

until the deliberations are completed and the decision is reached. * * *

21. Table I of § 917.460(a) is amended by removing the entry for Fresh Prune/Plums, adding an entry for Fresh Prunes, and revising the maturity requirements in Column B for the following varieties:

Angeleno.....	Full surface dark red or seventy-five percent dark red with remainder light greenish yellow. B Color.
Freedom.....	Not less than 90 percent of the surface shall be dark red color or light yellow. H Color.
Laroda.....	Full surface dark red or dark red color at blossom end and remainder of surface full light yellow color, with a leaf-spotting tolerance of 1/8 inch diameter.
Royal Diamond.....	Full surface red with smooth shoulders.
Royal Garnet.....	Full red color.
Royal Red.....	Full distinct red color.
Fresh Prunes.....	Fifty percent of surface mottled red color, balance of surface light green color. In addition, for all varieties of prunes shipped fresh, a random sample shall average 19 percent soluble solids, except for the Moyer variety, which shall average 16 percent soluble solids.

22. Table I of § 917.460(a) is amended by adding in alphabetical order the following varieties of plums to Column A and their maturity requirements to Column B:

Belmont Pride.....	Full dark red color.
Black Diamond.....	Full red color with spring.
Blue Knight.....	Full dark red color with spring.
Prima Black.....	Full dark red color with smooth shoulders.
Sweet Rosa.....	Seventy-five percent red color, remainder light greenish yellow color, or 50 percent light red flesh color. C color.

23. Table I of § 917.460(a) is amended by removing the following varieties of plums from Column A and their maturity requirements from Column B: Ashag, August Rosa, Fresno Rosa, Premier and Prima Rosa.

24. Table II of § 917.460(b) is amended by adding in alphabetical order the following varieties of plums to Column A and number of plums per sample to Column B:

Ambra.....	67
Autumn Giant.....	50
Black Ace.....	58
Black Gold.....	63
Black Torch.....	54
King James.....	50
May Rosa.....	71
Royal Diamond.....	56
Royal Garnet.....	69

25. Table II of § 917.460(b) is amended by removing the plum variety Rose Ann from Column A and the Rose Ann plums-per-sample number 60 from Column B.

Dated: June 27, 1989.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable
Division.

[FR Doc. 89-15598 Filed 6-30-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 946

[Docket No. FV-89-030-FR]

Irish Potatoes Grown in Washington; Amendment To Eliminate Exemption for Yellow Fleshed Potatoes and Require Potatoes Exported in 50- Pound Cartons to be at Least U.S. No. 1 Grade

AGENCY: Agricultural Marketing Service,
USDA.

ACTION: Final rule.

SUMMARY: This rule eliminates current provisions of the Washington potato handling regulation which exempt yellow fleshed potatoes from grade, size, pack, maturity and inspection requirements. It also requires potatoes exported in 50-pound cartons to be at least U.S. No. 1 grade. The objectives of these actions are to uphold the quality image of the Washington State potato industry in domestic markets and to provide a means by which foreign buyers may obtain a high quality product when purchasing Washington State potatoes.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 447-2431.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 113 and Marketing Order No. 946 (7 CFR Part 946), both as amended, regulating the handling of Irish potatoes grown in the State of Washington. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as

amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Washington State potatoes subject to regulation under the marketing order, and approximately 490 producers in the production area. The Small Business Administration (13 CFR 121.1) has defined small agricultural producers as those having annual gross revenue for the last three years of less than \$500,000, and small agricultural serviced firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of handlers and producers of Washington State potatoes may be classified as small entities.

In 1988, Washington State potato production totalled 63.25 million hundredweight (cwt.), and a record high yield of 550 cwt. per acre was attained. Approximately 87 percent of Washington potatoes produced is processed, and the remaining 13 percent is shipped to fresh market outlets. Fresh shipments of the 1988-89 Washington State potato crop to date are running slightly ahead of last season's level. As of May 31, 1989, fresh potato shipments amounted to 7,251,129 cwt. compared to 7,098,323 cwt. at the same time last year.

In 1988, total harvested potato acreage in Washington State amounted to 115,000 acres. About 88 percent of potato acreage was planted to long varieties, such as the Russet Burbank, Norgold Russet and Norkotah Russet. The remaining 12 percent was divided between round white and round red varieties, and this percentage has increased in recent years.

Since 1987, increases have been particularly significant for yellow fleshed varieties, which are generally classified as a round white type potato

due to their shape and skin color. The State of Washington Potato Committee (committee) projects that yellow fleshed potato planted acreage will exceed 1,000 acres this season.

The handling requirements for fresh Washington potatoes are specified in § 946.336 (53 FR 8143, March 17, 1988, as amended in 53 FR 21794, June 10, 1988). Current requirements for round potatoes specify that they be shipped under the following conditions. Round potatoes must grade at least U.S. No. 2 and must have a minimum diameter of 1½ inches (47.6 mm) except red skinned potatoes that are one inch in diameter may be shipped if they otherwise grade at least U.S. No. 1. Furthermore, the maturity requirement for round potatoes is that they shall not be more than "moderately skinned." Currently, the handling regulation exempts non-white fleshed potatoes and export shipments from these handling requirements.

This rule eliminates the current exemption for yellow fleshed potatoes and requires potatoes exported in 50-pound cartons to be at least U.S. No. 1 grade. These changes were unanimously recommended by the committee to become effective beginning with the 1989-90 season which commences July 1, 1989.

Prior to 1987, no distinction was made between white and non-white fleshed potatoes, and all were required to meet the grade, size, pack, maturity and inspection requirements of the handling regulation. Additionally, handlers were required to pay assessments on all fresh potatoes. In May 1987, an exemption from these handling requirements, published at 52 FR 15489, was provided for non-white fleshed potato varieties because very few potatoes of this type were being produced, and such potatoes were generally marketed in different outlets than white fleshed potatoes. Supplies of yellow fleshed potatoes in commercial fresh outlets are increasing, however, due to increasing production and consumer acceptance. Currently, yellow fleshed potatoes are being sold to grocery and restaurant outlets in which they compete with round, white fleshed potatoes.

Based on an approximate yield of 400 cwt. per acre and estimated planted acreage of 1,000 acres, Washington State production of yellow fleshed potatoes could be as high as 400,000 cwt. during the 1989 season. Because the production of yellow fleshed potatoes has increased, and these potatoes are now competing directly with white fleshed potatoes in commercial fresh markets, the committee unanimously recommended that yellow fleshed potatoes be required to meet the

handling requirements set for round variety potatoes. These requirements are that potatoes grade at least U.S. No. 2 and be at least 1½ inches in diameter.

Most of the round type potatoes that are grown in Washington and shipped to fresh market outlets are red-skinned varieties. To provide handlers with the opportunity to satisfy increased consumer demand for small-sized potatoes of this type, the current handling regulation provides that round, red-skinned potatoes that are one inch in diameter may be shipped if they otherwise grade at least U.S. No. 1.

The committee recommended that a comparable reduced size requirement be provided for yellow-fleshed potatoes, even though such potatoes are white-skinned. Since these potatoes are a relatively new item available from Washington, the committee believes that shippers should be provided with maximum flexibility in marketing yellow-fleshed potatoes. Accordingly, the rule provides that yellow-fleshed potatoes that are one inch in diameter may also be shipped if they otherwise grade at least U.S. No. 1.

The committee believes that this action will help maintain the quality of image of the Washington State potato industry. Other non-white fleshed varieties, such as purple or blue fleshed, will continue to be exempt because very few of these potatoes are being produced, and such potatoes are a specialty crop and generally do not directly compete with white fleshed potatoes. In addition, blue or purple fleshed potatoes are customarily marketed in different outlets than white and yellow fleshed potatoes.

Exports of Washington potatoes have increased considerably since the early 1980's. Fresh potato exports from Washington State in 1981 amounted to about 420,000 cwt. In 1988, fresh potato exports exceeded 590,000 cwt. A record high of about 665,000 cwt. was reached in 1986. Fresh potato exports in 1987 were about 550,000 cwt. and had an estimated value of \$10,383,000. Destinations for these potatoes included Hong Kong, Sweden and Singapore. Possibly the greatest potential for export market expansion lies in the Pacific Rim countries.

Currently, export shipments of potatoes are exempt from the requirements of the handling regulation. To provide a means by which foreign buyers can continue to obtain high quality when purchasing Washington State potatoes, the committee unanimously recommended that all potatoes exported in 50-pound cartons be required to be at least U.S. No. 1 grade. This export pack requirement is

similar to the domestic pack requirement which requires potatoes packed in 50-pound cartons to be at least U.S. No. 1, except that an additional tolerance for internal defects is provided for domestic shipments. These cartons are regarded as a premium pack and are the container most often used for export shipments. Shippers will continue to be able to fill specific orders for lower quality potatoes by packing them in other than 50-pound cartons, since only potatoes packed in such cartons will be required to meet this minimum quality requirement. This action should result in increased purchases and improved returns to growers.

Other exemptions currently provided are unchanged. The grade, size, maturity, and pack requirements are not applicable to shipments of potatoes for livestock feed, charity, seed, prepeeling, or other processing. Shipments to these outlets are also free from inspection requirements.

Section 8e of the Agricultural Marketing Agreement Act of 1937 requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for that particular area. Since yellow fleshed potatoes are generally considered to be a round white type, imported yellow fleshed potatoes are required to meet the same quality and size requirements set for round white varieties of potatoes. Because the import requirements for round white potatoes are based on those established under the marketing orders covering Colorado Area 3 potatoes (M.O. 948) and Southeastern States (M.O. 953), the changes to the handling requirements for Washington State potatoes will have no effect on the potato import regulation. Accordingly, the findings and determinations with respect to imports of Irish potatoes contained in section 980.1 of the regulations will not be changed by this action.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant

economic impact on a substantial number of small entities.

Notice of this action was given in the June 8, 1989, **Federal Register** [54 FR 24562] providing interested persons until June 19, 1989, to file written comments. No comments were received.

After consideration of all relevant matter presented including the information and recommendations submitted by the committee, and other available information, it is hereby found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the shipping season is expected to begin in early July and this rule, in order to be of maximum benefit to producers, should apply to shipments at the beginning of the season.

List of Subjects in 7 CFR Part 946

Marketing agreements and orders, Potatoes, Washington.

For the reasons set forth in the preamble, 7 CFR Part 946 is hereby amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR Part 946 continues to read as follows:

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

1a. A new subpart heading is added to Part 946 immediately preceding § 946.336 as follows:

Subpart—Handling Regulations

2. Section 946.336 is amended by revising the introductory text and paragraphs (a)(2)(i), (c), and (d)(7) to read as follows:

Note: This section will appear in the Code of Federal Regulations.

§ 946.336 Handling regulation.

No person shall handle any lot of potatoes unless such potatoes meet the requirements of paragraphs (a), (b), (c), and (g) of this section or unless such potatoes are handled in accordance with paragraphs (d) and (e), or (f) of this section, except that shipments of the blue or purple flesh varieties of potatoes shall be exempt from both this handling regulation and the assessment requirements specified in § 946.41.

(a)(2) * * *

(i) *Round varieties*—1 7/8 inches (47.6 mm) minimum diameter, except yellow fleshed and round red varieties may be 1

inch (25.4 mm) minimum diameter, if U.S. No. 1.

(c) *Pack requirements*—(1) *Domestic*. Potatoes packed in 50-pound cartons shall be U.S. No. 1 grade or better, except that potatoes which fail to meet the U.S. No. 1 grade only because of internal defects may be shipped provided the lot contains not more than 10 percent damage by any internal defect or combination of internal defects but not more than 5 percent serious damage by any internal defect or combination of internal defects.

(2) *Export*. Potatoes packed in 50-pound cartons shall be U.S. No. 1 grade or better.

(d) * * *
(7) *Export*, except to Alaska and Hawaii and except as provided in (c)(2) of this paragraph.

* * * * *

Dated: June 29, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-15724 Filed 6-30-89; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 51, and 60

RIN 3150-AC04

NEPA Review Procedures for Geologic Repositories for High-Level Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is adopting procedures for implementation of the National Environmental Policy Act with respect to geologic repositories for high-level radioactive waste. In accordance with the Nuclear Waste Policy Act of 1982, as amended, the Commission will adopt, to the extent practicable, the final environmental impact statement prepared by the Department of Energy that accompanies a recommendation to the President for repository development. The rule recognizes that the primary responsibility for evaluating environmental impacts lies with the Department of Energy; and, consistent with this view, it sets out the standards and procedures that would be used in determining whether adoption of the Department's final environmental impact statement is practicable.

EFFECTIVE DATE: August 2, 1989.

FOR FURTHER INFORMATION CONTACT: James R. Wolf, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-1641.

SUPPLEMENTARY INFORMATION: Under applicable law, the Nuclear Regulatory Commission exercises regulatory authority with respect to the development, operation, and permanent closure of one or more geologic repositories for high-level radioactive waste and spent nuclear fuel. In connection with the exercise of this authority, the Commission is required by the National Environmental Policy Act of 1969 (NEPA), to give appropriate consideration to the environmental impacts of its actions. The scope of such consideration and the procedure to be followed by the Commission in fulfilling its NEPA responsibilities are addressed by the Nuclear Waste Policy Act of 1982, as amended (NWPAct). This statute directs the Commission to adopt the environmental impact statement (EIS) prepared by the Department of Energy (the applicant for the NRC license with respect to the repository) "to the extent practicable," with the further proviso that adoption of DOE's EIS shall be deemed to satisfy the Commission's NEPA responsibilities "and no further consideration shall be required." The Commission has been engaged in rulemaking to implement this statutory framework.

The Commission accordingly undertook a careful review of the text and statutory history of the pertinent provisions of the Nuclear Waste Policy Act. The results of this review were presented in the notice of proposed rulemaking published in the **Federal Register** on May 5, 1988, 53 FR 16131. As summarized therein:

(1) The Commission will conduct a thorough review of DOE's draft EIS and will provide comments to DOE regarding the adequacy of the statement.

(2) If requested by Congress pursuant to the NWPAct, the Commission will provide comments on DOE's EIS to the Congress with respect to a State or Tribal notice of disapproval of a designated site.

(3) The NRC will find it practicable to adopt DOE's EIS (or any DOE supplemental EIS) unless:

(a) The action proposed to be taken by the NRC differs in an environmentally significant way from the action described in DOE's license application, or

(b) Significant and substantial new information or new considerations render the DOE EIS inadequate.

(4) The DOE EIS will accompany the application through the Commission's review process, but will be subject to litigation in NRC's licensing proceeding only where factors 3(a) or 3(b) are present.

In accordance with NWPA, the primary responsibility for evaluating environmental impacts lies with DOE, and DOE would therefore be required to supplement the EIS, whenever necessary, to consider changes in its proposed activities or any significant new information.

The Commission received nine letters of comment in response to its notice of proposed rulemaking. The commenters were the State of Nevada (Nuclear Waste Project Office), the U.S. Department of Energy, the Council on Environmental Quality, the U.S. Environmental Protection Agency, and several private organizations (the Nevada Nuclear Waste Task Force, the Environmental Defense Fund, the Southwest Research and Information Center, the Sierra Club, and the Edison Electric Institute).

After reviewing and giving careful consideration to all the comments received, the Commission now adopts, in substantial part, the position set forth in its earlier notice. In particular, the Commission continues to emphasize its view that its role under NWPA is oriented toward health and safety issues and that, in general, nonradiological environmental issues are intended to be resolved in advance of NRC licensing decisions through the actions of the Department of Energy, subject to Congressional and judicial review in accordance with NWPA and other applicable law. The Commission anticipates that many environmental questions would have been, or at least could have been, adjudicated in connection with an environmental impact statement prepared by DOE, and such questions should not be reopened in proceedings before NRC.

State of Nevada Comments

We begin with the comments presented by the State of Nevada not only because of its important sovereign interests, but because of the fundamental nature of the issues that are raised. In Nevada's view, NRC "poses, analyzes and answers the wrong question." According to Nevada, the question is how NRC should perform its own, independent, NEPA responsibilities and not how NRC should review and approve the adequacy of DOE's EIS.

Having posed the question in terms of responsibilities under NEPA, Nevada reviews the many cases that hold that

where a major federal action involves two or more federal agencies, each agency must evaluate the environmental consequences of the entire project and determine independently whether the statutory requirements have been satisfied. NRC is not relieved from the responsibility of making such an independent determination, according to the State, because it would still be able to carry out its licensing responsibilities in a manner consistent with law. NRC, which is directed by NWPA to adopt the DOE environmental impact statement "to the extent practicable," need only do so to the extent that it is otherwise within the customary practice of the agency.

The views of the State bring the question into sharp focus. If the issue were properly to be posed as Nevada urges—i.e., with an assumption that the Commission's NEPA responsibilities are not modified by NWPA—then the regulatory language suggested in its comment letter would have merit. But the Commission firmly believes that the law was intended to have all matters associated with the environmental impacts of repository development considered and decided, to the fullest extent practicable, apart from NRC licensing proceedings. As explained when the proposed rule was published, this interpretation is supported both by the specific legislative and judicial review procedures built into the statutory structure and by the accompanying legislative history. The Commission believes that the result is sensible. Concerns arising under NEPA—if not resolved through the negotiation procedures established by NWPA—would be adjudicated early, with finality, and with every reasonable argument being capable of being advanced to the oversight of Congress and the courts. From that point on, in the absence of substantial new information or other new considerations, it would be proper to inquire only whether the specific detailed proposal of the Department of Energy could be implemented in a manner consistent with the health and safety of the public. The resolution of issues in this manner for purposes of NEPA would in no event affect the framing or decision of health and safety issues, under the Atomic Energy Act, in NRC licensing proceedings.¹

¹ The State took exception to the standard for completeness of information in a license application—viz. the "reasonably available" standard of 10 CFR 60.24. Although the matter is not strictly at issue in this rulemaking, the Commission regards the State's concern in this regard to be overdrawn. While information may be sufficient to meet the requirements of § 60.24, this in no way

Although quite different statutory schemes are involved, we perceive a parallel with issues raised in *Quivira Mining Company v. NRC*, 866 F.2d 1246 (10th Cir. 1989). That case concerned regulations adopted by NRC pursuant to the Uranium Mill Tailings Radiation Control Act of 1978. It considered, among other things, the extent to which NRC, in giving the "due consideration to economic costs" required by the statute, could rely upon a cost-benefit study previously carried out by the Environmental Protection Agency to support EPA's rulemaking responsibilities. The Commission concluded that since the agencies' actions coincided in material respects, all statutory language would retain significant force and effect, and the time period allowed for the issuance of its regulations was inadequate for an independent study. Congress did not wish to require the NRC to perform a second cost-benefit analysis. The Court found the legislative history, as well as the statutory language, to be ambiguous on the question; as such, it upheld the NRC construction. Here, given the identity of the actions being considered by the two agencies (DOE and NRC), we believe it to be a fair reading of Congressional intent that NRC can adequately exercise its NEPA decisionmaking responsibility with respect to a repository by relying upon DOE's environmental impact statement. As in *Quivira Mining*, the timing requirement—under NWPA, a three-year licensing process for a unique facility, involving standards of exceptional complexity, requiring disputatious predictions of future human activity and natural processes for thousands of years—supplies practical support for our interpretation. Congress did not speak to the precise question of the standard to be used in deciding whether adoption of DOE's environmental impact statement is practicable; and if our construction is not the only one that might be proposed, it seems to us to be, at a minimum, "permissible."

Once DOE's EIS has been adopted, the statute expressly relieves the Commission from further consideration of the environmental concerns addressed in the statement. Congressional review of a State's resolution of disapproval—should such a resolution be passed—would permit (and, most likely, virtually ensure) that issues other than those to be

implies that such information will prove to be sufficient to meet the applicant's burden of persuasion under § 60.31.

adjudicated under the Atomic Energy Act would have been considered and weighed. Under these circumstances, it would do no violence to national environmental policy to proscribe further examination in administrative proceedings.

Council on Environmental Quality Comments

The Commission invited the Council on Environmental Quality to comment on the proposed rule. The conclusion of CEQ was similar to that of the State of Nevada. In particular, CEQ read the phrase "to the extent practicable" to mean that NRC should make an independent evaluation of the DOE environmental impact statement, adopting some or all of it as appropriate so as to avoid unnecessary duplication. From the Commission's perspective, though, the position does not fully take into account the detailed scheme for environmental review established by NWPAA. Neither the related provisions of the statute (including, for example, those dealing with legislative and judicial review and establishing time frames for Commission decisionmaking) are analyzed, nor is there any examination of the legislative history which, as described in the preamble to the proposed rule, supports our point of view. We continue to believe that it is clear—at least in the debates of the House of Representatives with respect to the bill which, with amendments, was enacted into law—that the Commission role was intentionally to be directed to health and safety issues to the exclusion, absent new information or new considerations, of issues arising under NEPA.

It is worth noting, though, that CEQ recognizes that the Commission might "defer" to a court finding that the DOE environmental impact statement is adequate. This is certainly close, if not identical to, the Commission's position that a judicial finding of adequacy would preclude further litigation of the matter in NRC licensing proceedings.

Comments of Environmental Organizations

The environmental organizations' comments included a number of arguments similar to those of the State of Nevada with respect to the Commission's customary NEPA responsibilities. As already indicated, it is our view that Congress intended, under NWPAA, for NRC to accept the DOE EIS in the absence of substantial new considerations or new information. We reject the suggestion made by the Sierra Club that the approach we have

outlined amounts to an abdication of any Commission responsibility.

In addition, however, a number of comments of somewhat narrower scope were submitted by environmental organizations (as well as by the State of Nevada) and are addressed here.

One matter that particularly concerned the private Nevada Nuclear Waste Task Force involved the relationship between the judicial process and the Commission's administrative process. The Task Force cautioned that NRC should not rely on there having been a court ruling with regard to the adequacy of DOE's environmental impact statement in advance of the Commission's licensing decision (when a judicial finding of inadequacy, affecting much or little of the EIS, could be treated as a new consideration). In fact, such reliance is not essential. It is our expectation that, under NWPAA, a petition for review of the EIS would need to have been filed roughly contemporaneously with DOE's submission of a license application to NRC, and that judgment might have been entered within the three years envisaged for Commission licensing. Whether or not this proves to be the case is not controlling, for the standard for adoption does not rest upon collateral estoppel principles. Similarly, we find it beside the point to speculate regarding the possibility that a reviewing court might delay its decision on the adequacy until it sees the NRC conclusions in the licensing proceeding. Such delay would not stand in the way of the Commission's taking final action.

Although we thus do not rest our position upon the availability of a prior judgment of a court, we reiterate our view, as described in the preamble to the proposed rule, that such a judgment, if entered, would be controlling on the question of the adequacy of the EIS; and if the EIS were found to be adequate, it would be practicable for the Commission to adopt it.

We were criticized for suggesting that members of the public might be precluded from raising issues anew on the grounds that they had been represented by State officials in prior judicial proceedings. This position was claimed to be inconsistent with NRC intervention rules which, it is correctly argued, traditionally consider the interests of the state in which a facility is located as being distinguishable from the interests of particular members of the public who may be affected by the issuance of a license. Our first response is that our case law with respect to standing for purposes of intervention does not necessarily apply in the

context of collateral estoppel or issue preclusion, where the policies of repose come into play. But, in addition, we would reach the same result even if informed members of the public were not constrained by the putative prior judgment against the state; for in that event their failure to pursue their claims within the 180 days specified by section 119 of NWPAA would operate as a bar.

The Commission's position that failure to challenge DOE's environmental impact statement promptly in the courts bars subsequent challenge to that EIS in NRC proceedings was also criticized. Commenters suggested, instead, that affected parties may decide for reasons of litigative strategy or otherwise to contest questions regarding the repository in NRC licensing proceedings rather than by going to court about the DOE environmental impact statement. But such a unilateral decision on their part cannot operate as a means to circumvent the clear policy of the NWPAA requiring prompt adjudication of the issues raised by the EIS. When there has been a full and fair opportunity to raise the challenge, a party's failure to avail itself should in our view be regarded as an abandonment of its right to do so many years later. See *Oregon Natural Resources Council v. U.S. Forest Service*, 834 F.2d 842, 847 (9th Cir. 1987).

There is force to a commenter's suggestion that our proposed rules failed to take account of an EIS having been prepared in connection with a Negotiator-selected site, in which case the Commission review would be governed by section 407 of NWPAA, as amended, 42 U.S.C. 10247, instead of section 114, 42 U.S.C. 10134. One difference, as pointed out by the comment, is that for a Negotiator-selected site DOE makes no formal recommendation to the President and the President makes no decision with respect to approval of the site. This difference alone would not affect the approach we take to discharging our NEPA responsibilities, in part because we would expect early judicial review to be available even in the absence of a Presidential decision. In this regard, NWPAA authorizes a civil action to review any EIS prepared with respect to "any action" under the applicable subpart and, given our perspective on the intended allocation of functions between DOE and NRC, "any action" could include the Secretary of Energy's submission of an application to the Commission. We think the intent of Congress, as evidenced by the considerable parallelism of the language employed, was generally to establish the

same sort of role for the Commission with respect to any site—whether at Yucca Mountain or at a Negotiator-selected location. We recognize that it is our obligation “to consider the Yucca Mountain site as an alternate to (the Negotiator-selected site) in the preparation of” an EIS. This obligation will be discharged, though, to the extent of our adoption of the DOE environmental impact statement, provided that the alternative sites were addressed therein.

One aspect of the Negotiator-selected site provisions does have to be taken into account, however. For a Negotiator-selected site, a Commission decision to adopt the environmental impact statement must be made “in accordance with § 1506.3 of Title 40, Code of Federal Regulations,”—a limitation that we found not to apply to the EIS submitted under section 114 of NWPA. Under the cited section of the CEQ regulations, the Commission may only adopt the DOE statement if it is “adequate.” While a judicial decision on the point would be controlling, we would otherwise need to make an independent judgment in accordance with established practice. The final regulations reflect this possibility. In passing, though, we observe that we find nothing anomalous in having this responsibility in the case of a Negotiator-selected site but not in the case of the Congressionally-designated site at Yucca Mountain, for in the latter case there are opportunities for State disapproval and Congressional consideration that serve to provide a forum outside the Department for the evaluation of environmental concerns.

We are not persuaded by the comment that took exception to our requirement that needed supplements to the EIS would, as a general rule, have to be prepared by DOE—and that DOE's failure to comply with this requirement might be grounds for denial of a construction authorization. It seems to us that such supplementation by DOE would ordinarily be appropriate whenever, in the light of new information or new considerations, its proposed action may give rise to significant environmental impacts that were not addressed in its original EIS.

We were urged to reconsider our position with respect to the imposition of license conditions directed at mitigation of adverse environmental impacts. We had suggested that DOE could itself be held accountable for compliance with the mitigation measures described in its EIS, so that there was no need for them to be subject to litigation in NRC proceedings. The basis for our position is that the

departure from planned mitigation measures may well be a major Federal action having significant environmental impacts, which would necessitate the preparation of an environmental impact statement for a project that was otherwise determined to be without significant impact. But, in any event, we see no basis for employing our regulatory authority in this instance to police DOE's compliance with its mitigation plans; it will be subject to no more and no less oversight from interested persons than would be the case for many other developmental projects carried out, after preparation of appropriate environmental documentation, by Federal departments and agencies. To permit the mitigation measures to be litigated in NRC administrative proceedings—legitimate as this may be in other contexts—would run counter to the direction of the NWPA. It would bring in through the back door at least some of the contentions which, in our view, were to be settled in other forums.

An argument was made that amended section 114(f)(6)—which provides that “the Commission” need not consider enumerated factors in any EIS prepared with respect to a repository—indicates that Congress intended for NRC to issue its own EIS. The language in question appears to have been designed as an editorial measure, lacking substantive effect. The legislative history, cited with the proposed rule, demonstrates that no important change was being made in NRC's NEPA responsibilities, which under the 1982 statute were limited in the manner we have described. The statutory language is not surplusage, for NRC may have an obligation to prepare a supplemental EIS where there are new considerations or new information.

Department of Energy Comments

The Department of Energy, which is the prospective applicant affected by the proposed rules, agreed that NWPA counsels against wide-ranging independent examination by NRC of environmental concerns during the course of the licensing proceedings. DOE also concurred with NRC's view that a judicial determination of adequacy of an EIS precludes further litigation of that issue and that failure to raise an issue within the time set out in NWPA bars later challenge. The other DOE comments call for some clarification of the Commission's intentions, but do not prompt any fundamental change of the position that had previously been outlined.

For example, we can put to rest DOE's concern that NRC might defer its acceptance review of the license

application until the entire judicial review process on the EIS had run its course. Under the amendments, both as proposed and as adopted, the acceptance review applies only to the completeness of “the application,” not “the application or environmental report” as under existing 10 CFR 2.101(f)(2).

We believe we can also satisfy DOE's concern with respect to our mention, at 53 FR 16132, that there may be a need for “multiple EIS's.” The point being made was not that NRC might need to prepare its own EIS when DOE had already done so, but that the licensing process may involve more than one major federal action (for example, the construction of the repository on the one hand and the emplacement of waste on the other) that could necessitate the preparation of a supplemental EIS if not an entirely new one, if the impacts of such actions are not evaluated or properly encompassed in the initial EIS.

The responsibility for supplementation was another point of contention. DOE—along with some of the other commenters—argued that it would be inappropriate for it to be obliged to supplement its completed EIS in order to satisfy any independent NEPA responsibilities of the Commission. We agree with this statement. But, as DOE itself acknowledges, it might need to supplement the EIS if it were to make a substantial change in the proposed action or if significant new circumstances or information were to become available. That is all that is required by the regulatory language (10 CFR 60.24(c)).

However, in support of its position, DOE suggested that NRC adoption under the NWPA provisions was related specifically to the EIS “submitted as part of the Department's recommendation to the President.” But the language of Section 114(f) quite clearly applies to “any environmental impact statement prepared in connection with a repository proposed to be constructed” by DOE under NWPA.

DOE is correct in pointing out that a supplemental EIS would not necessarily be required in the event of a substantial change in the proposed action, where the change and the impacts thereof had previously been considered in the original statement.

The principal remaining issue raised by DOE's comments concerns the appropriate role of NRC in DOE's NEPA activities. DOE suggests that NRC should be a “cooperating agency,” a role that the Council on Environmental

Quality has recognized as being appropriate in the licensor-licensee context. We are not persuaded. The present situation is unique because—unlike the customary licensor-licensee situation—the particular statute guiding our approach (i.e., NHPA) removes the balancing of environmental considerations from our independent judgment. Under these circumstances, it strikes us as particularly out of place for NRC to undertake the kind of critical evaluation that a “cooperating agency” should perform in the preparation of an EIS. The Commission, nevertheless, has jurisdiction and expertise that it can, and will, bring to DOE’s attention as a commenting agency through the entire DOE NEPA process. We shall not hesitate, in particular, to raise concerns that might subsequently also require adjudication, under the standards of the Atomic Energy Act, in our licensing proceedings. Other issues, of course, can be identified in our comments as well. In other words, NRC as a commenting agency can and will play an important constructive role all the while from the scoping stage through preparation of the environmental impact statement; but as the sole responsibility for weighing the environmental impacts in support of a recommendation to the President is vested in DOE, DOE properly should be the agency with formal sponsorship of the EIS as well.

We respond, finally, to DOE’s claim that the requirement for DOE to inform the Commission of the status of legal action on the repository is unnecessary, since this information is a matter of public record. As a general rule, the applicant has the burden of placing on the record those factual matters upon which NRC decisions may be predicated. Although we have not placed sole reliance upon principles of issue preclusion (collateral estoppel), it remains our position that a final judgment of a reviewing court with respect to the adequacy of the DOE final environmental impact statement would be controlling and would support our adoption of such FEIS. Accordingly, it is appropriate for DOE to report on the status thereof.

Industry Comments

Comments received from Edison Electric Institute generally supported the Commission’s view that its essential responsibility under NHPA is to address radiological safety issues under the Atomic Energy Act, and that the requirements of NEPA were substantively modified as they apply to the high-level nuclear waste program.

We decline to follow EEI’s suggestion that issues related to adoption of DOE’s

environmental impact statement be made prior to the hearing process and outside the adjudicatory arena. As we have noted before, the impact statement does not simply “accompany” an agency recommendation for action in the sense of having some independent significance in isolation from the deliberative process. Rather the impact statement is an integral part of the Commission’s decision. It forms as much a vital part of the NRC’s decisional record as anything else. *Public Service Company of Oklahoma* (Black Fox Station, Units 1 and 2), CLI-80-31, 12 NRC 264, 275 (1980). Even though the range of issues to be considered in the hearing may be limited, the formal function of the environmental impact statement as an element of the licensing decision remains.

However, we find merit in EEI’s proposal to fix an early schedule for the NRC staff to present its position on the practicability of adoption and for other parties to file contentions with respect to the practicability of adoption. Accordingly, the final rule requires the NRC staff to present its position on adoption at the time that the notice of hearing is published in the *Federal Register*. Any contentions filed by any other party to the proceeding must be filed within thirty days after the notice of hearing is published. In the event that “substantial new considerations or new information” subsequently arises, contentions concerning the practicability of adopting DOE’s EIS that are filed after the 30-day deadline established in the rule must be accompanied by a demonstration of compliance with the late filing criteria in 10 CFR 2.1014.

Changes from the Proposed Rule

Section 51.67 Environmental Information Concerning Geologic Repositories

This section is revised to provide for the submission of environmental impact statements, pursuant to Title IV of NHPA, as amended, with respect to a Negotiator-selected site. A further change reflects DOE’s comment that supplement would not be required where a modification to its plans had been previously addressed by its EIS.

Section 51.109 Public Hearings in Proceedings for Issuance of Materials License with Respect to a Geologic Repository

In the final rule, paragraph (a) incorporates a schedule for the staff to present its position on the practicability of adoption of the DOE environmental impact statement, and for the filing of

contentions with respect thereto. Consistent with the recently-completed LSS (Licensing Support System) rulemaking, a period of thirty days after notice of hearing is provided for the submission of contentions.

Paragraph (c) is revised so that the special criterion for adoption, as discussed herein, will apply only with respect to the geologic repository at the Yucca Mountain site. Any EIS for a Negotiator-selected site would be excluded from the application of this paragraph. A conforming change appears in paragraph (d).

Paragraph (e) is modified to emphasize that the Commission’s customary policies will be observed except for adoption of an EIS prepared under Section 114. This is achieved by the insertion of the cross-reference (“in accordance with paragraph (c)”) in the introductory clause. As the language has been modified, it permits the adoption of other DOE environmental impact statements with respect to a Negotiator-selected site in accordance with generally applicable law. This includes observance of the procedures outlined in 40 CFR 1506.3. This is addressed adequately in Appendix A to 10 CFR Part 51, Subpart A, and requires no further elaboration in the text of the rule.

Petition for Rulemaking

The Commission’s earlier notice invited comments upon the related portions of a petition for rulemaking submitted by the States of Nevada and Minnesota, PRM-60-2A, 50 FR 51701, December 19, 1985. With the exception of the State of Nevada, none of the comments received by the Commission in response to the notice addressed the petition as such. The State of Nevada referred to the petition, recognized that some of the considerations therein have been mooted, and urged that alternative language be considered in the proposed rule, in place of that which they had recommended in the petition.

The section of the petition which provides language pertaining to the adoption of DOE’s EIS (i.e., Section IV.3) is denied. However, the issues identified by the petition regarding the criteria and procedures for adoption of DOE’s EIS have been considered in this proceeding. Although the language being promulgated differs from that proposed by the petitioners, the Commission is in full agreement with the petitioners’ argument that adoption of DOE’s EIS must not compromise the independent responsibilities of NRC to protect the public health and safety under the Atomic Energy Act of 1954. Our

rulemaking approach is in fact designed to enhance our ability to address these health and safety issues as effectively and objectively as possible.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described in categorical exclusions 10 CFR 51.22(c)(1) and (3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This final 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 numbers 3150-0021 and 0127.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 USC 605(b)), 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 amended rule is the U.S. Department of Energy.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and record keeping requirements.

10 CFR Part 60

High-level waste, Nuclear power plants and reactors, Nuclear materials, Penalty, Reporting and record keeping requirements, Waste treatment and disposal.

Issuance

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, the National Environmental Policy Act of 1969, as amended, the Nuclear Waste Policy Act of 1982, as amended, and 5 U.S.C. 553,

the NRC adopts the following amendments to 10 CFR Part 51, and related conforming amendments to 10 CFR Parts 2 and 60.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1642 (42 U.S.C. 2021b et seq.).

2. In § 2.101, paragraphs (f)(1), (2), (5), and (7) are revised and (f) (4) is removed and reserved to read as follows:

§ 2.101 Filing of application.

(f)(1) Each application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter and any environmental impact statement required in connection therewith pursuant to Subpart A of Part 51 of this chapter shall be processed in accordance with the provisions of this paragraph.

(2) To allow a determination as to whether the application is complete and acceptable for docketing, it will be initially treated as a tendered document, and a copy will be available for public inspection in the Commission's Public Document Room. Twenty copies shall be filed to enable this determination to be made.

(4) [Reserved]

(5) If a tendered document is acceptable for docketing, the applicant will be requested to (i) submit to the Director of Nuclear Material Safety and Safeguards such additional copies of the application and environmental impact statement as the regulations in Part 60 and Subpart A of Part 51 of this chapter require, (ii) serve a copy of such application and environmental impact statement on the chief executive of the municipality in which the geologic repository operations area is to be located, or if the geologic repository operations area is not to be located within a municipality, on the chief executive of the county (or to the Tribal organization, if it is to be located within an Indian reservation), and (iii) make direct distribution of additional copies to Federal, State, Indian Tribe, and local officials in accordance with the requirements of this chapter and written instructions from the Director of Nuclear Material Safety and Safeguards. All such copies shall be completely assembled documents, identified by docket number. Subsequently distributed amendments to the application, however, may include revised pages to previous submittals and, in such cases, the recipients will be responsible for inserting the revised pages.

(7) Amendments to the application and supplements to the environmental impact statement shall be filed and distributed and a written statement shall be furnished to the Director of Nuclear Material Safety and Safeguards in the same manner as for the initial application and environmental impact statement.

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

3. The authority citation for Part 51 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); 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. Sections 51.20, 51.30, 51.60, 51.61, 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 (42 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). Secs. 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)).

4. In § 51.20, existing paragraph (b)(13) is redesignated as paragraph (b)(14) and a new paragraph (b)(13) is added to read as follows:

§ 51.20 Criteria for and identification of licensing and regulatory actions requiring environmental impact statements.

*(b)***

(13) Issuance of a construction authorization and license pursuant to Part 60 of this chapter.

5. Section 51.21 is revised to read as follows:

§ 51.21 Criteria for and identification of licensing and regulatory actions requiring environmental assessments.

All licensing and regulatory actions subject to this subpart require an environmental assessment except those identified in § 51.20(b) as requiring an environmental impact statement, those identified in § 51.22(c) as categorical exclusions, and those identified in § 51.22(d) as other actions not requiring environmental review. As provided in § 51.22(b), the Commission may, in special circumstances, prepare an environmental assessment on an action covered by a categorical exclusion.

6. Section 51.22 is amended, by revising the heading and adding a new paragraph (d), to read as follows:

§ 51.22 Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.

*(d) In accordance with section 121 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10141), the promulgation of technical requirements and criteria that the Commission will apply in approving or disapproving applications under Part 60 of this chapter shall not require an environmental impact statement, an environmental assessment, or any environmental review under

subparagraph (E) or (F) of section 102(2) of NEPA.

7. In § 51.26, paragraph (a) is revised and a new paragraph (c) is added, to read as follows:

§ 51.26 Requirement to publish notice of intent and conduct scoping process.

(a) Whenever the appropriate NRC staff director determines that an environmental impact statement will be prepared by NRC in connection with a proposed action, a notice of intent will be prepared as provided in § 51.27, and will be published in the *Federal Register* as provided in § 51.116, and an appropriate scoping process (see §§ 51.27, 51.28, and 51.29) will be conducted.

*(c) Upon receipt of an application and accompanying environmental impact statement under § 60.22 of this chapter (pertaining to geologic repositories for high-level radioactive waste), the appropriate NRC staff director will include in the notice of docketing required to be published by § 2.101(f)(8) of this chapter a statement of Commission intention to adopt the environmental impact statement to the extent practicable. However, if the appropriate NRC staff director determines, at the time of such publication or at any time thereafter, that NRC should prepare a supplemental environmental impact statement in connection with the Commission's action on the license application, the procedures set out in paragraph (a) of this section shall be followed.

8. A new § 51.67 is added to read as follows:

§ 51.67 Environmental information concerning geologic repositories.

(a) In lieu of an environmental report, the Department of Energy, as an applicant for a license or license amendment pursuant to Part 60 of this chapter, shall submit to the Commission any final environmental impact statement which the Department prepares in connection with any geologic repository developed under Subtitle A of Title I, or under Title IV, of the Nuclear Waste Policy Act of 1982, as amended. (See § 60.22 of this chapter as to required time and manner of submission.) The statement shall include, among the alternatives under consideration, denial of a license or construction authorization by the Commission.

(b) Under applicable provisions of law, the Department of Energy may be required to supplement its final environmental impact statement if it makes a substantial change in its

proposed action that is relevant to environmental concerns or determines that there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. The Department shall submit any supplement to its final environmental impact statement to the Commission. (See § 60.22 of this chapter as to required time and manner of submission.)

(c) Whenever the Department of Energy submits a final environmental impact statement, or a final supplement to an environmental impact statement, to the Commission pursuant to this section, it shall also inform the Commission of the status of any civil action for judicial review initiated pursuant to section 119 of the Nuclear Waste Policy Act of 1982. This status report, which the Department shall update from time to time to reflect changes in status, shall:

(1) State whether the environmental impact statement has been found by the courts of the United States to be adequate or inadequate; and

(2) Identify any issues relating to the adequacy of the environmental impact statement that may remain subject to judicial review.

9. A new § 51.109 is added to read as follows:

§ 51.109 Public hearings in proceedings for issuance of materials license with respect to a geologic repository.

(a)(1) In a proceeding for the issuance of a license to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area, the NRC staff shall, upon the publication of the notice of hearing in the *Federal Register*, present its position on whether it is practicable to adopt, without further supplementation, the environmental impact statement (including any supplement thereto) prepared by the Secretary of Energy. If the position of the staff is that supplementation of the environmental impact statement by NRC is required, it shall file its final supplemental environmental impact statement with the Environmental Protection Agency, furnish that statement to commenting agencies, and make it available to the public, before presenting its position, or as soon thereafter as may be practicable. In discharging its responsibilities under this paragraph, the staff shall be guided by the principles set forth in paragraphs (c) and (d) of this section.

(2) Any other party to the proceeding who contends that it is not practicable

to adopt the DOE environmental impact statement, as it may have been supplemented, shall file a contention to that effect within thirty days after the publication of the notice of hearing in the *Federal Register*. Such contention must be accompanied by one or more affidavits which set forth factual and/or technical bases for the claim that, under the principles set forth in paragraphs (c) and (d) of this section, it is not practicable to adopt the DOE environmental impact statement, as it may have been supplemented. The presiding officer shall resolve disputes concerning adoption of the DOE environmental impact statement by using, to the extent possible, the criteria and procedures that are followed in ruling on motions to reopen under § 2.734 of this chapter.

(b) In any such proceeding, the presiding officer will determine those matters in controversy among the parties within the scope of NEPA and this subpart, specifically including whether, and to what extent, it is practicable to adopt the environmental impact statement prepared by the Secretary of Energy in connection with the issuance of a construction authorization and license for such repository.

(c) The presiding officer will find that it is practicable to adopt any environmental impact statement prepared by the Secretary of Energy in connection with a geologic repository proposed to be constructed under Title I of the Nuclear Waste Policy Act of 1982, as amended, unless:

(1)(i) The action proposed to be taken by the Commission differs from the action proposed in the license application submitted by the Secretary of Energy; and

(ii) The difference may significantly affect the quality of the human environment; or

(2) Significant and substantial new information or new considerations render such environmental impact statement inadequate.

(d) To the extent that the presiding officer determines it to be practicable, in accordance with paragraph (c) of this section, to adopt the environmental impact statement prepared by the Secretary of Energy, such adoption shall be deemed to satisfy all responsibilities of the Commission under NEPA and no further consideration under NEPA or this subpart shall be required.

(e) To the extent that it is not practicable, in accordance with paragraph (c) of this section, to adopt the environmental impact statement prepared by the Secretary of Energy, the presiding officer will:

(1) Determine whether the requirements of section 102(2) (A), (C), and (E) of NEPA and the regulations in this subpart have been met;

(2) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken;

(3) Determine, after weighing the environmental, economic, technical and other benefits against environmental and other costs, whether the construction authorization or license should be issued, denied, or appropriately conditioned to protect environmental values;

(4) Determine, in an uncontested proceeding, whether the NEPA review conducted by the NRC staff has been adequate; and

(5) Determine, in a contested proceeding, whether in accordance with the regulations in this subpart, the construction authorization or license should be issued as proposed.

(f) In making the determinations described in paragraph (e), the environmental impact statement will be deemed modified to the extent that findings and conclusions differ from those in the final statement prepared by the Secretary of Energy, as it may have been supplemented. The initial decision will be distributed to any persons not otherwise entitled to receive it who responded to the request in the notice of docketing, as described in § 51.26(c). If the Commission or the Atomic Safety and Licensing Appeal Board reaches conclusions different from those of the presiding officer with respect to such matters, the final environmental impact statement will be deemed modified to that extent and the decision will be similarly distributed.

(g) The provisions of this section shall be followed, in place of those set out in § 51.104, in any proceedings for the issuance of a license to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area.

10. In § 51.118, the existing text is redesignated as paragraph (a) and a new paragraph (b) is added, to read as follows:

§ 51.118 Final environmental impact statement—Notice of availability.

(b) Upon adoption of a final environmental impact statement or any supplement to a final environmental impact statement prepared by the Department of Energy with respect to a geologic repository that is subject to the Nuclear Waste Policy Act of 1982, the appropriate NRC staff director shall

follow the procedures set out in paragraph (a) of this section.

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

11. The authority citation for Part 60 is revised to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 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, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97-425, 96 Stat. 2213, 2228, as amended (42 U.S.C. 10134, 10141).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 60.10, 60.71 to 60.75 are issued under sec. 1610, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§ 60.15 [Amended]

12. In § 60.15, paragraph (c) is removed and paragraph (d) is redesignated as paragraph (c).

13. In § 60.21, paragraph (a) is revised to read as follows:

§ 60.21 Content of application.

(a) An application shall consist of general information and a Safety Analysis Report. An environmental impact statement shall be prepared in accordance with the Nuclear Waste Policy Act of 1982, as amended, and shall accompany the application. Any Restricted Data or National Security Information shall be separated from unclassified information.

14. Section 60.22 is revised to read as follows:

§ 60.22 Filing and distribution of application.

(a) An application for a license to receive and possess source, special nuclear, or byproduct material at a geologic repository operations area at a site which has been characterized, and any amendments thereto, and an accompanying environmental impact statement and any supplements, shall be signed by the Secretary of Energy or the Secretary's authorized representative and shall be filed in triplicate with the Director.

(b) Each portion of such application and any amendments, and each environmental impact statement and any supplements, shall be accompanied by 30 additional copies. Another 120 copies shall be retained by DOE for distribution in accordance with written instructions from the Director or the Director's designee.

(c) DOE shall, upon notification of the appointment of an Atomic Safety and Licensing Board, update the application, eliminating all superseded information, and supplement the environmental impact statement if necessary, and serve the updated application and environmental impact statement (as it may have been supplemented) as directed by the Board. At that time DOE shall also serve one such copy of the application and environmental impact statement on the Atomic Safety and Licensing Appeal Panel. Any subsequent amendments to the application or supplements to the environmental impact statement shall be served in the same manner.

(d) At the time of filing of an application and any amendments thereto, one copy shall be made available in an appropriate location near the proposed geologic repository operations area (which shall be a public document room, if one has been established) for inspection by the public and updated as amendments to the application are made. The environmental impact statement and any supplements thereto shall be made available in the same manner. An updated copy of the application, and the environmental impact statement and supplements, shall be produced at any public hearing held by the Commission on the application, for use by any party to the proceeding.

(e) The DOE shall certify that the updated copies of the application, and the environmental impact statement as it may have been supplemented, as referred to in paragraphs (c) and (d) of this section, contain the current contents of such documents submitted in accordance with the requirements of this part.

15. In § 60.24, the section heading and paragraphs (a) and (c) are revised to read as follows:

§ 60.24 Updating of application and environmental impact statement.

(a) The application shall be as complete as possible in the light of information that is reasonably available at the time of docketing.

(c) The DOE shall supplement its environmental impact statement in a timely manner so as to take into account the environmental impacts of any substantial changes in its proposed actions or any significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

16. In § 60.31, the introductory paragraph is revised to read as follows:

§ 60.31 Construction authorization.

Upon review and consideration of an application and environmental impact statement submitted under this part, the Commission may authorize construction if it determines:

17. In § 60.51, the introductory portion of paragraph (a), and paragraph (b), are revised to read as follows:

§ 60.51 License amendment for permanent closure.

(a) DOE shall submit an application to amend the license prior to permanent closure. The submission shall consist of an update of the license application submitted under §§ 60.21 and 60.22, including:

(b) If necessary, so as to take into account the environmental impact of any substantial changes in the permanent closure activities proposed to be carried out or any significant new information regarding the environmental impacts of such closure, DOE shall also supplement its environmental impact statement and submit such statement, as supplemented, with the application for license amendment.

Dated at Rockville, Maryland this 26th day of June 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-15633 Filed 6-30-89; 8:45 am]

BILLING CODE 7590-01-D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2610 and 2622

Late Premium Payments and Employer Liability Underpayments and Overpayments; Change in Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule; correction.

SUMMARY: This document corrects the most recent amendments to Appendix A to Part 2610 and Appendix A to Part 2622, the interest rates on late premium payments and underpayments or overpayments of employer liability, respectively. Those amendments, which appeared at 54 FR 13520 (April 4, 1989), set forth the interest rates effective as of April 1, 1989. This correction removes the ending date for the effective period of those rates, which will remain in effect until changed.

EFFECTIVE DATE: June 30, 1989.

FOR FURTHER INFORMATION CONTACT:

John Foster, Attorney, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone (202) 778-8850 ((202) 778-8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The following corrections are made in FR Doc. 89-7930 appearing in the issue of April 4, 1989 [54 FR 13520]:

Appendix A to Part 2610—[Amended]

1. On page 13520, column three, under Part 2610, Appendix A, the last entry is corrected by deleting "June 30, 1989". As corrected, this entry should read "April 1, 1989 . . . 12."

Appendix A to Part 2622—[Amended]

2. On page 13521, column one at the top, the last entry is corrected by deleting "June 30, 1989. As corrected, this entry should read "April 1, 1989 . . . 12."

James B. Lockhart III,
Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89-15553 Filed 6-30-89; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2644

Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency. The effect of this amendment is to add to the appendix of that regulation a new interest rate to be effective from July 1, 1989, to September 30, 1989.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT:

John Foster, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC. 20006; telephone 202-778-8850 (202-778-8859 or TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("the PBGC") promulgated a final regulation on Notice and Collection of Withdrawal