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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

[Docket No. PRM-61-3]

Heartland Operation To Protect the Environment

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is docketing, as a petition for rulemaking, a document, dated August 7, 1995, filed with the Commission by Heartland Operation to Protect the Environment (HOPE). The petition was assigned Docket No. PRM-61-3 on October 6, 1995. The petitioner requests that the Commission amend its regulations to adopt a rule regarding government ownership of a low-level radioactive waste disposal site that is consistent with Federal statute. In this document, the NRC is announcing the receipt of the petition and requesting public comment on the suggested amendment.

DATES: Submit comments by March 11, 1996. Comments received after this date will be considered if it is practical to do so. However, assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to the Nuclear Regulatory Commission, Attention: Docketing and Service Branch, Office of the Secretary, Washington, DC 20555-0001. For a copy of the petition, write to the Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, at the same address as above or by telephone: 301-415-7163 or toll free: 1-800-368-5642.

SUPPLEMENTARY INFORMATION:

Background

The NRC published an advance notice of proposed rulemaking (ANPRM) in the Federal Register on August 3, 1994 (59 FR 39485). The ANPRM announced that the NRC was considering amending its regulations to allow private ownership of the land used for a low-level radioactive waste (LLRW) facility site as an alternative to the current requirement for Federal or State ownership. In the ANPRM, NRC considered the option to allow private-land ownership indefinitely, given that adequate land-use restrictions were imposed. The ANPRM invited comment on 12 questions to assist the NRC in determining if such a change could be made without adversely impacting public health and safety. The NRC received 49 comment letters in response to the ANPRM. The NRC prepared a detailed summary of the comments received.¹

On July 18, 1995 (60 FR 36744), the NRC published a notice withdrawing the ANPRM published in the Federal Register on August 3, 1994. In the notice of withdrawal, the NRC stated that a rule change to allow private-land ownership of a LLRW site is not warranted or needed. The NRC stated that the bases for its decision are that State and compacts have generally indicated that they do not need, nor would they allow, private-land ownership and that this rule change could be potentially disruptive to the current LLRW program.

Petitioner's Concern

The petitioner states that the NRC's present regulation (10 CFR 61.59(a)), which requires disposal of LLRW "only on land owned in fee by the Federal or a State government," is in conflict with a provision in the Nuclear Waste Policy Act of 1982 (NWPA), as amended (42 USC 10171(b)). The act authorizes the U.S. Department of Energy "to assume title and custody of low-level radioactive waste and the land on which such waste is disposed of, upon request by the owner of such waste and land

following termination of the license issued by the Commission (NRC) for such disposal * * *." Therefore, the petitioner proposes that the NRC regulations should conform to NWPA provision and require private land ownership during operations and closure of the facility, then converting title to the site to the U.S. Department of Energy.

The petitioner states that, because of the conflict between the NRC regulation and the NWPA statute, the NRC regulation is void with regard to Federal ownership of a LLRW disposal site before commencement of the receipt of waste. The petitioner asserts that if the regulation is void with regard to Federal ownership, that it is also silent or unconstitutional with regard to State ownership. The petitioner references the following case [*New York v. United States*, 112 S.Ct. 2408 (1992)].

Several commenters, including the petitioner, made similar comments on the ANPRM that there is not an adequate basis for requiring Federal or State land ownership, which therefore would support private ownership. In the withdrawal of the ANPRM, the Commission stated that it believes there is adequate statutory authority for NRC to require Federal or State land ownership. The Commission Paper (SECY-95-152; dated June 13, 1995) further discussed the NRC staff rationale for believing that NRC has this authority. The paper stated the staff's belief that NRC has authority to require Federal or State land ownership pursuant to the Atomic Energy Act of 1954, as amended, in Section 161b. This section gives the Commission the authority to promulgate regulations deemed necessary or desirable to protect health or to minimize danger to life or property.

The petitioner further states that the notice withdrawing the ANPRM (60 FR 36744) contains no documentation or statement of any issue of public health and safety as the basis for the regulation; therefore, the petitioner believes public health and safety cannot be an issue upon which the NRC regulation is based.

The petitioner also states that the notice of withdrawal contains the statement: "The Commission believes that the potential negative impact of disrupting the current process far outweighs any potential benefits that

¹ Copies of the summary are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW, (Lower Level), Washington DC; the PDR's mailing address is US NRC, Mail Stop LL-6, Washington, DC 20555-0001; telephone (202) 634-3273; fax (202) 634-3343.

might be derived from making a generic rule change at that time." In response, the petitioner asserts that the Commission's role is to regulate nuclear material in a manner that protects public health and safety and the environment, that its role is not to facilitate specific processes, i.e., the current LLRW disposal process.

The petitioner references the following quote from the notice of withdrawal:

For over three decades the public has been led to believe that all LLW disposal sites would necessarily be owned and controlled by either a Federal or State government. This, we believe, has been an important factor in convincing many proponent groups and State and local LLW advisory groups that LLW can and will be disposed of in a safe manner. To now try and convince these groups that Federal or State ownership of LLW disposal sites is not required may be difficult and generate a significant credibility problem.

In response, the petitioner states that credibility problems occur when misrepresentations, i.e., government ownership is necessary to ensure proper LLRW management, are initially made and that the credibility problems are exacerbated the longer the misrepresentations are allowed to continue. The petitioner believes that there certainly would appear to be a larger credibility problem for the Commission to maintain a regulation that is in direct conflict with a statute. The petitioner offers that the Commission might reflect on the Department of Energy's recent efforts to gain credibility by coming clean on past misrepresentations, i.e., secret radiation studies.

Conclusion

The petitioner believes that for the stated reasons, the NRC should adopt a rule regarding government ownership of LLRW disposal sites that is consistent with the Federal statute [42 USC 10171(b)].

Dated at Rockville, Maryland, this 2nd day of January, 1996.

For the Nuclear Regulatory Commission.
John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96-282 Filed 1-8-96; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-NM-93-AD]

Airworthiness Directives; Boeing Model 747-100, -200, and -300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 747-100, -200, and -300 series airplanes, that would have required an inspection to determine if hinge bolts and nuts are installed in the overhead stowage bins, and the installation of hinge bolts and nuts, if necessary. That proposal was prompted by reports that overhead stowage bins in the passenger compartment have fallen out of position due to missing hinge bolts. This action revises the proposed rule by revising the applicability to include additional airplanes. The actions specified by this proposed AD are intended to ensure that hinge bolts are installed in the overhead storage bins. Missing hinge bolts could result in the overhead stowage bins falling out of position and injuring airplane occupants.

DATES: Comments must be received by January 29, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-93-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dorothy Lundy, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227-1675; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95-NM-93-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-93-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 747-100, -200, and -300 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the Federal Register on August 23, 1995 (60 FR 43728). That NPRM would have required a one-time visual inspection to determine if the hinge bolts and nuts are installed in the overhead stowage bins. That NPRM also would have required installation of hinge bolts and nuts, if necessary. That NPRM was prompted by reports indicating that overhead stowage bins in the passenger compartment of certain Model 747 series airplanes have fallen out of position and injured passengers due to missing hinge bolts. Missing