State, subject to the provisions of its compact, or a compact region, to accept GTCC waste for disposal, and in the absence of some compelling reason the Commission's judgment is that this option should be preserved.

#### (b) Applicability of Standards

Both EPA and DOE, among other commenters, were concerned about one aspect of possible geologic repository disposal of GTCC waste. Should GTCC LLW be emplaced in a repository along with HLW, these two categories of waste would be subject to different standards—EPA's HLW standard, and EPA's LLW standard. In addition, they questioned whether NRC's 10 CFR Part 60, or 10 CFR Part 61 would apply to GTCC waste in a repository. Commenters cited the potential for confusion in having dual standards apply to waste in the same repository.

The Commission notes that its regulations were developed for specific types of disposal facilities. Thus, Part 60 applies to any geologic repository for HLW, regardless of what other types of radioactive wastes may be disposed of there. Similarly, Part 61 pertains to land disposal facilities other than repositories. Therefore, only Part 60, and not Part 61, would be relevant for disposal of GTCC wastes in a HLW repository.

If GTCC wastes were to be disposed of in a deep geologic repository, questions might be raised regarding the applicability to those wastes of the waste form and packaging requirements of Part 60. As Part 60 is now structured, the retrievability requirement of § 60.111 and the implicit requirement for packaging to permit safe handling and emplacement apply to all wastes, including GTCC wastes, that are disposed of in a repository. Applicability of the waste package containment requirement (300-1,000 years) is specifically limited to packages containing HLW or spent nuclear fuel. Because GTCC wastes would not be classified as HLW under these

<sup>1</sup> U.S. Congress, Office of Technology Assessment, *An Evaluation of Options for Managing Greater than Class C Low Level Radioactive Waste*, OTA-BP-0-50, October, 1988.

<sup>2</sup> *ibid.* pp. 2-3.

amendments, the waste package requirements of Part 60 would not pertain to GTCC wastes. The performance objectives for the engineered barrier system (release rate of 1 part per 100,000 per year) and for overall system performance are stated so as to be applicable to all wastes emplaced in a repository. The degree to which these performance objectives would affect GTCC waste form and packaging would depend on the specific radionuclides present in the GTCC wastes and on the physical and chemical forms of those wastes.

For all wastes disposed of in a repository, Part 60 now requires:

(1) waste disposal operations shall be conducted in compliance with the radiation protection requirements of Part 20 of the NRC's regulations (§ 60.111(a)),

(2) the option of waste retrieval shall be maintained for a period up to 50 years after the start of waste emplacement operations (§ 60.111(b)), and

(3) " \* \* any release of radionuclides from the engineered barrier system shall be a gradual process which results in small fractional releases to the geologic setting over long times \* \* \* The release rate of any radionuclide from the engineered barrier system following the containment period shall not exceed one part in 100,000 per year of the inventory of that radionuclide calculated to be present at 1,000 years following permanent closure \* \* \* " (§ 60.113).

Also implicit in Part 60 is a requirement that any GTCC wastes disposed of in a repository not prevent HLW or spent fuel from meeting the specific performance objectives for those types of wastes.

These general objectives can be achieved in various ways for different wastes. For example, containment within a durable waste canister might be appropriate for short-lived wastes (half-lives about 30 years or less), while processing of wastes to reduce leachability or use of retardant backfill materials might be more appropriate for longer-lived wastes. The NRC is initiating an effort, as contemplated by § 60.135(d) of Part 60, to specify in more detail the waste form and packaging criteria appropriate for specific types of GTCC wastes. The Commission anticipates that DOE will develop specific waste form and packaging alternatives for consideration by the NRC in that rulemaking, and the Commission would welcome similar suggestions from other interested parties.

Previous development of EPA's standards has addressed types of

wastes rather than types of disposal facilities as in NRC's regulations. Thus, it is possible that a repository containing both HLW and GTCC LLW would be subject to two EPA standards. The NRC does not anticipate that this will cause significant problems for DOE, since the LLW standard has not yet been proposed and this situation can be taken into account as the standard is developed.

#### (c) Effects on Repository Program

There were a number of comments, including those of DOE, that expressed concern over the possible impacts on the geologic repository program of emplacement of GTCC waste along with HLW in the repository. Specific concerns were over the potential for additional costs, GTCC waste taking up valuable repository space, and the burden for DOE of having to include GTCC waste in its performance assessment of the repository.

In the Commission's view, these concerns do not warrant changes from the proposed amendments. First, the proposed amendments allow for a range of GTCC disposal methods to be used by DOE. Under present regulations on land disposal of LLW (10 CFR Part 61), GTCC waste is specifically identified as "not generally acceptable" for near-surface disposal. Disposal methods for GTCC waste must generally be "more stringent" than near-surface disposal. The proposed amendments to Part 61 specified that one "more stringent" method would be geologic repository disposal. Other methods are not specified but are also left open to DOE, subject to Commission approval. The proposed amendments were not what prevented DOE from routinely using near-surface disposal; that is already prohibited by 10 CFR Part 61. Thus, relevant cost impacts of the amendments do not involve a comparison between costs of geologic repository disposal versus costs of near-surface disposal. Cost comparisons involve geologic repository disposal versus other unspecified Commission-approved "intermediate" methods. However, the proposed amendments did not require one method to be selected over another; either option is permitted. DOE would presumably weigh cost comparisons along with other factors in selecting which disposal method to use.

Even if geologic repository disposal were selected, this type of disposal should not cause an increase in the present HLW fee charged nuclear utilities—a specific concern raised on behalf of industry. Rather, as suggested by DOE's study of the matter pursuant to section 3(b)(3) of the LLWPAA, it is

likely that a separate fund, similar to the HLW Nuclear Waste Fund, would be established to provide for payment of disposal costs by the generators of GTCC wastes, either as an advance fee or as a charge upon waste receipt (*Recommendations for Management of Greater-than-Class C Low Level Radioactive Waste*, U.S. Department of Energy, DOE/NE-0077, 1987). The Commission anticipates that new legislation would be enacted if required so that the current situation does not represent a major impediment to disposal of GTCC wastes.

The fact that the expected volume of GTCC waste is very low was an important factor in the Commission's decision to propose the Part 61 amendments. Current evidence shows that the expected volume of GTCC waste is very small relative to volumes of HLW and Class A, B, and C LLW. It is projected that 2,000–4,800 cubic meters of commercially-generated GTCC waste will need disposal through the year 2020<sup>3</sup>. This amount of waste is smaller than the anticipated excavated volume of a single emplacement room of a repository, and would not present a significant burden on the capacity of the repository to receive HLW. It would not be a significant factor underlying the need for a second repository.

Regarding DOE's assessment of the performance of the repository, if DOE found that it did pose a major obstacle, these amendments would permit DOE to choose an acceptable alternative disposal method.

#### (d) Relationship to Defense Wastes

Some comments were concerned with any effects this rulemaking would have on defense wastes.

The proposed amendments apply solely to commercial GTCC LLW, and have no bearing on facilities for defense LLW. NRC has licensing authority only over commercially generated LLW; it has no licensing authority over defense LLW, including defense LLW that might be analogous to GTCC waste. Because Part 61, by its terms, would only apply to DOE activities subject to NRC jurisdiction, and NRC jurisdiction is lacking for defense LLW facilities, these efforts would have no effect on defense LLW disposal.

In the case of facilities authorized for the disposal of HLW, the Commission does have jurisdiction and the Commission's regulations would continue to apply. Accordingly, to the extent that DOE disposes of HLW in facilities other than geologic

<sup>3</sup> U.S. Department of Energy estimates.

repositories, a license under Part 61 would be required as before. DOE would not necessarily be precluded from proceeding with such disposal, but as has always been the case DOE would need to obtain the Commission's approval. The NRC staff has been working with DOE to develop appropriate classifications for defense reprocessing wastes under existing laws and regulations. These efforts have led to agreement that certain decontaminated salts at Savannah River and West Valley, generated incidentally in the course of processing, should not be classified as HLW. Additional efforts are now underway to review materials to be produced at Hanford in projected operations, to determine whether the disposal thereof is subject to Commission licensing.

*(e) Restricting DOE Options for GTCC Management*

DOE argued that the proposed amendments would limit its statutory authority, under the LLWPAA, to develop a comprehensive policy for management of GTCC waste.

The Commission considered the proposed rule to be entirely consistent with the "comprehensive scheme for developing a policy for disposal of GTCC wastes" referred to in this comment. The proposed rule did not constrain DOE's ability to "identify disposal options, financing mechanisms, and the legislation needed to implement them." Nor did the proposed rule require disposal of GTCC wastes prior to submittal of DOE's recommendations to Congress. The proposed rule only recognized that GTCC wastes must be disposed of in a facility licensed by the NRC—a constraint imposed by the LLWPAA.

In DOE's 1987 report to Congress regarding management of GTCC wastes (DOE/NE-0077), DOE stated that certain regulatory actions were needed before DOE could proceed with identification of disposal options and costs. One of these actions was a decision by NRC whether or not to proceed with development of a concentration based definition of high-level waste. The Commission has decided not to develop such a definition for the reasons previously discussed. Thus, one of the regulatory impediments previously identified by DOE will be removed by this rulemaking.

*(f) Reference to Analyses of Kocher and Croff*

In the proposed rule, the Commission cited a technical report which had recently been published (Kocher, D.C. and A.G. Croff, *A Proposed*

*Classification System for High-Level and Other Radioactive Wastes*, ORNL/TM-10289, Oak Ridge National Laboratory, 1987). The Commission cited this report to support its view that evaluations of the waste isolation capabilities of "intermediate" disposal facilities would be so speculative and site-specific that such analyses would not provide a technically defensible basis for classifying wastes as HLW or non-HLW. The Commission further stated that it could not accept an alternative classification approach presented in that report because that approach was based solely on the short-term storage and handling risks associated with the heat and external radiation levels generated by a waste rather than on the degree of waste isolation required following disposal. The authors of the cited report (Kocher and Croff) commented on the proposed rule alleging that the Commission had misrepresented the content and conclusions of their report.

As discussed in the detailed analysis of public comments, the Commission acknowledges that its statements could have been misunderstood. The Commission's purpose in referring to Kocher and Croff's report was solely to support its view that the proposal presented in the ANPRM, i.e., classification of wastes based on analyses of the projected performance of "intermediate" disposal facilities, should not be pursued because of the limited development of these facilities and because their performance is likely to be highly site-specific. The Commission continues to believe that Kocher and Croff's report supports this view. Other references to Kocher and Croff's work are withdrawn.

*(g) Licensing Under Part 61*

Concerning alternatives to geologic repository disposal, some comments argued that the licensing of any alternative disposal method should not necessarily be under the framework of Part 61, as was proposed in § 61.55. This would be too restrictive in their view.

The Commission's regulations for licensing of radioactive waste disposal consist solely of 10 CFR Part 60, which applies to disposal in a geologic repository, and 10 CFR Part 61, which applies to land disposal other than in a geologic repository. A wide variety of disposal methods, including all of those currently proposed as "intermediate" disposal methods, could be licensed under Part 61. Thus, the Commission does not believe that § 61.55 places any unnecessary restrictions on DOE.

On the contrary, as provided in § 61.1, Part 61 establishes procedures, criteria,

and terms and conditions with respect to "land disposal of radioactive waste". In implementing this objective, § 61.3 requires that the disposal of low-level waste at any "land disposal facility" must be authorized under Part 61. Section 61.7 notes that additional technical criteria might be needed for licensing of disposal facilities other than "near-surface" disposal. If needed, such criteria would be added to Part 61 before licensing an "intermediate" disposal facility. Because "land disposal facility" is defined broadly (so as to include any facility other than a geologic repository), the reference to licensing under Part 61 is proper and in conformance with the existing regulatory structure.

*(h) Mixed GTCC Waste*

EPA raised the possibility that some GTCC wastes would also contain hazardous materials subject to RCRA (Resource Conservation and Recovery Act) regulations. The Commission acknowledges this possibility as well as the importance of steps to insure that "mixed" GTCC wastes are managed appropriately. DOE will need to consider applicable RCRA requirements as well as those arising under the Atomic Energy Act. Should RCRA requirements associated with GTCC waste represent a significant impediment to placing a geologic repository in service, DOE will still have the option to propose the use of a separate facility.

*(i) Limiting State Responsibility*

A number of comments wanted the Commission to promulgate regulations making all radioactive waste which is hazardous for over 100 years a Federal responsibility. Congress clarified Federal/State responsibilities for radioactive waste in the LLWPAA. States are responsible for all commercially-generated Class A, B, and C LLW. The Federal government is responsible for the disposal of HLW and defense LLW. In view of this statutory framework, which the Commission considers to be compatible with protection of public health and safety, there would be no basis for any Commission action at this time.

**Changes From the Proposed Rule**

Only one change from the proposed rule has been made in these final amendments. Proposed § 61.55(a)(2)(iv) required geologic repository disposal of GTCC waste "unless proposals for disposal of such waste in a disposal site licensed pursuant to this part are submitted to the Commission for

approval." A comment pointed out that the mere submittal of proposals was quite different than approval of proposals by the Commission. The Commission agrees that its intent is better expressed by requiring proposals to be approved. Accordingly, the wording in this section has been changed to read "proposals \* \* \* are approved by the Commission."

#### Final Rule

Following its review and analysis of the public comments, the Commission believes that the course of action it had proposed—requiring geologic repository disposal of GTCC waste, or approved alternative—should be adopted. Therefore, these final amendments to Part 61 deviate little from those proposed. By these amendments, the Commission is providing DOE with the regulatory framework DOE needs to proceed with plans for management of GTCC waste. The rule identifies one approved method of disposal for GTCC waste, but allows DOE to plan and develop an alternative method if DOE so desires, subject to Commission approval. It is now up to DOE to evaluate its options for GTCC waste disposal, and to proceed with GTCC disposal.

In line with the foregoing discussion, therefore, the Commission is promulgating two changes to its existing rules. First, by amending 10 CFR 61.55, it would henceforth require all greater-than-Class-C waste to be disposed of in a geologic repository unless an alternative proposal is approved by the Commission. Second, the jurisdictional reach of 10 CFR Part 61 would be extended to cover all activities of the Department of Energy that may be subject to the licensing and regulatory authority of the Commission. This is intended to reflect the policy of the Low-Level Radioactive Waste Policy Amendments Act, which provides that all commercially-generated waste with concentrations exceeding Class C limits shall be disposed of in a facility licensed by the Commission that the Commission determines is adequate to protect the public health and safety. This change would take the form of eliminating the more restrictive language regarding the Department of Energy that appears in § 61.2.

#### Environmental Impact: Categorical Exclusion

The amendments to Part 61 contained herein are corrective or of a minor nature and do not substantially modify existing regulations. Accordingly, under 10 CFR 51.22(a) and 51.22(c)(2), they are eligible for categorical exclusion from

the preparation of an environmental assessment.

The first change, pertaining to the definition of "person," is corrective in that it merely reflects the broader jurisdiction of the Commission under the Low-Level Radioactive Waste Policy Amendments Act. The modification is not substantial.

The second change, pertaining to the disposal of greater-than-Class-C radioactive wastes in a geologic repository, is minor. The existing regulations in 10 CFR Part 61 already preclude disposal of GTCC in a Part 61 licensed disposal facility without further review and approval. This amendment does no more than state the Commission's conclusion that, in the absence of such an approved alternative, a geologic repository is the only currently authorized facility acceptable for GTCC disposal without further review by the Commission. It is thus a minor change to specify that the "more stringent" methods are to include disposal in a repository, where it is also expressly provided that, as before, proposals for other methods of disposal may still be submitted to the Commission for approval. No substantial modification of existing regulations is involved.

#### Paperwork Reduction Act Statement

This 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 3150-0135.

#### Regulatory Analysis

The Commission has prepared a regulatory analysis for this final 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., Washington, DC. Single copies of the analysis may be obtained from W. Clark Prichard, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3884.

#### Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), and NRC Size Standards (December 9, 1985, 50 FR 50241), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. The only entity subject to regulation under this rule would be the U.S. Department

of Energy, which does not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act. All waste generators, some of which might be classified as small entities, must pay the costs associated with management and disposal of the wastes they generate. This rule would not affect those costs since it preserves all options currently available for waste disposal. Only DOE's selection of a specific disposal technology from the full range of alternatives available would potentially have an economic impact on small entities.

#### Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that 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 61

Low-level waste, Nuclear materials, Penalty, Radioactive waste, Reporting and recordkeeping requirements, Waste classification, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 61.

#### PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

1. The authority citation for Part 61 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246, (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95-601, 94 Stat. 2951 (42 U.S.C. 2021a and 5851).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); Tables 1 and 2, §§ 61.3, 61.24, 61.25, 61.27(a) 61.41 through 61.43, 61.52, 61.53, 61.55, 61.56, and 61.61 through 61.63 are issued under sec. 161b, 68 Stat. 948 as amended (42 U.S.C. 2201(b)); §§ 61.9a, 61.10 through 61.16, 61.24, and 61.80 are issued under sec. 1610, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 61.2, the definition of "person" is revised in the alphabetical sequence to read as follows:

**§ 61.2 Definitions.**

As used in this part:

"Person" means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy (except that the Department of Energy is considered a person within the meaning of the regulations in this part to the extent that its facilities and activities are subject to the licensing and related regulatory authority of the Commission pursuant to law), any State or any political subdivision of or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

3. In § 61.55, paragraph (a) is amended by revising paragraph (a)(2)(iv) to read as follows:

**§ 61.55 Waste classification.**

- (a) \* \* \*
- (2) \* \* \*

(iv) Waste that is not generally acceptable for near-surface disposal is waste for which form and disposal methods must be different, and in general more stringent, than those specified for Class C waste. In the absence of specific requirements in this part, such waste must be disposed of in a geologic repository as defined in Part 60 of this chapter unless proposals for disposal of such waste in a disposal site licensed pursuant to this part are approved by the Commission.

Dated at Rockville, Md. this 19th day of May, 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-12570 Filed 5-24-89; 8:45 am]

BILLING CODE 7590-01-M

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

[Docket No. 88-NM-187-AD; Amdt. 39-6225]

**Airworthiness Directives; Boeing Model 737 Series Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which requires installation of a placard, inspection of the aft right lavatory partition beam to ensure structural integrity, and repair, if necessary. This amendment is prompted by reports of an inadvertent saw cut made in an aft right lavatory partition beam during the production installation of a ceiling panel. This condition, if not corrected, could lead to failure of the partition beam to provide adequate strength for the lavatory-mounted occupied flight attendant seat when subjected to flight or emergency landing conditions.

**EFFECTIVE DATE:** June 29, 1989.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Pliny Brestel, Airframe Branch, ANM-120S; telephone (206) 431-1931. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires the installation of a placard, inspection of the aft right lavatory partition beam to ensure structural integrity, and repair, if necessary, was published in the Federal Register on January 13, 1989 (54 FR 1385).

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

The Air Transport Association (ATA) of America requested that the proposed reporting requirements of paragraph C. be deleted from the rule and that reporting should only be required when further rulemaking might be necessary. The FAA does not concur. When the unsafe condition addressed by AD action appears to be attributed to a manufacturer's quality control (QC) problem, such a reporting requirement is instrumental in ensuring that the FAA is able to gather as much information as possible as to the extent and nature of the QC problem or QC breakdown, especially in cases where this

information may not be available through other established means. This information is necessary to ensure that proper corrective action is implemented.

The ATA further commented that, if the saw cut exceeds the limit specified in the service bulletin, the operator must contact the Manager of the Seattle Aircraft Certification Office (SACO) for approval of the repair, and therefore, it is redundant to require that same operator to report finding the saw cut again. The FAA does not agree that redundant reporting exists in many instances. The rule requires reporting within 7 days after detection of any inadvertent saw cuts. Only the repair for saw cuts which exceed the limit specified in the service bulletin must be approved by the Manager, SACO. Since all repairs do not require specific approval by the Manager, SACO, and quality control feedback is essential, paragraph C of the AD must be retained.

Since issuance of the NPRM, Revision 1 to Boeing Service Bulletin 737-25-1231, dated January 12, 1989, has been issued. The FAA has reviewed and approved the revision and has determined that compliance may also be made with the procedures as specified in Revision 1. The Revision provides for the installation of placards and provides procedures for removing the aft right flight attendant seat. The final rule has been changed to include this later revision as an optional service information source. This change does not increase the economic burden on any operator, nor does it increase the scope of the rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule, with the change previously noted.

There are approximately 80 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 15 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. The placard may be manufactured locally and the cost is expected to be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$1,200.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 737 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

#### List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

#### PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89

#### § 39.13 [Amended]

2. By adding the following new airworthiness directive:

**Boeing:** Applies to Model 737 series airplanes, as identified in Boeing Service Bulletin 737-25-1231, dated July 7, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure structural integrity of the occupied flight attendant seat mounted on the aft right lavatory during flight and emergency landing conditions, accomplish the following:

A. Within 30 days after the effective date of this AD, remove the aft right lavatory-mounted attendant seat or install a placard on the aft right lavatory-mounted flight attendant seat, stating: "NO OCCUPANCY", or equivalent. This placard may be removed or the seat reinstalled once the terminating action of paragraph B., below, has been accomplished.

B. Within 6 months after the effective date of this AD, inspect the aft right lavatory

partition beam for an inadvertent saw cut, and repair, if necessary, in accordance with Boeing Service Bulletin 737-25-1231, dated July 7, 1988, or Revision 1, dated January 12, 1989; or if the saw cut exceeds the limit specified in the service bulletin, repair in a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Report all inadvertent saw cuts detected during the inspection required by paragraph B., above, to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, within seven days after completion of the inspection.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

**Note:** The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 29, 1989.

Issued in Seattle, Washington, on May 15, 1989.

**Leroy A. Keith,**

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-12506 Filed 5-24-89; 8:45 am]

**BILLING CODE 4910-13-M**

#### 14 CFR Part 39

[Docket No. 87-CE-22-AD; Amdt. 39-6224]

#### Airworthiness Directives: SOCATA Models TB 20 and TB 21 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment revises Airworthiness Directive (AD) 87-12-09, Amendment 39-5650, applicable to certain SOCATA Models TB 20 and TB 21 airplanes, which presently requires

initial and repetitive visual inspections of the aileron balance weight attachment rivets and aileron skins, replacement of loose rivets and repair of cracks in the aileron skins, or replacement of the ailerons. This AD revision incorporates terminating action for the repetitive inspections when the aileron is either replaced or repaired, and which thereby corrects an omission in the original issuance of AD 87-12-09 which placed an unnecessary burden on the public. In addition, the revision makes minor editorial changes to the AD.

**DATES:** Effective Date: June 25, 1989.

**Compliance:** As prescribed in the body of the AD.

**ADDRESSES:** SOCATA Aircraft Service Bulletin (S/B) No. 28, dated December 1986, applicable to this AD may be obtained from SOCATA Groupe AEROSPATIALE, B.P. 38, 65001 Tarbes, France; Telephone 62.51.73.00 or 62.93.99.45 (for recorder); or the Product Support Manager, U.S., AEROSPATIALE, 2701 Forum Drive, Grand Prairie, Texas 75053; Telephone (214) 641-3614. This information may also be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

#### FOR FURTHER INFORMATION CONTACT:

Mr. John P. Dow, Sr., Aerospace Engineer, ACE-109, Aircraft Certification Service, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932, or Mr. Roger Anderson, Aerospace Engineer, AEU-100, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy; Telephone (322) 513.38.30.

**SUPPLEMENTARY INFORMATION:** On June 24, 1987, AD 87-12-09, Amendment 39-5650, was published in the Federal Register (52 FR 23645). It required initial and repetitive visual inspections of the aileron balance weight attachment rivets and aileron skins, replacement of loose rivets, and repair of aileron cracks, or replacement of the ailerons on certain SOCATA Models TB 20 and TB 21 airplanes. Subsequently, the FAA has determined that the AD omits the terminating action embodied in the manufacturer's service information. Therefore, the AD is being revised to allow for cessation of the repetitive inspections when the aileron is either repaired or replaced. It also makes minor editorial changes. Because an unnecessary burden on the public exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are