A transmittal letter making these changes in the Domestic Mail Manual will be published and will be transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the Federal Register as provided by 39 CFR 111.3.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-4087-6]

National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today issuing a final rule to stay the effectiveness of 40 CFR part 61, subpart T (subpart T), as it applies to owners and operators of uranium mill tailings disposal sites that are licensed by the Nuclear Regulatory Commission (NRC) or an affected NRC Agreement State (collectively NRC-licensees). Today's rule does not concern Subpart T sites that are under the control of the Department of Energy (DOE). This final rule stays the effectiveness of Subpart T as applied to NRC-licensed uranium mill tailings disposal sites until EPA concludes related rulemakings under section 112(d)(9) of the Clean Air Act, as amended, and the Atomic Energy Act, as amended, as described in a Memorandum of Understanding (MOU) between EPA, NRC and the affected NRC Agreement States, as signed by EPA on October 18, 1991, or June 30, 1994, whichever first occurs. Published elsewhere in today's Federal Register are two related rulemakings: a Notice of Proposed Rulemaking in which EPA is proposing a rule to rescind Subpart T as it applies to NRC-licensees and an Advanced Notice of Proposed Rulemaking (ANPR) in which EPA is announcing its intention to enter into a future rulemaking which would amend 40 CFR part 192, Subpart D, which was enacted pursuant to the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978.

DATES: Effective December 19, 1991. EPA is staying the effectiveness of subpart T of 40 CFR part 61 as applied to NRC-licensees that are owners and operators of uranium mill tailings disposal sites. This stay will remain in effect until such time as EPA takes final action on its related proposal to rescind subpart T for NRC-licensees pursuant to CAA sections 301(a) and 112(d)(9), as amended, or June 30, 1994, whichever first occurs.

ADDRESSES: Questions should be addressed to: Central Docket Section LE-131, Environmental Protection Agency, Attn: Docket No. A-91-67, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jamie Burnett, Environmental Standards Branch, Criteria and Standards Division, (ANR-460W), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460 (703) 308-8787.

SUPPLEMENTARY INFORMATION:

A. Background

1. Regulatory History

On December 15, 1989, EPA promulgated national standards regulating radionuclide emissions to the ambient air from several source categories, including from non-operational sites used for the disposal of uranium mill tailings (54 FR 51654). These sites are either under the control of the DOE pursuant to Title I of the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978, or the sites are under the control of NRC-licensees pursuant to Title II of UMTRCA. These standards—40 CFR part 61, subpart T (subpart T)—were promulgated pursuant to the authority of Clean Air Act (CAA or Act) section 112 as it existed in 1989, and were part of a larger promulgation of National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Radionuclides.

Subpart T requires compliance by owners and operators of uranium mill tailings disposal sites within two years of becoming non-operational (40 CFR 61.222(b)). Pursuant to its authority under then-existing CAA section 112(C)(1)(B)(ii), EPA waived compliance for two years for sites that were non-operational at the time of promulgation. *Id.* Thus, the earliest date by which sites must comply with the subpart T standard is December 15, 1991. Even so, EPA recognized at the time of promulgation that many sources subject to Subpart T might not be able to achieve compliance by December 15, 1991. Because EPA felt constrained by the CAA as it existed at that time, EPA stated that for those sites the Agency would negotiate expeditious compliance schedules pursuant to its enforcement authority under CAA section 113. *See* 54 FR 51683.

Subpart T requires that radon-222 emissions not exceed a flux of 20 pCi/m^2—s. By so doing, it in effect mandates that emplacement of an earthen cover to meet that emissions level occur as expeditiously as practicable. In its 1989 action, EPA recognized that even though NRC implements general EPA standards (promulgated under UMTRCA) which also regulate these sites and call for compliance with 20 pCi/m^2—s flux standard (see 40 CFR part 192), the UMTRCA regulatory program does not answer the critical timing concern addressed by subpart T:

> The existing UMTRCA regulations set no time limits for disposal of the piles. Some piles have remained uncovered for decades emitting radon. Although recent action has been taken to move toward disposal of these piles, some of them may still remain uncovered for years.

54 FR at 51683.

In addition to regulating radon emissions, Subpart T also requires specific testing and record keeping. *See* 40 CFR 61.223 and 61.224. The UMTRCA regulations as currently implemented by NRC, while ultimately limiting emissions to the same level as Subpart T, are supported by a variety of design-based substantive and procedural requirements that speak to UMTRCA's unique concern that final site closure occur in a manner that will last up to 1,000 years. See generally 10 CFR part 40, appendix A.

Together, these programs complement, duplicate and complicate each other. They complement each other to the extent subpart T ensures that sites will proceed expeditiously towards closure. They duplicate to the extent they create dual regulatory oversight, including independent procedural requirements, seeking to ensure compliance with the 20 pCi/m^2—s flux standard. And they complicate to the extent that reporting is to different federal agencies, and compliance schedules under the two regulatory schemes vary, with subpart T requiring the impossible of some sites—compliance by December 15, 1991.

Concern over the above-described duplication and complication created by the dual regulations inspired several petitions for reconsideration, most notably from NRC and the American Mining Congress (AMC). While these petitions remain pending before EPA, today's final rule to stay subpart T and the companion proposed rulemakings to rescind subpart T pursuant to section 112(d)(9) of the CAA, as amended, and the ANPR to amend the 40 CFR part 192,

subpart D mark EPA's steps towards addressing the issues they raise.

2. Clean Air Act Amendments of 1990

After promulgation of subpart T (and receipt of reconsideration petitions), in November 1990, the Clean Air Act was substantially amended. Included in this overhaul was an amendment that speaks directly to the duplication issue. Newly enacted section 112(d)(9) of the amendments provides:

> No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health.

This provision strives to eliminate duplication of effort between EPA and NRC, so long as public health is adequately protected.

Moreover, Congress expressed sensitivity to the special compliance problems of uranium mill tailings sites through new section 112(i)(3). This provision provides an additional 3-year extension to mining waste operations (e.g., uranium mill tailings) if the 4 years allowed (including a one year extension) for compliance with standards promulgated under the amended section 112 is insufficient to dry and cover mining waste to control emissions.

In light of these provisions, and given the express authority of section 112(d)(9), as amended, EPA, NRC and the affected Agreement States, have been meeting to discuss the dual regulatory programs under UMTRCA and the CAA. As part of this effort, EPA has carefully reviewed NRC's program implementing EPA's UMTRCA standards as applied to uranium mill tailings disposal sites.

3. Memorandum of Understanding (MOU) Between EPA, NRC and the Affected Agreement States

The result of this inter-agency consultation and review has been the execution of a Memorandum of Understanding (MOU), a copy of which is printed at 56 FR 55434. The purpose of this MOU is to ensure that owners and operators of existing uranium mill tailings piles licensed by NRC or an affected Agreement State, or those that will in the future become non-operational, effect final radon site closure—emplacement of an earthen cover to permanently limit radon emissions to a flux of no more than 20 pCi/m^2-s—as expeditiously as practicable considering technological feasibility. This phrase means as quickly as possible considering: (1) The physical characteristics of the tailings and the site; (2) the limits of available technology; (3) the need for consistency with mandatory requirements of other regulatory programs; and (4) delays beyond the control of the licensee (e.g., inclement weather). While this phrase does not preclude economic considerations, it also does not contemplate utilization of a cost-benefit analysis in setting compliance schedules. In other words, the compliance schedules are to be developed consistent with the target set forth in the MOU as reasonably applied to the specific circumstances of each site.

A guiding objective is that this occur as to all current disposal sites by the end of 1997, or within seven years of when the existing operating and standby sites enter disposal status. This objective comports with Congress' concern over timing as reflected in CAA section 112(i)(3), as amended. Specific compliance dates for individual piles are listed in the MOU.

EPA has tentatively concluded that implementation of the MOU, including appropriate modifications to the general UMTRCA regulations (at 40 CFR part 192) to ensure specific, enforceable closure deadlines and monitoring requirements, and the performance by NRC and the affected Agreement States of their other commitments contained in the MOU, would render the NRC's regulatory program for nonoperational uranium mill tailings piles protective of public health with an ample margin of safety. This is because while both programs (subpart T and 40 CFR part 192) impose a 20 pCi/m^2-s flux standard, the timing issue was the principle reason justifying promulgation of subpart T under the CAA. The changes to UMTRCA and other actions contemplated by the MOU would alleviate this concern by committing NRC and the affected Agreement States to a course of action that ensures that all sites expeditiously comply with the 20 pCi/m^2-s standard.

The MOU sets forth a series of actions and rulemakings by NRC, EPA, and the affected Agreement States that will ensure expeditious compliance, eliminate duplication of regulation, and avoid having any site in violation. In skeletal form, the MOU contains the agreement by NRC and the affected Agreement States to immediately solicit from their licensees reclamation plans and final closure schedules, for incorporation into enforceable licenses. NRC and the affected Agreement States also agree to utilize their authority to order the necessary license amendments (to effect expeditious closure and compliance with the 20 pCi/m^2-s flux standard) to the extent not agreed to by the licensee, and defend against any challenge to those orders.

For its part, EPA today issues a final rule to stay subpart T. EPA also simultaneously issues a Notice of Proposed Rulemaking, published elsewhere in this issue of the **Federal Register**, to rescind subpart T as it applies to NRC-licensees. That proposed rulemaking is being issued pursuant to CAA sections 301(a), and 112(d)(9), as amended. Also elsewhere in today's **Federal Register**, EPA today issues an Advanced Notice of Proposed Rulemaking to amend 40 CFR part 192, subpart D, Standards for Management of Uranium Byproduct Materials, pursuant to its authority under UMTRCA.

The MOU marked the first step in a comprehensive scheme to ensure that all uranium mill tailings disposal piles are finally closed and in compliance with the 20 pCi/m^2-s flux standard as expeditiously as practicable, thereby protecting public health with an ample margin of safety. At the same time, the MOU responded to other important concerns. The MOU responded to Congress' goals of minimizing the burdens created by regulatory duplication and assuring that the regulated sites have the time they need to comply without jeopardizing public health. The MOU addressed the related concern that this occur without holding a site owner or operator in violation for failing to meet what may be an impossible deadline, while also ensuring that compliance will occur as quickly as technologically feasible. This latter provision is essential in that it responded to the timing concern that was the basis for EPA's 1989 decision to promulgate subpart T. In total, the MOU represents a commitment by EPA, NRC and the affected Agreement States to a course of conduct designed to finally, efficiently and comprehensively resolve the public health threats presented by the disposal of uranium mill tailings.

B. Final Stay of Subpart T for Non-Operational NRC-Licensed Uranium Mill Tailings Disposal Sites

EPA is today issuing a final rule to stay subpart T as it applies to NRC-licensees that are owners or operators of nonoperational uranium mill tailings disposal sites. The stay will remain in place pending the related rulemaking, pursuant to the authority of CAA section

112(d)(9), as amended, to rescind subpart T as it pertains to NRC-licensees. The stay will expire at the conclusion of this related rulemaking or on June 30, 1994, whichever first occurs. The rulemaking which proposes to rescind subpart T is published elsewhere in today's **Federal Register**. The authority for this proposal is provided by the general rulemaking provision at CAA section 301(a), as well as by section 112(d)(9), as amended. This entire action is being conducted in the context of, and pursuant to the agreements and commitments contained in the MOU entered into by EPA, NRC and the affected Agreement States. The MOU is designed to comprehensively and finally ensure that all non-operational uranium mill tailings disposal sites achieve final closure, including compliance with the 20 pCi/m^2-s flux standard, as expeditiously as practicable considering technological feasibility. This phrase means as quickly as possible considering: (1) The physical characteristics of the tailings and the site; (2) the limits of available technology; (3) the need for consistency with mandatory requirements of other regulatory programs; and (4) delays beyond the control of the licensee (e.g., inclement weather). While this phrase does not preclude economic considerations, it also does not contemplate utilization of a cost benefit analysis in setting compliance schedules. In other words, the compliance schedules are to be developed consistent with the target set forth in the MOU as reasonably applied to the specific circumstances of each site.

In section 112(d)(9), Congress authorized EPA to decline to regulate NRC licensees under section 112 in those instances where, after EPA, in consultation with the NRC, makes a finding that NRC regulation is sufficient to provide an ample margin of safety. Congress clearly intended to give EPA the discretion to relieve affected facilities from the burdens associated with parallel regulation when this would not adversely affect public health. Since EPA has concluded that a rulemaking under section 112(d)(9) to rescind subpart T for NRC-licensed sites is warranted, it would frustrate the clear purpose of section 112(d)(9) for EPA to permit subpart T to take effect for this subcategory during the pendency of the rulemaking concerning rescission. Accordingly, EPA is issuing a final rule to stay the effectiveness of subpart T for NRC-licensed sites while the rulemaking concerning rescission of subpart T for this category is pending, or until June 30, 1994, whichever occurs first.

C. Discussion of Comments and Response to Comment

Although no public hearing was requested, two sets of written comments were submitted in response to the proposal to stay subpart T as applied to nonoperational uranium mill tailings disposal sites licensed by NRC or an affected NRC agreement State (collectively NRC-licensees). These comments—one in support and one in opposition to the proposed stay—have been evaluated by the Agency, and a summary and response is set forth below. However, there are aspects to these comments that are not directed at the proposed stay but instead go to the related proposal to rescind subpart T, published elsewhere in today's **Federal Register**. Those comments are not fully addressed here, although the proposal to rescind subpart T does provide some initial response which will be further addressed in the course of that rulemaking, which includes an opportunity for a public hearing and submission of additional comments. Still other comments, which are also not addressed here, seem directed to EPA's earlier promulgation of subpart T, a rulemaking decision that is not being revisited by either this final stay or the proposed rescission. Indeed, those comments were made and responded to at the time the Agency promulgated subpart T, and have also been repeated in subsequent petitions to reconsider that action, which are pending before the Agency, but might become moot should subpart T ultimately be rescinded.

Comment: EPA improperly relies on CAA section 112(d)(9) (enacted as part of the Clean Air Act Amendments of 1990 (CAAA)) as authority to stay subpart T for NRC-licensees because section 112(d)(9) applies prospectively to future promulgations under the CAAA, not to such pre-existing NESHAPs as subpart T.

Response: EPA disagrees with this comment, and instead believes that section 112(d)(9) applies to all CAA section 112 NESHAPs regulating NRC-licensees. The only language arguably supportive of the commenter's interpretation of section 112(d)(9) is that the provision that instructs EPA that "no standard [i.e., NESHAP] for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or Agreement State) is required *to be promulgated under this section*" (emphasis added). The commenter reads the clause "to be promulgated under this section" as limiting the provision to only NESHAPs promulgated under CAA section 112 as revised by the CAAA, as opposed to any NESHAP under CAA section 112 before enactment of the CAAA. As such, the commenter posits, the authority does not apply to such pre-existing NESHAPs as subpart T. We find this reading unpersuasive because it not mandated by the plain language of section 112(d)(9), and the context in which it was enacted as well as its legislative history argue for a contrary interpretation.

By its plain terms, the phrase "under this section" applies to section 112 both as it existed before the CAAA and as it is now, not only, as the commenter would have it, to section 112 as amended by the CAAA. If Congress intended the narrow reading advocated, it logically would have referred only to the "Section 112 as amended" or to the CAAA generally. Moreover, although the sentence does refer to regulations "to be" promulgated, ordinarily a reference to future action, it is implicit that EPA is not required to regulate sources already adequately regulated by NRC, and therefore EPA should not have to implement and enforce existing regulations that are duplicative.

In addition, the context in which section 112(d)(9) was enacted argues against the commenter's prospective-only interpretation. At the time of the CAAA, the radionuclide NESHAPs that could be affected by this provision had already been promulgated (although some, including subpart T, had not yet taken effect) under the pre-existing version of CAA Section 112. An interpretation rendering section 112(d)(9) inapplicable to those provisions would render section 112(d)(9) meaningless at the time enacted. This is so even though EPA is authorized by the CAAA to repromulgate some (but not all) of the radionuclide NESHAPs under the amended version of section 112. Thus, under the commenter's scheme, EPA could conceivably repromulgate under section 112 of the CAAA in order to afford itself of the authority of section 112(d)(9) to not promulgate a NESHAP at all. However, we do not believe Congress intended this sort of elaborate rulemaking—repromulgation in order to authorize rescission—when it enacted section 112(d)(9), and in fact such a process ill serves the purpose of section 112(d)(9) to avoid needless regulation.

Finally, the legislative history of section 112(d)(9) also supports EPA's view that the provision applies to radionuclide NESHAPs regulating NRC-

licensees no matter when promulgated. Section 112(d)(9) was crafted by Senator Simpson after an earlier provision was rejected. The rejected provision would have rescinded by operation of law all existing radionuclide NESHAPs as they apply to NRC-licensees, and prohibited any such future promulgations under section 112 as amended. Senator Simpson's alternative amendment—section 112(d)(9)—replaced automatic rescission and future prohibition by granting EPA the authority to find by rule that the NRC regulatory program protects public health with an ample margin of safety and, thus, EPA regulation is unnecessary. In enacting this alternative, there is no reason whatsoever to believe that Congress abandoned the initial concern over existing NESHAPs; rather, there is nothing in the legislative history to suggest that Congress intended that the amendments apply only to future NESHAPS. Section 112(d)(9) remained primarily directed to existing NESHAPs as they were the ones generating the immediate concern over duplicative regulation.

For these reasons, EPA believes that section 112(d)(9) authorizes EPA to make the finding necessary to rescind NESHAPs promulgated under the authority of CAA section 112 as it existed prior to the CAAA.

Comment: Because EPA has not made a finding that the regulatory program administered by NRC protects public health with an ample margin of safety, EPA should allow subpart T to remain "in effect" and not finalize the stay for NRC-licensees.

Response: As a preliminary matter, it should be noted that subpart T is not currently, and has not yet been, functionally "in effect" for NRC-licensees. This is because at the time it promulgated subpart T, EPA recognized that immediate compliance was impossible, and acted pursuant to its authority under then-existing CAA section 112 to waive compliance until December 15, 1991, which is two years from the statutory effective date for existing sites. Thus, this stay maintains the status quo pending related rulemaking to rescind subpart T as the NRC-licensees.

EPA believes this stay is authorized by CAA sections 301(a) and 112(d)(9), as amended, as it is a logical component to the implementation of the Congressional policy embodied in section 112(d)(9). Although the CAAA do not clearly establish all of the procedures to be followed by EPA in implementing section 112(d)(9) for previously promulgated NESHAPs, CAA section 301(a), which was retained by the CAAA, does provide the Agency with general rulemaking authority to implement the provisions of the statute. Moreover, EPA is unwilling to attribute to Congress an intention that EPA proceed with implementation of subpart T on an interim basis even though EPA believes that the NRC regulatory program will protect public health with an ample margin of safety, and is commencing rulemaking to rescind subpart T as to NRC-licensees simultaneous with today's action on this stay.

Given EPA's tentative determination that the NRC regulatory program will protect public health with an ample margin of safety (which assumes the MOU is implemented as intended), an interpretation of section 112(d)(9) to prohibit such an interim stay would undermine the purpose of that provision to avoid needlessly duplicative regulation. Indeed, such an interpretation would force all facilities affected by a previously promulgated NESHAP to make all of the expenditures necessary to demonstrate compliance, or negotiate a compliance schedule in the context of a judicial or administrative enforcement action, at the same time EPA is conducting rulemaking designed to provide relief from just that duplicative regulation. EPA is not prepared to presume that Congress intended this potential waste of administrative and judicial resources, or that it intended that section 112(d)(9) would provide meaningful regulatory relief only in the case of future NESHAPs.

Comment: Even if section 112(d)(9) authorizes a stay in certain circumstances, that authority may not be exercised here because EPA has not even tentatively found the existing NRC regulatory program protective of public health with an ample margin of safety.

Response: EPA believes the commenter misreads EPA's proposal and the authority provided by section 112(d)(9). Section 112(d)(9) authorizes rescission if EPA finds, by rule, that the NRC's "regulatory program" will protect public health with an ample margin of safety. The commenter narrowly construes that term to argue that because the actions contemplated by the MOU between EPA, NRC and the affected Agreement States have not yet concluded (e.g., license amendments to incorporate closure schedules), NRC's regulatory program is currently deficient.

EPA takes a broader view, however, determining instead that the MOU itself provides a basis for finding NRC's regulatory program protective of public health with an ample margin of safety, although the ongoing validity of that determination assumes that the MOU will be implemented as contemplated. In contrast to the commenter's characterization, EPA does tentatively find that the current NRC "regulatory program" as supplemented by the MOU satisfies section 112(d)(9), although it conditions its final determination upon the MOU's full implementation. In this way, subpart T will not be finally rescinded until the changes called for by the MOU are binding on and enforceable against the licensees.

This stay is an inextricable part of the MOU. The complication and needless duplication that would result should subpart T be allowed to go into effect (e.g., administrative, judicial and citizen enforcement actions) could unduly interfere with NRC's implementation of the other aspects of its regulatory program as modified by the remainder of the MOU. In contrast, EPA does not believe the stay will in any way interfere with the requirement that public health be protected with an ample margin of safety. Thus, while EPA believes it prudent to withhold final rescission of subpart T as to NRC-licensees until the MOU is implemented, this stay pending implementation is a reasonable exercise of the Agency's authority under section 112(d)(9).

Alternatively, even if the commenter is correct that EPA may not find that the NRC program protects public health with an ample margin until the MOU is fully implemented, EPA believes it is still authorized by section 112(d)(9) to stay Subpart T in the interim. In EPA's view, the fact that NRC is committed under the MOU to expeditiously implement a regulatory program that protects public health with an ample margin justifies EPA staying Subpart T as to NRC-licensees pending this process. Of course, should EPA become persuaded that NRC has abandoned the objectives and commitments set forth in the MOU, then EPA should take action to assure that subpart T is effective as to NRC-licensees. This may occur during the period of the stay, which expires by its own terms in two-and-a-half years (June 30, 1994), or even after rescission of subpart T through proceedings to reconsider the section 112(d)(9) finding. As to this latter course, EPA has included in its proposal to rescind subpart T a variety of procedural and substantive mechanisms designed to assure that if the MOU is not effectively implemented, subpart T will be reinstated.

Comment: This stay is inappropriate because the NRC regulatory program does not resolve the timing concern that

led EPA to promulgate subpart T in the first place. This timing problem is also not addressed by the MOU because (1) the MOU affects only existing nonoperational disposal sites, not those that will become nonoperational in the future, and (2) the MOU allows NRC to retain the authority to waive timely compliance with the 20 pCi/m²—s flux standard for economic reasons, which would not be allowed under the CAA.

Response: It is true that EPA initially promulgated Subpart T because the existing NRC regulatory program did not require that uranium mill tailings disposal sites expeditiously comply with the 20 pCi/m²—s flux standard. However, EPA believes that the MOU fully addresses this concern. The MOU calls for NRC to assure that compliance with the 20 pCi/m²—s standard occur as "expeditiously as practicable considering technological feasibility." The MOU states an overriding objective that existing sites achieve compliance by December 31, 1997, and that sites that become nonoperational in the future comply within seven years of becoming nonoperational. To this end, the MOU directs that NRC immediately commence soliciting reclamation plans for incorporation into licenses to set forth enforceable compliance schedules. This process has already begun.

Because the MOU fully addresses the timing concern, EPA believes it has the authority to stay subpart T as the MOU is implemented. The commenter's concern that the MOU does not speak to sites that become nonoperational in the future is unfounded. In fact, the MOU is explicit that newly nonoperational sites will also have to comply with the 20 pCi/m²—s standard as expeditiously as practicable considering technological feasibility. Although this requirement can not be the immediate subject of reclamation plans or licenses for those sites since by definition, they are not yet nonoperational, the MOU does call for EPA to modify its existing general UMTRCA regulations to codify this requirement. Once this occurs NRC will, in all probability, have to amend its implementing criteria to reflect the regulatory change.

As to its final point, the commenter is correct that the NRC has authority under the AEA to waive for economic reasons strict compliance with the dual requirement that sites meet the 20 pCi/m²-s standard as expeditiously as practicable considering technological feasibility. However, the full exercise of this authority is not contemplated by the MOU, and thus if this authority is used in a manner inconsistent with purposes and objectives of the MOU, EPA will not rescind subpart T, and this stay will expire. Also, if the waiver authority is used after subpart T is rescinded, the proposal includes procedural and substantive provisions designed to facilitate reconsideration of the rescission and possible reinstatement of subpart T. These results flow from the meaning of "expeditiously as practicable considering technological feasibility," as defined in today's simultaneous proposal to rescind subpart T as to NRC-licensees, which is consistent with the CAA: Costs play a very limited role, and utilization of a cost-benefit analysis in setting compliance schedules is not contemplated.

Comment: This stay, coupled with the compliance waiver, means that subpart T sites have had four-and-a-half years to comply with the section 112 requirement, a schedule that is inconsistent with the CAA.

Response: EPA agrees that the existing uranium mill tailings disposal sites have had more time to comply with the 20 pCi/m²-s standard than was contemplated by CAA section 112 as it existed prior to the CAAA. This is a function not of regulatory leniency, however, but instead of the physical reality of these sites. Unlike the typical source regulated under CAA section 112, where a regulatory option includes downsizing or shut-down, these sites are already shut down and a variety of time-consuming physical changes must occur (e.g., drying of the tailings) before compliance may be achieved. Indeed, these realities were addressed by Congress in enacting the CAAA, and special provisions were inserted at section 112(i)(3) that would allow these sites up to seven years to achieve compliance if EPA determined to repromulgate (or, perhaps, retain) subpart T. Moreover, in the context of negotiating compliance agreements with EPA, which is what would occur if subpart T went into effect for NRC-licensees, EPA would negotiate compliance schedules consistent with the "expeditiously as practicable considering technological feasibility" schedule committed to by NRC. However, in so doing and unlike NRC, EPA would be in the disadvantageous position of not being the regulatory agency involved in all other aspects of final closure of these sites. For these reasons, EPA believes the compliance schedules and regulatory requirements contemplated by the MOU reflect of physical reality and are consistent with what would result under subpart T, and as such are authorized by section 112(d)(9).

Comment: One commenter favored and one opposed EPA's authority to stay subpart T as to NRC-licensees for ninety days under CAA section 307(d)(7)(B). The commenter that opposed EPA's authority also argued that EPA lacks stay authority under section 301(a). The commenter that favored section 307(d)(7)(B) authority also argued that EPA has additional authority under APA section 10(d) (5 U.S.C. 705(d)).

Response: EPA believes this stay is authorized by section 112(d)(9) and 301(a), and does not rely upon the authority of section 307(d)(7)(B) or APA section 10(d). Nevertheless, upon initial reflection, the Agency does not find any statutory bar to its ability to utilize these alternative authorities. In this regard, EPA does not find persuasive the comment that EPA lacks authority because the referenced provisions are of a "general" nature, and more specific savings and statutory stay provisions exist to bar their application in this context. Thus, should litigation regarding this stay result, EPA reserves the right to present these authorities as alternatives. Finally, as to section 301(a), the Agency likewise does not find persuasive the argument that its general applicability is excluded from this context because of the allegedly more specific savings and statutory stay provisions. In EPA's view, those provisions either serve a separate purpose or function to do by operation of law what EPA is here doing by rulemaking. As such, they do not preclude EPA's utilization of section 301(a), in conjunction with section 112(d)(9), in this context.

Comment: The proposed stay of subpart T for NRC-licensees should be finalized because subpart T should not have been promulgated in the first place given (1) the impossibility of compliance, and (2) the regulatory scheme under UMTRCA.

Response: While EPA is today finalizing the subpart T stay for NRC-licensed uranium mill tailing disposal sites, it is not revisiting its earlier decision to promulgate subpart T.

Comment: EPA is slightly mistaken in stating, alternatively, that "many" or "some" existing uranium mill tailings disposal sites could not meet the December 15, 1991, compliance deadline under subpart T. In fact, no sites could meet that date. In addition, EPA misspeaks when it states that "some piles have remained uncovered for decades emitting radon." The commenter states "In fact, virtually all of the sites * * * were conducting operations until the early or mid-1980s". Thus it is true only of operational piles

and is not evidence of any failure of NRC's regulatory program.

Response: EPA is not revisiting its decision to promulgate subpart T in regard to either of these points. As to the first point, in claiming that no sites can come into compliance with subpart T, the commenter fails to mention two NRC-licensed piles, Edgemont and Ray Point, have already come into compliance. In addition, many piles designated as Title I piles have achieved closure under the DOE program.

As to the second point relating to decades of radon emission, EPA reaffirms its observation that in fact some currently nonoperational disposal sites have emitted radon for decades. The commenter's statement that virtually all sites were conducting operations until the early or mid-1980s acknowledges that "some" were not. Furthermore many of the DOE Title I piles have emitted radon for decades.

It is worth noting, however, that whether the currently nonoperational sites were operational during some or most of that period is not of consequence to the health risk identified by EPA in promulgating Subpart T, which is not being revisited here. This point is emphasized by EPA's promulgation of Subpart W at the same time it promulgated subpart T. Subpart W regulates operational disposal sites to ensure that their emissions also will not exceed 20 pCi/m^2–s; this stay does not affect Subpart W.

Comment: The discussion of the MOU in the preamble to the proposed stay may create confusion. By referring to "final closure" it suggests total site closure (e.g., groundwater restoration), when in fact radon control is all that is addressed by the MOU.

Response: EPA agrees that the MOU is directed only to compliance with the 20 pCi/m^2–s flux standard.

Comment: EPA should take steps to amend the MOU in certain respects.

Response: EPA believes the MOU is sufficient as executed and does not currently intend any revisions. The concerns underlying the changes requested, however, are being addressed to the extent appropriate in the rulemaking proposing to rescind subpart T.

List of subjects in 40 CFR Part 61

Air pollution control, Hazardous materials, Asbestos, Beryllium, Mercury, Vinyl Chloride, Benzene, Arsenic, and Radionuclides.

Dated: December 19, 1991.

William K. Reilly,

Administrator.

For all of the reasons given in the preamble, part 61 of title 40 of the Code of Federal Regulations is amended to read as follows:

PART 61 [AMENDED]

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

Authority: 42 U.S.C. 7401,7412, 7414, 7416, 7601.

2. Section 61.220 of subpart T of part 61 is amended by designating the current text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 61.220 Designation of facilities.

* * * * *

(b) The effective date for subpart T is stayed for owners and operators of all sites that are used for the disposal of tailings, commonly referred to as uranium mills and their associated tailings, that are regulated under Title II of the Uranium Mill Tailings Control Act of 1978, until the date on which EPA takes final action concerning its proposal to rescind subpart T for owners and operators of all sites that are used for the disposal of tailings that are regulated under title II of the Uranium Mill Tailings Control Act of 1978, pursuant to section 112(d)(9) of the Clean Air Act, as amended, as published on (date of this publication), or June 30, 1994, whichever first occurs. EPA will publish any such final action in the **Federal Register**.

[FR Doc. 91–30833 Filed 12–30–91; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket No. HM–198A; Amdt. No. 173–227]

RIN 2137–AB31

Elevated Temperature Materials

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; delay of compliance dates.

SUMMARY: RSPA is delaying the compliance dates for certain provisions of a final rule concerning elevated temperature materials and clarifying the effective date of this final rule in conjunction with the final rule published December 21, 1990, under Docket HM–181. This action is in response to numerous petitions asking RSPA to delay the compliance dates contained in the rule to allow affected entities sufficient time to come into compliance with the new requirements and to provide RSPA additional time to review petitions for reconsideration received in response to the final rule. RSPA will respond to other petitions for reconsideration in a separate document.

DATES: *Effective date:* These amendments are effective March 30, 1992. However, compliance with the regulations as amended herein is authorized as of October 30, 1991.

FOR FURTHER INFORMATION CONTACT: Beth Romo, Office of Hazardous Materials Standards, (202) 366–4488, or James K. O'Steen, Office of Hazardous Materials Technology, (202) 366–4545, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On October 2, 1991, RSPA published a final rule (Docket HM–198A; 56 FR 49980) amending the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) to regulate materials which pose a hazard due to their being offered for transportation or transported at elevated temperatures. The final rule established requirements to communicate the hazards of these elevated temperature materials by means of marking, shipping papers and placarding, and to prescribe packaging requirements for these materials. Based on the petitions received, RSPA finds it impracticable to take action and respond to certain substantive issues discussed in the petitions within the 90-day period prescribed by 49 CFR 106.37(b). In addition, RSPA has received requests from six petitioners, representing cargo tank manufacturers and shippers, to delay the effective date of the final rule. The petitioners stated that additional time is needed for newly-regulated entities to come into compliance with the new requirements. Delaying certain compliance dates allows RSPA an opportunity to more thoroughly study issues raised in the petitions for reconsideration and to prepare an appropriate response.

Clarification of Effective Date

This final rule is effective March 30, 1992. However, under the transition provisions of the Docket HM–181 final rule, as revised on December 20, 1991 (56 FR 66124), in § 171.14 (b)(3) and (b)(4), classification and hazard communication requirements may be delayed until October 1, 1993, except for