

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

RIN: AF65

Environmental Report--Materials Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to eliminate the requirement that an environmental report be submitted by uranium mill licensees at the time of license termination. This action removes an outdated and unnecessary reporting requirement.

EFFECTIVE DATE: The final rule is effective (60 days after publication in the Federal Register), unless significant adverse comments are received by (30 days after publication in the Federal Register). A companion Notice of Proposed Rulemaking is published with this final rule. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Mail comments to: Secretary, U S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Docketing and Service Branch. Hand deliver comments to 11555 Rockville Pike, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Copies of any comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information Section.

FOR FURTHER INFORMATION CONTACT: Joseph J. Mate, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6202, or e-mail JJM@NRC.GOV.

#### SUPPLEMENTARY INFORMATION:

##### Background

Environmental protection requirements applicable to NRC's domestic licensing and regulatory functions are addressed in 10 CFR Part 51. Part 51 also establishes procedures for compliance with the National Environmental Policy Act (NEPA). According to 10 CFR 51.60, license applicants or licensees under 10 CFR Part 40 and other parts, who seek approval for a specified list of actions must file an "Applicant's Environmental Report" or a "Supplement to an Applicant's Report." The action specified in 10 CFR 51.60(b)(3) is "Termination of a license for the possession and use of source material for uranium milling."

As promulgated in 1974, 10 CFR Part 51 required that the Atomic Energy Commission (AEC) consider whether, under the circumstances of a particular facility, the AEC should prepare an environmental impact statement (EIS) or environmental appraisal (EA) at license termination, and gave the AEC authority to obtain the necessary information from the licensee. At that time, few, if any, uranium mills had been subject to a full NEPA review.

Also, there were no statutory or codified rules relevant to the closure of mill tailings sites and ground-water remediation. Hence, an environmental report by the licensee at the time of license termination was necessary to ensure proper remediation of the site before terminating the license. The requirement for the submission of an environmental report as part of the application for license terminations was created in 1980. However, reporting requirements that have come into existence since the mid 1970s covering activities that precede license termination have rendered the requirement for a separate environmental report at license termination unnecessary.

#### Discussion

The current decommissioning requirements, for example, 10 CFR Part 40, Appendix A, criterion 9, call for a licensee to submit several environmental reports throughout the process leading up to license termination. The licensee must submit applications for license amendments to undertake site reclamation and decommissioning activities that must be completed before the license may be terminated. Examples of such activities are decommissioning the mill, reclaiming the tailings, and remediating the ground-water contamination. These applications must be accompanied by an environmental report or a supplement to an environmental report. After the reclamation and decommissioning activities are completed, the licensee must submit another license amendment application, again accompanied by the necessary environmental report, requesting removal of the license conditions that required the reclamation and decommissioning work. The NRC staff reviews the

application and issues a Technical Evaluation Report (TER) and an Environmental Impact Statement (EIS) or Environmental Assessment (EA).

The NRC staff will conduct a safety and environmental review to ensure that the proposed actions meet the requirements in 10 CFR Part 40 before approval of each such application for a license amendment and license condition requiring the decommissioning and reclamation actions. Before license termination, the licensee also must comply with site and byproduct material ownership provisions that require ownership of byproduct material and land (including any interests connected to the land essential to ensure the long-term stability of the disposal site) to be transferred to the Federal Government or to the appropriate State Government.

The termination process in effect at the time the rule was originally promulgated has been superseded by a multi-step process of application, reporting, and NRC staff review and approval that leads to the license termination. The sequence of events outlined above takes a number of years and will be completed before the licensee can request termination of the license. Because each step in the sequence requires an environmental report from the licensee, the environmental report that responds to 10 CFR 51.60(b)(3) at the time of license termination is simply a reiteration or summary of information previously submitted by the licensee earlier in the process. Hence, it does not provide any new information beyond that already submitted in previous reports, nor does its submittal have bearing on any regulatory decision being made. Elimination of the reporting requirement in 10 CFR 51.60(b)(3) would not affect the remaining requirements in 10 CFR 51.60, nor would changes be necessary to 10 CFR Part 40 or to Appendix A to Part 40.

## Electronic Access

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld, or directly via the Internet. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages.

Using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number: 1-800-303-9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT-100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." For further information about options available for NRC at FedWorld, consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and databases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, 703-321-3339, or by using Telnet via the Internet, fedworld.gov. If using 703-321-3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has an option "U.S. Nuclear Regulatory Commission" that will take you to the

NRC Online menu. The NRC Online area can also be accessed directly by typing "/go nrc" at a FedWorld command line. If you access NRC from the FedWorld's main menu, you may return to FedWorld by selecting the "Return to FedWorld " option from the NRC Online Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

A rulemaking site also can be accessed through the NRC's home page on the World Wide Web (<http://www.nrc.gov>). This site provides the same access to rulemakings as the FedWorld bulletin board, and you will be able to upload files (comments) if that function is supported by your web browser.

For more information on NRC bulletin boards at FedWorld call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-5780; e-mail [AXD3@nrc.gov](mailto:AXD3@nrc.gov). Information on the Rulemaking Web site can be obtained from Ms. Carol Gallagher, Division of Regulatory Applications, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-5905; e-mail [CAG@nrc.gov](mailto:CAG@nrc.gov).



## Procedural Background

The NRC considers this action to be noncontroversial. Public comment is unnecessary because the amendment relieves a burden on licensees by eliminating a requirement that has no regulatory use or implications. This action will become effective on (60 days after publication in the Federal Register). However, if the NRC receives significant adverse comments within (30 days after publication in the Federal Register) on the companion notice of proposed rulemaking, the NRC will publish a document that withdraws this action. The NRC will address the comments received in response to the proposed revisions that are published concurrently in the Proposed Rules section of this Federal Register. Such comments, if any, will be addressed in a subsequent final rule. Because comments are requested on the companion notice of proposed rulemaking, NRC will not initiate a second comment period.

## Environmental Impact: Categorical Exclusion

The Commission has determined that this final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

## Paperwork Reduction Act Statement

This direct final rule does not contain a new or significantly amended information collection requirement subject to the Paperwork Reduction Act of

1995 (44 U.S. C. 3501 et seq). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0027.

#### Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### Regulatory Analysis

The NRC staff prepared a regulatory analysis for this final regulation which covered two basic options: take no action and allow the requirement for an environmental report at license termination to remain in the regulations, or eliminate the requirement. The Commission has decided to eliminate the requirement through a direct final rule. This action would eliminate an unnecessary reporting requirement and the associated licensee burden to an estimated 11 licensees over the next 10 years.

#### Regulatory Flexibility Certification

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 regulation potentially affects about 30 licensees who operate uranium mills. Only about



11 licensees will be affected over the next 10 years. The large majority of these licensees do not fall under the definition of small business entities. Additionally, this change to the regulation will result in a decrease in requirements by eliminating a current reporting requirement. Hence, there is no significant economic impact on any licensee, large or small.

### Backfit Analysis

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

### Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a "major rule" and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

### List of Subjects in 10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Environmental regulations assessment and reports, NEPA procedures, Nuclear

materials. Nuclear power plants and reactors. Reporting and record keeping requirements.

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. 552 and 553, the NRC is adopting the following amendment to 10 CFR Part 51.

PART 51 - ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING  
AND RELATED REGULATORY FUNCTIONS

The authority citation for 10 CFR Part 51 continues to read as follows:

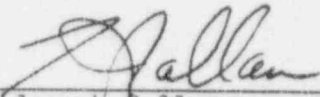
1. AUTHORITY: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953, (U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853-854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95-604, Title II, 92 Stat. 3033-3041; and sec. 193, Pub. L. 101-575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241, and sec. 148, Pub L. 100-203, 101 Stat. 1330-223 (U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036-3038 (42 U.S.C.2021) and under Nuclear Waste Policy Act of 1982, sec 121, 96 Stat. 2228 (42 U.S.C.10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act of 1982, sec 114(f), 96 Stat. 2216, as amended (42 U.S.C.10134(f)).

§ 51.60 [Amended]

2. In § 51.60, paragraph (b)(3) is removed, paragraphs (b)(4), (5), and (6) are redesignated as paragraphs (b)(3), (4), and (5), and paragraph (a) is amended by revising the reference "paragraphs (b)(1) through (b)(6)" to read "paragraphs (b)(1) through (b)(5)."

Dated at Rockville, Maryland this 21 day of April, 1997.

For the Nuclear Regulatory Commission.

  
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L. Joseph Callan,  
Executive Director for Operations.